No. 18-837

In The
Supreme Court of the United States

SCOTT HARRIS, ET AL.,

Petitioners,

v.

WEST ALABAMA WOMEN'S CENTER, ET AL.,

Respondents.

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

AMICUS CURIAE BRIEF OF TRINITY LEGAL CENTER IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF THE AMICUS CURIAE

Consent to file this amicus brief was given by both parties. This brief supporting Petitioner was prepared by counsel for amici.[1]

This case is of great national importance and consequence because it goes to the heart of this Court's abortion jurisprudence and recognizing the State's legitimate governmental interest without creating an undue burden. This case is certiorari worthy because Alabama is one of ten states that have enacted the dismemberment abortion ban with conflicting results. Thus, there is a conflict within the jurisdictions. In addition, certiorari should be granted to resolve the conflicting jurisprudence in this Court's cases of *Hellerstadt*, *Gonzales*, and *Stenberg* and to protect the humanity of human life.

Ten percent of the abortions in the United States are second trimester abortions.[2] According to a recent

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[1] The parties were notified ten days prior to the due date of this brief of the intention to file. The parties have consented to the filing of this brief. 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. Trinity Legal Center is a nonprofit corporation and is supported through private contributions of donors who have made the preparation and submission of this brief possible. No person other than amicus curiae, their counsel, or donors to Trinity Legal Center made a monetary contribution to its preparation or submission.

[2] Guttmacher Institute, *Second-Trimester Abortions Concentrated Among Certain Groups of Women*, *available at* https://

report, certain groups of women, such as those with lower educational levels, black women, and teenagers, are overrepresented among second-trimester abortion patients.[3] These are the most vulnerable women in our society who should be protected and given truthful and non-misleading information about the D&E procedure. As this Court has recognized, there are physical and psychological consequences for post-abortive women, and therefore, this decision has far-reaching and long-lasting implications.

SUMMARY OF THE ARGUMENT

I.

The Petition for Writ of Certiorari should be granted because Alabama has a legitimate interest in banning a gruesome, brutal, and inhumane form of abortion. Ten states have banned dismemberment abortion in the second trimester due to this gruesome method. Alabama's law comports with this Court's abortion pronouncements because it clearly describes the D&E procedure to be banned, provides an exception to prevent serious health risks to the mother, and does not create an undue burden because the woman can still have an abortion and have that specific method if the unborn child is not living. Alabama's dismemberment law is akin in both law and principle to

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www.guttmacher.org/news-release/2011/second-trimester-abortions-concentrated-among-certain-groups-women (2011).

[3] *Id*.

this Court's decision in *Gonzales*, and therefore, the Act should be upheld.

In a civilized nation, the state has a legitimate interest in protecting human beings from such a gruesome, cruel, and inhumane treatment when they are put to death. By analogy, the Eighth Amendment prohibits prisoners from cruel and inhumane treatment such as quartering where the person is torn apart. Neither prisoners nor innocent unborn children should be treated in such a manner. The dismemberment law should be upheld because Alabama sought to respect a woman's choice while protecting the dignity and humanity of her unborn child.

II.

From the foundation of this country, there has been a respect for life. But what was known in principle has now been proven in science. Since *Roe*, there has been an explosion of medical and scientific knowledge regarding the humanity of the unborn child. Through the development of ultrasound technology, a woman can see the living and growing child within her womb. Alabama has a legitimate state interest in treating the living unborn child in a humane and dignified manner. The Alabama Legislature correctly stated that the dignity and value of life continues to be a public policy of the highest order. The Petition for Writ of Certiorari should be granted and the dismemberment abortion law upheld.

ARGUMENT

I. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE STATE HAS A LEGITIMATE INTEREST IN BANNING A GRUESOME, BRUTAL, AND INHUMANE FORM OF ABORTION, AND THEREFORE, THE BAN SHOULD BE UPHELD.

A. Dismemberment Abortion Is a Gruesome Form of Abortion as This Court Has Stated, and Therefore, the State Has a Legitimate Interest in Banning It.

This Court has acknowledged the controversial nature of the abortion issue.[4] Because life begins at conception, millions of Americans believe that "abortion is akin to causing the death of an innocent child . . . "[5] This Court has also recognized that millions of Americans "recoil at the thought of a law that would permit it."[6] This can particularly be said concerning dismemberment abortion where the "living unborn

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[4] Stenberg v. Carhart, 530 U.S. 914, 920 (2000); *see id.* at 947 (O'Connor, J., concurring) (stating "The issue of abortion is one of the most contentious and controversial in contemporary American society").

[5] *Id*.

[6] *Id*. Justice Scalia described it as "so horrible that the most clinical description of it evokes a shudder of revulsion." *Id*. at 953 (Scalia, J., dissenting).

child"[7] is killed by tearing it apart limb by limb.[8] At the conclusion of the D&E abortion, the abortionist is left with "a tray full of pieces."[9] Because this is a gruesome and brutal death for the living unborn child, the state has a legitimate interest in banning this method of abortion.

Ten states have banned dismemberment abortions.[10] In 2016, the Alabama Legislature banned this gruesome and brutal type of abortion that is used in the second trimester of pregnancy.[11] Alabama has a history of protecting the physical and psychological health of women and respecting their living unborn

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[7] This Court repeatedly used the phrase "living unborn child" throughout the opinions in Stenberg v. Carhart.

[8] Although the majority in Stenberg discuss the D&E procedure in a very clinical manner, Justice Kennedy in his dissent realistically describes the procedure using the evidence from abortionist Carhart's own testimony. Stenberg v. Carhart, 530 U.S. 914, 958-59 (2000) (Kennedy, J., dissenting). *See generally* Dr. Anthony Levatino, 2nd Trimester Abortion Procedure, *available at* https://www.youtube.com/watch?v=ESqdmQFTNhE (demonstrating the procedure and the tray of pieces that has to be counted).

[9] Stenberg v. Carhart, 530 U.S. 914, 959 (2000) (Kennedy, J., dissenting).

[10] ALA. CODE § 26-23G-2; ARK. CODE ANN. § 20-16-1801 *et seq.*; KAN. STAT. ANN. § 65-6743; KY. REV. STAT. § 311.710 *et seq.*; LA. REV. STAT. § 40:1061.1.1; MISS. CODE ANN. §§ 41-41-151 to 41-41-169; OKLA. STAT. tit. 63 § 1-737.7 *et seq.*; TEX. HEALTH & SAFETY CODE § 171.151 *et seq.*; W. VA. CODE § 16-2O-1.

[11] ALA. CODE § 26-23G-2. Justices Stevens and Ginsburg in their concurring opinion in Stenberg recognized the "gruesome nature of late-term abortion procedures." Stenberg v. Carhart, 530 U.S. 914, 946 (2000) (Stevens, J., concurring and Ginsburg, J., joins concurring).

child.[12] The dismemberment law was simply another step in that protection due to the serious physical risk factors to the woman such as uterine perforation, cervical lacerations, infections, hemorrhage, maternal death, and future pregnancy complications.[13]

Alabama's law comports with this Court's pronouncements in *Casey* by clearly describing the procedure that is banned, providing for an exception to prevent serious health risks to the woman, and not creating an undue burden.[14] The procedure is only banned while there is a living unborn child and not after the death of the unborn child. This does not create an undue burden on the woman because she can have the D&E method during her second trimester if the unborn child is not alive, and thus, it does not limit her ability to have an abortion.

Based on this Court's abortion jurisprudence, the court of appeals correctly recognized at least three

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[12] For example, ALA. CODE § 26-23A-2 concerning a Woman's Right to Know Act was enacted in 2002. Legislative findings state: "(1) It is essential to the psychological and physical well-being of a woman considering an abortion that she receive complete and accurate information on her alternatives" and "(3) The decision to abort is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences. The medical, emotional, and psychological consequences of an abortion are serious and can be lasting or life threatening."

[13] Dr. Levatino describes these risks. *See* Dr. Anthony Levatino, 2nd Trimester Abortion Procedure, *available at* https://www.youtube.com/watch?v=ESqdmQFTNhE.

[14] *See* Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).

legitimate interests that the State of Alabama has to prevent a living unborn child from being dismembered.[15] First, the State may use its regulatory authority to show a profound respect for the life within the woman.[16] Second, the State may regulate a "brutal and inhumane procedure" to avoid the coarsening of society to the humanity of newborns and all vulnerable and innocent human life.[17] Third, the State may enact laws to protect the integrity of the medical profession and the health and well-being of medical practitioners.[18] It correctly concluded that "[d]ismemberment abortions exact emotional and psychological harm on at least some of those who participate in the procedure or are present during it."[19]

In spite of these legitimate state interests, the court of appeals said it was compelled to invalidate the Act because "there is constitutional law and then there is the aberration of constitutional law relating to abortion," and as a lower federal court it had to apply the "aberration."[20] By granting the Petition for Writ of Certiorari, this Court has the opportunity to correct the aberration and restore the State's right to protect

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[15] Alabama Women's Center v. Williamson, 900 F.3d 1319, 1320 (2018).

[16] *Id*.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 1314.

women and their living unborn children from a very gruesome, brutal, cruel, and inhumane death.

This case can be distinguished from *Stenberg v. Carhart*[21] because the statutory flaws that this Court found in *Stenberg* are not present in this case. This Court held the Nebraska statute unconstitutional because it applied to both the D&E and D&X procedures, lacked any exception to preserve the health of the mother, and created an undue burden on a woman.[22] In contrast, the Alabama dismemberment statute applies only to the D&E dismemberment method of a living unborn child. It also has an exception to preserve the health of the mother from serious health risks. It does not create an undue burden because the woman can still have an abortion in the second trimester and the D&E method can be used if the unborn child is not living.

In determining whether there has been an undue burden, the Court should follow the *Casey-Gonzales* formulation of that test and reject the reformulation of it in *Hellerstedt*. In *Hellerstedt*,[23] it did so in three ways. First, the Court superimposed a balancing test[24] to weigh benefits and the burden which was unnecessary

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[21] Stenberg v. Carhart, 530 U.S. 914 (2000).

[22] *Id*. at 930.

[23] Whole Woman's Health v. Hellerstedt, ___ U.S. ___, 136 S. Ct. 2292, 195 L. Ed. 2d 665 (2016).

[24] *Id*. at 2309.

and rewrites and further complicates the standard.[25] Second, it rejected the rational basis to act standard for a strict review unlike prior cases.[26] Third, the Court stated that courts were to "consider whether *any burden* imposed on abortion access is 'undue'."[27] Such a standard would prohibit the state from exercising its legitimate interests to protect women and their living unborn child. This would be unacceptable in any case, but particularly in a dismemberment case where there is a gruesome and brutal death of the unborn child.

Alabama's dismemberment Act is akin in both law and principle to this Court's decision in *Gonzales*, and therefore, the Act should be upheld. Justice Kennedy contrasted the *Stenberg* statute and found that in *Gonzales* the Act was more specific concerning its application and coverage.[28] In a similar way, the Alabama Act specifically describes the method to be banned and its application and coverage.[29]

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[25] Justice Thomas is critical of this rewrite because it "transform the under-burden test to something much more akin to strict scrutiny." *Id*. at 1234 (Thomas, J., dissenting).

[26] For example, in Gonzales this Court stated: "Where it has a rational basis to act, and it does not impose an undue burden, the State may use its regulatory power to bar certain procedures and substitute others, all in further of its legitimate interest in regulating the medical profession in order to promote respect for life including life of the unborn." Gonzales v. Carhart, 550 U.S. 124, 158 (2007).

[27] Whole Woman's Health v. Hellerstedt, ___ U.S. ___, 136 S. Ct. 2292, 2310, 195 L. Ed. 2d 665 (2016) (emphasis added).

[28] Gonzales v. Carhart, 550 U.S. 124, 133 (2007).

[29] ALA. CODE § 26-23G-2(3).

After describing in detail the various methods for second trimester abortions, this Court recognized that the Act "is a variation of this standard D&E method."[30] Likewise, the Alabama Act is a slight variation of the method because of the gestational age of the living unborn child. This variance in degree is actually as gruesome and brutal as the D&X partial birth abortion because the living unborn child is torn apart in pieces while the child is still alive and its heart is beating. This makes people in a civilized nation "recoil" from such a gruesome procedure.

In *Gonzales*, the Court recognized and discussed abortion methods besides the D&E method.[31] Alabama is not banning abortion in the second trimester; it is merely seeking a more humane method of abortion that would not be gruesome and brutal. This is a legitimate interest of the State. As this Court recognized in *Gonzales*, "the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus. . . ."[32] It recognized that the premise central to *Casey*[33] was that the government has a legitimate and substantial interest in preserving and promoting fetal life."[34]

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[30] Gonzales v. Carhart, 550 U.S. 124, 136 (2007).

[31] *Id*. at 140.

[32] *Id*. at 145 (*quoting* Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833, 846 (1992)).

[33] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992).

[34] Gonzales v. Carhart, 550 U.S. 124, 145 (2007).

This Court has also stated that the abortion decision is "so fraught with emotional consequence some doctors may prefer not to disclose precise details of the means that will be used. . . ."[35] Yet, that emotional trauma is even greater when later she learns the details of the procedure or the nature of the abortion.[36]

Congress and this Court have recognized, approving such a brutal and inhumane procedure will further coarsen society to the humanity of the unborn child as well as the vulnerable and innocent human.[37] In so doing, it will be increasingly difficult to protect life.[38] Just as the partial birth abortion ban expressed respect for the dignity of human life, so the Alabama dismemberment abortion law also respects the dignity of the living unborn child and protects the child from a gruesome and brutal death. The Amicus urges this Court to grant the Petition for Writ of Certiorari and reverse the decision of the court of appeals.

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[35] *Id*. at 159.

[36] For example, in Acuna v. Turkish, 192 N.J. 399, 930 A.2d 416 (2007), Rosa Acuna was seven weeks pregnant and asked if it was a baby. Turkish replied "don't be stupid, it's only blood." Upon learning the truth concerning the development of her baby and that parts of the baby were left in her, she suffered severe emotional and psychological trauma, which led to the development of acute post-traumatic stress disorder, obsessive compulsive disorder, major clinical depression and psychosexual dysfunction. *Id*.

[37] Gonzales v. Carhart, 550 U.S. 124, 157 (2007) (*citing* Congressional Findings (14)(N)).

[38] *Id*.

B. In a Civilized Nation, the State Has a Legitimate Interest in Protecting Human Beings from Gruesome, Cruel, and Inhumane Treatment When They Are Put to Death.

In *Roe v. Wade*, the State of Texas argued that life begins at conception, and therefore, the State has a compelling interest in protecting life from and after conception.[39] This Court said that it did not need to resolve the difficult question of when life begins,[40] reasoning that 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."[41]

Now forty-six years later, objective scientific evidence establishes with certainty when life begins.[42]

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[39] Roe v. Wade, 410 U.S. 113, 159 (1973).

[40] *Id.*

[41] *Id.*

[42] The leading textbooks also teach the scientific fact of when life begins. *See*, *e.g.*, William J. Larsen, Human Embryology at 1 (2d ed. New York: Churchill Livingstone, 1997) (" . . . [W]e begin our description of the developing human with the formation and differentiation of the male and female sex cells or gametes, which will unite at fertilization to initiate the embryonic development of a new individual."); Keith L. Moore & T.V.N. Persaud, the Developing Human: Clinically Oriented Embryology at 34 (6th ed. Only, Philadelphia: W.B. Saunders Co., 1998) ("Human development begins when a oocyte is fertilized."); Ronan O'Rahilly & Fabiola Muller, Human Embryology & Teratology at 88 (3d ed. New York, 2001) ("Just as postnatal age begins at birth, prenatal age begins at fertilization.").

This is a scientific and biological fact and not a legal or moral judgment. When a human ovum is fertilized by a human sperm, a biological life begins.[43] Thus, scientific evidence confirms that life begins at conception.[44]

Thanks to ultrasound technology, pictures of gestational development are available. Subsequent to this Court's ruling in *Casey*, states enacted "A Woman's Right to Know" laws[45] which provided this factual

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[43] John C. Wilke & Barbara H. Wilke, Abortion 63 (Hayes Pub. Co. 2003) (stating " . . . the beginning of any one human individual's life, biologically speaking, begins at the completion of the union of his father's sperm and his mother's ovum, a process called 'conception,' 'fertilization' or 'fecundation. . . .' ").

[44] In the largest government study since *Roe*, the South Dakota Task Force held extensive hearings and heard from medical and scientific experts. The Task Force Report stated that "[i]t can no longer be doubted that the unborn child from the moment of conception is a whole separate human being." Report of the South Dakota Task Force to Study Abortion 10 (Dec. 2005), *available at* http://www.dakotavoice.com/Docs/South%20Dakota%20Task%Force%20Report.pdf.

[45] *See*, *e.g.*, **Alabama:** ALA. CODE § 26-23A-1 *et seq.*; **Florida:** FLA. STAT. ANN. § 390.0111; **Georgia:** GA. CODE ANN. § 31-9A-1 *et seq.*; **Idaho:** IDAHO CODE ANN. § 18-609; **Indiana:** IND. CODE ANN. § 16-34-2-1.1; **Kansas:** KAN. STAT. ANN. § 65-6709; **Kentucky:** KY. REV. STAT. ANN. § 311.720 *et seq.*; **Louisiana:** LA. REV. STAT. ANN. § 40:1061; **Massachusetts:** MASS. GEN. LAWS ch. 111, § 70E; **Michigan:** MICH. COMP. LAWS § 333.17014 *et seq.*; **Minnesota:** MINN. STAT. ANN. § 145.4241 *et seq.*; **Mississippi:** MISS. CODE ANN. § 41-41-33; **Missouri:** MO. REV. STAT. § 188.027; **Montana:** MONT. CODE ANN. § 50-20-3 *et seq.*; **Nebraska:** NEB. REV. STAT. ANN. § 28-327 *et seq.*; **North Carolina:** N.C. GEN. STAT. ANN. § 90-21-80 *et seq.*; **North Dakota:** N.D. CENT. CODE § 14-02.1-01; **Ohio:** OHIO REV. CODE ANN. § 2317.56; **Oklahoma:** OKLA. STAT. ANN. tit. 63, § 1-738.1A *et seq.*; **Pennsylvania:** 18 PA. CONS. STAT. ANN. § 3203 *et seq.*; **South Carolina:** S.C. CODE ANN. § 44-41-310 *et seq.*; **South Dakota:** S.D.

scientific evidence of the development of the unborn child.[46] It has also been scientifically shown that the unborn child feels pain at an early age, possibly eight weeks, and that it is standard medical operational procedure to anesthetize the child.[47]

The societal question is "how do we treat human beings in terminating their lives?" This issue has been more fully developed in the context of capital punishment cases where the Constitution[48] and this Court's jurisprudence[49] has made it clear that society does not

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CODIFIED LAWS § 34-23A-10.1 *et seq*.; **Texas:** TEX. HEALTH & SAFETY CODE ANN. § 171.012; **Utah:** UTAH CODE ANN. § 76-7-305 *et seq*.; **Virginia:** VA. CODE ANN. § 18.2-76; **West Virginia:** W. VA. CODE ANN. § 16-2I-1 *et seq*.; **Wisconsin:** WIS. STAT. ANN. § 253.10. *See generally* Annotation, *Validity of State "Informed Consent" Statutes by Which Providers of Abortion Are Required to Provide Patient Seeking Abortion with Certain Information*, 119 A.L.R.5th 315 (2004).

[46] Similar to other states, Alabama has a woman's right to know booklet that explains "the developmental characteristics of an unborn child from conception until birth; abortion methods and risks; and other resources that are available to women facing a pregnancy." *See* Alabama Department of Public Health, *Did You Know*, *available at* http://adph.org/HEALTHCAREFACILITIES/assets/DidYouKnowBooklet.pdf.

[47] Report of the South Dakota Task Force to Study Abortion 55 (Dec. 2005), *available at* http://www.dakotavoice.com/Docs/South%20Dakota%20Task%Force%20Report.pdf.

[48] U.S. Const. amend. VIII (prohibiting "cruel and unusual punishments" including cruel forms of executions).

[49] *See*, *e.g.*, Glass v. Louisiana, 471 U.S. 1080 (1985); Estelle v. Gamble, 429 U.S. 97 (1976); Tropp v. Dulles, 356 U.S. 86 (1958); Louisiana ex rel. Francis v. Resweber, 329 U.S. 459 (1947); Wilkerson v. Utah, 99 U.S. 130 (1878). *Cf.* Rochin v. People of

permit barbarism where a life is to be terminated. By analogy, that jurisprudence helps in this case.

In *Wilkerson*,[50] a man was found guilty of premeditated first-degree murder and was sentenced to be publicly shot.[51] This Court stated that it is the duty of the court to follow the statute concerning the mode of executing the sentence unless the punishment was cruel and unusual within the meaning of the Eighth Amendment.[52] Unlike being embowelled alive, quartered, or burned alive which are atrocities, the shooting was upheld.[53]

The Eighth Amendment[54] itself does not define or give examples of cruel and unusual punishment. It merely states that cruel and unusual punishment shall not be inflicted. It also does not discuss how to determine if a particular punishment is cruel and unusual. But in *Furman*,[55] Justice Brennan stated: "The primary principle is that a punishment must not be so severe as to be degrading to the dignity of human beings. Pain, certainly, may be a factor in the judgment."

California, 342 U.S. 165, 172 (1952) (stating due process requires that conduct must not "shock the conscience").

[50] Wilkerson v. Utah, 99 U.S. 130 (1878).

[51] *Id*.

[52] *Id*. at 136-37.

[53] *Id*. at 135.

[54] U.S. Const. amend. VIII.

[55] Furman v. Georgia, 408 U.S. 238, 271 (1972) (Brennan, J., concurring).

In *Estelle*,[56] this Court assessed whether failing to provide adequate medical care would be tantamount to deliberate indifference to the prisoner's serious illness or injury would constitute cruel and unusual punishment. The Court stated that the Eighth Amendment proscribes more than "physically barbarous punishments"; it embodies "broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . " and does not "involve the unnecessary and wanton infliction of pain."[57] Therefore, the Court concluded that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'."[58]

In *Glass*,[59] the Justices who dissented from the denial of certiorari stated that electrocution does not comport with "standards of human dignity" and "is a cruel and barbaric method of extinguishing a human life." Civilized standards require physical violence during execution is minimized irrespective of the pain it might inflict.[60] But the Justices recognized that electrocution causes unspeakable pain and suffering.[61] They contend that electrocution causes more than death – it inflicts unnecessary and wanton pain and cruelty; the physical violence violates basic dignity;

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[56] Estelle v. Gamble, 429 U.S. 97 (1976).

[57] *Id*. at 102-03.

[58] *Id*. at 104.

[59] Glass v. Louisiana, 471 U.S. 1060 (1985).

[60] *Id*. at 1085.

[61] *Id*. at 1088.

and, may require several attempts and a lingering death.[62]

Based on these cases, there are certain guiding principles:

- Being quartered was considered an atrocity;
- Conduct that shocks the conscience violates the Due Process Clause;
- The government must respect certain decencies of civilized conduct;
- Conduct that is degrading to the dignity of human beings is banned;
- Pain is a factor;
- Idealist concepts of dignity, civilized standards, humanity, and decency are required; and,
- The punishment must comport with standards of human dignity.

Based on these principles, the Eighth Amendment prohibits such barbaric practices as drawing and quartering[63] which tore the individual apart. Such punishment was for the high crime of treason.[64] The last time

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[62] *Id*. at 1093

[63] *Id*. at 1088.

[64] For a history and description of drawing and quartering, *see* Wyatt Redd, *How Being Hanged, Drawn, and Quartered Became the Most Brutal Punishment in History* (2018), *available at* https://allthatsinteresting.com/hanged-drawn-quartered.

anyone was sentenced to be hanged, drawn, and quartered was in 1867.[65] It was certainly reasonable to say that this was the "most brutal punishment in history."[66] The living unborn child has not committed any high crimes and does not deserve this brutal and gruesome death.

Neither prisoners nor innocent unborn children should be treated in such a manner. The State of Alabama sought to respect a woman's choice while protecting the dignity of her unborn child by disallowing a gruesome, brutal, and inhumane form of abortion. This Court should grant the Petition for Writ of Certiorari and uphold the State's legitimate interests.

II. THIS COURT SHOULD RECOGNIZE AND PRESERVE THE HUMANITY OF ALL CITIZENS AND PARTICULARLY THE UNBORN WHO ARE THE MOST HELPLESS AND VULNERABLE IN OUR SOCIETY.

From the foundation of this country, there has been a respect for life. In the Declaration of Independence, the Congress of the thirteen states unanimously proclaimed that: "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, liberty, and the pursuit of happiness."[67] The right to life was the first right

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[65] *Id*.

[66] *Id*.

[67] DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

mentioned and the others could only be enjoyed if the first was protected.[68]

Mother Teresa addressed the issue before this Court and recognized the principle by stating:

> If the right [to] life is an inherent and inalienable right, it must surely obtain wherever human life exists. No one can deny that the unborn child is a distinct human being, that it is human, and that it is alive. It is unjust, therefore, to deprive the unborn child of its fundamental right to life on the basis of its age, size, or condition of dependency.[69]

As Justice Scalia stated:

> The notion that the Constitution of the United States, designed, among other things, "to establish Justice, insure domestic Tranquility, . . . and secure the Blessings of Liberty to ourselves and our Posterity," prohibits the States from simply banning this visibly brutal means of eliminating our half-born posterity is quite simply absurd.[70]

What was known in principle has now been proven in science. An explosion of medical and scientific

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[68] For a detailed discussion of *Roe*, *see* Linda L. Schlueter, *40th Anniversary of* Roe v. Wade*: Reflections Past, Present and Future*, 40 OHIO N. L. REV. 105 (2013).

[69] Matthew Clark, *Mother Teresa's Defense of the Unborn at the U.S. Supreme Court*, *available at* https://aclj.org/pro-life/mother-teresa-defense-unborn-us-supreme-court.

[70] Stenberg v. Carhart, 530 U.S. 914, 953 (2000) (Scalia, J., dissenting).

knowledge regarding the humanity of the unborn child has occurred since the Court's decision in *Roe v. Wade*.[71] Through the development of ultrasound technology, doctors and their patients can see the living and growing child within the womb. This technology also refutes the statements by abortionists that the child is just blood, a blob of tissue, or the product of conception.[72] These descriptions are not only misleading, they deny the humanity of the child.

Recognition of the humanity of the child can be seen in various ways:

- Ultrasound technology allows a mother to see her unborn child at all stages of her pregnancy including the growth and development of the child and potential abnormalities.
- Science confirms that life begins at conception.
- Doctors can successfully perform in-utero surgery on an unborn child at very early stages of pregnancy.
- The viability date of unborn children has continued to advance year after year, with infants born as early as twenty-one (21) weeks and living full healthy lives.

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

[72] For example, in Acuna v. Turkish, 192 N.J. 399, 930 A.2d 416 (2007) (stating at seven weeks development that the child was only blood).

- Improvements in neo-natal medical technology now make it possible for dramatically premature infants to live when a few years ago they would not have survived.
- DNA technology can remove any doubt that there are two living human beings – the mother and her unborn child.

Alabama has a legitimate state interest in reducing fetal pain and treating the unborn in a humane and dignified way. The Alabama Legislature correctly stated in its findings: "The dignity and value of life, especially the lives of children, born and unborn, has been and continues to be a public policy of the highest order and often sacred concern for the people of this state."[73]

[73] ALA. CODE § 26-23F-2(a)(4). (allowing "parents of deceased unborn infants to provide a dignified final disposition of the bodily remains of these infants").

CONCLUSION

This Court should grant the Petition for Writ of Certiorari and reverse the decision by the court of appeals.

Respectfully submitted,

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