

No. 18-837

**In The
Supreme Court of the United States**

**SCOTT HARRIS, IN HIS OFFICIAL CAPACITY AS
STATE HEALTH OFFICER, *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 BRIEF OF THE AMERICAN
CENTER FOR LAW AND JUSTICE
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI¹

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys often appear before this Court as counsel either for a party, *e.g.*, *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), or for amicus, *e.g.*, *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), addressing a variety of issues of constitutional law. The ACLJ is dedicated, *inter alia*, to combating the injustice of denying human rights to unborn children and has filed as amicus in previous abortion cases in this Court.²

SUMMARY OF ARGUMENT

The legitimacy of this Court in the public's eye depends in significant part upon its role as an institution that neutrally and dependably dispenses justice. In this case a lower court has ruled that a state *must* stand idly by, against its will, in the face of blatant injustice, inhumanity, and inconsistency in the law. The lower court opined that this Court's prior decisions interpreting constitutional law *compelled*

¹ Counsel of record for the parties received timely notice of the intent to file this brief and emailed written consent to its filing. No counsel for any party authored this brief in whole or in part. No person or entity aside from amicus, members of amicus, or counsel for amicus made a monetary contribution intended to fund the preparation or submission of this brief.

²This brief is also being submitted on behalf of more than 80,000 individuals who joined the ACLJ's Committee to Ban Dismemberment Abortions.

such a horrific outcome. Review is therefore manifestly necessary in the present case.

The public takes as a given that this Court would never tolerate, under the Eighth Amendment, the dismemberment of even the most vicious criminals; yet the lower court here believed this Court's cases require states to allow such treatment of innocent humans in the womb. The public understands that states properly can proscribe the deliberate dismembering of living animals under animal welfare laws; yet the lower court here thought that prenatal human beings, under this Court's precedents, must be relegated to a status even lower than that of rodents. This Court should grant review to dispel the misconception that states have a greater capacity, or even obligation, to protect murderers and swine than to protect unborn babies.

ARGUMENT

The Constitution does not compel states to treat unborn children less humanely than the worst criminals or even animals. The Eleventh Circuit's contrary (albeit reluctant) holding warrants this Court's review.

At issue is a state's prohibition on "tearing apart and extracting piece-by-piece from the uterus what was until then a living unborn child." Pet. App. 2a. *See also* Pet. App. 13a-15a (describing procedure). Such "brutal," "gruesome" dismemberment, *Gonzales v. Carhart*, 550 U.S. 124, 182 (2007) (Ginsburg, J., joined by Stevens, Souter, & Breyer, JJ., dissenting), would be unconstitutional if a state inflicted it upon Jack the Ripper. And states can certainly ban such acts against Fido the Dog. How then, can there be a constitutional right to tear prenatal humans limb from limb? The

answer is that there is not. This Court should therefore grant review.

I. WHAT IS DONE TO UNBORN BABIES IN DISMEMBERMENT ABORTIONS WOULD VIOLATE THE EIGHTH AMENDMENT IF DONE TO CONVICTED CRIMINALS.

It has long been settled that the Eighth Amendment to the Constitution forbids states from inflicting upon even the worst of criminals (capital offenders) such horrors as dismemberment.

Cruel and unusual punishments are forbidden by the Constitution . . .

. . . .
 . . . [I]n very atrocious crimes . . . circumstances of terror, pain, or disgrace were sometimes superadded [to execution]. Cases mentioned by the author are, where the prisoner was drawn or dragged to the place of execution, in treason; or where he was embowelled alive, beheaded, and quartered, in high treason.

. . . .
 . . . [I]t is safe to affirm that punishments of torture, such as those mentioned by the commentator referred to, and all others in the same line of unnecessary cruelty, are forbidden by th[e Eighth] amendment to the Constitution.

Wilkerson v. Utah, 99 U.S. 130, 134-36 (1878) (citations omitted). *See also Campbell v. Wood*, 511 U.S. 1119, 1122 (1994) (Blackmun, J., dissenting from denial of certiorari) (“partial or complete decapitation of the person, as blood sprays uncontrollably, obviously

violates human dignity”). As Justice Brennan opined in *Glass v. Louisiana*, 471 U.S. 1080 (1985),

in explaining the obvious unconstitutionality of such ancient practices as disemboweling while alive, drawing and quartering, [and] public dissection, . . . , the Court has emphasized that the Eighth Amendment forbids “inhuman and barbarous” methods of execution that go at all beyond “the mere extinguishment of life” and cause “torture or a lingering death.” . . . [B]asic notions of human dignity command that the State minimize “mutilation” and “distortion” of the condemned prisoner’s body. These principles explain the Eighth Amendment’s prohibition of such barbaric practices as drawing and quartering.

Id. at 1084-85 (Brennan, J., joined by Marshall, J., dissenting from denial of certiorari) (citations omitted).

Plainly, a state could not constitutionally employ “dismemberment abortion” to execute prisoners, no matter how grievous the convict’s crimes might be. Yet the court below held that this Court’s precedents required it to immunize the same grotesque practice when perpetrated against innocent human children prior to birth.

II. WHAT IS DONE TO UNBORN BABIES IN DISMEMBERMENT ABORTIONS WOULD VIOLATE ANIMAL CRUELTY LAWS IF DONE TO ANIMALS.

It is also common practice – and constitutional – for states to ban animal cruelty, which would include killing an animal by pulling it into pieces.

In *United States v. Stevens*, 559 U.S. 460 (2010), this Court confronted a federal law restricting so-called crush videos. While the *Stevens* decision turned on the First Amendment, its discussion of the underlying issue of animal cruelty is informative.

The law at issue defined “animal cruelty” to include practices “in which a living animal is intentionally maimed, mutilated, tortured, wounded, or killed,” *id.* at 465 (quoting statute). This Court noted the long tradition of banning animal cruelty:

As the Government notes, the prohibition of animal cruelty itself has a long history in American law, starting with the early settlement of the Colonies. Reply Brief 12, n. 8; *see, e.g.*, The Body of Liberties § 92 (Mass. Bay Colony 1641), *reprinted in* American Historical Documents 1000-1904, 43 Harvard Classics 66, 79 (C. Eliot ed. 1910) (“No man shall exercise any Tirranny or Crueltie towards any brute Creature which are usuallie kept for man’s use”).

Id. at 469. *See also id.* at 476 (acknowledging “a broad societal consensus against cruelty to animals”) (citation and internal quotation marks omitted); *id.* at 491 (Alito, J., dissenting) (“It is undisputed that the conduct depicted in crush videos may constitutionally be prohibited. All 50 States and the District of Columbia have enacted statutes prohibiting animal cruelty”) (citations omitted).

Unsurprisingly, all fifty states and the District of Columbia ban cruelty to animals.³ Hence, conduct analogous to dismemberment abortion, if perpetrated

³See Appendix to this brief.

against an animal, would be subject to criminal prohibition. *E.g.*, *A.J.R. v. State*, 3 N.E.3d 1000, 1007 (Ind. Ct. App. 2014) (“a person who knowingly or intentionally severs the limb of a wild animal which subsequently bleeds to death as a result of the injury would have mutilated that animal”); *see also United States v. Richards*, 755 F.3d 269, 272 (5th Cir. 2014) (defendants were charged with state felony cruelty to animals and with violation of amended federal “crush videos” law because they had practiced “binding animals . . . , chopping off their limbs with a cleaver, removing their innards, ripping off their heads”). Yet the Eleventh Circuit felt compelled by this Court’s precedents to declare that the state of Alabama was constitutionally barred from prohibiting the same cruel, inhumane practices against members of the species *homo sapiens*, at least before birth.

CONCLUSION

The Constitution does not compel states to relegate developing human offspring, with arms, legs, and beating hearts, to a legal status even lower than that of convicted murderers and inhuman beasts. This Court should grant review and reverse the judgment of the Eleventh Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX
List of state animal cruelty laws

Ala. Code § 13A-11-14(a)(1) (2013) (“cruelty to animals” includes “cruel mistreatment”)

Alaska Stat. § 11.61.140(a)(1) (2010) (“cruelty to animals” occurs when a person “knowingly inflicts severe or prolonged physical pain or suffering on an animal”)

Ariz. Rev. Stat. Ann. § 13-2910 (2012) (“cruelty to animals” includes “cruel mistreatment” which means “to torture or otherwise inflict unnecessary serious physical injury on an animal”)

Ark. Code. Ann. § 5-62-102 (2013) (“cruelty to animals” includes “cruel mistreatment” defined as “any act that causes or permits the continuation of unjustifiable pain or suffering”)

Cal. Penal Code § 597 (2012) (“[c]ruelty to animals” occurs when a person “maims, mutilates, tortures, or wounds a living animal”)

Colo. Rev. Stat. § 18-9-202 (2018) (“cruelty to animals” occurs when a person “tortures, needlessly mutilates, or needlessly kills an animal”)

Conn. Gen. Stat. § 53-247 (2016) (“[c]ruelty to animals” occurs when a person “tortures . . . mutilates or cruelly beats or kills or unjustifiably injures any animal”)

Del. Code Ann. tit. 11, § 1325 (2018) (“[c]ruelty to animals” includes “tormenting an animal”)

D.C. Code § 8-1808 (2018) (prohibits “actions that intentionally harm . . . an animal”)

Fla. Stat. § 828.12 (2018) (“animal cruelty” occurs when a person “unnecessarily mutilates, or kills any animal”)

Ga. Code Ann. § 16-12-4 (2014) (“cruelty to animals” occurs when a person “[c]auses physical pain, suffering, or death to an animal by an unjustifiable act”)

Haw. Rev. Stat. § 711-1108.5 (2013) (“cruelty to animals” occurs when a person “[t]ortures, mutilates or poisons” an animal)

Idaho Code § 25-3504 (2008) (“cruelty to animals” occurs when a person “is cruel to any animal”)

510 Ill. Comp. Stat. 70/3.01 (2018) (“[c]ruel treatment” occurs when a person “beat[s], cruelly treat[s], torment[s] . . . or otherwise abuses any animal”)

Ind. Code § 35-46-3-12 (2014) (“cruelty to an animal” occurs when a person “beats a vertebrate animal”)

Iowa Code § 717B.2 (2008) (“animal abuse” occurs when a person “injures, maims, disfigures, or destroys an animal”)

Kan. Stat. Ann. § 21-6412 (2017) (“[c]ruelty to animals” includes “killing, injuring, maiming torturing, burning or mutilating any animal”)

Ky. Rev. Stat. Ann. § 525.130 (2017) (“cruelty to animals” includes “mutilation, beating, [and] torturing”)

La. Stat. Ann. § 14:102.1 (2009) (“cruelty to animals” occurs when a person “[t]orments, cruelly beats, or unjustifiably injures any living animal”)

Me. Stat. tit. 17 § 1031 (2013) (“cruelty to animals” occurs when a person “tortures, torments, abandons or cruelly beats or intentionally mutilates an animal”)

Md. Code Ann., Crim. Law § 10-606 (LexisNexis 2018) (“cruelty to animals” includes to “mutilate; torture; cruelly beat; or cruelly kill an animal”) (internal numbering omitted)

Mass. Gen. Law ch. 272, § 77 (2018) (“[c]ruelty to [a]nimals” occurs when a person “cruelly beats, mutilates or kills an animal”)

Mich. Comp. Laws § 750.50b (2009) (crime to “kill, torture, mutilate, maim, or disfigure an animal”)

Minn. Stat. § 343.21 (2010) (“mistreating animals” includes to “torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal”)

Miss. Code Ann. § 97-41-1 (2011) (“cruelly” treating an animal includes to “torture, torment, unjustifiably injure . . . or cruelly beat or needlessly mutilate . . . any living creature”)

Mo. Rev. Stat. § 578.012 (2017) (“animal abuse” occurs when a person “kills an animal . . . [or] causes injury or suffering to an animal”)

Mont. Code Ann. § 45-8-211 (2003) (“cruelty to animals” includes “beating, tormenting, torturing, injuring, or killing [any] animal”)

Neb. Rev. Stat. § 28-1009 (2007) (“cruelly neglects an animal”)

Nev. Rev. Stat. § 574.100 (2017) (“[t]orture or unjustifiably maim, mutilate or kill” an animal)

N.H. Rev. Stat. Ann. § 644:8 (2019) (“[c]ruelty to [a]nimals” includes “acts or omissions injurious or detrimental to the health, safety or welfare of any animal”)

N.J. Stat. Ann. § 4:22-17 (2018) (“[c]ruelty” to animals occurs when a person “[i]nfl[ic]t[s] unnecessary cruelty upon a living animal or creature”)

N.M. Stat. Ann. § 30-18-1 (2007) (“[c]ruelty to animals” includes “mistreating, injuring, killing without lawful justification or tormenting an animal”)

N.Y. Agric. and Mkts. § 353 (LexisNexis 2005) (animal cruelty occurs when a person “tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal”)

N.C. Gen. Stat. § 14-360 (2015) (a person shall not “wound, injure, torment, [or] kill . . . any animal”)

N.D. Cent. Code § 36-21.2-03 (2013) (“animal cruelty” includes “[b]reaking an animal’s bones; [c]ausing the prolonged impairment of an animal’s health; [m]utilating an animal; or [p]hysically torturing an animal”) (internal numbering omitted)

Ohio Rev. Code Ann. § 959.02 (LexisNexis 2019) (“injuring animals” includes “kill[ing] and injur[ing] an animal”)

Okla. Stat. tit. 21 § 1685 (2006) (“[c]ruelty to [a]nimals” includes to “torture, destroy or kill, or cruelly beat or injure, maim or mutilate any animal”)

Or. Rev. Stat. § 167.320 (2013) (“animal abuse” occurs if a person “[c]auses serious physical injury to an animal”)

18 Pa. Cons. Stat. § 5533 (2017) (“[c]ruelty to animal[s]” occurs when a person “illtreats, overloads, beats, abandons or abuses an animal”)

4 R.I. Gen. Laws § 4-1-2 (2018) (animal cruelty occurs when a person “tortures, torments . . . cruelly beats, mutilates, or cruelly kills . . . any animal”)

S.C. Code Ann. § 47-1-40 (2014) (“[i]ll-treatment of animals” occurs when a person “tortures, torments, needlessly mutilates, cruelly kills, or inflicts excessive or repeated unnecessary pain or suffering upon an animal”)

S.D. Codified Laws § 40-1-2.4 (2014) (“subject an animal to cruelty”)

Tenn. Code Ann. § 39-14-212 (2004) (“cruelty to animals” occurs when a person “kills or intentionally causes serious physical injury to a companion animal”)

Tex. Penal Code Ann. § 42.092 (2017) (“[c]ruelty to [n]onlivestock [a]nimals” occurs when a person “tortures an animal or in a cruel manner kills or causes serious bodily injury to an animal”)

Utah Code Ann. § 76-9-301 (LexisNexis 2015) (“cruelty to an animal” occurs when a person “tortures an animal . . . [or] kills an animal or causes an animal to be killed without having a legal privilege to do so”)

Vt. Stat. Ann. tit. 13 § 352 (2018) (“cruelty to animals” occurs when a person “kills or attempts to kill any animal . . . [or] [t]ies, tethers, or restrains an animal, either a pet or livestock, in a manner that is inhumane”)

Va. Code Ann. § 3.2-6503 (2014) (requires that individuals maintain adequate care of their animals)

Wash. Rev. Code § 16.52.205 (2015) (“animal cruelty” occurs when a person “(a) inflicts substantial pain on, (b) causes physical injury to, or (c) kills an animal”) (internal numbering omitted)

W. Va. Code § 61-8-19 (2008) (“[c]ruelty to animals” forbids a person to “torture, mutilate, or maliciously kill an animal”)

Wis. Stat. § 951.02 (2011) (“m]istreating animals” occurs when a person “treat[s] any animal . . . in a cruel manner”)

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Wyo. Stat. Ann. § 6-3-203 (2018) (“cruelty to animals” occurs when a person “cruelly beats, tortures, torments, injures, mutilates or attempts to kill an animal”)