

No. 19-1392

In The
Supreme Court of the United States

THOMAS E. DOBBS, STATE HEALTH OFFICER OF
THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,

Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,

Respondents.

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

**BRIEF OF *AMICI CURIAE*
375 WOMEN INJURED BY SECOND AND
THIRD TRIMESTER LATE TERM ABORTIONS
AND MELINDA THYBAULT, INDIVIDUALLY
AND ACTING ON BEHALF OF 336,214 SIGNERS
OF THE MORAL OUTCRY PETITION,
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹**A. Mississippi Women Injured By Late Term Abortion**

Amici Curiae Mississippi Women Injured by Second and Third Trimester Abortions (hereafter Late Term Abortions) are Mississippi women² who were injured by their own abortions.

B. Other Women Injured By Late Term Abortion From Other States

Amici Curiae Other Women Injured by Late Term Abortion also suffered physical and psychological injuries as a result of their abortions. *Amici* Women Injured by Late Term Abortion know from their personal experience that declaring The Gestational Age Act unconstitutional and allowing unlimited access to late term abortion after fifteen weeks will mean countless

¹ Consent to this Brief was given by all parties, after timely notice of intent to file the Brief. The Justice Foundation is a 501(c)(3) non-profit legal foundation 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 party contributed to the writing or finances of the brief.

² Attached as Appendix A is the list of the initials, first names, or full names of the 375 *Amici Curiae* with Mississippi residents listed first, then the Women Injured By Abortion from other states. In order to protect their identities, some of the women have requested that we use initials only or first name only. Each of these women's sworn affidavits or declarations are on file at The Justice Foundation through a project called Operation Outcry which gives women injured by the abortion industry a voice in courts and legislatures.

women will suffer “devastating psychological injuries” which may last a lifetime, per *Casey*.³ The best information regarding the effect of actual abortions is not from **self-interested doctors**, but from their **patients**. Listening to their unique perspective as women hurt by abortion will aid the Court in achieving justice.

Amici Women Injured by Late Term Abortions were injured by the actions of the abortion industry, which is in conflict with their interests and should not be allowed to speak for all women. No other industry is allowed to represent in Court those it has injured.

C. Melinda Thybault, Founder of The Moral Outcry Petition, Acting Individually and on Behalf of 336,214 Signers of the Petition

Amicus Melinda Thybault (pronounced “Tebo”), the Founder of The Moral Outcry Petition, is convinced, as are the other 300,000 plus Signers of The Moral Outcry Petition,⁴ that this Court’s labored reasoning in abortion cases constitutes open season on the lives of unborn children, harvesting of the unborn and sanctions a crime against humanity. 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

³ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (hereafter *Casey*).

⁴ The names of The Signers of The Moral Outcry Petition are available at <https://bit.ly/3fLLc3z>

death, as in abortion at fifteen weeks or later. See www.themoraloutcry.com.

This Court has already recognized the truth that the child being aborted in the womb is an “infant life,” *Gonzales*, at 159, and reduced abortion from a “fundamental right” to a mid-level right subject to “undue burden” analysis in *Planned Parenthood v. Casey*.⁵ This was reaffirmed in the *June Medical plurality*, *June Medical Services, LLC, et al. v. Russo*, 591 U.S. ____ (2020), 18-1323, 18-1460, June 29, 2020 (Roberts).

◆

SUMMARY OF ARGUMENT

I.

Gonzales v. Carhart, 550 U.S. 124 (2007) (Hereinafter *Gonzales*) held that congress (and therefore the states) can constitutionally ban gruesome and inhumane types of abortions, particularly as long as 85%-90% of abortions can still be performed. Such a law does not create a “substantial obstacle” or “undue burden” under *Gonzales* and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (Hereinafter *Casey*). All pre-viability prohibitions on elective abortions are not unconstitutional per *Gonzales*. Previability laws that protect women’s psychological well-being (health), the dignity of “infant life” in the womb, and the integrity of the medical profession and society are constitutional. Late

⁵ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) (hereafter *Casey*).

term abortions are also a crime against humanity and, thus, states should be free to enact restrictions, even previability.

II.

Late term abortion is no longer necessary to solve women's perceived unwanted child burdens. Major statutory changes in all fifty states, including Mississippi, remove all burdens of raising an unwanted child from every woman for any reason at no cost, thus meeting women's perceived needs that *Roe* and *Casey* wanted to meet, without injuring women or destroying human life; therefore, The Gestational Age Act is constitutional under *Casey* and *Gonzales*. All burden is removed.

III.

Late term abortion severely injures significant numbers of women, as *Amici* can show from personal experience and a large body of scientific evidence; therefore, The Gestational Age Act is constitutional under *Gonzales*. Late term abortions can cause "grief more anguished and sorrow more profound" per *Gonzales*, and causes "devastating psychological consequences" per *Casey*.

IV.

In the alternative, human viability outside the womb now occurs at the embryo stage of development, thus shifting the viability line.



ARGUMENT**I.**

***Gonzales v. Carhart*, 550 U.S. 124 (2007) (Hereinafter *Gonzales*) Held That Congress (And Therefore The States) Can Constitutionally Ban Gruesome And Inhumane Types Of Abortions, Particularly As Long As 85%-90% Of Abortions Can Still Be Performed. Such A Law Does Not Create A “Substantial Obstacle” or “Undue Burden” Under *Gonzales* And *Casey*. All Pre-Viability Prohibitions On Elective Abortions Are Not Unconstitutional Per *Gonzales*. Previability Laws That Protect Women’s Psychological Well-Being (Health), The Dignity Of “Infant Life” In The Womb, And The Integrity Of The Medical Profession And Society Are Constitutional. Late Term Abortions Are Also A Crime Against Humanity And, Thus, States Should Be Free To Enact Restrictions, Even Previability.**

In *Gonzales*, this Court faced the stark, gruesome reality of late term abortion. The majority was shocked by its inhumanity. The Court upheld a ban on one method, intact D&E (partial birth abortion) but it also considered the typical late term abortion procedure called simply D&E. Here is the Court’s own description of the most common second semester (after 12 weeks) type of abortion:

*“The Act proscribes a particular manner of **ending fetal life**, so it is necessary here, as it was in *Stenberg*, to discuss abortion procedures in some detail.”* Gonzales, at 134.

*“Between 85 and 90 percent of the approximately 1.3 million abortions performed each year in the United States take place **in the first three months of pregnancy, which is to say in the first trimester.**”* Gonzales, at 134.

*“Of the remaining abortions that take place each year, most occur in the second trimester. **The surgical procedure referred to as “dilation and evacuation” or “D&E” is the usual abortion method in this trimester.**”*

*A doctor must first dilate the cervix at least to the extent needed to insert surgical instruments into the uterus and to maneuver them to evacuate the fetus. [Citations omitted] The steps taken to cause dilation differ by physician and gestational age of the fetus. [Citations omitted]. **A doctor often begins the dilation process by inserting osmotic dilators, such as laminaria (sticks of seaweed), into the cervix. The dilators can be used in combination with drugs, such as misoprostol, that increase dilation. The resulting amount of dilation is not uniform, and a doctor does not know in advance how an individual patient will respond. In general the longer dilators remain in the cervix, the more it will dilate. Yet the length of time doctors employ osmotic dilators varies. Some may keep dilators in the***

cervix for two days, while others use dilators for a day or less. [Citations omitted].

*After sufficient dilation the surgical operation can commence. The woman is placed under general anesthesia or conscious sedation. The doctor, often guided by ultrasound, inserts grasping forceps through the woman's cervix and into the uterus to grab the fetus. The doctor **grips a fetal part with the forceps and pulls it back through the cervix and vagina, continuing to pull even after meeting resistance from the cervix. The friction causes the fetus to tear apart. For example, a leg might be ripped off the fetus as it is pulled through the cervix and out of the woman. The process of evacuating the fetus piece by piece continues until it has been completely removed. A doctor may make 10 to 15 passes with the forceps to evacuate the fetus in its entirety, though sometimes removal is completed with fewer passes. Once the fetus has been evacuated, the placenta and any remaining fetal material are suctioned or scraped out of the uterus. The doctor examines the different parts to ensure the entire fetal body has been removed.*** [citation omitted]

Some doctors, especially later in the second trimester, may kill the fetus a day or two before performing the surgical evacuation. They inject digoxin or potassium chloride into the fetus, the umbilical cord, or the amniotic fluid. Fetal demise may cause contractions and make greater dilation

possible. *Once dead, moreover, the fetus' body will soften, and its removal will be easier. Other doctors refrain from injecting chemical agents, believing it adds risk with little or no medical benefit. [Citations omitted]. Gonzales, at 135, 136.*

“The Act does apply both previability and postviability because, by common understanding and scientific terminology, a fetus is a living organism while within the womb, whether or not it is viable outside the womb.” *Gonzales, at 147 (emphasis added).*

Amici request that this Court consider the effect on the woman who has felt her baby moving, then realizes the baby is dead for two days before removal. This overall description is clinical gruesomeness at its most horrible level. Especially if one inserts the term “baby,” which is the term most women use instead of the clinical term “fetus.”

Even if the Mississippi legislature’s efforts to minimize harm to women and the “infant life,” per *Gonzales*, through the Gestation Age Act becomes effective, more than 85%-90% of abortions can still occur in Mississippi, at earlier stages as they are performed now. The law even still allows some earlier second trimester abortions before fifteen weeks. Abortion is still possible in the vast majority of cases. No substantial obstacle to getting an abortion exists. Cannot a state legislature be as concerned for humanity and against the degradation of our culture as Congress, supported

by this Court in *Gonzales*, by banning one of the most horrible types of abortions? As *Gonzales* ruled:

“Whatever one’s views concerning the Casey joint opinion, it is evident a premise central to its conclusion—that the government has a legitimate and substantial interest in preserving and promoting fetal life—would be repudiated were the Court now to affirm the judgments of the Courts of Appeals. . . .

. . . the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.” *Gonzales*, at 145.

“To implement its holding, Casey rejected both Roe’s rigid trimester framework and the interpretation of Roe that considered all previability regulations of abortion unwarranted. 505 U. S., at 875–876, 878 (plurality opinion). On this point Casey overruled the holdings in two cases because they undervalued the State’s interest in potential life. See id., at 881–883 (joint opinion) (overruling Thornburgh v. American College of Obstetricians and Gynecologists, 476 U. S. 747 (1986) and Akron v. Akron Center for Reproductive Health, Inc., 462 U. S. 416 (1983)).” *Id.*, at 146. (emphasis added)

The parties in *Gonzales* did not make the arguments being made here, thus they were not ruled upon:

“Because D&E is the most common second-trimester abortion method, respondents suggest the Act imposes an undue burden. In this

litigation the Attorney General does not dispute that the Act would impose an undue burden if it covered standard D&E.” Id., at 147.

Mississippi does dispute it here. The U.S. Attorney General did not need to dispute it to defend the statute as written.

The fact that even the usual second trimester D&E abortions are gruesome and horrible is made even more clear in *Gonzales*:

*“Respondents look to situations that might arise during D&E, situations not examined in Stenberg. **They contend—relying on the testimony of numerous abortion doctors—that D&E may result in the delivery of a living fetus beyond the Act’s anatomical landmarks in a significant fraction of cases.** This is so, respondents say, because doctors cannot predict the amount the cervix will dilate before the abortion procedure. It might dilate to a degree that the fetus will be removed largely intact. **To complete the abortion, doctors will commit an overt act that kills the partially delivered fetus.** Respondents thus posit that **any D&E has the potential to violate the Act, and that a physician will not know beforehand whether the abortion will proceed in a prohibited manner.** Brief for Respondent Planned Parenthood et al. in No. 05–1382, p. 38.” At 154. (emphasis added)*

In other words, the “infant life,” *Gonzales*, at 159, can be born alive accidentally then killed in an “overt act.” Imagine the “devastating psychological consequences” to women who discover this after the abortion – to their “horror.”

In *Gonzales*, the Court even allowed Congress to outlaw a gruesome medical procedure that much of the evidence claimed was “safer” for women. *Gonzales* only dealt with intact D&E. Mississippi has gone further toward uplifting humanity and helping women by preventing late term abortion and through the Safe Haven law, *infra*.

“There can be no doubt the government “has an interest in protecting the integrity and ethics of the medical profession.” Washington v. Glucksberg, 521 U. S. 702, 731 (1997); see also Barsky v. Board of Regents of Univ. of N. Y., 347 U. S. 442, 451 (1954) (indicating the State has “legitimate concern for maintaining high standards of professional conduct” in the practice of medicine). Under our precedents it is clear the State has a significant role to play in regulating the medical profession.” Gonzales, at 157.

Mississippi has determined the same is true of late term abortion. Why should doctors be allowed to commit “overt acts” of killing children born alive, i.e., those accidentally “removed largely intact” in the second trimester when the State now offers to receive the child from the mother at no cost, *see infra*?

*“The government may use its voice and its regulatory authority to show its profound respect for the life within the woman. A **central premise of the opinion was that the Court’s precedents after Roe had “undervalue[d] the State’s interest in potential life.”** (Citations omitted) . . . The third premise, that the State, from the inception of the pregnancy, **maintains its own regulatory interest in protecting the life of the fetus that may become a child, cannot be set at naught by interpreting Casey’s requirement of a health exception so it becomes tantamount to allowing a doctor to choose the abortion method he or she might prefer. 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 furtherance of its legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn.** (emphasis added)*

*The Act’s ban on abortions that involve partial delivery of a living fetus furthers the Government’s objectives. **No one would dispute that, for many, D&E is a procedure itself laden with the power to devalue human life. Congress determined that the abortion methods it proscribed had a “disturbing similarity to the killing of a newborn infant,”** [citations omitted] and thus it was concerned with “draw[ing] a bright line that clearly distinguishes*

abortion and infanticide.” At 157-58. (emphasis added)

Gonzales and *Amici* agree late term abortion can hurt women more than other kinds. In this case, Mississippi and even the abortion industry agree later term abortions are more dangerous for women.

“In a decision so fraught with emotional consequence some doctors may prefer not to disclose precise details of the means that will be used, confining themselves to the required statement of risks the procedure entails. From one standpoint this ought not to be surprising. Any number of patients facing imminent surgical procedures would prefer not to hear all details, lest the usual anxiety preceding invasive medical procedures become the more intense. This is likely the case with the abortion procedures here in issue. [Citations omitted]. (“Most of [the plaintiffs]’ experts acknowledged that they do not describe to their patients what [the D&E and intact D&E] procedures entail in clear and precise terms”); see also id., at 479.”

“It is, however, precisely this lack of information concerning the way in which the fetus will be killed that is of legitimate concern to the State. Casey, supra, at 873 (plurality opinion) (“States are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning”). The State has an interest in ensuring so grave a choice is well informed. It is self-evident that a

mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form.” Gonzales, at 159. (emphasis added)

Amici can attest that the same “**grief more anguished and sorrow more profound**” can occur when she discovers the gruesome truth later on her own. A common reaction is: “I have murdered my own child.”⁶

Gonzales held, that even if abortion rates decline as a result of prohibiting one kind of abortion, that substantial reduction in late term abortions is not a “substantial obstacle” or “undue burden.”

“It is a reasonable inference that a necessary effect of the regulation and the knowledge it conveys will be to encourage some women to carry the infant to full term, thus reducing the absolute number of late-term abortions.” Gonzales, at 160.

⁶ See Dropbox Link of 425 Operation Outcry Affidavits and Declarations Under Penalty of Perjury of Women Injured By Late Term Abortions, including the 375 *Amici*: https://www.dropbox.com/sh/ohcwjy2dd1668t/AAA7_CHlS5leENxLZN2hhdUVa?dl=0

II.

Late Term Abortion Is No Longer Necessary To Solve Women’s Perceived “Unwanted” Child Burdens. Major Statutory Changes In All Fifty States, Including Mississippi, Remove All Burdens Of Raising An Unwanted Child From Every Woman For Any Reason At No Cost, Thus Meeting Women’s Perceived Needs That *Roe* and *Casey* Wanted To Meet, Without Injuring Women Or Destroying Human Life, Therefore, The Gestational Age Act Is Constitutional Under *Casey* And *Gonzales*. All Burden Is Removed.

A major factual and legal sea change can now remove all burden of “unwanted” children from women, without severely injuring them from abortion trauma or killing “infant life.” It can give women what they want from abortion, which is “liberty” from caring for “unwanted” children, without killing “**infant life.**” See also *June Medical Services, LLC, et al. v. Russo*, 591 U.S. ___ (2020), 18-1323, 18-1460, June 29, 2020 Slip Opinion (*plurality* by Roberts) p. 5.

In Mississippi, a woman can, at or within three days after the child’s birth, leave her child at no cost (with no questions asked) at any authorized facility.⁷

⁷ MISS. CODE ANN. § 43-15-201. In Mississippi, an emergency medical services provider shall take possession of a child not older than 72 hours without a court order if the child is voluntarily delivered to the provider by its parent with intent not to return for the child. Emergency medical services provider means

Mississippi will care for that child for at least 18 years, or more likely until the child is adopted by one of the two million people waiting to adopt newborn children.⁸ Every state now has such laws.⁹ This law completely eliminates any legal need, in every state, for an actual abortion to eliminate the burdens of unwanted children. Under the Mississippi law, a woman who has waited for fifteen weeks can simply wait a relatively short while later and place the child with the state after birth at no cost whatsoever. Access to Safe Haven is free, unlike abortion. Safe Haven is equally available to rich and poor, and widely accessible in Mississippi.

The question of whether Mississippi can ban a small percentage of abortions in the second and third trimester when it is willing to shift all responsibility for the care of the children from the woman to society is an open question this Court has not considered. It should be answered in the affirmative by this Court for the protection of “infant life,” *see Gonzales*, at 159, and

a licensed hospital operating an emergency department or an adoption agency licensed by the Department of Human Services. (See also www.nationalsafehavenalliance.org).

⁸ 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.

⁹ See www.nationalsafehavenalliance.org.

women, including from suicide, anxiety, depression, substance abuse, eating disorders, etc.¹⁰

In return for this 18 year **complete release of all parental obligation**, it is not an “undue burden” to ask the mother to carry the child to term and not “*terminate the life of a separate, unique, living human being*.”¹¹ The Supreme Court has consistently held for 47 years that requiring a woman to bear the last, harder, third trimester of pregnancy after 24 weeks is not an “undue burden” by allowing bans on abortion **after viability**.¹² Women are already required by law to bear the last twelve hardest weeks (three months) of pregnancy because of the “profound respect” for the human life of the child in her womb. *Id.*

¹⁰ See Coleman, Priscilla, “Abortion and Mental Health: Quantitative Synthesis and Analysis of Research, Published 1995-2009,” *The British Journal of Psychiatry* (2011) 199, 180-186. DOI: 10.1192/bjp.bp.110.07723, “Women who had undergone an abortion experienced an 81% increased risk of mental health problems.”

¹¹ See *Planned Parenthood v. Rounds*, 530 F.3d 724 (8th Cir. 2008) (*en banc*) (upholding statutory definition as scientifically “rational,” truthful, not false or misleading).

¹² *Roe v. Wade*, 410 U.S. 113, “If the state is interested in protecting fetal life after viability, it may go so far to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother.” At 163-65

III.

Late Term Abortion Severely Injures Significant Numbers Of Women, As *Amici* Can Show From Personal Experience And A Large Body Of Scientific Evidence; Therefore, The Gestational Age Act Is Constitutional Under *Gonzales*. Late Term Abortions Can Cause “Grief More Anguished and Sorrow More Profound” Per *Gonzales* And Causes “Devastating Psychological Consequences” Per *Casey*.

Similar *Amicus* briefing to this was presented to and cited by the Court in *Gonzales*. Citing the brief of Sandra Cano, the former “*Doe*” of *Doe v. Bolton*, and 180 Women Injured by Abortion,¹³ the Supreme Court recognized the significance of the women’s own actual experience:

Respect for human life finds an ultimate expression in the bond of love the mother has for her child. . . . Whether to have an abortion requires a **difficult and painful moral decision**. *Casey, supra, at 852-853, 112 S. Ct.*

¹³ Represented by The Justice Foundation. Her prolife position against her own case was also cited by a unanimous 8th Circuit decision recently as one of many reasons for re-evaluating the Supreme Court’s abortion jurisprudence. (*MKB Management Corp. v. Stenehjem*, 795 F.3d 768 (8th Cir. 2015) (*cert. denied*). Her dying wish was to see babies protected by law and women in difficult situations helped by society, instead of hurt by abortion. See Supreme Court Docket No. 05-11641 for her sworn affidavit in her Rule 60 Motion to reverse her own case.

2791, 120 L. Ed. 2d 674 (opinion of the Court). 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.** See Brief for Sandra Cano [The “Doe” of *Doe v. Bolton*] *et al.* [Ed. 180 Women Injured by Abortion] **as Amici Curiae in No. 05-380, pp 22-24.** [Ed. *Amici Women’s Testimonies*] **Severe depression and loss of esteem can follow. See *ibid.*** (emphasis added)

Gonzales, 550 U.S. 124, at 159 (2007) (emphasis added). Similar briefing with testimony was also cited in *June Medical Services, LLC, et al. v. Russo*, 591 U.S. ___ (2020), 18-1323, 18-1460, June 29, 2020, Slip Opinion, p. 29. (Alito dissenting for 4 Justices).

When asked “How has your abortion hurt you?” *Amici* Mississippi women answered:

A.D., 14 weeks, stated:¹⁴ *“The procedure was simple in their eyes I’m sure, but not as easy as declared. Not to mention the mental anguish. I also incurred superficial blood clots in my legs due to the strain and pain of the procedure, and then missed about a week of work. I cried lots and for days and weeks. At first, I couldn’t stand my husband because he did not have to go through it, and also blamed him for ‘getting me*

¹⁴ See Dropbox Link of 425 Operation Outcry Affidavits and Declarations Under Penalty of Perjury of Women Injured By Late Term Abortions, including 375 *Amici*: https://www.dropbox.com/sh/ohcwjy2dd1668t/AAA7_CHlS5leENxLZN2hhdUVa?dl=0

pregnant' to begin with. . . . I have felt guilty for 28 years now."

M.B., 17 weeks, stated: *"I have been diagnosed clinically depressed, with anxiety and very low self-esteem. . . . The father who was 18 at the time is now an alcoholic being fired from one job to another. That baby would have been his only child. . . . This will forever change a person, by that I mean your self-esteem, no self-worth, depression, anxiety, guilt, the what ifs. The list just goes on and on."*

D.K., 20 weeks, says: *"We were never told what would happen. Just that it would be done. . . . I suffer from depression and emotional disconnection from relationship. . . . I have not told anyone."*

Sonia, 20 weeks, says: *"I was given some sort of seaweed [sic] on a tampon on the first day, then the second day my water busted. . . . I was only 13 at the time and was strongly encouraged to just have the abortion. I was given abx [sic] and birth controls before leaving clinic. . . . I never knew that I would be mentally tormented for many yrs. after the abortion and suffer from depression for yrs. . . . It took me approximately fifteen years to get over the mental torment and ability to forgive myself and the baby's father. I was married five years before I was ever able to become pregnant at the age of 26. . . . It is a long process of healing and extremely difficult to forgive self, especially when you see other children playing."*

Amanda O., 18 weeks, states: *"I wasn't told that you would be emotionally and mentally sad . . . Hurt*

*. . . Guilt. . . I was very suicidal . . . I had nightmares. **I heard a baby crying in my head always** . . . It is just so miserable . . . to know that you did what you did . . . Given one chance . . . And then it is gone . . .”*
(emphasis added)

Ann R., 14 weeks, says: *“There was no explanation as to what was involved. I was not given any literature spelling out or illustrating what I was about to do. I was a lot later in the pregnancy than I thought I was simply because I was so young and ignorant and didn’t know how to properly calculate the weeks of pregnancy. They initially said they thought I was too far along, but did a pelvic exam and then decided they would go ahead and do it. . . . I hid the abortion in shame for eighteen years. I was in a terrible and dark place that I so wanted to forget but I never could. I remember the doctor saying, **‘I think that’s the biggest one we’ve ever done.’** Those words haunted me. I was a very angry person in so much personal bondage. I couldn’t be honest with myself about much of anything. I couldn’t really love. Even though my life may have looked okay on the outside, I was a complete wreck on the inside. . . . I believe it played a large part in the breaking down of my marriage and an inability to fully express love to my children.”* (emphasis added)

All the *Amici* women relay abortion experiences similar to these Mississippi women with varying consequences. Appendix B includes excerpts from women injured by late term abortion across America. Instead of late term abortion, which kills an “infant life” and injures women, why not allow transfer of responsibility

at no cost to the State or the mother can keep the child if she wishes?

The Gestational Age Act is also supported by the abortion industry's own admission that later term abortions have greater risks of adverse consequences to women. The risk is even higher after twelve weeks, as an abortion textbook endorsed by the National Abortion Federation, "Management of Unintended and Abnormal Pregnancy," lists "Advanced Stage of Pregnancy" on a list of "Risk Factors for Negative Emotional Sequelae."¹⁵ See also "A Clinicians Guide to Medical and Surgical Abortion," listing 14 factors for mental health problems after abortion, Ch. 3, p. 28-29, 1999. **Second trimester abortions "pose more serious risks to women's physical health compared to first trimester abortions.** The abortion complication rate is 3% to 6% at 12-13 weeks gestation and increases to 50% or higher as abortions are performed in the second trimester." Coleman, Coyle and Rue, "Late Term Elective Abortion and Susceptibility to Post-Traumatic Stress Symptoms", *Journal of Pregnancy*, Vol. 2010, Art. ID 130519, p. 1.

The most comprehensive bibliography of studies showing abortion risks is included at abortionrisks.org. Though some of these studies provide background information, most include statistically significant results

¹⁵ By Maureen Paul, E. Steve Lichtenberg, Lynn Borgatta, David Grimes, Phillip Stubbelfield, and Mitchell D. Creinin. (UK 2009) Table 5.4, p. 57.

linking one or more adverse effects to abortion. There are hundreds of studies worldwide documenting the harm to women from abortion. Though some may disagree, there is more than enough science to justify The Gestational Age Act, and consensus or **complete medical certainty is not required**. *June Medical, Roberts plurality*, p. 6, citing *Gonzales*, at 163, 164.

See also Planned Parenthood v. Rounds, 686 F.3d 889 (8th Cir. 2012) (*en banc*) upholding a state law requiring disclosure of increased risk of suicide and suicidal ideations. In addition, abortion increases the risk of depression, trauma, eating disorders and substance abuse, guilt, repressed grief, divorce and chronic relationship problems, unresolved trauma, repeat abortions, self-punishment, and child abuse of their other children.¹⁶

IV.

In The Alternative, Human Viability Outside The Womb Now Occurs At The Embryo Stage Of Development, Thus Shifting The Viability Line.

Amici Melinda Thybault and her husband Denny adopted a child at the **frozen embryo stage**. This “unwanted” child was generated through another couple’s in vitro fertilization process. This living embryo, Gideon Wilberforce Thybault, was placed in Mindy’s womb after being frozen for seven months. *See App. C*

¹⁶ Elliott Institute, www.afterabortion.org, “*Psychological Risks: Traumatic After Effects of Abortion*,” with many citations.

for his embryo photo. Gideon **was living and viable at six days old outside his mother's womb**. He was alive but **frozen for seven months**. He is part of an incredible, but now routine, advancement of human medicine. Gideon was born in 2018. *See* photo of Gideon after his birth in Appendix D.

This is the new undisputed viability standard which advances when science progresses. The law must progress even under the “Law of Judicial Precedent,” which lists “major changes in factual conditions” as sound and necessary reasons for reversing a precedent.¹⁷ He is scientifically proven to be “alive” in both photos, at both stages of development **outside** his mother's womb. Embryos are viable today.

Clearly abortion is unique. No other “mass of tissue” removed from a woman has a heartbeat. A wart, tonsils, appendix – none have a heartbeat when they are removed. The U.S. Supreme Court has advanced from only describing a “fetus,” in its early cases, to “unborn child,” *Gonzales*, at 134, and even “infant life” in *Gonzales*, at 159. The *plurality* in *June Medical* reaffirmed the “State has important interests in . . . protecting the health of the pregnant woman and in protecting the potentiality of human life.” Slip Opinion, Roberts, p. 4. The *Gonzales* Court also cited a nurse's testimony extensively describing the effect of the late

¹⁷ “Law of Judicial Precedent,” p. 400, released in 2016, coauthored by Bryan A. Garner, Neil M. Gorsuch, Brett M. Kavanaugh, *et al.*, Foreword by Justice Stephen Breyer, published by Thomson Reuters.

term abortion on the “baby.” *Gonzales*, at 138-139. Warning: See Appendix E. Gruesome photo of late term inhumanely aborted baby.¹⁸

If abortion is constitutional and necessary, why care about viability at all? But from the beginning of *Roe*, the Court has allowed the states to ban abortion after viability, except to protect the mother’s health. The Court wanted to respect human life. Now the conflict is over! The Safe Haven laws harmonize the social desire to eliminate the care of “unwanted” children without killing the “infant life”. It is justice for the child, mercy for the mother and a loving family for the two million women waiting to adopt newborn babies in America.¹⁹

Finally, discovery may be necessary to determine the issue and definition of “viability.” In vitro fertilization shows viability can be documented at six days

¹⁸ <https://www.priestsforlife.org/graphic-images/index.aspx?gid=4&sid=6> – This photo and others at this cite show the horror of the procedure in the manner that pictures of the Holocaust and slavery conveyed the horror of those institutions. After these types of abortion, many individuals, including *Amici* women, are reminded of the ancient Proverbs 6:16-19: “There are six things which the Lord hates, Yes, seven which are an abomination to Him: Haughty eyes, a lying tongue, And hands that shed innocent blood, A heart that devises wicked plans, Feet that run rapidly to evil, A false witness *who* utters lies, And one who spreads strife among brothers.”

¹⁹ 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.

after conception. Inflicting unnecessary pain on an “infant life” in the womb in an elective abortion is a crime against humanity. The case could be accepted for summary reversal for abuse of trial discovery. States defending any ban or restriction on abortion should be allowed all discovery necessary to establish any defense and present a full and complete record for this Court’s review. Failure to provide an appropriate record should not prevent this Court from performing its Constitutional function.



CONCLUSION

Amici urge this Court to protect women from experiencing the emotional trauma which *Amici* Women Injured by Late Term Abortion have suffered. The Safe Haven laws give women total freedom from burdens of unwanted children, but all children are now legally wanted by the States and adoption seeking families. Justice requires protection of vulnerable human life, male and female: not its destruction. It is time for a better way.



PRAYER

Amici respectfully pray this Court grant certiorari
and reverse the decision below.

Respectfully submitted,

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