

No. 19-1392

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

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

*Petitioners,*

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,

*Respondents.*

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

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**BRIEF OF AMICI CURIAE  
375 WOMEN INJURED BY SECOND AND  
THIRD TRIMESTER LATE TERM ABORTIONS  
AND ABORTION RECOVERY LEADERS  
IN SUPPORT OF PETITIONERS**

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## TABLE OF CONTENTS

	Page
TABLE OF CONTENTS .....	i
TABLE OF AUTHORITIES .....	iv
INTEREST OF <i>AMICI CURIAE</i> .....	1
A. Mississippi Women Injured By Late Term Abortion .....	1
B. Other American Women Injured By Late Term Abortion.....	1
C. Abortion Recovery Leaders .....	2
SUMMARY OF ARGUMENT .....	3
ARGUMENT .....	5
I. <i>Gonzales</i> Held That Congress (And There- fore The States) Can Constitutionally Ban Gruesome And Inhumane Types Of Abor- tions, Especially When Even 85%-90% Of Abortions Can Still Be Performed. Such A Law Does Not Create A “Substantial Ob- stacle” Or “Undue Burden” Under <i>Gonzales</i> And <i>Casey</i> . All Previability Prohibitions On Elective Abortions Are Not Unconsti- tutional Per <i>Gonzales</i> . Previability Laws That Reasonably Protect Women’s Psycho- logical Well-Being (Health), The Dignity Of “Infant Life” In The Womb, And The In- tegrity Of The Medical Profession And So- ciety Are Constitutional .....	5

## TABLE OF CONTENTS—Continued

	Page
II. Late Term Abortion Is No Longer Necessary To Solve Women’s “Unwanted” Child Concerns. 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 <i>Roe</i> And <i>Casey</i> Wanted To Meet, Without Injuring Women Or Destroying Human Life; Therefore The Act Is Constitutional Under <i>Casey</i> And <i>Gonzales</i> . All Burden Of 18 Years of Parenting And Providing For The Child Is Removed .....	17
III. Late Term Abortion Severely Injures Significant Numbers Of Women, As <i>Amici</i> Can Show From Personal Experience And A Large Body Of Scientific Evidence; Therefore The Act Is Constitutional Under <i>Gonzales</i> . Late Term Abortions Can Cause “Grief More Anguished and Sorrow More Profound” Per <i>Gonzales</i> And Cause “Devastating Psychological Consequences” Per <i>Casey</i> .....	20
IV. In Addition, Human Viability Outside The Womb Now Occurs At The Embryo Stage Of Development, Thus Shifting The Viability Line To Conception As Various Justices Have Predicted Would Happen As Science Advances .....	28
CONCLUSION.....	31
PRAYER.....	32

## TABLE OF CONTENTS—Continued

	Page
APPENDIX	
Appendix A: List of 375 <i>Amici Curiae</i> Women Injured by Second And Third Late Term Abortions From Mississippi And Other States.....	App. 1
Appendix B: Excerpts From Women Injured By Second and Third Trimester Late Term Abortions From All Fifty States in Alphabetical Order .....	App. 7

## TABLE OF AUTHORITIES

	Page
CASES	
<i>Cano v. Baker</i> , 435 F.3d 1337 (11th Cir. 2007) ( <i>cert. denied</i> ) (Supreme Court Docket No. 05-11641) .....	21, 22
<i>Doe v. Bolton</i> , 410 U.S. 179 (1973) .....	5, 21, 22
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007) .....	<i>passim</i>
<i>June Medical Services, LLC, et al. v. Russo</i> , 591 U.S. ____ (2020), 18-1323, 18-1460, June 29, 2020 Slip Opinion .....	2, 22
<i>McCorvey v. Hill</i> , 385 F.3d 846 (5th Cir. 2004) ( <i>cert. denied</i> ) (Supreme Court Docket No. 04-967) .....	22
<i>MKB Management Corp. v. Stenehjem</i> , 795 F.3d 768 (8th Cir. July 22, 2015) ( <i>cert. denied</i> ) .....	21
<i>Planned Parenthood v. Casey</i> , 505 U.S. 833 (1992) .....	<i>passim</i>
<i>Planned Parenthood v. Rounds</i> , 530 F.3d 724 (8th Cir. 2008) ( <i>en banc</i> ) .....	19
<i>Planned Parenthood v. Rounds</i> , 686 F.3d 889 (8th Cir. 2012) ( <i>en banc</i> ) .....	27
<i>Roe v. Wade</i> , 410 U.S. 113 (1973) .....	4, 5, 10, 20, 22
STATUTES	
The Mississippi Human Heartbeat Protection Act .....	18
Mississippi Code Ann. §§ 43-15-201, -203, -207, -209 (2013) .....	18

## TABLE OF AUTHORITIES—Continued

	Page
OTHER AUTHORITIES	
American Adoptions <a href="https://www.americanadoptions.com/pregnant/waiting_adoptive_families">https://www.americanadoptions.com/pregnant/  waiting_adoptive_families</a> .....	18, 31
Coleman, Coyle and Rue, “Late Term Elective Abortion and Susceptibility to Post-Traumatic Stress Symptoms,” <i>Journal of Pregnancy</i> , Vol. 2010, Art. ID 130519, p.1 .....	26
Coleman, Priscilla, “Abortion and Mental Health: Quantitative Synthesis and Analysis of Re- search, Published 1995-2009,” <i>The British  Journal of Psychiatry</i> (2011) 199 DOI: 10.1192/ bjp.bp.110.07723 .....	19
Child Welfare Website (All 50 State Safe Haven Laws) <a href="http://www.childwelfare.gov">www.childwelfare.gov</a> .....	18
Dropbox Link of 425 Operation Outcry Affidavits and Declarations Under Penalty of Perjury of Women Injured By Late Term Abortions, in- cluding <i>Amici</i> : <a href="https://www.dropbox.com/sh/ohcwjy2dd1668tl/AAA7_CHlS5leENxLZN2hhdUVa?dl=0">https://www.dropbox.com/sh/  ohcwjy2dd1668tl/AAA7_CHlS5leENxLZN2hhd  UVa?dl=0</a> .....	15
Elliott Institute: <a href="http://www.afterabortion.org">www.afterabortion.org</a> , “Psy- chological Risks: Traumatic After Effects of Abortion” .....	19, 27
<u>Management of Unintended and Abnormal Preg-  nancy</u> by Maureen Paul, E. Steve Lichtenberg, Lynn Borgatta, David Grimes, Phillip Stub- blefield, and Mitchell D. Creinin. (UK 2009) Table 5.4, p. 57 .....	22, 26

## TABLE OF AUTHORITIES—Continued

	Page
<i>The Law of Judicial Precedent</i> , Bryan A. Garner, Neil M. Gorsuch, Brett M. Kavanaugh, <i>et al.</i> , Foreword by Justice Stephen Breyer. Thom- son Reuters (2016) p. 400.....	29, 30
National Safe Haven Alliance <a href="http://www.national-safehavenalliance.org">www.national- safehavenalliance.org</a> .....	18
<a href="http://abortionrisks.org/index.php?title=Index">http://abortionrisks.org/index.php?title=Index</a> .....	26

## INTEREST OF *AMICI CURIAE*<sup>1</sup>

### 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 women who were injured by their own abortions.

### B. Other Women Injured By Late Term Abortion From Other States<sup>2</sup>

*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 Mississippi Human Heartbeat Protection Act (hereafter The Act) unconstitutional and allowing unlimited access to late term abortion after fifteen weeks will mean countless

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<sup>1</sup> Consent to this Brief was given by all parties, after timely notice of intent to file the Brief. No party contributed to the writing or financing of the brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

<sup>2</sup> 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 under penalty of perjury 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 consequences” per *Casey*.<sup>3</sup> which may last a lifetime. The best information regarding the effect of actual abortions is not from **self-interested doctors** and abortion for-profit centers, but from the **women**. Listening to their unique perspective as women hurt by abortion will aid the Court in achieving justice. Only women who have experienced abortion can know certain things about abortion.

This Court has already recognized the truth that the child being aborted in the womb is an “infant life,” *Gonzales v. Carhart*, 550 U.S. 124 (2007) (hereafter *Gonzales*) at 159, or even “infant” at 160. This Court has steadily reduced abortion protection from a “strict scrutiny” type analysis to a mid-level right subject to “undue burden” analysis in *Planned Parenthood v. Casey*.<sup>4</sup> This was followed 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), but the issue of the reversal of *Roe v. Wade* was not before the Court in *June Medical*.

### C. Abortion Recovery Leaders

Abortion is such a traumatizing, devastating, destructive event in so many American lives that self-care groups, lay and professional counselors, and compassion care organizations have arisen to deal

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<sup>3</sup> *Planned Parenthood v. Casey*, 505 U.S. 833 at 882 (1992) (hereafter *Casey*).

<sup>4</sup> *Id.*

with this destruction upon the land. Like many women’s health issues that were ignored or denied in the past, the abortion industry ignores or denies “the devastating psychological consequences” of abortion recognized by this Court in *Casey*, and the “severe depression and loss of esteem” this Court recognized in *Gonzales* at 159. Because the abortion industry does not tell women the words this Court has determined to be true, abortion recovery leaders have had to step up and deal with the traumatic fallout. *Amici* Sheila Harper, Chrissie Gillet, Deborah Tilden, Elsa Lopez, Kay Lynn Carlson, and Karen Yoder are leaders in the abortion recovery movement. Their ministries support women seeking healing from the trauma of abortion described by the other *Amici* Women Injured By Late Term Abortion. Each woman is unique, but patterns do emerge and women’s suffering can last for decades.



## SUMMARY OF ARGUMENT

### I.

*Gonzales v. Carhart*, 550 U.S. 124 (2007) (hereinafter *Gonzales*) held that Congress (and thus the states) can constitutionally ban gruesome and inhumane types of abortions, especially when even 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 previability prohibitions on elective abortions are not unconstitutional per *Gonzales*. Previability laws that reasonably 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, which occurs when the government withdraws legal protection from a class of human beings. Thus, states should be free to enact such restrictions even previability.

## II.

Abortion is no longer necessary to solve women's "unwanted children" concerns. Major statutory changes in all fifty states, including Mississippi, called Safe Haven laws, remove all burdens of raising an unwanted child from every woman for any reason, at no cost to the woman, thus meeting women's perceived needs that *Roe* and *Casey* desired to help meet, without injuring women or destroying human life. Therefore The Act is constitutional under *Casey* and *Gonzales*. All burden of 18 years of parenting and providing for the child is removed.

## III.

Late term abortion severely injures significant numbers of women, as *Amici* can show from personal experience and is also shown in a large body of scientific evidence; therefore The Act is constitutional under *Gonzales*. Late term abortions can cause "grief more anguished and sorrow more profound," "severe depression and loss of self-esteem" as stated in *Gonzales* at

159 and “devastating psychological consequences,” as stated in *Casey* at 882.

#### IV.

In addition, human viability outside the womb now exists at the embryo stage of development, thus shifting the viability line to conception, since a frozen embryo is viable outside his/her biological mother’s womb, even for years, through in vitro fertilization. Thus, *Roe*, *Doe*, and *Casey* should also be reversed.

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### ARGUMENT

#### I.

***Gonzales* Held That Congress (And Therefore The States) Can Constitutionally Ban Gruesome And Inhumane Types Of Abortions, Especially When Even 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 Previability Prohibitions On Elective Abortions Are Not Unconstitutional Per *Gonzales*. Previability Laws That Reasonably 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.**

In *Gonzales*, this Court faced the stark, gruesome reality of late term abortion. The majority was shocked

by its inhumanity, which all humans should abhor. 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 D&E (dilation and evacuation) which Mississippi is prohibiting here. Here is the Court's own description of the most common second trimester (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 . . . 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.** *Planned Parenthood, supra* at 960-961.” *Gonzales* at 135.

**[HERE IS WHAT HAPPENS TO WOMEN]  
(ADDED)**

“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.**" Id. [Citations omitted].

**[HERE IS WHAT HAPPENS TO THE INFANT] (ADDED)**

"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."** See, e.g., *Planned Parenthood*, 320 F. Supp. 2d, at 971–972." (emphasis added) *Gonzales* at 147.

*Amici* Women who actually experienced this gruesome reality request this Court to consider the effect on the woman who has felt her baby moving alive in her body,

then realizing the baby is dead and not moving, for two days, before removal. This overall description is clinical gruesomeness at its most wretched level. Especially if one inserts the term “baby” which is the term most women use instead of the clinical term “fetus.” The *Amici* victims of this industry are crying out for a better way. The new state Safe Haven laws protect all women from all abortion trauma, which the Court has clearly stated exists.

Even if the Mississippi legislature’s efforts to minimize harm to women and “infant life,” following *Gonzales*, were allowed to become 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 in the 13th and 14th weeks before the 15th week prohibition starts. 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 was, supported by the 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.” At 145. . . .



“ . . . 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.” . . .

**“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)).” 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.”

Mississippi does dispute it here. The U.S. Attorney General did not need to dispute it to defend the statute in *Gonzales* as written. He could concede the point.

The fact that even the typical 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” (*Casey*) to women who discover this after the abortion to their “horror.” (*Gonzales*)

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. Mississippi will also, through its Safe Haven law, *infra*, §II, receive the child, and pay all expenses of low-income women's prenatal care and delivery through its Medicaid program.

“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. (added)

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” from the mother when the State through Safe Haven laws now offers to receive the child from the mother at no cost, and relieve her of all child care obligations, *see infra*, §II.

“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 [*Casey*] 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 158. (emphasis added)

*Gonzales* and *Amici* agree late term abortion can hurt women even more than other kinds of abortions, though all abortions are associated with trauma. Preventing injury to women alone, and in addition,

removing the burden of child care, would surely be a rational basis for such a law. In this case, Mississippi, and even the abortion industry, agree later term abortions are more dangerous for women. *Gonzales* further states:

**“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.”

*Amici* Women agree late term abortion is “fraught with emotional consequences.”

*Amicus Sonia*, whose abortion was at 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 (sic) 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.*"<sup>5</sup>

Amanda O., abortion at 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)<sup>6</sup>

As Gonzales noted:

**"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**

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<sup>5</sup> See Dropbox Link of 425 Operation Outcry Affidavits and Declarations Under Penalty of Perjury of Women Injured By Late Term Abortions, including *Amici*: [https://www.dropbox.com/sh/ohcwjy2dd1668tl/AAA7\\_CHlS5leENxLZN2hhdUVa?dl=0](https://www.dropbox.com/sh/ohcwjy2dd1668tl/AAA7_CHlS5leENxLZN2hhdUVa?dl=0).

<sup>6</sup> *Id.*

**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 of Late Term Abortion later on her own. A common reaction is: *“I have murdered my own child.”*

M.W. (abortion at 16 weeks)

*“My heart is broken and longs for my child. I am ashamed of what I did. It is hard raising my children to have morals and integrity when I feel I have committed the most heinous act against my own flesh and blood. It’s not easy living and working and trying to do what’s right everyday while knowing that I had committed murder.”*

Jennifer (abortion at 14 weeks)

*“How hasn’t it [affected me]? Severe depression, nightmares where I see my child dragging its mangling limbs behind it as it walks towards me, knowing I’ve killed my own child, feelings of inadequacy as a mother to my children born afterwards. My resulting depression*

*has had negative effects on everyone in my life."*

Cindy (abortion at 24 weeks)

*"I always feel as I am a serial killer. I feel as though my life is not worth living anymore and often times thought of suicide."*

*Gonzales* held, that even if abortion rates decline as a result of prohibiting one kind of abortion, that 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 (emphasis added).

## II.

**Late Term Abortion Is No Longer Necessary To Solve Women's "Unwanted" Child Concerns. 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 Act Is Constitutional Under *Casey* And *Gonzales*. All Burden Of 18 Years of Parenting And Providing For The Child Is Removed.**

A major factual and legal sea change in women's circumstances can now remove all burden of "unwanted"



children from women, without severely injuring women or killing “infant life.” It can give women almost all of what they want from abortion, which is “liberty” from caring for “unwanted” children, without killing **“infant life.”**

In Mississippi, a woman can, at or within three days after the child’s birth, release her child at no cost (with no legal procedure and no questions asked) at any authorized facility.<sup>7</sup> Mississippi will care for that child for at least 18 years; or far more likely, only until the child is adopted by one of the two million people desiring to adopt newborn children.<sup>8</sup> Every state now has such laws.<sup>9</sup> This law completely eliminates any legal need, in every state, for an actual abortion to eliminate the burdens of unwanted children. Under 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 to her whatsoever, unlike abortion. This is especially helpful to low-income women. Access to Safe Haven is

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<sup>7</sup> 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.[i] Emergency medical services provider means a licensed hospital operating an emergency department or an adoption agency licensed by the Department of Human Services. (See also [www.nationalsafehavenalliance.org](http://www.nationalsafehavenalliance.org) and [www.childwelfare.gov](http://www.childwelfare.gov) for all 50 state Safe Haven laws.)

<sup>8</sup> American Adoptions [https://www.americanadoptions.com/pregnant/waiting\\_adoptive\\_families](https://www.americanadoptions.com/pregnant/waiting_adoptive_families).

<sup>9</sup> See <http://www.nationalsafehavenalliance.org/>.

free, unlike abortion. Safe Haven is equally available to rich and poor, and widely accessible in Mississippi. There are about 128 hospitals in Mississippi allowing Safe Haven drop-offs as opposed to only one full time abortion facility (because most doctors don't want to kill "infants").

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, "infant" at 160, and protection of women's health, including from suicide, anxiety, depression, substance abuse, eating disorders, etc.<sup>10</sup>

In return for this 18 year **complete release of all parental obligations** and release from criminal liability for neglect and abandonment, 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.*" *See Planned Parenthood v. Rounds*, 530 F.3d 724 (8th Cir. 2008) (*en banc*) upholding a statute requiring abortionists to tell women that abortion is the "termination of the life of a separate, unique, living

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<sup>10</sup> *See* [www.afterabortion.org](http://www.afterabortion.org), *see also* 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.")

human being.” The Eighth Circuit *en banc* held this was scientifically proven, truthful, relevant, and not false or misleading. The Supreme Court has consistently held for 48 years since *Roe* that requiring a woman to bear the last, harder, third trimester of pregnancy after viability at the traditional 24 weeks is not an “undue burden” by allowing bans on abortion **after viability**.<sup>11</sup> 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.

### 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 Act Is Constitutional Under *Gonzales*. Late Term Abortions Can Cause “Grief More Anguished and Sorrow More Profound” Per *Gonzales* And Cause “Devastating Psychological Consequences” Per *Casey*.**

Similar *Amicus* briefing to this *Amicus Curiae* Brief was presented to and cited by this Court in *Gonzales*. Citing the brief of Sandra Cano, the former “*Doe*”

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<sup>11</sup> *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.

of *Doe v. Bolton*, and 180 Women Injured by Abortion,<sup>12</sup> 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. 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).

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<sup>12</sup> Represented by The Justice Foundation. Sandra Cano’s (Mary Doe of *Doe v. Bolton*) prolife position asking this Court to reverse 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, 2015 (8th Cir. July 22, 2015) (*cert. denied*). Sandra’s dying wish was to see babies protected by law and women in difficult situations helped by society, instead of hurt by abortion. See *Cano v. Baker*, Supreme Court Docket No. 05-11641 for her (*Doe’s*) sworn affidavit in her Rule 60 Motion to reverse her own case.

Similar briefing to this *Amicus Curiae* Brief 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 (Alito, dissenting). Slip Opinion, p. 29. When *Roe* and *Doe* are reversed, the Court will be able to say the Court is finally joining the two women (Norma McCorvey of *Roe* and Sandra Cano of *Doe*) whose cases they are reversing in seeking better alternatives than abortion for women.<sup>13</sup> The Court in *Gonzales* has truthfully acknowledged that “whether to have an abortion is a difficult and painful moral decision.”

Even the National Abortion Federation textbook for abortion providers identifies numerous risk factors for **negative psychological adjustment** (such as, commitment and attachment to the pregnancy, ambivalence about the abortion decision, perception of abortion as a loss, appraisal of abortion as extremely stressful before it occurs, expectation of depression, severe grief or guilt, regret after the abortion, and belief that abortion is the same act as killing a newborn infant).<sup>14</sup> Millions of Americans, including many women, believe abortion is the same act as killing a newborn infant. Additionally, in 2006, the American

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<sup>13</sup> *McCorvey [Roe] v. Hill*, 385 F.3d 846 (5th Cir. 2004) (*cert. denied*) (Supreme Court Docket No. 04-967) (with *Roe*’s affidavit explaining her change of position). *Cano [Doe] v. Baker*, 435 F.3d 1337 (11th Cir. 2007) (*cert. denied*) (Supreme Court Docket No. 05-11641) (*see Doe* affidavit).

<sup>14</sup> Paul M, Lichtenberg S, Borgatta L, *et al.* Management of Unintended and Abnormal Pregnancy: Comprehensive Abortion Care. Surrey, UK: Wiley-Blackwell; 2009.

Psychological Association's Task Force on Mental Health and Abortion report recognized personal vulnerabilities to abortion harm stating, "that differing moral, ethical, and religious perspectives affect how abortion is perceived."<sup>15</sup> And, as the following testimonies reveal, suicidality, is a common theme among many:

Deirdre (abortion at 18 weeks)

*"I have felt shame, guilt, bouts of depression, many years ago I cut my wrists, have had a hard time connecting in relationships, and I have felt alone and unlovable, I have felt lied to about the facts about abortion, I have been angry at the government for allowing this . . . so many, many things . . ."*

Lauren (abortion at 17 weeks)

*" . . . I was told that the doctor would do a short procedure to open 'the cervix' & simply remove the 'mass', & then I could go home. Afterward, the nurse casually remarked that it was a girl, about the size of a grapefruit. Understanding I'd just murdered my daughter, I was devastated. Severe chronic depression, self-hatred, suicidal thoughts, inability to hold a job, failed first marriage (to the boyfriend who pushed me to abort), severe dysmenorrhea to the point of having to have my uterus removed when I was only 35. The grief, remorse,*

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<sup>15</sup> American Psychological Association, Task Force on Mental Health and Abortion. (2008). *Report of the APA Task force on Mental Health and Abortion*.

*regret have been unbearable. I had a promising life ahead of me, intelligent, straight-A-student, plans & dreams to be a productive member of society. Instead I drank myself out of college after the abortion, and have never been able to fulfill my potentials. I wonder what my daughter would be like if I'd allowed her to live & fulfill HER potentials. I miss her. It's been 29 years and I still grieve my actions and the loss of my child. I murdered my daughter."*

As the Court in *Gonzales* noted, abortion is a "painful and difficult moral decision," *supra*. No longer can we as a society ignore the moral aspects of abortion and allow for such a very limited, amoral view to guide our understanding of abortion consequences and decision-making practices. Abortion causes indisputable harm to many, many women and is no longer necessary to help women with an unwanted child.

When asked "How has your abortion hurt you?" other *Amici* Mississippi women answered:

M.B. (abortion at 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. (abortion at 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.”*

Ann R. (abortion at 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 women with varying consequences. Appendix B includes excerpts from women injured by late term abortion from every state in alphabetical order. Instead of late term abortion, which kills an “infant life” and injures women, Mississippi now allows Safe Haven transfer of responsibility to the State, at no cost to the woman, regular open adoption, or the mother can keep the child if she wishes.



The 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."<sup>16</sup> See also A Clinicians Guide to Medical and Surgical Abortion, listing 14 factors for mental health problems after abortion, Ch. 3, pp. 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 in <http://abortion-risks.org/index.php?title=Index>. Though some of these studies provide background information, most include statistically significant results linking one or more adverse effects to abortion. There are hundreds of studies worldwide documenting the harm to women of

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<sup>16</sup> By Maureen Paul, E. Steve Lichtenberg, Lynn Borgatta, David Grimes, Phillip Stubblefield, and Mitchell D. Creinin (UK 2009) Table 5.4, p. 57.

abortion. Though some may disagree, there is more than enough science to justify The Act, and complete 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 abortionists to disclose increased risk of suicide and suicidal ideations stating:

“Based on the record, the studies submitted by the State are sufficiently reliable to support the truth of the proposition that the relative risk of suicide and suicide ideation is higher for women who abort their pregnancies compared to women who give birth or have not become pregnant.” *supra*.

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.<sup>17</sup>

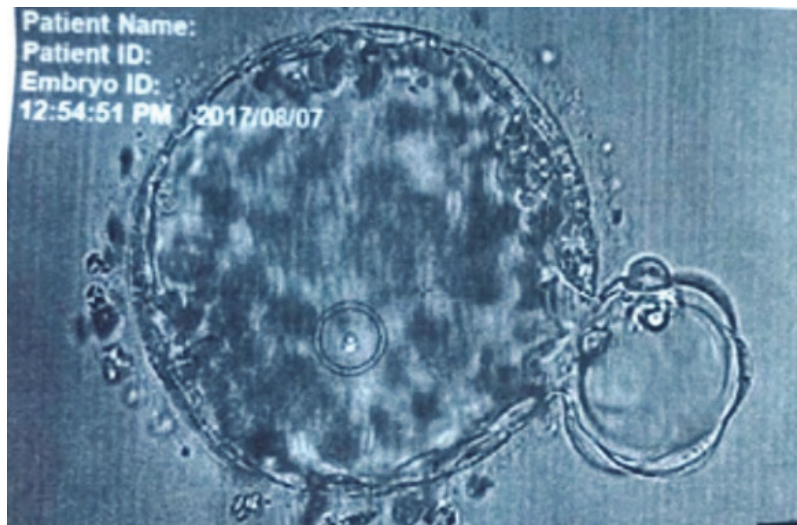
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<sup>17</sup> Elliott Institute: [www.afterabortion.org](http://www.afterabortion.org), “Psychological Risks: Traumatic After Effects of Abortion,” with many citations.

## IV.

**In Addition, Human Viability Outside The Womb Now Occurs At The Embryo Stage Of Development, Thus Shifting The Viability Line To Conception As Various Justices Have Predicted Would Happen As Science Advances.**

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, later named Gideon Wilberforce Thybault, was placed in the adoptive mother Melinda’s womb after being frozen for seven months. *See Amicus Curiae* Brief of Melinda Thybault, Individually, and acting on behalf of over 336,214 Signers of The Moral Outcry Petition in this case at the *cert.* phase. This is his embryo photo:



Gideon, **was living and viable at six days old after fertilization**. He was alive but **frozen and viable for seven months outside his biological mother's womb**. He is part of an incredible, but now routine development in human medicine. Gideon, who was viable for seven months outside his mother's womb, is living proof that viability now occurs at fertilization. See photo below of Gideon after his birth:



In vitro fertilization 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.<sup>18</sup> Frozen human embryos are scientifically proven to be “alive” **outside** their biological mother’s womb. Embryos are viable outside the mother today from the moment of fertilization.

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. Those are human parts, but they are not complete humans. But the child in the womb is a fully unique, separate, whole human. Absent lethal circumstances, like abortion, the child will live to a ripe old age. 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 or “infant” at 160. 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, C.J., p. 4. The *Gonzales* Court also cited a nurse’s testimony extensively describing the effect of the late term abortion on the “baby.” *Gonzales* at 138–139. Late term abortion kills that infant.




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<sup>18</sup> *The Law of Judicial Precedent*, Bryan A. Garner, Neil M. Gorsuch, Brett M. Kavanaugh, *et al.*, Foreword by Justice Stephen Breyer. Thomson Reuters (2016) p. 400.

## CONCLUSION

Why care about viability at all? From the beginning of *Roe*, the Court has allowed the states to ban abortion after viability, except to protect the mother's life or health. The Court wanted to respect human life to some degree, but also help women. Now the conflict is over! The Safe Haven laws harmonize the social desire to eliminate the burden of "unwanted" children for women, without killing the "infant life" and injuring women. This Court can now give justice for the child, mercy for the mother and a loving family for the two million families desiring to adopt newborn babies in America.<sup>19</sup>

*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 any perceived burdens of unwanted children. All children in America are now wanted ***as a matter of law*** by the States, and loving families. Justice requires protection of vulnerable human life, not its destruction. It is time for a better way.



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<sup>19</sup> [https://www.americanadoptions.com/pregnant/waiting\\_adoptive\\_families](https://www.americanadoptions.com/pregnant/waiting_adoptive_families).

**PRAYER**

*Amici* respectfully pray this Court will reverse the decision below and reverse all necessary prior Supreme Court opinions to the contrary, as Mississippi has requested in *Cert. Petition*, p. 5, FN. 1.

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