Description of attached Exhibits (A – M)

A. 1776 Declaration of Independence (8 pages)

B. William Blackstone's *Commentaries on the Laws of England (1765)* (excerpt) (6 pages)

C. University of South Carolina School of Law History Narrative (excerpt) (3 pages)

D. *Rector, Etc., Of Holy Trinity Church v. United States*; U.S. Supreme Court Opinion, 1892 (excerpt) (8 pages)

E. U.S. Senate Judiciary Subcomm Chairman's Report on S.158 Hearings (excerpt), 1981 (excerpt) (17 pages)

F. *Dobbs* U.S. Supreme Court Opinion, 2022 (excerpts) (13 pages)

G. "Mayo Clinic Complete Book of Pregnancy & Baby's First Year" (excerpts) (15 pages)

H. Time/Life article reprinting Lennart Nilsson Photo Essay (13 pages)

I. CBR AbortionNo.org graphic photos - 'Abortion photos - the victims speak' (4 pages)

J. Alabama Supreme Court *LePage* Opinion, 2024 (excerpts) (13 pages)

K. Florida Supreme Court Advisory Opinion, 2024, to the Attorney General (excerpts) (5 pages)

L. President Ronald Reagan Proclamation 'National Sanctity of Human Life Day, 1988' (3 pages)

M. Steven W. Fitschen, National Legal Foundation,
'Re: Character Witness Testimony on Behalf of Steven C. Lefemine' (2 pages)

Exhibit A

United States Code

2018 Edition

TITLE 1—GENERAL PROVISIONS
TO
TITLE 5—GOVERNMENT ORGANIZATION
AND EMPLOYEES
§§ 101–5949

UNITED STATES CODE

2018 EDITION

CONTAINING THE GENERAL AND PERMANENT LAWS
OF THE UNITED STATES ENACTED THROUGH THE
115TH CONGRESS

(ending January 2, 2019, the last law of which was signed on January 14, 2019)

Prepared and published under authority of Title 2, U.S. Code, Section 285b,
by the Office of the Law Revision Counsel of the House of Representatives

VOLUME ONE

ORGANIC LAWS

TITLE 1—GENERAL PROVISIONS
TO
TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES
§§ 101–5949

UNITED STATES
GOVERNMENT PUBLISHING OFFICE
WASHINGTON : 2019

CONTENTS

THE ORGANIC LAWS OF THE UNITED STATES OF AMERICA

THE DECLARATION OF INDEPENDENCE—1776 [1]

IN CONGRESS, JULY 4, 1776

The unanimous Declaration of the thirteen united States of America

WHEN in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed,—That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.—Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole pur-

[1] The delegates of the United Colonies of New Hampshire; Massachusetts Bay; Rhode Island and Providence Plantations; Connecticut; New York; New Jersey; Pennsylvania; New Castle, Kent, and Sussex, in Delaware; Maryland; Virginia; North Carolina; and South Carolina, in Congress assembled at Philadelphia, *Resolved* on the 10th of May, 1776, to recommend to the respective assemblies and conventions of the United Colonies, where no government sufficient to the exigencies of their affairs had been established, to adopt such a government as should, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular, and of America in general. A preamble to this resolution, agreed to on the 15th of May, stated the intention to be totally to suppress the exercise of every kind of authority under the British crown. On the 7th of June, certain resolutions respecting independency were moved and seconded. On the 10th of June it was resolved, that a committee should be appointed to prepare a declaration to the following effect: "That the United Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown; and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." On the preceding day it was determined that the committee for preparing the declaration should consist of five, and they were chosen accordingly, in the following order: Mr. Jefferson, Mr. J. Adams, Mr. Franklin, Mr. Sherman, Mr. R. R. Livingston. On the 11th of June a resolution was passed to appoint a committee to prepare and digest the form of a confederation to be entered into between the colonies, and another committee to prepare a plan of treaties to be proposed to foreign powers. On the 12th of June, it was resolved, that a committee of Congress should be appointed by the name of a board of war and ordnance, to consist of five members. On the 25th of June, a declaration of the deputies of Pennsylvania, met in provincial conference, expressing their willingness to concur in a vote declaring the United Colonies free and independent States, was laid before Congress and read. On the 28th of June, the committee appointed to prepare a declaration of independence brought in a draught, which was read, and ordered to lie on the table. On the 1st of July, a resolution of the convention of Maryland, passed the 28th of June, authorising the deputies of that colony to concur in declaring the United Colonies free and independent States, was laid before Congress and read. On the same day Congress resolved itself into a committee of the whole, to take into consideration the resolution respecting independency. On the 2d of July, a resolution declaring the colonies free and independent States, was adopted. A declaration to that effect was, on the same and the following days, taken into further consideration. Finally, on the 4th of July, the Declaration of Independence was agreed to, engrossed on paper, signed by John Hancock as president, and directed to be sent to the several assemblies, conventions, and committees, or councils of safety, and to the several commanding officers of the continental troops, and to be proclaimed in each of the United States, and at the head of the Army. It was also ordered to be entered upon the Journals of Congress; and on the 2d of August, a copy engrossed on parchment was signed by all but one of the fifty-six signers whose names are appended to it. That one was Matthew Thornton, of New Hampshire, who on taking his seat in November asked and obtained the privilege of signing it. Several who signed it on the 2d of August were absent when it was adopted on the 4th of July, but, approving of it, they thus signified their approbation.

NOTE.—The proof of this document, as published above, was read by Mr. Ferdinand Jefferson, the Keeper of the Rolls at the Department of State, at Washington, who compared it with the fac-simile of the original in his custody. He says: "In the fac-simile, as in the original, the whole instrument runs on without a break, but dashes are mostly inserted. I have, in this copy, followed the arrangement of paragraphs adopted in the publication of the Declaration in the newspaper of John Dunlap and as printed by him for the Congress, which printed copy is inserted in the original Journal of the old Congress. The same paragraphs are also made by the author in the original draught preserved in the Department of State."

pose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

He has obstructed the Administration of Justice, by refusing his Assent to Laws for establishing Judiciary powers.

He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people, and eat out their substance.

He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil power.

He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their acts of pretended Legislation:

For quartering large bodies of armed troops among us:

For protecting them, by a mock Trial, from punishment for any Murders which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefits of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offenses:

For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

For taking away our Charters, abolishing our most valuable Laws, and altering fundamentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our Coasts, burnt our towns, and destroyed the lives of our people.

He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation and tyranny, already begun with circumstances of Cruelty & perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

Nor have We been wanting in attentions to our Brittish brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which, would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

WE, THEREFORE, the Representatives of the UNITED STATES OF AMERICA, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publish and declare, That these United Colonies are, and of Right ought to be FREE AND INDEPENDENT STATES; that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of divine Providence, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

JOHN HANCOCK.

New Hampshire

JOSIAH BARTLETT, MATTHEW THORNTON,
WM. WHIPPLE,

Massachusetts Bay

SAML. ADAMS, ROBT. TREAT PAINE,
JOHN ADAMS, ELBRIDGE GERRY,

Rhode Island

STEP. HOPKINS, WILLIAM ELLERY,

Connecticut

ROGER SHERMAN,
SAM'EL HUNTINGTON,
WM. WILLIAMS,
OLIVER WOLCOTT.

New York

WM. FLOYD,
PHIL. LIVINGSTON,
FRANS. LEWIS,
LEWIS MORRIS.

New Jersey

RICHD. STOCKTON,
JNO. WITHERSPOON,
FRAS. HOPKINSON,
JOHN HART,
ABRA. CLARK.

Pennsylvania

ROBT. MORRIS,
BENJAMIN RUSH,
BENJA. FRANKLIN,
JOHN MORTON,
GEO. CLYMER,
JAS. SMITH,
GEO. TAYLOR,
JAMES WILSON,
GEO. ROSS.

Delaware

CAESAR RODNEY,
GEO. READ,
THO. M'KEAN.

Maryland

SAMUEL CHASE,
WM. PACA,
THOS. STONE,
CHARLES CARROLL OF Carrollton.

Virginia

GEORGE WYTHE,
RICHARD HENRY LEE,
TH. JEFFERSON,
BENJA. HARRISON,
THOS. NELSON, jr.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina

WM. HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina

THOS. HEYWARD, Junr.,
EDWARD RUTLEDGE,
THOMAS LYNCH, Junr.,
ARTHUR MIDDLETON.

Georgia

BUTTON GWINNETT,
LYMAN HALL
GEO. WALTON.

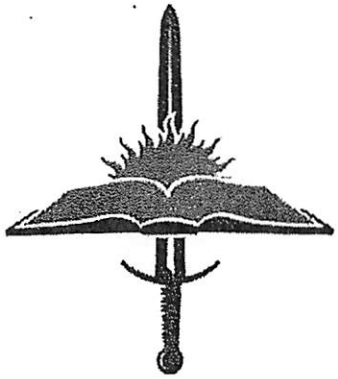
NOTE.—Mr. Ferdinand Jefferson, Keeper of the Rolls in the Department of State, at Washington, says: "The names of the signers are spelt above as in the fac-simile of the original, but the punctuation of them is not always the same; neither do the names of the States appear in the fac-simile of the original. The names of the signers of each State are grouped together in the fac-simile of the original, except the name of Matthew Thornton, which follows that of Oliver Wolcott."

Exhibit B

COMMENTARIES ON THE LAWS OF ENGLAND

BOOK THE FIRST (1765)

WILLIAM BLACKSTONE, Esq.



Based on the first edition, together with the most material corrections and additions in the second edition.

Translation of greek, latin, italian and french quotations (with some modifications) by J. W. Jones, Esq. (1823)

Footnotes have been converted to chapter end notes.
Spelling has been modernized.

Table of Contents

SECTION 2

Of the Nature of Laws in General

Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational. Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action, which is prescribed by some superior, and which the inferior is bound to obey.

Thus when the supreme being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all movable bodies must conform. And, to descend from the greatest operations to the smallest, when a workman forms a clock, or other piece of mechanism, he establishes at his own pleasure certain arbitrary laws for its direction; as that the hand shall describe a given space in a given time; to which law as long as the work conforms, so long it continues in perfection, and answers the end of its formation.

If we farther advance, from mere inactive matter to vegetable and animal life, we shall find them still governed by laws; more numerous indeed, but equally fixed and invariable. The whole progress of plants, from the seed to the root, and from thence to the seed again - the method of animal nutrition, digestion, secretion, and all other branches of vital economy - are not left to chance, or the will of the creature itself, but are performed in a wondrous involuntary manner, and guided by unerring rules laid down by the great creator.

This then is the general signification of law, a rule of action dictated by some superior being: and, in those creatures that have neither the power to think, nor to will, such laws must be invariably obeyed, so long as the creature itself subsists, for its existence depends on that obedience. But laws, in their more confined sense, and in which it is our present business to consider them, denote the rules, not of action in general, but of human action or conduct: that is, the precepts by which man, the noblest of all sublunary beings, a creature endowed with both reason and freewill, is commanded to make use of those faculties in the general regulation of his behavior.

Man, considered as a creature, must necessarily be subject to the laws of his creator, for he is entirely a dependent being. A being, independent of any other, has no rule to pursue, but such as he prescribes to himself; but a state of dependence will inevitably oblige the inferior to take the will of him, on whom he depends, as the rule of his conduct: not indeed in every particular, but in all those points wherein his dependence consists. This principle therefore has more or less extent and effect, in proportion as the superiority of the one and the dependence of the other is greater or less, absolute or limited. And consequently, as man depends absolutely upon his maker for every thing, it is necessary that he should in all points conform to his maker's will.

This will of his maker is called the law of nature. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion; so, when he created man, and endued him with freewill to conduct himself in all parts of life, he laid

down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also the faculty of reason to discover the purport of those laws.

Considering the creator only as a being of infinite power, he was able unquestionably to have prescribed whatever laws he pleased to his creature, man, however unjust or severe. But as be is also a being of infinite wisdom, he has laid down only such laws as were founded in those relations of justice, that existed in the nature of things antecedent to any positive precept. These are the eternal, immutable laws of good and evil, to which the creator himself in all his dispensations conforms; and which he has enabled human reason to discover, so far as they are necessary for the conduct of human actions. Such among others are these principles: that we should live honestly, should hurt nobody, and should render to every one his due; to which three general precepts Justinian[1] has reduced the whole doctrine of law.

But if the discovery of these first principles of the law of nature depended only upon the due exertion of right reason, and could not otherwise be obtained than by a chain of metaphysical disquisitions, mankind would have wanted some inducement to have quickened their inquiries, and the greater part of the world would have rested content in mental indolence, and ignorance its inseparable companion. As therefore the creator is a being, not only of infinite power, and wisdom, but also of infinite goodness, he has been pleased so to contrive the constitution and frame of humanity, that we should want no other prompter to inquire after and pursue the rule of right, but only our own self-love, that universal principle of action. For he has so intimately connected, so inseparably interwoven the laws of eternal justice with the happiness of each individual, that the latter cannot be attained but by observing the former; and, if the former be punctually obeyed, it cannot but induce the latter. In consequence of which mutual connection of justice and human felicity, he has not perplexed the law of nature with a multitude of abstracted rules and precepts, referring merely to the fitness or unfitness of things, as some have vainly surmised; but has graciously reduced the rule of obedience to this one paternal precept, "that man should pursue his own true and substantial happiness." This is the foundation of what we call ethics, or natural law. For the several articles into which it is branched in our systems, amount to no more than demonstrating, that this or that action tends to man's real happiness, and therefore very justly concluding that the performance of it is a part of the law of nature; or, on the other hand, that this or that action is destructive of man's real happiness, and therefore that the law of nature forbids it.

This law of nature, being coeval with mankind and dictated by God himself, is of course superior in obligation to any other-It is binding over all the globe in all countries, and at all times; no human laws are of any validity, if contfary to this: and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason; whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life: by considering, what method will tend the most effectually to our own substantial happiness. And if our reason were always, as in our first ancestor before his transgression, clear and perfect, unruffled by passions, unclouded by prejudice, unimpaired by disease or intemperance, the task would be pleasant and easy; we should need no other guide but this. But every man now finds the contrary in his own experience; that his reason is corrupt, and his

understanding full of ignorance and error.

This has given manifold occasion for the benign interposition of divine providence; which, in compassion to the frailty, the imperfection, and the blindness of human reason, has been pleased, at sundry times and in diverse manners, to discover and enforce its laws by an immediate and direct revelation. The doctrines thus delivered we call the revealed or divine law, and they are to be found only in the holy scriptures. These precepts, when revealed, are found upon comparison to be really a part of the original law of nature, as they tend in all their consequences to man's felicity. But we are not from thence to conclude that the knowledge of these truths was attainable by reason, in its present corrupted state; since we find that, until they were revealed, they were hid from the wisdom of ages. As then the moral precepts of this law are indeed of the same original with those of the law of nature, so their Intrinsic obligation is of equal strength and perpetuity. Yet undoubtedly the revealed law is of infinitely more authenticity than that moral system, which is framed by ethical writers, and denominated the natural law. Because one is the law of nature, expressly declared so to be by God himself; the other is only what, by the assistance of human reason, we imagine to be that law. If we could be as certain of the latter as we are of the former, both would have an equal authority; but, till then, they can never be put in any competition together.

Upon these two foundations, the law of nature and the law of revelation, depend all human laws; that is to say, no human laws should be suffered to contradict these. There are, it is true a great number of indifferent points, in which both the divine law and the natural leave a man at his own liberty; but which are found necessary for the benefit of society to be restrained within certain limits. And herein it is that human laws have their greatest force and efficacy; for, with regard to such points as are not indifferent, human laws are only declaratory of, and act in subordination to, the former. To instance in the case of murder; this is expressly forbidden by the divine, and demonstrably by the natural law; and from these prohibitions arises the true unlawfulness of this crime. Those human laws that annex a punishment to it, do not at all increase its moral guilt, or superadd any fresh obligation *in foro conscientiae* [in the court of conscience] to abstain from its perpetration. Nay, if any human law should allow or enjoin us to commit it, we are bound to transgress that human law, or else we must offend both the natural and the divine. But with regard to matters that are in themselves indifferent, and are not commanded or forbidden by those superior laws; such, for instance, as exporting of wool into foreign countries; here the inferior legislature has scope and opportunity to interpose, and to make that action unlawful which before was not so.

If man were to live in a state of nature, unconnected with other individuals, there would be no occasion for any other laws, than the law of nature, and the law of God. Neither could any other law possibly exist; for a law always supposes some superior who is to make it; and in a state of nature we are all equal, without any other superior but him who is the author of our being. But man was formed for society; and, as is demonstrated by the writers on this subject,[2] is neither capable of living alone, nor indeed has the courage to do it. However, as it is impossible for the whole race of mankind to be united in one great society, they must necessarily divide into many; and form separate states, commonwealths and nations, entirely independent of each other, and yet liable to a mutual intercourse. Hence arises a third kind of law, to regulate this mutual intercourse, called "the law of nations:" which, as none of these states will acknowledge a superiority in the other, cannot be dictated by any; but depends entirely upon the rules of natural law, or upon mutual compacts,

Exhibit C

Reconstruction Era (1867-1877)

The University of South Carolina School of Law was established as one of ten academic schools when South Carolina College was reorganized as the University of South Carolina in 1865 and 1866. The Board of Trustees elected twenty-seven year old South Carolina attorney Alexander Cheves Haskell as the first professor of law and the law school opened on October 7, 1867. Professor Haskell developed his own system of leading the junior class through a course in Blackstone's *Commentaries* and the senior class through a course on Stephens' *Pleading*. By November there were four students in the Law School's two classes. The first student of the law school was Arthur Moore of Columbia. He was joined by C. Pinckney Sanders (Walterboro), Jefferson Warren, and John T. Sloan (both of Columbia). Entrance requirements for the law school were no higher than for other schools and the course of study was not on the graduate level. Moore and Sloan completed the course in nine months and received the first bachelor of law degrees granted by the University on June 29, 1868. Haskell resigned the law professorship in November, closing the law school for the remainder of the academic year.

The Board of Trustees elected South Carolina attorney Cyrus David Melton to the professorship of law on July 12, 1869. Professors T. N. Roberts, Henry J. Fox, and Richard T. Greener, the first African-American faculty member at the University of South Carolina, assisted Melton with his teaching duties in the law school. The course of study was arranged to be completed in two academic years, though a student could enter both classes and complete the course in one year. Tuition for the law school's nine-month academic year was $50.00. From the opening of the law school in October 1867 until the death of Professor

Melton on December 4, 1875, classes were held in the University Library, now the South Caroliniana Library, and DeSaussure College.

During Melton's tenure, the University, including the law school, was integrated in October 1873. Walter Raleigh Jones was the first African-American to enroll in the law school on October 13, 1873. By the end of that October, five African-Americans had enrolled in the law school. On June 30, 1874, Jones earned the distinction of being the first African-American graduate of the law school. The Board of Trustees chose Franklin J. Moses, Sr., the Chief Justice of the Supreme Court of South Carolina, as Melton's successor. Under Moses the curriculum of the law school was modified to place a heavy emphasis on Blackstone's *Commentaries* and Kent's *Lectures*. When Moses died on March 6, 1877, the law school ceased to function. A Joint Resolution of the South Carolina General Assembly closed the law school on June 7, 1877. The Reconstruction-Era Law school had graduated thirty-nine students between 1868 and 1876, including eleven who were African-American.

Exhibit D

RECTOR, ETC., OF HOLY TRINITY CHURCH v. UNITED STATES.

Supreme Court

143 U.S. 457

12 S.Ct. 511

36 L.Ed. 226

RECTOR, ETC., OF HOLY TRINITY CHURCH
v.
UNITED STATES.

February 29, 1892.

Seaman Miller, for plaintiff in error.

Asst. Atty. Gen. Maury, for the United States.

Mr. Justice BREWER delivered the opinion of the court.

1
Plaintiff in error is a corporation duly organized and incorporated as a religious society under the laws of the state of New York. E. Walpole Warren was, prior to September, 1887, an alien residing in England. In that month the plaintiff in error made a contract with him, by which he was to remove to the city of New York, and enter into its service as rector and pastor; and, in pursuance of such contract, Warren did so remove and enter upon such service. It is claimed by the United States that this contract on the part of the plaintiff in error was forbidden by chapter 164, 23 St. p. 332; and an action was commenced to recover the penalty prescribed by that act. The circuit court held that the contract was within the

American laborers from such immigration. This class of immigrants care nothing about our institutions, and in many instances never even heard of them. They are men whose passage is paid by the importers. They come here under contract to labor for a certain number of years. They are ignorant of our social condition, and, that they may remain so, they are isolated and prevented from coming into contact with Americans. They are generally from the lowest social stratum, and live upon the coarsest food, and in hovels of a character before unknown to American workmen. They, as a rule, do not become citizens, and are certainly not a desirable acquisition to the body politic. The inevitable tendency of their presence among us is to degrade American labor, and to reduce it to the level of the imported pauper labor.' Page 5359, Congressional Record, 48th Cong.

10

We find, therefore, that the title of the act, the evil which was intended to be remedied, the circumstances surrounding the appeal to congress, the reports of the committee of each house, all concur in affirming that the intent of congress was simply to stay the influx of this cheap, unskilled labor.

11

But, beyond all these matters, no purpose of action against religion can be imputed to any legislation, state or national, because this is a religious people. This is historically true. From the discovery of this continent to the present hour, there is a single voice making this affirmation. The commission to Christopher Columbus, prior to his sail westward, is from 'Ferdinand and Isabella, by the grace of God, king and queen of Castile,' etc., and recites that 'it is hoped that by God's assistance some of the continents and islands in the ocean will be discovered,' etc. The first colonial grant, that made to Sir Walter Raleigh in 1584, was from 'Elizabeth, by the grace of God, of England, Fraunce and Ireland, queene, defender of the faith,' etc.; and the grant authorizing him to enact statutes of the government of the proposed colony provided that 'they be not against the true Christian faith nowe professed in the Church of England.' The first charter of Virginia, granted by King James I. in 1606, after reciting the application of certain parties for a charter, commenced the grant in these words: 'We, greatly commending, and graciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of Christian Religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts, to human Civility, and to a settled and quiet Government; DO, by these our Letters-Patents, graciously accept of, and agree to, their humble and well-intended Desires.'

12

Language of similar import may be found in the subsequent charters of that colony, from the same king, in 1609 and 1611; and the same is true of the various charters granted to the other colonies. In language more or less emphatic is the establishment of the Christian religion declared to be one of the purposes of the grant. The celebrated compact made by the pilgrims in the Mayflower, 1620, recites: 'Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid.'

13

The fundamental orders of Connecticut, under which a provisional government was instituted in 1638-39, commence with this declaration: 'Forasmuch as it hath pleased the Allmighty God by the wise disposition of his diuyne pruidence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford, and Wethersfield are now cohabiting and dwelling in and vppon the River of Conectecotte and the Lands thereunto adioyneing; And well knowing where a people are gathered togather the word of God requires that to mayntayne the peace and vnion of such a people there should be an orderly and decent Gouerment established according to God, to order and dispose of the affayres of the people at all seasons as occation shall require; doe therefore assotiate and conioyne our selues to be as one Publike State or Comonwelth; and doe, for our selues and our Successors and such as shall be adioyned to vs att any tyme hereafter, enter into Combination and Confederation togather, to mayntayne and presearue the liberty and purity of the gospell of our Lord Jesus w^{ch} we now p^{r}fesse, as also the disciplyne of the Churches, w^{ch} according to the truth of the said gospell is now practised amongst vs.'

14

In the charter of privileges granted by William Penn to the province of Pennsylvania, in 1701, it is recited: 'Because no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship; And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith, and Worship, who only doth enlighten the Minds, and persuade and convince the Understandings of People, I do hereby grant and declare,' etc.

15

Coming nearer to the present time, the declaration of independence recognizes the presence of the Divine in human affairs in these words: 'We hold these truths to be self-evident, that all men are created equal, that thet are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.' 'We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name and by Authority of the good People of these Colonies, solemnly publish and declare,' etc.; 'And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.'

16

If we examine the constitutions of the various states, we find in them a constant recognition of religious obligations. Every constitution of every one of the 44 states contains language which, either directly or by clear implication, recognizes a profound reverence for religion, and an assumption that its influence in all human affairs is essential to the well-being of the community. This recognition may be in the preamble, such as is found in the constitution of Illinois, 1870: 'We, the people of the state of Illinois, grateful to Almighty God for the civil, political, and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations,' etc.

17

It may be only in the familiar requisition that all officers shall take an oath closing with the declaration, 'so help me God.' It may be in clauses like that of the constitution of Indiana, 1816, art. 11, § 4: 'The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God.' Or in provisions such as are found in articles 36 and 37 of the declaration of rights of the constitution of Maryland, (1867:) 'That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty: wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace, or safety of the state, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness or juror on account of his religious belief: provided, he believes in the existence of God, and that, under his dispensation, such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come. That no

religious test ought ever to be required as a qualification for any office of profit or trust in this state, other than a declaration of belief in the existence of God; nor shall the legislature prescribe any other oath of office than the oath prescribed by this constitution.' Or like that in articles 2 and 3 of part 1 of the constitution of Massachusetts, (1780:) 'It is the right as well as the duty of all men in society publicly, and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. * * * As the happiness of a people and the good order and preservation of civil government essentially depend upon piety, religion, and morality, and as these cannot be generally diffused through a community but by the institution of the public worship of God and of public instructions in piety, religion, and morality: Therefore, to promote their happiness, and to secure the good order and preservation of their government, the people of this commonwealth have a right to invest their legislature with power to authorize and require, and the legislature shall, from time to time, authorize and require, the several towns, parishes, precincts, and other bodies politic or religious societies to make suitable provision, at their own expense, for the institution of the public worship of God and for the support and maintenance of public Protestant teachers of piety, religion, and morality, in all cases where such provision shall not be made voluntarily.' Or, as in sections 5 and 14 of article 7 of the constitution of Mississippi, (1832:) 'No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil de partment of this state. * * * Religion morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this state.' Or by article 22 of the constitution of Delaware, (1776,) which required all officers, besides an oath of allegiance, to make and subscribe the following declaration: 'I, A. B., do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.'

18

Even the constitution of the United States, which is supposed to have little touch upon the private life of the individual, contains in the first amendment a declaration common to the constitutions of all the states, as follows: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' etc.,—and also provides in article 1, § 7, (a provision common to many constitutions,) that the executive shall have 10 days (Sundays excepted) within which to determine whether he will approve or veto a bill.

19

There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning. They affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons.

They are organic utterances. They speak the voice of the entire people. While because of a general recognition of this truth the question has seldom been presented to the courts, yet we find that in Updegraph v. Com., 11 Serg. & R. 394, 400, it was decided that, 'Christianity, general Christianity, is, and always has been, a part of the common law of Pennsylvania; * * * not Christianity with an established church and tithes and spiritual courts, but Christianity with liberty of conscience to all men.' And in People v. Ruggles, 8 Johns. 290, 294, 295, Chancellor KENT, the great commentator on American law, speaking as chief justice of the supreme court of New York, said: 'The people of this state, in common with the people of this country, profess the general doctrines of Christianity as the rule of their faith and practice; and to scandalize the author of these doctrines is not only, in a religious point of view, extremely impious, but, even in respect to the obligations due to society, is a gross violation of decency and good order. * * * The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject, is granted and secured; but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community is an abuse of that right. Nor are we bound by any expressions in the constitution, as some have strangely supposed, either not to punish at all, or to panish indiscriminately the like attacks upon the religion of Mahomet or of the Grand Lama; and for this plain reason, that the case assumes that we are a Christian people, and the morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines or worship of those impostors.' And in the famous case of Vidal v. Girard's Ex'rs, 2 How. 127, 198, this court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: 'It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania.'

20

If we pass beyond these matters to a view of American life, as expressed by its laws, its business, its customs, and its society, we find every where a clear recognition of the same truth. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, 'In the name of God, amen;' the laws respecting the observance of the Sabbath, with the general cessation of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing every where under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian

nation. In the face of all these, shall it be believed that a congress of the United States intended to make it a misdemeanor for a church of this country to contract for the services of a Christian minister residing in another nation? Suppose, in the congress that passed this act, some member had offered a bill which in terms declared that, if any Roman Catholic church in this country should contract with Cardinal Manning to come to this country, and enter into its service as pastor and priest, or any Episcopal church should enter into a like contract with Canon Farrar, or any Baptist church should make similar arrangements with Rev. Mr. Spurgeon, or any Jewish synagogue with some eminent rabbi, such contract should be adjudged unlawful and void, and the church making it be subject to prosecution and punishment. Can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was, in effect, the meaning of this statute. The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the legislature used general terms with the purpose of reaching all phases of that evil; and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the legislature, and therefore cannot be within the statute.

21

The judgment will be reversed, and the case remanded for further proceedings in accordance with this opinion.

Exhibit E

Calendar No.

[COMMITTEE PRINT]

Congress Session } SENATE { Report No.

[Misc. pubs]

THE HUMAN LIFE BILL—S. 158

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

TO THE

COMMITTEE ON THE JUDICIARY,
UNITED STATES SENATE

[U.S. Congress]

MADE BY ITS

SUBCOMMITTEE ON SEPARATION OF POWERS

DECEMBER ——

U.S. GOVERNMENT PRINTING OFFICE
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CONTENTS

97TH CONGRESS } SENATE { REPORT
1st Session } { No. 97-

Calendar No.

THE HUMAN LIFE BILL—S. 158

DECEMBER ——

Mr. EAST, from the Subcommittee on Separation of Powers, submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S. 158]

The Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, to which was referred the bill, S. 158, to recognize that the life of each human being begins at conception and to enforce the fourteenth amendment by extending its protection to the life of every human being, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

I. AMENDMENT IN THE NATURE OF A SUBSTITUTE

Strike out the enacting clause and all after the enacting clause and substitute in lieu thereof the following:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 42 of the United States Code shall be amended at the end thereof by adding the following new chapter:

CHAPTER 101

SECTION 1. (a) The Congress finds that the life of each human being begins at conception.

(b) The Congress further finds that the fourteenth amendment to the Constitution of the United States protects all human beings.

SEC. 2. Upon the basis of these findings, and in the exercise of the powers of Congress, including its power under section 5 of the fourteenth amendment to the

Constitution of the United States, the Congress hereby recognizes that for the purpose of enforcing the obligation of the States under the fourteenth amendment not to deprive persons of life without due process of law, each human life exists from conception, without regard to race, sex, age, health, defect, or condition of dependency, and for this purpose "person" includes all human beings.

SEC. 3. Congress further recognizes that each State has a compelling interest, independent of the status of unborn children under the fourteenth amendment, in protecting the lives of those within the State's jurisdiction whom the State rationally regards as human beings.

SEC. 4. Notwithstanding any other provision of law, no inferior Federal court ordained and established by Congress under article III of the Constitution of the United States shall have jurisdiction to issue any restraining order, temporary or permanent injunction, or declaratory judgment in any case involving or arising from any State law or municipal ordinance that (1) protects the rights of human persons between conception and birth, or (2) prohibits, limits, or regulates (a) the performance of abortions or (b) the provision at public expense of funds, facilities, personnel, or other assistance for the performance of abortions: *Provided*, That nothing in this section shall deprive the Supreme Court of the United States of the authority to render appropriate relief in any case.

SEC. 5. Any party may appeal to the Supreme Court of the United States from an interlocutory or final judgment, decree, or order of any court of the United States regarding the enforcement of this Act, or of any State law or municipal ordinance that protects the rights of human beings between conception and birth, or which adjudicates the constitutionality of this Act, or of any such law or ordinance. The Supreme Court shall advance on its docket and expedite the disposition of any such appeal.

SEC. 6. If any provision of this Act or the application thereof to any person or circumstance is judicially determined to be invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected by such determination.

II. PURPOSE OF THE PROPOSED ACT

The purpose of S. 158 is first, to recognize the biological fact that the life of each human being begins at conception; second, to affirm that every human life has intrinsic worth and equal value regardless of its stage or condition; and third, to enforce the fourteenth amendment by ensuring that its protection of life extends to all human beings.

III. NEED FOR THIS LEGISLATION

To protect the lives of human beings is the highest duty of government. Our nation's laws are founded on respect for the life of each and every human being. The Declaration of Independence holds that the right to life is a self-evident, inalienable right of every human being. Embodied in the statement that "all men are created equal" is the idea of the intrinsic worth and equal value of every human life. The author of the Declaration, Thomas Jefferson, explained in later years that "[t]he care of human life and happiness, and not their destruction, is the first and only legitimate object of good government." [1]

Today there is a strong concern among many citizens that government is not fulfilling its duty to protect the lives of all human beings. Since 1973 abortion has been available on demand nationwide,[2] resulting in more than one and one-half million abortions per year. Yet this abrupt and fundamental shift in policy occurred without any prior inquiry by any branch of the federal government to determine whether the unborn children being aborted are

[1] Speech to the Republican Citizens of Washington County, Maryland (March 31, 1809) *reprinted in* J. BARTLETT, FAMILIAR QUOTATIONS 472-73 (14th ed. 1968).

[2] The state of the law allowing abortion on demand is explained at pp. 5-6, infra.

living human beings. Nor has any branch of the federal government forthrightly faced the question whether our law should continue to affirm the sanctity of human life—the intrinsic worth and equal value of all human life—or whether our law should now reject the sanctity of life in favor of some competing ethic. Only by determining whether unborn children are human beings, and deciding whether our law should and does accord intrinsic worth and equal value to their lives, can our government rationally address the issue of abortion.

A government can exercise its duty to protect human life only if some branch of that government can determine what human life is. It can afford no protection to an individual without first ascertaining whether that individual falls within a protected class. The principal author of the fourteenth amendment, Congressman John A. Bingham of Ohio, recognized this truism when he stated that, in order to decide whether an individual is protected under the law of our land, "the only question to be asked of the creature claiming its protection is this: Is he a man?" [3] Since the fourteenth amendment expressly confers on Congress the power to enforce the protections of that amendment, including the protection of life, it is appropriate for Congress as well as the Supreme Court to ask whether a particular class of individuals are human beings.

Some branch of government, as a practical matter, *must* have power to answer this basic question. Otherwise, the government would be unable to fulfill its duty to protect each individual that *is* a human being. When the individual under consideration is an unborn human child, the basic question becomes, "When does the life of each human being begin?" Only by examining this question can the government determine whether unborn children are living human beings. Only after addressing this issue can a government intelligently decide whether to accord equal value to the lives of unborn children and whether to protect their lives under the law.

In its hearings on S. 158, the Subcommittee has exhaustively addressed all questions relevant to the protection of lives of unborn children under the fourteenth amendment. Through these hearings we have also come to recognize that the fundamental question concerning the life and humanity of the unborn is twofold. Not only must government answer the biological, factual question of when the life of each human being begins; it must also address the question whether to accord intrinsic worth and equal value to all human life, whether before or after birth.

These two questions are separate and distinct. The question of when the life of a human being begins—when an individual member of the human species comes into existence—is answered by scientific, factual evidence. Science, however, is not relevant to the second question; science cannot tell us what value to give to each human life. This second question can be answered only in light of the ethical and legal values held by our citizens and expressed by the framers of our Constitution.

The two congressional findings contained in section 1 of S. 158 correspond to these two distinct questions. The congressional finding in section 1(a) of the bill addresses the first question and rests on a factual, scientific determination. The congressional finding in section 1(b) of the bill reflects the conclusion of the Subcommittee

[3] CONG. GLOBE, 40th Cong., 1st Sess. 542 (1867).

that the fourteenth amendment answers the second question by affirming the intrinsic worth and equal value of all human lives.

Much confusion has arisen in the Subcommittee's hearings and in public debate over S. 158 because of the failure to distinguish between the two basic questions. Those, on the one hand, who claim that scientific evidence can resolve the abortion issue ignore the significance of the second question. They fail to see that even if unborn children are human beings, government must decide whether their lives are of such value that they should be protected under the law. Those, on the other hand, who deny that science has any relevance to the abortion issue generally focus only on the second question and refuse to acknowledge the possibility of answering the first. They ignore the role science plays in informing us that a particular individual is a member of the human species, a separate individual whose life we must decide either to value or not.[4]

The Subcommittee has taken pains to separate its consideration of the two questions. In this report we shall often refer to the "scientific question" and the "value question" as a convenient shorthand. We have analyzed the testimony of various witnesses and sources of public record as they relate to each question separately. And we report separately our conclusions on each question.

We emphasize that both questions must be answered by some branch of government before the abortion issue can be fully and rationally resolved. The need for Congress to investigate both questions stems partly from the self-professed institutional limitations of our federal judiciary. The Supreme Court, in its 1973 abortion decision, declared itself unable to resolve when the life of a human being begins: "When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." *Roe* v. *Wade*, 410 U.S. 113, 159 (1973). The Court went on to explain that a "wide divergence of thinking" exists on the "sensitive and difficult" question of when a human life begins, *id.* at 160; hence, the judiciary is not competent to resolve the question.

As a result of its self-professed inability to decide when the life of a human being begins, the Supreme Court rendered its 1973 abortion decision without considering whether unborn children are living human beings. And because the Court did not consider whether unborn children are living human beings, it was able to avoid an explicit decision on whether our law accords intrinsic worth and equal value to the life of every human being regardless of stage or condition. The Court thus declined to address either of the crucial questions relevant to protecting unborn children under the law: the Court addressed neither the scientific question nor the value question. The Court's entire 1973 opinion concerning the power of states to protect unborn children—including the Court's

[4] For instance, the medical and scientific witnesses who testified against S. 158 universally argued that the question when human life begins is a "moral, religious or philosophical" question rather than a scientific one. In context, it is clear that they were interpreting the question, "Is it a human being?" not as an inquiry about whether a certain being is an individual member of the human species, but as a value question concerning what rights ought to be given to such a creature. *See* pp. 10–15, *infra*. Similarly, the doctors who responded to a questionnaire sent by Senator Baucus tended to regard "human being" as a semantic construct presupposing a conclusion that the being in question is entitled to certain rights, rather than as a designation for all individual members of the human species.

ruling on personhood of the unborn—must be read in light of this failure to resolve the two fundamental questions concerning the existence and value of unborn human life.

That a judicial decision addressing neither of these fundamental questions has led to a national policy of abortion on demand throughout the term of pregnancy is a great anomaly in our constitutional system. It is important to examine the judicial reasoning that led to this result. The Court held that "the right of personal privacy includes the abortion decision," but added that "this right is not unqualified and must be considered against important state interests in regulation." 410 U.S. at 154. Because it did not resolve whether unborn children are human beings, the Court could not make an informed decision on whether abortions implicate the interest and duty of the states to protect living human beings. Still, without purporting to know whether unborn children are living human beings, the Court stated by fiat that they are not protected as persons under the fourteenth amendment.[5]

Then the Court created judge-made rules governing abortions. 410 U.S. at 163-65. During the first three months of an unborn child's life, the states may do nothing to regulate or prohibit the aborting of the child. In the next three months of the unborn child's life, the states may regulate only the manner in which the child is aborted; but abortion remains available on demand. In the final three months before the child is born, the states may prohibit abortions except when necessary to preserve the "life or health of the mother." *Id.* at 165.

The apparently restrictive standard for the third trimester has in fact proved no different from the standard of abortion on demand expressly allowed during the first six months of the unborn child's life. The exception for maternal health has been so broad in practice as to swallow the rule. The Supreme Court has defined "health" in this context to include "all factors—physical, emotional, psychological, familial, and the woman's age—relevant to the well-being of the patient." *Doe* v. *Bolton*, 410 U.S. 179, 192 (1973). Since there is nothing to stop an abortionist from certifying that a third-trimester abortion is beneficial to the health of the mother—in this broad sense—the Supreme Court's decision has in fact made abortion available on demand throughout the pre-natal life of the child, from conception to birth.

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[5] The Court devoted very little analysis to its holding that the word "person" in the fourteenth amendment does not include the unborn. Justice Blackmun noted first that of the *other* uses of the word "person" in the Constitution—such as the qualifications for the office of President and the clause requiring the extradition of fugitives from justice—"nearly all" seem to apply only postnatally, and "(n)one indicates, with any assurance, that it has any possible pre-natal application." 410 U.S. at 157. As Professor John Hart Ely has pointed out, the Court might have added that most of these provisions were "plainly drafted with *adults* in mind, but I suppose that wouldn't have helped." Ely, *The Wages of Crying Wolf: A Comment on Roe* v. *Wade*, 82 YALE L. J. 920, 925-26. (1973). Justice Blackmun also noted that "throughout the major portion of the nineteenth century prevailing legal abortion practices were far freer than they are today...." 410 U.S. at 158. This statement seems not to reflect an awareness that the relatively permissive attitude toward abortion prior to quickening that prevailed in the *early* nineteenth century was overwhelmingly rejected by the very legislatures that ratified the fourteenth amendment. It was these same legislatures which adopted strict anti-abortion laws. These laws in turn resulted from the consensus in the medical profession, based on recent scientific discoveries, that the unborn child was a human being from the moment of conception. *See* pp. 10, 24-25, *infra*. Although Justice Blackmun mentioned these political and scientific developments in an earlier portion of his opinion, 410 U.S. at 138-142, he did not discuss their relevance to an understanding of the consensus at the time of the adoption of the fourteenth amendment on whether the word "person" includes the unborn.

Statistics such as those of the District of Columbia showing that more children are aborted than are born alive demonstrate the availability of abortion on demand.[6] The news media have reported some of the shocking results of abortion on demand during the third trimester, including the purposeful killing of babies who survive an abortion procedure. *See* Jeffries & Edmonds, "Abortion: The Dreaded Complication," *Philadelphia Inquirer*, Aug. 2, 1981, Today Magazine, at 14. Whether the Supreme Court intended such an extreme result is not clear.[7]

Roe v. *Wade* has been widely criticized by constitutional scholars; it is frequently cited as the most extreme example of a case in which the Supreme Court substituted its own judgment for the judgments of elected legislatures. *See, e.g.*, Byrn, *An American Tragedy: The Supreme Court on Abortion*, 41 Fordham L. Rev. 807 (1973); Destro, *Abortion and the Constitution: The Need for a Life-Protective Amendment*, 63 Calif. L. Rev. 1250 (1975); Ely, *supra* note 5. While some critics assailed the decision on the ground that unborn children are human beings who ought to be protected by law, the majority of the constitutional scholars who attacked *Roe* made it clear that they personally favored permissive abortion laws, but objected to the Court's decision on the ground that under our Constitution legislatures rather than the federal courts have the power to make abortion policy. In the words of Professor Ely, *Roe* "is bad because it is bad constitutional law, or rather because it is *not* constitutional law and gives almost no sense of an obligation to try to be." Ely, *supra* note 5, at 947.

Not the least of the problems with *Roe* v. *Wade* was that it did not adequately explain either the constitutional or factual bases for its holdings or their precise scope. For instance, it has been suggested that the court's holding that the states may not protect unborn children rests not on the Court's uncertainty about when life begins, but on the Court's endorsement of a rule of constitutional law to the effect that the class of "fourteenth amendment persons" does not necessarily include all human beings. *See The Human Life Bill: Hearings on S. 158 Before the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary*, 97th Cong., 1st Sess. (1981) [hereinafter cited as *Hearings on S. 158*] (May 21 transcript at 94–95) (testimony of Professor William Van Alstyne). *See also* note 5, *supra*. Under this analysis, even if there were a universal consensus to the effect that unborn children are human beings, they would have no constitutional rights and could not be protected by law. If this was actually the holding of *Roe* v. *Wade*, then the possibility that new classes of human beings will be held not to be "fourteenth amendment persons" gives the decision profound and disturbing implications beyond the abortion context.

A congressional determination that unborn children are human beings and that their lives have intrinsic worth and equal value will encourage the Court to reexamine the results and the reason-

[6] At hearings before another Subcommittee of the Senate Committee on the Judiciary, Dr. Irwin M. Cushner, who testified against restrictions on abortion, stated that no more than two percent of induced abortions are performed "for clinically identifiable reasons," and that no more than one percent are performed to save the life of the mother or for any other purpose related to physical health. Hearings Before the Subcommittee on the Constitution of the Senate Committee on the Judiciary, October 14, 1981.

[7] Chief Justice Burger, for example, stated in a separate opinion that the Court was not endorsing a constitutional right to abortion on demand. *Doe* v. *Bolton*, 410 U.S. 179, 208 (1973) (Burger, C.J., concurring).

ing of *Roe* v. *Wade*. In *Roe* the Court expressed a desire to decide the abortion issue "consistent with the relative weights of the respective interests involved . . . ." 410 U.S. at 165. The Court's view of the relative weight of the interests of the unborn child was necessarily influenced by the Court's professed inability to determine whether the unborn child was a living human being. It is difficult to believe that the Court would again balance the respective interests in such a way as to allow abortion on demand, if the Court were to recognize that one interest involved was the life of a human being.

IV. THE SCIENTIFIC QUESTION: WHEN DOES A HUMAN LIFE BEGIN

During the course of eight days of hearings, fifty-seven witnesses testified on S. 158 before the Subcommittee. Of these witnesses, twenty-two, including world-renowned geneticists, biologists, and practicing physicians, addressed the medical and biological questions raised by the bill. Eleven testified in support of the bill and eleven in opposition.

The testimony of these witnesses and the voluminous submissions received by the Subcommittee demonstrate that contemporary scientific evidence points to a clear conclusion: the life of a human being begins at conception, the time when the process of fertilization is complete. Until the early nineteenth century science had not advanced sufficiently to be able to know that conception is the beginning of a human life; but today the facts are beyond dispute.

Physicians, biologists, and other scientists agree that conception marks the beginning of the life of a human being—of a being that is alive and is a member of the human species. There is overwhelming agreement on this point in countless medical, biological, and scientific writings. Extensive quotation from such writings would be unnecessarily redundant except for the strenuous efforts by some parties to deny or obscure this basic fact. The following are only a limited sample from the scientific literature:

> *Zygote.* This cell results from fertilization of an oocyte by a sperm and is *the beginning of a human being.*
>
> * * * * * * *
>
> *Development begins at fertilization,* when a sperm unites with an oocyte to form a *zygote* (from the Greek *zygotus,* meaning "yoked together"). Each of us started life as a cell called a zygote.

K. Moore, *The Developing Human* 1, 12 (2d ed. 1977).

> In this first pairing, the spermatozoon has contributed its 23 chromosomes, and the oocyte has contributed its 23 chromosomes, thus re-establishing the necessary total of 46 chromosomes. The result is the conception of a unique individual, unlike any that has been born before and unlike any that will ever be born again.

M. Krieger, *The Human Reproductive System* 88 (1969).

> [A]ll organisms, however large and complex they may be when full grown, begin life as but a single cell.

This is true of the human being, for instance, who begins life as a fertilized ovum . . . .

I. Asimov, *The Genetic Code* 20 (1962).

It is the penetration of the ovum by a spermatozoon and the resultant mingling of the nuclear material each brings to the union that constitutes the culmination of the process of *fertilization* and marks the initiation of the life of a new individual.

B. Patten, *Human Embryology* 43 (3d ed. 1968).

The formation, maturation and meeting of a male and female sex cell are all preliminary to their actual union into a combined cell, or *zygote,* which definitely marks the beginning of new individual.

L. Arey, *Developmental Anatomy* 55 (7th ed. 1974).

A human being originates in the union of two *gametes,* the ovum and the spermatozoon.

J. Roberts, *An Introduction to Medical Genetics* 1 (3d ed. 1963).

Bisexual reproduction is characteristic of all vertebrates, and *gametogenesis* (the production of *germ cells*) is its first phase. The next phase, the beginning of the development of a new individual, is the fusion of two germ cells (*gametes*) of different nature; one, the *spermatozoon* from the male parent; the other, the *ovum* from the female parent. The result of this fusion is the formation of the first cell of the new individual, the *zygote.*

W. Hamilton & H. Mossman, *Human Embryology* 14 (4th. ed 1972).

The zygote thus formed [by the moving together of two sets of chromosomes] represents the beginning of a new life.

J. Greenhill & E. Friedman, *Biological Principles and Modern Practice of Obstetrics* 23 (1974).

The zygote is the starting cell of the new organism

S. Luria, *Thirty-Six Lectures in Biology* 146 (1975).

A new individual is initiated by the union of two gametes—a male gamete, or *spermatozoon,* and a female gamete, or *mature ovum.*

J. Brash, *Human Embryology* 2 (1956).

Fertilization is significant in that new life is created, but specifically the cardinal features of fertilization are that (1) the diploid number of chromosomes [46] is reconstituted and (2) the sex of the conceptus is designated chromosomally.

J. Thomas, *Introduction to Human Embryology* 52 (1968).

A new individual is inaugurated in a single cell (zygote) that results from the union of a male gamete (spermatozoön) with a female gamete (ovum or egg).

T. Torrey, *Morphogenesis of the Vertebrates* 47 (3d ed. 1971).

> The fertilized egg cell—or zygote—contains nuclear material from both parents. It marks the beginning of the life of a new human being and is a useful focal point for presenting all the diverse aspects of organic reproduction.

G. Simpson & W. Beck, *Life: An Introduction to Biology* 139 (2d ed. 1965).

Many witnesses who appeared before the Subcommittee reaffirmed the scientific consensus on this point. Dr. Jerome Lejeune of the Université René Descartes in Paris, discoverer of the chromosomal disease which causes mongolism, testified that, "[l]ife has a very, very long history, but each individual has a very neat beginning—the moment of its conception."[8] *Hearings on S. 158* (April 23 transcript at 18).

Similarly, Dr. Watson Bowes, Professor of Obstetrics and Gynecology at the University of Colorado School of Medicine, stated, "If we are talking, then, about the biological beginning of a human life or lives, as distinct from other human lives, the answer is most assuredly that it is at the time of conception—that is to say, the time at which a human ovum is fertilized by a human sperm." *Id.* at 61. Dr. Bowes ended his prepared statement as follows: "In conclusion, the beginning of a human life from a biological point of view is at the time of conception. This straightforward biological fact should not be distorted to serve sociological, political, or economic goals." *Id.* at 65.

Dr. Hymie Gordon, Professor of Medical Genetics and physician at the Mayo Clinic, affirmed this consensus and recognized the distinction between the scientific question and the value question:

> I think we can now also say that the question of the beginning of life—when life begins—is no longer a question for theological or philosophical dispute. It is an established scientific fact. Theologians and philosophers may go on to debate the meaning of life or the purpose of life, but it is an established fact that all life, including human life, begins at the moment of conception.

Id. at 31-32.

Dr. Gordon further observed:

> I have never ever seen in my own scientific reading, long before I became concerned with issues of life of this nature, that anyone has ever argued that life did not begin at the moment of conception and that it was a human conception if it resulted from the fertilization of the human egg by a human sperm. As far as I know, these have never been argued against.

Id. at 52.

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[8] Various possible biological nuances on this fact do not detract from the scientific facts relevant to this subcommittee's findings. One witness testified that cases in which twins arise from a single embryo suggest that the individual has not yet been "stably constituted" until the point when twinning occurs. Hearings on S. 158 (May 20 transcript at 19) (testimony of Dr. Clifford Grobstein). But even in such exceptional cases of "homozygous" twins, there is a being in existence from conception who is alive and human. That we can describe the formation of twins merely emphasizes that even at the earliest stages after conception we can have scientific knowledge of the existence of distinct, individual human beings.

The same witness also described the experimental process of the fusion of nonhuman embryos. *Id.* But such experiments have never been successfully performed on human beings, and even in other species, such as mice, fusion cannot be performed except within minutes of conception. Hearings on S. 158 (April 23 transcript at 22) (testimony of Dr. Lejeune).

Dr. Micheline Matthews-Roth, a principal research associate in the Department of Medicine at the Harvard Medical School, after reviewing the scientific literature on the question of when the life of a human being begins, concluded her statement with these words:

> So, therefore, it is scientifically correct to say that an individual human life begins at conception, when egg and sperm join to form the zygote, and that this developing human always is a member of our species in all stages of its life.

Id. at 41–42.

The scientific consensus on the biological fact of the beginning of each human life has existed ever since the medical and scientific communities became aware of the process of conception in the mid-ninteenth century. In 1859 a committee of the American Medical Association unanimously reported its objection to the widespread unscientific belief "that the foetus is not alive till after the period of quickening." The committee unanimously recommended a resolution for the Association to protect against all abortions as an "unwarrantable destruction of human life," except when performed to preserve the life of the mother. 12 American Medical Association, *The Transactions of the American Medical Association* 75–78 (1859). The committee emphasized that the true nature of abortion was not a "simple offense against public morality and decency," nor an "attempt upon the life of the mother" but rather the destruction of her child. The committee therefore called upon the Association to recommend to governors and legislators of the states that they protect human life, by law, from the time of conception. During the second half of the nineteenth century, following the formation of a consensus in the medical and scientific community on the beginning of each human life, the overwhelming majority of the states came to protect the lives of unborn children from the time of conception rather than the time of quickening. *See* Byrn, *An American Tragedy: The Supreme Court on Abortion*, 41 Fordham L. Rev. 807, 827–33 (1973).

Until recent years, no serious challenge was made to the straightforward scientific fact that the life of a human being begins at conception. As recently as 1963, Planned Parenthood Federation of America, now a strong proponent of legalized abortion in Congress and before this subcommittee, published a pamphlet entitled *Plan Your Children for Health and Happiness*, which acknowledged: "An abortion requires an operation. It kills the life of a baby after it has begun."

The biological consensus that conception marks the begining of the life of a human being has recently been confirmed by the process of creating a new human life outside the mother: the "test-tube baby." *See Hearings on S. 158* (April 23 transcript at 22–23) (testimony of Dr. Lejeune).

It may at first seem difficult to reconcile the existence of such a broad consensus with the testimony of some witnesses opposing S. 158 before this subcommittee who emphatically denied that it is possible to determine when a human life begins. If the facts are so

clear, it is crucial to understand how, for example, one noted professor of genetics from Yale University School of Medicine could say that he knows of no scientific evidence that shows when actual human life exists.[9]

Such statements appear on the surface to present a direct contradiction to the biological evidence discussed above. The explanation of this apparent contradiction lies in the existence of the two distinct questions identified above, the scientific question and the value question. We must consider not only whether unborn children are human beings but also whether to accord their lives intrinsic worth and value equal to those of other human beings. The two questions are separate and distinct. It is a scientific question whether an unborn child is a human being, in the sense of a living member of the human species. It is a value question whether the life of an unborn child has intrinsic worth and equal value with other human beings.

Those witnesses who testified that science cannot say whether unborn children are human beings were speaking in every instance to the value question rather than the scientific question. No witness raised any evidence to refute the biological fact that from the moment of human conception there exists a distinct individual being who is alive and is of the human species. No witness challenged the scientific consensus that unborn children are "human beings," insofar as the term is used to mean living beings of the human species.

Instead, these witnesses invoked their value preferences to redefine the term "human being." The customary meaning of "human being" is an individual being who is human, *i.e.*, of the human species. This usage is that of the medical and scientific writers quoted above and of all the medical textbooks to which the Subcommittee has been referred; of Doctors Lejeune, Gordon, and Matthews-Roth, who testified before the Subcommittee; of the American Medical Association in 1859; and of Planned Parenthood in 1963. In this sense a "human being" is something that can be identified by science. Whether a living being is human is thus, in the words of Dr. Lejeune, a matter of "plain experimental evidence." *Hearings on S. 158* (April 23 transcript at 25). Disregarding the customary scientific definition of human being, some witnesses sought to make "human being" and "humanness" into undefined concepts that vary according to one's values. They took the view that each person may define as "human" only those beings whose lives that person wants to value. Because they did not wish to accord intrinsic worth to the lives of unborn children, they refused to call them "human beings," regardless of the scientific evidence.

This technique of argument has been openly advocated by one commentator who writes that "[w]hether the fetus is or is not a human being is a matter of definition, not fact; and we can define any way we wish." Hardin, *Abortion—or Compulsory Pregnancy?* 30 J. of Marriage & the Family 246, 250 (1968). This line of argument does not refute the consensus answer to the scientific question; instead it evades the scientific question by focusing solely on the value question. By adopting this line of argument, some witnesses appearing before the Subcommittee, notably Dr. Rosenberg, were able to testify that they knew of no scientific evidence showing

[9] Hearings on S. 158 (April 24 transcript at 24) (testimony of Dr. Leon Rosenberg).

when actual human life exists. That he was speaking only to the value question is evident from his explanation that "science, per se, doesn't deal with the complex quality called 'humanness' any more than it does with such equally complex concepts as love, faith, or trust." *Hearings on S. 158* (April 24 transcript at 25).

A careful examination reveals the true nature of this line of argument. By redefining "human being" according to one's value preferences, one never has to admit believing that some human lives are unworthy of protection. Conveniently one can bury the value judgment that some human lives are not worth protecting beneath the statement that they are not human beings at all. An editorial in the journal of the California Medical Association has explained why this line of argument appeals to those who reject the traditional ethic of the sanctity of human life, which accords intrinsic worth and equal value to all human lives:

> Since the old ethic has not yet been fully displaced it has been necessary to separate the idea of abortion from the idea of killing, which continues to be socially abhorrent. The result has been a curious avoidance of the scientific fact, which everyone really knows, that human life begins at conception and is continuous whether intra- or extra-uterine until death. The very considerable semantic gymnastics which are required to rationalize abortion as anything but taking a human life would be ludicrous if they were not often put forth under socially impeccable auspices.

A New Ethic for Medicine and Society, 113 California Medicine 67, 68 (1970).

The Subcommittee rejects as misleading semantic efforts to manipulate the English language and to redefine "human being" according to particular value preferences; instead we adhere to the customary meaning of "human being" as including every living member of the human species. S. 158 embodies the Subcommittee's finding, in accordance with the overwhelming consensus of scientific authority, that the life of a human being begins at conception. Our analysis of the leading works on embryology and fetal development indicates that witnesses who disputed that the life of a human being begins at conception reflect not scientific judgment, but rather the value preference of certain members of the scientific community[10] against protecting the life of unborn human beings.[11]

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[10] A recent survey by a disinterested insurance company found that the two groups in society most favorable toward abortion were the scientific and medical community and the legal profession. While 65 percent of the general public believe that abortion is immoral, only 25 percent of doctors and other scientists and only 25 percent of lawyers express such a belief. THE CONNECTICUT MUTUAL LIFE REPORT ON AMERICAN VALUES IN THE 80s 219 (1981).

[11] Practical realities sometimes make it impossible for pro-abortion doctors to evade the fact that unborn children are living human beings. The *Philadelphia Inquirer,* in its Today magazine section on Sunday, August 2, 1981, ran a cover story by Liz Jeffries and Rick Edmonds entitled "Abortion: The Dreaded Complication." The "complication" described in the article, and so dreaded by abortionist doctors, is that some babies will survive an abortion procedure and be born alive. The article describes one instance in which a live two and one-half pound baby boy survived an abortion procedure: "Dismayed, the second nurse . . . . deposited it . . . on the stainless steel drainboard of a sink in the maternity unit's Dirty Utility Room—a large closet where bedpans are emptied and dirty linens stored. . . . '[The patient's physician] told me to leave it where it was,' the head nurse testified later, 'just to watch it for a few minutes, that it would probably die in a few minutes.' " *Id.* at 14.

The Subcommittee is appalled that some in the medical profession show such disdain for the value of a human life. But such tragic events do make it impossible to ignore that the unborn

If the United States government is to give reasonable consideration to the abortion issue it must start from the fact that unborn children are human beings. The hearings before this subcommittee show that this fact is not seriously in doubt; it is questioned only by means of efforts to redefine "human being" in a purely subjective manner. No governmental body that approaches the abortion question with honesty can accept semantic gymnastics that obscure the real issue. Accordingly, we turn next to the real issue in dispute, whether to accord intrinsic worth and equal value to all human lives regardless of stage or condition.

V. THE VALUE QUESTION: SHOULD WE VALUE ALL HUMAN LIVES EQUALLY?

The answer to the scientific question casts the value question in clear relief. Unborn children are human beings. But should our nation value all human lives equally? Scientific evidence is not relevant to this question. The answer is a matter of ethical judgement.

Deeply engrained in American society and American constitutional history is the ethic of the sanctity of innocent human life. The sanctity-of-life ethic recognizes each human life as having intrinsic worth simply by virtue of its being human. If, as a society, we reject this ethic, we must inevitably adopt some other standard for deciding which human lives are of value and are worthy of protection. Because the standards some use to make such decisions turn on various qualities by which they define which lives are worthy of protection, the alternative to the sanctity-of-life ethic is often termed the "quality-of-life ethic." A sharp division exists today between those who affirm the sanctity-of-life ethic and those who reject it in favor of the quality-of-life ethic. The Supreme Court has never purported to decide which ethic our Constitution mandates for valuing the lives of human beings before birth. Nevertheless, deciding which ethic should apply is fundamental to resolving the abortion issue under the Constitution.

A few proponents of abortion have conceded that the real issue at stake is the intrinsic value of human life. The California Medical Association journal California Medicine, for exampe, has recognized the relationship between the rejection of the sanctity-of-life ethic and the advocacy of abortion:

> In defiance of the long held Western ethic of intrinsic and equal value for every human life regardless of its stage, condition or status, abortion is becoming accepted by society as moral, right, and even necessary.

A New Ethic for Medicine and Society, 113 California Medicine 67, 68 (1970). Similarly, some witnesses who appeared before the Subcommittee to oppose S. 158 tacitly rejected the sanctity of human life. For example, one witness stated that "[a]t some point as the amazing chain of events that results in a fertilized egg becoming a human being unfolds, we acquire the basis for those attributes that make us humans, but precisely when I cannot say." *Hearings on S.*

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children being aborted today are human beings. Other medical realities further confirm this fact. For example, babies within their mothers' wombs can now be treated to alleviate various disorders. The doctors treating them do not try to redefine them as non-human. When doctors or scientists deny in selected contexts that unborn children are human beings, their statements should be recognized as evasions of facts by those for whom the facts are inconvenient.

Exhibit F

PRELIMINARY PRINT

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OFFICIAL REPORTS

OF

THE SUPREME COURT

JUNE 24, 2022

REBECCA A. WOMELDORF

REPORTER OF DECISIONS

Syllabus

DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL. *v.* JACKSON WOMEN'S HEALTH ORGANIZATION ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 19–1392. Argued December 1, 2021—Decided June 24, 2022

Mississippi's Gestational Age Act provides that "[e]xcept in a medical emergency or in the case of a severe fetal abnormality, a person shall not intentionally or knowingly perform . . . or induce an abortion of an unborn human being if the probable gestational age of the unborn human being has been determined to be greater than fifteen (15) weeks." Miss. Code Ann. §41–41–191(4)(b). Respondents—Jackson Women's Health Organization, an abortion clinic, and one of its doctors—challenged the Act in Federal District Court, alleging that it violated this Court's precedents establishing a constitutional right to abortion, in particular *Roe* v. *Wade*, 410 U. S. 113, and *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833. The District Court granted summary judgment in favor of respondents and permanently enjoined enforcement of the Act, reasoning that Mississippi's 15-week restriction on abortion violates this Court's cases forbidding States to ban abortion pre-viability. The Fifth Circuit affirmed. Before this Court, petitioners defend the Act on the grounds that *Roe* and *Casey* were wrongly decided and that the Act is constitutional because it satisfies rational-basis review.

Held: The Constitution does not confer a right to abortion; *Roe* and *Casey* are overruled; and the authority to regulate abortion is returned to the people and their elected representatives. Pp. 234–302.

(a) The critical question is whether the Constitution, properly understood, confers a right to obtain an abortion. *Casey*'s controlling opinion skipped over that question and reaffirmed *Roe* solely on the basis of *stare decisis*. A proper application of *stare decisis*, however, requires an assessment of the strength of the grounds on which *Roe* was based. The Court therefore turns to the question that the *Casey* plurality did not consider. Pp. 234–257.

(1) First, the Court reviews the standard that the Court's cases have used to determine whether the Fourteenth Amendment's reference to "liberty" protects a particular right. The Constitution makes no express reference to a right to obtain an abortion, but several constitutional provisions have been offered as potential homes for an implicit constitutional right. *Roe* held that the abortion right is part of a right

to privacy that springs from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. See 410 U. S., at 152–153. The *Casey* Court grounded its decision solely on the theory that the right to obtain an abortion is part of the "liberty" protected by the Fourteenth Amendment's Due Process Clause. Others have suggested that support can be found in the Fourteenth Amendment's Equal Protection Clause, but that theory is squarely foreclosed by the Court's precedents, which establish that a State's regulation of abortion is not a sex-based classification and is thus not subject to the heightened scrutiny that applies to such classifications. See *Geduldig* v. *Aiello*, 417 U. S. 484, 496, n. 20; *Bray* v. *Alexandria Women's Health Clinic*, 506 U. S. 263, 273–274. Rather, regulations and prohibitions of abortion are governed by the same standard of review as other health and safety measures. Pp. 235–237.

(2) Next, the Court examines whether the right to obtain an abortion is rooted in the Nation's history and tradition and whether it is an essential component of "ordered liberty." The Court finds that the right to abortion is not deeply rooted in the Nation's history and tradition. The underlying theory on which *Casey* rested—that the Fourteenth Amendment's Due Process Clause provides substantive, as well as procedural, protection for "liberty"—has long been controversial. The Court's decisions have held that the Due Process Clause protects two categories of substantive rights—those rights guaranteed by the first eight Amendments to the Constitution and those rights deemed fundamental that are not mentioned anywhere in the Constitution. In deciding whether a right falls into either of these categories, the question is whether the right is "deeply rooted in [our] history and tradition" and whether it is essential to this Nation's "scheme of ordered liberty." *Timbs* v. *Indiana*, 586 U. S. ——, —— (internal quotation marks omitted). The term "liberty" alone provides little guidance. Thus, historical inquiries are essential whenever the Court is asked to recognize a new component of the "liberty" interest protected by the Due Process Clause. In interpreting what is meant by "liberty," the Court must guard against the natural human tendency to confuse what the Fourteenth Amendment protects with the Court's own ardent views about the liberty that Americans should enjoy. For this reason, the Court has been "reluctant" to recognize rights that are not mentioned in the Constitution. *Collins* v. *Harker Heights*, 503 U. S. 115, 125.

Guided by the history and tradition that map the essential components of the Nation's concept of ordered liberty, the Court finds the Fourteenth Amendment clearly does not protect the right to an abortion. Until the latter part of the 20th century, there was no support in American law for a constitutional right to obtain an abortion. No state

constitutional provision had recognized such a right. Until a few years before *Roe*, no federal or state court had recognized such a right. Nor had any scholarly treatise. Indeed, abortion had long been a *crime* in every single State. At common law, abortion was criminal in at least some stages of pregnancy and was regarded as unlawful and could have very serious consequences at all stages. American law followed the common law until a wave of statutory restrictions in the 1800s expanded criminal liability for abortions. By the time the Fourteenth Amendment was adopted, three-quarters of the States had made abortion a crime at any stage of pregnancy. This consensus endured until the day *Roe* was decided. *Roe* either ignored or misstated this history, and *Casey* declined to reconsider *Roe*'s faulty historical analysis.

Respondents' argument that this history does not matter flies in the face of the standard the Court has applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment. The Solicitor General repeats *Roe*'s claim that it is "doubtful . . . abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus," 410 U. S., at 136, but the great common-law authorities—Bracton, Coke, Hale, and Blackstone—all wrote that a post-quickening abortion was a crime. Moreover, many authorities asserted that even a pre-quickening abortion was "unlawful" and that, as a result, an abortionist was guilty of murder if the woman died from the attempt. The Solicitor General suggests that history supports an abortion right because of the common law's failure to criminalize abortion before quickening, but the insistence on quickening was not universal, see *Mills* v. *Commonwealth*, 13 Pa. 631, 633; *State* v. *Slagle*, 83 N. C. 630, 632, and regardless, the fact that many States in the late 18th and early 19th century did not criminalize pre-quickening abortions does not mean that anyone thought the States lacked the authority to do so.

Instead of seriously pressing the argument that the abortion right itself has deep roots, supporters of *Roe* and *Casey* contend that the abortion right is an integral part of a broader entrenched right. *Roe* termed this a right to privacy, 410 U. S., at 154, and *Casey* described it as the freedom to make "intimate and personal choices" that are "central to personal dignity and autonomy," 505 U. S., at 851. Ordered liberty sets limits and defines the boundary between competing interests. *Roe* and *Casey* each struck a particular balance between the interests of a woman who wants an abortion and the interests of what they termed "potential life." *Roe*, 410 U. S., at 150; *Casey*, 505 U. S., at 852. But the people of the various States may evaluate those interests differently. The Nation's historical understanding of ordered liberty does not pre-

Indiana, 586 U. S. ——, —— (2019) (internal quotation marks omitted); *McDonald*, 561 U. S., at 764, 767 (internal quotation marks omitted); *Glucksberg*, 521 U. S., at 721 (internal quotation marks omitted).[19] And in conducting this inquiry, we have engaged in a careful analysis of the history of the right at issue.

Justice Ginsburg's opinion for the Court in *Timbs* is a recent example. In concluding that the Eighth Amendment's protection against excessive fines is "fundamental to our scheme of ordered liberty" and "deeply rooted in this Nation's history and tradition," 586 U. S., at —— (internal quotation marks omitted), her opinion traced the right back to Magna Carta, Blackstone's Commentaries, and 35 of the 37 state constitutions in effect at the ratification of the Fourteenth Amendment. 586 U. S., at ——–——.

A similar inquiry was undertaken in *McDonald*, which held that the Fourteenth Amendment protects the right to keep and bear arms. The lead opinion surveyed the origins of the Second Amendment, the debates in Congress about the adoption of the Fourteenth Amendment, the state constitutions in effect when that Amendment was ratified (at least 22 of the 37 States protected the right to keep and bear arms), federal laws enacted during the same period, and other relevant historical evidence. 561 U. S., at 767–777. Only then did the opinion conclude that "the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *Id.*, at 778; see also *id.*, at 822–850 (THOMAS, J., concurring in part and concurring in judgment) (surveying history and reaching the same

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[19] See also, *e. g.*, *Duncan* v. *Louisiana*, 391 U. S. 145, 148 (1968) (asking whether "a right is among those 'fundamental principles of liberty and justice which lie at the base of our civil and political institutions'"); *Palko* v. *Connecticut*, 302 U. S. 319, 325 (1937) (requiring "a 'principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental'" (quoting *Snyder* v. *Massachusetts*, 291 U. S. 97, 105 (1934))).

2

a

We begin with the common law, under which abortion was a crime at least after "quickening"—*i. e.*, the first felt movement of the fetus in the womb, which usually occurs between the 16th and 18th week of pregnancy.[24]

The "eminent common-law authorities (Blackstone, Coke, Hale, and the like)," *Kahler* v. *Kansas*, 589 U. S. ——, —— (2020), *all* describe abortion after quickening as criminal. Henry de Bracton's 13th-century treatise explained that if a person has "struck a pregnant woman, or has given her poison, whereby he has caused abortion, if the foetus be already formed and animated, and particularly if it be animated, he commits homicide." 2 De Legibus et Consuetudinibus Angliae 279 (T. Twiss ed. 1879); see also 1 Fleta, ch. 23, reprinted in 72 Selden Soc. 60–61 (H. Richardson & G. Sayles eds. 1955) (13th-century treatise).[25]

Sir Edward Coke's 17th-century treatise likewise asserted that abortion of a quick child was "murder" if the "childe be born alive" and a "great misprision" if the "childe dieth in her body." 3 Institutes of the Laws of England 50–51

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[24] The exact meaning of "quickening" is subject to some debate. Compare Brief for Scholars of Jurisprudence as *Amici Curiae* 12–14, and n. 32 (emphasis deleted) ("'a quick child'" meant simply a "live" child, and under the era's outdated knowledge of embryology, a fetus was thought to become "quick" at around the sixth week of pregnancy), with Brief for American Historical Association et al. as *Amici Curiae* 6, n. 2 ("quick" and "quickening" consistently meant "the woman's perception of fetal movement"). We need not wade into this debate. First, it suffices for present purposes to show that abortion was criminal by *at least* the 16th or 18th week of pregnancy. Second, as we will show, during the relevant period—*i. e.*, the period surrounding the enactment of the Fourteenth Amendment—the quickening distinction was abandoned as States criminalized abortion at all stages of pregnancy. See *infra*, at 246–250.

[25] Even before Bracton's time, English law imposed punishment for the killing of a fetus. See Leges Henrici Primi 222–223 (L. Downer ed. 1972) (imposing penalty for any abortion and treating a woman who aborted a "quick" child "as if she were a murderess").

(1644). ("Misprision" referred to "some heynous offence under the degree of felony." *Id.*, at 139.) Two treatises by Sir Matthew Hale likewise described abortion of a quick child who died in the womb as a "great crime" and a "great misprision." Pleas of the Crown 53 (P. Glazebrook ed. 1972); 1 History of the Pleas of the Crown 433 (1736) (Hale). And writing near the time of the adoption of our Constitution, William Blackstone explained that abortion of a "quick" child was "by the ancient law homicide or manslaughter" (citing Bracton), and at least a very "heinous misdemeanor" (citing Coke). 1 Commentaries on the Laws of England 129–130 (7th ed. 1775) (Blackstone).

English cases dating all the way back to the 13th century corroborate the treatises' statements that abortion was a crime. See generally J. Dellapenna, Dispelling the Myths of Abortion History 126, and n. 16, 134–142, 188–194, and nn. 84–86 (2006) (Dellapenna); J. Keown, Abortion, Doctors and the Law 3–12 (1988) (Keown). In 1732, for example, Eleanor Beare was convicted of "destroying the Foetus in the Womb" of another woman and "thereby causing her to miscarry."[26] For that crime and another "misdemeanor," Beare was sentenced to two days in the pillory and three years' imprisonment.[27]

Although a pre-quickening abortion was not itself considered homicide, it does not follow that abortion was *permissible* at common law—much less that abortion was a legal *right*. Cf. *Glucksberg*, 521 U. S., at 713 (removal of "common law's harsh sanctions did not represent an acceptance of suicide"). Quite to the contrary, in the 1732 case mentioned above, the judge said of the charge of abortion (with no mention of quickening) that he had "never met with a case so barbarous and unnatural."[28] Similarly, an indictment from 1602, which did not distinguish between a pre-quickening and post-quickening abortion, described abortion as "perni-

[26] 2 Gentleman's Magazine 931 (Aug. 1732).
[27] *Id.*, at 932.
[28] *Ibid.*

cious" and "against the peace of our Lady the Queen, her crown and dignity." Keown 7 (quoting *R.* v. *Webb*, Calendar of Assize Records, Surrey Indictments 512 (1980)).

That the common law did not condone even pre-quickening abortions is confirmed by what one might call a proto-felony-murder rule. Hale and Blackstone explained a way in which a pre-quickening abortion could rise to the level of a homicide. Hale wrote that if a physician gave a woman "with child" a "potion" to cause an abortion, and the woman died, it was "murder" because the potion was given "*unlawfully* to destroy her child within her." 1 Hale 429–430 (emphasis added). As Blackstone explained, to be "murder" a killing had to be done with "malice aforethought, . . . either express, or implied." 4 Blackstone 198 (emphasis deleted). In the case of an abortionist, Blackstone wrote, "the law will imply [malice]" for the same reason that it would imply malice if a person who intended to kill one person accidentally killed a different person:

> "[I]f one shoots at A and misses *him*, but kills B, this is murder; because of the previous felonious intent, which the law transfers from one to the other. The same is the case, where one lays poison for A; and B, against whom the prisoner had no malicious intent, takes it, and it kills him; this is likewise murder. *So also*, if one gives *a woman with child* a medicine to procure abortion, and it operates so violently as to kill the woman, *this is murder* in the person who gave it." *Id.*, at 200–201 (emphasis added; footnotes omitted).[29]

Notably, Blackstone, like Hale, did not state that this proto-felony-murder rule required that the woman be "with

[29] Other treatises restated the same rule. See 1 W. Russell & C. Greaves, Crimes and Misdemeanors 540 (5th ed. 1845) ("So where a person gave medicine to a woman to procure an abortion, and where a person put skewers into the womb of a woman for the same purpose, by which in both cases the women were killed, these acts were clearly held to be murder" (footnotes omitted)); 1 E. East, Pleas of the Crown 230 (1803) (similar).

quick child"—only that she be "with child." *Id.*, at 201. And it is revealing that Hale and Blackstone treated abortionists differently from *other* physicians or surgeons who caused the death of a patient "without any intent of doing [the patient] any bodily hurt." Hale 429; see 4 Blackstone 197. These other physicians—even if "unlicensed"—would not be "guilty of murder or manslaughter." Hale 429. But a physician performing an abortion would, precisely because his aim was an "unlawful" one.

In sum, although common-law authorities differed on the severity of punishment for abortions committed at different points in pregnancy, none endorsed the practice. Moreover, we are aware of no common-law case or authority, and the parties have not pointed to any, that remotely suggests a positive *right* to procure an abortion at any stage of pregnancy.

b

In this country, the historical record is similar. The "most important early American edition of Blackstone's Commentaries," *District of Columbia* v. *Heller*, 554 U. S. 570, 594 (2008), reported Blackstone's statement that abortion of a quick child was at least "a heinous misdemeanor," 2 St. George Tucker, Blackstone's Commentaries 129–130 (1803), and that edition also included Blackstone's discussion of the proto-felony-murder rule, 5 *id.*, at 200–201. Manuals for justices of the peace printed in the Colonies in the 18th century typically restated the common-law rule on abortion, and some manuals repeated Hale's and Blackstone's statements that anyone who prescribed medication "unlawfully to destroy the child" would be guilty of murder if the woman died. See, *e. g.*, J. Parker, Conductor Generalis 220 (1788); 2 R. Burn, Justice of the Peace, and Parish Officer 221–222 (7th ed. 1762) (English manual stating the same).[30]

[30] For manuals restating one or both rules, see J. Davis, Criminal Law 96, 102–103, 339 (1838); Conductor Generalis 194–195 (1801) (printed in Philadelphia); Conductor Generalis 194–195 (1794) (printed in Albany);

period of gestation as the time when the child is endowed with life" because "foetal movements are the first clearly marked and well defined *evidences of life*." *Evans* v. *People*, 49 N. Y. 86, 90 (emphasis added); *Cooper*, 22 N. J. L., at 54 ("In contemplation of law life commences at the moment of quickening, at that moment when the embryo gives *the first physical proof of life*, no matter when it first received it" (emphasis deleted and added)).

The Solicitor General offers a different explanation of the basis for the quickening rule, namely, that before quickening the common law did not regard a fetus "as having a 'separate and independent existence.'" Brief for United States 26 (quoting *Parker*, 50 Mass., at 266). But the case on which the Solicitor General relies for this proposition also suggested that the criminal law's quickening rule was out of step with the treatment of prenatal life in other areas of law, noting that "to many purposes, in reference to civil rights, an infant *in ventre sa mère* is regarded as a person in being." *Ibid.* (citing 1 Blackstone 129); see also *Evans*, 49 N. Y., at 89; *Mills* v. *Commonwealth*, 13 Pa. 631, 633 (1850); *Morrow* v. *Scott*, 7 Ga. 535, 537 (1849); *Hall* v. *Hancock*, 32 Mass. 255, 258 (1834); *Thellusson* v. *Woodford*, 4 Ves. 227, 321–322, 31 Eng. Rep. 117, 163 (1789).

At any rate, the original ground for the quickening rule is of little importance for present purposes because the rule was abandoned in the 19th century. During that period, treatise writers and commentators criticized the quickening distinction as "neither in accordance with the result of medical experience, nor with the principles of the common law." F. Wharton, Criminal Law § 1220, p. 606 (rev. 4th ed. 1857) (footnotes omitted); see also J. Beck, Researches in Medicine and Medical Jurisprudence 26–28 (2d ed. 1835) (describing the quickening distinction as "absurd" and "injurious").[32] In

[32] See *Mitchell* v. *Commonwealth*, 78 Ky. 204, 209–210 (1879) (acknowledging the common-law rule but arguing that "the law should punish abortions and miscarriages, willfully produced, at any time during the period of gestation"); *Mills* v. *Commonwealth*, 13 Pa. 631, 633 (1850) (the quicken-

ment was adopted." Brief for Respondents 20. But that argument flies in the face of the standard we have applied in determining whether an asserted right that is nowhere mentioned in the Constitution is nevertheless protected by the Fourteenth Amendment.

Not only are respondents and their *amici* unable to show that a constitutional right to abortion was established when the Fourteenth Amendment was adopted, but they have found no support for the existence of an abortion right that predates the latter part of the 20th century—no state constitutional provision, no statute, no judicial decision, no learned treatise. The earliest sources called to our attention are a few district court and state court decisions decided shortly before *Roe* and a small number of law review articles from the same time period.[36]

A few of respondents' *amici* muster historical arguments, but they are very weak. The Solicitor General repeats *Roe*'s claim that it is "'doubtful' . . . 'abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus.'" Brief for United States 26 (quoting *Roe*, 410 U. S., at 136). But as we have seen, great common-law authorities like Bracton, Coke, Hale, and Blackstone all wrote that a post-quickening abortion was a crime—and a serious one at that. Moreover, Hale and Blackstone (and many other authorities following them) asserted that even a pre-quickening abortion was "unlawful" and that, as a result, an abortionist was guilty of murder if the woman died from the attempt.

[36] See 410 U. S., at 154–155 (collecting cases decided between 1970 and 1973); C. Means, The Phoenix of Abortional Freedom: Is a Penumbral or Ninth-Amendment Right About To Arise From the Nineteenth-Century Legislative Ashes of a Fourteenth-Century Common-Law Liberty? 17 N. Y. L. Forum 335, 337–339 (1971) (Means II); C. Means, The Law of New York Concerning Abortion and the Status of the Foetus, 1664–1968: A Case of Cessation of Constitutionality, 14 N. Y. L. Forum 411 (1968) (Means I); Lucas 730.

explain why it was included. For example, multiple paragraphs were devoted to an account of the views and practices of ancient civilizations where infanticide was widely accepted. See 410 U. S., at 130–132 (discussing ancient Greek and Roman practices).[49] When it came to the most important historical fact—how the States regulated abortion when the Fourteenth Amendment was adopted—the Court said almost nothing. It allowed that States had tightened their abortion laws "in the middle and late 19th century," *id.*, at 139, but it implied that these laws might have been enacted not to protect fetal life but to further "a Victorian social concern" about "illicit sexual conduct," *id.*, at 148.

Roe's failure even to note the overwhelming consensus of state laws in effect in 1868 is striking, and what it said about the common law was simply wrong. Relying on two discredited articles by an abortion advocate, the Court erroneously suggested—contrary to Bracton, Coke, Hale, Blackstone, and a wealth of other authority—that the common law had probably never really treated post-quickening abortion as a crime. See *id.*, at 136 ("[I]t now appear[s] doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus"). This erroneous understanding appears to have played an important part in the Court's thinking because the opinion cited "the lenity of the common law" as one of the four factors that informed its decision. *Id.*, at 165.

After surveying history, the opinion spent many paragraphs conducting the sort of fact-finding that might be undertaken by a legislative committee. This included a lengthy account of the "position of the American Medical Association" and "[t]he position of the American Public Health

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[49] See, *e. g.*, C. Patterson, "Not Worth the Rearing": The Causes of Infant Exposure in Ancient Greece, 115 Transactions Am. Philological Assn. 103, 111–123 (1985); A. Cameron, The Exposure of Children and Greek Ethics, 46 Classical Rev. 105–108 (1932); H. Bennett, The Exposure of Infants in Ancient Rome, 18 Classical J. 341–351 (1923); W. Harris, Child-Exposure in the Roman Empire, 84 J. Roman Studies 1 (1994).

Exhibit G

MAYO CLINIC COMPLETE BOOK OF PREGNANCY & BABY'S FIRST YEAR

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Mayo Clinic Complete Book of Pregnancy & Baby's First Year provides reliable, practical, comprehensive, easy-to-understand information on all aspects of pregnancy and baby care through age 1. Much of its information comes directly from the experience of Mayo's 1,300 physicians and medical scientists.

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Contents

Part Three — Living With and Understanding Your Baby

Part Four — From Partners to Parents: A Family Is Born

Editorial Staff

Foreword

As change sweeps over health care, one fact remains certain: Mayo Clinic will continue its 100-year tradition of providing the highest-quality, most cost-effective medical care, blending practice with medical education and research. That's always been our goal. It will not change.

Each year, more than 350,000 individuals seek Mayo health care from our facilities in Rochester, Minnesota; Scottsdale, Arizona; and Jacksonville, Florida. Through the years, we've served the needs of more than 4,000,000 people.

At Mayo, we are committed to helping people stay well. In 1932, one of our founders, Dr. Charles H. Mayo, noted that "the object of all health education is to change the conduct of individual men, women and children by teaching them to care for their bodies well." The words "change the conduct" have special meaning to us because they set the tone for the health information we publish. Our aim is to offer practical information, facts you can use, not just interesting theory.

Mayo Clinic Complete Book of Pregnancy & Baby's First Year upholds our tradition of providing the very best in authoritative, easy-to-understand, practical health information. This is a comprehensive guide to the latest information available on pregnancy and child care through that critical first year of your baby's development. If you plan to start a family, if you're pregnant or if you already have a new baby, this book can guide your thoughts and actions on a host of practical issues that confront every new or prospective parent.

On behalf of the nearly 19,000 health professionals and support personnel who make up Mayo Foundation, thank you for selecting this book. We hope you'll find, in this single comprehensive volume, all of the information that you need as you look ahead to the turning point in your life that having a baby represents.

Robert R. Waller, M.D.
President and Chief Executive Officer
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Acknowledgments

Pregnancy is a time of excitement, anticipation and uncertainty. Information from sources such as this book can help satisfy your need for details and reassurances about your own health and the health of your unborn baby. It can also help prepare you for childbirth and the memorable first year. As you might expect, this book covers the health-related issues surrounding pregnancy and your baby's first year. It also covers many of the family adjustment issues you may encounter as you add a new baby to your family.

Expectant and new parents have been an important part of the creation of this book. We began by asking newly pregnant women how a book could satisfy their information needs beyond the traditional resources of medical care providers, family and friends. As the book was written, we included many quotes and stories from parents because we believe that they can best express some of the joys and surprises that accompany new parenthood. We are grateful to the parents who gave us their reactions to and suggestions for many of the chapters.

Ultimately, the combined resources of parents and the collective knowledge and experience of a wide variety of professionals resulted in a book that we believe is authoritative, practical, comprehensive and uniquely designed to meet the concerns of pregnant couples and new parents. A book of this scope requires the teamwork of many individuals. More than 100 Mayo physicians, nurses, nurse-practitioners, parent educators, dietitians, social workers and medical technicians had a "hands-on" role in writing this book. Mayo editors, illustrators, photographers, designers and other publishing support personnel refined, packaged and enhanced the information.

Through words and images, we have created a book that we hope will help you feel prepared for pregnancy, childbirth and the care of your baby.

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Robert V. Johnson, M.D.
Editor-in-Chief

Credits

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Part One

Pregnancy

CHAPTER THREE

How Your Baby Develops

The inside story

During your pregnancy, you'll be concerned about your baby's development as well as the changes taking place in your own body. If you're like most expectant mothers, your mind will be full of questions:

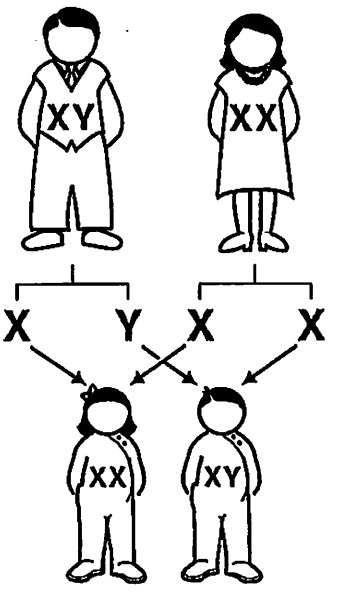
- What does my baby look like right now?
- How big is she or he?
- Will I have a boy or a girl, and what determines the baby's sex?

Understanding how your baby develops can help you accept some of the changes taking place in your body. You may also feel a sense of elation at this miracle, the creation of a unique new person.

Boy or Girl?

Whether you will have a boy or girl is determined at the moment your baby is conceived. One pair of the baby's chromosomes, called sex chromosomes, determines its sex. Females have two chromosomes called X chromosomes. In males, the sex chromosomes are different; one is an X and the other is a Y chromosome. It is the presence of this Y chromosome that determines whether the embryo will develop as a male. Eggs contain only X sex chromosomes. Sperm, however, may contain either X or Y sex chromosomes.

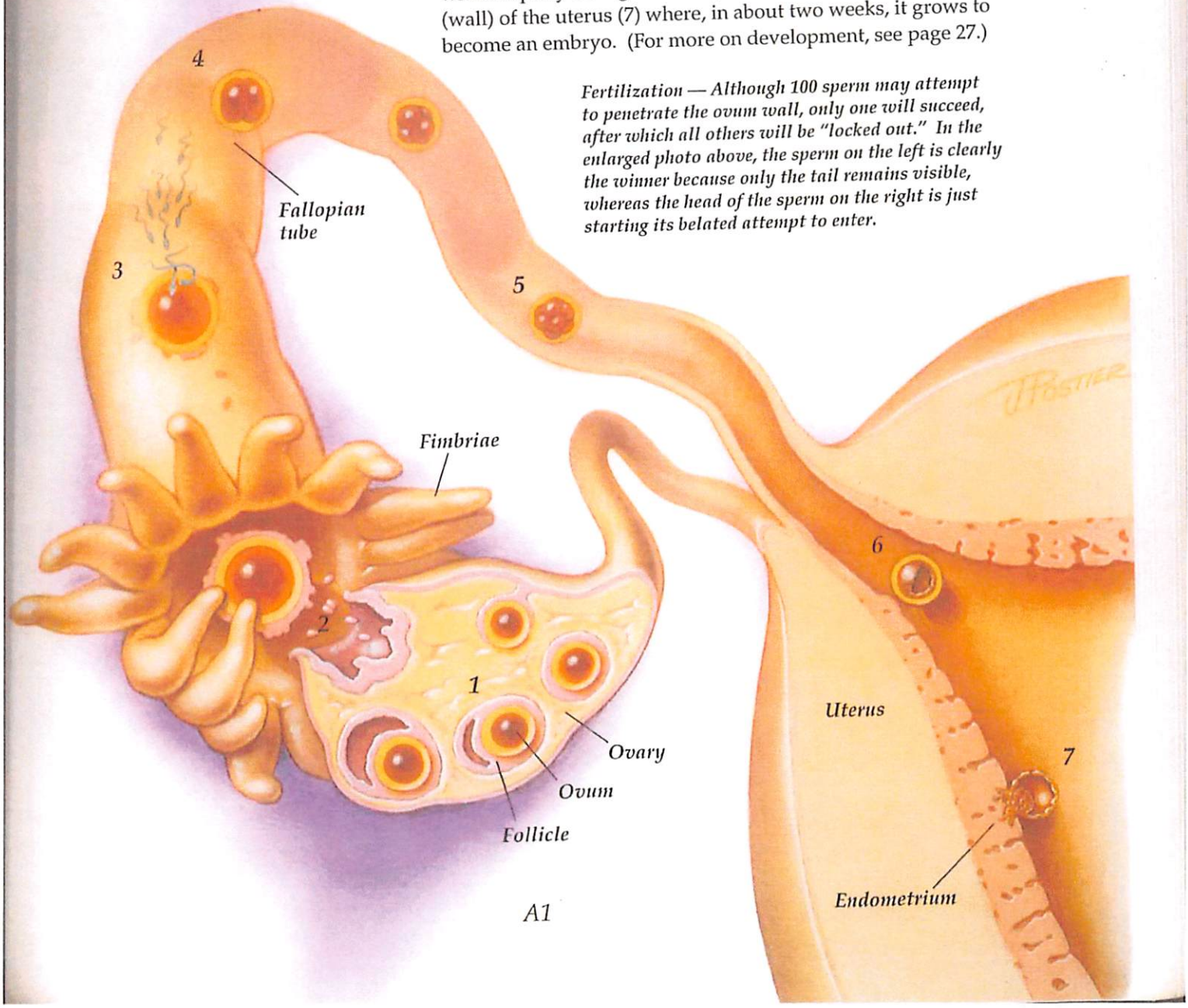
Each month, during your menstrual cycle, a single egg leaves your ovary. This is called ovulation. At the instant of fertilization, sperm and egg join and pool their chromosomes, creating an embryo with a full complement of 23 pairs, or a total of 46 chromosomes. If a sperm containing an X chromosome meets the egg, a female embryo (with two X chromosomes) will result. If a sperm containing a Y chromosome joins the X chromosome in the egg, the embryo will be male. In this way, it is always the father's contribution that determines the sex of the fetus.



About Beginnings

Here's how conception occurs — (1) An ovum (egg) matures within a small cavity (follicle) inside the ovary. Finger-like structures (fimbriae) at the funnel end of the fallopian tube are positioned to catch the ovum when ovulation occurs. At ovulation (2), the follicle bursts through the wall of the ovary and releases the ovum, which moves into the fallopian tube, where it ripens. Fertilization occurs (3) when one sperm penetrates the covering shell of nutrient cells that make up the wall of the ovum (see enlarged photo at left). Within about 24 hours, the fertilized ovum divides (4), then divides again and again until, within about three days, it reaches the morula stage, when the multi-celled ovum (5) resembles a tiny raspberry. Once inside the uterus, the ovum sheds its outer wall to become a blastocyst (6), which rapidly enlarges and implants itself in the endometrium (wall) of the uterus (7) where, in about two weeks, it grows to become an embryo. (For more on development, see page 27.)

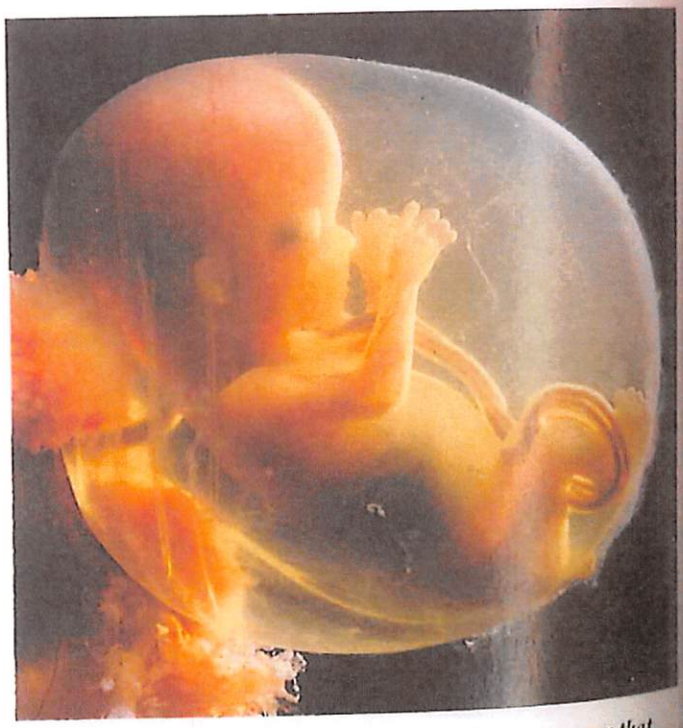
Fertilization — Although 100 sperm may attempt to penetrate the ovum wall, only one will succeed, after which all others will be "locked out." In the enlarged photo above, the sperm on the left is clearly the winner because only the tail remains visible, whereas the head of the sperm on the right is just starting its belated attempt to enter.



The Baby Within You

Once conceived, your baby develops rapidly, changing in the first several weeks from a cluster of cells the size of a pinhead to an embryo that's beginning to resemble a baby. The embryo at **immediate right** is 5 weeks old. Although less than half an inch long, the brain, eyes, heart, liver and backbone are forming. The placenta, upper right corner of photo, provides nourishment and eliminates wastes. At **far right** is a 6-week-old embryo. A tiny arm has formed, and finger-like structures are apparent on a paddle-shaped hand. The eyelids are taking shape. The embryo is about half an inch long, and the heart is beating about 150 times a minute.

At 9 weeks after conception, your embryo has developed sufficiently to be called a fetus, and at about 11 weeks, your fetus might resemble the one shown above. Comfortably nestled within the lacy interior of your uterus, your baby still has plenty of room because she or he is less than 3 inches long. Eyes and ears are clearly identifiable. Arms, legs, fingers and toes are developing quickly, and all organs, nerves and muscles are formed and beginning to function. Your fetus can flex the arms and kick the legs; you won't feel movements until your baby grows larger.



At 17 weeks, above, your fetus has a baby-like appearance that includes thin eyebrows, scalp hair and rather well-developed limbs. Head-to-rump length is about 7½ inches. Weight is about a pound. At this age, the typical fetus is becoming increasingly active, moving head, arms and legs vigorously about and making breathing movements. Your baby's hearing is well developed. She or he probably is hearing your conversations.

Exhibit H

LIFE CULTURE

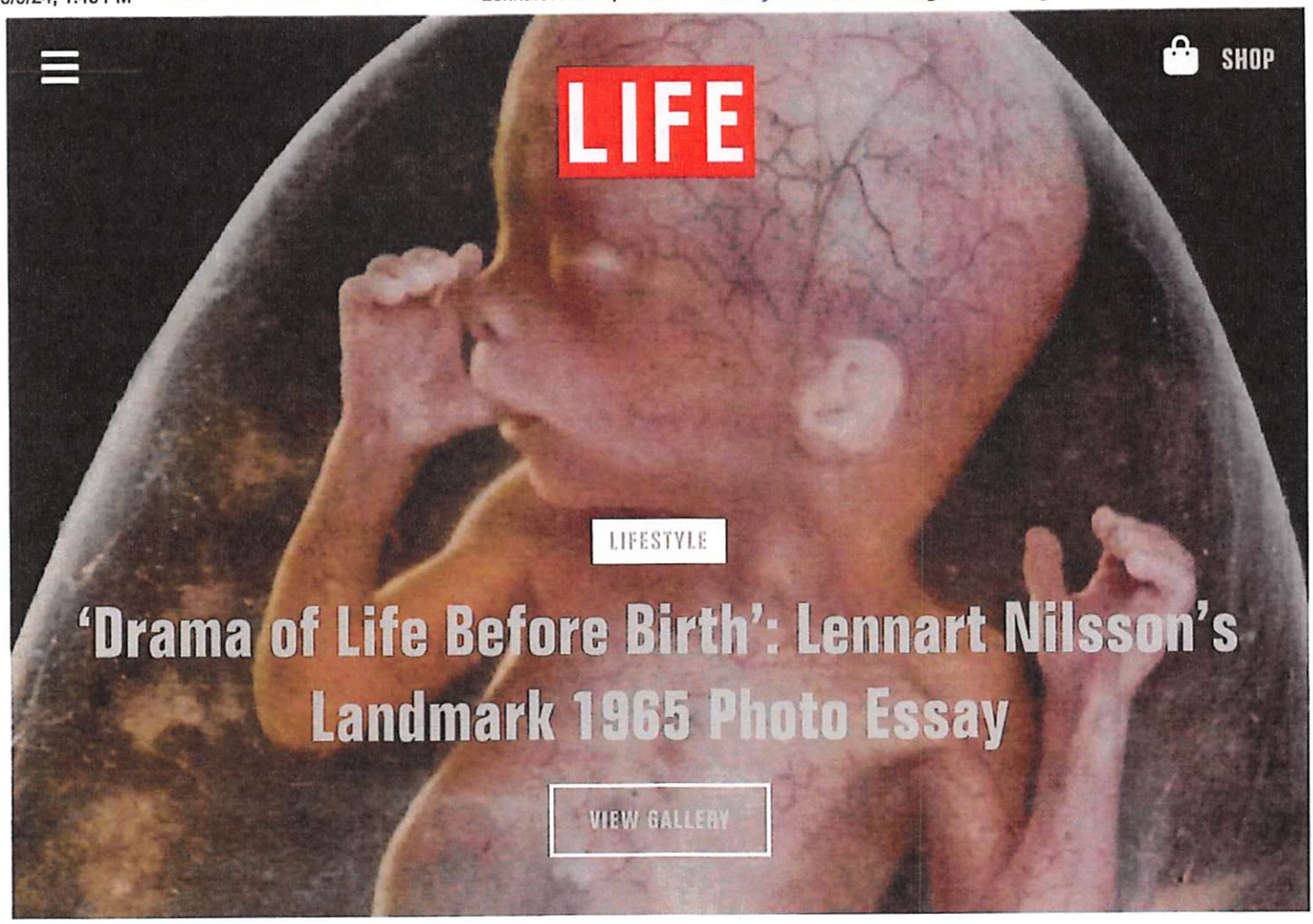
'Drama of Life Before Birth': Lennart Nilsson's Landmark 1965 Photo Essay

4 MINUTE READ

BY BEN COSGROVE

MARCH 4, 2013 12:59 PM EST

In the five decades since Lennart Nilsson's portrait of an 18-week-old human fetus appeared on the cover of the April 30, 1965, issue of LIFE—



Drama of Life Before Birth

Written By: Ben Cosgrove

In the five decades since Lennart Nilsson's portrait of an 18-week-old human fetus appeared on the cover of the April 30, 1965, issue of LIFE along with other, equally jaw-dropping pictures across multiple pages inside the magazine the debate about when life begins and who, ultimately, wields control of a woman's body, both before and after birth, has only intensified. Religious, ethical, legal and medical arguments swirl around the issues of conception, contraception and abortion, and few political "hot button" issues are more radioactive than that of (put in the simplest and, perhaps, the most incendiary possible terms) the "right to choose" versus a "right to life."

In 1965, however, the central question gripping most everyone who saw Nilsson's pictures was the far more prosaic, and readily answerable, "How on

earth did he *do* that?"

As LIFE told its readers when Nilsson's pictures first appeared in the magazine's pages:

"Ten years ago, a Swedish photographer named Lennart Nilsson told us that he was going to photograph in color the stages of human reproduction from fertilization to just before birth. It was impossible for us not to express a degree of skepticism about his chances of success, but this was lost on Nilsson. He simply said, 'When I've finished the story, I'll bring it to you.' Lennart kept his promise. He flew into New York from Stockholm and brought us the strangely beautiful and scientifically unique color essay in this issue."

What most people don't recall or, more likely, never knew about Nilsson's achievement is that, in fact, many of the embryos pictured in the photo essay "had been surgically removed," as LIFE told its readers, "for a variety of medical reasons."

In other words, while Nilsson (and Karl Storz in Germany and Jungners Optiska in Stockholm, who manufactured special macro-lenses and wide-angled special optics to Nilsson's specs) revolutionized photography with mind-expanding devices and techniques for *in utero* photography, it's worth recalling that not all of the embryos or fetuses seen in that groundbreaking 1965 LIFE article lived very long beyond the moment that Nilsson made their portraits. Doomed to a mortal end, they gained a kind of immortality through a photographer's inspired vision and tenacious pursuit of what so many, for so long, deemed the impossible.

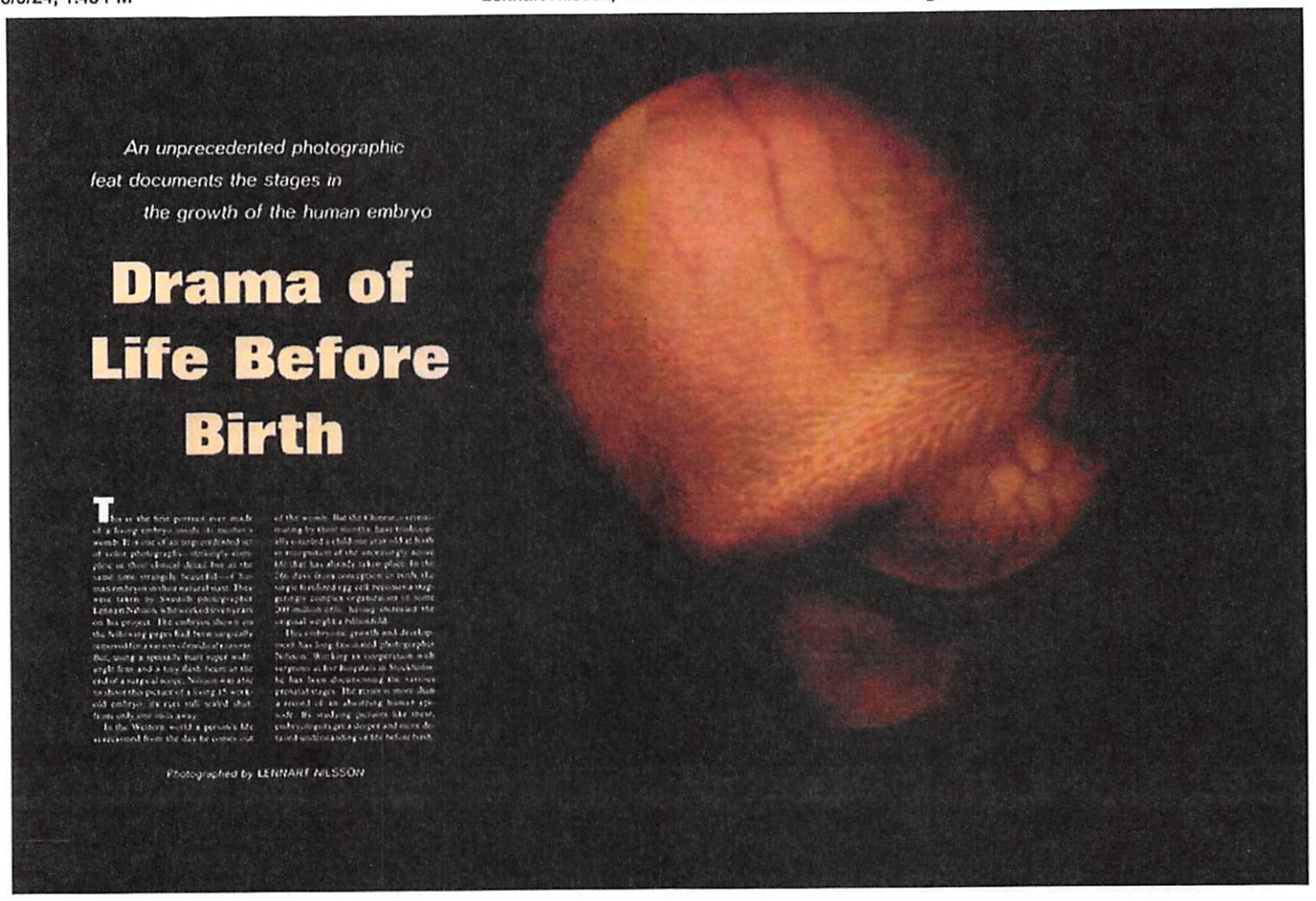
Of the pictures themselves, and the years and years spent designing, experimenting with and ultimately putting to use the radical equipment that allowed the world to see what it had never before witnessed, Nilsson once told an interviewer (in a revealing Q&A published on his own site):

The first job I did for [LIFE] on an exclusive basis was when Dag Hammarskjöld was elected UN Secretary General in 1953. I traveled to New York with him and photographed the newly installed Secretary General in his office in the 38th floor in the UN Building. I had my first embryo pictures along with me on that trip. "Unbelievable!" they said at LIFE. I thought so, too! But I didn't know anything about the development of the fetus and had to learn from scratch. But they were incredibly enthusiastic at LIFE and twelve years later, in 1965, they published their big story on human reproduction.

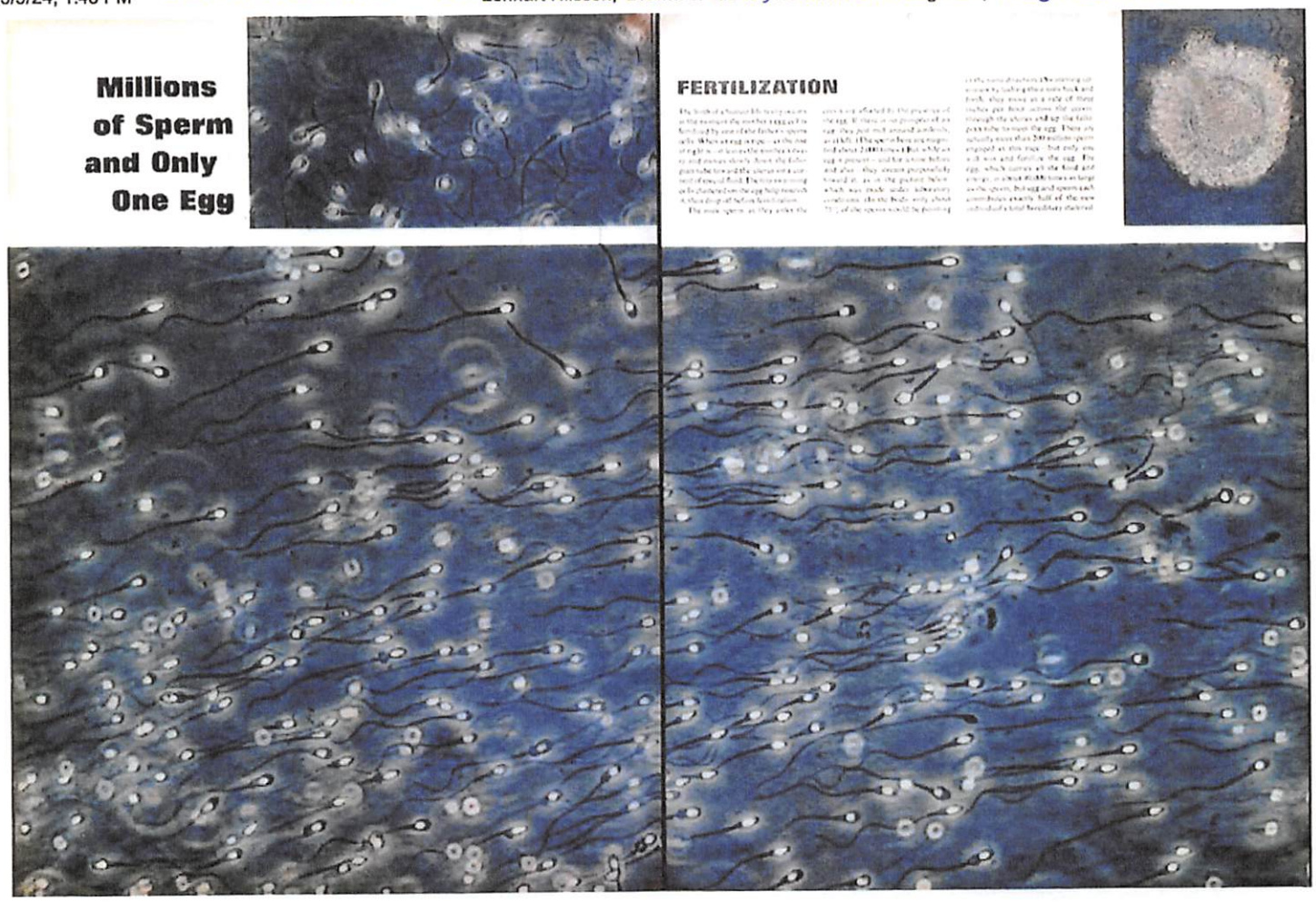
Today, so many years after Nilsson's at-once exalting and humbling pictures of "the drama of life before birth" first mesmerized and astounded millions of people all over the globe, the photos he made and those he continues to make, in his 90s remain among the most thrilling amalgams of art and science the world has ever seen.

[Visit LennartNilsson.com to see more of Nilsson's astonishing photography, across a variety of subjects]

Ben Cosgrove is the Editor of LIFE.com



The Drama of Life 1965
LIFE Magazine



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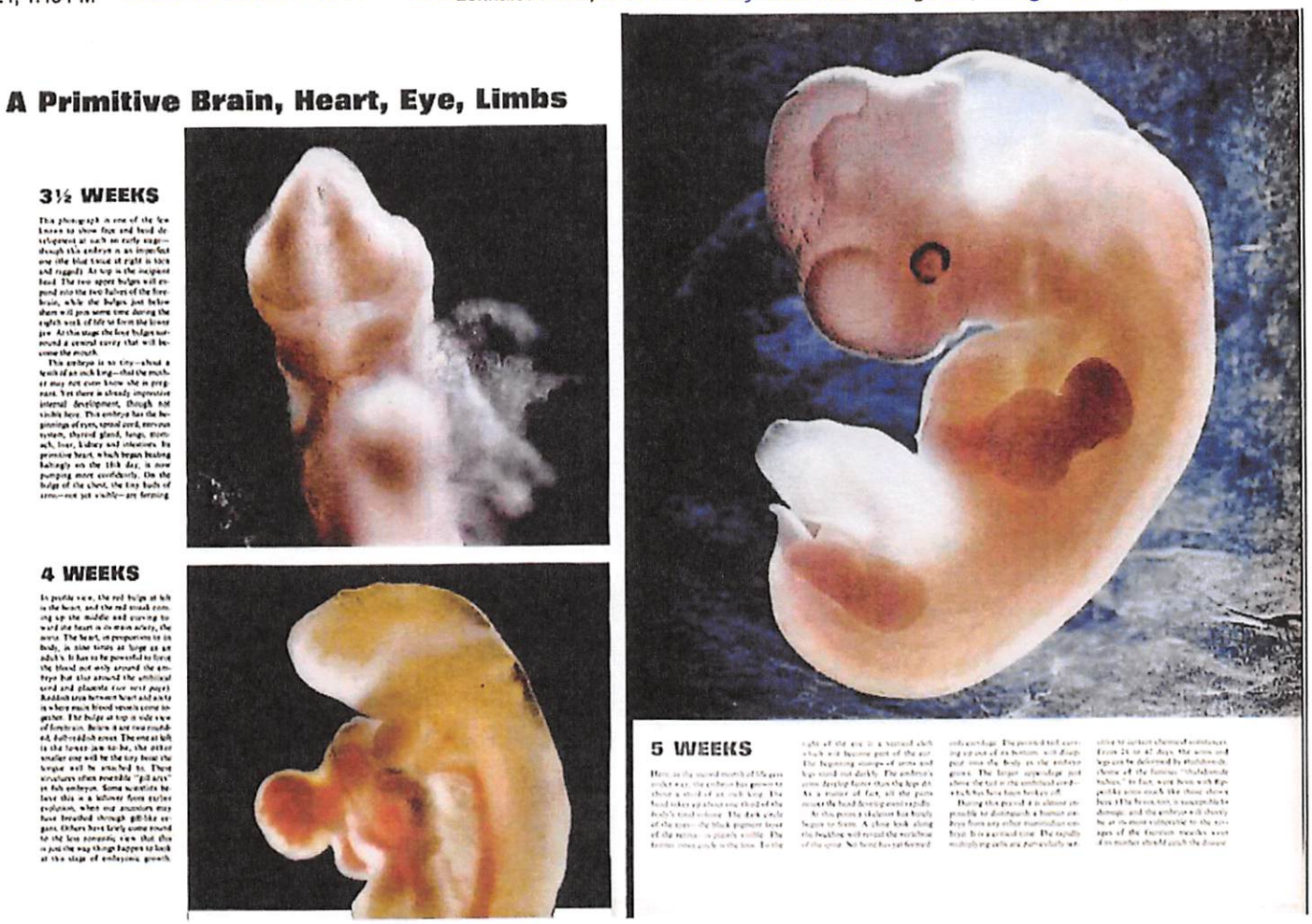

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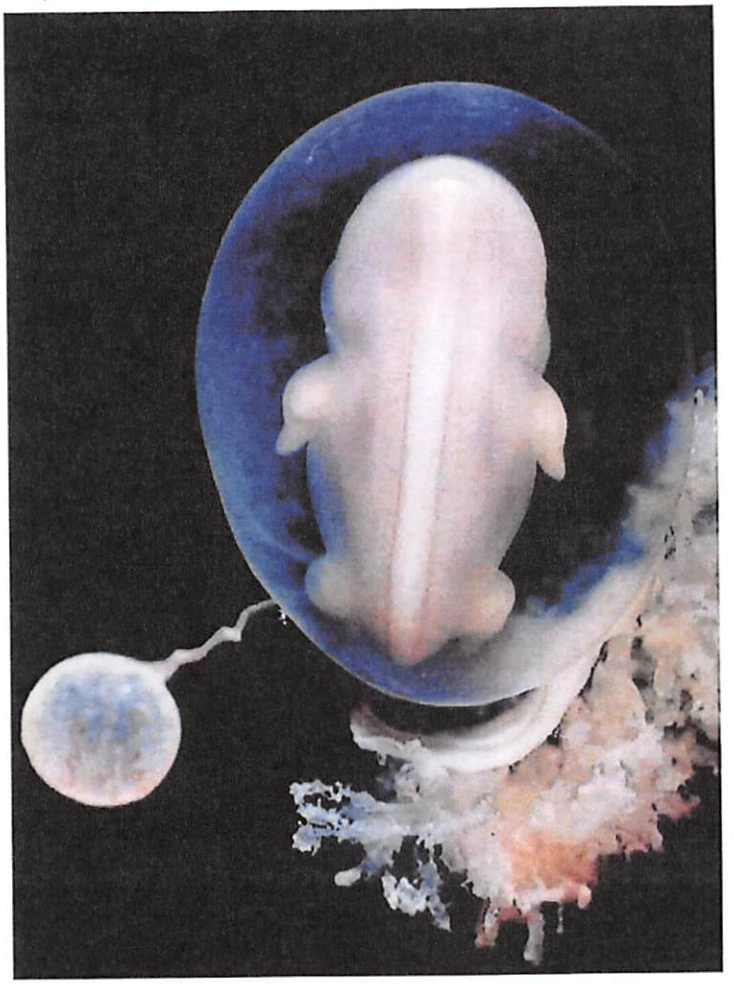
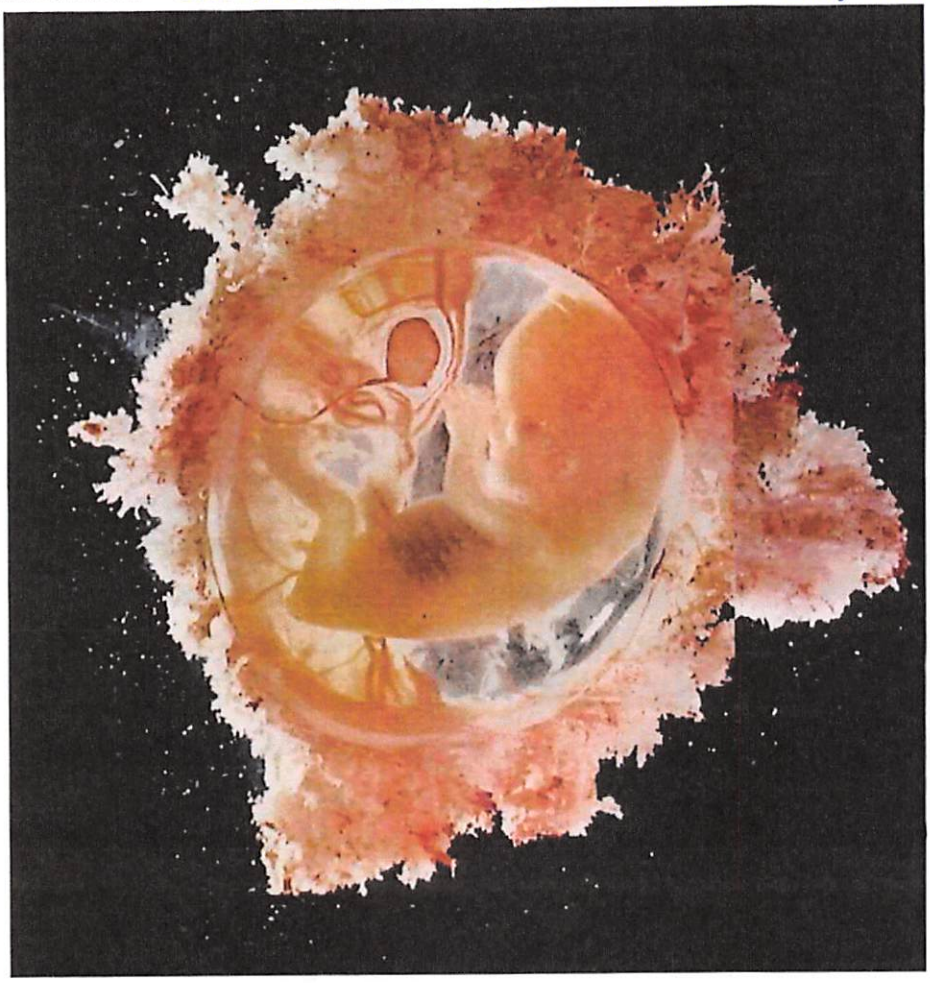
LIFE Magazine



The Drama of Life 1965
LIFE Magazine

The Drama of Life 1965
LIFE Magazine



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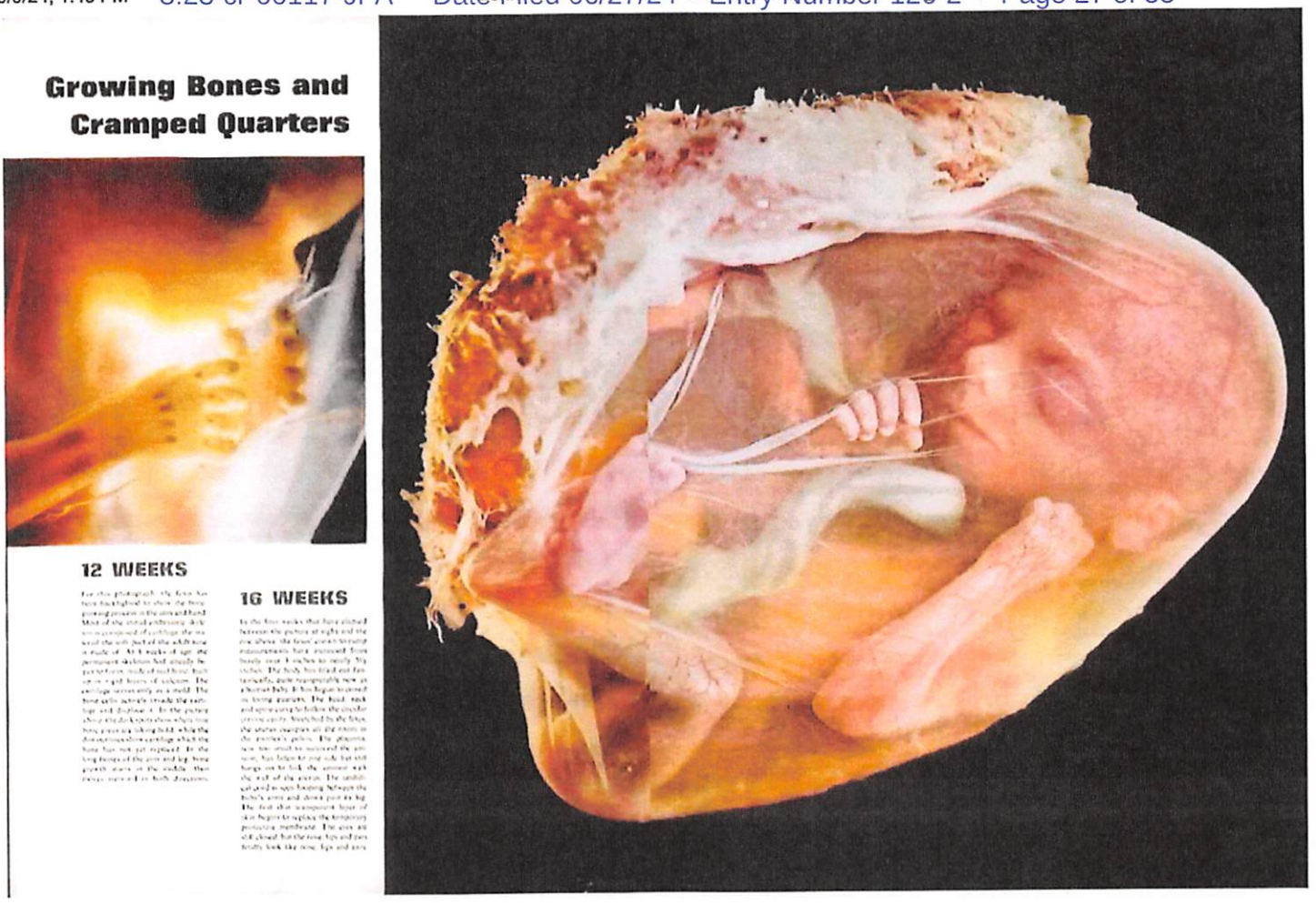
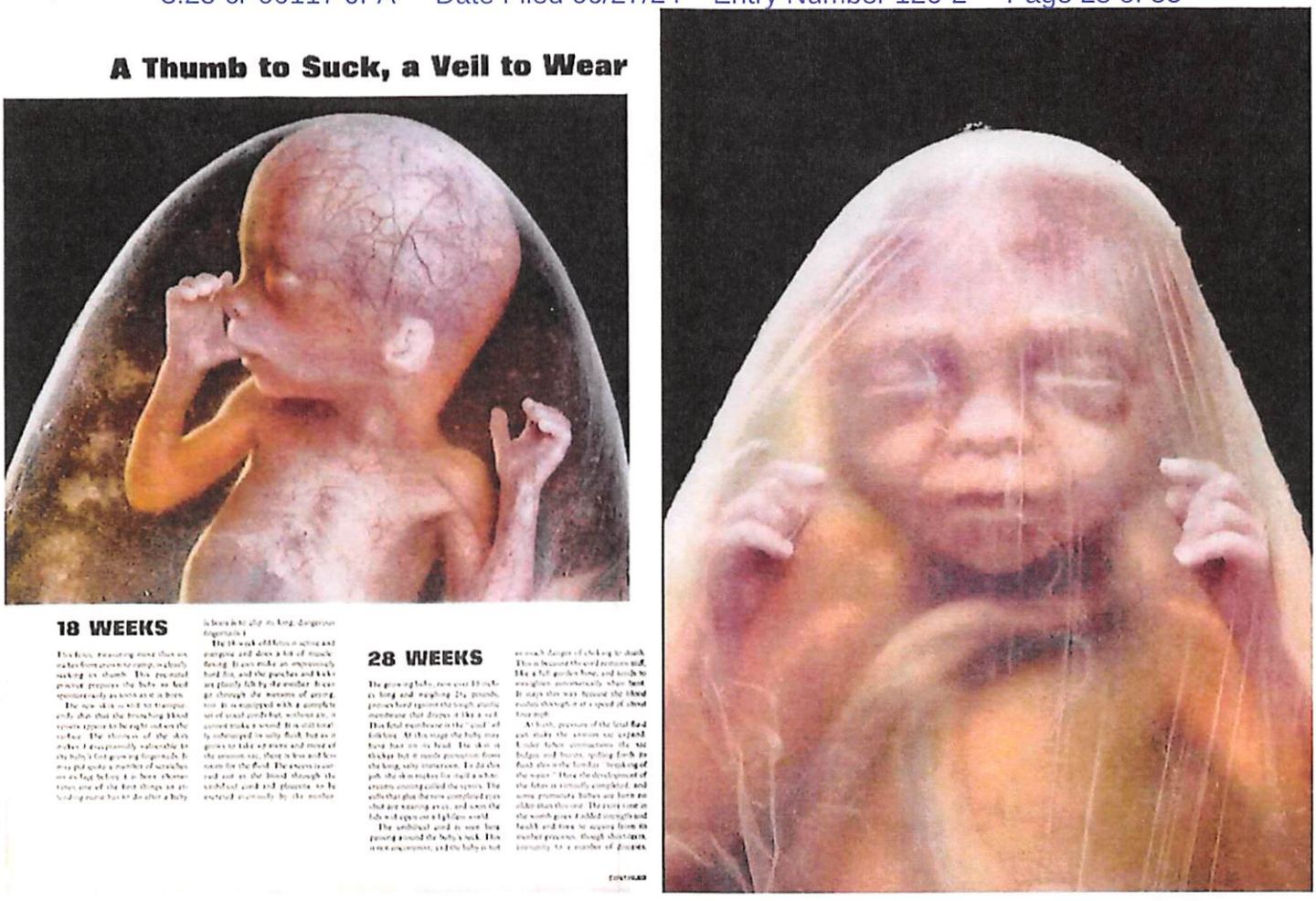


The Drama of Life 1965
LIFE Magazine



The Drama of Life 1965
LIFE Magazine

1965, CULTURE, LENNART NILSSON, MEDICINE, SCIENCE AND TECHNOLOGY

MORE LIKE THIS

Exhibit I

ABORTION PHOTOS

Abortion photos – the victims speak

No one can argue with a photograph. Photos of the broken bodies of the victims of abortion prove at a glance what CBR exists to establish – the humanity of the preborn and the inhumanity of abortion. But we are often told by pro-lifers and pro-aborts alike that it is wrong to display these photos publicly because the photos are too upsetting. This position makes no sense.

It makes no sense if the critic is a pro-lifer. CBR's experience sharing these photos with people in the public square has demonstrated that they save lives. How can someone claim to be pro-life if they honestly believe that not upsetting people is more important than saving babies from abortion?

It also makes no sense if the critic is a pro-abort. An abortion photo merely depicts something that someone has done to a baby. How is it possible that it is okay to do this thing to a baby if it is so horrifying to view that it is immoral for us to show it to people?

Nobody likes abortion photos. That's okay – they're not supposed to be liked. Sometimes it's har hear a victim's story. Abortion photos are the only way the victims of America's holocaust can tell t story.

The following images are the backbone of CBR's various public, abortion-awareness projects. The coins and pencils are included as size references and are part of the original photos. All ages are in weeks from fertilization. These photos are available for download and use as long as you agree to the terms of use (below). Click a photo to enlarge for viewing or download.

[Show slideshow]


10 Week Abortion (03)


10 Week Abortion (04)


10 Week Abortion (05)


10 Week Abortion (06)


10 Week Abortion (07)


10 Week Abortion (08)


10 Week Abortion (09)


10 Week Abortion (10)

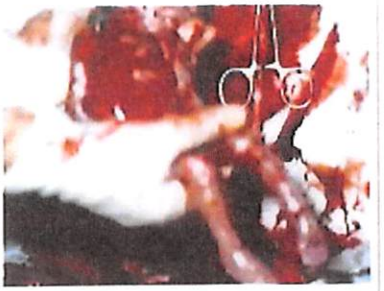

10 Week Abortion (11)


10 Week Abortion (12)


11 Week Abortion (01)


11 Week Abortion (02)

22 Week Abortion (01)



22 Week Abortion (02)

22 Week Abortion (03)

24 Week Abortion

26 Week Abortion

◀ 1 2

Terms of use:

1. You must condemn all abortion-related violence.

2. The photos are copyrighted, so acknowledge Center for Bio-Ethical Reform as the copyright holder by printing "Copyright abortionNO.org" (or a non-English translation) in small font at the bottom of each photo used.

3. Always display the age of the baby (in whatever language is appropriate) so viewers understand how quickly children develop in the womb and how awful it is when they are destroyed by abortion.

4. Do not alter the photos in any way.

5. Do not transfer the photos to other individuals or groups who want to use them. Instead, refer those individuals or groups to us so they can obtain the photos directly from us.

Exhibit J

Rel: February 16, 2024

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2023-2024

SC-2022-0515

James LePage and Emily LePage, individually and as parents and next friends of two deceased LePage embryos, Embryo A and Embryo B; and William Tripp Fonde and Caroline Fonde, individually and as parents and next friends of two deceased Fonde embryos, Embryo C and Embryo D

v.

The Center for Reproductive Medicine, P.C., and Mobile Infirmary Association d/b/a Mobile Infirmary Medical Center

Appeal from Mobile Circuit Court
(CV-21-901607)

SC-2022-0579

Felicia Burdick-Aysenne and Scott Aysenne, in their individual capacities and as parents and next friends of Baby Aysenne, deceased embryo/minor

v.

The Center for Reproductive Medicine, P.C., and Mobile Infirmary Association d/b/a Mobile Infirmary Medical Center

Appeal from Mobile Circuit Court
(CV-21-901640)

MITCHELL, Justice.[1]

This Court has long held that unborn children are "children" for purposes of Alabama's Wrongful Death of a Minor Act, § 6-5-391, Ala. Code 1975, a statute that allows parents of a deceased child to recover punitive damages for their child's death. The central question presented in these consolidated appeals, which involve the death of embryos kept

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[1]These consolidated appeals were originally assigned to another Justice on this Court; they were reassigned to Justice Mitchell on December 15, 2023.

A. Wrongful-Death Claims

Before analyzing the parties' disagreement about the scope of the Wrongful Death of a Minor Act, we begin by explaining some background points of agreement. All parties to these cases, like all members of this Court, agree that an unborn child is a genetically unique human being whose life begins at fertilization and ends at death. The parties further agree that an unborn child usually qualifies as a "human life," "human being," or "person," as those words are used in ordinary conversation and in the text of Alabama's wrongful-death statutes. That is true, as everyone acknowledges, throughout all stages of an unborn child's development, regardless of viability.

The question on which the parties disagree is whether there exists an unwritten exception to that rule for unborn children who are not physically located "in utero" -- that is, inside a biological uterus -- at the time they are killed. The defendants argue that this Court should recognize such an exception because, they say, an unborn child ceases to qualify as a "child or "person" if that child is not contained within a biological womb.

214 (11th ed. 2003)), and all other mainstream dictionaries are in accord. See, e.g., 3 The Oxford English Dictionary 113 (2d ed. 1989) (defining "child" as an "unborn or newly born human being; foetus, infant"); Webster's Third New International Dictionary 388 (2002) (defining "child" as "an unborn or recently born human being"). There is simply no "patent or latent ambiguity in the word 'child'; it is not a term of art and contains no inherent uncertainty." Ankrom, 152 So. 3d at 431 (Shaw, J., concurring in part and concurring in the result).

The parties have given us no reason to doubt that the same was true in 1872, when the Wrongful Death of a Minor Act first became law. See Act No. 62, Ala. Acts 1871-72 (codified at § 2899, Ala. Code 1876). Indeed, the leading dictionary of that time defined the word "child" as "the immediate progeny of parents" and indicated that this term encompassed children in the womb. Noah Webster et al., An American Dictionary of the English Language 198 (1864) ("[t]o be with child [means] to be pregnant").[5] And Blackstone's Commentaries, the leading

[5]As Justice Cook points out, this entry goes on to explain that the term "child" is "applied to infants from their birth; but the time when they cease ordinarily to be so called, is not defined by custom." ___ So. 3d at ____ (Cook, J., dissenting). Justice Cook believes that this language indicates that infants prior to birth were not considered "children." We

authority on the common law, expressly grouped the rights of unborn children with the "Rights of Persons," consistently described unborn children as "infant[s]" or "child[ren]," and spoke of such children as sharing in the same right to life that is "inherent by nature in every individual." 1 William Blackstone, Commentaries on the Laws of England 125-26.[6] Those expressions are in keeping with the United

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disagree. The language quoted by Justice Cook contrasts newborns with older children in order to make the point that there is no clear-cut time at which a young person transitions from childhood to adulthood; it does not indicate that infants were considered something other than children prior to their birth, as the definition elsewhere makes clear when it describes a pregnant woman as being "with child." Another definition on that same page further drives home the point that unborn children are "children" when it describes "childbearing" as the act of "bearing children" in the womb.

[6]It is true, as Justice Cook emphasizes, that the common law spared defendants from criminal-homicide liability for killing an unborn child unless the prosecution could prove that the child had been "born alive" before dying from its injuries. But the criminal law has always been "out of step with the treatment of prenatal life in other areas of law," in that it generally prioritizes lenity towards the accused over the otherwise applicable "'civil rights'" of unborn children. Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 247 (2022) (citation omitted). Accordingly, the born-alive safe harbor appears to have operated primarily as an evidentiary rule rather than as a substantive limitation on personhood. Joanne Pedone, Filling the Void: Model Legislation for Fetal Homicide Crimes, 43 Colum. J. L. & Soc. Probs. 77, 82 (2009) (explaining that the function of the born-alive rule was "to make sure the government established causation before obtaining a homicide conviction," during an era in which "'the state of medical science'" was primitive and in which

States Supreme Court's recent observation that, even as far back as the 18th century, the unborn were widely recognized as living persons with rights and interests. See Dobbs v. Jackson Women's Health Org., 597 U.S. 215, 246-48 (2022).

Courts interpreting statutes are required to give words their "'"natural, ordinary, commonly understood meaning,"'" unless there is some textual indication that an unusual or technical meaning applies. Swindle v. Remington, 291 So. 3d 439, 457 (Ala. 2019) (citations omitted). Here, the parties have not pointed us to any such indication, which reflects the overwhelming consensus in this State that an unborn child is just as much a "child" under the law as he or she is a "child" in everyday conversation.

Even if the word "child" were ambiguous, however, the Alabama Constitution would require courts to resolve the ambiguity in favor of

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proving causation for prenatal injuries was difficult (quoting Clarke D. Forsythe, Homicide of the Unborn Child: The Born Alive Rule and Other Legal Anachronisms, 21 Val. U. L. Rev. 563, 586 (1987))). Like the so-called "quickening rule," the born-alive rule ensured that there was "'evidence of life,'" but did not provide a definition of life, and did not mean that unborn children were considered to be something other than living human beings. Dobbs, 597 U.S. at 246 (citation omitted); see also Forsythe, supra, at 586 & n.105.

SC-2022-0515; SC-2022-0579

PARKER, Chief Justice (concurring specially).

A good judge follows the Constitution instead of policy, except when the Constitution itself commands the judge to follow a certain policy. In these cases, that means upholding the sanctity of unborn life, including unborn life that exists outside the womb. Our state Constitution contains the following declaration of public policy: "This state acknowledges, declares, and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life." Art. I, § 36.06(a), Ala. Const. 2022 (adopted Nov. 6, 2018) (sometimes referred to as "the Sanctity of Unborn Life Amendment"). As noted in the main opinion, these cases involve unborn life -- a fact that no party in these cases disputes. Therefore, I take this opportunity to examine the meaning of the term "sanctity of unborn life" as used in § 36.06 and to explore the legal effect of the adoption of the Sanctity of Unborn Life Amendment as a constitutional statement of public policy.

I. Meaning of "Sanctity"

The Alabama Constitution does not expressly define the phrase "sanctity of unborn life." But because the parties have raised § 36.06 in

other because each word carries its own set of implications. When the People of Alabama adopted § 36.06, they did not use the term "inviolability," with its secular connotations, but rather they chose the term "sanctity," with all of its connotations.

This kind of acceptance is not foreign to our Constitution, which in its preamble "invok[es] the favor and guidance of Almighty God," pmbl., Ala. Const. 2022, and which declares that "all men ... are endowed [with life] by their Creator," Art. I, § 1, Ala. Const. 2022.[11] The Alabama Constitution's recognition that human life is an endowment from God emphasizes a foundational principle of English common law, which has been expressly incorporated as part of the law of Alabama. § 1-3-1, Ala. Code 1975 ("The common law of England ... shall ... be the rule of decisions, and shall continue in force ...."). In his Commentaries on the Laws of England, Sir William Blackstone declared that "[l]ife is the immediate gift of God, a right inherent by nature in every individual."[12]

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[11]Accord the philosophy of the United States of America as expressed in the Declaration of Independence -- "endowed by their Creator with certain unalienable Rights, that among these are Life ...." The Declaration of Independence para. 2 (U.S. 1776).

[12]Blackstone went on to state that life "begins in contemplation of law as soon as an infant is able to stir in the mother's womb." 1 William

of the sanctity of life from the earliest stages of development. We have done so in three recent cases [Ankrom, Hamilton, and Mack]; we do so again today." (footnote omitted)).

But the principle itself -- that human life is fundamentally distinct from other forms of life and cannot be taken intentionally without justification -- has deep roots that reach back to the creation of man "in the image of God." Genesis 1:27 (King James). One 17th-century commentator has explained the significance of man's creation in God's image as follows:

> "[T]he chief excellence and prerogative of created man is in the image of his Creator. For while God has impressed as it were a vestige of himself upon all the rest of the creatures ... so that from all the creatures you can gather the presence and efficiency of the Creator, or as the apostle [Paul] says, you can clearly see his eternal power and divinity, yet only man did he bless with his own image, that from it you may recognize not only what the Creator is, but also who he is, or what his qualities are.
>
> "... God did this: (1) so that he might as it were contemplate and delight himself in man, as in a copy of himself, or a most highly polished mirror, for which reason his delights are said to be with the children of men. (2) So that he might, as much as can be done, propagate himself as it were in man. ... (3) So that he would have on earth one who would know, love, and worship him and all that is his, which could not be obtained in the least apart from the image of God .... (4) So that he might have one with whom he would live most blessed for eternity, with whom he would converse as with a

> although they have nothing of their own by which they obtain the favour of God, he looks upon his own gifts in them, and is thereby excited to love and to care for them. This doctrine, however, is to be carefully observed, that no one can be injurious to his brother without wounding God himself. Were this doctrine deeply fixed in our minds, we should be much more reluctant than we are to inflict injuries. Should any one object, that this divine image has been obliterated, the solution is easy; first, there yet exists some remnant of it, so that man is possessed of no small dignity; and secondly, the Celestial Creator himself, however corrupted man may be, still keeps in view the end of his original creation; and according to his example, we ought to consider for what end he created men, and what excellence he has bestowed upon them above the rest of living beings."

John Calvin, Commentaries on the First Book of Moses Called Genesis 295-96 (John King trans., Calvin Translation Society 1847) (1554) (emphasis added). Likewise, the Geneva Bible, which was the "most popular book in colonial homes,"[15] includes a footnote to Genesis 9:6 that provides: "Therefore to kill man is to deface God's image, and so injury is not only done to man, but also to God." Genesis 9:6 n.2 (Geneva Bible 1599).

Finally, the doctrine of the sanctity of life is rooted in the Sixth Commandment: "You shall not murder." Exodus 20:13 (NKJV 1982). See

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[15]Kenneth Graham, Confrontation Stories: Raleigh on the Mayflower, 3 Ohio St. J. Crim. L. 209, 213-14 (2005).

life cannot be wrongfully destroyed without incurring the wrath of a holy God, who views the destruction of His image as an affront to Himself. Section 36.06 recognizes that this is true of unborn human life no less than it is of all other human life -- that even before birth, all human beings bear the image of God, and their lives cannot be destroyed without effacing his glory.

II. Effect of Constitutional Policy

Having discussed the meaning of the phrase "sanctity of unborn life," I will briefly explore the legal effect of its inclusion in the Alabama Constitution as a statement of public policy. Again, I will start with the text. Section 36.06 provides, in relevant part:

> "(a) This state acknowledges, declares, and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life.
>
> "(b) This state further acknowledges, declares, and affirms that it is the public policy of this state to ensure the protection of the rights of the unborn child in all manners and measures lawful and appropriate."

In 2018, the term "public policy" was a legal term that meant: "The collective rules, principles, or approaches to problems that affect the commonwealth or (esp.) promote the general good; specif., principles and

Amendment. The People of Alabama have declared the public policy of this State to be that unborn human life is sacred. We believe that each human being, from the moment of conception, is made in the image of God, created by Him to reflect His likeness. It is as if the People of Alabama took what was spoken of the prophet Jeremiah and applied it to every unborn person in this state: "Before I formed you in the womb I knew you, Before you were born I sanctified you." Jeremiah 1:5 (NKJV 1982). All three branches of government are subject to a constitutional mandate to treat each unborn human life with reverence. Carving out an exception for the people in this case, small as they were, would be unacceptable to the People of this State, who have required us to treat every human being in accordance with the fear of a holy God who made them in His image. For these reasons, and for the reasons stated in the main opinion, I concur.

Exhibit K

Supreme Court of Florida

No. SC2023-1392

ADVISORY OPINION TO THE ATTORNEY GENERAL RE: LIMITING GOVERNMENT INTERFERENCE WITH ABORTION.

April 1, 2024

PER CURIAM.

The Attorney General of Florida has petitioned this Court for an advisory opinion concerning the validity of a proposed citizen initiative amendment to the Florida Constitution, circulated under article XI, section 3 of the Florida Constitution, and titled "Amendment to Limit Government Interference with Abortion." We have jurisdiction. *See* art. IV, § 10; art. V, § 3(b)(10), Fla. Const. We approve the proposed amendment for placement on the ballot.

I. BACKGROUND

On October 9, 2023, the Attorney General petitioned this Court for an opinion regarding the validity of this initiative petition sponsored by Floridians Protecting Freedom, Inc. (the Sponsor). We invited interested parties to file briefs regarding the validity of the

III. CONCLUSION

We conclude that the proposed amendment complies with the single-subject requirement of article XI, section 3 of the Florida Constitution, and that the ballot title and summary comply with section 101.161(1), Florida Statutes. And there is no basis for concluding that the proposed amendment is facially invalid under the United States Constitution. Accordingly, we approve the proposed amendment for placement on the ballot.

No rehearing will be permitted.

It is so ordered.

CANADY, LABARGA, and COURIEL, JJ., concur.
MUÑIZ, C.J., concurs with an opinion, in which CANADY and COURIEL, JJ., concur.
GROSSHANS, J., dissents with an opinion, in which SASSO, J., concurs.
FRANCIS, J., dissents with an opinion.
SASSO, J., dissents with an opinion, in which GROSSHANS and FRANCIS, JJ., concur.

MUÑIZ, C.J., concurring.

Animating the majority's decision today is the constitutional principle that "[a]ll political power is inherent in the people." Art. I, § 1, Fla. Const. A judge's obedience to that principle does not signal personal indifference to the objective justice of a proposed

there are constitutional and statutory requirements that must be satisfied in order for an amendment to reach the ballot. Holding a sponsor to those requirements is far from what the majority characterizes as a "stranglehold on the amendment process." *See* majority op. at 33. Consequently, I find the ballot summary conclusively defective for failing to inform the voter of the material legal effects of the amendment, including the substantial effect this amendment could have on article I, section 2 of our constitution. This conclusion requires me to respectfully dissent from the majority's opinion.

SASSO, J., concurs.

FRANCIS, J., dissenting.

The issue of abortion is incredibly divisive. *See Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 292 (2022) ("*Roe* [*v. Wade*, 410 U.S. 113 (1973)] 'inflamed' a national issue that has remained bitterly divisive for the past half century. And for the past 30 years, [*Planned Parenthood of Se. Pa. v.*] *Casey* [505 U.S. 883 (1992)] has done the same." (citations omitted)).

When *Dobbs* found there was no *federal* constitutional right to it, the Court "return[ed] the issue of abortion to the people's elected

protecting "the potentiality of human life," particularly viable pregnancies. *See Dobbs*, 597 U.S. at 228, 271 (defining "viability" as the ability to survive outside the womb).[15]

While I recognize that our review in ballot initiative cases is narrow, this case is different because abortion is different. *Dobbs*, 597 U.S. at 218 (Syllabus) ("Abortion is different because it destroys what *Roe* termed 'potential life' . . . . None of the other decisions cited by *Roe* and *Casey* involved the critical moral question posed by abortion."). The exercise of a "right" to an abortion literally results in a devastating infringement on the right of another person: the right to live. And our Florida Constitution recognizes that "life" is a "basic right" for "[a]ll natural persons." Art. I, § 2, Fla. Const. One must recognize the unborn's competing right to life and the State's moral duty to protect that life.

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15. *Roe* found that "in 'the stage subsequent to viability,' which in 1973 roughly coincided with the beginning of the third trimester, the State's interest in the 'potentiality of human life' became compelling, and therefore a State could 'regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.'" *Dobbs*, 597 U.S. at 271 (citing *Roe*, 410 U.S. at 164-65).

Exhibit L

Proclamation 5761 of January 14, 1988

National Sanctity of Human Life Day, 1988

By the President of the United States of America
A Proclamation

America has given a great gift to the world, a gift that drew upon the accumulated wisdom derived from centuries of experiments in self-government, a gift that has irrevocably changed humanity's future. Our gift is twofold: the declaration, as a cardinal principle of all just law, of the God-given, unalienable rights possessed by every human being; and the example of our determination to secure those rights and to defend them against every challenge through the generations. Our declaration and defense of our rights have made us and kept us free and have sent a tide of hope and inspiration around the globe.

One of those unalienable rights, as the Declaration of Independence affirms so eloquently, is the right to life. In the 15 years since the Supreme Court's decision in *Roe v. Wade*, however, America's unborn have been denied their right to life. Among the tragic and unspeakable results in the past decade and a half have been the loss of life of 22 million infants before birth; the pressure and anguish of countless women and girls who are driven to abortion; and a cheapening of our respect for the human person and the sanctity of human life.

We are told that we may not interfere with abortion. We are told that we may not "impose our morality" on those who wish to allow or participate in the taking of the life of infants before birth; yet no one calls it "imposing morality" to prohibit the taking of life after people are born. We are told as well that there exists a "right" to end the lives of unborn children; yet no one can explain how such a right can exist in stark contradiction of each person's fundamental right to life.

That right to life belongs equally to babies in the womb, babies born handicapped, and the elderly or infirm. That we have killed the unborn for 15 years does not nullify this right, nor could any number of killings ever do so. The unalienable right to life is found not only in the Declaration of Independence but also in the Constitution that every President is sworn to preserve, protect, and defend. Both the Fifth and Fourteenth Amendments guarantee that no person shall be deprived of life without due process of law.

All medical and scientific evidence increasingly affirms that children before birth share all the basic attributes of human personality—that they in fact are persons. Modern medicine treats unborn children as patients. Yet, as the Supreme Court itself has noted, the decision in *Roe v. Wade* rested upon an earlier state of medical technology. The law of the land in 1988 should recognize all of the medical evidence.

Our Nation cannot continue down the path of abortion, so radically at odds with our history, our heritage, and our concepts of justice. This sacred legacy, and the well-being and the future of our country, demand that protection of the innocents must be guaranteed and that the personhood of the unborn be declared and defended throughout the land. In legislation introduced at my request in the First Session of the 100th Congress, I have asked the Legislative branch to declare the "humanity of the unborn child and the compelling interest of the several

states to protect the life of each person before birth." This duty to declare on so fundamental a matter falls to the Executive as well. By this Proclamation I hereby do so.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim and declare the unalienable personhood of every American, from the moment of conception until natural death, and I do proclaim, ordain, and declare that I will take care that the Constitution and laws of the United States are faithfully executed for the protection of America's unborn children. Upon this act, sincerely believed to be an act of justice, warranted by the Constitution, I invoke the considerate judgment of mankind and the gracious favor of Almighty God. I also proclaim Sunday, January 17, 1988, as National Sanctity of Human Life Day. I call upon the citizens of this blessed land to gather on that day in their homes and places of worship to give thanks for the gift of life they enjoy and to reaffirm their commitment to the dignity of every human being and the sanctity of every human life.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of January, in the year of our Lord nineteen hundred and eighty-eight, and of the Independence of the United States of America the two hundred and twelfth.

RONALD REAGAN

Proclamation 5762 of January 21, 1988

American Heart Month, 1988

By the President of the United States of America
A Proclamation

For more than half of this century, diseases of the heart and blood vessels, collectively called cardiovascular diseases, have been our Nation's most serious health problem. Last year, these diseases claimed 973,000 lives, and they caused serious and sometimes permanent illness or disability in still more Americans. Within this family of diseases, the leading killers remained coronary heart disease, which accounted for 524,000 deaths, and strokes, which accounted for 148,000 deaths.

Grim though these statistics may be, other statistics indicate that a corner may have been turned in 1965. Since then, mortality rates for all cardiovascular diseases, and especially for the two leading killers—coronary heart disease and stroke—have been moving steadily downward. For example, since 1972, mortality rates for all cardiovascular diseases combined have fallen by 34 percent, and those for coronary heart disease and stroke have declined by 35 percent and 50 percent respectively.

One major reason for the decline in cardiovascular mortality rates is that more and more Americans are modifying their habits in the direction of better cardiovascular health. Research has identified factors that increase vulnerability to premature coronary heart disease or stroke, and millions of Americans are acting on that knowledge to

Exhibit M

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The Honorable Joseph F. Anderson, Jr.
U.S. District Court for the District of South Carolina
901 Richland Street
Columbia, SC 29201

RE: CHARACTER WITNESS TESTIMONY ON BEHALF OF STEVEN C. LEFEMINE

Dear Judge Anderson:

I write to testify to an important aspect of the character of Steven C. Lefemine as a pro-life advocate, namely his commitment to non-violence.

I have known Steve since 2005, when he first became a client of the National Legal Foundation, a public interest law firm of which I serve as President. We have assisted Steve in multiple capacities, including providing legal advice concerning interactions with law enforcement, writing demand letters on his behalf, and representing him in litigation. Regarding the latter, I had the honor of representing Steve at the Supreme Court of the United States in *Lefemine v. Wideman*, 568 U.S. 1 (2012). The issue before the Court was an award of attorney's fees under 42 U.S.C. §1988, but the case originated from Steve's prolife protect activities.

In every situation of which I am aware since 2005, Steve has never deviated from his commitment to non-violent conduct.

As this Court undoubtedly knows, this commitment is not shared by all in the prolife community. But this has been Steve's unbroken commitment during our entire working relationship. I respectfully request that this Court take Steve's commitment into account in its sentencing considerations.

Respectfully,

Steven W. Fitschen
President