IN THE SUPREME COURT OF OHIO
Case No. 2023-0004

State ex rel. Preterm-Cleveland, et al.,
Appellees,

vs.

David Yost, Attorney General of Ohio, et al.,
Appellants.

On appeal from the Hamilton County
Court of Appeals,
First Appellate District
Court of Appeals
Case No. C-220504

AMICUS CURIAE BRIEF OF JANET FOLGER PORTER

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On November 16, 2023, this Court requested new briefing by the parties on the effect, if any, of Issue 1 on the Heartbeat Law. Amici curiae respectfully submits her interests and the following arguments against applying Issue 1 to the Heartbeat Law or any other pro-life protective law passed in this state through the people's elected representatives.

INTEREST OF AMICUS CURIAE

Janet Folger Porter, President and Founder of Faith2Action Ministries, is the Architect of the Heartbeat Law, which she had drafted in December of 2010 and introduced for the first time in the nation in February 2011, with 50 co-sponsors of the Ohio House of Representatives. Heartbeat Laws have since been passed in 15 states (and counting) including the Texas Heartbeat Law which saved 20,000 lives even *before* the *Dobbs* decision overturned *Roe v. Wade*. Porter was also Legislative Director of Ohio Right to Life between 1988-1997 and oversaw the introduction and passage of the nation's first Ban on Partial Birth Abortion in Ohio, along with Ohio's Parental Consent Law, Fetal Homicide Law, and the Woman's Right to Know

Law (Informed Consent), each of which were *co-sponsored* by more than half of the Ohio House of Representatives. She was also instrumental in passing Ohio abortion clinic regulations and removing taxpayer funding of abortions for state employees. Porter has written two books on the passage of Ohio laws: *True to Life, Real Stories of Changed Hearts and Saved Lives that Impacted a Nation*, and *A Heartbeat Away, How the Heartbeat Bill Will Pierce the Heart of Roe v. Wade and the Shocking Betrayal No One Saw Coming.* Faith2Action's primary mission is to protect life—something Issue 1 seeks to prohibit.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Issue 1 is fundamentally unconstitutional and an assault on the inalienable Right to Life. Issue 1 violates the United States Constitution, the Ohio Constitution, over 30 Ohio laws, the *Dobbs* decision, science, technology, and our God-given rights.

Issue 1 violates Article 1 Section 1 of the Ohio Constitution, the Declaration of Independence, and the Fourteenth Amendment which states "**nor shall any State deprive any person of life without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Judiciary Subcommittee summarized their findings: "Physicians, biologists, and other scientists agree that **conception marks the beginning of the life of a human being—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.[1]" [Emphasis added]

Ohio Revised Code § 2919.19 (a) likewise, states; "Unborn human individual means an individual organism of the species homo sapiens **from fertilization until birth**." [Emphasis added]

Gonzales v. Carhart recognized a "living fetus"[2] from the point of "detectable heartbeat" as an *undisputed* finding of fact. And it is a fact upon which the courts can rely. The human heartbeat is a universally recognized indicator of life. This is affirmed by the Ohio Heartbeat Law, and the Heartbeat Laws passed in Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas, North Dakota, Iowa, Georgia, South Carolina, and Florida. Nearly half the nation has now aligned with science, with twenty states which have passed laws to protect human life from fertilization and 15 states which passed Heartbeat Laws (ten of which have passed both). Heartbeat Laws have been enacted and upheld by state courts across the country and the United States Supreme Court. Ohio's Heartbeat Law should, likewise, be upheld and made enforceable again without delay.

Issue 1 violates the Eighth Amendment to the U.S. Constitution barring "cruel and unusual punishments" beginning with striking Ohio's ban on abortion after 20 weeks,[3] post viability abortions[4], Ohio's ban on Dismemberment Abortion[5], and Partial Birth Abortion,[6] opening the door to the barbaric second and third trimester abortions on babies who are able to survive outside the womb. In the case of "rape/incest" abortions, innocent children are specifically held to answer for the "infamous crime" of their father—something Article 1, Section 10 of the Ohio Constitution directly forbids, and Issue 1 violates. It also violates Equal Protection guaranteed in the Fourteenth's Amendment for children who are, through no fault of their own, conceived in rape.

For these reasons and those that follow, I petition the court to find Issue 1 unconstitutional and invalid in its entirety while upholding Ohio's Heartbeat Law, passed by the people through their elected representatives and upheld by the United States Supreme Court.

ARGUMENT

1. **Issue 1 violates Article 1 Section 1 of the Ohio Constitution, the Fourteenth Amendment to the U.S. Constitution, and the Declaration of Independence.**

    - **Issue 1 violates Article 1 Section 1 of the Ohio Constitution** [without stating the intent to do so]. Article 1, section 1 states: "All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety." [Emphasis added]
    - **Issue 1 violates the 14th Amendment to the U.S. Constitution**, which, in part, states, "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." [Emphasis added]
    - **Issue 1 violates the Declaration of Independence** which states, "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..." [Emphasis added]

Issue 1 violates our Ohio and United States Constitution and our God-given Right to Life because the being in the womb under assault by Issue 1 is, in fact, a *human* being whose Right to

Life is *inalienable*. This is a biological fact no longer up for debate. As our founders proclaimed in our Declaration of Independence, we were *created* equal, not *born* equal. It remains self-evident. It is backed by every shred of medical evidence and technology from 4-D ultrasound to inter-uterine surgery. It is no longer disputed even by those who favor abortion.

For half a century courts have been pretending they don't recognize the obvious—something so indisputable that even Planned Parenthood declared it in a pamphlet they published back in 1965: "**An abortion kills the life of a baby after it has begun**."[7]

Even after *Roe v. Wade,* 410 U.S. 113 (1973), Planned Parenthood's former Director Faye Wattleton agreed.[8] On the *Phil Donahue* show September 6, 1991, she admitted that she was "fully aware" that the being in the womb was a "baby":

> Randall Terry: "It's not a frog or a ferret that's being killed. It's a baby."
>
> Faye Wattleton: "I am fully aware of that. I am fully aware of that."[9]

Those in favor of abortion are aware of the unborn child's humanity. So are the scientists.

Dr. Jerome Lejeune a professor of genetics at the University of Descartes in Paris who discovered the genetic cause for Downs Syndrome, testified to the U.S. Judiciary Subcommittee. Lejeune testified, "**after fertilization has taken place a new human being has come into being**." He stated that this "is no longer a matter of taste or opinion," and "not a metaphysical contention, **it is plain experimental evidence**." He added, "*Each individual has a very neat beginning, at conception*."[10] [Emphasis added]

- Professor Micheline Matthews-Roth, Harvard University Medical School also testified before the Senate Judiciary Committee: "It is incorrect to say that biological data cannot be decisive...it is scientifically correct to say that **an individual human life begins at conception**...Our laws, one function of which is to help preserve the lives of our people, should be based on accurate scientific data."[11] [Emphasis added]

- Dr. Watson A. Bowes, University of Colorado Medical School told the Congressional committee: "The beginning of a single human life is from a biological point of view a simple and straightforward matter—**the beginning is conception**."[12] [Emphasis added]

- Dr. Alfred M. Bongiovanni, professor of pediatrics and obstetrics at the University of Pennsylvania, stated: "I have learned from my earliest medical education that **human life begins at the time of conception**.... I submit that human life is present throughout this entire sequence from conception to adulthood and that any interruption at any point throughout this time constitutes a termination of human life....I am no more prepared to say that these early stages [of development in the womb] represent an incomplete human being than I would be to say that the child prior to the dramatic effects of puberty...is not a human being. **This is human life at every stage**."[13] [Emphasis added]

  The Official Senate report on Senate Bill 158, the "Human Life Bill," summarized the issue this way: Physicians, biologists, and other scientists agree that **conception marks the beginning of the life of a human being—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.[14] [Emphasis added]

In 1989, during testimony on The Seven Human Embryos in Tennessee, Dr. Lejeune stated, "…as soon as he has been conceived, a man is a man."[15] And all men are created Equal. Our founders wrote in our nation's birth certificate what they considered to be self-evident. But with all the money and misinformation, we have lost sight of the obvious. This new life has its own DNA distinct from the mother and father, a unique, individual, human life. In fact, about half of the time this human being has a sex (male) that is different from its mother (female).

Ohio recognized the human being in the womb as worthy of protection more than 25 years before the collapse of *Roe v. Wade* with the Fetal Homicide statute which protects unborn children from conception. Ohio Revised Code § 2903.01 states: "Unlawful termination of another's pregnancy" means causing the death of an unborn member of the species homo sapiens, who is or was carried in the womb of another, as a result of injuries inflicted during the period that **begins with fertilization and that continues unless and until live birth occurs**."

This is also recognized by Ohio Revised Code § 2919.19 (a) which states; "Unborn **human individual** means an individual organism of the species homo sapiens **from fertilization until birth**." [Emphasis added]

According to the National Conference of State Legislatures *State Laws on Fetal Homicide and Penalty-enhancement for crimes Against Women* (May 1, 2018), there are at least twenty-nine states that protect the unborn child from "any stage of gestation/development," "conception," "fertilization," or "post fertilization." Yet if the abortionist was the one doing the killing (prior to *Roe's* collapse), it was permitted. This hypocritical double standard simply cannot stand, especially in a post-*Roe* era.

Federal law already recognizes and protects unborn life in its earliest stages. Over a million frozen embryos are testament to America's belief that embryos are people. Some 65,000 babies were born after coming out of a freezer in 2016. Six-year-old Emma Gibson was born in 2017 after being in a freezer for twenty-four years.[16] Louisiana's Fifth Circuit Court of Appeals has determined that embryos are people, and thus custody battles between parents are covered by family law.[17] The federal government has also recognized embryos for survivors' benefits for both Social Security and VA benefits.[18]

Roe is dead, as *Dobbs* concluded; "*Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences. And far from bringing about a national settlement of the abortion issue, *Roe* and *Casey* have inflamed debate and deepened division. It is time to heed the Constitution and return the issue of abortion **to the people's elected representatives**." *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228, (2022) [Emphasis added]

Below are the twenty states which have passed laws through their elected representatives to protect babies from conception and the 15 states which passed the Heartbeat Law (the asterisk depicts states with both Heartbeat laws *and* protection from fertilization).

1. Alabama
2. Arkansas*
3. Idaho*
4. Kentucky*
5. Louisiana*
6. Mississippi *
7. Missouri*
8. Oklahoma*
9. South Dakota
10. Tennessee*
11. Texas*
12. West Virginia
13. Indiana
14. North Dakota*
15. Wyoming

Heartbeat Laws Alone:

16. Iowa
17. Georgia
18. South Carolina
19. Florida
20. Ohio

Nearly half of the nation has aligned with science and the Supreme Court, with fifteen states protecting human beings in the womb from their beginning at fertilization, five more from the child's detectable heartbeat, and many more in the process of passing and enacting similar laws to protect human life in the womb.

The Right to Life is not granted to us by the government. It is not given to us by a popular vote. Nor can it be taken by one. With 46 human chromosomes science has settled the question once and for all. There is not an embryology, fetology, or biology book in existence that claims life begins at any time *other* than the moment of fertilization, when the unique individual human life, with 46 unique *human* chromosomes, began. The only thing added from that moment of fertilization is time and nourishment—the same for any growing child, teen, or adult. It is definitive. There is, and will always be, a human child at the center of this dispute.

As the Supreme Court declared in *Dobbs v. Jackson Women's Health Org*., 142 S. Ct. 2228, (2022) "We therefore hold that the Constitution does not confer a right to abortion. *Roe* and *Casey* must be overruled." *Roe* has been overruled and our actions to protect human life must respond accordingly. We can no longer turn a blind eye to irrefutable biological facts, technology and recent rulings by the Court.

Issue 1 violates Article 1, Section 1 of the Ohio Constitution, the Fourteenth Amendment to the U.S. Constitution, and the Declaration of Independence because the being in the womb under assault by Issue 1 is, in fact, a human being with the inalienable Right to Life. Any attempt to strip this member of the human family of this inalienable right is a violation of the Ohio

Constitution and the Fourteenth Amendment which states "**nor shall any State deprive any person of life without due process of law**; nor deny to any person within its jurisdiction the equal protection of the laws." Issue 1 is unconstitutional because the Right to Life is inalienable. It must be ruled as such.

2. **Issue 1 violates the Supreme Court's undisputed finding of fact in *Gonzales v. Carhart*: a "living fetus" is recognized from the time of…"detectable heartbeat."**

In *Issues in Law & Medicine*, Gregory J. Roden, quoting from *Gonzales v. Carhart*, which upheld the Partial-Birth Abortion Ban Act, Roden stated:

> "The [Partial-Birth Abortion Ban] Act does apply both pre-viability and post-viability because, by common understanding and scientific terminology, a fetus is a living organism while within the womb, whether or not it is viable outside the womb. See, e.g., *Planned Parenthood,* 320 F. Supp. 2d, at 97I-972. **We do not understand this point to be contested by the parties**."[22] [Emphasis added]

Here the Supreme Court was referring *Planned Parenthood Federation of America v. Ashcroft*, 320 F.Supp.2d 957 (N.D. Cal. 2004). The specific portion of the case the Court was referring to was a "Finding of Fact," which reads:

> "The fetus may still have a **detectable heartbeat** or pulsating umbilical cord…and **may be considered a "living fetus."**[23] [Emphasis added]

Roden clarified: Under our Federal Rules of Civil Procedure, the District Court's finding of fact in *Planned Parenthood v. Ashcroft* cannot "be set aside unless clearly erroneous" (Rule 52).[24]

Furthermore, the Supreme Court in *Gonzales* went onto state, "**We do not understand this point to be contested by the parties**."[25] Under Rule 201 of the Federal Rules of Evidence, the Supreme Court has thereby given that finding of fact judicial notice; Rule 201(b) reads

> The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.[26]

The courts have determined there is a living fetus from the point of a detectable heartbeat. It is a fact. It is an undisputed fact. And it is a fact upon which the courts can rely.

Roden continued:

> "Having done so, as an integral principle of the *Gonzales* decision, all states and courts now may rely on this finding of fact under the doctrine of stare decisis. That is because courts "should rely only upon the facts that are contained in the record or that are properly subject to judicial notice" [*Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833 (1992)]."

Hence, all states and federal courts, where a fetus has a detectable heartbeat, should take judicial notice of it being a "living fetus"; the issue is no longer a matter of legal controversy. It is an undisputed fact recognized by the United States Supreme Court in *Gonzales v. Carhart*, 550 U.S. 124 (2007), 15 years prior to the fall of *Roe*.

So, instead of a "potentially living" fetus, a "*living* fetus" is recognized from the time of…"detectable heartbeat." It's an *undisputed* finding of fact that even those in favor of legal abortion on demand agreed with, recognized by the U.S. Supreme Court. There is a "living fetus" from the point of "detectable heartbeat"—the *exact wording* used in the Ohio Heartbeat Law.

The word "fetus" is a Latin word for the young human being. Black's Law Dictionary defines fetus as "an unborn child." Merriam-Webster defines it as "a developing human," while the Cambridge English Dictionary defines fetus as "a young human being… after the organs have started to develop."

The abortion movement has used the Latin term "fetus" to clinically dehumanize the unborn child in the minds of the public for fifty years. But it doesn't make someone less human when we use Latin to describe them any more than it makes someone less pregnant by using the Latin word for pregnant woman and speak of the "gravida." But since most people aren't fluent in Latin, English is preferable since clarity is essential when determining the rights of a fellow human being.

With forty-six *human* chromosomes, of course it is a fellow human being, of which we are speaking--not a rabbit or a carrot. And once there's a detectable heartbeat, even the Supreme Court admits that "young human being" is alive. This undisputed finding of fact 15 years prior to *Roe* being overturned, was likely a contributing factor to the Texas Heartbeat Law being upheld, saving an approximate 20,000 lives before *Roe* was delegated to the ash heap of history. That is nearly the number of lives the repeal of Issue 1 and the enactment of the Ohio Heartbeat Law

will bring—a virtual stadium full of Ohio children whose lives will be legally protected instead of brutally ended by abortion.

Perhaps the most powerful testimony for the Ohio Heartbeat Bill was from a child who was not yet born. In the Ohio House hearing in March 2011, the committee heard from "the youngest to ever 'testify'"—a 9-week-old unborn baby girl whose mother had already named her Halley. A mobile ultrasound revealed little Halley and her beating heart displayed on a big screen for the committee and all in attendance to see.

The beating heart declared what we have been told by pro-lifers for decades: "Abortion stops a beating heart." But when the Heartbeat Bill is enacted again, a beating heart will stop abortion. The only way for those to object to the bill was to deny science and run from technology.

About nine months later, the Heartbeat Bill was being heard in the Ohio Senate Committee for the first time. While the Senate didn't permit a mobile ultrasound, they did allow for video testimony. So, the video "testimony" of little Baby Halley from the House Committee, when she was 9 weeks in the womb, was shown. When the Senate Committee had viewed it, one of the Ohio Senators walked in, holding—*now born*—baby Halley. The same child whose heartbeat was heard from the womb was now in the arms of one of the Senate committee members. That is when Ducia Hamm, Director of the Ashland Pregnancy Care Center, said, "The House heard her heart. You get a chance to see her face and look into her eyes."[27]

While 30 states have introduced Heartbeat bills, 15 states have passed them in agreement with the Supreme Court—once there is a detectable heartbeat, we are talking about a living human being worthy of protection. As Pennsylvania Heartbeat Bill sponsor Senator Doug Mastriano

stated, “If a heartbeat denotes the end of life, obviously, logically, scientifically, it denotes, clearly, the beginning of life.”[28]

In *Roe v. Wade,* the State of Texas argued that the fetus is a “person” within the definition of the Fourteenth Amendment. The author of *Roe v. Wade,* Justice Harry Blackmun responded: If this suggestion of personhood is established, the appellant’s case, of course, collapses, for the **fetus’ right to life would then be guaranteed specifically by the [Fourteenth] Amendment.** [Emphasis added]

We have reached that point. *Roe* has collapsed. It is time to recognize the truth our founders declared as “self evident.” That “all men are created equal.” Not *born* equal. *Created* equal. And the inalienable Right to Life applies to every member of the human family, those with forty-six human chromosomes and a detectable human heartbeat—an undisputed indicator of a “living human being” recognized by the U.S. Supreme Court.

Constitutional Law Professor David Forte was one of the original drafters of Ohio's Heartbeat Law. Forte holds degrees from Harvard, the University of Manchester, England, the University of Toronto, and Columbia University. During the Reagan administration, Forte served as chief counsel to the U.S. delegation to the United Nations, consultor to the Pontifical Council for the Family under Pope John Paul II and Pope Benedict XVI. He was a senior visiting scholar at Princeton and a former judge.[19]

In his law review article, *Life, Heartbeat, Birth: A Medical Basis for Reform* (2019), he explained that the Supreme Court’s standard (prior to *Roe* being overturned) permitted legal protection of the unborn child by the states when there is a likelihood of survival to live birth.

But "viability," the Court's former standard, was based on an arbitrary guess—which can be up to 90% wrong.[20] The measurement isn't a measurement of the child's humanity, it is merely a determination of our current technology's ability to sustain life outside the womb. Viability is a line that is far less concrete since it changes with the year and hospital in which a child is born.

As Justice Alito stated in the *Dobbs* decision, "According to the dissent, the Constitution requires the States to regard a fetus as lacking even the most basic human right—to live—at least until an arbitrary point in a pregnancy has passed. **Nothing in the Constitution or in our Nation's legal traditions authorizes the Court to adopt that 'theory of life**.'" Indeed, the beginning of human life is no longer a theory. The artificial line of viability is gone.

Fifty years ago, a child born at seven months may not have had much chance of survival while today it's a common occurrence. Does that mean babies born at seven months are more human or more worthy of protection today than they were fifty years ago? Of course not. The overruled and outdated viability standard was merely a measure of our ever-changing technology.

Forte revealed the medical findings that if there is a detectable heartbeat in an unborn child, there is a 95% to 98% likelihood that child will survive to live birth.[21] Heartbeat is a much better, and more scientific, marker than viability—the arbitrary measurement of technology the Supreme Court had been using. We must ask, if the Heartbeat Law was upheld even under *Roe*, how much *more* it should be upheld now that *Roe* and the arbitrary viability standard are gone?

Yes, even *before* the viability standard was declared dead in *Dobbs,* the Heartbeat Law was enacted. We can understand why, as Constitutional Law Professor Forte explained*:*

> "While viability is uncertain and ambiguous, **the point at which an independent fetal heart rate is detectable** (usually between the fifth and sixth weeks of pregnancy), **is unambiguous, and is a strong predictor of survivability to term.** It does not require determinations based on estimates by individual doctors, but can be objectively identified through the relatively simple application of medical technologies like ultrasonography. [Emphasis added]
>
> ...The significance of these findings affects the manner in which the State's interest in the life of the unborn human becomes real and compelling. Fetal heart rate is easily detectable by readily available medical technology and represents a much more determinable point at which the State's interest in the protection of prenatal life ripens.[29]

Keep in mind, Professor Forte made these arguments before *Roe* was overturned. He continued,

> "If potential life is of interest to the State, if the State has a right to prefer childbirth over abortion, then the protection of that life should extend before the uncertain point of viability to the point at which survivability to full term is, all things considered, a strong statistical likelihood. Research now demonstrates that fetal heartbeat represents a more definable point to ascertain survivability than the ambiguous concept of viability that has been adopted by the Court."[30]

University of Georgia Law Professor Randy Beck, in his law review article *The Essential Holding of Casey: Rethinking Viability*, not only questioned the arbitrary notion of the viability standard but reveals that members of the Supreme Court agreed. In their 1992 decision in *Planned Parenthood of Southeastern Pa. v. Casey* 505 U.S. 833, 870 (1992), Justices Sandra

Day O'Connor, Anthony Kennedy, and David Souter wrote, "Legislatures may draw lines which appear arbitrary without the necessity of offering a justification. But courts may not. **We must justify the lines we draw**."[31] [Emphasis added]

The Ohio Supreme Court must, indeed, "justify the lines" they draw. And the fact remains that those arbitrary lines no longer exist. Yet, Issue 1 seeks to go back to the dark ages and make abortion legal even *after* viability as long as the abortionist (with a stark conflict of interest) decides it's "necessary to protect the pregnant patient's life or *health*." Like everything else in Amendment 1, "health" is undefined, opening it up to the same interpretation given by the 1973 Court in *Doe v. Bolton* 410 U.S. 179 (1973): "physical, emotional, psychological, familial and the woman's age—relevant to the well-being of the patient."[32] That definition would allow a 30-year-old to claim she wanted the abortion because she was *either* "too young" *or* "too old" since this definition of health allows for *any reason whatsoever* to abort a child at eight or nine months.

Everyone knows the heart monitors in hospitals aren't for decoration. If there's any doubt about whether someone's alive, we instinctively check for a pulse. Everyone understands that. It's why we've never been to a funeral of someone with a beating heart. So, why would we ignore this scientific yardstick applied to every *other* area of detecting human life? Arkansas State Senator Jason Rapert, who passed the nation's first Heartbeat law in 2013, stated the case very simply, "If there's a heartbeat, there's life." Louisiana Heartbeat Bill joint sponsor Rep. Valarie Hodges put it this way, "Nothing is more precious to any of us than the heartbeat." Without it we're dead."[33]

A fundamental right is a fundamental right, irrespective of either state jurisdiction or popular opinion. There are objectively just and unjust laws as recognized by both Augustine and Martin Luther King, Jr. Some things are inherently unjust and can never be relegated to the subjectivity of a states' rights issue. Just as we wouldn't put slavery to a popular vote--no matter the mob and no matter the money, the inalienable right to life—and our children are not for sale to the highest bidder. As Justice Gorsuch recently observed, "blind obedience to *stare decisis* would leave this Court still abiding grotesque errors like *Dred Scott v. Sandford*, *Plessy v. Ferguson*, and *Korematsu v. United States*." Allowing Issue 1 to stand would continue the assault on the inalienable Right to Life in the same way *Dred Scott* continued the assault on the inalienable Right to Liberty.

Professor Forte also stated,

> "Anyone who enters this argument soon discovers that there is no tenable ground on which to claim that the child in the womb, the offspring of homo sapiens, can be anything less than a human being."
>
> In other words, the child became a rights-bearing person only when the mother, in a grand Nietzschean gesture, said in effect, "I permit you to live. I confer upon you, now, dignity and standing." But if the child gains her rights in that way, they could hardly be natural rights, and indeed they may hardly be rights at all. For they do not begin-they cannot begin-with the sense that there is anything intrinsic in the child that we are obliged to respect, or any objective truths that we are obliged to respect as truths, when they do not accord with our own interests." [34] [See Hadley Arkes, *Natural Rights and the Right to Choose* (2002)]

No ballot amendment can overturn God-given rights. The Heartbeat Rally on September 20, 2011, in the Ohio Statehouse Atrium filled every seat available for rent with overflow attendees watching from outside screens. Pro-life pioneer and Heartbeat Bill supporter Dr. Jack Willke, co-founder of the National Right to Life Committee, was among those who addressed them. Holding up a tape recorder with a six-week baby's heartbeat to the microphone, he stated:

> "This little baby was six weeks and five days old from conception when we made this recording...Is there life? If there's a heart beating there's a life, of course...it's just that simple and it's just that incontrovertible...Ask a public person anywhere on either side of this argument, 'If the heart is beating, is the being alive?' And if you say 'no,' they wonder what rock you crawled out from under. It just defies all logic. And in the public mind (as with science), a heartbeat equates with human life...there are also seven more states waiting in the wings who want to pass this same legislation and they're watching Ohio. So, Ohio, let's go for it!"[35]

A letter to President Trump, dated September 13, 2017, was hand delivered to Vice President Mike Pence by Janet Porter, Former Majority Leader Tom DeLay, and Rachelle Heidlebaugh at a White House meeting. It was signed by 120 national leaders including Dr. James Dobson, Governor Mike Huckabee, Don Wildmon, Founder of the American Family Association, Penny Nance, President Concerned Women for America, Joe Scheidler, National Director Pro-Life Action League, Pastor Bill and Deborah Owens, Founder, Coalition of African American Pastors, Ed Martin, President, Phyllis Schlafly's Eagles, Former Ohio Congressman Bob McEwen, and Abby Johnson, author of *Unplanned*." It stated:

> "We, the undersigned, have united to protect human lives with HR 490, the (federal) Heartbeat Protection Act, which is **co-sponsored by two-thirds of the Republicans in Congress—more than any other pro-life bill.** It also has more public support than any other pro-life bill. Simply put, the Heartbeat Bill ensures that "if a heartbeat is detected, the baby is protected." To deny the child's beating heart is to deny science. To ignore it is heartless."[36]

It pointed to a recent George Barna poll which found:

> "69% of Americans support the Heartbeat Bill—most of them strongly. The bill has support from the vast majority of Republicans (86%) and Independents (61%). Even 55% of Democrats believe "If a doctor is able to detect a heartbeat of an unborn baby, that baby should be legally protected."[37]

The Barna poll was clear: seven out of ten in America, and even a *majority* of *Democrats* agree an unborn baby with a detectable heartbeat "should be legally protected." To deny this fellow human being's beating heart is to deny science. To ignore it is heartless. The Ohio Heartbeat is constitutional and, like in state courts across the country *and* the U.S. Supreme Court, should be upheld. If the Heartbeat Law was constitutional prior to *Roe's* collapse, how much *more* should it be upheld now that *Roe* and the arbitrary viability standard are gone?

Issue 1 is a violation of our inalienable Right to Life, the 14th Amendment to the U.S. Constitution, the Supreme Court's undisputed finding of fact, the *Dobbs* decision, Article 1 Section 1 of the Ohio Constitution, and irrefutable biological fact. We petition the court to

acknowledge the heartbeat, a universally recognized indicator of human life and the Constitutional protections that are guaranteed as a result.

3. **Issue 1 violates Article 1, Section 10 of the Ohio Constitution** [without stating the direct intent to do so]**, and the Eighth and Fourteenth Amendment to the U.S. Constitution.**

- **Article 1, Section 10 of the Ohio Constitution** states "no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury....In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed." [Emphasis added]
- The Eighth Amendment prohibits cruel and unusual punishment: "...nor cruel and unusual punishment inflicted."
- The Fourteenth Amendment: states "nor shall any State deprive any person of life without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Issue 1 would allow innocent children to be sentenced to death in violation of Ohio's Constitution. In the case of so-called "rape/incest abortions," these innocent children would specifically be held to answer for the "infamous crime" of their father—something Article 1, Section 10 of the Ohio Constitution directly forbids.

Lauran Bunting testified before the legislative committee hearings on the Ohio Heartbeat Bill. At her side was her three-year old daughter Isabella (Bella) Bunting, who, through no fault of her own, was conceived in rape. Lauran testified that innocent children conceived through rape should not be singled out for death for a crime for which they had no part.[38]

The Ohio voters in Issue 1 weren't able to see the beautiful face of Bella, who stood before the committee, baby doll in hand. Unbeknownst to Heartbeat Bill supporters, Isabella had made red hearts from construction paper which she handed out to the members of the committee that said simply, “Thank you.” The legislators, who were considering a “rape/incest exception” amendment on that day, realized that they were holding little Bella's heart in their hands--*literally*. A vote to single out innocent children for death would target children like the sweet little girl standing before them. The Ohio legislators decided they would not sentence innocent children like Bella to death for the crime of their father.

Rebecca Kiessling is a beautiful wife, mother of five (two adopted), attorney, and speaker. She was also conceived by rape. She is founder of a global organization called “Save the 1,” made up of nearly 700 people who were also conceived in rape. She testified for the Ohio Heartbeat Bill with four powerful words: “My heart beats too.”

She told the committee, “It is simply barbaric to punish innocent children for someone else's crime,” and stated what has always been the case with Ohio law: “**We punish rapists, not babies**.” Rebecca pointed out that she is the “child of a rape *victim*” who is now very glad her daughter was born, adding, “We value our lives and the lives of our children.”[39]

Kiessling told the Ohio legislators, “I literally owe my birth to pro-life legislators who protected me...I wasn't 'lucky,' I was protected.”[40] “I am a person and I deserve life and dignity every bit as much as anyone else...adding exceptions sends a message to our people group that our lives are worth less than anyone else's, and we ache from such malice an reckless disregard for our lives.” She added, “**The baby is not the 'scary enemy,'”** and **“child sacrifice is what's antiquated.”** [41]

Kiessling testified, “The abortion forces merely use the rape issue to try to keep abortion legal, on demand, for *any* reason for all nine months of pregnancy—through birth, in fact, at taxpayer expense, just like they did in New York and other states. In *Roe v Wade,* Norma McCorvey, “Jane Roe,” was told by her attorney to lie, to say she was gang raped. They said this would make her case stronger. Many years later she sought to overturn her own case. Nearly 60 million children have been aborted based upon the lie of rape. The abortion advocates know this and that's why they exploit the violation of women to **open the door for killing any and all unborn children**.”

The ads for Issue 1 were no exception to this. Here are some excerpts from the pro-Issue 1 ads aired by Ohioans United for Reproductive Rights, Ohio Citizen Action, and "Red Wine Blue USA:

- “Here in Ohio the state is trying to ban abortion even in cases of rape”
- “We need to stop Ohio’s extreme abortion ban that no exceptions for rape or incest.”
- “My patients all have their own stories but government took away their freedom to make their own decisions with Ohio’s life-threatening abortion ban. There are no exceptions for rape or incest, so vote yes on Issue 1”

- "…one of the most restrictive abortion bills in the country...does not have exceptions for rape & incest. And they won't stop there, vote yes on Issue 1."
- "Issue 1 stops Ohio's life-threatening abortion ban with no exception for rape or incest."
- "…your sister or daughter. but if she is raped and gets pregnant, a law in Ohio would force her to have the child. (shows quote "extreme Ohio abortion law does not provide an exception for rape" in background)...government should never force a rape victim…"
- "10 year old rape victim...opponents of Issue 1 want an extreme ban on abortion with no exceptions for rape"
- "Stopping Ohio's life-threatening abortion ban, an extreme ban, with no exceptions for rape or incest."
- "A ban with no exceptions for rape or incest."
- "To stop the abortion ban that has no exceptions for rape or incest, vote yes on Issue 1."
- "Abortion - banned - with no exceptions for rape or incest, and women who miscarry could be denied emergency care."
- "…a ban with no exceptions for rape or incest. Yes Issue 1 protects birth control, and emergency care for miscarriages."[42]

Kiessling was right. Issue 1 proponents followed the "tried and true" method to "exploit the violation of women to open the door for killing **any and *all* unborn children**."

Rape survivor Kathleen DeZeeuw put it this way:

> "I, having lived through rape, and also having raised a child 'conceived in rape,' feel personally assaulted and insulted every time I hear that abortion should be legal because of rape and incest.

> I feel that we're being used by pro-abortionists to further the abortion issue, even though we've not been asked to tell our side."[43]

Also testifying for the Heartbeat Bill was Shannon Hartkemeyer, the sister of Andrew Hoar. Andrew was conceived in rape and adopted by Shannon's parents into her family. She testified how Andrew was an incredible blessing to their entire family and many others. She stated that Andrew would have been there to testify himself, but he was in Afghanistan on his third tour of duty fighting to defend our nation and our freedoms.

Rape is a violent act perpetrated against a woman for which she has no choice. The abortion is a *second* act of violence in which she participates. It does not erase the first act of violence; it compounds it with more violence and (fatally) harms yet another innocent victim.

We heard abortion activists testify that abortion is "needed" because of a woman's "mental health." Does killing children really prevent suicide in adults? The *British Journal of Psychiatry* found:

> "Women who aborted were 81 percent more likely to experience mental health problems compared to all other control groups, and 55 percent more likely to have problems compared to women who delivered an unplanned or unwanted pregnancy."[44]

When children are protected, their mothers are protected as well.

Researchers at the University of Minnesota found that a teenage **girl who has had an abortion** in the last six months is **ten times more likely to attempt suicide** than a comparable teenage girl who has not had an abortion.[45] [Emphasis added]

A large-scale study conducted in Finland found the suicide rate for women who had abortions the prior year was three times higher than women in the general population,[46] and six times higher compared to women who gave birth.[48]

A U.S. study of more than 173,000 low-income California women found that those who received "state-funded abortions were 2.6 times more likely to die from suicide compared to women who delivered their babies. Giving birth…was shown to reduce women's suicide risk compared to the general population."[47]

Abortion leads to the loss of women's lives as well as the lives of their children.

Allan Parker, President of the Justice Foundation in San Antonio, points to the safe haven laws in all fifty states (NationalSafeHavenAlliance.org), which allows a mother within a set time after birth to drop off a child she doesn't want or can't care for with no questions asked. There are no child-abandonment charges, and unlike expensive abortions, there is no charge and no abortion related trauma for the mother. **There is no longer the argument that a mother is stuck raising a child for eighteen years.**"[49] [Emphasis added]

None of us can control the circumstances of our conception. Imagine for a moment that your parents sat you down and told you that, contrary to what you had believed, you were not the product of their loving marriage, but instead were adopted. Loved, cherished, and chosen. But there's more. Imagine that, like Bella, you found out that you were conceived when your biological mother was raped. The question is this, "Is your life any less valuable than it was ten minutes before you heard such news?" Is it any less worthy of protection? The answer, of course, is no.

Then, imagine after hearing this news that you were being summoned by a group of state legislators who just cast a vote that said your life had no worth. That, as a result of how you were conceived, you were going to be escorted by the state police to a facility where your life would be taken from you in one of a variety of brutal ways. That is what a "rape/incest exception" does—kill the innocent for the crime of the guilty.

None of us chose the manner in which we were conceived; it does not change our humanity. Pastor James Robison's written testimony was also presented to the Ohio legislators considering the Heartbeat Bill. Robison's LIFE Outreach organization helps feed over 400,000 children each month throughout Africa. He was also conceived through rape. There are a lot of children (and souls) saved because he was born. Ohio legislators were glad he wasn't killed for the crime of his father, Ohio voters never got to hear his case.[50]

While the children of rape are not singled out for abortion by the Ohio Heartbeat Law, it's important to note, contrary to the Issue 1 misinformation, **women who are the victims of rape are *not prohibited* from getting an abortion by the Heartbeat Law.** They are free to have an abortion for rape/incest, or any other reason, prior to the baby's heartbeat being detected.

While some would claim that a woman may not know that she is pregnant, she certainly knows if she has been raped. Treatment directly following a rape benefits women by preventing conception, treating for trauma and sexually transmitted diseases, and collecting the forensic evidence to convict the rapist and prevent him from assaulting other women.

Issue 1, and the advertising behind it discriminates against people like Isabella, Rebecca, Andrew, and James who do not deserve to be killed because of a crime committed by their

father. As Deuteronomy 24:16 states, "The fathers shall not be put to death for [the sins of] their children, nor shall the children be put to death for their fathers; [only] for his own sin shall anyone be put to death."

Children, who themselves commit murder, cannot be put to death for it according to the U.S. Supreme Court ruling in *Roper v Simmons*. The execution of "juvenile offenders" was said to violate the Eighth Amendment's prohibition of cruel and unusual punishment. How much more does the execution of *innocent* children—who have committed *no* crime violate the Eighth Amendment? The Supreme Court also ruled in *Coker v. Georgia*, 433 U.S. 584 (1977) that **the rapists themselves cannot be executed**! If the Eighth Amendment applies to those guilty of rape (and murder) how much more should it apply to human beings who have committed no crime?

The Ohio Heartbeat Bill doesn't discriminate based on the manner in which someone is conceived and protects women from a lifetime of regret and increased suicides associated with abortion. Issue 1, in violation of Article 1, Section 10 of the Ohio Constitution, authorizes the death an innocent human being for the "infamous crime" of their father without being "allowed to appear and defend in person and with counsel" and without a "speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed" as required by Ohio's Constitution.

Issue 1 is also a violation of the Eighth Amendment which prohibits cruel and unusual punishment and the Fourteenth Amendment's prohibition against denying "*any* person of life without due process of law; nor deny to *any* person within its jurisdiction the equal protection of the laws." [Emphasis added]

Testifying for Ohio's bill to ban Partial Birth Abortion was eyewitness Brenda Shafer, RN, a nurse from Dayton, Ohio who assisted in a Partial Birth Abortion. Prior to the procedure she described herself as "pro-choice." She told the committee members:

> "I remember looking at the ultrasound monitor, asking the doctor if this was the heart. He confirmed it. Here I was, a trained nurse, with no real understanding about fetal development."

She said all she could think of was that bumper sticker, "Abortion stops a beating heart." She testified before the Ohio Legislative committee:

> "I stood at the doctor's side and watched him perform this 'brain-suction abortion' (which became known as Partial-Birth Abortion) on a woman who was six months pregnant. The doctor delivered the baby's body and arms, everything but his little head. The baby's body was moving. His little fingers were clasping together. He was kicking his feet. The doctor took a pair of scissors and inserted them into the back of the baby's head, and the baby's arms jerked out in a flinch, a 'startle' reaction, like a baby does when he thinks that he might fall. Then the doctor opened the scissors up. He then stuck the high-powered suction tube into the hole and sucked the baby's brains out. Now the baby was completely limp. I never went back to the clinic. But I am still haunted by the face of that little boy. It was the most perfect, angelic face I have ever seen."[51]

That testimony was heard by Ohio legislators in our Democratic Republic but concealed from Ohio voters. Notorious Partial Birth abortionist Martin Haskell, MD, whose practice was shut down by Ohio's law, donated $100,000 to the Issue 1 campaign. Unlike Ohio voters, he clearly

understood what Issue 1 sought to achieve: legalization of the lucrative practice of late term Partial Birth Abortions. Partial birth abortion is more aptly referred to as infanticide since the child in this procedure is not "unborn" but rather four-fifths of the way *born*.

In the Partial Birth Abortion hearings in Ohio, the baby's pain was described as a mere "reflex." The question was asked if a baby, whose diapers were being changed was accidentally stabbed with a safety pin, would you say that the baby's reaction of crying and recoiling from the prick is a mere "reflex?" How, then, would the same baby, at the same stage of development, stabbed with a pair of scissors in the back of the neck, as with Partial Birth abortion, be a mere "reflex"? Why would we allow this infanticide to take place in Ohio again? We must not.

The National Abortion Federation explained the Partial Birth Abortion procedure in their own words in their 1992 National Abortion Federation written report: "Once the child is delivered to the neck, the surgeon then forces the scissors into the base of the skull. Having safely entered the skull, he spreads the scissors to enlarge the opening. The surgeon...introduces a suction catheter into this hole and evacuates the skull contents."[53]

As was stated in committee, the difference between abortion and homicide in *this* procedure is about *three inches,*[52] a statement repeated by Congressman Charles Canady (R-FL) the sponsor of the first Partial Birth Abortion Ban Act of 1995 on the floor of the U.S. House of Representatives.[54] All but the child's head is born in a Partial Birth abortion—making it much closer to infanticide than abortion.

The Executive Director of the National Coalition of Abortion Providers, Ron Fitzsimmons admitted that as many as 5,000 Partial Birth Abortions were done each year, primarily on healthy

mothers and healthy babies. **He admitted that he "lied through his teeth" when he suggested that Partial Birth Abortions were "rare."**[55] According to Planned Parenthood, the later the abortion, the more money there is to be made, with the average rates for second trimester abortions advertised from $1,500-$2,000.[56] Abortions in the third trimester can range over $25,000.[57]

The "Salt Poisoning" abortion method, where a saline poison is inserted into the mother's womb, was the method used in the attempt to take the life of Melissa Ohden at 31 weeks (nearly 8 months) gestation. Melissa described her experience to Ohio legislators in the committee hearing the Ohio Heartbeat Bill. She told them about how she was burned alive with poison that intended to take her life, but was able to come and testify because this type of abortion "failed," and instead of killing her, left her severely burned and injured. Melissa, a beautiful wife and mother, is the founder of the Abortion Survivor's Network and is one of only 250 abortion survivors of which she is aware. Holding her daughter in her arms, she urged the committee to think about her little girl, "who would have never had life if that abortion would have succeeded in ending mine."[58] Voters never got to see what the Ohio legislators witnessed, looking into the eyes of two females who wouldn't be here if Melissa's abortion had been "successful."[59] Pro-abortion leaders in the committee were asked, "What about Melissa's rights? She's a woman, don't *her* rights matter?" No answer was given.

Issue 1 also seeks to strike down Ohio's ban on dismemberment abortion.[60] Unlike the Saline method of burning babies alive (which allows some, like Melissa, to escape death), dismemberment abortion guarantees no survivors. In this cruel method, forceps with sharp metal

jaws are used to grasp parts of the developing baby as old as 24 weeks (6 months), which are then twisted and torn away as the living child is pulled apart limb from limb.

> Dr. Warren Hern, a Boulder, Colorado abortionist who has performed a number of D&E abortions, says they can be particularly troubling to a clinic staff and worries that this may have an effect on the quality of care a woman receives. Hern also finds them traumatic for doctors too, saying "there is no possibility of denial of an act of destruction by the operator. It is before one's eyes. The sensation of dismemberment flow through the forceps like an electric current."[61]

Walter Weber is Senior Counsel at the American Center for Law and Justice. He is a co-drafter of Ohio's Heartbeat Law, and many others that followed around the nation. In the ACLJ Amicus Brief in *Dobbs*, he wrote:

> "The *Dobbs* case involves a pro-abortion challenge to Mississippi's ban on abortions after 15 weeks of pregnancy. As we observe: the standard method for abortion after 15 weeks of gestation is to rip apart and remove the body of the prenatal child. Such "brutal," "gruesome" dismemberment [quoting the late Justice Ginsburg] would be unconstitutional if a state inflicted it upon Jack the Ripper. And states can certainly ban such acts against Fido the Dog. How then, can there be a constitutional right to tear prenatal humans limb from limb? The answer is that there is not."[62]

What is interesting to note is that all the means of ending an unwanted pregnancy involve brutally and inhumanely killing the baby. The option of inducing pre-term labor where the baby is delivered live and whole, and the medical profession upholds their Hippocratic Oath to do no

harm is nowhere to be found. If it were sincerely about ending a pregnancy and not about killing a baby, then attempts to save the premature baby could be made. If such attempts were unsuccessful, then the pregnancy would have been terminated, but the baby, even though it died, would not have been brutally murdered.

If in fact, the goal of those who advocate for abortion is simply for the right to "end unwanted pregnancies," and not the dehumanizing and barbaric murdering of innocent children, then you must ask yourself, why is this medical procedure not even listed among all the other procedures? And it cannot be for the protection of the mother as all the other procedures expose women to hemorrhaging, remaining bone fragments, and a myriad of other physiological and psychological risks. The lack of labor induction as a viable option is extremely telling that abortion is undeniably a form of cruel and unusual punishment, and nothing short of barbaric infanticide.

This Court should repudiate Issue 1, which if upheld, will strike Ohio's ban on abortion after 20 weeks,[64] post viability abortions[65], and Ohio's ban on Dismemberment Abortion[66], and Partial Birth Abortion[67], opening the door to the barbaric and lucrative second and third trimester abortions on babies who are able to survive outside the womb.

Pastor Jim Garlow addressed the overflow crowd at the September 20, 2011, Heartbeat Rally in the Ohio Statehouse Atrium. Dr. Garlow said,

> "In Germany before the war when they would load the Jews on the trains and they would come close to the churches, it was reported the churches that sometimes they would hear the screams of the Jewish people on the trains and it was said, What did you do?" And

the people in the church said, we would simply sing louder. We are not singing louder any longer."

"I've taken people on tours of the concentration camps in Germany--on church history tours across Europe. And when I take them to Buchenwald I say that I want you to know that someday—some day in America people are going to tour the abortuaries and they're going to say, 'You're not going to believe what actually happened to other human beings in these places' and they're going to say, 'Where was the church when this was going on?' And we're going to say, 'We rose up and we made a difference and in Ohio we put a stop to it this day.'" [68]

As the American Center for Law and Justice pointed out in their Amicus Brief in *Dobbs*, "A supposed 'right' that facilitates such repugnant practices, that is akin to cruel punishments for prisoners and inhuman treatment of animals, and whose continued force depends upon this Court placing greater authority on its own precedents than on the Constitution, is not worthy of the label."[69]

Issue 1 violates the Eighth Amendment to the U.S. Constitution barring "cruel and unusual punishment," the Fourteenth Amendment's prohibition against depriving any person of life without due process, and denying any person equal protection of the laws." Issue 1 would also cause innocent children to be specifically held to answer for the "infamous crime" of their father in violation of Article 1, Section 10 of the Ohio Constitution.

CONCLUSION

Issue 1 is a violation of at least nine Articles of the Ohio Constitution, the United States Constitution, federal laws, and at least 30 state laws. The people of Ohio passed these laws through their elected representatives over the course of half a century, in transparent hearings where all sides were openly heard and vigorously debated. These laws were also fully vetted through the judicial system and upheld by multiple courts including the U.S. Supreme Court (*Ohio v Akron Center,* 497 U.S. 502 (1990) and *Gonzales v. Carhart,* 2007) as Constitutional before going into effect.

One of the laws Issue 1 violates is the "Human Rights and Heartbeat Protection Act," best known as the Ohio Heartbeat Law, which passed in 2019. It was signed into law by Governor Mike DeWine, after nearly a *decade* of being fully vetted with testimony from every side in months of hearings and hours of floor debate each time the vote was cast by the representatives of the people in both the Ohio House and Senate. Our laws were passed through our Democratic Republic in accordance with the *Dobbs* decision which stated, "It is time to heed the Constitution and return the issue of abortion **to the people's elected representatives**." [Emphasis added]

The Texas version of the Heartbeat law was upheld by the United States Supreme Court even before *Roe v. Wade* was relegated to the ash heap of history. Also prior to *Roe's* collapse, *Gonzales v. Carhart* recognized a "living fetus" (defined by Black's Law Dictionary as "an unborn child") from the point of "detectable heartbeat" as an *undisputed* finding of fact. "Detectable heartbeat" is the exact same language used in the Ohio Heartbeat Law and Heartbeat laws passed in Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma,

Tennessee, Texas, North Dakota, Iowa, Georgia, South Carolina, and Florida. It is time we acknowledge a universally recognized indicator of life science has provided: the human heartbeat, beating like an SOS for protection that is long overdue. Heartbeat Laws have been enacted and upheld by state courts across the country and the United States Supreme Court. Ohio's Heartbeat Law should, likewise, be upheld and enforced again without delay.

As Justice Alito stated in the *Dobbs* decision, "According to the dissent, the Constitution requires the States to regard a fetus as lacking even the most basic human right—to live—at least until an arbitrary point in a pregnancy has passed. Nothing in the Constitution or in our Nation's legal traditions authorizes the Court to adopt that 'theory of life.'" That's because the beginning of human life is no longer a theory. As Professor Micheline Matthews-Roth, Harvard University Medical School told the U.S. Senate Judiciary Committee: "It is incorrect to say that biological data cannot be decisive....It is **scientifically correct to say that an individual human life begins at conception**...Our laws, one function of which is to help preserve the lives of our people, should be based on accurate scientific data." [Emphasis added]

The author of *Roe v. Wade*, Justice Harry Blackmun, himself, said: "If this suggestion of personhood is established, the appellant's case, of course, collapses, for **the fetus' right to life would then be guaranteed specifically by the [Fourteenth] Amendment**." [Emphasis added] We have reached that point. *Roe* has collapsed. It is time to recognize the truth our founders found to be "self evident." That "all men are created equal." Not *born* equal. *Created* equal. And the inalienable Right to Life applies to every member of the human family, including ALL those with forty-six human chromosomes and a detectable human heartbeat—an undisputed indicator of a living human being recognized, unanimously, by the United States Supreme Court.

Issue 1 violates the Eighth Amendment to the U.S. Constitution barring "cruel and unusual punishments" beginning with striking Ohio's ban on abortion after 20 weeks,[3] post viability abortions[4], Ohio's ban on Dismemberment Abortion[5], and Partial Birth Abortion,[6] opening the door to the barbaric second and third trimester abortions on babies who are able to survive outside the womb. In the case of "rape/incest" abortions, innocent children are specifically held to answer for the "infamous crime" of their father—something Article 1, Section 10 of the Ohio Constitution directly prohibits, and Issue 1 directly violates. Issue 1 also violates the Equal Protection guaranteed in the Fourteenth's Amendment for those conceived by rape. As Rebecca Kiessling, who was conceived by rape, declared, "**We punish rapists, not babies**," adding, **"child sacrifice is what's antiquated."**

Dr. Jack Willke, co-founder of the National Right to Life Committee, testified in the full Ohio House of Representatives as well as Ohio House and Senate committees for the Heartbeat Bill, declaring Ohio as a "pioneer in the nation" to restore legal protection to unborn children. Ohio was the state that paved the way for Parental Notification, as it was our law that was upheld by the U.S. Supreme Court, allowing others to follow (*Ohio v Akron Center,* 1990). We were the first to introduce and pass the ban on Partial Birth Abortion, followed by 30 states that passed it along with Congress, and two Supreme Court rulings before it was ultimately upheld (*Gonzales v. Carhart,* 2007). Ohio was also the first to introduce the Heartbeat Bill, followed by 15 states (and counting) who have passed it into law. Children with beating hearts are alive today, inside and *outside* the womb, on the way to fulfilling their destiny because those Heartbeat laws were enacted.

This is not the time to surrender to an unconstitutional foreign-funded mob rule. We must be the ones to stand against the new national strategy of the abortion movement to bypass the legislature and the Republican form of government which safeguards the minority. We petition the Court to stand against the freight train that seeks to crush our Constitution and a half-century of protective laws passed by the people through their elected representatives.

This is the moment we affirm that God-given rights cannot be repealed. They were not endowed to us by a popular vote. Nor can they be stripped away by one.

Issue 1 is unconstitutional because the Right to Life is inalienable. Not only does it violate our God-given rights, it violates the United States Constitution, the Ohio Constitution, more than 30 Ohio laws, the *Dobbs* decision, science, technology, and the law of nature and nature's God.

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