AlaFile E-Notice

03-CV-2020-901262.00

Judge: HON. JOHNNY HARDWICK

To: JOSEPH BRENT HELMS
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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

BABY Q, INDIVIDUALLY BABY Q, INDIVIDUALLY ET AL V. KAY IVEY, GOV. OF A
03-CV-2020-901262.00

The following matter was FILED on 12/11/2020 3:04:11 PM

ZI MEMBERS OF THE ALABAMA LEGISLATURE ("INTERVENORS")

MOTION TO INTERVENE

[Filer: HELMS JOSEPH BRENT]

Notice Date: 12/11/2020 3:04:11 PM

GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104

334-832-1260

STATE OF ALABAMA Revised 3/5/08
Unified Judicial System
03-MONTGOMERY ☐ District Court ☑ Circuit Court

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CV2(

BABY Q, INDIVIDUALLY BABY Q, INDIVIDUALLY ET AL V. KAY IVEY, GOV. OF A

CIVIL MOTION COVER SHEET

Name of Filing Party: ZI - Members of the Alabama Legislature ("Intervenors")

Name, Address, and Telephone No. of Attorney or Party. If Not Represented.

JOSEPH BRENT HELMS
13 Sycamore Ln.
Albertville, AL 35950
Attorney Bar No.: HEL032

☐ Oral Arguments Requested

TYPE OF MOTION

Motions Requiring Fee

- ☐ Default Judgment ($50.00)
- ☐ Joinder in Other Party's Dispositive Motion (i.e.Summary Judgment, Judgment on the Pleadings, orother Dispositive Motion not pursuant to Rule 12(b)) ($50.00)
- ☐ Judgment on the Pleadings ($50.00)
- ☐ Motion to Dismiss, or in the Alternative SummaryJudgment($50.00)
- ☐ Renewed Dispositive Motion(Summary Judgment,Judgment on the Pleadings, or other DispositiveMotion not pursuant to Rule 12(b)) ($50.00)
- ☐ Summary Judgment pursuant to Rule 56($50.00)
- ☑ Motion to Intervene ($297.00)
- ☐ Other _____ pursuant to Rule _____ ($50.00)

*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.

☐ Local Court Costs $ 0

Motions Not Requiring Fee

- ☐ Add Party
- ☐ Amend
- ☐ Change of Venue/Transfer
- ☐ Compel
- ☐ Consolidation
- ☐ Continue
- ☐ Deposition
- ☐ Designate a Mediator
- ☐ Judgment as a Matter of Law (during Trial)
- ☐ Disburse Funds
- ☐ Extension of Time
- ☐ In Limine
- ☐ Joinder
- ☐ More Definite Statement
- ☐ Motion to Dismiss pursuant to Rule 12(b)
- ☐ New Trial
- ☐ Objection of Exemptions Claimed
- ☐ Pendente Lite
- ☐ Plaintiff's Motion to Dismiss
- ☐ Preliminary Injunction
- ☐ Protective Order
- ☐ Quash
- ☐ Release from Stay of Execution
- ☐ Sanctions
- ☐ Sever
- ☐ Special Practice in Alabama
- ☐ Stay
- ☐ Strike
- ☐ Supplement to Pending Motion
- ☐ Vacate or Modify
- ☐ Withdraw
- ☐ Other _____ pursuant to Rule _____ (Subject to Filing Fee)

Check here if you have filed or are filing contemoraneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) ☐

Date: 12/11/2020 2:58:24 PM

Signature of Attorney or Party
/s/ JOSEPH BRENT HELMS

*This Cover Sheet must be completed and submitted to the Clerk of Court upon the filing of any motion. Each motion should contain a separate Cover Sheet.
**Motions titled 'Motion to Dismiss' that are not pursuant to Rule 12(b) and are in fact Motions for Summary Judgments are subject to filing fee.

ELECTRONICALLY FILED
12/11/2020 3:01 PM
03-CV-2020-901262.00
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

Baby Q, et al., **Plaintiffs,** **v.** **KAY IVEY, et al.,** **Defendants.**	**Case No. 03-CV-2020-901262.00**

MOTION TO INTERVENE

Pursuant to Rules 24(a)(2) and 24(b)(2), Ala. R. Civ. P., Intervenors, twenty-five (25) members of the Alabama Senate and twenty-one (21) members of the Alabama House of Representatives (listed in the Appendix hereto and referred to hereinafter collectively as "Intervenors" unless otherwise identified individually), a total of forty-six (46) members of the Alabama Legislature, by and through undersigned counsel, move to intervene in this action to defend the constitutionality of The Human Life Protection Act,[1] to protect the rights of *all* natural persons, including the fundamental absolute right of unborn children to life, liberty, and all rights protected by the Ninth, Tenth, and Fourteenth Amendments to the United States Constitution, and, in short, to protect the scope of their constitutional authority to protect and defend fundamental rights and the effectiveness of their legislative voting power in regard thereto. For the reasons set forth

[1] Act 2019-189, Ala. Acts 2019, Section 1. The Human Life Protection Act is attached hereto as Exhibit "A".

hereinunder, intervention is warranted. Due to the very early stage of this action, a responsive pleading does not accompany this motion as contemplated in Rule 24(c), Ala. R. Civ. P. If this motion is granted, Intervenors intend to file a response to the motion to dismiss filed by State Defendants and "a pleading setting forth the claim or defense for which intervention is sought"[2] within 30 days of the Court's ruling on this motion or as otherwise ordered.

INTRODUCTION AND BACKGROUND

On October 16, 2020, Plaintiffs commenced this action "to protect preborn African-American children from discrimination and to ensure their equal protection under the law."[3] In their Complaint, Plaintiffs asked this Court for "a declaratory judgment and/or writ of mandamus" ordering State Defendants "to take all measures necessary" to provide such protection.[4] As a legal basis for their request, Plaintiffs rely on various provisions of the Alabama Constitution,[5] The Human Life Protection Act,[6] and the Ninth,[7] Tenth,[8] and Fourteenth[9] Amendments to the United States Constitution.

On November 9, 2020, Defendants Kay Ivey, Steve Marshall, Robert L. Broussard, and Hays Webb (hereinafter collectively referred to as "State Defendants" unless

[2] Ala. R. Civ. P. 24(c).
[3] Complaint, ¶ 1.
[4] *Id.*
[5] Complaint ¶ ¶ 21-24, 39.
[6] Complaint ¶ 25, 53.
[7] Complaint ¶ 57.
[8] Complaint ¶ 26.
[9] Complaint, ¶ 1.

otherwise identified individually), each in his or her official capacity as an elected official, filed a Motion to Dismiss Plaintiffs' action. As a basis for dismissal, State Defendants declared that they "are prevented from stopping abortions in Alabama because of binding federal precedent" which, State Defendants declare, they "are bound to follow … regardless of whether they agree with it."[10]

State Defendants' basis for dismissal, simply put, stands for the proposition that Intervenors had no power in the first instance to protect fundamental, pre-constitutional rights and that certain legislative powers to protect fundamental rights have been withdrawn from the legislature by the Fourteenth Amendment as a result of *Roe v. Wade* and its progeny. State Defendants seek to unilaterally preempt The Human Life Protection Act, which, based on legislative findings, finds its basis in the fundamental right to life and liberty of all natural persons.[11] The fundamental right to life predates

[10] Motion to Dismiss, p. 7.

[11] The term "natural person" is used, because at the time the Bill of Rights and the Fourteenth Amendment were adopted, the common law provided the lexicon for understanding the Constitution's provisions. *See Washington v. Glucksberg*, 521 U.S. 702, 712 (1997) ("Sir William Blackstone's . . . Commentaries on the Laws of England not only provided a definitive summary of the common law but was also *a primary legal authority for 18th- and 19th-century American lawyers.*") (emphasis added). The common law divided persons into "natural" persons who were "such as the God of nature formed us" and "artificial" persons who were "such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic." In *Western Turf Assn. v. Greenberg*, the United States Supreme Court recognized this distinction in regard to liberty, saying, "[T]he liberty guaranteed by the Fourteenth Amendment against deprivation without due process of law is the *liberty of natural, not artificial, persons*." 204 U.S. 359, 363 (1907) (emphasis added). However, this distinction and its meaning for constitutional purposes was not considered in *Roe v. Wade*, 410 U.S. 113, 157 (1973) (stating that "[t]he *Constitution* does not define 'person' in so many words" and "no *case could be cited* that holds that a fetus is a person within the meaning of the Fourteenth Amendment.") (emphasis added). The issue does not appear to have been raised in *Planned Parenthood v. Casey*.

the United States Constitution, was "retained" under the Ninth Amendment,[12] and is protected from diminution or denial without due process of law according to the Fourteenth Amendment. State Defendants are treating as a *nullity the very power behind* the legislature's vote. State Defendants' relief will destroy the work of Intervenors and nullify the exercise of their law-making authority.

Intervenors are The Human Life Protection Act's[13] House sponsor, Terri Collins, along with twenty (20) co-sponsors, the Senate sponsor, Clyde Chambliss, and a supermajority of the Senate. All Intervenors voted to adopt The Human Life Protection Act. Intervenors seek to enter this lawsuit on the side of Plaintiffs in order to defend their legislative authority and duty to enact The Human Life Protection Act, to protect and defend the fundamental right to life of *all* natural persons within the borders of Alabama, including unborn natural persons, as well as the other fundamental and absolute rights at common law retained by the people of Alabama pursuant to the Ninth Amendment, to secure those rights by the powers reserved to them by the Tenth Amendment, and to protect those fundamental rights from denial or disparagement by misconstruction of enumerated rights without the due process of law required of states by the Fourteenth Amendment to the United States Constitution.

[12] The Ninth Amendment states: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."
[13] Act 2019-189, Ala. Acts 2019, Section 1.

Intervenors have a strong interest in the constitutional question of first impression created by Plaintiffs' action, namely, whether the United States Supreme Court's Fourteenth Amendment jurisprudence utilizing its Fourteenth Amendment doctrine of substantive due process is in conflict or can be harmonized with the "rights retained by the people" under the Ninth Amendment, which includes the fundamental and absolute right to life, and the peoples' right to have their state legislature exercise the powers not "expressly given, or given by necessary implication" to the national government,[14] which powers were "retained" by the people to themselves or their "states, respectively," under the Tenth Amendment. Or, put another way: Is Plaintiffs' claimed right to life and the Ninth and Tenth Amendment grounds asserted therefor and Intervenors' interest in securing to Plaintiffs that right through the Ninth, Tenth, and Fourteenth Amendment controlled by the analysis in *Roe v. Wade* and *Planned Parenthood v. Casey*, in which the import of the Ninth Amendment was not adjudicated?

These substantial legislative interests are unique to Intervenors as sponsors, co-sponsors, and legislative voting supporters of The Human Life Protection Act. They are, therefore, *entitled*, by right, to intervene as plaintiffs to this action. In the alternative, Intervenors should be *permitted* to intervene because the substantial legislative interests at stake and State Defendants' argument against the validity of The Human Life

[14] *Martin v. Hunter's Lessee*, 14 U.S. 304, 325 (1816).

Protection Act involve common questions of law and fact. Intervenors seek to fully articulate their substantial interest in this litigation.

STATEMENT OF FACTS

The Human Life Protection Act was passed by the Alabama House of Representatives on April 30, 2019 and by the Alabama Senate on May 14, 2019. [15] It was approved by Governor Kay Ivey on May 15, 2019.[16] It became effective "six months following its passage and approval by the Governor, or its otherwise becoming law."[17]

In The Human Life Protection Act, Intervenors made certain findings, the first of which recognized the expression of the will of the People of Alabama from whom Intervenors and State Defendants draw their lawful authority: "On November 6, 2018, electors in this state approved by a majority vote a constitutional amendment to the Constitution of Alabama of 1901 declaring and affirming the public policy of the state to recognize and support the sanctity of unborn life and the rights of unborn children."[18] The Human Life Protection Act also refers to the United States Declaration of Independence, noting that, according to "the principle of natural law … 'all men are created equal'" and that the "self-evident truth found in natural law, that all human

[15] Exhibit A, p. 9.
[16] *Id.*
[17] Act 2019-189, Ala. Acts 2019, Section 10.
[18] Act 2019-189, Ala. Acts 2019, Section 2(b).

beings are equal from creation" is a "truth of universal human equality."[19] Lastly, Intervenors made certain findings regarding the science proving the "humanity of the unborn child"[20] and "the clear development of a human being,"[21] which is what led them to define an "unborn child, child, or person" as "[a] human being, specifically including an unborn child in utero at any stage of development, *regardless of viability*."[22]

State Defendants have moved to dismiss this action, "not because State Defendants disagree with Plaintiffs about abortion, but because, at least in part, "State Defendants cannot be ordered to violate federal law."[23] More specifically, State Defendants' assert that, "unfortunately," they are:

> prevented from stopping abortions in Alabama because of binding federal precedent. There is no "uncertainty," Compl. at ¶ 53, or "quandary," *id*. at ¶ 54, as to whether State Defendants can lawfully put a stop to abortion in Alabama. *See generally West Ala. Women's Ctr. v. Williamson*, 900 F.3d 1310 (11th Cir. 2018) (invalidating Alabama law banning dismemberment abortion). State Defendants (as well as this Court) are bound to follow federal law, regardless of whether they agree with it. See U.S. Const. art. VI, § 2; *Magers v. Ala. Women's Ctr. Reproductive Alternatives, LLC*, No. 1190010, slip op. at 13 (Oct. 30, 2020) (Mitchell, J., concurring specially) ("[S]tates remain severely constrained in their ability to account for the unborn by enacting and enforcing laws that protect them in the womb[.]")[24]

[19] Act 2019-189, Ala. Acts 2019, Section 2(d).
[20] Act 2019-189, Ala. Acts 2019, Section 2(e).
[21] Act 2019-189, Ala. Acts 2019, Section 2(h).
[22] Act 2019-189, Ala. Acts 2019, Section 3(7) (emphasis added).
[23] Motion to Dismiss, p. 7.
[24] *Id.* Note that in The Human Life Protection Act, Intervenors found that "[t]he cases of Roe v. Wade and its progeny have engendered much civil litigation and legislative attempts to reign in so called abortion rights. Roe v. Wade attempted to define when abortion of an unborn child would be legal. Judges and legal scholars have disagreed and dissented with its findings." Act 2019-189, Ala. Acts 2019, Section 2(j).

If State Defendants' argument prevails without consideration of the question of first impression raised by this action and in light of Intervenors' findings of fact concerning The Human Life Protection Act, then Intervenors' duty[25] to protect and defend the fundamental rights of all natural persons in Alabama will have been denied *in principal* and, consequently, there will be an on-going impairment to and diminution of their constitutional power and authority to protect the three absolute rights[26] at common law that are fundamental within the meaning of the United States and Alabama Constitutions.[27]

ARGUMENT

1. This Court should grant Intervenors' Motion to Intervene

Intervenors have a *right* to intervene because State Defendants' action seeks to defeat the scope of Intervenors' legislative authority in regard to specification and protection of fundamental rights and the effectiveness of Intervenors' legislative voting power in regard thereto. That interest is certainly substantial and is immediately threated by State Defendants' Motion to Dismiss.

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[25] 1 William Blackstone, Commentaries on the Laws of England, *129 (Stating: "[T]he principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these absolute rights of individuals."

[26] *Id.* (stating that the absolute rights at common law "may be reduced to three principal or primary articles; the right of personal security, the right of personal liberty, and the right of private property.").

[27] See *Munn v. Illinois,* 94 U.S. 113, 134 (1877) ("[T]he great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances."

In the alternative, Intervenors should be *permitted* to intervene for the same reasons above.

a. Legal standard for granting a motion to intervene by right pursuant to Ala. R. Civ. P. 24(a)(2)

An Alabama court may grant a motion to intervene as a matter of right pursuant to Rule 24(a)(2), Ala. R. Civ. P., only where certain criteria are met. Rule 24(a)(2), Ala. R. Civ. P., sets forth those criteria. First, the applicant's motion to intervene must be "timely."[28] Second, the applicant must claim "an interest relating to the property or transaction which is the subject of this action."[29] Third, the applicant must show that it "is so situated that the disposition of this action may as a practical matter impair or impede the applicant's ability to protect that interest."[30] And finally, the applicant must show that its "interest is [not] adequately represented by existing parties."[31] Given that the criteria of the rule are met, the court may grant Intervenors' motion to intervene as a matter of right.

i. Intervenors satisfy the legal standard for intervention by right pursuant to Ala. R. Civ. P. 24(a)(2)

1. The Motion to Intervene is timely because it was filed when Intervenors reasonably knew that their interest would be affected

[28] Ala. R. Civ. P. 24(a)(2).
[29] *Id.*
[30] *Id.*
[31] *Id.*

The Complaint was filed by Plaintiffs on October 16, 2020. On November 9, 2020, State Defendants filed a Motion to Dismiss the Complaint. Other than State Defendants named in the Motion to Dismiss, no defendant has filed an answer, no party has filed a discovery request, and the court has not entered an order of any kind. Thus, it was not until Intervenors read State Defendants' Motion to Dismiss that Intervenors could have reasonably evaluated and determined how State Defendants' Motion to Dismiss related to and affected Intervenors' interest.

Intervenors secured legal counsel and filed a motion to intervene even before Plaintiffs filed a response to State Defendants' Motion to Dismiss. Intervenors recognize that timeliness, as noted by the Alabama Supreme Court, "is not a word of exactitude or of precisely measurable dimensions."[32] In fact, Ala. R. Civ. P. 24(a)(2) is "silent concerning what constitutes a timely application."[33] Therefore, when ruling upon a motion to intervene by right, "most courts tend to require less rigidity in evaluation of timeliness under Rule 24(a)."[34] While "the determination of timeliness is a matter committed to the sound discretion of the trial court,"[35] given the foregoing, Intervenors' motion to intervene should be considered timely.

2. Intervenors have a direct and protectable interest which will be impaired or impeded if Intervenors are not permitted to intervene

[32] *Strousse v. Strousse*, 322 So.2d 726, 728-29 (Ala. Civ. App. 1975) (quoting *McDonald v. E. J. Lavino Company*, 430 F.2d 1065, 1071 (5th Cir. 1970)).
[33] *Strousse*, 322 So.2d at 728.
[34] *Magee v. Boyd*, 175 So. 3d 79, 140 (Ala. 2015).
[35] *Strousse*, 322 So.2d at 728.

In Alabama, an intervenor "must have an interest in the subject matter of the litigation of such a nature that he will gain or lose by the direct legal operation of the judgment."[36] Here, Intervenors have a "direct, substantial, and legally protectable interest" in the subject matter of the litigation.[37]

a. State Defendants are seeking to restrict Intervenors' legislative authority and nullify their voting power with respect to the protection of fundamental rights

Intervenors seek to intervene because State Defendants' position regarding the extent and nature of federal judicial power, along with a failure to consider the import of Intervenors' legislative findings and their relation to the Ninth, Tenth, and Fourteenth Amendment grounds pled by Plaintiffs in support of their Equal Protection claim, shrinks the scope and effectiveness of Intervenors' legislative authority and voting power, rendering it a nullity when it comes to protecting the fundamental right to life that is grounded in the common law conception of rights reflected in and guaranteed to the people by the Ninth Amendment. That interest is certainly substantial and is immediately threatened if the particular argument about "federal law" made by State Defendants were to prevail and become precedent.

[36] *Gunter v. Gunter*, 911 So. 2d 704, 708-09 (Ala. Civ. App. 2005).
[37] *Randolph County v. Thompson*, 502 So. 2d 357, 363 (Ala. 1987).

Granting State Defendants' Motion to Dismiss because "State Defendants are prevented from stopping abortions in Alabama because of binding federal precedent"[38] would be precedent severely discounting the fact that state legislative bodies are free to distinguish judicial precedents and have been especially encouraged to do so when the United States Supreme Court's rationale is questionable or distinguishable.[39] For their inability to stop abortion in Alabama and enforce The Human Life Protection Act, State Defendants specifically cite *W. Ala. Women's Ctr. v. Williamson.*[40] This decision is not controlling precedent for this Court and can be readily distinguished.

W. Ala. Women's Ctr. v. Williamson was decided by the 11th Circuit Court of Appeals.[41] A petition for writ of certiorari to the United States Supreme Court in that case was denied.[42] However, in denying certiorari, one of the Court's most staunch critics of *Roe*[43] and *Casey,*[44] Justice Thomas lamented: "this case does not present the

[38] Motion to Dismiss, p. 7.
[39] *United States v. Windsor*, 570 U.S. 744, 799 (2013) (Scalia, J., dissenting) (stating: "[A]n opinion with such scatter-shot rationales as this one (federalism noises among them) can be distinguished in many ways. And deserves to be. State and lower federal courts should take the Court at its word and distinguish away.").
[40] 900 F.3d 1310 (11th Cir. 2018).
[41] *W. Ala. Women's Ctr. v. Williamson*, 900 F.3d 1310 (11th Cir. 2018).
[42] *W. Ala. Women's Ctr. v. Williamson*, 588 U.S. _____ (2019).
[43] *Gonzales v. Carhart,* 550 U.S. 124, 168-69 (2007) (Thomas, J., concurring) ("I write separately to reiterate 'my view that the Court's abortion jurisprudence, including *Casey* [*Planned Parenthood of Se. Pa. v. Casey* , 505 U.S. 833, 112 S.Ct. 2791 (1992)] and *Roe v. Wade* , 410 U. S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), has no basis in the Constitution.'").
[44] *Gonzales v. Carhart,* 550 U.S. 124, 168-69 (2007) (Thomas, J., concurring) ("I write separately to reiterate 'my view that the Court's abortion jurisprudence, including *Casey* [*Planned Parenthood of Se. Pa. v. Casey* , 505 U.S. 833, 112 S.Ct. 2791 (1992)] and *Roe v. Wade* , 410 U. S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), has no basis in the Constitution.'").

opportunity to address our demonstrably erroneous 'undue burden' standard."[45] The present case does present that opportunity because the fallacy of *Roe's* legal analysis is being confronted head on by Intervenors' assertion of their duty to protect and defend the fundamental right to life retained by all natural persons in Alabama by the Ninth Amendment.

Moreover, State Defendants appear to have erroneously applied *Roe* and *Casey* to forbid all regulation of abortion before viability. They failed to consider abortion regulations that the United States Supreme Court has either upheld or refused to enjoin, namely, *Connecticut v. Menillo*, 423 U.S. 9 (1975), *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), *Mazurek* v. *Armstrong,* 520 U.S. 968 (1997), and *Gonzales v. Carhart*, 550 U.S. 124 (2007). In those decisions and on other occasions, the United States Supreme Court has recognized the power of governments to regulate abortion to protect fundamental rights such as life, health, and equal protection of the laws. After viability, a state's interests in securing those rights prevails. Before viability, the state's interest in protecting fundamental rights prevails unless its law imposes an undue burden on abortion access.

State Defendants' rationale about "binding federal law" demonstrates confusion concerning who has the authority to define viability. They assumed that any statute articulating a viability standard must automatically offend Supreme Court precedent. But

[45] *Id.*

the Supreme Court has ruled that a legislature may lawfully establish a presumption of viability at some benchmark and impose on physicians the burden of proving non-viability.[46]

This Court will be called upon to address other requisite inquiries. In addition to balancing fundamental rights of life, health, and equal protection of the law, this Court will have to consider the state's compelling interests that are at stake both before and after a child's viability outside the womb, findings concerning the Alabama legislature's stated purposes, namely, to secure the fundamental rights of persons under law,[47] and deference to the legislature's findings concerning recent developments in fetal medicine and medical ethics.

Whether there is a burden, and whether any burden is undue, are case-specific, fact-dependent inquiries. These inquires cannot be avoided simply by citing some Supreme Court decisions, because the Supreme Court made clear that there are fundamental right claims on both sides of cases such as this. An important consideration that would render any burden constitutionally permissible, rather than undue, is that a state has acted to secure fundamental rights, whether enumerated rights, such as equal protection of the law for females and the disabled, or those rights that are so firmly

[46] *Webster v. Reproductive Health Services*, 492 U.S. 490, 513-20 (1989).
[47] See *Mazurek v. Armstrong,* 520 U.S. 968, 972 (1997) ("We do not assume unconstitutional legislative intent even when statutes produce harmful results.").

grounded in our history and traditions as to be essential to, and implicit in, ordered liberty, such as the right to life.[48]

Thus, to accept State Defendants' rationale about "binding federal law" and what constitutes federal law when there is a stark, distinguishable difference between the present Plaintiffs, the rights claimed, and the constitutional justifications for the claim and those which were adjudicated in *Roe*, *Casey*, and *W. Ala. Women's Ctr. v. Williamson,* would effectively be a nod by Alabama's judiciary toward expanding what constitutes federal law[49] and the scope of the federal judiciary's power under Article III of the United States Constitution.[50] Such a holding would necessarily restrict the scope of Intervenors' legislative powers.

This Court has been called upon to review the constitutionality of The Human Life Protection Act and its enforceability in the state of Alabama. As this Court will review the constitutionality of The Human Life Protection Act, it should frame its analysis according to the Alabama legislature's findings and pursuant to relevant evidence and testimony

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[48] *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

[49] *See* Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 Va. L. Rev. 933, 936 (2018) ("The power of judicial review is . . . limited: It permits a court to decline to enforce a statute in a particular case or controversy, and it permits a court to enjoin executive officials from taking steps to enforce a statute—though only while the court's injunction remains in effect. But the statute continues to exist, even after a court opines that it violates the Constitution, and it remains a law until it is repealed by the legislature that enacted it.")

[50] If federal judicial power can "enforce" the rights set forth in the Fourteenth Amendment by making void all similar laws in *every* state beyond the particular parties to whom that power was applied, then it has rendered meaningless Section 5 of the Fourteenth Amendment which states: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Congress alone, *by legislation*, can make *void* a state law as to *all* the persons within the borders of a particular state and all states. Congress has enacted no law prohibiting any state law governing, regulating, or restricting abortion.

presented by them. The Alabama legislature's findings, which are based in the United States Constitution and the text of The Human Life Protection Act, frame the undue burden analysis because legislatures have sound reasons for regulating abortion.

b. As the authors, sponsors, passers, and driving force behind the enactment of The Human Life Protection Act, Intervenors have the right to defend their authority to enact it

State legislators have compelling reasons to secure fundamental rights because they have an obligation to do so.[51] States have especially compelling interests to secure those fundamental rights that are unalienable, which are of interest to the whole community and which no one—not even the person whose life is at stake—has the power to waive or give away.[52]

Intervenors take seriously their oaths to uphold and defend the Constitution of Alabama and the Constitution of the United States.[53] Far from attempting to place obstacles between Alabama residents and their fundamental rights, and pursuant to

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[51] 1 Blackstone, *Commentaries* at 124 (emphasis added) ("[T]he principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained by the institution of friendly and social communities. Hence it follows, that *the first and primary end of human laws is to maintain and regulate these absolute rights of individuals.*").

[52] *Hopt v. People of the Territory of Utah*, 110 U.S. 574, 579 (1884) ("The natural life, says Blackstone, 'cannot legally be disposed of or destroyed by any individual, neither by the person himself, *nor by any other of his fellow creatures, merely upon their own authority*.' 1 Bl. Com. 133. The public has an interest in his life and liberty.") (emphasis added).

[53] "All members of the legislature, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation: 'I, …, solemnly swear (or affirm, as the case may be) that *I will support the Constitution of the United States, and the Constitution of the State of Alabama*, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God.'" Ala. Const. Article XVI, Section 279 (emphasis added).

their oath, Intervenors have enacted[54] The Human Life Protection Act to ensure that every natural person residing within the borders of Alabama is secure in all his or her fundamental rights. But State Defendants argue that Intervenors lacked any constitutional authority to enact The Human Life Protection Act because their authority was preempted by "federal law."

Given that legislators have often been able to invoke the court's jurisdiction by alleging an injury to their legislative authority and prerogatives, there should be no barrier to this Court holding that Intervenors have an interest in defending the scope of their legislative authority and their constitutional duties sufficient to intervene.[55]

Although Alabama courts have not considered intervention in this specific context, the Alabama Supreme Court has noted that "federal cases are instructive

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[54] "It is made the duty of the legislature to enact all laws necessary to give effect to the provisions of this Constitution." Ala. Const. Article IVII, Section 282.

[55] *State ex rel. Ohio Gen. Assembly v. Brunner*, 872 N.E.2d 912, 919 (2007) (holding that legislators had standing to prosecute an action seeking "to prevent nullification of their individual votes" by executive officials' refusal to treat a bill as validly enacted law); *Silver v. Pataki*, 755 N.E.2d 842, 845 (2001) (holding that a legislator had standing to challenge the constitutionality of the governor's veto power on the basis that a legislator "can maintain an action `to vindicate the effectiveness of his vote where he is alleging that the Governor has acted improperly so as to usurp or nullify that vote'" (quoting *Silver v. Pataki*, 274 A.D.2d 57, 67, 711 N.Y.S.2d 402, 410 (2000) *289 (Williams, J., dissenting))); and *Fordice v. Bryan*, 651 So.2d 998, 1003 (Miss. 1995) (holding that legislators had standing to challenge the governor's use of the veto power because the legislators' votes "were adversely affected by the Governor's vetoes"); *See also Karcher v. May,* 479 U.S. 72, 82 (1987) (legislators could intervene to defend an act passed by the New Jersey legislature); *Coleman v. Miller*, 307 U.S. 433, 438 (1939); *Yniguez v. State of Arizona*, 939 F.2d 727, 732 (9th Cir. 1991) ("[T]he Supreme Court held that state legislators who intervened in their official capacities to defend a lawsuit challenging the constitutionality of a statute" only lacked standing after they left office); *Flores v. State of Arizona*, Case No. CV-92- 596-TUC-RCC (D. Ariz.) (Order of March 15, 2006 (Dkt. Entry No. 390)) (granting legislators' motion for permissive intervention); *Powell v. Ridge*, 247 F.3d 520, 522 (3rd Cir. 2001) (granting the legislators' motion to intervene as Defendants to "articulate to the Court the unique perspective of the legislative branch of the Pennsylvania government."); *Clairton Sportsmen's Club v. Pennsylvania Turnpike Comm*., 882 F. Supp. 455, 462-463 (W.D. Pa. 1995) (permitting intervention of state legislators to submit briefs and make arguments concerning the decision to build a highway system).

because the language of our Rule 24 is 'virtually identical' to the language contained in Rule 24 of the Federal Rules of Civil Procedure. See the 'Committee Comments' to Rule 24, Ala.R.Civ.P." [56] And, the federal courts have recognized the type of interest asserted by Intervenors and even held that such could be sufficient for standing, though standing is not the issue here.[57]

In *Kennedy*, United States Senator Ted Kennedy "filed suit against the Administrator of the General Services Administration and the Chief of White House Records seeking a declaration that the Family Practice of Medicine Act (hereinafter, S. 3418) became law on December 25, 1970, and an order *requiring the appellants to publish the Act as a validly enacted law*."[58] The constitutional issue centered on the fact

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[56] *Marcum v. Ausley,* 729 So. 2d 845, 849 (Ala. 1999); *see also Alabama Federal Savings and Loan Association*, 534 So.2d at 613 (1988) (looking to federal decisions when the Court "found no reported decisions of the Alabama appellate courts dispositive of the question of intervention as it is presented in the procedural and factual posture of the instant case."); *See* Committee Comments on 1973 Adoption (stating that Ala. R. Civ. P. 24. "is virtually identical with Rule 24, F.R.C.P. The only differences are the deletions of matters not relevant to state practice." And, the federal courts have recognized the type of interest asserted by Intervenors and even held that such could be sufficient for standing. *See Kennedy v. Sampson*, 511 F.2d 430, 435 (D.C. Cir. 1974) (holding that an "individual legislator has standing to protect the effectiveness of his vote with or without the concurrence of other members of the majority."). It should be noted that under the Federal Rules of Civil Procedure "requiring standing for an applicant wishing to come in on the side of a plaintiff who has standing runs into the doctrine that Article III is satisfied so long as one party has standing. (citations omitted). Requiring standing of someone who seeks to intervene as a defendant (citations omitted) runs into the doctrine that the standing inquiry is directed at those who invoke the court's jurisdiction. *See Virginia v. Hicks,* ___ U.S. ___, 123 S.Ct. 2191, 2196-98, ___ L.Ed.2d ___ (2003)." *Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003). Intervenors are not here asserting that they would have standing if Plaintiffs' action is dismissed on one of the other three grounds asserted by State Defendants, but would agree with Plaintiffs that standing cannot be denied *because* the relief prayed for would require State Defendants to "violate federal law."

[57] *See Kennedy v. Sampson,* 511 F.2d 430, 435 (D.C. Cir. 1974) (holding that an "individual legislator has standing to protect the effectiveness of his vote with or without the concurrence of other members of the majority.").

[58] *Id.* at 432 (emphasis added).

the "President issued a memorandum of disapproval announcing that he would withhold his signature from S. 3418."[59] State Defendants took the position that the President's actions "resulted in a 'pocket veto' under article I, section 7 of the United States Constitution."[60] Senator Kennedy, "relying upon the same provision, contend[ed] that the bill became law without the President's signature at the expiration of the ten-day period following its presentation to him."[61]

In analyzing the interest that gave rise to standing being granted, the Circuit Court described the gravamen of the Writ as follows:

> [T]he legal issue turns on the validity of executive action which purports to have disapproved an Act of Congress by means of a constitutional procedure which does not permit Congress to override the disapproval. If appellants' arguments are accepted, then appellee's vote in favor of the bill in question has been nullified and appellee has no right to demand or participate in a vote to override the President's veto. Conversely, if appellee's interpretation of the veto clause is correct, then the bill became law without the President's signature. *In short, disposition of the substantive issue will determine the effectiveness vel non [or not] of appellee's actions as a legislator with respect to the legislation in question*.[62]

Likewise, in *Coleman v. Miller,* twenty of Kansas' forty state senators voted not to ratify the proposed "Child Labor Amendment" to the Federal Constitution.[63] The State's

[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.* at 433 (emphasis added).
[63] *Coleman v. Miller*, 307 U.S. 433 (1939).

Lieutenant Governor cast a deciding vote in favor of the amendment.[64] The senators who had voted against the amendment, joined by a twenty-first senator, filed a mandamus action in the Kansas Supreme Court to compel state officials to recognize that the legislature had not, in fact, ratified the amendment.[65] The Court held that the members of the legislature had a "plain, direct and adequate interest in maintaining the effectiveness of their votes" which would otherwise be deprived of all validity.[66]

To have the arguments for legislative authority herein asserted go unmade by Intervenors and yet have them foreclosed in the future by precedent from the Alabama judiciary would undoubtedly nullify Intervenors' authority and votes to secure fundamental rights to unborn children envisioned by the Ninth Amendment, protected by the right to due process of law guaranteed by the Fourteenth Amendment, and given effect by The Human Life Protection Act through the Tenth Amendment. If Intervenors allow State Defendants to persuade this Court, without their argument to the contrary, to accord to the United States Supreme Court a judicial power it does not have[67] and

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[64] *Id.*
[65] *Id.*
[66] *Id.* at 438.
[67] "Preemption is based on the Supremacy Clause, and that Clause is not an independent grant of legislative power to Congress. Instead, it simply provides 'a rule of decision.' *Armstrong v. Exceptional Child Center, Inc.,* 575 U.S. ——, ——, 135 S.Ct. 1378, 1383, 191 L.Ed.2d 471 (2015)." *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1479 (2018). By the same course of reasoning, this state-law-preemption and rule-of-decision clause did not expand the federal court's Article III judicial power and nothing in the Fourteenth Amendment did either.

has even disclaimed under the Fourteenth Amendment,[68] then "the people will have ceased to be their own rulers," and Intervenors, as duly elected representatives of the citizens of Alabama, will be culpable of having "resigned [their] government into the hands of that eminent tribunal."[69]

The presence of Intervenors in the litigation assures that the relevant questions in the case will be framed with the "necessary specificity," "contested with the necessary adverseness," and "pursued with the necessary vigor" to obtain proper judicial resolution of the constitutional challenge.[70] It will also afford Intervenors the ability to protect its interest, as a practical matter, in the present litigation. However, absent intervention by Intervenors, Intervenors' ability to protect its interest may, as a practical matter, be impaired or impeded for the reasons that follow.

3. Plaintiffs' representation of Intervenors' defense of their legislative power may not be adequate

The United States Supreme Court has long said that a party is not adequately represented by existing parties "if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal."[71] This minimal burden "implements the basic jurisprudential assumption that

[68] *Ex Parte Virginia*, 100 U.S. 339, 345 (1879) (Construing the Fourteenth Amendment: "It is not said the *judicial power* of the general government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed.").
[69] Abraham Lincoln, First Inaugural Address (March 4, 1861), in *Lincoln on the Civil War*, 93-94 (2011).
[70] *Flast v. Cohen*, 392 U.S. 83, 106 (1968).
[71] *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 (1972). The Supreme Court in *Trbovich* was speaking of Federal Rule of Civil Procedure 24, which is literally identical to Ala. R. Civ. P. 24. And the

interest of justice is best served when *all* parties with a real stake in a controversy are afforded an opportunity to be heard."[72] Here it cannot be disputed that each of Intervenors has a real stake in this controversy.

Intervenors recognize that "[t]here is a presumption of adequate representation when an existing party seeks the same objectives as the interveners."[73] But where an existing party "who purports to seek the same outcome will not make all of the prospective intervenor's arguments," that representation is said to be inadequate.[74] In addition to the foregoing, "a decision not to appeal by an original party to the action can constitute inadequate representation of another party's interest."[75]

Intervenors assert that Plaintiffs' representation of Intervenors would be inadequate. Why? Because the parties' objectives are different, Plaintiffs will not make *all* of Intervenors' arguments, and Plaintiffs might make the decision not to appeal an unfavorable decision, or to appeal an unfavorable decision on grounds other than those upon which Intervenors would be entitled to appeal.

Alabama Supreme Court has affirmed that, "the language of [Alabama's] Rule 24 is 'virtually identical' to the language contained in Rule 24 of the Federal Rules of Civil Procedure." *Marcum v. Ausley,* 729 So. 2d 845, 849 (Ala. 1999).

[72] *Hodgson v. United Mine Workers of America*, 473 F.2d 118, 130 (D.C. Cir. 1972) (emphasis added).

[73] *Magee*, 175 So. 3d at 141 (quoting *Clark v. Putnam County,* 168 F.3d 458, 461 (11th Cir.1999).

[74] *Grutter v. Bollinger*, 188 F.3d 394, 400 (6th Cir. 1999) (quoting *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997)).

[75] *Americans United for Separation of Church and State v. city of Grand Rapids*, 922 F.2d 303, 306 (6th Cir. 1990).

Plaintiffs are seeking "to protect preborn African-American children from discrimination."[76] Intervenors are seeking to protect their constitutional duty and authority to protect and defend the fundamental right to life of *all* unborn children.[77] A judgment based on equal protection as prayed for by Plaintiffs[78] is not as extensive as Intervenors' claim that their legislative duty requires and their power enables them to protect and defend the fundamental right to life of every unborn child within the borders of Alabama, regardless of membership in a protected class. Thus, Plaintiffs' focus at trial will likely be narrower, focusing on their equal protection claim, which probably will not highlight Intervenors' constitutional position. In accordance with their prayer for relief, Plaintiffs will likely introduce evidence at trial showing disparate impact in furtherance of their equal protection claim, but not evidence substantiating the findings made in The Human Life Protection Act, which distinguish it from *Roe*, *Casey*, *W. Ala. Women's Ctr. v. Williamson,* which are just some of the cases mentioned in this motion. Plaintiffs' claim probably does not depend on such proof or argument.

Intervenors have a stake in the disposition of Plaintiffs' claims beyond whether Plaintiffs have been denied equal protection under the law. If Intervenors have the constitutional authority to enact The Human Life Protection Act, for the reasons given in

[76] Complaint, ¶ 1.
[77] Act 2019-189, Ala. Acts 2019.
[78] Complaint, ¶ B.

The Human Life Protection Act's findings, then Plaintiffs' interest in life can be vindicated even if Plaintiffs' equal protection claim fails.

And finally, representation is not adequate where the proposed Intervenors "will bring to the proceedings a point of view which will enrich the record in a matter which may well establish precedent and influence public policy."[79] And, as previously stated, dismissal on State Defendants' ground that it is "prevented from stopping abortions in Alabama because of binding federal precent"[80] will definitely establish precedent and influence Intervenors' public policy decisions going forward. Intervenors will enrich the record with their viewpoints on the law and the facts. Intervenors' greater stake in the outcome of this precedent setting case puts a premium on examining their proof and perspective on the key issues that will assist the Court in its final decision in this case. No other party can provide the direct interest adequate to represent Intervenors' interests in this case.

b. Legal standard for granting a motion to intervene by permission pursuant to Ala. R. Civ. P. 24(b)(2)

An Alabama court may grant a motion to intervene as a matter of permission pursuant to Rule 24(b)(2), Ala. R. Civ. P., only where certain criteria are met. Rule 24(b)(2), Ala. R. Civ. P., sets forth those criteria. First, the application must be "timely."[81] Second, the applicant's "claim or defense and the main action" must "have a question of law or

[79] *Usery v. Brandel*, 87 F.R.D. 670, 678 (D.C.Mich., 1980).
[80] Motion to Dismiss, p. 7.
[81] Ala. R. Civ. P. 24(b).

fact in common."[82] Third, in relevant part, when "a party to an action relies for ground of claim or defense upon any statute … administered by a … state governmental officer or agency … the officer or agency … may be permitted to intervene in the action."[83] And last, the court must exercise discretion in determining "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."[84]

i. Intervenors satisfy the legal standard for intervention by permission pursuant to Ala. R. Civ. P. 24(b)(2)

1. Intervenors' application is timely

For the reasons stated hereinabove, Intervenors' application is "timely."[85]

2. Intervenors' claim and the main action have a question of law or fact in common

For the reasons stated hereinabove Intervenors' claim and the main action have a question of law or fact in common. Specifically, Plaintiffs and Intervenors agree that, according to the Fourteenth Amendment, Alabama cannot deny any natural person his or her right to life or equal protection without due process of law.

The findings in The Human Life Protection Act pertain to whether Plaintiffs have a fundamental right to life, who constitutes a "person" under the Fourteenth Amendment if the concept of law and rights guaranteed by the Ninth Amendment is used to construe that Amendment, and what duty Intervenors and State Defendants have to

[82] Ala. R. Civ. P. 24(b)(2).
[83] *Id.*
[84] *Id.*
[85] *Id.*

secure fundamental rights and enact and enforce laws that would prevent the fundamental rights of all natural persons within the borders of Alabama from being denied without *any* due process of law.

Intervenors' findings concerning the Act that would vindicate Plaintiffs' claim and proof thereon would show that Intervenors were, in fact, acting in fulfillment of their duties under the United States Constitution and Alabama Constitution, not violating federal law. The Fourteenth Amendment, by its express terms, is prescriptive when it comes to state laws that would deprive "*any* person" his or her fundamental right to life without "due process of law."

3. Plaintiffs rely on a statute, namely, The Human Life Protection Act, which permits intervention by Intervenors

Plaintiffs rely on The Human Life Protection Act.

Intervenors believe that their oath of office[86] imposes on them a solemn duty to secure to all natural persons in Alabama (1) the rights they had prior to the adoption of the United States Constitution, which were retained by them under the Ninth Amendment and are secured to them under the Fourteenth Amendment, which prohibits Alabama from denying fundamental rights without due process of law, and (2) the rights they reserved to themselves under Amendment 930 to the Alabama Constitution, which provides, in full:

[86] *See* Ala. Const., Art. XVI, § 279.

> (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.
> (c) Nothing in this constitution secures or protects a right to abortion or requires the funding of an abortion.[87]

On November 6, 2018, the People of Alabama ratified Amendment 930 to the Alabama Constitution. Article IVII, Section 282 of the Alabama Constitution reads as follows: "[i]t is made the duty of the legislature to enact all laws necessary to give effect to the provisions of this Constitution."

In the legislative findings of The Human Life Protection Act, Intervenors stated that "[o]n November 6, 2018, electors in this state approved by majority vote a constitutional amendment to the Constitution of Alabama of 1901."[88] That constitutional amendment is Amendment 930.

The "rights of unborn children" and, more specifically, the "right to life" of an unborn child, predate Amendment 930. They also predate the United States Declaration of Independence,[89] which states that "all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and

[87] Ala. Const. amend. 930.
[88] Act 2019-189, Ala. Acts 2019, Section 2(b).
[89] (US 1776).

the pursuit of Happiness." They are, as recognized by Intervenors, a "principle of natural law."[90]

Among the most fundamental of the fundamental rights is the right to human life.[91] It is not merely a privilege or immunity of citizenship, but is also among those ancient, natural, and customary rights that the people reserved to themselves at the founding.[92] Equally fundamental is the right of equal protection of the laws. Both rights belong to all natural persons, which is to say, human beings, male and female, able and disabled, born and unborn.[93] In passing The Human Life Protection Act, Intervenors found that those fundamental rights are placed in jeopardy in abortion clinics within the state.[94]

Intervenors are intervening to insure that this court does not ignore this particular aspect of Plaintiffs' Complaint[95] and sweep past the conception of law and rights guaranteed to the people and retained by them under the Ninth Amendment and how that comes into play with the powers the people of the states retained under the Tenth Amendment to have their representatives protect their fundamental rights in a

[90] Act 2019-189, Ala. Acts 2019, Section 2(d).
[91] *Glucksberg* at 714-15 ().
[92] See the Ninth and Fourteenth Amendments to the United States Constitution.
[93] *Glucksberg* at 741 (Stephens, J., concurring)("The State has an interest in preserving and fostering the benefits *that every human being* may provide to the community."); 1 William Blackstone, *Commentaries on the Laws of England*, 119, 125-26 (1765); Joshua J. Craddock, *Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?*, 40 Harv. J.L. Pub. Pol'y 539 (2017) (demonstrating that "person" in the Fourteenth Amendment includes pre-born human beings).
[94] Act 2019-189, Ala. Acts 2019, Section 3(1).
[95] Complaint, ¶ 57.

system of dual sovereigns. This assertion by Intervenors raises an issue of first impression.

4. Intervention will not unduly delay or prejudice the adjudication of the rights of the original parties

As addressed hereinabove, there has been no undue delay or prejudice to the rights of any of the original parties. In fact, some of the original parties have not yet filed an answer. It is also noteworthy that there is no alternative forum in which Intervenors can litigate to protect or redress their interests if State Defendants' relief is granted on the ground that The Human Life Protection Act is a violation of preemptive "federal law." This fact weighs heavy in favor of permissive intervention. Intervenors' interest will be finally affected by the judgment here and Intervenors should, therefore, be permitted to intervene.

CONCLUSION

The Court will be presented with conflicting views of what federal law requires and prescribes. It will be presented with conflicting views about how the Fourteenth Amendment should be interpreted in light of the Ninth Amendment. State Defendants' views on these issues would reduce the constitutional authority and legislative ability of Intervenors to protect and defend the fundamental right to life of all natural persons within the borders of Alabama and to protect other fundamental rights to liberty and property in an expanded view of substantive due process and federal judicial power. There is no doubt that their interests involve questions of law and fact common to

Plaintiffs' claim and State Defendants' claim that they "are prevented from stopping abortions in Alabama because of binding federal precedent."[96] Intervenors must and should be able to defend those interests.

For these reasons, Intervenors' Motion to Intervene should be granted.

Submitted this 11th day of December, 2020.

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[CERTIFICATE OF SERVICE ON SUBSEQUENT PAGE.]

[96] Motion to Dismiss, p. 7.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the Alabama Judicial System will be sent electronically to the registered participants as identified below and on the Notice of Electronic Filing and copies will be sent to those indicated below and as non-registered participants on the Notice of Electronic Filing.

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Filed and served on the date above written.

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APPENDIX

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Senator Jim McClendon
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Senator Del Marsh
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Senator Randy Price
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Senator David Sessions
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[END]

EXHIBIT "A"

ACT #2019-101

HB314

198038-3

By Representatives Collins, Rowe, Mooney, Wilcox, Estes, Lipscomb, Isbell, Ellis, Lee, Allen, Faust, Brown (K), Pettus, Greer, Kiel, Nordgren, Reynolds, Drake, Wood (R), Ball, Fridy, Rich, Ingram, Shiver, Wood (D), Simpson, Kitchens, Marques, Weaver, South, Faulkner, Shaver, Holmes, McMillan, Whorton, Farley, Hurst, Standridge, Crawford, Sorrell, Brown (C), Robertson, Whitt, Moore (P), Wheeler, Carns, Oliver, Garrett, Sullivan, Gaston, Blackshear, Fincher, Wingo, Hill, Ledbetter, Baker, Dismukes, Stadthagen, Poole, Clouse, McCutcheon, Shedd, Sorrells, Pringle, Harbison, Hanes and Easterbrook

RFD: Judiciary

First Read: 02-APR-19

HB314

ENROLLED, An Act,

Relating to abortion; to make abortion and attempted abortion felony offenses except in cases where abortion is necessary in order to prevent a serious health risk to the unborn child's mother; to provide that a woman who receives an abortion will not be held criminally culpable or civilly liable for receiving the abortion; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as The Alabama Human Life Protection Act.

Section 2. Legislative Findings.

(a) This state's statute criminalizing abortion, Section 13A-13-7, Code of Alabama 1975, has never been repealed. It has remained unenforceable as a result of the U.S. Supreme Court decision in Roe v. Wade, 410 U.S. 113 (1973) and its progeny, which struck down as unconstitutional a Texas statute criminalizing abortion and which effectively repealed by implication and made unenforceable all other state statutes criminalizing abortion.

(b) On November 6, 2018, electors in this state approved by a majority vote a constitutional amendment to the Constitution of Alabama of 1901 declaring and affirming the public policy of the state to recognize and support the sanctity of unborn life and the rights of unborn children. The amendment made it clear that the Constitution of Alabama of 1901 does not include a right to an abortion or require the funding of abortions using public funds.

(c) In present state law, Section 13A-6-1, Code of Alabama 1975, defines a person for homicide purposes to include an unborn child in utero at any stage of development, regardless of viability.

(d) In the United States Declaration of Independence, the principle of natural law that "all men are created equal" was articulated. The self-evident truth found in natural law, that all human beings are equal from creation, was at least one of the bases for the anti-slavery movement, the women's suffrage movement, the Nuremberg war crimes trials, and the American civil rights movement. If those movements had not been able to appeal to the truth of universal human equality, they could not have been successful.

(e) Abortion advocates speak to women's rights, but they ignore the unborn child, while medical science has increasingly recognized the humanity of the unborn child.

(f) Recent medical advances prove a baby's heart starts to beat at around six weeks. At about eight weeks, the heartbeat can be heard through an ultrasound examination. A fetal Doppler can detect a fetal heartbeat as early as 10 weeks.

(g) Ultrasound imaging shows the developing child in utero.

(h) As early as six weeks after fertilization, fetal photography shows the clear development of a human being. The Alabama Department of Public Health publication "Did You Know . . ." demonstrates through actual pictures at two-week intervals throughout the entire pregnancy the clear images of a developing human being.

(i) It is estimated that 6,000,000 Jewish people were murdered in German concentration camps during World War II; 3,000,000 people were executed by Joseph Stalin's regime in Soviet gulags; 2,500,000 people were murdered during the Chinese "Great Leap Forward" in 1958; 1,500,000 to 3,000,000 people were murdered by the Khmer Rouge in Cambodia during the 1970s; and approximately 1,000,000 people were murdered during the Rwandan genocide in 1994. All of these are widely acknowledged to have been crimes against humanity. By comparison, more than 50 million babies have been aborted in the United States since the Roe decision in 1973, more than three times the number who were killed in German death camps,

Chinese purges, Stalin's gulags, Cambodian killing fields, and the Rwandan genocide combined.

(j) The cases of Roe v. Wade and its progeny have engendered much civil litigation and legislative attempts to reign in so called abortion rights. Roe v. Wade attempted to define when abortion of an unborn child would be legal. Judges and legal scholars have disagreed and dissented with its finding.

Section 3. As used in this act, the following terms shall have the following meanings:

(1) ABORTION. The use or prescription of any instrument, medicine, drug, or any other substance or device with the intent to terminate the pregnancy of a woman known to be pregnant with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child. The term does not include these activities if done with the intent to save the life or preserve the health of an unborn child, remove a dead unborn child, to deliver the unborn child prematurely to avoid a serious health risk to the unborn child's mother, or to preserve the health of her unborn child. The term does not include a procedure or act to terminate the pregnancy of a woman with an ectopic pregnancy, nor does it include the procedure or act to terminate the pregnancy of a woman when the unborn child has a lethal anomaly.

(2) ECTOPIC PREGNANCY. Any pregnancy resulting from either a fertilized egg that has implanted or attached outside the uterus or a fertilized egg implanted inside the cornu of the uterus.

(3) LETHAL ANOMALY. A condition from which an unborn child would die after birth or shortly thereafter or be stillborn.

(4) MEDICAL EMERGENCY. A condition which, in reasonable medical judgment, so complicates the medical condition of the pregnant woman that her pregnancy must be terminated to avoid a serious health risk as defined in this act.

(5) PHYSICIAN. A person licensed to practice medicine and surgery or osteopathic medicine and surgery in Alabama.

(6) SERIOUS HEALTH RISK TO THE UNBORN CHILD'S MOTHER. In reasonable medical judgment, the child's mother has a condition that so complicates her medical condition that it necessitates the termination of her pregnancy to avert her death or to avert serious risk of substantial physical impairment of a major bodily function. This term does not include a condition based on a claim that the woman is suffering from an emotional condition or a mental illness which will cause her to engage in conduct that intends to result in her death or the death of her unborn child. However,

the condition may exist if a second physician who is licensed in Alabama as a psychiatrist, with a minimum of three years of clinical experience, examines the woman and documents that the woman has a diagnosed serious mental illness and because of it, there is reasonable medical judgment that she will engage in conduct that could result in her death or the death of her unborn child. If the mental health diagnosis and likelihood of conduct is confirmed as provided in this act, and it is determined that a termination of her pregnancy is medically necessary to avoid the conduct, the termination may be performed and shall be only performed by a physician licensed in Alabama in a hospital as defined in the Alabama Administrative Code and to which he or she has admitting privileges.

(7) UNBORN CHILD, CHILD or PERSON. A human being, specifically including an unborn child in utero at any stage of development, regardless of viability.

(8) WOMAN. A female human being, whether or not she has reached the age of majority.

Section 4. (a) It shall be unlawful for any person to intentionally perform or attempt to perform an abortion except as provided for by subsection (b).

(b) An abortion shall be permitted if an attending physician licensed in Alabama determines that an abortion is necessary in order to prevent a serious health risk to the

unborn child's mother. Except in the case of a medical emergency as defined herein, the physician's determination shall be confirmed in writing by a second physician licensed in Alabama. The confirmation shall occur within 180 days after the abortion is completed and shall be prima facie evidence for a permitted abortion.

Section 5. No woman upon whom an abortion is performed or attempted to be performed shall be criminally or civilly liable. Furthermore, no physician confirming the serious health risk to the child's mother shall be criminally or civilly liable for those actions.

Section 6. (a) An abortion performed in violation of this act is a Class A felony.

(b) An attempted abortion performed in violation of this act is a Class C felony.

Section 7. This act shall not apply to a physician licensed in Alabama performing a termination of a pregnancy or assisting in performing a termination of a pregnancy due to a medical emergency as defined by this act.

Section 8. The construction of existing statutes and regulations that regulate or recognize abortion in Alabama that are in conflict with or antagonistic to this act shall be repealed as null and void and shall recognize the prohibition of abortion as provided in this act. If this act is challenged and enjoined pending a final judicial decision, the existing

statutes and regulations that regulate or recognize abortion shall remain in effect during that time.

Section 9. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 10. This act shall become effective six months following its passage and approval by the Governor, or its otherwise becoming law.

HB314

Mac McCutcheon

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 30-APR-19.

Jeff Woodard
Clerk

Senate 14-MAY-19 Passed

APPROVED 5-15-19

TIME 4:30 pm

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2019-189
Bill Num...: H-314

Recv'd 05/16/19 09:18amSL

SPONSORS

Clerk

HOUSE ACTION

DATE: 4-2 20 19
RD 1 RFD Judy

REPORT OF STANDING COMMITTEE

This bill having been referred by the House to its standing committee on Health was acted upon by such committee in session, and returned therefrom to the House with the recommendation that it be Passed, w/amend(s)_____ w/sub_____
this 17th day of April, 20 19
Paul D. Fee, Chairperson

DATE: 4-18 20 19
RF RD 2 CAL

DATE: 4-3 20 19
RE-REFERRED ✓ RE-COMMITTED
Committee HLTH

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill,
HB 314
YEAS 72 NAYS 26

JEFF WOODARD,

RECONSIDERED YEAS NAYS

SENATE ACTION

DATE: 5-2 20 19
RD 1 RFD Judy

This Bill was referred to the Standing Committee of the Senate on Judy
and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report
w/amd(s) 1 w/sub_____ w/eng sub_____
by a vote of
yeas 7 nays 2 abstain 0
this 8 day of May 20 19
Carl Ward, Chairperson

DATE: 5-8 20 19
RF RD 2 ✓ CAL

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill,
HB _____
YEAS 32 NAYS 2

PATRICK HARRIS,
Secretary

DATE: 5-9 RD 3 at length
PASSED ✓ PASSED AS AMENDED
YEAS 32 NAYS 2
And was ordered returned forthwith to the House.

PATRICK HARRIS,
Secretary

DATE: 20
INDEFINITELY POSTPONED YEAS NAYS

DATE: 20

DOCUMENT 47