PARKER, Justice (concurring specially).

I concur fully with the Court's rationale that unborn children are persons entitled to the full and equal protection of the law. I write specially to expound upon the principles presented in the main opinion and to note the continued legal anomaly and logical fallacy that is Roe v. Wade, 410 U.S. 113 (1973); I urge the United States Supreme Court to overrule this increasingly isolated exception to the rights of unborn children.

A national survey of the laws of the states demonstrates that unborn children have numerous rights that all people enjoy. As I stated in Ex parte Ankrom, 152 So. 3d 397, 429 (Ala. 2013) (Parker, J., concurring specially): "[T]he only major area in which unborn children are denied legal protection is abortion, and that denial is only because of the dictates of Roe [v. Wade, 410 U.S. 113 (1973)]." In Roe, the United States Supreme Court, without historical or constitutional support,[1] carved out an exception to the rights of unborn children and prohibited states from recognizing an unborn child's inalienable right to life[2] when that right

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[1]See Hamilton v. Scott, 97 So. 3d 728, 737-47 (Ala. 2012) (Parker, J., concurring specially).

[2]See Washington v. Glucksberg, 521 U.S. 702, 714 (1997) (quoting Martin v. Commonwealth, 184 Va. 1009, 1018-19, 37

conflicts with a woman's "right" to abortion. The judicially created exception of Roe is an aberration to the natural law and the positive and common law of the states. Of the numerous rights recognized in unborn children, an unborn child's fundamental, inalienable, God-given right to life is the only right the states are prohibited from ensuring for the unborn child; the isolated Roe exception, which is increasingly in conflict with the numerous laws of the states recognizing the rights of unborn children, must be overruled. As states like Alabama continue to provide greater and more consistent protection for the dignity of the lives of unborn children, the Roe exception is a stark legal and logical contrast that grows ever more alienated from and adverse to the legal fabric of America. See Hicks v. State, 153 So. 3d 53, 72-84 (Ala. 2014) (Parker, J., concurring specially) (noting that abortion jurisprudence violates logic's law of noncontradiction).

## I. Baby Doe is a Person Under the Brody Act, § 13A-6-1(a)(3), Ala. Code 1975

The main opinion is this Court's most recent declaration

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S.E.2d 43, 47 (1946)) (recognizing that "'[t]he right to life and to personal security is not only sacred in the estimation of the common law, but it is inalienable'").

of the obvious truth that unborn children are people and thus entitled to the full protection of the law. In 2006 the Alabama Legislature passed the Brody Act to expressly require that the term "PERSON ... when referring to the victim of a criminal homicide or assault, means a human being, including an unborn child in utero at any stage of development, regardless of viability." § 13A-6-1(a)(3), Ala. Code 1975 (emphasis added). Today the Court duly rejects Jessie Livell Phillips's arguments that the unborn child he murdered, Baby Doe, was not a "person" under Alabama law.

As a matter of first impression, Phillips argues to this Court that his unborn child was not a "person" within the meaning of the capital-murder statute and, thus, that his sentence of death is contrary to the Eighth Amendment to the United States Constitution. The Legislature passed the Brody Act 12 years ago with the expressed intent of addressing just the sort of double-murder of which Phillips was convicted: namely, "[t]o amend Section 13A-6-1 of the Code of Alabama 1975, relating to the definition of person for the purpose of criminal homicide or assaults; to define person to include an unborn child; ... [and] to name the bill the 'Brody Act' in memory of the unborn son of Brandy Parker, whose death

occurred when she was eight and one-half months pregnant ...." Act No. 2006-419, Ala. Acts 2006 (emphasis added). This Court has repeatedly held that the Brody Act "'constitutes clear legislative intent to protect even nonviable fetuses from homicidal acts.'" Stinnett v. Kennedy, 232 So. 3d 202, 212 (Ala. 2016) (quoting Mack v. Carmack, 79 So. 3d 597, 610 (Ala. 2011)). In Mack v. Carmack, we rejected the viability standard of Roe and cited the Brody Act's protection of unborn children, "regardless of viability, as a justification for our holding that the Wrongful Death Act ... permits a cause of action for the death of a previable fetus." 232 So. 3d at 214. We reaffirmed Mack one year later in Hamilton v. Scott, 97 So. 3d 728 (Ala. 2012), and again in Stinnett, supra, in 2016.

Nevertheless, Phillips argues that, despite the Brody Act, Baby Doe did not qualify as a "person" for purposes of the capital-murder statute. The main opinion quotes approvingly from the opinion of the Court of Criminal Appeals, which relied in part on the Brody Act:

> "Indeed, contrary to Phillips's assertion, a simple reading of the capital-murder statute plainly and unambiguously makes the murder of 'two or more persons' -- when one of the victims is an unborn child -- a capital offense because the capital-murder statute expressly incorporates the

> intentional-murder statute codified in § 13A-6-2(a)(1), Ala. Code 1975 -- a statute that, in turn, uses the term 'person' as defined in § 13A-6-1(a)(3), Ala. Code 1975, which includes an unborn child as a person.
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> "....
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> "Because an 'unborn child' is a 'person' under the intentional-murder statute and because the intentional-murder statute is expressly incorporated into the capital-murder statute to define what constitutes a 'murder,' an 'unborn child' is definitionally a 'person' under § 13A-5-40(a)(10), Ala. Code 1975...."

Phillips v. State, [Ms. CR-12-0197, Dec. 18, 2015] ___ So. 3d ___, ____ (Ala. Crim. App. 2015) (emphasis added). The Court today, as did the Court of Criminal Appeals, holds that an unborn child is a "person" for purposes of intentional murder and capital murder -- declining Phillips's invitation to ignore the plain meaning of the Brody Act, which was enacted by the Legislature to protect unborn children.

Phillips also argues that the trial court erred in commenting in its amended sentencing order that "the policy of this State has recognized an unborn baby to be a life worthy of respect and protection." Again citing the Brody Act, the main opinion states that the trial court was correct in stating that unborn babies are worthy of respect and protection: "[U]nder the criminal laws of the State of

Alabama, the value of the life of an unborn child is no less than the value of the lives of other persons." ___ So. 3d at ___ (emphasis added). Indeed, in another criminal-law context, we have repeatedly held that, "by its plain meaning, the word 'child' in the chemical-endangerment statute[, § 26-15-3.2(a)(1), Ala. Code 1975,] includes an unborn child, and, therefore, the statute furthers the State's interest in protecting the life of children from the earliest stages of their development." Hicks, 153 So. 3d at 66. See also Ankrom, supra. In the present case, the trial court was merely echoing what the Legislature has made express: "The public policy of the State of Alabama is to protect life, born, and unborn." § 26-22-1(a), Ala. Code 1975.

Phillips challenges his sentence under the Eighth Amendment to the United States Constitution because, he claims, he is the only person in the United States on death row where the basis of the capital offense is that he killed a woman who was in the first trimester of pregnancy and the unborn child also died. The main opinion astutely notes that Phillips's crimes were capital not because he killed a pregnant woman but because he killed two persons. In addressing Phillips's argument that his sentence is

disproportionate to sentences in similar cases, citing several cases decided before the Legislature adopted the Brody Act, the main opinion states that the significance of the Brody Act's amendment of the Criminal Code was in "[r]ecognizing the personhood of an unborn child ... '... at any stage of development, regardless of viability.'" ___ So. 3d at ___ (quoting § 13A-6-1(a)(3), Ala. Code 1975). I further note that, to the extent Phillips's argument implies that the young age of his unborn child (six to eight weeks) somehow lessens the child's value as a person, such an assertion is entirely unconvincing in light of the natural law, Alabama law, and this Court's numerous recent decisions "consistently recognizing that an unborn child is a human being from the earliest stage of development and thus possesses the same right to life as a born person." Hicks, 153 So. 3d at 73-74 (Parker, J., concurring specially). Over and over, this Court has acknowledged the equal personhood of unborn life, regardless of gestational age, from Mack and Hamilton and Stinnett in the civil-law context to Ankrom and Hicks in the criminal-law context. Over and over, this Court has rightly rejected "the arbitrary and illogical nature of the viability

rule."[3] Mack, 79 So. 3d at 610. Simply put, the viability rule is no longer viable; Alabama no longer relies on it in any context other than when required to do so in the abortion context.[4] Phillips's apparent attempt to cynically reanimate

[3]The viability rule was baseless, incoherent, and arbitrary when Roe was decided and has aged poorly:

> "Since Roe was decided in 1973, advances in medical and scientific technology have greatly expanded our knowledge of prenatal life. The development of ultrasound technology has enhanced medical and public understanding, allowing us to watch the growth and development of the unborn child in a way previous generations could never have imagined. Similarly, advances in genetics and related fields make clear that a new and unique human being is formed at the moment of conception, when two cells, incapable of independent life, merge to form a single, individual human entity. Of course, that new life is not yet mature -- growth and development are necessary before that life can survive independently -- but it is nonetheless human life. And there has been a broad legal consensus in America, even before Roe, that the life of a human being begins at conception. An unborn child is a unique and individual human being from conception, and, therefore, he or she is entitled to the full protection of law at every stage of development."

Hamilton, 97 So. 3d at 746–47 (Parker, J., concurring specially) (footnotes omitted; emphasis added).

[4]In Mack in 2012, this Court overruled two previous cases, Lollar v. Tankersley, 613 So. 2d 1249 (Ala. 1993), and Gentry v. Gilmore, 613 So. 2d 1241 (Ala. 1993), that held that no cause of action for wrongful death existed for the death of a previable fetus. The Mack opinion thoroughly demonstrated that, even at the time Lollar and Gentry were decided, "the viability rule already had been undermined in this State by this Court's reasoning in its earlier decisions in Wolfe [v.

the viability standard (or some other arbitrary

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Isbell, 291 Ala. 327, 280 So. 2d 758 (1973),] and Eich [v. Town of Gulf Shores, 293 Ala. 95, 300 So. 2d 354 (1974),]" by commentators who "had heavily criticized the viability rule," and by changes in the nationwide legal landscape, including "some jurisdictions [that] have recognized the arbitrary and illogical nature of the viability rule." 79 So. 3d at 610. We conceded in Mack, however, that, "at the time Lollar and Gentry were decided, there remained one significant factor that provided some support for the viability rule: Alabama's homicide statutes applied only to persons 'who had been born and [were] alive at the time of the homicidal act.' § 13A-6-1(2), Ala. Code 1975." Id. The Brody Act's change of that law to protect all unborn children "at any stage of development, regardless of viability," § 13A-6-1(a)(3), Ala. Code 1975, removed the last vestige of legal support for the viability rule in Alabama. "After Mack and Hamilton, this Court continued to reject the use of the viability standard in contexts beyond wrongful death" in both civil and criminal cases. Stinnett, 232 So. 3d at 222 (Parker, J., concurring specially). In Ankrom in 2013 (reaffirmed in Hicks in 2014), we held that all unborn children have the protection of the chemical-endangerment statute and rejected any limitation of the statute to only viable unborn children as "inconsistent with the plain meaning of the word 'child' and with the laws of this State." 152 So. 3d at 419. In Stinnett in 2016, we rejected the argument that a plaintiff in a wrongful-death action had to prove "future viability [of an unborn child] in order to establish the element of proximate cause" because such a rule "would effectively reimpose the viability rule." 232 So. 3d at 218. Such a proximate-cause inquiry was inapplicable "[i]n light of the legislative recognition that a 'person' includes an 'unborn child in utero at any stage of development, regardless of viability.'" Id. (quoting the Brody Act). Today, this Court, by applying Alabama's capital-murder statutes to protect equally the unborn and the born, yet again reaffirms that the Brody Act meant what it said in recognizing the personhood of the unborn "at any stage of development" or gestation. If after Mack there remained any life for the viability rule in Alabama law outside the abortion context, the Court's opinion today should confirm that the viability rule is dead and buried.

gestational-age standard) to his benefit and to the detriment of Baby Doe's personhood is justly denied.

A person is a person, regardless of age, physical development, or location. Baby Doe had just as much a right to life as did Erica Phillips. Phillips was sentenced to death for the murder of two persons; Erica and Baby Doe were equally persons.

## II. State Laws Increasingly Protect the Rights of Unborn Children

The Court's decision today is the latest example of a state affording the protections of the law to unborn children. However, Alabama is not the only state that recognizes rights in unborn children or affords unborn children the protections of the law. I have written before that "[u]nborn children, whether they have reached the ability to survive outside their mother's womb or not, are human beings and thus persons entitled to the protections of the law -- both civil and criminal." Stinnett, 232 So. 3d at 224 (Parker, J., concurring specially). In Ankrom, a decision released more than five years ago, I wrote specially to, in part, summarize five areas of the law that "recognize unborn children as persons with legally enforceable rights": criminal law, tort

law, guardianship law, health-care law, and property law. Ankrom, 152 So. 3d at 421 (Parker, J., concurring specially). Today, I provide a review and an updated survey of those areas of the law, and I also include a new survey concerning family law.

A. Criminal Law

In my special concurrence in Ankrom, I discussed "three aspects of criminal law where the states have increasingly protected fetal life":

> "[F]irst, criminalizing fetal homicide; second, making the pregnancy of a homicide victim an aggravating factor that can lead to the imposition of the death penalty; and, third, prohibiting the execution of pregnant criminals.
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> "A. Fetal-Homicide Statutes
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> "In a strong majority of states, killing an unborn child is criminal homicide unless it occurs as the result of a medical abortion. The majority of states prohibit any killing of an unborn child, other than a medical abortion at the mother's request, regardless of gestational age. However, some states limit the applicability of homicide statutes based on the gestational age of the fetus. The most common age requirements are viability, which is that portion of the pregnancy where the unborn child is capable of surviving birth and living outside the womb, and quickening, which is the point during the pregnancy when the pregnant woman first notices the movements of her unborn child. A few states have created other age requirements.
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> "B. Penalty-Enhancement Statutes

> "Seven states specifically provide that the murder of a pregnant woman is an aggravating factor that may justify the imposition of the death penalty. In nine other states, the murder of a pregnant woman and her unborn child can lead to the application of the death penalty under statutes that allow for imposing the death penalty where a defendant murders more than one person in a single incident. And in Florida, a killing that would be capital murder if the pregnant woman died is capital murder if the mother survives but her unborn child dies.
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> "C. Restrictions on Imposition of the Death Penalty
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> "Of the 33 states in which the death penalty is authorized by law, at least 23 states have statutes prohibiting the execution of a pregnant woman. If a pregnant woman is sentenced to death, the woman's sentence is suspended, permitting the unborn child to develop and be born, thus protecting that unborn child's life."

Ankrom, 152 So. 3d at 423-25 (Parker, J., concurring specially) (footnotes omitted).[5] Criminal-law statutes like Alabama's Brody Act, penalty-enhancement statutes, and restrictions on capital punishment for pregnant women continue to protect unborn children in a strong majority of states. Since Ankrom was released, three states have amended their

[5]The omitted footnotes include citations to authority from states throughout the nation demonstrating the extensive protections afforded unborn children. I have omitted those footnotes here simply for the ease of the reader. I have also omitted similar footnotes from other quoted portions of my special concurrence in Ankrom.

fetal-homicide statutes to remove any post-viability or gestational-age limitation, broadening their protection to all unborn children at any stage of development.[6] Penalty enhancements for killing a pregnant woman and restrictions on the imposition of the death penalty on pregnant women remain largely unchanged.[7]

One new area developing in the law is that states are affording unborn children protection by allowing others to defend them through the use of force in order to neutralize a threat against the unborn child. Currently, three states allow the use of force to defend an unborn child; two of those

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[6]Florida and Indiana have each abandoned the viability standard as a threshold for criminal liability, while Arkansas has abandoned the 12-week gestation standard as a threshold for criminal liability. See Ark. Code Ann. § 5-1-102(13)(B)(i)(a) and (b) (2018) (cross-referencing homicide offenses); Fla. Stat. § 775.021(5)(e) (2018) (defining "unborn child" as "a member of the species Homo sapiens, at any stage of development, who is carried in the womb"), § 782.09 (2018) (killing of unborn child by injury to mother), and § 782.071 (2018) (vehicular homicide); and Ind. Code § 35-42-1-6 (2018) (feticide) (see also Ind. Code § 35-42-1-1(4) (2018) (murder), § 35-42-1-3(a)(2) (2018) (voluntary manslaughter), and § 35-42-1-4 (2018) (involuntary manslaughter)).

[7]Since Ankrom was released, Delaware's death-penalty statute has been ruled unconstitutional, Rauf v. State, 145 A.3d 430, 433 (Del. 2016), and Maryland has abolished its death penalty altogether. Md. Code Ann., Art. 27, §§ 71-79 (repealed). Because Maryland had protected pregnant women from being executed, the total number of states that prohibit execution of a pregnant woman has dropped to 22.

states have recognized that greater force may be necessary to protect the unborn child than is necessary to protect the mother.[8]

B. Tort Law

In two primary areas, "[t]ort law recognizes the humanity of unborn children by permitting actions to recover damages for prenatal injury and for prenatal wrongful death." Ankrom, 152 So. 3d at 425 (Parker, J., concurring specially).

"A. Prenatal Injuries

> "Thirty states permit recovery of damages for nonfatal prenatal injuries, regardless of the gestational age of the unborn child at the time the child suffered those injuries. Seventeen other states and the District of Columbia permit an action to recover damages for prenatal injuries when those injuries occur after viability, but have not determined whether an action may be brought for injuries occurring before viability.

"B. Wrongful Death

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[8]See Mo. Rev. Stat. § 563.031(2)(1) (2018) (use of force in defense of persons); Holland v. State, 481 S.W.3d 706, 711 (Tex. App. 2015) (concluding that the lack of instruction was prejudicial because "the matters of provocation and a duty to retreat that may have been attributed to the pregnant mother would not be attributable to the unborn child. Furthermore, the jury might have determined that greater force was necessary to protect the unborn child than was necessary to protect the pregnant mother"); People v. Kurr, 253 Mich. App. 317, 323, 328, 654 N.W.2d 651, 655, 657 (2002) (holding that a mother may use deadly force to protect her unborn child, viable or nonviable, even if she does not fear for her own life).

> "Forty states and the District of Columbia permit recovery of damages for the wrongful death of an unborn child when post-viability injuries to that child cause its death before birth. See Hamilton v. Scott, 97 So. 3d at 737 (Parker, J., concurring specially, joined by Stuart, Bolin, and Wise, JJ.). Of these states, 2 also allow recovery in any case where the child dies after quickening even if it is not yet viable, and 11 states allow recovery regardless of the stage of pregnancy when the injury and death occur."

Ankrom, 152 So. 3d at 425-28 (Parker, J., concurring specially) (footnotes omitted). Since Ankrom was released, Arkansas has joined those states that allow a wrongful-death action regardless of gestational age,[9] increasing the overall number of states to 12.

C. Guardianship Law

> "All states -- by statute, rule, or precedent -- permit a court to appoint a guardian ad litem to represent the interests of an unborn child in various matters including estates and trusts."

Ankrom, 152 So. 3d at 428 (Parker, J., concurring specially) (footnote omitted). Every state continues to permit courts to appoint guardians ad litem for unborn children.[10]

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[9]Ark. Code Ann. § 16-62-102(a)(1) (2018) (adopting the criminal-law definition of "unborn child in § 5-1-102," which is "offspring of human beings from conception until birth").

[10]In addition to the sources cited in footnote 27 of my special concurrence in Ankrom, 152 So. 3d at 428, see Alaska Stat. § 13.06.120(a)(5) (2017); Mass. Gen. Laws ch. 203E § 305(a) (2018); Minn. Stat. §§ 501C.0303-501C.0305 (2018) (trust representative for unborn), § 524.1-403(4) (2018)

D. Health-Care Law

> "Every state permits competent adults to execute advance directives, including living wills and durable powers of attorney for health care. These documents describe the types of health care the author wishes to receive or not receive if he or she is unable to make decisions concerning his or her health care. With a few limited exceptions, however, most states prohibit the withdrawal or withholding of life-sustaining treatment from a pregnant woman, regardless of her advance directive. Similarly, those states generally prohibit an agent acting under a health-care power of attorney from authorizing an abortion."

Ankrom, 152 So. 3d at 429 (Parker, J., concurring specially) (footnotes omitted). As when Ankrom was released, the majority of states do not allow the withdrawal or withholding of life-sustaining treatment from a pregnant woman, even if contrary to her advance directive.[11] The number of states that prohibit an agent from authorizing an abortion while acting under a heath-care power of attorney has remained constant.

E. Property Law

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(guardian ad litem in probate matters); Mont. Code Ann. § 72-38-305 (2017) (appointment of representative); N.M. Stat. Ann. §§ 45-1-403.5 (2018) (appointment-of-representative provision in the Probate Code) and 46A-3-305 (2018) (appointment-of-representative provision in the Uniform Trust Code); N.C. Gen. Stat. § 36C-3-305 (2018); Pennsylvania: Rule 5.5(a), Orphans' Court Rules; 33 R.I. Gen. Laws § 33-22-17 (2018); S.D. Codified Laws §§ 55-18-9 and 55-18-19 (2018); and Va. Code Ann. § 64.2-718 (2018).

[11]Connecticut repealed its statute, Conn. Gen. Stat. § 19a-574. See 2018 Conn. Legis. Serv. P.A. 18-11 (2018).

As I explained in Ankrom, "[f]or centuries, the law of property has recognized that unborn children are persons with rights." 152 So. 3d at 422 (Parker, J., concurring specially).

> "For example, if a father (or, in some states, a close relative) died before his child was born, that child would inherit from the father as if he or she had already been born at the time the father died. Similarly, if a will failed to provide for the possibility of a child born after the execution of the will and a child was born, the omitted child could, in many cases, receive a share in the estate equal in value to what he or she would have received if the testator had died intestate or a share equal in value to that provided to children named in the will. Some states apply a similar rule to ownership of future interests in land, as well."

Ankrom, 152 So. 3d at 422-23 (Parker, J., concurring specially) (footnotes omitted). Since Ankrom was released, at least three states have repealed and replaced provisions for posthumous children, continuing to ensure that children in utero at the time of the death of a father (or other relative) receive an inheritance or a share along with the children named in the will.[12] In a similar context, one state court

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[12]See Or. Rev. Stat. § 112.077(3) (2018) ("A person conceived before the death of the decedent and born alive thereafter inherits as though the person was a child of the decedent and alive at the time of the death of the decedent.") (repealing Or. Rev. Stat. § 112.075); Tex. Est. Code §§ 255.051 to 255.056 (2017) (relating to succession by a pretermitted child). See also Me. Rev. Stat. Ann. tit. 18-A,

found that an unborn great-grandchild was "living" at the time of the grantor's death and was entitled to take under a living trust.[13] Recognizing property rights for children conceived through nontraditional methods, at least four states have amended their statutes to provide protection for children posthumously conceived by assisted-reproductive technology.[14]

F. Family Law

One area of the law that I did not address in my special concurrence in Ankrom was family law. Eight states have extended to unborn children various aspects of family law designed to protect children,[15] two of which have allowed

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§ 2-302 (2018) (repeal effective July 1, 2019, pursuant to adoption of Uniform Probate Code in Maine Laws 2017, c. 402, § A-1).

[13]See In re David Wolfenson 1999 Trust, 56 N.Y.S.3d 848, 854, 57 Misc. 3d 362, 369 (Sur. 2017) (concluding that the great-grandchild in utero was "a great-grandchild who was 'living' at the time of David's death within the meaning of the statute(s) and case law, and within the intendment of the provisions of Articles THREE and FOUR of the Trust, and that she is entitled to take under those provisions" (capitalization in original)).

[14]See 755 Ill. Comp. Stat. § 5/2-3 (2018); Iowa Code § 633.267 (2018); Or. Rev. Stat. § 112.405 (2018); and Va. Code Ann. § 64.2-204 (2018).

[15]Wis. Stat. § 48.981 (2018) (Abused or Neglected Children and Abused Unborn Children); In re A.L.C.M., 239 W. Va. 382, 392, 801 S.E.2d 260, 270 (2017); Sciascia v. Sciascia, No. 11FD1867 (Tex. Dist. Ct. 2011); In re Benjamin M., 310 S.W.3d 844, 850-51 (Tenn. Ct. App. 2009); In re Unborn Child, 263

protective orders to be issued for the protection of an unborn child.[16] Five states have considered unborn children "victims of abuse or neglect."[17] As one New York court put it decades

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N.Y.S.2d 366, 179 Misc. 2d 1 (Fam. Ct. 1998); In re Fathima Ashanti K.J., 558 N.Y.S.2d 447, 449, 147 Misc. 2d 551, 555 (Fam. Ct. 1990); In re Ruiz, 27 Ohio Misc. 2d 31, 34-35, 500 N.E.2d 935, 937-39 (Ct. Com. Pl. 1986); Gloria C. v. William C., 476 N.Y.S.2d 991, 998, 124 Misc. 2d 313, 325 (Fam. Ct. 1984); Raleigh Fitkin-Paul Morgan Mem'l Hosp. v. Anderson, 42 N.J. 421 (1964) (compelling a woman, over her religious objection, to have a blood transfusion to save her unborn child's life); Hoener v. Bertinato, 67 N.J. Supp. 517 (Juv. Ct. 1961) (same); and Kyne v. Kyne, 38 Cal. App. 2d 122, 127, 100 P.2d 806, 809 (1940) (unborn child was entitled to his father's support).

[16]See Sciascia v. Sciascia, No. 11FD1867 (Tex. Dist. Ct. 2011) (issuing a protective order for a mother, unborn child, and born children); Gloria C. v. William C., 476 N.Y.S.2d 991, 998, 124 Misc. 2d 313, 325 (Fam. Ct. 1984) ("This court finds that birth of the child is not a condition precedent to enforcement of an order of protection issued on behalf of the fetus.").

[17]See Wis. Stat. § 48.981 (Abused or Neglected Children and Abused Unborn Children); In re A.L.C.M., 239 W. Va. 382, 392, 801 S.E.2d 260, 270 (2017) (holding that a child born with illegal drugs in his or her system was abused and/or neglected under the West Virginia Child Welfare Act); In re Benjamin M., 310 S.W.3d 844, 850 (Tenn. Ct. App. 2009) ("[W]e hold that the statutory language defining severe child abuse clearly reflects an intent that actions before a child is born can constitute abuse to a child that is born injured by those actions."); In re Unborn Child, 683 N.Y.S.2d 366, 370, 179 Misc. 2d 1, 8 (Fam. Ct. 1998) ("In the case at bar, it would be incongruous to imagine the Family Court Act's clear purpose being anything other than to protect children, including unborn children, from harm."); In re Fathima Ashanti K.J., 558 N.Y.S.2d 447, 449, 147 Misc. 2d 551, 555 (Fam. Ct. 1990) (interpreting child-abuse and neglect statutes to include unborn infant born with a positive toxicology report); In re

ago:

> "Interpreting our child abuse and neglect statutes to include the unborn would be consistent with medical and scientific advances to treat the fetus while still in the mother's womb.
>
> "It has been articulated that the unborn child's most vital sources of protection are tort and child abuse laws so that 'when parents fail to protect their unborn child the state may employ these substantive provision[s] ... to intervene on behalf of the fetus.... Thus the unborn child possesses a right to a gestation undisturbed by wrongful injury and the right to be born with a sound mind and body free from parentally inflicted abuse or neglect.'"

In re Fathima Ashanti K.J., 558 N.Y.S.2d 447, 449, 147 Misc. 2d 551, 555 (Fam. Ct. 1990) (quoting John E.B. Myers, Abuse and Neglect of the Unborn: Can the State Intervene?, 23 Duq. L. Rev. 1, 60 (1984)).

Based on the national survey I conducted for my special writing in Ankrom and that I update today, it is apparent that the laws of this nation increasingly recognize unborn children as persons entitled to the protections of the law, except where prohibited by the Roe exception.

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Ruiz, 27 Ohio Misc. 2d 31, 35, 500 N.E.2d 935, 939 (Ct. Com. Pl. 1986) (in finding that a viable unborn child had been abused based on the mother's prenatal conduct, the court stated: "[T]his court is in agreement with its sister courts in holding that a child does have a right to begin life with a sound mind and body ...."); and Kyne v. Kyne, 38 Cal. App. 2d 122, 127, 100 P.2d 806, 809 (1940).

III. Roe v. Wade is Contrary to the Laws of the States

Yet, in spite of voluminous state laws recognizing that the lives of unborn children are increasingly entitled to full legal protection, the isolated Roe exception stubbornly endures. Based on the Roe exception, "the states are forbidden to protect unborn children only in ways that conflict with a woman's 'right'" to abortion. Hamilton v. Scott, 97 So. 3d at 740 (Parker, J., concurring specially)(emphasis added). However, "Roe does not prohibit states from protecting unborn human lives." Id. In fact, "in [Planned Parenthood v.] Casey[, 505 U.S. 833 (1992)], the Supreme Court acknowledged that 'the State has legitimate interests from the outset of the pregnancy' in protecting the unborn child, 505 U.S. at 846, and a 'substantial state interest in potential life throughout pregnancy.' 505 U.S. at 876." 97 So. 3d at 740 (Parker, J., concurring specially). The United States Supreme Court's declaration in Roe that, in the abortion context, unborn children are not "persons" within the meaning of the Fourteenth Amendment to the United States Constitution stands in stark contrast to numerous determinations by the states that unborn children are, in fact, "persons" in virtually all other contexts.

However, some liberal Justices on the United States Supreme Court adamantly defend the isolated Roe exception. I have written extensively explaining why the Roe exception lacks legal foundation and is patently illogical. See Stinnett v. Kennedy, 232 So. 3d at 220 (Parker, J., concurring specially); Hicks v. State, 153 So. 3d at 72 (Parker, J., concurring specially); and Hamilton, 975 So. 3d at 737 (Parker, J., concurring specially). The Roe exception is treated as impervious to reason and unassailable by legal authority. A "right" created not from the language of the Constitution of the United States,[18] but one abstracted from its supposed "emanations" and "penumbras," the Roe exception stands as an indictment against the United States Supreme Court that "our Nation ceases to be governed according to the 'law of the land' and instead becomes one governed ultimately by the 'law of the judges.'"[19] In re Winship, 397 U.S. 358,

[18]See Gonzales v. Carhart, 550 U.S. 124, 169 (2007)(Thomas, J., concurring)("I write separately to reiterate my view that the Court's abortion jurisprudence, including [Planned Parenthood of Southereastern Pa. v.] Casey[, 505 U.S. 833 (1992),] and Roe v. Wade, 410 U.S. 113 (1973), has no basis in the Constitution.").

[19]See West Alabama Women's Ctr. v. Williamson, 900 F.3d 1310, 1314 n. 1 (noting that "there is constitutional law and then there is the aberration of constitutional law relating to abortion" and citing the following authority in support: "Whole Woman's Health v. Hellerstedt, 579 U.S. ___, 136 S. Ct.

384 (1970).

Of course, based on the following language in Roe, it is apparent that liberal judicial activists will do all they can to keep the people of America from recognizing the personhood of an unborn child:

> "The appellee and certain amici argue that the fetus is a 'person' within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, [Roe]'s case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment. [Roe] conceded as much on reargument."

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2292, 2321, 195 L. Ed. 2d 665 (2016) (Thomas, J., dissenting) (referring to 'the Court's habit of applying different rules to different constitutional rights -- especially the putative right to abortion'); Stenberg v. Carhart, 530 U.S. 914, 954, 120 S. Ct. 2597, 2621, 147 L. Ed. 2d 743 (2000) (Scalia, J., dissenting) (stating that the 'jurisprudential novelty' in that case 'must be chalked up to the Court's inclination to bend the rules when any effort to limit abortion, or even to speak in opposition to abortion, is at issue'); Hill v. Colorado, 530 U.S. 703, 742, 120 S. Ct. 2480, 2503, 147 L. Ed. 2d 597 (2000) (Scalia, J., dissenting) ('Because, like the rest of our abortion jurisprudence, today's decision is in stark contradiction of the constitutional principles we apply in all other contexts, I dissent.'); Thornburgh v. Am. Coll. of Obstetricians & Gynecologists, 476 U.S. 747, 814, 106 S. Ct. 2169, 2206, 90 L. Ed. 2d 779 (1986) (O'Connor, J., dissenting) ('This Court's abortion decisions have already worked a major distortion in the Court's constitutional jurisprudence.'); id. ('Today's decision ... makes it painfully clear that no legal rule or doctrine is safe from ad hoc nullification by this Court when an occasion for its application arises in a case involving state regulation of abortion.').").

410 U.S. at 156-57 (emphasis added; footnote omitted). In Roe, the United States Supreme Court specifically stated that, if unborn children are persons, then they have the right to life. The Roe Court concluded that unborn children are not persons; this is the main foundation of the Roe exception. As demonstrated by the groundswell of state laws recognizing the personhood of unborn children, the foundation of the Roe exception is crumbling. In order for the outdated, isolated, and crumbling Roe exception to endure, liberal Justices must insist, against all scientific evidence and reason, that unborn children are not human. Judicial activism created the Roe exception; blind adherence to Roe's judicially imposed dogma allows it to linger.

It is my hope and prayer that the United States Supreme Court will take note of the crescendoing chorus of the laws of the states in which unborn children are given full legal protection[20] and allow the states to recognize and defend the

[20]It is not entirely uncommon for the United States Supreme Court to look to the direction the laws of the states are trending in analyzing a legal issue before it. For instance, in Roper v. Simmons, 543 U.S. 551 (2005), a decision with which I adamantly disagree, a liberal majority of the Supreme Court, in determining that it is cruel and unusual punishment violative of the Eighth Amendment to the United States Constitution to sentence juvenile criminal offenders to death, took into account "[t]he evidence of national consensus

inalienable right to life possessed by every unborn child, even when that right must trump the "right" of a woman to obtain an abortion.

## IV. Conclusion

Today, this Court adds Alabama's capital-murder statutes

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against the death penalty for juveniles." 543 U.S. at 564. The Supreme Court stated:

> "[T]he objective indicia of consensus in this case -- the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice -- provide sufficient evidence that today our society views juveniles ... as 'categorically less culpable than the average criminal.' [Atkins v. Virginia,] 536 U.S. [304,] 316 [(2002)]."

543 U.S. at 568. But see id. at 607, 616 (Scalia, J., dissenting) (stating that the Roper majority's finding of a national consensus is "on the flimsiest of grounds" and that the Court's preference for its "own judgment" above the states' self-anoints it as "the authoritative conscience of the Nation"). Also in Roper, the Supreme Court "affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual. Trop v. Dulles, 356 U.S. 86, 100–101 (1958) (plurality opinion)." Roper, 543 U.S. at 561.

If the Supreme Court will consider national trends in state law to determine that the evolving standards of decency in our society have "progressed" to the point that it is now cruel and unusual punishment to sentence a juvenile criminal offender to death, why does it ignore the national trend of the laws of the states to extend the full protection of the law to unborn children in considering the isolated Roe exception?

to the growing list of Alabama's, and other states', broad legal protections for unborn children. In so doing, we affirm once again that unborn children are persons with value and dignity equal to that of all persons. The Roe exception is the last remaining obstacle to the states' ability to protect the God-given respect and dignity of unborn human life. I urge the Supreme Court of the United States to reconsider the Roe exception and to overrule this constitutional aberration. Return the power to the states to fully protect the most vulnerable among us.