No. 16-17296

In the United States Court of Appeals for the Eleventh Circuit

WEST ALABAMA WOMEN'S CENTER, *et al.*, on behalf of themselves and their patients,

Plaintiffs – Appellees,

v.

DR. THOMAS M. MILLER, in his official capacity as State Health Officer, *et al.*,

Defendants – Appellants.

On Appeal from the United States District Court
for the Middle District of Alabama
No. 2:15-CV-00497-MHT-TFM

BRIEF OF THE ATTORNEYS GENERAL OF THE STATES OF LOUISIANA, ARIZONA, ARKANSAS, FLORIDA, GEORGIA, IDAHO, INDIANA, KANSAS, MICHIGAN, MISSOURI, NEBRASKA, NEVADA, OHIO, OKLAHOMA, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, WEST VIRGINIA, AND WISCONSIN; AND MISSISSIPPI AND THE COMMONWEALTH OF KENTUCKY, BY AND THROUGH THEIR GOVERNORS, AS *AMICI CURIAE* IN SUPPORT OF APPELLANTS AND REVERSAL

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CERTIFICATE OF INTERESTED PERSONS

Except for the following, all parties appearing before the district court and in this Court are listed in the Brief for Appellants.

The States of Louisiana, Arizona, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Michigan, Mississippi, Missouri, Nebraska, Nevada, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia, and Wisconsin did not participate in the district court below, but will participate as *amici curiae* for Appellants before this Court.

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INTRODUCTION AND INTEREST OF *AMICI*

The question raised by the district court's decision goes to the heart of the States' authority to regulate abortion. The Supreme Court has held that States (1) have an interest in protecting and fostering respect for human life, including unborn life, and (2) have the power to regulate the medical profession, including on matters of medical judgment and ethics. *See Gonzales v. Carhart*, 550 U.S. 124 (2007). As a result, States not only may prohibit specific abortion procedures that threaten to erode respect for life, but they may balance related medical tradeoffs when they do so, on condition that they do not unduly burden the decision to obtain an abortion. *Id.* Although access to an abortion is a constitutional right, access to a particular abortion method — *even a method favored by plaintiff abortion providers* — is not.

The abortion method involved in this case is an exceptionally grisly one, potentially even more so than the "partial birth" procedure at issue in *Gonzales*. The abortions here, referred to as "dismemberment" abortions, kill fetuses quite literally by tearing them limb from limb while they are still alive in the womb. The potential that repeated performance of such a procedure will compromise respect for

life as well as the ethics of the medical profession is unquestionably serious. Many States would prefer to prohibit it altogether. But in light of applicable precedent, Alabama has instead sought to moderate the procedure by requiring that abortion providers use available methods to kill fetuses *before* dismembering them. Alabama's regulation, including the State's weighing of medical options and tradeoffs, called for precisely the same judicial deference that the Supreme Court afforded Congress in *Gonzales v. Carhart*.

The district court failed to do so, however. It instead applied a more searching review, evidently assuming (erroneously) that the State had to guarantee that remaining abortion procedures would be near-substitutes from a medical perspective. As *Gonzales* shows, Alabama was required to do no such thing. Because the district court analyzed this case under the wrong legal standards, its decision should be reversed.

Amici are all States that regulate abortion in order to preserve respect for life, including several that have enacted regulations of dismemberment abortions similar to Alabama's. Several states in addition to Alabama — specifically, *amici* Arkansas, Kansas,

Louisiana, Mississippi, Oklahoma, and West Virginia — have enacted laws that ban dismemberment abortion.[1] In requiring fetal demise before dismemberment, *amici* do not intend to sanction abortion generally. They also regret being placed in the incongruous position of advocating for fetal death as a humane alternative to a procedure that should have no place in a civilized society. But in light of precedent, *amici* strongly support the authority of States to protect both life and the dignity of unborn life in that small way, and thus have an interest in ensuring that courts scrutinize such regulations under the appropriate standards.

STATEMENT OF THE ISSUES

Whether States have an interest in regulating dismemberment abortions to further respect for human life, including unborn life.

Whether States have the authority to balance medical uncertainties when they regulate abortion in the interest of respecting life, and whether they are entitled to judicial deference when they do so.

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[1] *See* Ark. Code Ann. §§ 20-16-1801–1807; Kan. Stat. Ann. § 65-6743; La. Rev. Stat. § 40:1061.1.1; Miss. Code Ann. §§ 41-41-151–160; Okl. St. Ann. §§ 1-737.7–.16; W.Va. Code § 16-2O-1. Texas currently has Senate Bill 415 pending.

SUMMARY OF THE ARGUMENT

The States' authority to regulate abortion for the purpose of protecting unborn life, and advancing respect for life, is well-established and unquestioned. *See, e.g.*, *Gonzales*, 550 U.S. at 145. Alabama defended the challenged abortion regulation on that ground here, and the district court rightly treated its justifications as legitimate. It is also beyond serious question that the abortion procedure at issue here threatens to undermine respect for life, and the State is thus empowered to defend against that threat.

The Supreme Court further held in *Gonzales* that when a State regulates abortions for the sake of fostering respect for life, including unborn life, it has leeway to balance that interest against possible medical tradeoffs. *Id.* at 163, 166. Even when some abortion providers consider a forbidden procedure to be medically preferable, the State's reasonable resolution of the tradeoffs prevails. Abortion providers instead must work to find abortion methods that are more consistent with respect for life. The nature of the State's interest distinguishes cases like this one and *Gonzales* from cases like *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), where the State justified its

abortion regulations in *medical* terms and the Court evaluated them as such.

The district court in this case appears to have operated under the assumption that even when a State regulates abortion for the sake of respect for life, the State cannot prevent abortion providers from using the methods they prefer. That analysis contradicts the Supreme Court's holding in *Gonzales*, and the decision should be reversed.

ARGUMENT

I. Requiring Demise Before Fetuses Are Dismembered Furthers States' Interest In Respect For Human Life.

The Alabama fetal demise law, as the district court acknowledged, was intended to "advance[e] respect for human life; promot[e] [the] integrity and ethics of the medical profession; and promot[e] respect for life, compassion, and humanity in society at large." *W. Alabama Women's Ctr. v. Miller*, No. 2:15-CV-497-MHT, 2016 WL 6395904, at *16 (M.D. Ala. Oct. 27, 2016). The district court "assume[d] the legitimacy of these interests." *Id.* In that respect, the district court was correct: The interests cited by the State are unquestionably legitimate, and the fetal demise law directly serves them.

The Supreme Court has recognized ever since *Roe v. Wade* that the State has an "important and legitimate interest in protecting the potentiality of human life" before birth. 410 U.S. 113, 162 (1973). The Court has reaffirmed that interest on multiple occasions. *See Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 877 (1992) (O'Connor, J., joined by Kennedy & Souter, J.J.) (explaining that States may enact regulations that "create a structural mechanism by which the State … may express profound respect for the life of the unborn"); *Gonzales*, 550 U.S. at 145 ("[T]he government has a legitimate and substantial interest in preserving and promoting fetal life[.]"); *id.* at 157 ("The government may use its voice and its regulatory authority to show its profound respect for the life within the woman."). Abortion jurisprudence thus has always entailed a compromise between women's abortion rights and the risk that unregulated exercise of those rights will "devalue human life." *Gonzales*, 550 U.S. at 158.

The fullest discussion of the State interest in unborn human life appears in *Gonzales*. As the Supreme Court explained in that case, one way that States can vindicate their interest in promoting "[r]espect for human life," *id.* at 159, is by ensuring that abortion *methods* are

consistent with such respect: So long a State acts "rational[ly]" and "does not impose an undue burden" on the underlying right to an abortion, the State may "bar certain procedures and substitute others." *Id.* at 158. By limiting use of particularly "brutal" abortion procedures, *id.* at 160, States further respect for life, both in society at large and in the medical profession in particular. They also protect women from the deep grief many of them are likely to feel if and when they later discover exactly how their unborn children were killed, *id.* at 159, while encouraging the medical profession to "find different and less shocking methods to abort the fetus[.]" *Id.* at 160.

The abortion method at issue here provides a case in point for when a State can invoke that interest. In a dismemberment abortion, as Alabama explains in its opening brief, a doctor kills a living fetus literally by tearing it apart. The doctor first dilates the pregnant woman's cervix just enough to insert instruments, such as a forceps, into the uterus. The doctor then seizes parts of the fetus's body, "such as a foot or hand," and pulls those parts out of the uterus and into the vagina. *Stenberg v. Carhart*, 530 U.S. 914, 958 (2000) (Kennedy, J., dissenting). Because the cervical opening is not wide enough for the

fetus's body to exit, the doctor can use "the traction created by the opening between the uterus and vagina to dismember the fetus, tearing the grasped portion away from the remainder of the body." *Id.* The fetus does not die instantly, but stays alive, heart beating, while the doctor repeats the process, tearing off one limb at a time. *Id.* at 959. In the end the fetus bleeds to death or dies from the trauma, and the doctor is left with "'a tray full of pieces.'" *Id.* (quoting Dr. Leroy Carhart, the abortion doctor who was respondent in *Gonzales* and *Stenberg*).

It is hard to exaggerate the inconsistency of killing human fetuses by dismemberment with every other norm of modern humane conduct. Nobody would euthanize her pet in that way. States may not execute prisoners in that way. *Glass v. Louisiana*, 471 U.S. 1080, 1084 (1985) (describing the "inhuman and barbarous" practice of "drawing and quartering" as "obvious[ly] unconstitutional[]"). If anyone tried slaughtering livestock in that way, Federal law would treat it as inhumane and thus contrary to "the public policy of the United States." *See* 7 U.S.C. § 1902 (identifying two humane methods of slaughter and classifying all others as contrary to public policy). Indeed, it is difficult

to imagine *any* standard of ordinary decency that involves this manner of terminating human life.

By the same token, the grisliness of such abortions implicates the State's interest in protecting respect for human life. The Supreme Court in *Gonzales* relied on that interest in upholding a Federal ban on "partial birth" abortion, a similar procedure in which a doctor delivers a fetus up to the head, then kills the fetus by forcing a scissors into the skull and suctioning out the brain. 550 U.S. at 138.[2] "No one would dispute that, for many, [partial birth abortion] is a procedure itself laden with the power to devalue human life," the Court explained. *Id.* at 158. And in so doing, the Court observed that dismemberment abortions are "in some respects as brutal, *if not more*." *Id.* at 160 (emphasis

[2] Congress expressly relied on its interest in protecting respect for life in enacting the ban. *See* § 14(G), 117 Stat. 1202, note following 18 U.S.C. § 1531 ("[A] prohibition [on partial birth abortion] will draw a bright line that clearly distinguishes abortion and infanticide, that preserves the integrity of the medical profession, and promotes respect for human life[.]"); *id.* § 14(J) ("Partial-birth abortion also confuses the medical, legal, and ethical duties of physicians to preserve and promote life, as the physician acts directly against the physical life of a child[.]"); *id.* § 14(N) ("Implicitly approving such a brutal and inhumane procedure by choosing not to prohibit it will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life."); *see also Gonzales*, 550 U.S. at 157 (citing the congressional findings).

added). The interests the Court recognized in *Gonzales* are just as strong here.

Alabama, among other States, has accordingly chosen to promote respect for unborn life (and related interests) by regulating dismemberment abortions: You cannot kill a living fetus by dismembering it. 1975 Ala. Code § 26-23G-2(3). If you are going to dismember a fetus, instead you must kill it first, using one of several available, more humane methods. Alabama included an exception applicable if such an abortion is necessary to avert the mother's death or preserve her health, as defined by statute. *Id.* § 26-23G-2(6).

By any normal standard of morality and basic decency, considering the gruesomeness of the procedure, Alabama's regulation is relatively modest. It is also undeniably unfortunate for a State to have to defend unborn life by substituting more merciful fetal deaths for horrific ones. Many States would prefer to prohibit dismemberment altogether. But States that do not sanction abortion as a rule — including *amici* — nonetheless regard efforts to make abortion procedures marginally more humane as an important second-best means to assert their interest in respecting life.

All of this confirms that Alabama's stated interests in the fetal demise law are indeed legitimate. *W. Alabama Women's Ctr.*, 2016 WL 6395904, at *16. There should be no question in that regard on appeal. The district court's error — as discussed in the next section — consisted, rather, in its failure to accord those interests their proper weight.

II. The District Court Failed To Evaluate The Alleged Burdens In Light Of Alabama's Interests.

The district court held that the Plaintiffs are likely to succeed on the merits because it found that known methods of killing fetuses before dismemberment are potentially risky and less reliable or available than dismembering the living fetus in the first instance. The court thus concluded that requiring fetal demise before a dismemberment abortion substantially burdens abortion rights.

As an initial matter, many of the district court's factual findings about fetal demise methods are erroneous. As to digoxin injection, for example, the district court found that the injection would require women to "make an additional trip to the clinic 24 hours prior to their [abortion] appointment," supposedly a "serious logistical obstacle." Doc. 115 at 87. Although the plaintiff doctors in this case perform

dismemberment abortions in one day, *see* Tr. Vol. I at 185; Tr. Vol. II at 40, such abortions usually involve two appointments a day apart to allow time for cervical dilation, *see* Doc. 81-8 at 2, 5,[3] so the digoxin injection would make little "logistical" difference if any. As to potassium chloride injections, the district court stated that "there has been no study on the efficacy or safety of the procedure before standard D&E," Doc. 115 at 95, ignoring the fact that Alabama introduced *two* such studies into the record, both of which found the procedure safe (for the patient) and effective. Docs. 81-7, 81-9.

But of particular importance to *amici* is the fact that the district court's legal conclusion as to substantial burden also cannot be squared with *Gonzales*, which required the district court to evaluate the fetal demise law's alleged burdens in light of the particular interests Alabama asserted. Because the district court applied the wrong legal standard, its decision should be reversed.

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[3] *See also Surgical Abortion Procedures*, American Pregnancy Association (updated Jan. 26, 2017), *available at* http://americanpregnancy.org/unplanned-pregnancy/surgical-abortions/.

A. *Gonzales* permits States to balance medical uncertainties when promoting respect for unborn life.

Gonzales started from the premise that "'the fact that [an abortion regulation] which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it more difficult or more expensive to procure an abortion cannot be enough to invalidate it.'" *Gonzales*, 550 U.S. at 157–58 (*quoting Casey*, 505 U.S. at 874) (alteration omitted). An important consequence of that premise is that when a State prohibits "brutal" or "shocking" abortion methods in order to vindicate respect for life, *id.* at 160, it is under no constitutional obligation to guarantee that the remaining abortion methods are medically equivalent.

That proved essential to the *Gonzales* Court's reasoning, in light of the medical evidence it confronted. Although the Court "assume[d]" that the partial birth abortion ban "would be unconstitutional … if it subjected women to significant health risks," 550 U.S. at 161 (quotes and alterations omitted), it recognized that "whether the [ban] create[d] significant health risks for women [was] a contested factual question." *Id.* Substantial evidence (including several district court decisions) indicated that partial birth abortion was safer for the patient than

other alternatives, including dismemberment abortion. *Id.* And the partial birth abortion ban, unlike Alabama's fetal demise law, lacked a mother's health exception that would make partial birth abortion available if it ever were medically necessary. *Id.* Those factors made it plausible that legal unavailability of partial birth abortion would raise medical risks for at least some pregnant women seeking abortions.

The Court nonetheless resolved the uncertainty in favor of the partial birth abortion ban. It noted that legislatures have "wide discretion to pass legislation in areas where there is medical and scientific uncertainty." *Id.* at 163 (collecting cases). But more importantly, it tied that discretion to "the State's interest in promoting respect for human life at all stages in the pregnancy." *Id.* "[W]hen the regulation is rational and in pursuit of legitimate ends" — *i.e.*, when an abortion regulation is intended to defend respect for unborn life and rationally furthers that goal, as was the case in *Gonzales* — "[c]onsiderations of marginal safety, including the balance of risks, are within the legislative competence[.]" *Id.* at 166. That means that a State may ban an inhumane method of abortion *even if* doing so has tradeoffs: "[I]f some procedures have different risks than others, it does not follow

that the State is altogether barred from imposing reasonable regulations." *Id.*

The *Gonzales* Court assumed that alternatives to partial birth abortion that are safe for the patient would be available. But significantly, one of the alternatives the Court considered available if partial birth abortion were ever "truly necessary" was "an injection that kills the fetus," the same alternative that Alabama proposes here. *Id.* at 164. It was not essential to the Court's reasoning, in other words, that doctors have the option of killing fetuses by dismemberment; the Court considered the option that Alabama requires here to be adequate as well.

Gonzales thus stands for the proposition that the State's authority to promote respect for unborn life, so long as it does not substantially burden the abortion decision, takes precedence over the ability of abortion doctors "to choose the abortion method he or she might prefer," *Gonzales*, 550 U.S. at 158, even if the State's decision entails medical tradeoffs. Abortion doctors and their patients do not have a right to any particular method of abortion. *Planned Parenthood Sw. Ohio Region v. DeWine*, 696 F.3d 490, 516 (6th Cir. 2012) ("The Court has not extended

constitutional protection to a woman's preferred method, or her 'decision concerning the method' of terminating a pregnancy."). On the contrary, when the State exercises its regulatory power to ensure respect for life, the medical profession must give way and "find different and less shocking methods to abort the fetus … thereby accommodating legislative demand." *Gonzales*, 550 U.S. at 160; *id.* at 163 ("Physicians are not entitled to ignore regulations that direct them to use reasonable alternative procedures.").

Application of *Gonzales* in this case would resolve the matter in favor of the State. Alabama identified a discrete abortion procedure — dismemberment abortion — that uniquely threatens to devalue human life and debase the medical profession. It accordingly passed a regulation that continues to permit the basic medical procedure, but requires that doctors modify it to make it less morally offensive — a modification that the *Gonzales* Court had already treated as a reasonable alternative when a similar procedure was prohibited for similar reasons. That is exactly the kind of regulation that *Gonzales* permits. Abortion providers may prefer to perform abortions the old way, and may have qualms with the State's resolution of medical

uncertainties, but the moral judgment is the State's to make and the medical tradeoffs are the State's to balance. Their recourse, similarly to the doctors before the Court in *Gonzales*, is to find alternative procedures as the statute requires.

B. *Hellerstedt* is not to the contrary, and does not control this case.

The district court did not apply *Gonzales* in that way; in fact, it did not even acknowledge those aspects of *Gonzales*'s reasoning. Instead, the district court's analysis derived entirely on the Supreme Court's recent decision invalidating various Texas abortion regulations in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). *Hellerstedt*, however, is distinguishable, and does not overrule the principles that *Gonzales* established.

Hellerstedt, unlike *Gonzales*, did not involve a State's exercise of its authority to promote respect for unborn life. The regulations at issue in *Hellerstedt* did not ban or modify any abortion procedure, and Texas did not seek to justify its regulations in moral terms at all, let alone in the ways contemplated by *Gonzales*. Instead, the *Hellerstedt* Court was faced with a set of health and safety regulations for abortion providers — specifically, a legislative change requiring abortion doctors to have

admitting privileges at local hospitals (instead of merely contracting with a doctor who held such privileges) and a requirement that abortion facilities comply with regulations applicable to ambulatory surgical centers. 136 S. Ct. at 2299–300. Texas justified those laws purely as health and safety regulations, also a legitimate State interest. *See* Respondents' Br., *Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274), at 1 (stating that "Texas enacted [the regulations] to improve the standard of care for abortion patients"). The Court accordingly analyzed them solely in those terms. 136 S. Ct. at 2310 (noting that in the absence of legislative findings, the Court would "infer that the legislature sought to further a constitutionally acceptable objective (namely, protecting women's health)").

Judging the regulations by the standard of health and safety, the Court determined that the regulations did not actually do anything more than existing law to benefit the patient's health and safety. *Id.* at 2311 (finding "nothing in Texas' record evidence that shows that, compared to prior law, which required a 'working arrangement' with a doctor with admitting privileges, the new [abortion doctor admitting privileges] law advanced Texas' legitimate interest in protecting

women's health"); *id.* at 2315 (finding "considerable evidence in the record supporting the district court's findings indicating that the [ambulatory surgical center standard law] does not benefit patients and is not necessary"). In the Court's view, their principal effect was instead to make abortion dramatically harder to access by forcing numerous clinics to close. *Id.* at 2312 (abortion doctor admitting privileges); *id.* at 2316 (ambulatory surgical center standards).

Hellerstedt and *Gonzales* are thus distinguishable in at least two ways — both of which show that this case is controlled by the latter.

First, the statute in *Gonzales*, unlike the Court's determination of the statute in *Hellerstedt*, actually served the government's professed interest. The fact that the partial birth abortion ban may have "ha[d] the incidental effect of making it more difficult or more expensive to procure an abortion" therefore was not "enough to invalidate it'" in *Gonzales*. 550 U.S. at 157–58 (*quoting Casey*, 505 U.S. at 874). Here, where there is *no question* that Alabama's fetal demise law advances respect for life, the same rule applies to its "incidental" effects on abortion access. That is worlds away from *Hellerstedt*, where the Court held the regulations at issue did not actually do anything more than

existing law to advance patient health and safety, and where the Court held the fact that they made abortions considerably more difficult to obtain was thus fatal. *Hellerstedt*, 136 S. Ct. at 2312, 2316.

Second, the government interests at issue in this case are the same as the ones in *Gonzales*, but unlike the ones in *Hellerstedt*. *Hellerstedt* holds that when a State regulates abortion services for the sake of the patient's health and safety, the regulations stand or fall based on whether the regulations' burdens significantly outweigh the regulations' health and safety benefits. A court should evaluate the facts just as they evaluate the rationality of any other State regulation "'where constitutional rights are at stake.'" *Id.* at 2310 (*quoting Gonzales*, 550 U.S. at 165) (emphasis omitted). Factual evaluation of health regulations for whether they serve their professed purposes and for whether they impose significant burdens, naturally, is a classic judicial function. For that reason, the *Hellerstedt* Court reaffirmed the importance of judicial fact finding in cases involving "medical uncertainty" about health and safety regulations. *Id.* at 2309–10.

The same is not true, though, when a State regulates abortion for the kinds of moral purposes involved here and in *Gonzales*. In those

cases, a statute's moral ends are to some extent incommensurable with potential tradeoffs. At the very least, judicial standards for review of the legislature's choices are lacking. When Congress determined, for example, that partial birth abortion "'confuses the medical, legal, and ethical duties of physicians to preserve and promote life,'" and that continuing to permit it "'will further coarsen society to the humanity of not only newborns, but all vulnerable and innocent human life, making it increasingly difficult to protect such life,'" *Gonzales*, 550 U.S. at 157 (*quoting* § 14, 117 Stat. 1202, note following 18 U.S.C. § 1531), it would have been pointless for the Court to analyze whether a prohibition "confer[red] … benefits sufficient to justify the burdens upon access[.]" *Hellerstedt*, 136 S. Ct. at 2299. Weighing the interest of fetal life against medical concerns is fundamentally a matter of policy.

In that circumstance, where judicial competence is at a low ebb, "[c]onsiderations of marginal safety, including the balance of risks, are within the *legislative* competence[.]" *Gonzales*, 550 U.S. at 166 (emphasis added). To be sure, the court should consider the total evidence in any case, *see id.* at 165, but a legislature's reasonable

resolution of medical questions deserves more weight in a case like this one than in a case like *Hellerstedt*.

* * * *

Faced in this case with a law that serves the legitimate State purpose of furthering respect for life, the district court should have recognized that incidental effects on abortion access are permissible under *Gonzales*. It should also have accorded greater weight to Alabama's resolution of medical questions surrounding its fetal demise law, and to its balancing of those questions against the State's interest. It did neither of those things and thus committed reversible error.

CONCLUSION

It bears repeating that the *amici* States do not intend to sanction abortion generally. They regret being placed in a position of advocating for fetal death as a humane alternative to a procedure that should have no place in a civilized society — a situation that only highlights how absurdly far judicial decisions regarding unborn human life have departed from authorities barring inhumane treatment to animals and criminals who are facing the death penalty. But in light of precedent, *amici* strongly support the authority of States to protect both the life

and dignity of unborn life in that small way, and thus have an interest in ensuring that courts scrutinize such regulations under the appropriate standards. The Court should reverse the district court's opinion and vacate the preliminary injunction.

Respectfully submitted,

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I hereby certify that on March 17, 2017, I filed the foregoing document through the Court's CM/ECF system, which will serve an electronic copy on all registered counsel of record.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because the brief contains 4,422 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. R. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Word 14-point Century Schoolbook font.

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Dated: March 17, 2017