No. _____

In The
Supreme Court of the United States

MANDY ROOKS,

Petitioner,

v.

DRAKE ROOKS,

Respondent.

On Petition For A Writ Of Certiorari To The Colorado Supreme Court

PETITION FOR A WRIT OF CERTIORARI

REBECCA R. MESSALL
Counsel of Record
MESSALL LAW FIRM, LLC
7887 E. Belleview Ave.,
Suite 1100
Englewood, CO 80111
303.228.1685
rm@lawmessall.com

Counsel for Petitioner

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

Whether extracorporeal embryos created during marriage are persons or a property.

Whether classifying extracorporeal embryos as property and permitting one spouse to discard or donate them to a third party violates the religious rights of the other spouse who believes the embryos are ensouled.

PARTIES TO THE PROCEEDINGS

Petitioner is Mandy Rooks. Respondent is Drake Rooks.

CORPORATE DISCLOSURE STATEMENT

Not applicable.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Mandy Rooks, respectfully files this *Petition for a Writ of Certiorari* to review the judgment of the Colorado Supreme Court.

OPINIONS BELOW

The Colorado Supreme Court opinion is at 2018 CO85 and provided at App. 1. The Colorado Court of Appeals opinion is at 2016 COA153 and provided at App. 63. The Garfield County, Colorado, District Court opinion, with redactions, is at App. 86.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1257(a). The Colorado Supreme Court's ruling was entered October 29, 2018.

CONSTITUTIONAL AND UNDERLYING STATUTORY PROVISIONS INVOLVED

The Declaration provides:

When in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of nature and of

Nature's God entitles them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and pursuit of happiness. . . . That to secure these rights, governments are instituted among men, deriving their just power from the consent of the governed. . . .

The Preamble to the Constitution provides:

We the people of the United States in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

The First Amendment provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment provides:

No person shall . . . be deprived of life, liberty or property without due process of law. . . .

The Ninth Amendment provides:

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

The Thirteenth Amendment provides:

Neither slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

The Fourteenth Amendment provides:

Sec. I. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

The Colorado Constitution provides:

Section 3. Inalienable rights. All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

Colorado Statutes provide:

C.R.S. §14-10-124(1.5): Allocation of parental responsibilities. The court shall determine the allocation of parental responsibilities, including parenting time and decision-making responsibilities, in accordance with the best interests of the child giving paramount consideration to the child's safety and the physical, mental, and emotional conditions and needs of the child as follows: [sub-paragraphs omitted].

STATEMENT OF THE CASE

A. Factual Background

1. The Rooks separated in 2014 after more than ten years of marriage. App. 6 ¶6. Petitioner is experienced as a nurse in hospital pediatrics.[1] Her former husband had worked as a police officer and as an overseas police trainer.[2] In 2011 and again in 2013, the couple contracted with service providers to create embryos. They also contracted to have some embryos implanted and others stored for later attempts to achieve implantation. App. 6-7 ¶7. The procedures were successful, resulting in three children. App. 6 ¶6. In addition, six embryos remain in cryogenic storage. The providers' contracts contained terms for handling the embryos in the event of the parents' deaths. In the event of divorce, the embryos' fate would be decided as

[1] *Mother's Trial Brief*, p. 1, filed Feb. 3, 2015 (not included in Appendix).

[2] *Id.*

part of the divorce/dissolution decree paperwork. App. 3 ¶2; 42 ¶73.

2. In the trial brief, Petitioner's counsel asserted: "Her credit card debt remains from [the IVF] endeavor. She does not want to be forced to decide their fate right now. She is willing to take full financial responsibility for their storage and any progeny."[3]

3. Reflecting her religious beliefs as a Christian concerning the embryos, and her beliefs as a medical professional, Petitioner testified:

> Q: What do you want the Court to do with respect to the embryos that are currently maintained down there?
>
> A: . . . I want the Court to not award Drake Rooks with the destruction of the life we intended to create and I would like to be fully responsible for their storage, for their maintenance, and in the future if I am able to ever financially get one of them out again, I want to be able to make that determination on my own.[4]

B. Procedural Background

1. The Trial Court

a. The trial court observed that the embryos "are biologically and scientifically 'life.'" App. 92. It

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[3] *Mother's Trial Brief*, p. 8.

[4] Tr. trcpt 181/14-22, Feb. 24, 2015 (not included in Appendix).

recognized that this case raises "parents' fundamental right to make decisions concerning the care, custody, and control of their children," *citing Troxel v. Granville*.[5] App. 87. It determined, however, that under Colorado statutes, the embryos are not "persons," *id.*, that they were a "form of property" and that the statutory custody standard for the "best interests of the child" did not apply. App. 93. From this premise, the trial court reasoned that the embryos' disposition was "a matter of contract, as well as the exercise of the court's inherent equitable authority." App. 93. Finding a "marital agreement" and having found the embryos to be property,[6] the court ruled for the father in "discarding" the embryos. App. 98, 109.

b. As an alternative to its contract analysis, the trial court performed a balancing analysis, still treating the embryos as marital property and yet, having equally divided the couple's other property, failed to equally award the six embryos, which would have given three embryos to each parent. Instead, the court viewed the father as having a right to avoid another child or children with Petitioner. App. 109-10. The trial court saw no benefits from the embryos and only problems. Rather than requiring their destruction, the court awarded them to the father to "dispose of as he wishes." App. 114. This award of discretion to the

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[5] 530 U.S. 57, 57 (2000).

[6] *See* C.R.S. §14-2-310(3): "Unenforceable Terms: A term in a premarital agreement or marital agreement which defines the rights or duties of the parties regarding custodial responsibility is not binding on the court."

father violated the couple's instructions in the provider contracts that the embryos were not to be "donated." App. 104.

2. The Colorado Court of Appeals

a. Petitioner appealed the treatment of her embryos as "marital property," stating "[t]here is no legal support for such categorization.[7] She argued that her reliance estopped the father from withdrawing his consent.[8] She appealed the trial court's failure to uphold Petitioner's fundamental liberty interest as a parent to the care, custody, and management of her children.[9] She objected that the embryos were not treated under the "best interests" standard, but her three other children were subjected to a "best interest" standard in denying her custody of the embryos.[10] She appealed the lack of a strict scrutiny review.[11]

b. The appellate court built its reasoning upon a premise that embryos are not "persons" under Colorado statutes and therefore, are not "children." App. 66 ¶11. It reviewed for abuse of discretion, rejected Petitioner's constitutional claims, App. 82 ¶55,

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[7] *Amended Opening Brief*, filed November 3, 2015, p. 12, 26-27, Case No. 15CA906, Colorado Court of Appeals (not included in the Appendix).

[8] *Id.* at 27.

[9] *Id*. at 33, 36, 38, *citing Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (natural parents have a fundamental liberty interest in care, custody and management of their children).

[10] *Id.* at 15, n.3.

[11] *Id.* at 37.

and affirmed the husband's right to avoid the possibilities of a future child with Petitioner. App. 83 ¶56. The couple's three other children were weighed as evidence against Petitioner. App. 82 ¶56. The court denied that the trial court had limited Petitioner's right to have more children. App. 84 ¶58. Rather, the court chided Petitioner for failing to negotiate a contract on terms in her favor. App. 84 ¶58.

3. The Colorado Supreme Court

a. The Colorado Supreme Court granted her writ. She appealed the abuse of discretion standard.[12] She appealed the "property" classification,[13] arguing for a "crucial distinction between the rights of the parties **as genetic, legal, and gestational parents** (and their corresponding fundamental liberty and privacy rights, if any)."[14]

b. Petitioner contended that the embryos' lives are already in being such that the father had already exercised his "right to procreate," *citing* language from this Court's decision in *Carey v. Population Servs. Int'l*, 431 U.S. 678, 685 (1977) (the right to procreate concerns "whether to accomplish or to prevent conception"). She argued that, as the natural mother, she has a right to choose to give birth to some or all of the embryos as a fundamental liberty interest, *citing* this

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[12] *Opening Brief*, p. 30, 34-35, filed July 14, 2017, Colorado Supreme Court (not included in Appendix).

[13] *Id.* at 14, *citing Troxel*, *supra*.

[14] *Id.* at 19, n.4 (emphasis added).

Court.[15] Petitioner also argued that her husband's consent to fertilize her ova precluded him from asserting a constitutional right **not** to be their parent.[16] She specifically asked the court to rule that "fertilization, *when done with the parties' consent*, constitutes an advance waiver of the right not to be a genetic parent."[17] She contended that such a bright-line rule will insure that couples are informed of their rights and duties prior to paying for IVF.[18]

c. Petitioner objected to using factors against her that did not satisfy a strict scrutiny analysis, i.e., her existing children, her full-time mothering and the unlikely increase in the father's payments of child support.[19] She argued that the court incorrectly balanced the couples' constitutional rights because, in fact, the court had given the father an automatic post-fertilization right to withhold consent.[20]

d. The court's starting premise was that, because embryos are not persons under Colorado's wrongful death and homicide statutes, App. 33 ¶56, this was a case about marital property. App. 4 ¶3; 33 ¶57. The court cited this Court as the basis for recognizing the

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[15] *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Bowers v. Hardwick*, 478 U.S. 186, 190 (1986); *Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (2015).

[16] *Opening Brief*, n.3, at 26-28 (not included in Appendix).

[17] *Id.* (emphasis in the original).

[18] *Id*. at 37.

[19] *Id*. at 30-33.

[20] *Id.* at 36.

importance of individual autonomy in decisions involving reproduction, App. 19 ¶36, however, leaving the word undefined. It also cited this Court for the principle that procreation is "one of the basic civil rights,"[21] again, leaving the word "procreation" undefined. It relied on this Court's rulings on access to contraception,[22] App. 19 ¶ 36, and on a woman's right of privacy.[23] App. 20 ¶37. It sweepingly pronounced a new "right to procreate or avoid procreation" that "does not depend on the means by which that right is exercised," App. 21 ¶39, seeming to create constitutional duties by third parties but not defining the obligation or the scope of such a right.

e. The court did not address the trial court's finding that the embryos are "biologically and scientifically 'life.'" It ruled that the embryos are merely "marital property of a special character," not strictly speaking, either persons or property. App. 33 ¶57.

f. The court held that consent to commence IVF procedures was not automatic consent for implantation. App. 36 ¶62. It pronounced that "both spouses have equally valid, constitutionally based interests in procreational autonomy." App. 41 ¶72. It held that the basis for a father's post-fertilization right to prevent implantation includes his future possible emotional,

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[21] *Citing Skinner, supra*.

[22] *Citing Griswold v. Connecticut*, 381 U.S. 479, 485 (1965) and *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972).

[23] *Citing Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2309 (2016) and *Bellotti v. Baird*, 443 U.S. 622, 639-43 (1979).

financial or logistical hardships. App. 40 ¶69. It did not consider the mother's past medical hardships undertaken in reliance on the marriage contract. It held that her financial condition, the number of her existing children (standing alone) and her ability to adopt should not have been considered. App. 40-41 ¶71. It reversed and remanded to have the trial court apply a new analytical framework. App. 44 ¶75.

g. The dissent argued that the father should be able to withdraw his consent at any point prior to implantation, again, without taking into account any of the mother's medical hardship in conceiving the embryos. The dissent argued essentially for *laissez faire* in order to "keep donors free from government intrusion." App. 61 ¶107. The dissent viewed Petitioner and her then-husband as mere "donors" rather than as parents. It opined that the majority's balancing factors would invite appeals in disputes where the court need not get involved. App. 61 ¶108.

REASONS FOR GRANTING THE PETITION

A. Classifying Human Life as Property Conflicts with this Court's Precedent, with other State Court Decisions and with Statutes at the Federal and State Levels.

1. This is a case of first impression. Petitioner challenges the "property" classification given to her six embryos by the Colorado Supreme Court. The embryos

were intentionally created during a lawful marriage between their mother and father. The embryos are identifiable, biological persons, not property. The reason the distinction is crucial is that Petitioner sought custody under a statute requiring the court to act in the best interests of the child.[24] The lower courts rejected the "best interests" test by deeming Petitioner's embryos to be property instead of persons. This classification is false and alarming:

> To treat the frozen embryo as mere property is to view it as chattel, a movable piece of personal property. The owners of this embryonic property would enjoy the same rights in it as they would in a sofa, automobile, or beach chair. The owners could sell the embryos, throw them away, or trade them for something else. A third party could convert the embryos and become liable for the fair market value of the embryo.[25]

2. This Court is not asked to take a "philosophical" point of view of personhood, or take sides on "the plausibility of a religious claim"[26] about the biological composition of the embryos. Also, this Court is not asked to decide whether this is a parental competition

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[24] C.R.S. §14-10-124.

[25] Howell, Shirley Darby, *The Frozen Embryo: Scholarly Theories, Case Law and Proposed State Regulation*, Vol. 14, No. 3, DePaul J. of Health Care L. 407, 413 (Spring 2013).

[26] *See Burwell v. Hobby Lobby*, 573 U.S. ___, 134 S. Ct. 2751, 2778 (2014) (courts must not presume to determine the plausibility of a religious claim).

of "equal rights to procreation."[27] On the contrary, the six embryos are already *in esse*, that is, "in being," and therefore, Petitioner and the father have already exercised their rights to procreate when they formed these six embryos. The Court is not asked to decide the exact second that life begins. Rather, the record is undisputed that these are human embryos whose lives have already begun. On this fact, Petitioner asks the Court to make a constitutional determination under the Fourteenth and Fifth Amendments that these six embryos are persons, not property.[28] "It is emphatically the province and duty of the judicial branch to say what the law is."[29] The issue for this Court is simply whether the embryos are persons or property so that the trial court, on remand, will consider an award of custody according the best interests of the child(ren).

3. In the alternative, Petitioner asks the Court to review this case and find that her religious rights as a Christian were violated by a court order authorizing her embryos to be destroyed or donated to third

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[27] *See* O'Brien, Molly, Note and Comment: *An Intersection of Ethics and Law: The Frozen Embryo Dilemma and the Chilling Choice Between Life and Death*, 32 Whittier L. Rev. 171, 191, n.207 (2010) (commentators disagree about whether the right to procreate extends to procreation with the use of assisted reproductive technologies), *citing N.Y. St. Task Force on Life & the Law, Assisted Reproductive Technologies: Analysis and Recommendations for Public Policy* 99, 135 (April 1998).

[28] When persons are deemed to be property, they can be bequeathed upon the owner's death. *See Williams v. Ash*, 42 U.S. 1 (1842) (upholding testatrix's conditional bequest of 16 slaves but granting freedom if they were sold or removed from state).

[29] *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

parties, and that the Colorado Supreme Court's framework ignores her religious rights.[30] She will testify on remand that she believes her embryos are ensouled.

4. Also in the alternative, if the "property" classification is upheld, Petitioner asks the Court to review the unequal award of the "property" which should have been awarded so that three of the six embryos were awarded to each parent.

5. A broad legal consensus in America, even prior to *Roe*, holds that the unborn child is a unique and individual human being from conception and therefore, is entitled to the "full protection of law at every stage of development."[31] At the same time, legal disputes abound concerning extracorporeal embryos because clear constitutional guidelines do not exist. "Fertility clinics in the United States alone are estimated to be part of a $4.5 billion industry, and as many as one million embryos are currently frozen in storage."[32] Biotechnology is outpacing the law, such that the embryo's moral and legal status remains unsettled:

> Since 2013, state legislators have proposed over 100 bills [on personhood]. There was an

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[30] *See infra*, Section G.

[31] *Hamilton v. Scott*, 97 So. 3d 728, 747 (Ala. 2012), *citing* Linton, Paul Benjamin, Planned Parenthood v. Casey: *The Flight From Reason in the Supreme Court*, 13 St. Louis U. Pub. L. Rev. 15, 120-37 (1993).

[32] Greer, Gaddie, Note: *The Personhood Movement's Effect on Assisted Reproductive Technology: Balancing Interests Under a Presumption of Embryonic Personhood*, Vol. 96, No. 6, Tex. L. Rev. 1293, 1301 (2018).

> influx of personhood bills across the country in 2017, and 2018 looks to be no exception. For example, on February 20, South Carolina's Senate Judiciary Committee approved a bill titled, "The Personhood Act of South Carolina." The bill grants people the constitutional rights of due process and equal protection from the moment of fertilization.[33]

Also, personhood amendments exploded in popularity after *Roe*:

> Between 1973 and 2003, members of Congress proposed a Human Life Amendment – which would amend the federal Constitution to grant fetuses personhood status and require "respect" for fetal life – over 330 times. (Only one of these proposals went to a vote, and it failed).[34]

6. The trial court found that the embryos "are biologically and scientifically 'life.' " App. 92. Classifying them as property patently contradicts this observable reality. It violates this Court's numerous rulings that unborn life is a compelling state interest,[35] rulings which depend on the premise that every person's life

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[33] *Id.* at 1297 (citations omitted).

[34] *Id.* at 1305 (citations omitted).

[35] *See Gonzales v. Carhart*, 550 U.S. 124, 158 (2007) (noting that "the State, from the inception of the pregnancy," has an interest "in protecting the life of the unborn child); *Planned Parenthood v. Casey*, 510 U.S. 1309 (1992) (upholding state interests in unborn life as being "substantial" or "profound"); *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 519 (1989) (state's compelling interest in unborn life is not limited to viability).

begins at fertilization or conception rather than at implantation or delivery.[36]

7. The case at bar does not directly implicate a woman's right to end a pregnancy[37] under the *Roe*[38] line of cases. At the same time, this Court has never held that a father has a constitutional right[39] to prevent his wife from implanting embryos after they have been created during, and in reliance upon, the marriage itself.[40] Moreover, classifying human life as property violates the Thirteenth Amendment and violates Petitioner's religious beliefs and her rights of conscience.

8. The property classification in this case conflicts with every jurisdiction's tort law. The Alabama Supreme Court held that any unborn child is a person under the states' wrongful death statutes and that a

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[36] *See* Mullaney, Patrick, *A Father's Trial and the Case for Personhood*, Vol. XXVII, No. 2, Human Life Review 85, 93-4 (Spring 2001).

[37] *See Hamilton*, *supra* at 738 (Parker, J. concurring specially).

[38] *Roe v. Wade*, 410 U.S. 113 (1973).

[39] *See*, *e.g.*, Cohen, Glen, *The Constitution and the Right Not to Procreate*, 60 Stan. L. Rev. 1135 (2008) (contending that a woman's right to privacy as a gestational carrier does not compel a finding that an individual has a constitutional right not to be a genetic parent).

[40] *See* Howell, *supra* at 407 (husband was held estopped from withdrawing consent to implant embryos in a case decided by Israel's Supreme Court where wife was induced into detrimental loss of finances and time and had suffered physical pain and risk).

child's viability is not required.[41] The New Hampshire Supreme Court held that an unborn baby at 10-12 week gestational age was a person under that state's wrongful death statute.[42] Every jurisdiction in the United States allows a child, if born alive, to sue for prior injuries.[43] Furthermore, nearly every state permits wrongful death actions for a child who dies before delivery, a rule which was the subject of "the most spectacular abrupt reversal of a well-settled rule in the whole history of the law of torts," according to the quintessential legal expert on modern tort jurisprudence.[44] The landmark case was *Bonbrest v. Kotz*,[45] holding that a child *en ventre sa mere* is not only an independent human being, but that her life begins as such from the moment of conception. *Bonbrest* signaled the demise of an unscientific, but at that time, a "well-settled" rule that a child in her mother's womb was not a separate individual person. In 1949, *Verkennes v. Corniea*,[46] noted the growing number of states that had overturned the prior rule prohibiting wrongful death suits for unborn children.[47] By 1961, the requirement was waning that prenatal-injury cases required the child's

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[41] *Hamilton*, *supra*.

[42] *Wallace v. Wallace*, 421 A.2d 134 (N.H. 1980).

[43] *See Huskey v. Smith*, 265 So. 2d 596, 596 (Ala. 1972).

[44] *See* Prosser, W. *Handbook of the Law of Torts* 354 (3d ed. 1964).

[45] 65 F. Supp. 138 (D.D.C. 1946).

[46] 38 N.W.2d 838 (Minn. 1949).

[47] *Id.* at 840.

viability outside the womb.[48] In 1985, the Pennsylvania Supreme court rejected the "much criticized rule of the common law." It held that a "child *en ventre sa mere*" is an individual who is "a separate creature from the moment of conception."[49]

9. The idea of "quickening" or "stirring" in the mother's womb (i.e., a mother's feeling of the child's movement) "was intended to protect prenatal life as soon as it could be discerned, not to exclude human life from protection prior to that point."[50] The idea of quickening was an evidentiary test for purposes of prosecuting a crime involving an unborn child, and was not a statement about the value of life prior to perceptive movement in the womb.[51] "In the mid-nineteenth century, American courts began to discard the obsolete 'quickening' rule in order to 'protect the unborn from the point of fertilization.'"[52] Moreover, a general consensus in state statutes treated preborn human beings as "persons" by the time that the Fourteenth Amendment was adopted.[53]

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[48] *Hamilton*, *supra* at 744.

[49] *Amadio v. Levin*, 501 A.2d 1085, 1087 (Pa. 1985).

[50] Craddock, Joshua J., *Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortions?* Vol. 40, No. 2, Harvard J. of Law & Pub. Policy, 539, 553-54 (2017).

[51] *Id.* at 554.

[52] *Id.* at 555, *citing Mills v. Commonwealth*, 13 Pa. 631, 632-33 (1850) and *Smith v. State*, 33 Me. 48 (1851).

[53] *Id*. at 556.

10. Classifying Petitioner's embryos as property conflicts with hundreds of years of common law.[54] In an early English case, a party opposed a devise to a child *en ventre sa mere*, arguing that the devise of property was void because the child was a "non-entity." The court rejected the argument by saying: "Let us see, what this non-entity can do. He may be vouched in a recovery, though it is for the purpose of making him answer over in value. He may be an executor. He may take by devise. He may be entitled under a charge for raising portions. He may have an injunction; and he may have a guardian."[55] Similarly in the United States, the Connecticut Supreme Court has long held that "[a] child is considered in being from the time of its conception."[56] In 1941, a New York court detailed the two hundred year history of inheritance rights for persons in the womb:

> It has been the uniform and unvarying decision of all common law courts in respect of

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[54] *See* Maledon, Wm. J., *The Law and the Unborn Child: The Legal and Logical Inconsistencies*, 46 Notre Dame Lawyer 349, 351-52, n.14 (Winter 1971), *citing Marsh v. Kirby*, 21 Eng. Rep. 512 (Ch. 1634) (a gift to a child *en ventre sa mere* was upheld as to rents and profits from certain leases); *Hale v. Hale*, 24 Eng. Rep. 25 (Ch. 1692) (posthumously-born child held to be within the meaning of a trust created for testator's "children who shall be living" at his death); *Burdet v. Hopegood*, 24 Eng. Rep. 484 (Ch. 1718) (gift over to testator's cousin, in case testator "should leave no son at time of his death," held invalid due to son's birth posthumously).

[55] Maledon, *citing Thellusson v. Woodford*, 31 Eng. Rep. 117, 163 (Ch. 1798).

[56] *Cowles v. Cowles*, 13 A. 414 (Conn. 1888).

> estate matters for at least the past two hundred years that a *child en ventre sa mere* is 'born' and 'alive' for all purposes for his benefit . . . Identical conceptions are found in many other English cases and in the early decisions in this State.[57]

11. The property classification in this case conflicts with this Court's rulings as well as the factual underpinning for federal statutes such as 18 U.S.C. §§1531, 3596(b) and 1841. The factual premise for these federal laws is that unborn children are not property, but persons.

a. This Court stated that a fetus in the womb, by "common understanding and scientific terminology . . . is a living organism"[58] within the meaning of the federal act protecting a "living [human] fetus" from certain procedures.[59] The federal act protects a "human fetus"[60] from anyone who "performs a partial birth abortion."[61] The act allows a "father" and the "maternal grandparents" of a fetus who is "killed" by this method to sue for treble the costs of the abortion[62] and for all injuries, psychological and physical, occasioned by a

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[57] *In re Holthausen's Will*, 26 N.Y.S. 2d 140 (1941) (numerous citations omitted).

[58] *Gonzales*, *supra* at 147.

[59] *See* 18 U.S.C. §1531(b)(1)(A) protecting a "living fetus" from certain procedures.

[60] 18 U.S.C. §1531(a).

[61] 18 U.S.C. §1531(b)(1).

[62] 18 U.S.C. §1531(c)(2)(B).

violation of the act.[63] The statute presumes that an unborn child is a person, not property, because property cannot be killed. Moreover, property does not have a father and mother, nor maternal grandparents. In upholding §1531, this Court has implicitly held that an unborn child is a "person" protected by federal law.

b. Under 18 U.S.C. §3596(b): "A sentence of death shall not be carried out upon a woman while she is pregnant." This statute again implicitly recognizes that an unborn child is not property, but a person. At common law, an invasion of a pregnant woman's privacy was permitted to spare the child in the womb. "The *writ de ventre inspiciendo* [inspection of the abdomen], to ascertain whether a woman convicted of a capital crime was quick with child, was allowed by the common law, in order to guard against the taking of the life of an unborn child for the crime of the mother."[64]

c. Under 42 U.S.C. §300aa-11, the National Childhood Vaccine Injury Act, "a woman who received a covered vaccine while pregnant and any child who was *in utero* at the time such woman received the vaccine shall be considered persons to whom the covered

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[63] 18 U.S.C. §1531(c)(2)(A).

[64] Roden, Gregory J., *The Sovereign's Remedy*, Vol. XL, No. 4, The Human Life Review 56, 57, n.5 (Fall 2014), *citing Union Pac. R. Co. v. Botsford*, 141 U.S. 250, 253 (1891) (noting narrow exceptions under common law right to privacy in certain civil cases to confirm claims of pregnancy and in capital cases to guard against taking the life of an unborn child for the crime of the mother).

vaccine was administered and persons who received the covered vaccine."

12. The property classification of the embryos in this case conflicts with the federal Unborn Victims of Violence Act of 2004, 18 U.S.C. §1841(d) and 10 U.C.M.J. §919a, where the definition of unborn child includes "a member of the species homo sapiens, at any stage of development, who is carried in the womb."

13. The property classification here conflicts with federal patent law. The Leahy-Smith America Invents Act, Pub. L. No. 112-29 (2011), §33, prohibits application of the patent laws to human organisms.[65] The U. S. Patent Office characterized this statute as enacting explicitly into law what had been the Patent Office's long-standing interpretation of the existing law on patentable subject matter under 35 U.S.C. §101.[66]

14. The property classification here conflicts with at least 29 states that have enacted fetal-homicide statutes protecting unborn children from the moment of conception.[67]

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[65] 125 Stat. 284, 340 (Sept. 16, 2011), classified to 35 U.S.C. §101, Note, "Limitation on Issuance of Patents."

[66] Bahr, Robert S., Acting Associate Commissioner for Patent Examination Policy, *Memorandum on Claims Directed to or Encompassing a Human Organism*, U. S. Patent and Trademark Office (September 20, 2011), http://www.uspto.gov/sites/default/files/.

[67] National Conference of State Legislatures, http://www.ncsl.org/research/health/fetal-homicide-state-laws.aspx; *see also State v. Courchesne*, 998 A.2d 1, 50, n.46 (Conn. 2010).

15. The property classification here conflicts with state legislative efforts regarding extracorporeal embryos to reverse harsh court rulings. For example:

a. Louisiana requires courts to resolve disputes by a standard that determines the "best interest of the *in vitro* fertilized *ovum*." La. Rev. Stat. Ann. §9:131. And in §126, Louisiana explicitly provides that an embryo is not "property":

> An in vitro fertilized human ovum is a biological human being which is not the property of the physician which acts as an agent of fertilization, or the facility which employs him or the donors of the sperm and ovum. . . . A court in the parish where the in vitro fertilized ovum is located may appoint a curator, upon motion of the in vitro fertilization patients, their heirs, or physicians who caused in vitro fertilization to be performed, to protect the in vitro fertilized human ovum's rights.

b. New Mexico, in N.D. Stat. Ann. 24-§9A-1(D), "implicitly grants a human embryo the status of human being" by mandating that all *in vitro* fertilized ova be implanted in a human female recipient.[68]

c. Arizona, in Ariz. Rev. Stat. Ann. §36-2301 *et seq*., enacted a law to reverse judicial favoritism toward a spouse who seeks to prevent implantation. The act disregards contracts between the spouses. It requires that frozen embryos be awarded to the spouse

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[68] *Howell*, *supra* at 412, n.45.

who wants to develop them to birth after separation or divorce.[69]

B. A Property Classification Conflicts with the Express Language of the Constitution's Preamble.

1. Noticeably missing from *Roe*'s review of the word person in the Constitution is any review of the Preamble's purpose clause. The Constitution's drafters stated that its purpose was to secure the blessings of liberty for themselves **and** for their **posterity**:

> We, the people of the United States, in order to . . . secure the Blessings of Liberty for ourselves and for our Posterity, do ordain and establish this Constitution for the United States of America.

2. "Posterity," in the Preamble, does not mean "property":

> It is "a textually specific indication that the Constitution was intended, and presumably should be understood and interpreted, to secure 'Blessings of Liberty' to descendants as yet unborn. Indeed it is not disingenuous to suggest that the Constitution places two classes of people on a par in terms of entitlement

[69] With this knowledge, spouses may simply freeze eggs and sperm separately for future possible fertilization and implantation.

> to the 'Blessings of Liberty,' i.e., 'ourselves' and 'our Posterity.' "[70]

3. Marcin points out that the word posterity appeared in many of the great documents establishing the newly forming state governments,[71] including Pennsylvania and Virginia in 1776. In 1780, Massachusetts recognized the "goodness of the Great Legislator of the Universe in affording the people an opportunity of forming a new constitution of civil government for ourselves and our posterity."[72]

4. Marcin states: "The 'People of the United States' in 1788, when they ordained and established the Constitution, did so in order to secure the blessings of liberty to their yet-to-be-born descendants. Their yet-to-be-born descendants included those who were then *in utero* as well as the innumerable generations yet to come into existence."[73] Marcin observes: "What seems evident is that the 'Blessings of Liberty to . . . our Posterity' clause identifies us as a people who profess a caring attitude toward our descendants to the point of announcing formally and solemnly that the fundamental document of our structured self-government was ordained and established for their weal as

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[70] Marcin, Raymond, *Posterity in the Preamble and a Positivist Pro-Life Position*, 38 Am. J. of Juris. 273, 276 (1993).

[71] *Id.*

[72] *Id*. at 276.

[73] *Id.* at 277.

well as ours, and so that they may enjoy what we enjoy."[74]

5. While the Preamble does not itself confer powers or rights,[75] it expresses in no uncertain terms that the Constitution's protections extend to people born and yet-to-be-born. In claiming authority from this Court's precedent, the lower courts violated the statement of purpose in the Preamble to the Constitution along with the *raison d'etre* of the Declaration by holding that the six embryos here are property.

C. Human Embryos Are Entitled to Substantive Due Process as Persons Under the Fourteenth Amendment Based on the Original Intent of its Author.

1. The purpose of the Fourteenth Amendment, according to a statement in 1859 by its author, John Bingham of Ohio, was to rectify this Court's errors[76] and guarantee "'*[n]atural or inherent rights, which belong to all men irrespective of all conventional regulations . . . by the broad and comprehensive word 'person'* as contradistinguished from the limited term *'citizen'*. . . .'"[77] Accordingly, if Bingham's original intent,

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[74] *Id.* at 280.

[75] *See id*. at 280-83.

[76] *See* Mullaney, Patrick, *Unborn Life's Protection: Exactly What Does Constitute Us?* Vol. XXX, No. 3, Human Life Review 44, 49 (Summer 2004), referring to *Barron v. Baltimore*, 32 U.S. 243 (1833) and *Scott v. Sanford*, 60 U.S. 393 (1856).

[77] *Id*. at 48-49 (emphasis in the original).

as the author of the Fourteenth Amendment, was to construe the word "person" broadly and **comprehensively**, then persons of all ages (including those in gestation) are persons under the Fourteenth Amendment. This is because natural rights are acquired upon a person's "creation." Such rights are granted by nature prior to, and independent of, promulgated law. They are "irrespective of all conventional regulations," as Bingham said.

2. People are entitled to "their separate and equal station" under the "laws of nature and of nature's God" and under the Declaration. Specifically: "We hold these truths to be self-evident, that **all men** are created **equal**. . . ." (emphasis added). Important to this point is that the Creator creates "men" by fertilization. Ova or sperm are not "men" until they unite. "All men" in the Declaration does not exclude women and children. "All men" cannot logically exclude Petitioner's posterity. The embryos here are "men" whom God has "created" by the union of the ova and sperm, even though the IVF process facilitated the unification. Petitioner's embryos are therefore "persons" entitled to natural rights under the Fourteenth Amendment and under the Preamble. They are entitled to be in the custody of a parent who loves them and to be protected from aggression by others.

3. Significantly, the Constitution is not an end in itself, but rather the means to an end that protects each person's intrinsic rights under the laws of nature

and nature's God.[78] In the year 1610, Sir Edward Coke had written in Calvin's case:

> The law of nature was before any judicial or municipal law [and] is immutable. The law of nature is that which God, at the time of creation of the nature of man, infused into his heart for his preservation and direction; and this is the eternal law, the moral law, called also the law of nature.[79]

4. The Declaration of Independence adopted Coke's view of natural rights, specifically, his view that government is not the highest law under either the Declaration or the Constitution:

> In 1776 the British Government was insisting that "the law of the land" and "the immemorial rights of English subjects" were exclusively and precisely what the British Parliament from time to time declared them to be. This claim for parliamentary absolutism was at variance with all the great traditions of the natural law and common law as recorded through the centuries from Bracton to Black stone.[80]

5. Coke's view was in contrast to Locke's view that the rights of individuals and minorities are

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[78] *See generally* Manion, Dean Clarence, *The Natural Law Philosophy of Founding Fathers*, Vol. I, Natural Law Institute Proceedings 3-29 (College of Law, Univ. of N. Dame, 1948).

[79] *Id*. at 8.

[80] *Id*. at 16.

absolutely subject to the majority.[81] Manion states that the Declaration was drawn from essays, pamphlets and correspondence of the time, when it pronounced that government is subject to natural rights. Jefferson explained:

> No man has a natural right to commit aggression on the equal rights of another and this is all from which the **laws ought to restrain him**. When the laws have declared and enforced all this, they have fulfilled their functions and the idea **is** quite **unfounded** that on entering into society we give up any natural rights.[82]

6. As Manion put it, the "necessary corollary" to the doctrine of unalienable natural rights is the limitation upon the sovereignty and government by its division, judicial review and democratic forces.[83] "This was, indeed, the significant contribution that the American Revolution made to the doctrine of natural law."[84]

D. Lower Courts Are in Conflict.

1. Upholding what science shows to be true (that human embryos are unique human persons) is consistent with natural law and respect for religious or conscientious parents who seek to avoid their embryos'

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[81] *Id.* at 19-20.

[82] *Id*. at 20 (emphasis added).

[83] *Id*. at 21.

[84] *Id*.

immediate destruction.[85] Respecting one spouse's emotional or religious attachments imposes no burden where that spouse agrees to pay the storage fees. The passage of time may resolve the embryo-dispute when the pressure of court proceeding has lessened. But if not, custody orders are modifiable.

2. The significant difference in a custody analysis is that, constitutionally, the embryos are persons, not property, with the right to be protected from aggression arising from experimentation and from private "donation" for experimentation or to third parties who have not gone through the rigors of adoption laws. A property law analysis dehumanizes human life.

3. Mothers' claims have prevailed where they have shown that they are childless and unlikely to conceive other children.[86] Otherwise, mothers' claims are automatically denied in favor of fathers seeking to "avoid procreation."[87] On the contrary, as shown below,

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[85] *See, e.g.*, *In re Marriage of Dahl & Angle*, 194 P.3d 834 (Or. Ct. App. 2008) (denying father's claims that embryos should be donated to another couple rather than destroyed or subjected to experimentation); *J.B. v. M.B.*, 787 A.2d 707 (N.J. 2001) (denying father's religious claims that his embryos were "life").

[86] *Reber v. Reiss*, 42 A.3d 1131 (Pa. Super. 2012) (mother's claims upheld where she was unlikely to conceive other children).

[87] *See Davis v. Davis*, 842 S.W.2d 588 (Tenn. 1992) (holding under *Roe* that a father's right not to procreate supersedes a mother's claims despite five ectopic pregnancies, removal of fallopian tubes, six IVF attempts, hormonal stimulation, a month of subcutaneous injections, eight days of intramuscular injections, anesthesia five times and a failed implantation attempt); *Kass v. Kass*, 673 N.Y.S.2d 350 (N.Y. 1998) (denying mother's claims despite suffering egg retrieval five times, embryo transfers nine

a father of extracorporeal embryos already "procreated" at the point of fertilization. This reality moots his claimed right to negate "procreation" by withholding consent for implantation. This Court should grant the requested writ because the supposed "right not to procreate" in this case is based on a fictional set of facts, not the facts here involving embryos already "procreated."

E. Science is Firm on When a Person Comes Into Being.

1. This Court is asked to make a limited ruling on when a new person is created during marriage under the Fourteenth and Fifth Amendments. Disproven science should not be the basis for such a ruling. Moreover, the Court should reject any philosophy that persons lack constitutional protections because they are deemed to be property, imbeciles, vegetative, unfit, unwanted or defective. In addition to statutes and case law that already protect life from its beginning, this Court may take judicial notice under Fed. R. Civ. P. R. 201 of long-known biology that all human beings

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times, one miscarriage and one ectopic pregnancy); *A.Z. v. B.Z.*, 725 N.E. 2d 1051 (Mass. 2000) (denying mother's claims after seven egg retrievals over three years); *J.B. v. M.B.*, 783 A.2d 707, 710 (N.J. 2001), *modified and aff'd*, 170 N.J. 9 (2001) (*citing Roe* for right not to procreate); *Roman v. Roman*, 193 S.W.3d 40 (Tex. Civ. App. 2006) (denying mother's claims after extraction of 13 ova where father withdrew consent the night before scheduled implantation).

come into existence by the creation of the zygote upon the fusion of a sperm cell with a oocyte (egg cell).

2. Specifically, Robert Edwards, who helped create the first human baby born from IVF procedures, Louise Brown, published his findings about the differences found in the cells of the early embryo:

> Two of the cells in a four-cell embryo will often develop into the inner cell mass that has a role to play in body development. Another cell develops into the trophectoderm (the trophectoderm includes the placenta). The fourth cell of the four-cell stage will often develop into the germline, which will also play a role in human development. Even at the fourth-cell stage, protein distributions in each cell can be different. For example, the fourth cell with mostly vegetal cytoplasm has small amounts of proteins leptin and STAT 3, whereas two cells have intermediate amounts and a third cell with mostly animal cytoplasm has large amounts. In addition, mRNA expression of proteins such as B-HCG secretions are different in trophectoderm cells as compared to cells that will reveal the inner cell mass.[88]

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[88] Gitchell, Rita Lowery, *Should Legal Precedent Based on Old, Flawed, Scientific Analysis Regarding When Life Begins, Continue to Apply to Parental Disputes Over the Fate of Frozen Embryos, When There Are Now Scientifically Known and Observed Facts Proving Life Begins at Fertilization?* 20 DePaul J. of Health Care Law 6 n.17 (Spring 2018), *citing* Edwards, Robert G. & Hansis, Christopher, *Initial Differentiation of Blastomeres in 4-Cell Human Embryos and its Significance for Early*

> Scientist, Dr. Maureen Condic, who holds a doctorate in neurobiology from the University of California, Berkeley, and currently teaches human embryology as an Associate Professor of Neurobiology and Anatomy at the University of Utah School of Medicine, confirms, based on accepted scientific criteria, that human life begins at fertilization. Dr. Condic reports scientists determine when a new cell is formed based on two universal criteria, cell composition and cell behavior. When sperm and egg plasma fuse in less than a second, a single cell is created that has a composition consisting of a gene set or genome that can be distinguished from the gene set of the sperm or the gene set of the egg. The new cell has sperm and egg derived components, but the molecular composition is unique. The new cell immediately acts differently than either gamete and prepares to replicate. The new cell acts not as a mere human cell, but as an organism undergoing a self-directed process of maturation. Dr. Condic has given expert testimony to the same effect: "Thus the conclusion that a human zygote is a human being (i.e. a human organism) is not a matter of religious belief, societal convention or emotional reaction. It is a matter of observable, objective fact."[89]

Embryogenesis and Implantation, 11 Reproductive Biomedicine online 206 (2005), https://www.rbmojournal.com/article/S1472-6483(10)60960-1/pdf (cites omitted).

[89] Gitchell, at 6-7, n.24 (other footnotes omitted), *citing* Condic, Maureen L., *When Does Human Life Begin? The Scientific*

> Other scientists confirm Dr. Condic's statements. Dr. Renee Reijo Pera, Ph.D., the Vice President of Research and Economic Development at Montana State University and former Professor of Obstetrics and Gynecology and former Director of Stanford Center for Human Pluripotent Stem Cell Research and Education, said in a 2010 lecture that she discovered in her research that what makes us human "wasn't consciousness, and it wasn't love, and it wasn't spirituality, but it just is: on day one, a human sperm and a human egg come together and we have a human embryo."[90]

3. Importantly, nomenclature in regard to embryos can be used to support an anti-factual point of view. Prominent embryologists confirm that the term "pre-embryo" is scientifically inaccurate. The term "pre-embryo" should not be used for the following reasons: (1) it is ill-defined because it is said to end with the appearance with the primitive streak or to include neurulation; (2) it is inaccurate because purely embryonic cells can already be distinguished after a few days, as can also the embryonic (not the pre-embryonic) disc; (3) it is unjustified because the accepted meaning of the word embryo includes all of the first 8 weeks; (4) it is equivocal because it may convey the erroneous idea that a new human organism is formed at only some

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Evidence And Terminology Revisited, 8 Univ. of St. Thomas J. L. & Pub. Policy 44, 46-47, 76-79 (2013).

[90] Gitchell, at 7, n.29 (footnotes omitted), *citing* IdeaCity, *Renee Reijo Pera-Synth. Hum. Reproduc'n*, YOUTUBE (9/1/10), https://youtube/mkHhTT5Qqsg.

considerable time after fertilization; and (5) it was introduced in 1986 largely for public policy reasons.[91]

4. Petitioner is indisputably the mother of the six embryos here. She cannot be the embryos' "owner." They are persons. The Court is asked to reject the classification of these embryos as property[92] and to reject any spirit of compromise that would deem embryos to be a "special form of property" akin to 3/5 of a person.[93] A property classification dehumanizes Petitioner, their mother, and her other children who are full siblings to these six embryos and were conceived in the same manner. These six embryos are lives-in-being. They are Petitioner's offspring. They are her descendants, her heirs, her progeny, her posterity. As lives-in-being, they should be recognized as such under the Fifth and Fourteenth Amendments.

5. For this Court to consider whether these human embryos are entitled to constitutional protections as persons is no more outlandish than to determine

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[91] O'Rahilly, Ronan & Muller, Fabiola, *Human Embryology & Teratology* 88 (3d ed. 2001).

[92] Property is: "Collectively, the rights in a valued resource such as land, chattel, or an intangible. It is common to describe property as a 'bundle of rights.' These rights include the right to possess and use, the right to exclude, and the right to transfer." Bryan A. Garner (ed.), *Black's Law Dictionary* (10th ed. 2014). An "owner" is: "Someone who has the right to possess, use, and convey something; a person in whom one or more interests are vested." *Id.*

[93] *See* U.S. Const. art. I §2, para. 3: "Representatives and direct taxes shall be determined by adding to the whole number of free persons . . . three-fifths of all other persons."

that the First Amendment applies in the digital era, that the Second Amendment is not limited to musket owners, that the Eighth Amendment protection is not just about stockades, or that the Fourteenth Amendment only refers to slaves.

F. Petitioner's Family Rights are More Precious than Property Rights.

This court has frequently recognized the right to have a family. "The rights to conceive and to raise one's children have been deemed 'essential,' [cites omitted], 'basic civil rights of man,' [cite omitted], and 'rights far more precious . . . than property rights' [cite omitted]."[94] Just as a state legislature, in *Stanley*, may not adopt a theory that an unwed father is not a "parent" or that he is automatically unfit for custody of his own children, this Court should not permit the state court below to adopt a theory that Petitioner is not the parent of her own embryos so as to deprive her of their custody. The ruling here deprives Petitioner of her "essential" right to raise the children she has already conceived, a right more precious than property rights.

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[94] *Stanley v. Illinois*, 405 U.S. 645, 652 (1972).

G. The Colorado Supreme Court's Framework is Faulty Because its Property Classification Violates Petitioner's Sincerely Held Religious Beliefs and Permits the Destruction or Donation of her Embryos.

As was noted by Petitioner's trial counsel in the record, this case was one of first impression in Colorado at the trial court and appellate levels. The issue of whether her embryos were persons or property was not one of the issues tried to the court. It was a *sua sponte*, post-trial finding by the trial court based on Colorado statutes and case law (notably, all post-*Roe*). Her religious beliefs were not at issue in the trial court, but the record does establish that Petitioner believes her embryos are human lives.[95] She will testify on remand that this view is based on her sincerely held religious beliefs as a Christian,[96] as well as on her medical training as a nurse. She will testify on remand that she believes her embryos are ensouled. The trial court found that the embryos are lives. App. 92. This Court itself recognizes that human life exists before birth. However, on remand, the trial court will apply the Colorado Supreme Court's faulty analytical framework. The new framework is faulty because it wholly fails to consider Petitioner's sincerely held religious beliefs that her embryos are not "property." Petitioner's religious beliefs against destroying or donating her

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[95] *Supra* n.4, quoting from trial transcript.

[96] Tr. trcpt 246/4, Feb. 24, 2015 (discussing an issue of alcohol) (not included in Appendix).

embryos have been, and will be, ignored on remand without this Court's intervention. Petitioner's sincere religious belief that life begins at fertilization "implicates a difficult and important question of religion and moral philosophy" regarding the fate of her embryos.[97]

H. Classifying These Embryos as Property Should Not Be Based on Precedent that Adopted Hierarchies of Persons.

1. Classifying human embryos as property provokes the need to remember history and its relation to today, when governments, academia and private interests seek to bio-engineer future human lives by owning embryos as property.[98]

2. Other petitions filed with this Court seek relief from wide scale injustice caused by eugenic assaults on defenseless groups. Indiana seeks to prohibit selective abortions of children based on sex, race and disability. Downs Syndrome victims are particularly dehumanized by selective abortion, since their entire class is targeted for elimination. Yet, according to the Seventh Circuit, the basis for overturning Indiana's anti-eugenics law was this Court's decision in *Roe*.[99]

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[97] *Burwell*, *supra* at 2778.

[98] *See* Smith, Wesley J., *Brave New World is Closer Than You Think*, Vol. XLIII, No. 1, The Human Life Review 47 (Winter 2017).

[99] *See* this Court's Docket No. 17-3163, *Petition for Writ of Certiorari* pending in *Planned Parenthood of Indiana and*

3. As recently observed, *Roe*'s meaning of "person" was not inevitable. One writer has pointed out[100] that a pre-*Roe* federal district court decision determined that the rationale of *Griswold* did not extend to abortion. The court held:

> The legal conclusions in *Griswold* as to the rights of individuals to determine without governmental interference whether or not to enter into the process of procreation cannot be extended to cover those situations wherein, voluntarily or involuntarily, the preliminaries have ended, and a new life has begun. Once human life has commenced, the constitutional protections found in the Fifth and Fourteenth Amendments impose upon the state the duty of safeguarding it.[101]

CONCLUSION

The fact that embryos are human persons was recognized in law hundreds of years ago. The scientific reality is that "reproduction" and "procreation" refer to a new human person, not property, and not to an in-between classification. Granting human embryos the status of persons cannot be left up to fifty states, any more than the Kansas-Nebraska Act could leave the status

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Kentucky v. Commissioner of Indiana State Dept. of Health, 888 F.3d 300, 306 (7th Cir. 2018).

[100] Craddock, *supra* at 568.

[101] *Id.*, *citing Steinberg v. Brown*, 321 F. Supp. 741, 746-47 (N.D. Ohio 1970).

of slaves to each state. The test of who is a "person" must be decided for the entire nation in order to uphold the principles of "Equal Justice Under Law." In the alternative, the Colorado Supreme Court's analytical framework violates Petitioner's sincerely held religious beliefs. Also, in the alternative, the Colorado Supreme Court's framework violates her right to an equal share of the embryos as "property," being three embryos for each parent.

Wherefore, Petitioner asks this Court to grant her *Petition*, reverse the Colorado Supreme Court and grant such other and further relief that the Court deems just and proper.

Respectfully submitted,

REBECCA R. MESSALL
Counsel of Record
MESSALL LAW FIRM, LLC
7887 E. Belleview Ave.,
Suite 1100
Englewood, CO 80111
303.228.1685
rm@lawmessall.com

Counsel for Petitioner