IN THE SUPREME COURT OF ALABAMA

Ex parte STATE ex rel. AMIE BETH SHAVER,

Petitioner,

v.

KAY IVEY, in her official.capacity as Governor of Alabama, STEVE MARSHALL, in his official capacity as Attorney General of Alabama, ROBERT L. BROUSSARD, in his official capacity as District Attorney of the 23rd Judicial Circuit of Alabama, DARYL. D. BAILEY, in his official capacity as District Attorney of the 15th Judicial Circuit of Alabama, HAYS WEBB, in his official capacity as District Attorney Of the 6th Judicial Circuit of Alabama, DISTRICT ATTORNEY DOES ##1-38, each in his or her official capacity as an Alabama District Attorney,

Respondents.

CASE NO. _____

EMERGENCY PETITION FOR WRIT OF MANDAMUS
(Oral Argument Requested)

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STATEMENT OF THE CASE

Comes now Petitioner, State of Alabama, on the relation of AMIE BETH SHAVER and petitions this Court for a writ of mandamus to the Respondents to take all measures necessary to protect black unborn children and black women in Alabama from discrimination and to ensure their equal protection under the law.

Petitioner seeks relief from this Court, as it bears the "ultimate responsibility for the orderly administration of justice in this State." *Ex parte State ex rel. Ala. Policy Inst.*, 200 So.3d 495, 514 (Ala. 2015). Only this Court has the jurisdiction to speak with one voice for the entire State to declare that Alabama has the power under the Tenth Amendment of the U.S. Constitution to protect black children in Alabama from discrimination and to ensure their equal protection. Only such action by this Court can provide the relief necessary to end the state-wide confusion and to prevent endless delays in protecting the right to life of black children in Alabama granted by Amendment 930. Due to the magnitude and importance of preventing the denial of justice to these innocent human beings and to the necessity of timely action to prevent

the consummation of such atrocities, this Court has original jurisdiction to hear this matter.

STATEMENT OF FACTS

1. On November 6, 2018, the people of the State of Alabama overwhelmingly voted to approve Amendment 930 to Alabama's Constitution, which reads "(a) This state acknowledges, declares, and affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life. (b) This state further acknowledges, declares, and affirms that it is the public policy of this state to ensure the protection of the rights of the unborn child in all manners and measures lawful and appropriate."

2. Despite the clear expression of the people's sovereign will, Respondents have failed to recognize and support the sanctity of unborn life and ensure the constitutionally-mandated rights of the State's unborn children, including the right to life.

3. Based on the most recent data available through the Alabama Department of Public Health, 7,381 unborn children were killed by abortion providers in Alabama in 2018.[1]

4. Over 60% of those abortions were performed on black women—yet blacks make up just under 27% of the total population of Alabama.[2] No racial group has been left out of societal protection in Alabama more than unborn black children. No racial group has been targeted more for abortion in Alabama than black women.

5. Respondents have failed to protect the constitutional rights of the significantly disproportionate number of black children who are guaranteed the right to life under Amendment 930.

6. America's abortion industry has a long and shameful history of targeting minority populations. In his concurring opinion in *Box v. Planned Parenthood*, Justice Clarence Thomas recognizes that the problem of discrimination against blacks is so pervasive that many are prevented "from being born in the first place." *Box v. Planned Parenthood*

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[1] Induced Termination of Pregnancy Statistics 2018 prepared by the Alabama Center for Health Statistics. Available at http://www.alabamapublichealth.gov/healthstats/assets/itop2018al%20.pdf.

[2] *Ibid.*

of Ind. & Ky., Inc., 139 S. Ct. 1780 (2019). As Justice Thomas points out, less than 100 years ago leading academics supported the suppression and even the eradication of entire communities of Black Americans. Tragically these eugenic, inherently discriminatory, ideas are still with us.

7. In 1921, Margaret Sanger founded the American Birth Control League (ABCL) along with Clarence Cook Little, who served as President of the American Eugenics Society, and Lothrop Stoddard, a white supremacist. ABCL was renamed Planned Parenthood Federation of America in 1942.

8. In 1939, Sanger initiated the "Negro Project" to reduce the birth rate among Black Americans. In a letter to eugenicist Clarence Gamble, heir to the Proctor and Gamble fortune, Sanger wrote, "We do not want word to go out that we want to exterminate the Negro population."[3]

9. The idea that Sanger would "want to exterminate the Negro population" came from her own writings, where she proudly admitted

[3] Margaret Sanger letter to C. J. Gamble, 1939, available at https://libex.smith.edu/omeka/files/original/d6358bc3053c93183295bf2df1c0c931.pdf.

that her goal was to stop all reproduction by those she deemed "unfit."[4] Justice Thomas notes that Sanger's "arguments about the eugenic value of birth control in securing 'the elimination of the unfit,' apply with even greater force to abortion, making it significantly more effective as a tool of eugenics." *Box, supra* at 1789.

10. Planned Parenthood has continued the legacy of its founder by aggressively targeting its services to black communities.[5] The effect is a higher than average abortion rate among black women and a disproportionately higher number of black babies killed by abortion. It is estimated that between 4.1 and 4.6 million American black children are "missing" because of the alarming reduction in the fertility rate of black women due to abortion.[6] Thus, the targeting of black children through

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[4] Margaret Sanger, Birth Control and Racial Betterment, Feb. 1919, Library of Congress Microfilm 131:0099B, available at https://www.nyu.edu/projects/sanger/webedition/app/documents/show.php?sangerDoc=143449.xml.

[5] Mark Crutcher et al., Life Dynamics Inc., Racial Targeting and Population Control (2011) at p. 2-3, available at https://www.lifenews.com/wp-content/uploads/2011/08/LifeDynamicsRacialReport .pdf.

[6] Lyman Stone, *Baby Bust: Fertility is Declining the Most Among Minority Women* (May 16, 2018), available at https://ifstudies.org/blog/baby-bust-fertility-is- declining-the-most-among-minority-women.

abortion has suppressed the votes and representation of Alabama's black population.

11. The following clinics within the State of Alabama provide surgical and medical abortions: Alabama Women's Clinic in Huntsville; Reproductive Health Services in Montgomery, Planned Parenthood Birmingham, and West Alabama Women's Center in Tuscaloosa. Planned Parenthood Mobile currently does not provide abortions, but does dispense abortifacient "Morning After" drugs.

12. Relator Amie Beth Shaver is a resident of Birmingham, Alabama. She was born to a black father and a white mother. Shaver was placed for adoption at birth in 1972. Shaver is deeply grateful to have been born before the abortion-on-demand industry created by *Roe v. Wade*. Shaver has been a long-time public advocate for preborn persons to be treated equally under the law – advocating for an end to abortion-on-demand in Alabama. Shaver is also a professed adherent to Christianity, sincerely holding that her faith demands that all persons, no matter their phase of development are created in the image of God and are entitled to equal protection of the laws of man. Amie Beth Shaver

petitions this court, on behalf of the public interest of the State of Alabama, to protect black children from abortion in Alabama.

13. Respondent Kay Ivey is the Governor of the State of Alabama.

14. Respondent Steve Marshall is the Attorney General of the State of Alabama.

15. Respondent Robert L. Broussard is District Attorney of Madison County, Alabama (23rd Judicial Circuit) in which Alabama Women's Clinic is located.

16. Respondent Daryl D. Bailey is District Attorney of Montgomery County, Alabama (15th Judicial Circuit) in which Reproductive Health Services is located.

17. Respondent Danny Carr is District Attorney of Jefferson County, Alabama (10th Judicial Circuit) in which Planned Parenthood Birmingham is located.

18. Respondent Hays Webb is District Attorney of Tuscaloosa County, Alabama (6th Judicial Circuit) in which West Alabama Women's Center is located.

19. Respondent Ashley Rich is District Attorney of Mobile County, Alabama (13th Judicial Circuit) in which Planned Parenthood Mobile is located.

20. Each of Respondents DISTRICT ATTORNEY DOES ##1-38 is District Attorney of a Judicial Circuit in which surgical or medical abortions are performed.

STATEMENT OF ISSUES

1. Whether Pre-Born African American Children Are Persons Under Alabama Law.

2. Whether African American Persons Should Be Afforded Equal Protection Under Alabama Law.

3. Whether This Court Should Order Respondents to Use All Means Lawful and Necessary to Abate the Depravation Equal Protection of Laws Guaranteed to Pre-Born African American Persons.

STATEMENT OF WHY WRIT SHOULD ISSUE

I. THE WRIT SHOULD ISSUE BECAUSE THE ALABAMA CONSTITUTION AND SUPPORTING LAW REQUIRES RESPONDENTS TO TAKE ALL MEASURES LAWFUL AND APPROPRIATE TO PROVIDE EQUAL PROTECTION TO BLACK CHILDREN, BORN OR UNBORN, WITHIN THE STATE.

A. In exercising their authorities and powers, Respondents do not have discretion to refuse equal protection to African-American pre-born children in Alabama.

The Alabama Constitution, Statutes, and Case Law confer authority to equally protect preborn children's right to life on the Governor, the Attorney General, and the District Attorneys. Art. V, § 120, Ala. Const. 1901; Ala. Code § 36-15-1; § 36-15-15; § 12-17-184(2); *Central of Georgia R. Co. v. Robertson*, 83 So. 102 at 106 (Ala. 1919) ("Natural persons and corporations, the richest and the poorest, the highest and the humblest, are alike equal before the law, have the same, and only the same, rights, and are under the same, and only the same, liabilities.") (quoting *A.G.S.R.R. Co. v. McAlpine,* 75 Ala. 113 (Ala. 1883).

In exercising these authorities and powers, the Respondents are expressly required to enforce the clear and overwhelming intent of the Alabama Constitution, the Legislature, the will of the People of Alabama, and controlling case law.

Where the operative statute unequivocally directs a state official's performance, that performance is ministerial. *See Graham v. Alabama State Employees Ass'n*, 991 So. 2d 710, 718 (Ala. Civ. App. 2007).

> Alabama law has defined discretionary acts as those acts as to which there is no *hard and fast rule* as to course of conduct that one must or must not take and those requiring exercise in judgment and choice and involving what is just and proper under the circumstances. In contrast, official action, the result of performing a certain and specific duty arising from fixed and designated facts, is a ministerial act.

Id. (internal quotations and citations omitted) (emphasis in original). Thus, the Respondents have no discretion to enforce the right to life of African American preborn persons within the State. The Respondents' acts or omissions are taken in opposition to the clear and overwhelming intent of the Alabama Constitution, the Legislature, the Will of the People of Alabama, and controlling case law.[7]

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[7] e.g., Amend. 930, Ala. Const. 1901; Art. I, § 1, Ala. Const. 1901; Ala. Code § 13A-6-1(a)(3); Ala. Code § 13A-5-40(10); Ala. Code § 13A-5-49(9); Ala. Code § 26-15-3.2; Ala. Code § 26-22-1(a); *Ex parte Phillips*, No. 1160403 (Ala. Oct. 19, 2018), slip op. at 41, 70-71; *Hamilton v. Scott*, No. 1150377 (Ala. Mar. 9, 2018) (*Hamilton II*), slip op. at 11; *Stinnett v. Kennedy*, 232 So. 3d 202, 203, 215 (Ala. 2016); *Ex parte Hicks*, 153 So. 3d 53, 66-72, 84 (Ala. 2014); *Ex parte Ankrom*, 152 So. 3d 397, 411, 421, 429, 439 (Ala. 2013); *Hamilton v. Scott*, 97 So. 3d 728, 734 n.4, 737, 739 (Ala. 2012) (*Hamilton I*); *Mack v. Carmack*, 79 So. 3d 597, 599, 600, 607, 611 (Ala. 2011) (per curiam); *Ziade v. Koch*, 952 So. 2d 1072, 1082 (Ala. 2006);

B. Mandamus relief is appropriate to require Respondents to perform their duty to provide equal protection under the law to preborn children within the State.

The elements for mandamus relief are:

1) a clear legal right in the petitioner to the order sought;
2) an imperative duty upon the respondent to perform, accompanied by a refusal to do so;
3) the lack of another adequate remedy; and
4) properly invoked jurisdiction of the court.

Ex parte Jim Walter Res., Inc., 91 So. 3d 50, 52 (Ala. 2012) (internal quotations and citations omitted); *see also Ex parte United Serv. Stations, Inc.*, 628 So.2d 501, 503 (Ala. 1993).

1. Petitioner has a clear legal right to mandamus relief.

Under well-settled Alabama law, the Relator has standing to seek mandamus relief in the name of the State:

> It is now the settled rule in Alabama that a mandamus proceeding to compel a public officer to perform a legal duty in which the public has an interest, as distinguished from an official duty affecting a private interest merely, is properly brought in the name of the State on the relation of one or more persons interested in the performance of such duty to the public . . . .

Kendrick v. State ex rel. Shoemaker, 54 So. 2d 442, 447 (Ala. 1951).

Gentry v. Gilmore, 613 So. 2d 1241, 1249 (Ala. 1993) (Maddox, J., dissenting); *Ankrom v. State*, 152 So. 3d 373, 382 (Ala. Crim. App. 2011).

a. Under Alabama Law, Preborn Children are persons who possess the fundamental right to life

In 2006, the Alabama Legislature passed the Brody Act which defines 'person' as "a human being, including an unborn child in utero at any stage of development, regardless of viability" for purposes of Alabama's homicide laws. Ala. Code § 13A-6-1(a)(3). In so doing, the legislature has recognized that "when an 'unborn child' is killed, a 'person' is killed." *Ziade v. Koch*, 952 So.2d 1072, 1082 (Ala. 2006) (SEE, J. concurring specially, joined by NABERS, C.J., and STUART, SMITH, and PARKER, JJ.). In *Ex parte Phillips, 2018 Ala. LEXIS 105 (Ala. October 19, 2018)*, the Court affirmed that "under 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." *Id*. at 71.

In *Mack v. Carmack*, 79 So.3d 597 (Ala. 2011), this Court expanded the protections of the state's wrongful death laws to include preborn children. *See also*, *Hamilton v. Scott*, 97 So.3d 53 (Ala. 2012); *Stinnet v. Kennedy*, 232 So.3d 202 (Ala. 2016). In view of the legislative policy that preborn children at all stages of development are persons who should be protected under the Homicide Act, the Court reasoned that preborn children should also be protected by the state's Wrongful Death Act,

given the shared purpose of the Acts in preventing homicide (the unlawful killing of persons):

> [I]n light of the shared purpose of the Wrongful Death Act and the Homicide Act to prevent homicide, the amendment [to the Homicide Act] was an important pronouncement of public policy concerning who is a "person" protected from homicide. Thus, borrowing the definition of "person" from the criminal Homicide Act to inform as to who is protected under the civil Wrongful Death Act made sense. We reasoned "it would be 'incongruous' if 'a defendant could be responsible criminally for the homicide of a fetal child but would have no similar responsibility civilly.'"

Stinnet, *supra*, at 215 (brackets added).

Because unborn children are legal persons who are entitled to full protection of the law, they accordingly possess a fundamental right to life. Article I, § 1 of Alabama's Constitution of 1901 declares that "all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness."

The ultimate recognition of these values occurred on November 6, 2018, when the people of Alabama went to the ballot and overwhelmingly ratified Amendment 930 which formally codified the right to life for all of Alabama's preborn children under the state's constitution. Section (a) of the Amendment reads as follows: "This state acknowledges, declares, and

affirms that it is the public policy of this state to recognize and support the sanctity of unborn life and the rights of unborn children, including the right to life."

The language of this section constitutes an official declaration that Alabama law recognizes the right to life of preborn children within the state. In Alabama law, the expression 'public policy' is not used in the aspirational sense of denoting a "declared objective," but simply refers to the established law of the state. Article I, § 13.50(b)(3), Ala. Const. 1901, states, "Both the provisions of the Alabama Constitution and the statutes and regulations of the State of Alabama, with interpreting opinions by its courts of competent jurisdiction, have developed the state's public policy." Art. I, § 13.50(b)(4), Ala. Const. 1901, declares, "The public policy of the State of Alabama protects the unique rights of its citizens..." *See also*, *Scott v. Board of Trustees of Mobile S.S. Association-International Longshoremen's Ass'n Pension, Welfare and Vacation Plans*, 540 So.2d 657, 658 n.1 (Ala. 1988) ("'[T]he term 'public policy' of a State is **nothing more or less than** the law of the State, as found in its constitution and statutes and when they have not directly spoken, then in the decisions of

the courts and in the regular practice of government officials.'")(citation omitted)(emphasis added).

When viewed within the broader context of Alabama law, Amendment 930 is an expression of the State's fundamental value determination that the life of a preborn child is just as valuable as any other life and that a preborn child has a right to life because he or she is a person of intrinsic worth and dignity. The people of Alabama have expressed their will, both directly and through their elected officials. Now it falls upon this Court to defend the sovereign will of Alabama using the powers reserved to the states under the U.S. Constitution.

b. Under the Tenth Amendment of the U.S. Constitution, States Have the Power to Ensure the Equal Protection of Children within Their Territorial Jurisdictions.

The Tenth Amendment to the U.S. Constitution provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." In *New York v. United States*, 505 U.S. 144 (1992), the Supreme Court averred "[T]he Tenth Amendment 'states but a truism that all is retained which has not been surrendered.' " quoting *United States v. Darby*, 312 U.S. 100, 124 (1941). Unless specifically warranted

by the Constitution, the federal government is powerless to interfere with the policy decisions of a state.

The U.S. Constitution does not explicitly (or implicitly) prohibit states from recognizing the equal protection of preborn human life. States have, and have always had, the power to recognize the fundamental principles that all human life — no matter how fragile or how wanted — is intrinsically valuable and that each individual has an innate right to life and the opportunity to pursue his or her own course of happiness. The Constitution does not preclude states from protecting all human life irrespective of race or color.

The principle of federalism entrusting the health and safety of individuals to the state governments is well-established:

> Our Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.' *Jacobson* v. *Massachusetts*, 197 U. S. 11, 38 (1905). When those officials 'undertake[ ] to act in areas fraught with medical and scientific uncertainties,' their latitude 'must be especially broad.' *Marshall* v. *United States*, 414 U. S. 417, 427 (1974).

(*S. Bay United Pentecostal Church v. Newsom*, ___U.S.___, 140 S.Ct. 1613, 1613-1614, 207 L.Ed.2d 154, 155 (2020)

The Court in *Roe v. Wade* did not question the premise that all human beings possess an innate right to life, rather it acknowledged that

this was a question fraught with uncertainty and the Court was not in a position to speculate as to when human life begins:

> "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer."

Roe v. Wade, 410 U.S. 113, 159 (1973).

States, therefore, have a presumptive and justifiable foundation under the Tenth Amendment to answer that pivotal question unanswered in the Constitution and in the Supreme Court's jurisprudence and to acknowledge the right to life of all unborn children within that state's boundaries irrespective of race or color.

In *Reynolds v. U.S.*, 98 U.S. 145 (1878), the Supreme Court posed the following rhetorical questions:

> Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice?

Reynolds v. United States, 98 U.S. 145, 166 (1878).

Even personal liberties such as the freedom to exercise religious beliefs cannot justify the killing of an innocent person. If a child is recognized as having equal protection under the law, that child's life cannot be taken merely because of another person's beliefs.

Similarly, states have the authority to protect children even when doing so may come in conflict with the constitutional rights of the parents. *See, e.g.*, *Prince v. Commonwealth of Massachusetts*, 321 U.S. 158, 166-67 (1944) (States can restrict the right to practice religion freely and can intrude upon the private realm of family life in order to protect the life or well-being of a child).

In *Central of Georgia R. Co. v. Robertson*, 83 So. 102 at 106 (Ala. 1919), the Alabama Supreme Court held that all human beings "the richest and the poorest, the highest and the humblest, are alike equal before the law." Through its authority under the Tenth Amendment, Alabama has secured the equal protection of preborn African American children through Amendment 930. Because the Supreme Court did not address this constitutional basis for the establishment of equal protection and the right to life for all preborn children, the analysis in *Roe* and its progeny is neither controlling nor contradicted.

c. States Are Not Prevented From Affording Equal Protection Rights to Children by Roe and its Progeny.

America has not always secured the blessings of liberty to all persons within her jurisdiction. Slavery is a hideous stain on the fabric of our nation. Just 160 years ago, on March 6, 1857, the U.S. Supreme Court held that a black slave named Dred Scott was not fully a person and could not claim the rights and protections of citizenship. *Dred Scott v. Sandford*, 60 U.S. 393 (1856). Almost five years later, and 158 years ago to the day, President Abraham Lincoln signed the Emancipation Proclamation and opened the door for Mr. Scott to gain his freedom.

In the decades following, another insidious evil began its attack on blacks in America. The eugenics movement was a powerful force that, at best, disenfranchised blacks and at its core sought the wholesale destruction of the black race through the aggressive promotion of birth control, forced sterilization, and eventually abortion, especially in black communities.

The denial of human and civil rights that marked the American era of slavery was now unleashed on a new group of defenseless human beings— unborn children—in particular black children. *Roe v. Wade*, 410 U.S. 113 (1973), borrowed from *Dred Scott* to create a subclass of human

beings based on arbitrary characteristics, including age and their status as "wanted or "unwanted". Like *Scott*, *Roe* and its progeny resulted in a confusing and discriminatory application of laws against the unborn. In Alabama, for example, the killing of an unborn child by any means other than abortion is considered a homicide. The death sentences of pregnant women in Alabama must be commuted until after they give birth.

Unborn children can inherit property. In a recent Alabama case, a pregnant woman who started a fight that resulted in her baby's death was charged with manslaughter.[8]

If it is unlawful and amoral to lynch a twenty year-old black person in Alabama, and if the full weight of the Respondents' office should bear down on the guilty parties responsible for such heinous acts, so it should be unlawful, amoral, and punishable by the Respondents to allow twenty-week-old black persons to be dismembered.

Similarly, the grossly disparate treatment of "planned" and "unplanned" or "wanted" and "unwanted" children in Alabama is

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[8] Sarah Mervosh, *Alabama Woman Who Was Shot While Pregnant Is Charged in Fetus's Death*. New York Times (June 27, 2019), available at https://www.nytimes.com/2019/06/27/us/pregnant-woman-shot-marshae-jones.html.

violative of Alabama's equal protection laws. This injustice is further compounded by the reality that black children are more likely to be deemed "unwanted" in a system that has historically discriminated against them. To understand the racial component in this discriminatory treatment, one need only look to comments by Supreme Court Justice Ruth Bader Ginsburg who, in a 2009 interview, acknowledged the link between *Roe v. Wade* and population growth, "particularly growth in populations that we don't want to have too many of."[9] Amendment 930 remedies this violation of equal protection for all children by recognizing the inherent sanctity of all children and by ensuring that the right to life for all children, regardless of race, is protected.

The U.S. Supreme Court has never cited a constitutional provision or federal statute that empowers the federal government to prevent the equal protection of preborn human life. In *Roe* and its progeny, no principle has been established which would prevent a state from exercising its Tenth Amendment power to recognize equal protection for preborn children within that state's boundaries.

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[9] Emily Bazelon, *The Place of Women on the Court*. New York Times Magazine (July 7, 2009), available at https://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html.

Therefore, Respondents must exercise the authority given to the State of Alabama under the Tenth Amendment of the U.S. Constitution to provide equal protection to its most vulnerable residents. Accordingly, Petitioner has a clear legal right to Respondents' performance, thus satisfying the first mandamus requirement.

2. <u>Respondents refuse to perform an imperative duty.</u>

Respondents have a duty to uphold the Constitution of Alabama and to equally enforce state law. Thus far, they have failed to protect the right to life of Alabama's African American preborn persons.

The governor's foremost duty is to faithfully execute the laws of the state. Art. V, Sec. 120, Ala. Const. 1901. To date, Governor Ivey has declined to take action because of her belief that laws which restrict abortion are "unenforceable as a result of the U.S. Supreme Court decision in *Roe v. Wade*."[10]

The attorney general is tasked with enforcing the laws of the state (Ala. Code § 36-15-1) and instructing the district attorneys in the

[10] Governor Ivey Issues Statement After Signing the Alabama Human Life Protection Act, Office of the Governor, May 15, 2019, available at https://governor.alabama.gov/newsroom/2019/05/governor-ivey-issues-statement-after-signing-the-alabama-human-life-protection-act/.

discharge of their duties. Ala. Code § 36-15-15. The Attorney General has failed to extend full and equal protection of the law to Alabama's preborn children and to instruct Alabama's district attorneys to do so. District attorneys have the power to "draw up all indictments and to prosecute all indictable offenses" within their jurisdiction. Ala. Code § 12-17-184(2).

Thus, the second mandamus requirement is met.

3. <u>Petitioner has no other remedy.</u>

The remedy of writ of mandamus was established for the specific purpose of requiring government officials to perform the duties that they are obliged by the law to do. Because Respondents have not performed their public duties, Relator has no other remedy than mandamus to enforce the rights of preborn children. Mandamus allows the Relator to act on behalf of the state — the real party of interest. The public cannot be a party to a complaint of violation before the Respondents and are not otherwise able to appeal Respondents' nonperformance of their duty. Thus, this case does not offend the rule that mandamus will not lie as a substitute for appeal.

Furthermore, no other remedy could be applied quickly enough to stop the discriminatory killing of preborn babies in our state. This Court

has held that under Alabama law, "the value of the life of an unborn child is no less than the value of the lives of other persons." *Ex parte Phillips*, 2018 Ala. LEXIS 105, *71 (Ala. 2018). Consistent with that ruling, it should now order the enforcement of Amendment 930 to safeguard the value of *all children* and to end discriminatory practices against black children in Alabama.

If the number of black children threatened by abortion in Alabama every day were in immediate danger of another form of preventable death, would this not constitute a matter of utmost urgency deserving of expeditious relief? Only the issuance of a writ of mandamus by this Court can provide the remedy required to ensure that Alabama's Constitution is upheld and the right to life of black children is protected. Thus, the third mandamus requirement is met.

4. <u>This Court's jurisdiction is properly invoked.</u>

This Court has both constitutional and statutory authority to issue original writs as herein petitioned. Art. VI, § 140, Ala. Const. 1901; Ala. Code § 12-2-7. Ala. Code §12-2-7 provides, "The Supreme Court shall have the authority … [t]o exercise original jurisdiction in the issue and determination of writs of quo warranto and mandamus in relation to

matters in which *no other court has jurisdiction*" (emphasis added). The term 'jurisdiction' refers not just to the power of a court to hear a case, but also to the power to provide "the relief necessary" to the circumstances of a case. See *Ex parte State ex rel. Ala. Policy Inst.*, 200 So.3d 495, 513 (Ala. 2015) ("[N]o other court in this State has the jurisdiction to provide the relief necessary in this most unusual of cases").

This Court has the right to determine when jurisdiction "is necessary to afford full relief and do complete justice." *Ex parte Ala. Textile Products Corp.*, 242 Ala. 609, 614 (Ala. 1942). In assessing the necessity of action under § 12-2-7, this Court will consider whether "the case is of more than ordinary magnitude and importance to prevent a denial of justice or where no application can be made to the lower court in time to prevent the consummation of the alleged wrong." *Ala. Policy Inst.*, *supra*, at 514 (internal citations omitted).

The necessity for invoking this Court's jurisdiction in this case arises from the statewide nature of the relief requested. While relief against any one of Respondents' inactions might be obtained in an inferior court, relief against all of Respondents' nonperformance, and correcting the confusion and disarray caused by Respondents' multi-

jurisdictional nonperformance, requires the "full relief and ... complete justice" that only this Court can provide. See *Ex parte Alabama Textile Products Corp*., 242 Ala. 609 (Ala. 1942). To be sure, the statewide injury to the public caused by Respondents' non-enforcement of Alabama's laws providing equal protection to Alabama's African American preborn children makes this case "of more than ordinary magnitude and importance," such that no inferior court "possesses the authority to afford to the petitioner relief as ample as this court could grant." *Id*. at 613

In the present case, Petitioner is requesting this court to instruct Respondents to take all actions reasonable, lawful, and appropriate to protect the rights and lives of Alabama's preborn children, especially its black children who have been targeted for abortion. Alabama's preborn children continue to die in abortion clinics around the state at the rate of approximately 140 per week - the overwhelming majority of those being black children.

Only this Court has the jurisdiction to speak for the entire state of Alabama, and only this court can provide the relief necessary to quickly end the genocide taking place across this great state. Every life matters. Due to the magnitude and importance of preventing the denial of justice

for these innocent human beings and to the necessity of timely action to prevent the consummation of this atrocity, only this court has the jurisdiction to provide appropriate relief.

Thus, the fourth mandamus requirement is met.

II. NO PANDORA'S BOX OF MALCONTENT POLITICAL AGITATORS WILL BE OPENED BY GRANTING THE INSTANT WRIT.

In *Alabama Dept. of Transp. v. Harbert Intern*, 990 So. 2d 831 (2008), the Court elucidated a very important criteria for this Honorable Court to consider in determining whether to grant the instant relief requested. *Harbert* stated that action may be taken against a state official if the state official is operating "under a mistaken interpretation of law." *Id.* at 839. Such is the case at hand. The Respondents are operating under the mistaken interpretation of law that *Roe* and its progeny forbid them from affording equal protection to preborn children in Alabama.

Harbert hedged its holding by stating that the Alabama Supreme Court will not entertain an action to micro-manage a state official: "The writ will not lie to direct the manner of exercising discretion and neither will it lie to compel the performance of a duty in a certain manner..." *Ibid.*

In the case at hand, the Petitioner does not ask this Court to micro-manage the manner in which Respondents fulfill their lawful obligations to provide equal protection to preborn children, and specifically, to those preborn Black children being egregiously discriminated against via abortion on demand in Alabama. Rather, the Petitioner asks the Court to clarify that Respondents have a duty to provide equal protection to those preborn children and therefore must act with the full weight of their office to protect them.

Harbert also hedged application of this doctrine to "limited circumstances." *Ibid*. Truly, the circumstances of the request at hand are rare - the opportunity to address such a cruel and glaring injustice and to save so many innocent lives with so little ink comes but once in a lifetime. The rarity of the relief sought should embolden the Court in a well-considered and well-constructed decision to grant the relief requested.

CONCLUSION

Hundreds of thousands of Alabama's unborn children have perished since *Roe v. Wade*. Nearly two thirds of those were black babies. The people of Alabama through their elected representatives passed a

Constitutional Amendment to help put an end to the discriminatory killing of vulnerable children. Alabama Case Law is clear that Alabama Law provides equal protection to all human beings "the richest and the poorest, the highest and the humblest." *Central*, at 106.

This Petition merits consideration not only by this Court, but by the entire panel of this Court's Justices, because of the gravity and urgency of the issues raised herein. This Petition is literally a matter of life and death. Under these dire circumstances, only this Court can enforce the laws and Constitution of Alabama, to which members of this noble court have sworn allegiance before God, in order to prevent further discrimination and loss of life.

The Court should instruct the Respondents that the U.S. Constitution empowers them, Alabama's Constitution requires them, and Alabama Case Law instructs them to take all actions necessary to prohibit discrimination against preborn black children in Alabama to ensure their equal protection under the law.

WHEREFORE, the premises considered, Petitioner prays that the Court grant the petition, issue the writ of mandamus prayed for here in, and order that an answer to the petition be filed by Respondents.

RESPECTFULLY submitted this 22nd day of September, 2020.

/s/ Samuel J. McLure, Esq.
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Attorney for Petitioner

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Attorneys for Petitioner

CERTIFICATE OF COMPLIANCE WITH ALA. R. APP. P 32(d)

The undersigned attorney does hereby certify that the instant Writ of Mandamus is in compliance with Ala. R. App. P. 32(d) with a word count of 5771.

/s/ Samuel J. McLure, Esq.
Samuel J. McLure, Esq.
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that I have this 22nd day of September, 2020, served copies of this petition on the Respondents, by e-mail and/or U.S. first class mail as follows:

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Samuel J. McLure, Esq.
Attorney for Petitioner

IN THE SUPREME COURT OF ALABAMA

Ex parte STATE ex rel. AMIE BETH SHAVER,

Petitioner,

v.

KAY IVEY, in her official.capacity as Governor of Alabama, STEVE MARSHALL, in his official capacity as Attorney General of Alabama, ROBERT L. BROUSSARD, in his official capacity as District Attorney of the 23rd Judicial Circuit of Alabama, DARYL. D. BAILEY, in his official capacity as District Attorney of the 15th Judicial Circuit of Alabama, HAYS WEBB, in his official capacity as District Attorney Of the 6th Judicial Circuit of Alabama, DISTRICT ATTORNEY DOES ##1-38, each in his or her official capacity as an Alabama District Attorney,

Respondents.

CASE NO. _____

EMERGENCY PETITION FOR WRIT OF MANDAMUS
(Oral Argument Requested)

VERIFICATION OF AMIE BETH SHAVER

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Attorneys for Petitioners

VERIFICATION OF AMIE BETH SHAVER

I, Amie Beth Shaver, being first duly cautioned, swear or affirm under penalty of perjury that the following is true:

1. I am of sound mind, over the age of 19, and, if called upon to testify as to the following matters, I could and would do so competently, based upon my personal knowledge.

2. I have reviewed the Emergency Petition for Writ of Mandamus ("Petition") filed on behalf of myself as Relatrix in this case on September 22, 2020.

3. Every factual allegation in the Petition is true and accurate.

Further affiant sayeth naught.

Amie Beth Shaver

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, Samuel J. McClure, a Notary Public, in and for said County in Said State, hereby certify that Amie Beth Shaver, whose name is signed to the foregoing instrument and who is known to me or produced a valid driver's license for identification, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 22 day of January, 2020.

Notary Public
My Commission expires:

SAMUEL MCLURE
My Commission Expires
December 12, 2022

CERTIFICATE OF SERVICE

I certify that I have this 22nd day of September, 2020, served copies of this petition on the Respondents, by e-mail and/or U.S. first class mail as follows:

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