IN THE SUPREME COURT OF IOWA
No. 23–1145

PLANNED PARENTHOOD OF THE HEARTLAND, INC.; EMMA GOLDMAN CLINIC; and SARAH TRAXLER, M.D.,

Petitioners-Appellees, vs.

vs.

KIM REYNOLDS ex rel. STATE OF IOWA and IOWA BOARD OF MEDICINE,

Respondents-Appellants.

BRIEF OF AMICI CURIAE 32 STATE FAMILY POLICY COUNCILS AND FAMILY POLICY ALLIANCE IN SUPPORT OF RESPONDENTS-APPELLANTS AND REVERSAL OF THE JUDGMENT BELOW

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INTEREST OF AMICI CURIAE[1]

Amici Family Policy Councils are thirty-two non-profit family policy organizations based in thirty-two states and an allied non-profit family policy organization with whom the state-based family policy councils are aligned. Collectively, these Family Policy Councils seek to educate citizens and State legislators on public policies that address most closely who we are as human beings.

Grounding *Amici*'s policy advocacy is a pre-positive anthropology that requires state legislative and judicial bodies to defer to the natural and customary law defining the nature of persons resident in the "supreme law of the land" that is the Fourteenth Amendment. That Amendment guarantees to every "person" equal protection of state laws prohibiting the intentional killing of one person by another.

State constitutional rights to abortion, whether created judicially or written into the text of those constitution, and differing standards of statutory review depending on whether the human life in the hands of a

[1] Pursuant to 6.906.4(4)(*d*) no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money to fund the preparation or submission of the brief, and no person contributed money to fund the preparation or submission of this brief.

physician is born or unborn, de-humanize the unborn, denying the fundamental law that human beings are bearers of certain fundamental rights as persons as distinguished from other forms of animate life. State jurisprudence that requires more than a rational basis standard of review for abortion laws as is entailed when constitutional rights are involved departs from this fundamental law and understanding of persons on which the protections of the Fourteenth Amendment are predicated, makes judges policy makers, and frustrates Amici's legislative advocacy for the life of unborn persons. And, for that reason, *Amici* support the Respondents-Appellants.

SUMMARY OF THE ARGUMENT

The authority of a state legislator and state judge is defined foremost by his or her oath to uphold the Constitution of the United States and the constitution of the state in which he or she serves and is confined by them. And though "[n]either constitution is to be construed alone, but each with a reference to the other,[2] Article VI, clause 2 of the United States Constitution makes it clear which of the two constitutions is to control when the federal constitution denies a power to a state and grants to Congress a power to "enforce" that denial against the states:[3]

> This constitution, and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land. And the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

The last sentence in that clause -- "'any thing in the constitution or laws of any state to the contrary notwithstanding' . . . was but an expression of the necessary meaning of the former clause, introduced from abundant caution,

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[2] Joseph Story, *Commentaries on the Constitution of the United States*, § 416 (hereinafter "Story's *Commentaries*).

[3] The Fourteenth Amendment, by Section 1, expressly denies to states the power to "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 laws." Section 5 expressly grants to "Congress . . . the power to enforce, by appropriate legislation, the provisions of this article."

to make its obligation more strongly felt *by the state judges*." Story's *Commentaries,* § 1833 (emphasis added). It "removed every pretence, under which ingenuity could, by its miserable subterfuges, escape from the controlling power of the constitution." *Id*.[4]

Therefore, members of a state's legislative and judicial branches shall not "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 laws." U.S. Const. amend. 14. Characterization of the human being during a pregnancy as a zygote or embryo does not change the fact that it is human and is *alive.* Therefore, it cannot be denied, by any pretense, that abortion terminates the "life" of a human being, not a "potential" life. *See Gonzales v. Carhart,* 550 U.S. 124, 157 (2007) (noting that "[t]he government may use its voice and regulatory authority to show its profound respect for the life within the woman" in holding the federal ban on partial birth abortions constitutional); *EMW Women's Surgical Center v. Beshear,* 920 F.3d 421, 430 (2019) (upholding the constitutionality of Kentucky's informed consent law on the ground that the mandated information provides

[4] Story cites Federalist Nos. 44 and 64 as support for his proposition that circumstances made the last sentence in the clause necessary.

"a patient greater knowledge of the unborn life inside her" and "shows her what, or whom, she is consenting to terminate").

Notably, in *Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 (2022), the United States Supreme Court did not examine abortion as a constitutional right to "medical procedures or treatments" *id*. at 2328, and, in reversing *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), it rejected *Casey's* premise that abortion was a constitutional right grounded in "personal dignity and autonomy." *Id*. at 2257. Rather, it treated the issue as the specific act of abortion. Those arguments in relation to abortion having been rejected in relation to the Fourteenth Amendment, any claim that abortion is a type of state constitutional right requiring a standard of review greater than any other state statute must now consider what remains of the Fourteenth Amendment's guarantees, namely, whether a living, but unborn human being, is a "person" within the meaning of the Fourteenth Amendment's Equal Protection Clause. That necessity is laid bare by the grammatical fact that the subject in that clause is the same as in the preceding clause that predicates the due process of law requirement on the underlying right to life of human beings resident in our nation's fundamental and customary law at the time of the Fourteenth Amendment's ratification. Whatever "current prevailing standards that draw their 'meaning from the

evolving standards . . . of a maturing society'" may govern the "maintenance" of rights in Iowa's Constitution, *Planned Parenthood v. Reynolds*, 915 N.W.2d 206, 236 (2018), that evolutionary approach does not apply to the U.S. Constitution and its guarantees. See *New York State Rifle & Pistol Assn., Inc.,* 142, S.Ct. at 2137 (stating that "post-ratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text").

On this question, *Amici* offer the Court two points for consideration. First, based on the "constitutional text and history" of both the Fifth and Fourteenth Amendment's Due Process Clauses, *Bruen*, 142 S.Ct. at 2128-29 (2022) (construing the Second Amendment), the unborn fall within the meaning of the words "*any* person" found in both, because those clauses are predicated on the right of all natural persons, as understood at common law, to life. It is human life that constitutes a being a natural person that the Fourteenth Amendment protects by its due process guarantee and, by parity of legal reasoning, it is the human life of "any person" that the Fourteenth Amendment protects by its guarantee of "the equal protection of the laws." Second, unless the words "any person" in the Fourteenth Amendment are an exhaustive reference to all natural persons possessing human life, the

aspiration in the Fourteenth Amendment to equal protection of the law can be nullified if a state legislative or judicial body can define some natural persons possessing human life as non-persons.

When, as in *Dobbs*, this Court focuses on the text and history of the two guarantees made in the Fourteenth Amendment to "any," and therefore, all "persons," the conclusion is inescapable: all who possess human life are persons and are entitled to the equal protection of the laws. Therefore, any state constitutional right to abortion or any state constitutionally mandated standard of review that treats differently state laws protecting the life of those in the hands of a physician, whether born or unborn, violates the supreme law of the land.

ARGUMENT OF LAW

I. Introduction.

It is an historic juridical baseline that the law is to countenance and address aright the persons for whom it is designed. Justinian's venerable *Corpus Juris Civilis* in the Digest offers that "since all law is made for the sake of human beings, we should speak first of the status of persons." DIG. 1.5.2. And from Justinian's Institutes: "Knowledge of law amounts to little if it overlooks the persons for whose sake law is made." J. INST. 1.2.12. Indeed, the concept of rights vanishes from the law's apprehension if it can

no longer recognize any pre-existing and given understanding of what it means to be human and, therefore, a person as distinguished from other life forms. In the absence of any such recognition, no rights, at least of any enduring kind, can be identified, defined, and secured, as envisioned by "the enumeration in the Constitution, of certain rights" and "others retained by the people" U.S. Const. amend. 9. "Rights" degenerates into a vacuous word whose content depends on the whims of those then in power. And, consequently, their vindication upon violation cannot be assured.

Thus, the point of having legislatures and courts is to secure the rights that persons already have by virtue of their being. Neither state legislatures nor the Constitution of the United States create those rights. *See* U.S. Const. amend. 9 (speaking of rights in terms of those enumerated and those not enumerated and "retained by the people"); *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) (stating that "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right," that it "is not a right granted by the Constitution," and is not "in any manner dependent upon that instrument for its existence.").

The same is true of the rights in the Fifth and Fourteenth Amendments. The requirement that a person be accorded due process of law before being

deprived of "life" is predicated on the conviction that a person already has a right to life. Its procedural guarantee does not bestow a right to life on any person any more than the Second Amendment bestows on "the people" the right to keep and bear arms. *See Dobbs*, 142 S.Ct. 2301 at (Thomas J., concurring) quoting *McDonald v. Chicago*, 561 U.S. 742, 811 (2010, Thomas, J., concurring in part and concurring in judgment) ("The notion that a constitutional provision that guarantees only 'process' before a person is deprived of life, liberty, or property could define the substance of those rights strains credulity for even the most casual user of words."). And as with the Second Amendment, a proper interpretation of the rights of persons in the Fourteenth Amendment respecting "life" and "equal protection of the laws," as constitutive parts of the Constitution, must be "centered on constitutional text and history." *Bruen*, 142 S.Ct. at 2128-29 (construing the Second Amendment).

There is nothing new in *Bruen's* observation. *See Smith v. Alabama*, 124 U.S. 465, 478 (1888) ("The interpretation of the Constitution of the United States is necessarily influenced by the fact that its provisions are framed in the language of the English common law, and are to be read in the light of its history."); *South Carolina v. United States*, 199 U.S. 437, 449 (1905) ("in interpreting the Constitution we must have recourse to the common law").

In fact, common law is the conception of law upon which "[t]he whole Structure of our present jurisprudence stands," Joseph Story, *Commentaries on the Constitution of the United States* § 157 (1833), and it is the legal "nomenclature of which the framers of the Constitution were familiar." *Minor v. Happersett*, 88 U.S. 162, 167 (1875).

Thus, American constitutional rights are not philosophical abstractions given their contours by the excogitative genius of would-be judicial philosophers,[5] contingent for their existence and the principle they embody on the composition of the bench at a particular existential moment. *See Casey*, 505 U.S. at 901 ("Our Constitution is a covenant running from the first generation of Americans to us and then to future generations. It is a coherent succession."). The framers crafted American constitutions—state and federal—in common law terms. *Cf. Iowa Civil Liberties Union v. Critelli,* 244 N.W.2d 564, 568 (1976) (noting that "Constitutional or statutory provisions do not repeal the common law by implication unless the intention to do so is plain."). The United States Constitution is law, and it is a coherent succession because its enumerated rights are described in detail

[5] *See* Story's *Commentaries*, § 451 ("Constitutions are not designed for metaphysical or logical subtleties, for niceties of expression, for critical propriety, for elaborate shades of meaning, or for the exercise of philosophical acuteness, or judicial research.").

in common law treatises, such as those by Coke and Hale, and especially Blackstone's *Commentaries*.

Blackstone was the teacher and lexicographer for the founding generation. Morris L. Cohen, *Thomas Jefferson Recommends a Course of Law Study*, 1119 U. Pa. L. Rev. 823 (1971); Robert A. Ferguson, Law and Letters in American Culture 11 (1984); Albert W. Alschuler, *Rediscovering Blackstone*, 145 U. Pa. L. Rev. 1 (1996); R.H. Helmholz, Natural Law in Court: A History of Legal Theory in Practice 131–41 (2015). As the U.S. Supreme Court has rightly acknowledged, Blackstone's "works constituted the preeminent authority on English law for the founding generation." *Alden v. Maine*, 527 U.S. 706, 715 (1999). Blackstone retained his influence through the adoption of the Civil War Amendments. James M. Ogden, *Lincoln's Early Impressions of the Law in Indiana*, 7 Notre Dame L. Rev. 325, 328 (1932). And the U.S. Supreme Court continues to turn to Blackstone today. *See*, *e.g.*, *Bruen*, 142 S.Ct. 2111, 2128, 2143 (2022) (examining Blackstone's *Commentaries* in determining the way in which modern weaponry restricted by a state law are analogues to what was protected by the right to bear arms at common law); *Dobbs*, 142 S.Ct. 2228, 2249 (2022) (examining Blackstone's treatment of abortion at common law

in denying the claim that liberty in the Fourteenth Amendment encompasses a substantive right to abortion).

It is to that common law history this Court must turn for its interpretation of the word "life" in the Fourteenth Amendment and its implications for the meaning of the word "person," and its relation to the Equal Protection Clause in our nation's supreme law.

II. "The child in the mother's womb" is a person under the Fourteenth Amendment entitled to equal protection of the laws.

1. The text and history of the Fourteenth Amendment shows that the word "life" therein refers to "natural persons" and that requires that the unborn, as natural persons, be treated as "any person" in the Amendment's Equal Protection Clause.

At common law, persons were "divided by the law into either natural persons, or artificial. Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic." 1 W. Blackstone, Commentaries on the Laws of England (1769) (hereinafter Blackstone's *Commentaries*), *123.

Blackstone explained the difference between natural and artificial persons: "Natural persons are such as the God of nature formed us; artificial are such as are created and devised by human laws for the purposes of society and government, which are called corporations or bodies politic."

Id. at *119. A natural person—a person who enjoys the absolute right to life—is therefore any person who is formed as a person without the assistance of law.

In case there were any doubt as to whether absolute rights extend to unborn persons, Blackstone expressly mentioned them in his chapter on absolute rights—chapter 1 of the first volume of the *Commentaries*—and he made it clear that unborn human beings are among the persons who possess such rights:

> Life is the immediate gift of God, a right inherent by nature in every individual; and it begins in contemplation of law as soon as an infant is able to stir in the mother's womb. For if a woman is quick with child, and by a potion or otherwise, killeth it in her womb; or if any one beat her, whereby the child dieth in her body, and she is delivered of a dead child; this, though not murder, was by the ancient law homicide or manslaughter. But the modern law doth not look upon this offence in quite so atrocious a light, but merely as a heinous misdemeanor. An infant *in ventre sa mere*, or in the mother's womb, is supposed in law to be born for many purposes. It is capable of having a legacy, or a surrender of a copyhold estate, made to it. It may have a guardian assigned to it; and it is enabled to have an estate limited to its use, and to take afterwards by such limitation, as if it were then actually born.

Id. at *129.

To the same effect are the lectures in law by one the preeminent members of America's founding generation, James Wilson (citing to the preceding passage in Blackstone in the second sentence that follows):

> With consistency, beautiful and undeviating, human life, from its commencement to its close, is protected by the common law. In the contemplation of law, life begins when the infant is first able to stir in the womb. (citation omitted) By the law, life is protected not only from immediate destruction, but from every degree of actual violence, and, in some cases, from every degree of danger.

James Wilson, *Lectures on Law*, in 2 Collected Works of James Wilson *1068 (Kermit L. Hall and Mark David Hall, eds. 2007). It is "human life" that the law protects. *Cf. State v. Moore*, 25 Iowa 128, 135-136 (1868) ("The common law is distinguished, and is to be commended, for its all-embracing and salutary solicitude for the sacredness of human life and the personal safety of every human being. This protecting, paternal care, enveloping every individual like the air he breathes, not only extends to persons actually born, but, for some purposes, to infants *in ventre sa mere.* The *right to life* and to personal safety is not only sacred in the estimation of the common law, *but it is inalienable*." (emphasis added)).

Given Blackstone's inclusion of the unborn as bearers of the absolute right to life and Wilson's acknowledgment that human life was protected from its commencement, it cannot be gainsaid that unborn persons possess the kind of life that was to be protected from deprivation within the meaning of the Fifth Amendment's Due Process Clause, which has an inexorable bearing on the same language found in the Fourteenth Amendment's Due

Process Clause. As the United States Supreme Court has said, "[t]he conclusion is . . . irresistible, that when the same phrase was employed in the Fourteenth Amendment to restrain the action of the States, it was used in the same sense and with no greater extent" than was true of the Fifth Amendment's restraint on the federal government. *Hurtado v. California*, 110 U.S. 516, 535 (1884). Thus, even as "[d]ue process of law" under the Fifth Amendment is to be "interpreted according to the principles of the common law," *id*. at 535, so also in the Fourteenth Amendment and, likewise, the interpretation of "life" and its relation to persons as set forth in each.

There is nothing in the text and history of the Fourteenth Amendment that abrogated the legal meaning of the words "person" and "life" in Fifth Amendment and the relation between the two. Indeed, it would strain the bounds of reason and the applicable rules of constitutional interpretation[6] to

[6] Two rules of constitutional interpretation from Story's *Commentaries* seem to apply. First, Section 401 "Where the words are plain and clear, and the sense distinct and perfect arising on them, there is generally no necessity to have recourse to other means of interpretation. It is only, when there is some ambiguity or doubt arising from other sources, that interpretation has its proper office." Second, Section 407, "Contemporary construction is properly resorted to, to illustrate, and confirm the text, to explain a doubtful phrase, or to expound an obscure clause; and in proportion to the uniformity and universality of that construction, and the known ability and talents of those, by whom it was given, is the credit, to which it is entitled. It can never

believe that Congress drafted a Due Process Clause that allowed states to do what it was forbidden to do by the Fifth Amendment—deprive a person of human life without due process of law. *See Dobbs* 142 S.Ct. at 2256 (noting that "[m]any judicial decisions from the late 19th and early 20th centuries made [the] point" the criminalization of abortion was "spurred by a sincere belief that abortion kills a human being.").

From this equality of meaning between the two Due Process Clauses, the meaning of the word "person" in the Fourteenth Amendment's Equal Protection Clause becomes clear. The kind of life protected by due process of law is the kind of life that belongs to human beings understood as natural persons. That kind of life must also be given the equal protection of the laws. In other words, the word "person" in the Fourteenth Amendment's Due Process Clause and again in its Equal Protection Clause can best be

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abrogate the text; it can never fritter away its obvious sense; it can never narrow down its true limitations; it can never enlarge its natural boundaries." Since the word "person" in the Fourteenth Amendment is the subject of the rights and is one possessing "life" – regardless of what kind of "person" *possessing human life* might, for example, *also* meet the "qualifications for Representatives and Senators," *Roe v. Wade*, 410 U.S. 113, 157 (1973) – its meaning must include all those human beings possessing life, and such an interpretation is in accord the "contemporary construction" of the word "person" in 1868. *Roe* non-historical intra-textual consideration of the word "person" failed to consider that possession of human life is a characteristic possessed of every person in the Constitution regardless of what other characteristics, qualifications, or rights might be posited in connection with them.

understood as an exhaustive reference to at least one kind of being – a natural person, born or unborn –who is a bearer of the absolute right to life.

Therefore, a state constitutional abortion right[7] or even a constitutionally required standard of review that treats laws protecting the life of the unborn person in the hands of a physician differently or with more rigor than those laws that protect others denies the unborn person possessing that right the equal protection of the law, which is prohibited by the supreme law of our

[7] An emphasis on constitutional jurisprudence as setting forth fundamental rights as distinguished from the treatment of those rights by legislative bodies is part of our common law birthright. Common law recognized that some things about which the law cannot be indifferent and those about which it can be indifferent. Blackstone's *Commentaries*, * 54-55. The existence of a right to life is not a matter about which law, the common law, or the Fourteenth Amendment, by its express language, is indifferent. For example, while at common law the criminal penalties associated with abortion varied over time, the existence of the right to life was not negotiable. The failure of *Roe* was its failure to make this distinction. *See Roe*, 410 U.S. at 140 (concluding that women had a "substantially broader right to terminate a pregnancy" in the past because "at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than" in 1973). But as *Dobbs* noted, it was always a crime though the penalties varied. The legislature, not the judiciary, is best equipped to deliberate about specify the boundaries between the rights of all persons. *See* Grégoire Webber, at al, Legislated Rights: Securing Human Rights through Legislation (2018). In Iowa, the legislature affirmed what the Constitution did not clearly abrogate—the right to life at common law—and that which presumably serves as the predicate for Iowa's Due Process Clause. See *Critelli,* 244 N.W.2d at 568 (1976) (noting that "Constitutional . . . provisions do not repeal the common law by implication unless the intention to do so is plain.")

land. In fact, it would appear on its face that the Iowa legislature sought to affirm that the unborn possessed this right given there can be no argument the state's Constitution abrogated this common law right. *See Critelli,* 244 N.W.2d at 568 (noting that "[c]onstitutional or statutory provisions do not repeal the common law by implication unless the intention to do so is plain.").

2. The reversal of *Roe* requires that a necessary predicate for its abortion right, namely, that the unborn are not persons under the Fourteenth Amendment, be abandoned, and its denial affirmed.

Even the Court in *Roe v. Wade*, 410 U.S. 113 (1973), acknowledged an historical effect of what Blackstone declared about the unborn child being a bearer of the absolute rights conferred on persons by natural and customary law. The Court noted that "unborn children have been recognized as acquiring rights or interests by way of inheritance or other devolution of property, and have been represented by guardians *ad litem.* (citation omitted)." *Id*. at 162. And while sensibly noting the obvious – that "perfection of the interests . . . has generally been contingent upon live birth" – it was because the unborn could be a bearer of the absolute right to property that the unborn person's property interest was protected by law by the appointment of a *guardian ad litem*" in the first place, and as *Amici*

contend, such an appointment would be required by the Due Process Clause.[8] *Id*.

In fact, the *Roe* Court acknowledged that if "the fetus is a 'person' within the language and meaning of the Fourteenth Amendment," the "case" for abortion rights thereunder "of course, collapses." *Id*. at 156-157. Therefore, the right in *Roe* was necessarily predicated on its denial of constitutional status of person to the unborn person. This makes *Roe's* reversal in *Dobbs* of paramount importance to the question raised by *Amici*:

> *Dobbs* reversed *Roe* and thereby overruled any part of that opinion that was essential to its holding. The proposition that the unborn are not constitutional persons was absolutely necessary, as Blackmun's concession makes clear. No other Supreme Court case (except those following the now canceled *Roe*) has held that the unborn are not "persons." *With Dobbs, the decisive constitutional question is open for the first time in fifty years*.

[8] Only because we have hidden from our conscience the nature or kind of life lived by the unborn person in the womb do we not see that that it also possesses perfect liberty when that word is given its meaning at common law. Blackstone's *Commentaries*, *134 ("personal liberty consists in the power of locomotion, of changing situation, or moving one's person to whatsoever place one's own inclination may direct, without imprisonment or restraint, unless by due course of law"). Only the "law" of gestational maturation hinders the unborn from changing his or her "situation." Thus, it could be said that the unborn is a person who, with the exception of abortion, enjoys all three of the rights on which the Fourteenth Amendment Due Process Clause is predicated—life, liberty, and, as *Roe* indicated, property.

Gerard V. Bradley, "Life After Dobb," published in First Things, August 2023, at https://www.firstthings.com/article/2023/08/life-after-dobbs (emphasis added).

But the answer to that question cannot be doubted given the analysis of common law required by *Bruen* and the next-day application of that requirement in *Dobbs* to a claim that the word "liberty" in the Fourteenth Amendment be given a substantive interpretation.[9] The unborn, as living human beings, are bearers of the fundamental right to life protected against denial or deprivation by any person without due process of law or the equal protection of the laws. *See Hopt v. Utah*, 110 U.S. 574, 579 (1884) ("The natural life, says Blackstone, 'cannot legally be disposed of or destroyed *by any individual*, neither by the person himself, nor by any other of his fellow creatures, *merely upon their own authority*.' 1 Bl. Com. 133. The public has an interest in his life and liberty." (emphasis added)). And as persons possessing human life – natural life – the unborn must be accorded the equal

[9] "As used in the Due Process Clauses, 'liberty' most likely refers to 'the power of locomotion, of changing situation, or removing one's person to whatsoever place one's own inclination may direct; without imprisonment or restraint, unless by due course of law.' 1 W. Blackstone, Commentaries on the Laws of England 130 (1769) (hereinafter Blackstone's *Commentaries*). That definition is drawn from the historical roots of the Clauses and is consistent with our Constitution's text and structure." *Obergefell v. Hodges*, 135 S.Ct. 2584, 2632 (2015) (Thomas, J., dissenting).

protection of those laws that protect the life of all other persons from being disposed of or destroyed by another person on their own authority, the very definition of what abortion is.

Any right to abortion in a state Constitution or any constitutionally mandated standard of review that treats the constitutionality of statutes protecting life differently from the life of others based on whether the life is that of a born or unborn person denies to the unborn the equal protection of Iowa's laws. Such a right violates the supreme law of the land.

IV. A constitutionally mandated standard of statutory review that treats the life of unborn persons as a "subordinate and inferior class of beings" compared to the standard applied to other persons violates the Fourteenth Amendment and imposes on Iowa's Constitution the stain on human life that characterized *Dred Scott v. Sandford*.

Reducing the human life possessed by some persons to a status lower than that of others defeats the purpose of the Fourteenth Amendment which was to forever remove from our nation's constitutional jurisprudence the stain on our shared humanity that is *Scott v. Sanford*, 60 U.S. 393 (1857). "One great purpose of [the "Civil War amendments"] was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with *all other persons* within the jurisdiction of the States. *Ex Parte Virginia*, 100 U.S. 339, 344-345 (1880) (emphasis supplied). The "condition of inferiority

and servitude" of those persons just described is relevant to the present case because of the conclusion in *Scott* that those of the "colored race . . . were at that time considered as a *subordinate and inferior class of beings,* who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, *and had no rights* or privileges *but such as those who held the power and the Government might choose to grant them.*" *Scott*, 60 U.S. at 404-405 (emphasis added). They were lesser persons because they were considered a lesser kind of "being" than the persons of the dominate race who by "power" could deny them the rights of natural persons, such as life, liberty, and property, along with any number of civil rights.

Thus, it has been rightly said that "[t]he history of the Amendment proves that the people were told that its purpose was to protect weak and helpless human beings." *Connecticut General Life Insurance Co. v. Johnson*, 303 U.S. 77, (1938); *see also Munn v. Illinois*, 94 U.S. 113 (1877) (Field, J., dissenting) (addressing the Fourteenth Amendment, "The deprivation not only of life, but of whatever God has given to *everyone with life*, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision." (emphasis added)). Holding that the unborn are not within the class of beings who can be rights-

bearing persons, even as to the most fundamental of all – life – is to foist onto Iowans and their Constitution the stain on human represented by the *Scott* decision. "Any person" means what it says.

A state constitutional right to abortion treats unborn persons as human beings who are unequal in their *being* to other persons, and thereby denies them the equal protection of the laws of Iowa that protect human life of "any person" from intentional destruction by others. The same is true when laws protecting the life of unborn persons are subjected to a state constitutionally mandated standard of review that is higher, greater, or simply different from that applied to laws protecting the life of other persons, particularly when the actor with respect to the life of both is the same, a physician. Therefore, any right to abortion in the Iowa Constitution or any constitutionally mandated disparate application of judicial review to laws protecting the human life of "any person" -- born or unborn -- is violative of the supreme law of the land as set forth in the Fourteenth Amendment.

CONCLUSION

The right to life remains among the most fundamental of the fundamental rights of all persons. *Washington v. Glucksberg*, 521 U.S. 702, 714 (1997) quoting *Martin v. Commonwealth*, 184 Va. 1009, 1018-1019 (1946) ("'The right to life and to personal security is not only sacred in the estimation of

the common law, but it is inalienable'"). It is not merely a privilege or immunity of citizenship, but is also among those ancient, natural, and customary rights that belong to human beings as human beings. It cannot be gainsaid that it is "'deeply rooted in this Nation's history and tradition' and 'implicit in the concept of ordered liberty.'" *Dobbs*, 142 S.Ct. at 2242 quoting *Glucksberg,* 521 U. S. at 721 (internal quotation marks omitted).

Equally fundamental is the right of equal protection of the laws. Both rights belong to all natural persons, which is to say, human beings, male and female, able and disabled, born and unborn. Compare *Id*. at 741 (Stephens, J., concurring) ("The State has an interest in preserving and fostering the benefits that every human being may provide to the community."); Blackstone's *Commentaries* at *125-26; Joshua J. Craddock, *Protecting Prenatal Persons: Does the Fourteenth Amendment Prohibit Abortion?*, 40 Harv. J.L. Pub. Pol'y 539 (2017) (demonstrating that "person" in the Fourteenth Amendment includes pre-born human beings).

The Fourteenth Amendment's Due Process Clause is predicated on life—human life—being a fundamental right, and the Equal Protection Clause prevents the human life of any person from being treated as inferior and subordinate to that of any person under the law, even if it respects only the standard of judicial review applicable laws designed to protect human

life. Such state constitutional right or standard of review relative to physicians who perform abortion does what the Fourteenth Amendment forbids: treats some human life an inferior and insubordinate to that of others when human life is in the hands of a physician.

Respectfully submitted,

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APPENDIX – LIST OF AMICI

Alabama Policy Institute

Alaska Family Council

Arkansas Family Council

Center for Arizona Policy

Christian Civic League of Maine

Delaware Family Policy Council

Family Institute of Connecticut

Family Heritage Alliance (SD)

Family Leader Foundation (IA)

Family Policy Alliance (national)

Family Policy Institute of Washington

Frontline Policy Council (GA)

Hawaii Family Forum

Idaho Family Policy Center

Indiana Family Institute

Kansas Family Voice

Louisiana Family Forum

Michigan Family Forum

Minnesota Family Council

New Jersey Family Policy Center

New Mexico Family Action

New Yorker's Family Research Foundation

North Carolina Family Policy Council

North Dakota Family Alliance

Pennsylvania Family Institute

Texas Values

The Palmetto Family Council (SC)

Rhode Island Family Institute

The Family Action Council of Tennessee

The Family Foundation (VA)

The Family Foundation (KY)

The Family Foundation of Virginia

Wisconsin Family Action

Wyoming Family Alliance

CERTIFICATE OF COST

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/s/ *Justin Reid*

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type- volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font and contains 5,870 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Justin Reid*

CERTIFICATE OF FILING AND SERVICE

I certify that on November 14, 2023, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

/s/ *Justin Reid*