



**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
FIFTEENTH JUDICIAL CIRCUIT**

Baby Q, a preborn African-American)
child, and on behalf of all others similarly)
situated, AMIE BETH SHAVER, as next)
of friend of Baby Q, Ex parte STATE ex)
rel. AMIE BETH SHAVER,)

Plaintiffs/Petitioners,)

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, PLANNED)
PARENTHOOD OF BIRMINGHAM,)
ALABAMA WOMEN’S CENTER,)
REPRODUCTIVE HEALTH SERVICES,)
WEST ALABAMA WOMEN’S CENTER)

Defendants/Respondents.)

CIVIL ACTION:

WRIT OF MANDAMUS and/or
PETITION FOR DECLARATORY
JUDGMENT - CLASS ACTION -
JURY TRIAL DEMANDED

Case No.

COMPLAINT

For its Complaint, Plaintiffs respectfully allege as follows:

PARTIES

1. Comes now Plaintiff, Baby Q a pseudonymous African-American child residing in Alabama, representative of the Class of preborn African-American children who are disproportionately injured through abortion, and on behalf of all others similarly situated. An African American baby is over three times more likely to be aborted than a white baby.¹ Baby Q, and on behalf of all those similarly situated, petitions this Court for a declaratory judgment and/or writ of mandamus to the Defendants to take all measures necessary to protect preborn African-American children from discrimination and to ensure their equal protection under the law.

2. Comes now Plaintiff, State of Alabama, on the relation of AMIE BETH SHAVER and AMIE BETH SHAVER as next of friend of Baby Q, a preborn African-American child, and on behalf of all others similarly situated, and petitions this Court for a declaratory judgment and/ or writ of mandamus to the Defendants to take all measures

¹ Induced Termination of Pregnancy Statistics 2018 prepared by the Alabama Center for Health Statistics. Available at <http://www.alabamapublichealth.gov/healthstats/assets/itop2018a1%20.pdf>; Center for Disease Control and Prevention, Abortion Surveillance - United States, 2016, available at: <https://www.cdc.gov/mmwr/volumes/68/ss/pdfs/ss6811a1-H.pdf>. *Abortion reaches highest percentage among Black women since 2000*, available at: <https://www.liveaction.org/news/abortions-highest-percentage-black-women-2000/>. KFF, Population Distribution by Race/Ethnicity, available at: <https://www.kff.org/other/state-indicator/distribution-by-race-ethnicity/?dataView=0¤tTimeframe=2&selectedDistributions=black&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>. *Black women abort at almost four times the rate of White women*, available at: <https://www.liveaction.org/news/black-women-abort-four-times-rate-white/>. Guttmacher Institute, *Induced Abortion in the United States*, available at: <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>. Policy Report, *The Effects of Abortion on the Black Community*, available at: <https://docs.house.gov/meetings/JU/JU10/20171101/106562/HHRG-115-JU10-Wstate-ParkerS-20171101-SD001.pdf>. Wall Street Journal, *Margaret Sanger Gets Canceled*, available at: <https://www.wsj.com/articles/margaret-sanger-gets-canceled-11595889653>.

necessary to protect preborn African-American children from discrimination and to ensure their equal protection under the law.

3. Relator Shaver and Next of Friend Shaver is a resident of Birmingham, Alabama. She was born to an African-American 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 by the laws of man. Amie Beth Shaver petitions this court, on behalf of the public interest of the State of Alabama, to protect African-American children from abortion in Alabama.

4. Defendant Kay Ivey is the Governor of the State of Alabama.

5. Defendant Steve Marshall is the Attorney General of the State of Alabama.

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

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

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

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

10. 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)).

11. In exercising these authorities and powers, the Defendants 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.

12. 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). In 2018, the people of Alabama overwhelmingly passed a constitutional amendment recognizing the rights of unborn children, including the right to life, and stating that “it is the public policy of this state to ensure the protection of the rights of the unborn child.” Thus, the Defendants have no discretion to enforce the right to life of African American preborn persons within the State. The Defendants’ 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.²

13. Defendant Planned Parenthood of Birmingham is a licensed abortion clinic located in Birmingham, Alabama.

14. Defendant Alabama Women’s Center is a licensed abortion clinic located in Huntsville, Alabama.

15. Defendant Reproductive Health Services is a licensed abortion clinic located in Montgomery, Alabama.

16. Defendant West Alabama Women’s Center is a licensed abortion clinic in Tuscaloosa, Alabama.

² 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); *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).

JURISDICTION AND VENUE

17. **Mandamus relief is appropriate to require Defendants 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) Petitioners have a clear legal right to mandamus relief.

18. 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).

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

19. 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.

20. 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).

21. 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.”

22. The ultimate recognition of these rights occurred on November 6, 2018, when the people of Alabama went to the ballot and overwhelmingly ratified Amendment 930 which 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.”

23. 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 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).

24. 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.

25. In 2019, the Alabama Legislature passed Act No. 2019-189 which imposes criminal liability on any person who “intentionally perform[s] or attempt[s] to perform an abortion,” with limited exceptions for serious health risks to the mother.

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.

26. 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.

27. 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.

28. 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))

29. 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).

30. 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.

31. 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).

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

33. 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).

34. 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, who are disproportionately targeted for abortion, 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.

35. 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 an African-American 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, President Abraham Lincoln signed the Emancipation Proclamation and opened the door for Mr. Scott to gain his freedom.

36. In the decades following, another insidious evil began its attack on African-Americans in America. The eugenics movement was a powerful force that, at best,

disenfranchised African-Americans and at its core sought the wholesale destruction of the African-American race through the aggressive promotion of birth control, forced sterilization, and eventually abortion, especially in African-American communities.

37. 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 African-American 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.³

38. It is unlawful and amoral to lynch a twenty year-old African-American man in Alabama because he is ensured the right to life under Alabama’s Constitution. The full weight of the Defendants’ office must bear down on the guilty parties responsible for such a heinous act. Under Amendment 930, Preborn African American children are also expressly ensured that they too have a right to life, so Defendants must likewise bring

³ 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>.

the full weight of their office to protect twenty-week-old African-American persons from dismemberment.

39. Similarly, the grossly disparate treatment of “planned” and “unplanned” or “wanted” and “unwanted” children in Alabama is violative of Alabama’s equal protection laws. This injustice is further compounded by the reality that African-American 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.”⁴ 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.

40. 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.

⁴ 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>.

41. Therefore, Defendants 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, Plaintiffs have a clear legal right to Defendants' performance, thus satisfying the first mandamus requirement.

(2) Defendants refuse to perform an imperative duty.

42. Defendants 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.

43. 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*."⁵

44. The Attorney General is tasked with enforcing the laws of the State (Ala. Code § 36-15-1) and instructing the district attorneys in the 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).

45. Thus, the second mandamus requirement is met.

⁵ 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/>.

(3) Petitioners have no other remedy.

46. 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 Defendants 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 Defendants and are not otherwise able to appeal Defendants' nonperformance of their duty.

47. 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 and Act No. 2019-189 to safeguard the value of *all children* and to end discriminatory practices against African-American children in Alabama.

48. If the number of African-American 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 African-American children is protected.

49. 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 African-American children in Alabama from discrimination and to ensure their equal protection.

50. Thus, the third mandamus requirement is met.

(4) This Court's jurisdiction is properly invoked.

51. This Court has jurisdiction to decided cases against the Defendants when those cases arise out of mandamus and declaratory relief. *Alabama Dept. of Transp. v. Halbert Intern*, 990 So.2d 831 (Ala. 2008). In the present case, Plaintiffs are requesting this court to instruct Defendants to take all actions reasonable, lawful, and appropriate to protect the rights and lives of Alabama's preborn children, especially its African-American 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, with the overwhelming majority of those being African-American children.

52. The necessity for invoking this Court's jurisdiction in this case arises from legal uncertainty that pervades the entire State of Alabama. The people of Alabama have expressed their will to protect the lives of its preborn children. However, state officials have thus far refused to act due to erroneously perceived conflict between Alabama law and U.S. Supreme Court precedent in *Roe v. Wade* and its progeny. For example, Governor Ivey has stated that her failure to take action is the result of her belief that laws

which restrict abortion are “unenforceable as a result of the U.S. Supreme Court decision in *Roe v. Wade*.”⁶

53. To add to this uncertainty, a federal district court recently enjoined Attorney General Marshall from enforcing Ala. Act No. 2019-189 on the basis that it “contravenes clear Supreme Court precedent.” *Robinson v. Marshall*, Civil Action No. 2:19cv365-MHT (WO), Middle District of Alabama, Opinion dated October 29, 2019, p. 16-17. This Act is the primary legal mechanism for the State to protect preborn African American children from the injustice of abortion.

54. Accordingly, Attorney General Marshall is now enjoined from enforcing Alabama Act No. 2019-189 and from providing advice and guidance to public officials, including district attorneys, on the enforcement of Alabama Act No. 2019-189. *Robinson v. Marshal, supra*, Preliminary Injunction dated October 29, 2019, pp. 1-2. District attorneys are left in a quandary whether to enforce the will of the people or risk violating the Supreme Court’s holding in *Roe v. Wade* and facing similar enjoinder.

55. As long as these issues remain unresolved, any further actions by Defendants, and other state officials, to protect the lives of preborn children throughout the State will be met with continuous legal challenges and injunctions.

56. Meanwhile, Alabama’s preborn children will continue to die in abortion clinics around the State at the rate of approximately 140 per week. Since this single

⁶ 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/>.

injunction was granted on October 29, 2019, over 6,400 preborn children in Alabama have likely perished. And the litigation continues. Every life matters.

57. The relief requested herein presents no conflict with Federal Law and does not implicate Federal Law as no Federal Law has prohibited states from prohibiting eugenic abortion. Furthermore, the 9th Amendment to the US Constitution reinforces that granting the relief requested herein is both proper and not in contradiction to Federal Law. Thus, the fourth mandamus requirement is met.

58. Jurisdiction is also proper under Alabama Code 6-6-220 *et seq.*

59. Venue in the Circuit Civil Court of Montgomery County is appropriate.

FACTUAL ALLEGATIONS

60. 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."

61. Despite the clear expression of the people's sovereign will, Defendants 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.

62. 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 2018.⁷

63. Over 60% of those abortions were performed on African-American preborn persons, yet African-Americans make up just under 27% of the total population of Alabama.⁸ No racial group has been left out of societal protection in Alabama more than unborn African-American children. No racial group has been targeted more for abortion in Alabama than African-American children.

64. Defendants have failed to protect the constitutional rights of the significantly disproportionate number of African-American children who are guaranteed the right to life under Amendment 930.

65. 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 African-Americans is so pervasive that many are prevented "from being born in the first place." *Box v. Planned Parenthood 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 African-American Americans. Tragically these eugenic, inherently discriminatory, ideas are still with us.

⁷ 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>.

⁸ *Ibid.*

66. 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.

67. In 1939, Sanger initiated the “Negro Project” to reduce the birth rate among African-American 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.”⁹

68. The idea that Sanger would “want to exterminate the Negro population” came from her own writings, where she proudly admitted that her goal was to stop all reproduction by those she deemed “unfit.”¹⁰ 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.

69. Planned Parenthood has continued the legacy of its founder by aggressively targeting its services to African-American communities.¹¹ The effect is a higher than average abortion rate among African-American women and a disproportionately higher

⁹ Margaret Sanger letter to C. J. Gamble, 1939, available at https://libex.smith.edu/omeka/files/original/d6358b_c3053c93183295bf2df1c0c931.pdf.

¹⁰ Margaret Sanger, Birth Control and Racial Betterment, Feb. 1919, Library of Congress Microfilm 131:0099B, available at https://www.nyu.edu/projects/sanger/webedition/ap_p/documents/show.php?sangerDoc=143449.xml.

¹¹ 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>.

number of African-American babies killed by abortion. It is estimated that between 4.1 and 4.6 million American African-American children are “missing” because of the alarming reduction in the fertility rate of African-American women due to abortion.¹² Thus, the targeting of African-American children through abortion has suppressed the votes and representation of Alabama’s African-American population.

70. 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.

CLASS ALLEGATIONS

71. **Class Definition:** Plaintiff Shaver brings this action pursuant to Ala. R. Civ. P. 23(b)(1), (2), and/or (3) as next of friend of Baby Q, on behalf of Baby Q and the Class of similarly situated individuals, defined as follows:

Class: All persons in the State of Alabama who are preborn African-American children

The following persons are excluded from the Class: (1) persons who properly execute and file a timely request for exclusion from the Class, either through a legal parent, legal custodian, legal guardian, or *Guardian ad Litem*.

¹² 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>.

72. **Numerosity:** On information and belief, tens of thousands of preborn children in Alabama fall into the definition of the Class. Members of the Class can be identified through Alabama Office of Vital Statistics, Census, medical records, and / or other third-party sources.

73 **Commonality and Predominance:** There are many questions of law and fact common to Plaintiff's and the Classes' claims, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- a. Whether preborn African-American children are persons under Alabama Law.
- b. Whether preborn African-American are disparately impacted through abortion.
- c. Whether preborn African-American children should be afforded equal protection under Alabama Law.
- d. Whether the Defendants should use all means lawful and necessary to abate the deprivation equal protection of laws guaranteed to preborn African American persons.

74. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Classes, in that Plaintiff's and the members of the Class have their right to life disparately and unjustly deprived through abortion by the thousands every year in Alabama.

75. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff's claims are representative of the claims of the other members of the Class, as Plaintiff and each member of the Class is at a disparately high risk of deprivation of their right to life through abortion. Plaintiff also has no interests antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so. Neither Plaintiff nor her counsel have any interest adverse to the Class.

76. **Policies Generally Applicable to the Classes:** This class action is appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making final declaratory and/or mandamus relief appropriate with respect to the Class as a whole. Defendants' policies that Plaintiff challenges apply and affect members of the Class uniformly, and Plaintiff's challenge of these policies hinges on Defendants' conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiff. The factual and legal bases of Defendants' duty to Plaintiff and to the other members of the Class are the same.

77. **Superiority:** This case is also appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient

adjudication of this controversy. The harm suffered by the individual members of the Class cannot be timely and effectively litigated as compared to the class as a whole in order to redress Defendants' wrongful inaction. Absent a class action, it would be difficult, if not impossible, for the individual members of the Class to obtain effective relief from Defendants. Even if members of the Class themselves could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties and the Court and require duplicative consideration of the legal and factual issues presented. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

78. Plaintiff reserves the right to revise the foregoing "Class Allegations" and "Class Definition" based on facts learned through additional investigation and in discovery.

FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT and /or MANDAMUS RELIEF: REQUEST FOR SPEEDY HEARING

79. Plaintiff re-alleges paragraphs 1 through 53 as though fully set forth herein.

80. Under Alabama Code 6-6-220 *et seq.*, the court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment. *See* AL Code 6-6-222.

81. Under Alabama Case Law previously cited, this Court has the duty and power to issue the instant mandamus order requested.

Notice of Injury

82. The Plaintiff's injury is in the deprivation of their lives and rights as persons, and the deprivation of their equal protection under the law.

83. Hundreds of thousands of Alabama's unborn children have perished since *Roe v. Wade*. Nearly two thirds of those were African-American 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.

Actual Controversy Exists

84. An actual controversy has arisen between Plaintiff and Defendants as to the rights, duties, responsibilities, and obligations of the parties under Alabama Law.

85. The Court's entry of a declaratory judgment and / or mandamus relief would terminate the uncertainty or controversy giving rise to the instant civil action.

PRAYER FOR RELIEF

AS TO DEFENDANTS 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

WHEREFORE, Plaintiff respectfully prays that this Honorable Court grant the following relief:

- A. For a declaration or mandamus order affirming that Pre-Born African American Children Are Persons Under Alabama Law.
- B. For a declaration or mandamus order affirming that African American Persons Should Be Afforded Equal Protection Under Alabama Law.
- C. For a declaration or mandamus order affirming that Defendants should Use All Means Lawful and Necessary to Abate the Deprivation Equal Protection of Laws Guaranteed to Pre-Born African American Persons.
- D. For declaration or mandamus order instructing the Defendants 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 African-American children in Alabama to ensure their equal protection under the law.
- E. For a declaration affirming that Defendants 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.
- F. Awarding reasonable attorney's fees and expenses;
- G. Awarding pre- and post-judgment interest, to the extent allowable.
- H. Entering judgment for injunctive and/or declaratory relief as necessary to protect the interests of Plaintiff and the Class.

- I. Awarding such other and further relief as equity and justice require.

PRAYER FOR RELIEF
AS TO DEFENDANTS PLANNED PARENTHOOD OF BIRMINGHAM,
ALABAMA WOMEN’S CENTER, REPRODUCTIVE HEALTH SERVICES,
WEST ALABAMA WOMEN’S CENTER

WHEREFORE, Plaintiff respectfully prays that this Honorable Court grant the following relief:

- A. Entering judgment for injunctive and/or declaratory relief as necessary to protect the interests of Plaintiff and the Class.
- B. Awarding reasonable attorney’s fees and expenses;
- C. Awarding pre- and post-judgment interest, to the extent allowable.
- D. Awarding such other and further relief as equity and justice require.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Dated this 16th day of October, 2020.

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

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**Application for Pro Hac Vice
forthcoming

Attorneys for Plaintiffs

**IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
FIFTEENTH JUDICIAL CIRCUIT**

Baby Q, a preborn African-American child, and on behalf of all others similarly situated, AMIE BETH SHAVER, as next of friend of Baby Q, Ex parte STATE ex rel. AMIE BETH SHAVER,

Plaintiffs,

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, PLANNED PARENTHOOD OF BIRMINGHAM, ALABAMA WOMEN'S CENTER, REPRODUCTIVE HEALTH SERVICES, WEST ALABAMA WOMEN'S CENTER

Defendants.

CIVIL ACTION:

WRIT OF MANDAMUS and/or
PETITION FOR DECLARATORY
JUDGMENT - CLASS ACTION -
JURY TRIAL DEMANDED

Case No.

VERIFICATION OF SAMUEL J. MCLURE

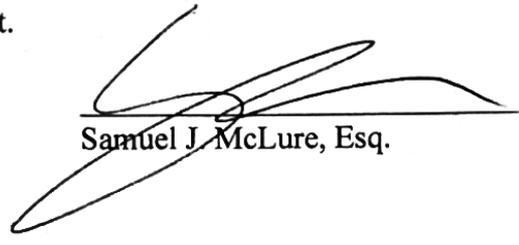
I, Samuel J. McLure, being first duly cautioned, swear or affirm under penalty of perjury that the following is true:

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 represent the Plaintiff in the instant matter who is proceeding pseudonymously as Baby Q, upon consent of parent and / or legal guardian. I personally investigated and verified the factual assertions of Baby Q and find them to be credible and true.

3. I am conversant with all the facts alleged in the Complaint, and I find the same true and credible.

Further affiant sayeth naught.


Samuel J. McLure, Esq.

STATE OF ALABAMA)
MONTGOMERY COUNTY)

I, BRENNAN DEPACE, a Notary Public, in and for said County in Said State, hereby certify that Samuel J. McLure, Esq., 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 16th day of October, 2020.

Brennan De Pace
Notary Public
My Commission expires: 08/04/2024

