NO. 19-1392

IN THE

Supreme Court of the United States

THOMAS E. DOBBS, M.D., M.P.H. IN HIS OFFICIAL CAPACITY AS STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, et al.,

Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ON BEHALF OF ITSELF AND ITS PATIENTS, et al.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF 22 STATE POLICY ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici are state-based family policy councils—non-profit organizations that seek to educate citizens and State legislators on public policies that address most closely who we are as human beings.[1] Grounding *Amici*'s policy advocacy is the pre-positive anthropology resident in customary and natural law. *Amici* organizations are identified in the Appendix to this brief.

Amici support Petitioner because this Court's abortion jurisprudence prevents States and citizens from giving proper regard to customary and natural law and thereby hamstrings their efforts to influence State public policy that would protect the fundamental and absolute common law right to life possessed by prenatal persons. The Court in *Roe v. Wade*, *Planned Parenthood v. Casey*, and related cases created a non-textual doctrine of substantive due process and applied it to redefine liberty as license to destroy human life. This view of liberty rests upon the Court's acceptance of a diminished view of the human person that repudiates the natural and common law commitments undergirding Amici's advocacy. *See* Gerard V. Bradley, *Moral Truth and Constitutional Conservatism*, 81 La. L. Rev. 1317, 1330, 1331 (2021) (opining that the Court's abortion

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[1] Pursuant to Rule 37.6, the undersigned certifies that no counsel for a party authored any part of this brief, and no person other than *amici*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission. *Amici curiae* timely provided notice of intent to file this brief to all parties, and all parties have consented to the filing of this brief.

jurisprudence reduces persons from a "natural kind or class of beings" to "an intra-systemic riddle, to be solved by a feat of technical legal reasoning—as if the law were . . . impervious to the reality of persons.").

The positivistic reduction of persons represented by the Court's abortion decisions has leavened the law in a way that curtails historic State policies grounded in deference to a given human nature and the common law rights that correspond to that nature. By purporting to leave the question of the meaning of persons in the Fourteenth Amendment unanswered,[2] this Court's holdings requiring States to abandon common and natural law commitments have effectively ratified a diminished view of the human person in law. These holdings have foisted upon the States a denatured anthropological model that prohibits them from ascribing objective meaning, dignity, and value to vulnerable persons. The severe distortion of the human person in constitutional caselaw invites systemic effects well beyond the troubled context of abortion. If constitutional precept commands States to treat nascent human life as vacant of meaning and value apart from subjective individual determination or Court authorization, concurrently placed in doubt is the historic understanding of law as constrained by a reality prior to and beyond its coercive impositions. A national abortion-enablement policy is mournful in itself, but does not keep to itself. It corrodes the law altogether.

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[2] *See Roe v. Wade*, 410 U.S. 113, 159 (1973) (offering that "the judiciary" is "not in a position to speculate as to the answer" to the question of human life's beginning.)

SUMMARY OF THE ARGUMENT

Since *Roe v. Wade*, 410 U.S. 113 (1973), the Court has denied to state legislatures and courts the authority to protect the fundamental, absolute right to life that at common law belonged to all persons. The Court's abortion decisions in their various constructions of the Fourteenth Amendment's Due Process Clause contradict the principle that the Court elsewhere has articulated, namely, that "[o]ur Constitution is a covenant running from the first generation of Americans to us and then to future generations. It is a coherent succession." *Planned Parenthood v. Casey*, 505 U.S. 833, 901 (1992). Indeed, in recent decades the Court has "retreat[ed] from interpreting the full meaning of the covenant in light of all of [its] precedents." *Id*.

A vital part of our constitutional covenant is the Ninth Amendment. It establishes that "the enumeration of certain rights herein shall not be construed to deny or disparage other rights retained by the people." U.S. Const. amend. IX. The Ninth Amendment reflects a non-positivistic conception of law and rights rooted in the common law and serves as a rule of construction for the whole of the U.S. Constitution and its amendments, absent an express abrogation. It was not abrogated by the Fourteenth Amendment.[3]

The message of the Ninth Amendment, along with the Tenth Amendment and the liberty-preserving structure of our federal system of dual sovereigns,

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[3] Yet the Ninth Amendment's purpose and effect, and its relation to the Court's Fourteenth Amendment abortion jurisprudence, has never been ruled upon by this Court.

finds echoes in venerable decisions of this Court. In *Hurtado v. California*,[4] *Barron v. Baltimore*,[5] *Ex Parte Virginia*,[6] and the *Slaughter-House Cases*,[7] the Court set forth sound principles by which amendments to the Constitution—and the Fourteenth Amendment in particular—should be interpreted. The premises of these decisions (which include the relevance of common law to the Fourteenth Amendment, the jurisdictionally limited scope of the judicial power, and the liberty-preserving structure of federalism), have never been overruled by this Court.

These case decisions, along with the Ninth Amendment and its common law predicates, constitute the "convincing justification under accepted standards of precedent" that the *Casey* plurality opined as necessary to demonstrate *Roe's* reversal to be something other than "surrender to political pressure." *Casey*, 505 U.S. at 867 (opinion of O'Connor, J., Kennedy, J., and Souter, J.).

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[4] *Hurtado v. California*, 110 U.S. 516 (1884).
[5] *Barron v. Baltimore*, 32 U.S. 243 (1833).
[6] *Ex Parte Virginia*, 100 U.S. 339 (1880).
[7] *Slaughter-House Cases,* 83 U.S. 36 (1873).

ARGUMENT

I. The Ninth Amendment presents a rule of interpretation foreclosing any reading of the Constitution's provisions that would eliminate persons' retained State common law rights—including the right to life.

The project of constitutional interpretation "must begin with the constitutional text." *Fulton v. City of Philadelphia*, 593 U.S. ___ (2021) No. 19–123 (slip op. 20) (Alito, J., concurring). The text of the Ninth Amendment has unique significance in that it lays out a rule of constitutional construction necessary to properly interpret and apply other portions of constitutional text. The Ninth Amendment forecloses any reading of enumerated rights that would efface the unenumerated, retained rights of the people.

Because the Ninth Amendment's text bespeaks a common group of rights divided only by whether they are enumerated in the Constitution, it implies that all the rights possessed by the people share a common provenance. This, in turn, suggests that both the enumerated rights and the "others retained" were to carry forward the substantive meaning they had under the source of law from which they were derived.

The effect of the Ninth Amendment, then, was to leave the unenumerated rights in the hands of the people (being, by the Tenth Amendment, enforced by the States), and in no part a responsibility of the federal government except in recognizing and conforming to the interpretive and jurisdictional boundary they represent.

A. The unenumerated rights of persons are the rights enjoyed at common law.

Whatever other sources this Court may consider for identifying those rights acknowledged in the Ninth Amendment, the rights of the people it references would have been intended by its drafters and understood by its readers as the many diverse rights anchored in the extant common law in the several states. The precepts of the common law make for a "nomenclature of which the framers of the Constitution were familiar," *Minor v. Happersett*, 88 U.S. 162, 167 (1875). "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." *Smith v. Alabama*,124 U.S. 465, 478 (1888). As a result, this Court has relied on the common law to interpret the Constitution's provisions. *See*, *e.g.*, *Ramos v. Louisiana*, 130 S. Ct. 1390 (2020) (investigating common law jury right to interpret constitutional jury right); *Gamble v. United* States, 139 S. Ct. 1960, 1964 (2019) (analyzing common law to determine meaning of "same offense" in Fifth Amendment); James Stoner, Common-Law Liberty: Rethinking American Constitutionalism 17-21 (summarizing common law background of constitutional provisions).

1. Life, liberty, and property were rights protected at common law.

Persons had three absolute rights at common law: Personal security (which includes the right to life), liberty, and property. 1 William Blackstone, Commentaries on the Laws of England 129 (1765)

("Blackstone's *Commentaries*"). "[T]he preservation of these, inviolate, may justly be said to include the preservation of our civil immunities in their largest and most extensive sense." *Id*.

Thus, vital to civil liberty is the Ninth Amendment's assurance that the people retain all their common law rights notwithstanding the constitutional enumeration of only some. As a result, the three absolute rights at common law which were not enumerated as such within the first eight amendments (though the rights that are enumerated presuppose them)[8] require federal acknowledgment of their possession by the people.[9] And as the Tenth Amendment recites, the power to protect and secure these rights was "reserved to the states, respectively, or to the people." U.S. Const. amend. X.

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[8] Several of the rights enumerated in the Bill of Rights are predicated on the existence of the three fundamental rights and would be unintelligible but for them. For instance, the Second Amendment right to bear arms serves to protect one's life, liberty, and property. *See e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 594 (2008) (noting in its construction of the Second Amendment that Blackstone described the right to keep and bear arms as "'the natural right of resistance and self-preservation.'"). The Fourth Amendment right against unlawful searches and seizures countenances a person's right to enjoyment of property.

[9] The Ninth Amendment is not itself a fount or implied catalogue of specific individual rights for federal enforcement. Instead, it is a safeguard that constrains the interpretation of constitutional terms that *are* subject to federal enforcement, confirming that the meaning and operation of the latter are not to diminish the unenumerated fundamental common law rights retained by the people and (under the Tenth Amendment) enforced by the States.

In the *Slaughter-House Cases*, 83 U.S. 36 (1873), the Court ruled that the rights of national citizenship under the Privileges and Immunities Clause do not include "those rights which are fundamental" and for "the establishment and protection of which organized government is instituted."[10] *Id.* at 76. This interpretation assigns the power to protect such rights where the Tenth Amendment had placed them, namely, with the States and the people. *Id.* But the Court's *Slaughter-House* opinion did not purport to eliminate, deny, or disparage common law rights.

In view of our common law heritage, the fundamental rights to which the Court in *Slaughter-House* referred would certainly include the three absolute rights at common law. Persons' rights to life, liberty, and property are not positive grants from the federal government, but instead are precisely those pre-political rights for "the establishment and protection of which organized government is instituted."[11] These rights are retained by the people,

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[10] Yet there is a "possibility that certain individual rights enumerated in the Constitution could be considered privileges or immunities of federal citizenship," *McDonald v. City of Chicago*, 561 U.S. 742, 808 (2010) (Thomas, J., dissenting).

[11] *See Slaughter-House Cases*, 83 U.S. at 76. The Declaration of Independence describes the purpose for government itself in a similar way, explaining that the reason "governments are instituted among men" is to secure unalienable rights, including that of life. Indeed, when government fails to protect such rights, it forfeits its just claim to a continuing authority. Decl. of Independence (1776). In his *Commentaries*, Blackstone set forth what the Founders later emphasized: "[T]he principal aim of society is to protect individuals in the enjoyment of those absolute rights, which were vested in them by the immutable laws of nature, but which could not be preserved in peace without that mutual assistance and intercourse which is gained

and the States possess the authority to enforce them. *Slaughter-House*'s division of State-enforced fundamental rights from national citizenship rights (which in fact may include enumerated rights) has instructive constraining implications, particularly in view of the Ninth Amendment.

2. The common law right to life belonged to all natural persons.

"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." James Wilson, *Of the Natural Rights of Individuals*, in 2 Collected Works of James Wilson *1068 (Kermit L. Hall and Mark David Hall, eds. 2007).

The Court's use of substantive due process to endorse an unenumerated abortion right or "liberty" interest unknown to the common law has negated the continued enjoyment by persons, and enforcement by States, of a common law fundamental right: to life. Applying substantive due process in this manner contravenes the Ninth Amendment's injunction against construing enumerated rights "to deny or disparage other rights retained by the people."

B. The Ninth Amendment restrains the creation of unenumerated rights by the federal government.

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by the institution of friendly and social communities. Hence it follows, that the first and primary end of human laws is to maintain and regulate these absolute rights of individuals." Blackstone's *Commentaries*, *124.

Because unenumerated, pre-constitutional fundamental rights are outside the scope of the Fourteenth Amendment, Congress, to whom enforcement power over the whole of the Fourteenth Amendment was singularly given in Section 5, is forbidden to restrict the powers of State government to enact and enforce laws *protecting* the lives, liberty, and property of persons within the State. Congressional enforcement interference with State law under Section 5 is properly applied only to remedy violations of persons' rights of national citizenship, due process of law, and equal protection of the laws. See *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997) ("The design of the Amendment and the text of § 5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Fourteenth Amendment's restrictions on the states," otherwise "what Congress would be enforcing would no longer be, in any meaningful sense, the 'provisions of [the Fourteenth Amendment]."') (internal quotation marks omitted). Yet the Court through the device of substantive due process has empowered itself to do what it has forbidden Congress to do: nullify the authority of States and the people to secure the fundamental and absolute common law right to life.[12]

Accordingly, two incompatible approaches to Court jurisdiction under the Fourteenth Amendment are presented in this Court's extant caselaw standards. One, in keeping with the Ninth and Tenth Amendments, is found in the fundamental rights rationale employed in the *Slaughter-House Cases* that

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[12] Part II, below, will explain that the federal judiciary's power was not enlarged by the Fourteenth Amendment.

leaves protection of common law fundamental rights with the people and their State representatives. The second is found in the Court's substantive due process analysis authorizing a common law-repudiating right to abortion that prohibits States from securing persons' absolute common law right to life.

Given the Ninth Amendment's rule of construction foreclosing federal disparagement of unenumerated rights left to State protection, and this Court's failure in its substantive due process caselaw to countenance the Ninth Amendment's restraint on the interpretation of enumerated rights (such as due process), the *Roe* line of cases must be reevaluated.

II. The Fourteenth Amendment did not abrogate the Ninth Amendment or eliminate our constitutional structure of federalism.

This Court has never adjudicated the relationship between the Ninth and Fourteenth Amendments, nor opined that the Fourteenth abrogated or modified the Ninth as a rule of construction. Because it "cannot be presumed that any clause in the constitution is intended to be without effect," *Marbury v. Madison*, 5 U.S. 137, 174 (1803), the Ninth Amendment's implication for judicial construction of Fourteenth Amendment rights must be taken into account.

This Court's decision in *Barron v. Baltimore*, 32 U.S. 243 (1833) is a venerable precedent addressing the relationship of constitutional amendments to the sovereignty and jurisdictional authority of the States. There the Court set forth a principle guiding its pre-Fourteenth Amendment ruling that the Bill of Rights did not apply to State governments: "Had congress

engaged in the extraordinary occupation of improving the constitutions of the several states by affording the people additional protection from the exercise of power by their own governments in matters which concerned themselves alone, they would have declared this purpose in plain and intelligible language."[13] *Id*. at 250.

If the members of Congress, in later proposing for ratification the Fourteenth Amendment, had "engaged in the extraordinary occupation of [allegedly] improving the constitutions of the several states" by forbidding States to prosecute the common law crime of abortion,[14] "would they not have declared this purpose in plain and intelligible language?"[15]

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[13] This respect for independent State authority is prominent also in the *Slaughter-House Cases*. "Was it the purpose of the fourteenth amendment, by the simple declaration that no State should make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, to transfer the security and protection of all the civil rights which we have mentioned, from the States to the Federal government?" *Slaughter-House Cases*, 83 U.S. at 77 (emphasis added).

[14] Clarke D. Forsythe, *A Draft Opinion Overruling Roe v. Wade*, 16 Georgetown J.L. & Pol'y, 445, 462 (2018) (stating there is "considerable data that the English common law prohibited abortion at the earliest point that the law could detect that a developing human was alive pre-natally," and "'the authors of the [nineteenth] century's two leading American treatises on the law of crimes (Joel Prentiss Bishop and Francis Wharton) both concluded that abortion at any stage of pregnancy was a common law crime.'").

[15] The barbarity authorized by this "improvement" to State legal systems has been described forthrightly in various court opinions. *See Gonzalez v. Carhart*, 550 U.S. 124, 137-38 (2007) (describing abortion methods); *Harris v. West Alabama Women's Center*, 139 S. Ct. 2606, 2607 (2019) (Thomas, J., concurring)

For the Court to apply substantive due process theories to eliminate the regulatory authority of the State over medical professionals who violate the fundamental right to life of vulnerable persons in their jurisdiction degrades both State authority and the persons within its boundaries. There is no textual basis upon which to ground the proposal that the Fourteenth Amendment removed State power to secure to all persons in their jurisdiction their fundamental common law right to life.

Indeed, the Due Process Clause (allegedly the source of the Court's abortion policy) itself is predicated on the common law. *See* Nathan S. Chapman and Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L.J. 1672 (2012); Frank H. Easterbrook, *Substance and Due Process*, 1982 Sup. Ct. Rev. 85 (1982). In *Hurtado v. California*, 110 U.S. 516, 535 (1884), this Court interpreted the Fourteenth Amendment's Due Process Clause by reference to its counterpart in the Fifth Amendment. With respect to the latter, the Court explained that "[d]ue process of law . . . refers to that law of the land which derives its authority from the legislative power conferred upon Congress by the Constitution of the United States, exercised within the limits therein prescribed, and *interpreted*

(quoting *West Alabama Women's Center v. Williamson*, 900 F.3d 1310, 1319-1320 (11th Cir. 2018) (same); *Hodes & Nauser v. Schmidt*, 440 P. 3d, 461, 521 (Kan. 2019) (Stegall, J., dissenting) (same). The tactical flight from such descriptions into equivocal euphemisms (e.g., "terminating a pregnancy") by those advocating abortions continuing immunity from legal proscription is understandable.

according to the principles of the common law." *Id.* at 535 (emphasis added). This common law benchmark applies also to the Fourteenth Amendment. "The 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. *Id*.

This Court's more recent interpretations of the Fourteenth Amendment's Due Process Clause divorce its terms from their common law meaning. Abortion was a crime at common law[16] and the Court in *Roe* acknowledged that "in this country, the [abortion] law in effect in all but a few States until mid-19th century was the pre-existing English common law." *Roe*, 410 U.S. at 138.[17] Neither the text of the Fourteenth Amendment nor its historical context so much as hint it removed the jurisdiction of the States to protect the lives of those within its jurisdiction.

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[16] Forsythe, 16 Georgetown J.L. & Pol'y at 462.

[17] From 1848 to 1876, nearly all the States enacted statutes adopting the American Medical Society's position that termination of the pregnancy at any point should be a crime. *See* Human Life Bill (S. 158): Report by the Subcommittee on Separation of Powers to the Senate Committee on the Judiciary, 97th Cong., 1st Sess. 25 (1981), 4 (citing The Transactions of The American Medical Association, 12 American Medical Association 75, 78 (1859)).

A. The Fourteenth Amendment did not expand the federal judicial power to eliminate State protection of common law fundamental rights for persons in its jurisdiction.

The congressional enforcement of Fourteenth Amendment prohibitions is worlds apart from Court-created rights unknown to our legal history and divorced from the common law framework of the Constitution. In *Ex Parte Virginia*, 100 U.S. 399 (1879), this Court emphasized the amendment's congressional—not judicial—enforcement authority. "It is not said" in the Fourteenth Amendment that "the judicial power … shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed"; nor that the judiciary "shall be authorized to declare void any action of a State in violation of the prohibitions. It is the power of Congress which has been enlarged." *Id.* at 345-46. The Court determined that congressional enforcement of the Fourteenth Amendment is so central to its operation that "[w]ere it not for the fifth section of that amendment, there might be room for argument that the first section is only declaratory of the moral duty of the State." *Id*. at 347-48.

While Congress elected to enact 42 U.S.C. §1983 to provide a cause of action for enforcement of constitutional rights, that statute does not authorize courts to create new rights that eliminate State authority to protect a common law right to life. The rights vindicated in a Section 1983 action derive from elsewhere: "the Constitution and laws of the United States. One cannot go into court and claim a violation of § 1983—for § 1983 by itself does not protect anyone

against anything." *Gonzaga University v. Doe*, 536 U.S. 273, 285 (2002) (cleaned up). The federal government can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication." *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 326 (1816).

B. The judicial use of substantive due process to enforce historically unknown substantive rights is incompatible with State prerogatives and the constitutional structure of federalism.

In the *Slaughter-House Cases*, this Court observed that interpreting the Privileges and Immunities Clause to encompass the entire array of pre-constitutional rights would upend the Constitution's dual-sovereign federalism structure. "[S]uch a construction . . . would constitute this court a perpetual censor upon all legislation of the States, on the civil rights of their own citizens, with authority to nullify such as it did not approve as consistent with those rights, as they existed at the time of the adoption of this amendment." *Slaughter-House Cases*, 83 U.S. at 78. This Court's cautionary comments on the disruptive systemic effect of this error of interpretation are ardent.

> [W]hen, as in the case before us, these consequences are so serious, so far-reaching and pervading, so great a departure from the structure and spirit of our institutions; when the effect is to fetter and degrade the State governments by subjecting them to the

> control of Congress, in the exercise of powers heretofore universally conceded to them of the most ordinary and fundamental character; when in fact it radically changes the whole theory of the relations of the State and Federal governments to each other and of both these governments to the people; the argument has a force that is irresistible, in the absence of language which expresses such a purpose too clearly to admit of doubt.

Id. As a result, the Court was "convinced that no such results were intended by the Congress which proposed these amendments, nor by the legislatures of the States which ratified them." *Id.*

This structural principle applies equally as a critique of federal usurpation of State jurisdiction via other clauses of the Fourteenth Amendment. The adverse consequences to our system of federalism that *Slaughter-House* reproved are equally present upon unenumerated common law rights being absorbed into the Fourteenth Amendment's Due Process Clause. It matters not whether those rights were imported through the Privileges and Immunities Clause or via substantive due process, the effect on the people and the States is the same. Further, the use of substantive due process to create rights unknown and hostile to the common law enacts the very thing that *Slaughter-House* concluded the Fourteenth Amendment could not reasonably be interpreted to authorize. By contriving new rights, the Court has substituted itself into Congress's Section 5 role yet to do what *Slaughter-House* said

Congress was prohibited from doing: "limiting and restricting the exercise of legislative power by the States, in their most ordinary and usual functions," *id*., such as securing common law rights acknowledged by the Ninth Amendment.

While *Slaughter-House* "left open the possibility that certain individual rights *enumerated* in the Constitution could be considered privileges or immunities of federal citizenship," *McDonald*, 561 U.S. at 808 (Thomas, J., dissenting) (emphasis added), the Privileges and Immunities Clause does not encompass *unenumerated* rights. The federal enforcement of such rights would represent a repudiation of our system of federalism that concerned this Court in *Slaughter-House*, just as it had in *Barron*.

This Court unanimously emphasized in *Bond v. United States*, 564 U.S. 211 (2011), that "freedom is enhanced by the creation of two governments not one," and explained at length that our federal structure safeguards the freedom of citizens for an array of reasons. *Id*. at 221-22 (internal quotation marks omitted).[18] Yet "[t]he enormous expansion of federal power in the twentieth century has powerfully reinforced our tendency to denigrate, if not to miss

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[18] In *McDonald v. City of Chicago* 561 U.S. 742 (2010), opponents of *Slaughter-House*'s interpretation of the Privileges and Immunities Clause could not "to identify the Clause's full scope," and the Court "decline[d] to disturb [its] holding." *Id*. at 758. But any uncertainty as to the scope of the Privileges and Immunities Clause is no reason to dispute its respect for federalism or disregard the Ninth Amendment read together with the Tenth.

completely, the framers' belief that the limited powers scheme of our federal system was an important guarantor of popular rights." Thomas B. McAffee, *Federalism and the Protection of Rights: The Modern Ninth Amendment's Spreading Confusion*, 1996 BYU L. Rev 351 (1996).

The rights that belonged to persons at common law were retained by the people. The Constitution did not disparage or deny these rights, nor did it make them national claims for federal court enforcement. The Court should return constitutional rights jurisprudence to the "beautiful fabric of balanced government which has been reared with so much care and wisdom, and in which the people have reposed their confidence as the truest safeguard of their civil, religious, and political liberties." Joseph Story, Commentaries on the Constitution of the United States § 416.

CONCLUSION

The Constitution's federalism structure, emphasized in the Ninth and Tenth Amendments and celebrated in this Court's precedents, contemplates that the people and their State representatives, or the State courts applying the common law, were to play the primary role in specifying and securing the people's fundamental common law rights. These rights not enumerated in the Constitution are retained in their integrity from federal manipulation, and the States remain authorized to secure their enjoyment.

This Court should put to rest the aberrant line of jurisprudence that foists upon the nation a mandatory abortion enablement and that

disparages the right of the people to secure to themselves and to their posterity[19] the fundamental common law right to life.

Respectfully submitted,

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[19] U. S. Const., preamble.

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