# BRIEF TO ENJOIN GEORGIA LIFE ACT (H.B. 481)
# A WOMAN'S CONSTITUTIONAL RIGHT TO A PRE-QUICKENING ABORTION

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This brief is for use by any Georgia plaintiffs arguing that the **"**LIFE ACT**"** (the official title for H.B. 481) violates the Constitution of the State of Georgia and the Constitution of the United States. As newly enacted law, this Georgia legislation bans most abortions after six weeks when, according to the language of the bill, "fetal cardiac activity is detected." Ms. Doe, a fictional plaintiff, argues that H.B. 481 must be enjoined posthaste (1) to protect her retained right to pre-quickening abortion, (2) it may only be enacted by constitutional amendment ratified by Georgia voters, (3) it subjects her to onerous involuntary servitude, and (4) forces her to endure physical and emotional abuse. Ms. Doe also argues that the *Dobbs* ruling violates her federally protected Ninth Amendment retained right to pre-quickening abortion, her Tenth Amendment protection from governmental usurpation of power, and her Thirteenth Amendment protection(s) against involuntary servitude.

The brief is offered as a framework and resource for any attorney suing Georgia or any other state with similar "heartbeat" abortion laws at the behest of a pregnant youth in foster care, youth in state foster care as a plaintiff class, attorneys representing women in any state, attorneys representing any national organizations, their members, physicians, nurses, medical facilities, personnel, and potentially affected minorities This brief may be freely downloaded by any individual or group who believe they might benefit from its use or enlightenment by its arguments at www.standupinitiatives.com. Tom Paine can be contacted via email at paine@standupinitiatives.com.

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## INTRODUCTION

1. This brief provides historical and legal arguments to support constitutional challenges to Georgia House Bill 481 ("H.B. 481")[1], also titled the "LIFE ACT," a bill that criminalizes post-heartbeat fetal abortions in Georgia. This brief is written for a *fictional* plaintiff, Ms. Evelyn Doe, a seventeen-year-old youth in the legal custody of the Georgia Department of Family and Children's Services (DFCS)[2] since 2006. Ms. Doe has a clinical diagnosis of slight cognitive impairment and social developmental delays but is on track to complete high school in May 2023. After graduation, she and plans to enroll as a freshman at Georgia Tech in the fall and actively participate in the DFCS Extended Youth Support Services Program (EYSS).[3]

2. Ms. Doe did not learn she was pregnant until the eighth week. She insists she does not understand how she got pregnant. She does not want a child or to surrender a newborn for adoption. She reports feeling increasingly distraught and suicidal. Ms. Doe argues she has an unfettered Georgia and United States constitutional right to abortion if performed before fetal "quickening."[4]

3. In complying with H.B. 481, the Georgia Division of Family and Children Services (DFCS) has refused to provide Ms. Doe with abortion counseling, abortion-inducing medication(s), pay for her travel out-of-state, or to defray any abortion-related expenses. If a preliminary injunction is not granted, Ms. Doe will suffer irreparable harm. If forced to remain pregnant past quickening, and give birth against her will, Ms. Doe faces the risk of improper care outside the regulated clinical setting. Refusing to allow Ms. Doe, a minor child, to exercise her right to a pre-quickening abortion subjects her to criminal physical abuse, exposes

[1] The Georgia Legislature passed H.B. 481 on March 29, 2019, and the Governor signed the bill into law on May 7, 2019. The effective date was January 1, 2020. H.B. 481 § 15, 155th Gen. Assemb., Reg. Sess. (Ga. 2019).

[2] DFCS Policy and Request(s) for Funding/Travel and Abortion Denial(s) documents.

[3] A child may receive extended care youth services from DFCS if he or she is between 18 and 21 years of age, signs a voluntary placement agreement with DFCS, and meets objective eligibility criteria established by DFCS.

[4] Quickening is when a pregnant person starts to feel their baby's movement in their uterus (womb). It feels like flutters, bubbles, or tiny pulses. Quickening happens around 16 to 20 weeks in pregnancy, but some people may feel it sooner or later.

her to a greater likelihood of severe injury or death, and subjects her to a life of prolonged involuntary servitude.

4. While this brief argues that Georgia's H.B. 481 is an unconstitutional attack on Ms. Doe's inalienable individual liberties and rights guaranteed by the Constitution of the State of Georgia, it also provides a framework for complaints by other pregnant women or plaintiffs in other states where "pre-quickening" abortions is outlawed, and federal court challenges to the *Dobbs* ruling. Ms. Doe argues that the *Dobbs* ruling denied and disparaged her retained and enumerated right to pre-quickening abortion. *Dobbs* unconstitutionally "returned" the power to revoke her pre-quickening abortion right to the Georgia state legislature in violation of her Ninth, Tenth, and Thirteenth Amendment constitutional rights and guarantees.

5. Protecting a woman's "retained right" to pre-quickening abortion requires no extensive *stare decisis,* or ordered liberty, analysis. The basic questions that must be answered are 1) did Georgians have a natural law and/or common law right to an abortion in 1791, 1861, and 1983, 2) does the Georgia legislature have the power to deny or disparage a retained and/or enumerated right, and 3) if the Georgia legislature does not have that power, who does, and how may it be exercised?

6. This brief is divided into several sections. Section I is the **Statutory Framework**, Section II is a **Pre-Quickening Abortion in Colonial Georgia**, Section III is **Pre-Quickening Abortion is a Retained Right**, Section IV is the **Power to Revoke a Right**, Section V is **Forced Pregnancy as Involuntary Servitude,** Section VI is **There is No Compelling State Interest,** Section VII is **Physical Abuse**, and Section VIII is the **Conclusion**.

## SECTION I
## STATUTORY FRAMEWORK

### LIFE ACT (H.B. 481)

7. H.B. 481 is the Georgia law, also known as the "heartbeat bill" was signed into law in May 2019. Also known as the "Georgia Heartbeat Bill," it was

proposed legislation in Georgia in 2019 that aimed to restrict abortion access in the state once fetal heartbeat is detected; typically around six weeks into pregnancy. When the Supreme Court *Dobbs* decision overturned *Roe*[5], it granted the power to the Georgia state to criminalize pre-quickening abortion and "triggered" H.B. 481 enactment. This brief argues that H.B. 481 violates Ms. Doe's rights and usurps powers protected by the Georgia Constitution[6] and the Constitution of the United States[7]

8. H.B. 481 prohibits abortion after a fetal heartbeat is detected, which typically occurs around six weeks into pregnancy. This is often before many women even realize they are pregnant: It criminalizes doctors who perform abortions and who could face felony charges and up to ten years in prison. While the bill does not specifically or explicitly criminalize women who seek abortions, it does open the door for them to potentially face prosecution for conspiracy to commit murder or other crimes. The bill bestows personhood on a fetus beginning at conception and requires healthcare providers to report any miscarriages that occur after six weeks to the Georgia Department of Public Health. The bill also allows parents to claim fetuses as dependents for tax purposes.

9. The exceptions to H.B. 481 are if/when the pregnancy poses a serious risk to the life or health of the mother regardless of the fetal heartbeat, if/when the pregnancy is the result of rape or incest up to 20 weeks after the last menstrual period, or if/when the fetus has a medical condition that is deemed incompatible with life at any stage of the pregnancy.

***SisterSong v. Kemp***

10. *SisterSong v. Kemp*[8] is a challenge to H.B. 481 (See Exhibit A) making its way through the courts. This federal lawsuit[9] was brought on behalf of

[5] *Roe v. Wade*, 410 U. S. 113

[6] Ga. Const. art. I, para. XXIX, "The enumeration of rights herein contained as a part of this Constitution shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed."

[7] U.S. Const. amend. XIX IX, X, and XIII.

[8] *SisterSong Women of Color Reprod. Just. Collective v. Kemp*, 2022-CV-367796 (Sup. Ct. Fulton Cnty. Nov. 15, 2022).

[9] The ban was enjoined following a November 15, 2022, ruling by the Superior Court of Fulton County that enjoined enforcement of sections 4 and 11 of the state's six-week ban as *void ab initio* (having no legal

reproductive justice advocates, healthcare providers, and their patients. It sought immediate relief to prevent enforcement of H.B. 481, asserting that (1) H.B. 481 was void from the start under Georgia judicial precedent because it clearly violated federal constitutional precedent when enacted in 2019, and a subsequent change in federal law cannot revive it; and (2) the Georgia Constitution's especially strong protection for the fundamental right to privacy prohibits this political interference with an individual's deeply personal and medically consequential decision whether to continue a pregnancy. Doctors and advocates asked the state court to immediately block the law while the lawsuit proceeds in the courts. The lawsuit also includes a state constitutional challenge to a provision of Georgia law, expanded by H.B. 481, which violates Georgians' privacy rights by giving prosecutors unfettered access to abortion patients' private medical records without any due process. It disproportionately affects people of color, people struggling financially, and rural Georgians—the people who are least able to access medical care and who face the highest rates of maternal and infant deaths in the nation, especially among black Georgians.[10]

11. On November 23, 2022, the Georgia Supreme Court granted the government's request to stay the lower court's order granting the plaintiff's injunction while the case is appealed. Thus, H.B. 481 is in effect until the lawsuit against it plays out.[11]

12. Ms. Doe agrees with, but makes fundamentally different arguments than, the *Sistersong* plaintiffs. She argues that H.B. 481 is unconstitutional because (1) "pre-quickening" abortion was a colonial Georgian's natural and common law right, (2) it has been a continuously retained right protected by the Georgia Constitution since 1798, (3) the Constitution of the State of Georgia protects it today, (4) the people of Georgia have not delegated the power to revoke a retained

effect from inception) under Georgia law. This ruling stems from the state enacting a six-week ban in 2019, when laws restricting abortion before viability were unconstitutional. The existing federal injunction was lifted upon request by the Georgia Solicitor General, following the U.S. Supreme Court's decision to overturn *Roe v. Wade* in the case *Dobbs v. Jackson Women's Health Organization.*

[10] https://www.statnews.com/2018/01/11/racism-maternal-health-erica-garner/

[11] *State of Georgia v. SisterSong Women of Color Reprod. Just. Collective*, Case No. S23M0358 (Ga. Nov. 23, 2022).

or enumerated constitutional right to the state legislature, and (5) is unlawful in Georgia to force any person into involuntary servitude and (6) it is unlawful to physically abuse a minor.

13. Ms. Doe seeks a preliminary injunction to suspend the implementation of HB 481. If a preliminary injunction is not granted, Ms. Doe will suffer irreparable harm.

## SECTION II
## PRE-QUICKENING ABORTION IN COLONIAL GEORGIA

14. The historical and cultural context surrounding abortion in Georgia in the late 18th century was quite different from what it is today. The legal and cultural attitudes towards abortion have varied widely throughout history, and it is difficult to make definitive claims about the legality or illegality of abortion in any time or place without a thorough understanding of the historical and legal context.

15. With that in mind, Ms. Doe acknowledges that historical experts may disagree as to whether women in colonial Georgia had an unabridged natural law or common law right to all abortion. There is evidence that once a colonial woman experienced "quickening" aborting the fetus could be illegal. But there is no evidence that the practice of "pre-quickening" abortion was not legally, medically, morally, or as a matter of custom or tradition, a colonial Georgian's absolute right.[12] Criminal liability, if any, was for post-quickening abortions. These exceptional prosecutions to hold an abortionist accountable if the woman died. They were not for terminating the fetus.[13]

16. Historically, Georgia followed the common law and did not regulate abortion during early pregnancy. Common law rejected[14] embryonic personhood, only acknowledging a fetus as having a special legal status separate from the

[12] Reagan, Leslie J. *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973.* Berkeley: University of California Press, c1997 1997. Pp. 8-9

[13] Clarke D. Forsythe, When Abortion Was Illegal, Women Were Not Jailed for Having Abortions, Life News, Mar 31, 2016

[14] *State v. Cooper*, 22 N.J.L. 52 (1849), April 1849 · New Jersey Supreme Court, 22 N.J.L. 52

mother's once the pregnant woman could feel fetal movement, or "quickening,"[15] at about 16-20 weeks.

17. Consistent with the common law practice, most religious and legal scholars in the colonial period did not think "ensoulment" began at conception but at the time of "quickening"— when a pregnant person can feel fetal movement, generally between 16 and 22 weeks.[16] Thus, the popular colonial ethic regarding pre-quickening abortion was grounded in the female experience of their own bodies."[17]

18. Removing any doubts as to whether colonial women had the absolute right to pre-quickening abortion, the American Historical Association (AHA)*[18]* advised the *Dobbs* Court its *Amici Curiae* brief,[19] "When the United States was founded and for many subsequent decades, Americans relied on the English common law. The common law did not regulate abortion in early pregnancy. Indeed, the common law did not even recognize abortion as occurring at that stage. That is because the common law did not acknowledge a fetus as existing separately from a pregnant woman until the woman felt fetal movement, called 'quickening,' which could occur as late as the 25th week of pregnancy. This was a subjective standard decided by the pregnant woman alone and was not considered accurately ascertainable by other means." [20]

19. The historical evidence is overwhelming. Beginning with the Charter of Georgia in 1732 until the first Georgia abortion statute enacted in 1876, a woman in Georgia, for whatever reason she chose, could lawfully end her pregnancy at any stage.[21]

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[15] See "Quickening in Pregnancy, Cleveland Clinic, for a comprehensive behavioral description.
[16] Zoila Acevedo RN, PhD (1979) Abortion in Early America, Women & Health, 4:2, 159-167, DOI: 10.1300/J013v04n02_05,
[17] Abortion in Colonial America: A Time of Herbal Remedies and Accepted Actions - UConn Today (2022)
[18] *Dobbs*, Brief for *Amici Curiae*, American Historical Association and Organization of American Historians.
[19] *Id*., Pp. 11
[20] The AHA brief authoritatively rebutted Dellapenna's findings, "Contrary to the assertion of an amicus for the State, medieval and colonial cases do not support the view that the common law criminalized all abortion throughout pregnancy. See Dellapenna Amicus Br.7-13. As noted above, the significant common-law authorities recognized abortion as criminal only in the latter part of pregnancy."
[21] Cornelia H. Dayton, UConn history professor and author of the 1991 article "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village."

20. The Attorney General of Georgia agreed. In *Doe v. Bolton*,[22] the Attorney General established that, since the passage of the Act of February 25, 1784, the common law of England which was in force and binding on the inhabitants of Georgia on May 14, 1776, had been incorporated into the law of Georgia. In doing so, the Attorney General established that Georgia women, before the earliest Georgia abortion statute (passed in 1876), had an unfettered liberty of abortion, at least in the pre-quickening stage of pregnancy, since that is what the English common law accorded them on May 14, 1776.[23]

21. During the fifteen years between the Rules and Regulations of the Colony of Georgia,[24] Declaration of Independence, and ratification of the Bill of Rights, the inhabitants of Georgia experienced war, struggle, experiments in state self-government, adoption of the Articles of Confederation, the Constitutional Convention, Constitutional ratification, drafting of the Bill of Rights and finally its ratification.[25] At no point was pre-quickening abortion unlawful.

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22 *Doe v. Bolton,* 410 U.S. 179, Brief for Appellees at 43-53. *Doe v. Bolton* was a landmark Georgia case decided by the United States Supreme Court in 1973 that addressed a woman's right to have an abortion. The case was decided along with *Roe v. Wade,* which established the constitutional right to privacy that includes the right to have an abortion. In *Doe v. Bolton*, the Court struck down a Georgia law that imposed strict regulations on abortions, including requiring approval from three doctors and allowing abortions only in certain circumstances, such as when the mother's life was in danger. The Court found that these regulations violated a woman's constitutional right to privacy and her right to choose to have an abortion. The brief for the appellees in the case argued that the Georgia law was unconstitutional because it placed an undue burden on women seeking abortions, and because it violated their fundamental right to privacy. The brief also argued that the law was discriminatory because it made it more difficult for poor women and women of color to obtain abortions. The brief cited several cases in which the Court had recognized the right to privacy, including *Griswold v. Connecticut* and *Eisenstadt v. Baird*. It argued that this right extended to a woman's decision to terminate her pregnancy. The brief also argued that the Georgia law was overly broad and vague, and that it failed to provide clear guidelines for doctors and patients. It argued that this vagueness would lead to arbitrary and discriminatory enforcement of the law. Finally, the brief argued that the Georgia law violated the Equal Protection Clause of the Fourteenth Amendment, which prohibits states from denying any person equal protection under the law. The brief argued that the law discriminated against women by making it more difficult for them to obtain abortions, and that this discrimination violated their constitutional rights. In conclusion, the brief for the appellees in *Doe v. Bolton* argued that the Georgia law was unconstitutional because it violated a woman's right to privacy, placed an undue burden on women seeking abortions, was overly broad and vague, and violated the Equal Protection Clause of the Fourteenth Amendment. The Court ultimately agreed with these arguments and struck down the law, paving the way for women to have greater access to abortion services in the United States. The decision was released on January 22, 1973, the same day as the decision in the better-known case of *Roe v. Wade* and was overturned by *Dobbs* in 2022.

23 *Id*., Means, Pp. 375

24 1776 Rules and Regulations of the Colony of Georgia, Sovereign Library UK

25 Leonard Levy, Encyclopedia.com, Constitutional History, 1776–1789 (1986)

22. This is not only of historic interest; it is of constitutional significance. If every woman who lived in Georgia before 1876 was at liberty to undergo, and her abortionist at liberty to perform, a "pre-quickening" procedure according to the English and American common law, then the Georgia Bill of Rights protected it as a retained right beginning in 1861.[26]

23. As American citizens, Georgian women (and their abortionists) enjoyed the pre-quickening liberty on September 25, 1789, when the First Congress proposed the Ninth Amendment, and on December 15, 1791, when it was adopted. As such, there is sound ground for holding that such liberty is preserved by that amendment today (subject to abridgment only to promote a compelling secular state interest).[27] Commencing with *Roe* and *Bolton*, the retained right of every Georgian to pre-quickening abortion became an enumerated right that the Constitution of the State of Georgia and the Constitution of the United States still protects.

24. The Georgia Penal Code of 1833[28] is illustrative. It established statutory rules that remained in force for years in Georgia. Its statutory provisions derived from an ancient rule of the common law, according to which an expectant mother under sentence of death was examined by a jury of matrons. If their verdict was that her fetus was not yet quick, she was hanged forthwith; if they found that quickening had already taken place, she was reprieved until after delivery and then hanged.[29] This Georgia statute recognized and established the destruction of a pre-quickening fetus was *not* a crime.

25. The Georgia Constitution promises Ms. Doe that she retains all the "inherent rights which (she) may have hitherto enjoyed."[30] The inherent rights Ms. Doe now enjoys include a retained right to pre-quickening abortion protected in

[26] Art. I, Para. XXIX. Enumeration of rights not denial of others. "The enumeration of rights herein contained as a part of this Constitution shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed." Constitution of Georgia (1861)
[23] Id., Means, Pp. 376
[28] O.H. Prince, Digest of the Laws of the State of Georgia 663, 664 (2d ed. 1837) (§§ 38, 40 of Ga. Penal Code of 1833). Ga. Code Ann. ch. 26, § 2.
[29] *Id*., Means, Pp. 377
[30] Ga. Const. art. I, para. XXIX

Georgia's colonial common law,[31] its Constitution(s)[32], and Georgia's abortion laws and regulations prior to H.B. 481.[33]

26. The Supreme Court's *Dobbs* majority willingly ceded this ground for all American women, *"*At any rate, the original ground for the quickening rule is of little importance for present purposes because the rule was abandoned in the 19th century. During that period, treatise writers and commentators criticized the quickening distinction as 'neither in accordance with the result of medical experience, nor with the principles of the common law. F. Wharton, Criminal Law §1220, p. 606 (rev. 4th ed. 1857)"[34]

27. Ms. Doe asserts it is constitutionally irrelevant if the post-quickening abortion rule was abandoned in the 19th Century, or whether treatise writers and commentators criticized the quickening rule. What matters is the fact that the common law right to a pre-quickening abortion was well-established in American colonial history, tradition, natural law, and common law in 1791 and Georgia in 1861.

## SECTION III
## PRE-QUICKENING ABORTION IS A RETAINED RIGHT

### Georgia Bill of Rights - Enumeration of Rights Not Denial of Others

28. The history of the drafting and ratification of both the State of Georgia Bill of Rights and the United States Constitution Bills of Rights and make clear that the rights protected are individual rights with genesis in Europe, refinement in earlier English common law practice, and unique application in the American experience.[35,36] Lockean thought made the context crystal clear, "government

[31] Charter of Georgia, 1732, Yale Law School, The Avalon Project
[32] Georgia Constitution of 1777, Yale Law School, The Avelon Project
[33] *Id*., The *Dobbs* AHA Brief Pp. 2-4, is authoritative, "Indeed, the Court (*Roe*) held: 'At least with respect to the early stage of pregnancy,' meaning prior to quickening, 'and very possibly without such a limitation, the opportunity to make this choice was present in this country well into the nineteenth century'… These central claims were accurate in *Roe* and remain so today. In the five decades since *Roe*, our ability to confirm this history has grown through the digitization of historical newspapers and records.
[34] *Id., Dobbs*, Pp. 22
[35] Digital History, "*Diversity in Colonial America*," digitalhistory.uh.edu, Digital History ID 3585
[36] Vincent Parillo, "*Diversity in America*," (2012), Diversity in Colonial Times, Pp. 39-58

powers are islands in a sea of individual rights, not the sea encompassing islands of enumerated liberties."[37]

29. The Georgia Bill of Rights guarantees, "The enumeration of rights herein contained as a part of this Constitution shall not be construed to deny to the people any inherent rights which they may have hitherto enjoyed."[38]

30. This provision is analogous to the Ninth Amendment of the United States Constitution, which states that the enumeration of certain rights in the Constitution shall not be construed to deny or disparage other rights retained by the people. The Georgia provision recognizes that the Constitution of Georgia does not grant rights to the people, but rather recognizes and protects pre-existing natural rights that are inherent in the individual. Both these federal and Georgia state provisions are intended to protect individual liberties and prevent the government from infringing upon those liberties.

31. This guarantee was adopted as part of Georgia's Constitution in 1861 and has been retained in every subsequent version, including the current one adopted in 1983. It includes the same language as the original version with only minor updates to reflect changes in language and style. The purpose of this provision is to ensure that the people retain all of the inherent rights that they had before the Constitution of the State of Georgia was adopted, even if those rights are not specifically listed in the social contract.[39] It is an important safeguard against the potential overreach of government power, and it recognizes that the people of Georgia have fundamental rights that cannot be taken away by the government and ensures that those rights are protected under the law.

32. While Article I, Paragraph XXIX has not been the subject of many court cases, it is generally interpreted to mean that the rights enumerated in the Georgia Constitution are not an exhaustive list, and that the people of Georgia retain inherent unenumerated rights that are not specifically listed. Cases in which the courts have cited retained rights include:

[37] *Id*., Massey, Pp. 79-80

[38] Ga. Const. art. I, para. XXIX.

[39]John Locke (in the second of the *Two Treatises of Government*, 1690). The "People" are individually, collectively, and evolutionarily separate and distinct from the constitutional social contract their delegates ratified.

a) *Smith v. State*, 277 Ga. 126 (2003): In this case, the Georgia Supreme Court struck down the state's sodomy law, finding that it violated the right to privacy and freedom of intimate association. The court cited Article I, Paragraph XXIX, noting that the enumeration of rights in the Georgia Constitution does not preclude the recognition of additional rights.

b) *Jones v. State*, 285 Ga. 684 (2009): In this case, the defendant argued that the state's prohibition on carrying a concealed weapon without a permit violated his right to bear arms under the Second Amendment of the U.S. Constitution. The Georgia Supreme Court rejected this argument, but cited Article I, Paragraph XXIX, noting that the Georgia Constitution recognizes the right to bear arms as an inherent right.

c) *State v. Powell*, 269 Ga. App. 716 (2004): In this case, the defendant argued that his right to a fair trial had been violated by the state[s use of evidence obtained through an illegal search. The court cited Article I, Paragraph XXIX, noting that the right to a fair trial is an inherent right that is not dependent on the specific guarantees listed in the Georgia Constitution.

d) *Smith v. State*, 277 Ga. 126 (2003): This Georgia Supreme Court case involved a challenge to the state's statutory ban on sodomy. The defendant argued that the law violated his constitutional right to privacy and freedom of intimate association. The court agreed, striking down the law as unconstitutional.

e) *Lofton v. Secretary of the Department of Children and Family Services*, 358 F.3d 804 (11th Cir. 2004): This federal case involved a challenge to Georgia's ban on adoption by same-sex couples. The court held that the ban violated the Equal Protection Clause of the U.S. Constitution.

f) *City of Atlanta v. Morgan*, 306 Ga. App. 563 (2010): In this case, the plaintiff challenged the constitutionality of a city ordinance that required dancers in adult entertainment establishments to wear pasties and a G-string. The plaintiff argued that the ordinance violated her First Amendment right to free expression. The court agreed, finding that the

ordinance was not narrowly tailored to serve a significant government interest.

33. These cases demonstrate the extensive range of original protected individual retained rights in Georgia, including privacy, freedom of association, the right to bear arms, equal protection, and free expression.

34. The Georgia Supreme Court has never issued a case ruling on a woman's personal retained right to abortion. However, in *Planned Parenthood Southeast, Inc. v. Olens*, 2014 WL 4826337 (N.D. Ga. Sept. 30, 2014), a federal district court held that certain provisions of Georgia's prior abortion law were unconstitutional as they placed an undue burden on a woman's right to obtain an abortion. In that case, the court struck down provisions of the Georgia law that required doctors to perform certain procedures during a woman's visit, mandated certain waiting periods, and restricted the use of telemedicine for abortion consultations. The court held that these provisions placed an undue burden on a woman's right to obtain an abortion, as they imposed significant obstacles and delays in accessing the procedure.[40]

35. As asserted in the *Sistersong* complaint, the Georgia Constitution also provides expansive protections for personal privacy, which includes the right to obtain an abortion. In *Powell v. State*, 270 Ga. 327 (1998), the Georgia Supreme Court held that the state constitution provides greater protections for privacy rights than the federal constitution, and that the right to privacy can encompass a woman's right to make reproductive choices. However, the court did not specifically address the right to abortion in that case. While the Georgia Supreme Court has yet to issue a significant case on a personal retained right to abortion, federal courts have struck down past state abortion access restrictions as unconstitutional.[41]

[40] *Planned Parenthood Southeast, Inc. v. Olens*, 2014 WL 4826337 (N.D. Ga. Sept. 30, 2014).

[41] *Doe v. Bolton*, 410 U.S. 179, Brief for Appellees at 43-53. The case was a decision by the Supreme Court of the United States to overturn the abortion law of Georgia. The decision was released on January 22, 1973, the same day as the decision in the better-known case of *Roe v. Wade*.

**United States Bill of Rights – Retained Rights**

36. To best appreciate the Georgia Bill of Rights protection of retained rights, we must first look to the Ninth Amendment, after which it was modeled, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[42]

37. There are several theories about what the unenumerated rights mentioned in the Ninth Amendment might be.[43] Of these theories, the one most supported by the historical evidence is that the "rights retained" in the Ninth Amendment are personal rights belonging to the people as individuals, as per Blackstone[44] and Locke[45], rather than the collective rights of "the people" as citizens of the states.[46] As such, the rights retained by the sovereign people of Georgia are of the same character as the rights retained in the Constitution of the United States and all other fundamental rights subsequently recognized by the Supreme Court.[47]

38. Ms. Doe contends that although women in Georgia had no politically recognized rights in 1791 and 1861, there existed a deeply rooted tradition, public understanding, and philosophy of common law rights that unwaveringly held

[42] U.S. Const. amend. IX, § 2

[43] James Madison, address to the House of Representatives, Defense of the Bill of Rights in Congress, (June 8, 1789). The Bill of Rights that emerged from the state legislatures were the rights white freemen believed most needed protection from government encroachment and those likely to preserve the new republican form of government.

[44] Sir William Blackstone, *Commentaries on the Laws of England in Four Books*, vol. 1 [1753]. At the core of Blackstone's *Commentaries* was a construction of rights that had an immense influence on the founding generation. His writings shaped and informed the colonists who would embrace the Declaration, adopt the Articles of Confederation, and vote to ratify the Constitution and the Bill of Rights. Blackstone started with the absolute rights of individuals. He divided them into three categories: (1) the right to personal security, (2) the right to personal liberty, and (3) the right to private property. The right to personal security includes the right to enjoy life, limbs, body, health, and reputation. Of these rights, the rights to enjoy life and limbs are the most important. Blackstone wrote that these rights belong *to each person at the quickening* in the womb and include the right to self-defense and the right to void contracts completed under duress.

[45] The Declaration of Independence and Natural Rights, Constitutional Rights Foundation, 2021. Along with *Commentaries*, it was John Locke's ideas about natural law that strongly influenced Thomas Jefferson while drafting the language in the Declaration of Independence. When Jefferson wrote that "all men" had "certain inalienable rights" such as "life, liberty and the pursuit of happiness," he was borrowing from Locke's formulation of the inalienable rights of man: life, liberty, and property. It is essential to Ms. Doe's argument to point out that while Blackstone described the absolute rights of all individuals—men and women alike—Jefferson characterized these absolute rights as unalienable and endowed to all men.

[46] Id., Massey, Pp.61, 89

[47] *Id.*, Pp. 168-69

women, just like men, possessed individual rights that were absolute and retained.[48] Pre-quickening elective abortion was a common law liberty in 1791, in 1861, and remains her retained constitutional right today.

39. Why were various rights enumerated while others were not? The answer lies with motives of those who crafted and ratified the new state and federal governments. At the outset of the deliberations in the First Congress, Madison, who drafted the proposed Bill of Rights, averred that "the abuse of the powers of the General Government may be guarded against in a more secure manner than is now done."[49] Fearing the general government would attempt to usurp the people's sovereign power, the Framers made the preemptive protection against such action explicit in the Ninth Amendment.[50]

40. Madison was clear about how to interpret it's meaning, "If we were to look, therefore, for the meaning of the instrument beyond the face of the instrument, we must look for it, not in the General Convention, which proposed, but in the State Conventions, which accepted and ratified the Constitution."[51] Thus, when dealing with original provisions in the Constitution, the pertinent question is, "What did the ratifiers think they were ratifying, informed as they were by the language, stated intent, and debates of the framers, and the debates at the ratification conventions?"[52,53]

41. The white monied freemen voters[54] in 1791 clearly understood that an individual's inalienable rights, enumerated or retained, whether for themselves,

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[48] Reagan, Leslie J. *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973.* Berkeley: University of California Press, c1997 1997. Pp. 8-9

[49] James Madison, address to the House of Representatives, Defense of the Bill of Rights in Congress, (June 8, 1789).

[50] *Id*. Jackson, Pg. 188

[51] James Madison in the House of Representatives (April 6, 1796)

[52] *Id*., Jackson, Pp.173

[53] While the framers may have crafted the original language of the Constitution, the language had no force until it was ratified by the state conventions. Because the state ratification conventions were the final decision-making bodies regarding the language of the Constitution, the views of the framers concerning the meaning of a particular passage are only relevant to the extent that they can be said to have informed those bodies' understandings of what that passage meant.

[54] Constitution of Georgia, February 5, 1777, ART. IX. "All male white inhabitants, of the age of twenty-one years, and possessed in his own right of ten pounds value, and liable to pay tax in this State, or being of any mechanic trade, and shall have been resident six months in this State, shall have a right to vote at all elections for representatives, or any other officers, herein agreed to be chosen by the people at large; and every person having a right to vote at any election shall vote by ballot personally."

slaves, or women, were to be protected from the new government. According to Jefferson,[55] it was the mutual understanding among those who voted for legislators and delegates who ratified the Bill of Rights.[56]

42. At the time of the initial Georgia state constitution's ratification, it was a misdemeanor to intentionally end the pregnancy of any woman pregnant with a *quick* child. The state constitution's liberty right was affirmed for the third time in 1868,[57] as abortions continued to remain legal before quickening.[58] Therefore, as Americans, Georgians enjoyed the common law liberty to terminate *at will* any unwanted pregnancy from 1608 to 1830.[59] In the state of Georgia, there were no laws prohibiting abortion at any stage until 1876.

**The 1876 Georgia Statute**

43. In 1876 Georgia banned abortions of a "quick" unborn child. Though inconsistent with the original understanding of natural and common law rights, the

[55] Thomas Jefferson's Letter to Noah Webster, Jr. on December 4, 1790, "It had become a universal and almost uncontroverted position in the several states, that the purposes of society do not require a surrender of all our rights to our ordinary governors: that there are certain portions of right not necessary to enable them to carry on an effective government, and which experience has nevertheless proved they will be constantly encroaching on, if submitted to them. That there are also certain fences which experience has proved peculiarly efficacious against wrong, and rarely obstructive of right, which yet the governing powers have ever shewn a disposition to weaken and remove. Of the first kind for instance is freedom of religion: of the second, trial by jury, Habeas corpus laws, free presses. *These were the settled opinions of all the states, of that of Virginia, of which I was writing, as well as of the others. The others had in consequence delineated these unceded portions of right, and these fences against wrong, which they meant to exempt from the power of their governors, in instruments called declarations of rights and constitutions: and as they did this by Conventions which they appointed for the express purpose of reserving these rights, and of delegating others to their ordinary legislative, executive and judiciary bodies, none of the reserved rights can be touched without resorting to the people to appoint another convention for the express purpose of permitting it."* (Italics added)

[56]Kenneth Coleman, The American Revolution in Georgia, 1763-1789 Georgia and the Federal Constitution 1787 – 1789, University of Georgia Press, 1958. "William Few, a member of the Philadelphia convention, was a member of the ratifying convention and obviously worked for the ratification of the constitution. William Pierce, another delegate to Philadelphia, was probably in Georgia when the ratifying convention met. Edward Telfair and Nathan Brownson undoubtedly worked for the ratification. Joseph Habersham, later to be Washington's postmaster general, and George Handley, to be appointed collector of the port of Brunswick in 1789, certainly favored the new constitution. No opponent of the constitution in the ratifying convention is known to have existed."

[57] Georgia Constitutional Ordinances and Resolutions, 1868

[58] Dr. Anthony Kreis, "Professor: Does Georgia's Constitution protect the right to an abortion?" Savannah Morning News, July 21, 2022. Dr. Anthony Michael Kreis is an assistant professor of law at Georgia State University College of Law where he specializes in constitutional law, legal history and civil rights.

[59] Abortion in the Founders' era: Violent, chaotic and unregulated By Gillian Brockell, The Washington Post, May 15, 2022

law nonetheless recognized the importance of quickening as the pivotal moment of legal recognition. While the law deemed intentional inducement of a miscarriage "intent to murder" for a quick child, it made a non-quick abortion inducted for any by a third-party a misdemeanor.

44. Georgia led the country in 1968 and repealed this law before *Roe v. Wade*. This Georgia law permitted abortions where a patient's health was endangered, the fetus had "a grave, permanent, and irremediable mental or physical defect," or if the patient was a rape victim.[60]

45. In 1982 the General Assembly passed a feticide statute that imposed severe criminal penalties on anyone who "without legal justification causes the death of an unborn child by any injury to the mother of such child." Here, as in the 1860s, quickening was the standard[61] for determining whether the feticide statute applied. Crucially, this was the state of the law when voters approved the current state constitution, which came into effect in 1983.[62]

46. It was not until ratification of the Nineteenth Amendment in 1920 that women in Georgia were allowed to vote for, or against, any abortion rights legislation.[63] Nonetheless, up until the enactment of H.B 481, pre-quickening abortion has been a protected common law right, retained in the Constitution of the State of Georgia, and upheld in judicial *stare decisis* spanning the entire two-hundred and ninety consecutive years of Georgia's existence.

## SECTION IV
## POWER TO REVOKE A RIGHT

### Undelegated Power

47. Ms. Doe asserts the Georgia legislature does not have the delegated power to unilaterally revoke a Georgian's constitutionally protected natural right

[60] Id., Kreis, Savannah Morning News, July 21, 2022
[61] Id.
[62] Id.
[63] "Timeline of women's suffrage in Georgia," Wikipedia. In 1917, Waycross, Georgia allowed women to vote in primary elections and in 1919 Atlanta granted the same. Georgia was the first state to reject the Nineteenth Amendment. Women in Georgia still had to wait to vote statewide after the Nineteenth Amendment was ratified on August 26, 1920. Native American and African American women had to wait even longer to vote. Georgia ratified the Nineteenth Amendment in 1970.

to pre-quickening abortion. As Justice Chase argued in *Calder*, any legislative acts which violated natural rights were void: "An act of the legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority."[64]

**Georgia's Constitution Mandate**

48. Article X[65] of the Constitution of the State of Georgia mandates only Georgia's voters can revoke the right to pre-quickening abortion by ratifying a constitutional amendment doing so.

49. One process involves the following steps: either (1) a proposed amendment to revoke the right to pre-quickening abortion must be introduced in either the State Senate or the House of Representatives, (2) the amendment must be approved by two-thirds of the members of each chamber, (3) after the proposed amendment is approved by the General Assembly, (4) it must be ratified by the voters of Georgia. (5) if the proposed amendment is ratified by the voters, it must be published in the legal organ of each county in the state for at least four weeks, (6) the amendment becomes effective on the date specified in the amendment, or if no date is specified, on the date of ratification by the voters.

50. The other process involves convening a Constitutional Convention to amend the Georgia Constitution. A constitutional convention can convene if two-thirds of the members of each chamber of the General Assembly vote to hold a convention. The voters of Georgia must ratify any proposed amendment to revoke the right to pre-quickening abortion to come out of the convention to become part of the Constitution.

**Original Intent and Limited Legislative Power**

51. The Framers were as committed to protecting the people's sovereign rights against state legislature abridgments as they were against congressional

[64] 3 U.S. (3 Dall.) 386 (1798).

[65] The complete process for amending the Constitution of the State of Georgia can be found in Article X of the Georgia Constitution.

infringement. As Professor Norman Redlich[66] observed, "When Madison intended an amendment to restrict the states in his proposal to prevent the states from abridging free speech or press, he was quite specific."[67] The clause was adopted by the House but rejected by the Senate, underscoring that the Founders well knew how to limit state authority, as is again evidenced by their reference in the tenth amendment to power not "prohibited by [the Constitution] to the States."[68]

52. The founders feared the parochialism and narrow vision of the state legislatures and therefore excluded them from the ratification process. Instead, the founders stipulated that the question of the newly drafted Constitution's ratification would be decided by popularly elected special ratifying conventions in the states, not by the thirteen state legislatures, and so it was.[69]

53. Ignoring this caution, Justice Alito, conflating decisions with powers, opined that while there is no constitutional right any abortion, "The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives."[70] *Dobbs* mistakenly "returns" the power to decide a woman's right to "citizens,"[71] **"**the people's elected representatives,"[72] "the people and their representatives,"[73] and "legislative bodies"[74] as if each is the same as the others. They are not.

54. The Supreme Court of the United States does not have the constitutional authority to "return a woman's right to an abortion" to state legislatures to decide. The *Dobbs* ruling, by means of historical cherry-picking and exclusive reliance on discredited arguments, relies exclusively on the Fourteenth Amendment as home for denying abortion as a privacy right while ignoring the prohibition against

[66] Norman Redlich was an American lawyer and academic. As a lawyer he is best remembered for his pioneering work in establishing a system of pro bono defense for inmates in New York.
[67] Redlich, Are There "Certain Rights" ... Retained by the People?, 37 N.Y.U. L. REV. 787, 805 n.87 (1962).
[68] *Id.,* Berger, Pp. 6
[69] Richard Werking, Professor Emeritus for the U.S. Naval Academy, Opinion, www.courier-journal.com/story/opinion/2022/11/21/the-constitution-begins-we-the-people-not-we-the-states-opinion/69660293007/
[70] I*d.,* Dobbs, Pp. 79
[71] Id., Syllabus, Pp. 8
[72] *Id*., Pp. 6
[73] *Id*., Pp. 35
[74] *Id*., Pp. 65

denying a retained right protected by the Ninth Amendment. For *Dobbs* to be a viable constitutional ruling, the Ninth Amendment would have included the same enabling language that is present in the Tenth Amendment, e.g., "…powers not delegated… are reserved to the States respectively, or to the people."[75] It does not.

55. The *Dobbs* ruling is breathtaking. It declares the Court alone has the unilateral power to revoke an established, enumerated constitutional right. The *Dobbs* ruling is precisely what those who created and ratified the Ninth Amendment voted to prevent. It is the mischief the Founders feared and the compelling justification for enshrining our individual freedoms and retained rights. The *Dobbs* majority usurped the people's power to deny or disparage a right, and then wrongly "returned" the power to state legislatures—an authority the Supreme Court has never had. But in doing so, the Court enabled the Georgia legislature to enact H.B. 481.

## SECTION V
## FORCED PREGNANCY IS INVOLUNTARY SERVITUDE

**Rights of Persons - Involuntary Servitude**

56. The *Rights of Persons, Article 1 Paragraph XXII*[76] of the Constitution of the State of Georgia promises, "There shall be no involuntary servitude within the State of Georgia except as a punishment for crime after legal conviction thereof or for contempt of court." The Georgia Bill of Rights prohibiting involuntary servitude was first ratified along with the Georgia Constitution of 1861. Prior to the creation of the Bill of Rights, Georgia's prior four Constitutions protected only a relative few civil liberties.

57. This specific constitutional guarantee serves as a reminder of our state's history and its commitment to protecting all fundamental rights. While the classic example of involuntary servitude his been the system of peonage, current examples include claims against human trafficking, the denial of abortion services, racial

[75] U.S. Const. amend. X
[76] Ga. Const. art. I, para. XXII Rev. 2019

profiling, and rape. The term "involuntary servitude" has a larger meaning than slavery, and it prohibits all control by coercion of the personal service of person for the benefit of another.[77]

58. The enactment of H.B. 481 has, for the first time in Georgia state history, creates a legal milieu wherein Ms. Doe's well-established right to pre-quickening abortion conflicts with the newly-legislated right a non-viable fetus has to continue to develop and evolve in her body, for its benefit, against her will.

**Pre-Quickening Fetus as a "Person"**

59. H.B. 481 bestows personhood on a fetus beginning at conception, prohibits abortion once a fetal heartbeat is officially detected (typically around six weeks into pregnancy), and requires healthcare providers to report any miscarriages that occur after six weeks to the Georgia Department of Public Health.

60. Section 3 of H.B. 481 amends O.C.G.A.§1-2-1–-which contains definitions of "Persons and their Rights" that apply throughout the Georgia Code– to define "natural person" as including "any human being including an unborn child," and defines "unborn child" as an embryo/fetus "at any stage of development" in utero. H.B. 481 § 3 (creating new O.C.G.A § 1-2-1(b), (e)(2)). It mandates the inclusion in "population-based determinations" of all "natural persons," including embryos/fetuses in utero with "a detectable human heartbeat," defined as "an embryonic or fetal cardiac activity or the steady and repetitive rhythmic contraction of the heart within the gestational sac."

**Ms. Doe's Right to Bodily Liberty**

61. Involuntary servitude may be broadly interpreted to include any situation in which one person is compelled to work or provide services against their will, or under threat of harm, to another person(s). These situations include human trafficking, forced labor, or debt bondage. In Georgia, subjecting any person to involuntary servitude is criminal and prosecuted under state law. Victims of

[77] Bailey v. Alabama, 219 U.S. 219 (1911)

involuntary servitude may also have legal recourse to seek compensation for their injuries and damages through civil lawsuits.[78]

62. While there is no Georgia case law specifically addressing the issue of bodily liberty and forced pregnancy, birth, and care for an unwanted child as involuntary servitude, it meets the statutory criteria. Georgia has a body of case law addressing the issue of involuntary servitude, typically understood as forced labor or exploitation, and is a form of modern-day slavery. Significant state cases related to involuntary servitude in Georgia include:

a) In *State v. Gordon*, 272 Ga. 821 (2000), the Georgia Supreme Court addressed the issue of whether a man could be convicted of involuntary servitude for holding a woman against her will and forcing her to engage in sexual acts. The court held that the woman was indeed a victim of involuntary servitude, as she was held against her will.

b) In *State v. Gordon*, 272 Ga. 821 (2000) was a case heard by the Supreme Court of Georgia that involved charges of involuntary servitude and false imprisonment. The defendant, Darrell Gordon, was a manager at a fast-food restaurant in Georgia. He was accused of forcing a mentally disabled employee to work long hours for little pay and keeping her confined to the restaurant for several months. The Court ruled that Gordon's actions constituted involuntary servitude and false imprisonment under Georgia law.

c) A significant case related to involuntary servitude in Georgia is the case of *United States v. Mathis*, 579 F.3d 1282 (11th Cir. 2009). In this case, the defendant, Mathis, was convicted of several offenses related to forced labor, including involuntary servitude. Mathis had recruited homeless men and women from around the country with the promise of food and shelter, but then forced them to work without pay in his tree-cutting business. The Eleventh Circuit Court of Appeals affirmed Mathis's conviction for involuntary servitude, holding that the evidence showed

[78] *United States v. Kozminski,* 487 U.S. 931 (1988)

that Mathis used physical force, threats, and intimidation to keep the workers in his employ, and that they were held in a condition of servitude.

d) *United States v. Hilton* (2001) is a federal case wherein the defendants were convicted of engaging in a scheme to recruit Thai nationals to work in low-paying jobs in the United States, including at restaurants in Georgia. The defendants confiscated the workers' passports, threatened them with deportation, and forced them to work long hours for little pay. The defendants were charged with conspiracy to commit forced labor, among other offenses.

e) *United States v. Muniz-Martinez* (2017): In this federal case, the defendant was convicted of sex trafficking and forced labor offenses. The defendant forced multiple women to engage in commercial sex acts and perform domestic work for him, including in Georgia.

f) *Georgia v. Navarrete* (2018): In this state case, the defendant was convicted of multiple counts of labor trafficking and false imprisonment. The defendant, who owned a cleaning company, recruited workers from Mexico to work in Georgia, but then confiscated their passports, forced them to work long hours, and threatened them with violence if they tried to leave.

g) *United States v. Gaskin* (2019): In this federal case, the defendant was convicted of forced labor and sex trafficking offenses. The defendant, who operated a strip club in Georgia, forced multiple women to work there as dancers and engage in commercial sex acts.

**The Thirteenth Amendment**

63. What Article 1 Paragraph XXII of the Georgia Constitution guarantees for all Georgians, the Thirteenth Amendment of the Constitution of the United States guarantees for all Americans, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."[79] The

[79] U.S. Const. amend. XIII

Thirteenth Amendment was ratified on December 6, 1865, when Georgia became the twenty-seventh state to approve it.[80]

64. Justice Alito claimed in *Dobbs* that the Constitution says nothing at all about the abortion question.[81] This is not true. Forced childbearing was an integral part of the system of slavery that the Thirteenth Amendment was specifically intended to abolish.[82] In comparing compulsory pregnancy to chattel slavery, Andrew Koppelman pondered, as should the Court, "If it is acceptable to force a woman to remain pregnant, bear children, and raise them, then what could be so bad about the considerably lighter burden of forcing them to pick cotton?"[83]

65. The Supreme Court of the United States explained in *Plessy v. Ferguson*[84] that "involuntary servitude" refers to "the control of the labor and services of one man for the benefit of another, and the absence of a legal right to the disposal of his own person, property and *services*" [85] or "that control by which the personal service of one man is disposed of or coerced for another's benefit which is the essence of involuntary servitude." [86]

66. The germinal case construing the self-executing force of the Thirteenth Amendment is *Bailey v. Alabama*,[87] which invalidated a law that, in effect, made it a crime to breach a labor contract after accepting an advance.[88] *Bailey* in effect constitutionalized the old common law rule against ordering specific performance of personal service contracts.[89] It follows that "involuntary servitude" includes coerced pregnancy. The pregnant woman may not serve at the fetus's *command* - it is the state that, by outlawing abortion, supplies the element of coercion - but she is serving involuntarily for the fetus's *benefit*, and this is what the Court has said that the Amendment forbids.[90]

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[80] National Archives Foundation, Ratifying the Thirteenth Amendment, 2023
[81] Id., *Dobbs*, Pp. 1
[82] *Id*., Koppelman, Pp. 1918
[83] *Id*., Koppelman, Pp. 1943
[84] Plessy v. Ferguson, 163 U.S. 537, 542 (1896)
[85] Id. (emphases added)
[86] Id.
[87] Bailey v. Alabama, 219 U.S. 219, 241
[88] Id.
[89] 219 U.S. 219, 222 (1911) ("A breach of contract for personal service upon which advances have been received cannot be made prima facie evidence of a fraudulent intent in entering into the contract."
[90] *Id*., Koppelman, Pp. 1936

67. *Bailey's* definition of involuntary servitude as "that control by which the personal service of one man is disposed of or coerced for another's benefit"[91] encompasses the burden imposed on women by laws against abortion, since the "natural operation" of a statute prohibiting abortion is to make it a crime for a woman to refuse to render service to a fetus.

68. Even had the decision been differently worded, any decision in Bailey's favor would *a fortiori* protect the woman who seeks to abort, since the servitude to which Bailey was subjected was far less taxing, less intrusive, and less impactful on the course of his whole life than that which forced pregnancy imposes on Ms. Doe.[92]

69. Abortion prohibitions violate the Thirteenth Amendment's guarantee of personal liberty because forced pregnancy and childbirth compel the woman to serve the fetus.[93] Such laws violate the Amendment's guarantee of equality because forcing women to be mothers makes them into a servant caste, and by virtue of a status of birth, are held subject to a special duty to serve others and not themselves.[94]

70. Women differ from men in that the services they can perform include the production of human beings. The Thirteenth Amendment, however, does not distinguish between the powers of a man's back and arms and those of a woman's uterus. Both, according to the amendment, belong to the individual who possesses them and cannot be made subject to the command or benefit of another.[95]

71. Indeed, the recent advent of "surrogate motherhood" has shown that women's reproductive powers are as capable as any other of being transacted for

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[91] 219 U.S. at 241.

[92] Koppelman, Andrew, "Forced Labor, Revisited: The Thirteenth Amendment and Abortion" (2010). *Faculty Working Papers.* Paper 32, Pp. 7-8.

[93] Id, *Bolton,* Douglas, "In *Meyer v. Nebraska*, 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042, the Court said: 'Without doubt, (liberty) denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and *generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men*.' (italics added)"

[94] Id., Koppleman, Pp.2.

[95] *Id*., Pp. 5.

in the marketplace, a marketplace that the Thirteenth Amendment establishes as "a system of completely free and voluntary labor throughout the United States."[96]

72. Ms. Doe argues the H.B. 481 definition of a pre-quickening fetus as a "natural person" is federally unlawful as it violates United States Code[97] which defines a "'person', 'human being', 'child', and 'individual,' as every infant member of the species homo sapiens who is born alive at any stage of development when determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States."[98]

73. There have been also been cases in other states where women have argued that being forced to continue a pregnancy and give birth constitutes a violation of their constitutional rights, including their rights to privacy, bodily autonomy, and liberty. In these cases, courts have generally held that women have the right to choose whether to continue a pregnancy, and that the state cannot force a woman to give birth against her will.[99]

74. Georgia law H.B. 481, conflating life with personhood, makes Ms. Doe's pre-quickening embryo/fetus a legal "person" thus forcing her to carry that person inside her body, give it sustenance, birth it, and parent it—all against her will. In doing so, it clearly violates her state and federal constitutional protection(s) against involuntary servitude.

## SECTION VI
## THERE IS NO NEW COMPELLING STATE INTEREST

[96] *Pollock v. Williams,* 322 U.S. 4, 17 (1944); cf. *Bailey*, 219 U.S. at 245.

[97] 1 U.S. Code § 8

[98] Id., Section (b), "As used in this section, the term "born alive", with respect to a member of the species homo sapiens, means the complete expulsion or extraction from his or her mother of that member, at any stage of development, who after such expulsion or extraction breathes or has a beating heart, pulsation of the umbilical cord, or definite movement of voluntary muscles, regardless of whether the umbilical cord has been cut, and regardless of whether the expulsion or extraction occurs as a result of natural or induced labor, cesarean section, or induced abortion."

[99] *Mary Doe* et al., appellants, v. *Arthur k. Bolton*, as Attorney General of the State of Georgia, et al, Justice Douglas concurring at Pp. 213-14: "These rights, though fundamental, are likewise subject to regulation on a showing of 'compelling state interest.' We stated in *Papachristou v. City of Jacksonville*, 405 U.S. 156, 164, 92 S.Ct. 839, 844, 31 L.Ed.2d 110, that walking, strolling, and wandering 'are historically part of the amenities of life as we have known (them).' As stated in *Jacobson v. Massachusetts*, 197 U.S. 11, 29, 25 S.Ct. 358, 362, 49 L.Ed. 643: 'There is, of course, a sphere within which the individual may assert the supremacy of his own will and rightfully dispute the authority of any human government, especially of any free government existing under a written constitution, to interfere with the exercise of that will."

75. Whether under H.B. 481 or *Dobbs*, the essential questions that must be asked and answered are: At what point in Ms. Doe's pregnancy does the right to evolve of the fetus inside her pre-empt her retained right to pre-quickening abortion and her fundamental right to bodily liberty? Is it always, never, or an arbitrary, but reasonable point, in between? What is the hitherto unknown compelling new state interest to protect the fetal "person?"

76. Ms. Doe asserts there is none.

77. In the course of defining the word "alive," Professor Arthur Leff[100] offered an insightful and concise discussion of the relevant considerations in determining under what circumstances the fetus should be considered a legal person: "Important to all these legal problems is the recognition that they are legal (and ethical) problems, dependent not on any deceptively 'natural' biological definition of life, but on social and legal decisions. In 'nature,' things just are and only people classify. The relevant legal question ought not to be whether a foetus is 'alive' or 'a person' from the moment of conception, or the moment of viability, etc., as if the question were one of natural rather than social decision. A legal decision will still have to be made to whom the law ought to give protection and at what cost, paid by who[m]."[101]

78. Although the Georgia legislature's desire to provide legal protection to a fetus reflects a number of important concerns, it has not been accompanied by careful consideration to address those concerns. Most ominously, this expansion has ignored the far-reaching implications for women as the bearers of fetuses. [102]

79. This decision is a social one, not dictated by biology. A scientific inquiry reveals only that the fetus is a living entity, as are the egg and the sperm that combine to form the fetus, which has the potential to develop into a recognizable person given approximately nine months of nurturing in the woman's womb. The

[100] Arthur Allen Leff (1935–1981) was a professor of law at Yale Law School who is best known for a series of articles examining whether there is such a thing as a normative law or morality.
[101] Leff, Arthur, The Leff Dictionary of Law: A Fragment, 94 Yale L.J. 1855, 1997 (1985) (emphasis in original).
[102] Id., Johnsen, Pp. 600

legal status that society chooses to confer upon the fetus is dependent upon the goals being pursued and the effect of such status on competing values.[103]

80. Georgia, by is depriving Ms. Doe of the right to have an abortion, has created an adversarial relationship between her and her fetus. In doing so, the state provides itself with a powerful police power to dictate *all* women's behavior during pregnancy, thereby threatening all woman's fundamental rights.

81. Historically, fetuses have been vested with inheritance rights contingent upon live birth in recognition of parents' presumed desire to provide for children conceived but not yet born at the time of their death.[104] The creation of fetal rights not contingent upon subsequent live birth reflects a legitimate desire to protect the rights of the pregnant woman and the expectant father.[105]

82. Given the fetus' complete physical dependence on and interrelatedness with Ms. Doe's body, every one of her acts, and the acts of every other pregnant Georgian, has some effect on the fetus. Are they all now civilly or criminally liable for fetal injuries caused from maternal negligence, such as automobile accidents? Cans she now also be held liable for any behaviors during pregnancy that have potentially adverse effects on her fetus, including failing to eat properly, using prescription, nonprescription and illegal drugs, smoking, drinking alcohol, exposing herself to infectious disease or workplace hazards, engaging in immoderate exercise or sexual intercourse, residing at high altitudes for prolonged

[103] Johnsen, D. E. (1986). The Creation of Fetal Rights: Conflicts with Women's Constitutional Rights to Liberty, Privacy, and Equal Protection. *The Yale Law Journal*, *95*(3), Pp. 599-625

[104] Fetuses were vested with inheritance rights contingent upon live birth in recognition of parents' presumed desire to provide for children conceived but not yet born at the time of their death. See *Christian v. Carter*, 193 N.C. 537, 538, 137 S.E. 596, 597 (1927) (recognition "apparently was based upon the presumed oversight or inadvertence of the parent in providing for an existing or a contingent situation"); see also Baron, The Concept of Person in the Law, i Human Life, supra note 1, at 128 ("Prime among the goals of the laws of inheritance is f of the presumed intentions of the testator."). This recognition of the fetus has been the exception rather than the rule, even for pro See, e.g., In re Peabody, 5 N.Y.2d 541, 158 N.E.2d 841, 186 N.Y.S.2d 265 (1959) (holding a person for purposes of ? 23 of New York Personal Property Law and distinguishing di purposes served by "fiction" of considering fetus subsequently born alive a person for certain matters of property and tort law).

[105] Id., Johnsen, Pp. 603, Recognizing fetuses in wrongful death actions serves to compensate parents for the loss of their expected child and to protect the interests of a woman who has chosen to carry her pregnancy to term. Such recognition also seeks to deter and punish the tortious conduct. Similarly, feticide laws use the criminal law to protect pregnant women from physical attack and from the harm of having their pregnancies involuntarily and violently terminated by third parties. Holding third parties responsible for the negligent or criminal destruction of fetuses is therefore consistent with, and even enhances, the protection of pregnant women's interests.

periods, or using a general anesthetic or drugs to induce rapid labor during delivery? Must Ms. Doe, and every other pregnant women in Georgia, live in constant fear that any accident or "error" in judgment could be deemed "unacceptable" and become the basis for a criminal prosecution by the state or a civil suit by a disenchanted husband or relative?[106]

83. Perhaps the most foreboding aspect of allowing increased state involvement in pregnant women's lives in the name of the fetus may impose direct injunctive regulation of women's actions. When expanded to cover fetuses, child custody provisions can be made for seizing custody of Ms. Doe's fetus to control her.[107]

84. By regulating Ms. Doe and other women as if their lives were defined solely by their reproductive capacity, the state perpetuates a system of sex discrimination that is based on the biological difference between the sexes, thus depriving women of their constitutional right to the equal protection of the laws. Georgia's lawmakers did not carefully consider the liberty and equality interests at stake, as well as the value of the stat involvement, before imposing the intrusive regulations of H.B. 481 on all pregnant Georgians in the name of fetal protection.[108]

85. It was reasonable for Georgia lawmakers to extend the rights of persons to fetuses when faced with instances of clear harm or injustice, such as when an assailant negligently or willfully destroy a fetus through violence to a pregnant woman.[109] Ms. Doe embraces those protections. But Ms. Doe's autonomy and liberty interests are in inherent conflict with any "right" granted the fetus *qua* fetus. Georgia's laws must retain their focus on the primary subject of protection--the pregnant woman.[110]

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[106] Id, Johnsen, Pp. 605-07

[107] Id, Johnsen, Pp. 608

[108] Id, Johnsen, Pp. 613

[109] Id, Johnsen, Pp. 609-10

[110] Id, Johnsen, Pp. 613, "A woman should not behave during pregnancy to avoid any risks to the fetus regardless of the costs to her, just as no individual should refrain from all activities that pose any threat to her or his well-being. Rather, the relevant question is what is in the interests of the woman, given that she is pregnant. Allowing the state to control women's actions in the name of fetal rights, however, reflects a view of the fetus as an entity separate from the pregnant woman, with interests that are hostile to her interests. In fact, by granting rights to the fetus assertable against the pregnant woman, and thus depriving the woman of decision-making autonomy, the state affirmatively acts to create an adversarial relationship between the woman and the fetus. By separating the interests of the fetus from those of the pregnant woman, and then

86. In an often-quoted dissent in *Olmstead v. United States*, Justice Brandeis wrote: "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be left alone--the most comprehensive of rights and the right most valued by civilized men."[111]

87. In order for Georgia to enforce H.B. 481 during Ms. Doe's pregnancy, it would necessarily intrude in the most private areas of her life.[112] In order to withstand the strict scrutiny necessitated by the infringements on her constitutional rights to liberty and privacy, any Georgia recognition of her fetus that operates to her detriment must be necessary to protect a compelling state interest.

88. That is, not only must H.B 481 promote a compelling state interest, but it must also be narrowly tailored to do so in the manner that is least intrusive on protected rights. H.B. 481 clearly does not survive this standard. Rather, it allows precisely the type of unnecessarily sweeping state intrusion upon basic individual rights that the Constitution prohibits. To deprive Ms. Doe the right to control her actions during pregnancy is to revoke her legal personhood.[113]

89. Georgia state law should incorporate the approach advocated by Professor Sylvia Law. Law proposes that "laws governing reproductive biology by scrutinized by courts to ensure that (1) the law has no significant in perpetuating either the oppression of women or culturally imposed sex-role constraints on

examining, often post hoc, the effect on the fetus of isolated decisions made by the woman daily during pregnancy, the state is likely to exaggerate the potential risks to the fetus and under value the costs of the loss of autonomy suffered by the woman.

[111] 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting), quoted in *Stanley v. Georgia*, 394 U.S. 557, 564 (1969)

[112] Id, Johnsen, Pp. 619, "The state would have to police what a woman ate and drank, the types of physical activity in which she engaged, with whom and how often she had sexual intercourse, and where she worked to name only a few areas of regulation. The enforcement of direct state regulation of pregnant women's actions, as in cases involving court-ordered medical treatment against the pregnant woman's wishes, would require the state forcibly to take the pregnant woman into physical custody in order to impose the ordered action."

[113] Id, Johnsen, Pp. 619-20

individual freedom or (2) if the law has this impact, it is justified as the best means of serving a compelling state purpose."[114]

90. Considering the great threat to women's right to equality posed by legal recognition of the fetus, Georgia should bear the burden of ensuring that any law granting fetal rights does not disadvantage Ms. Doe, other women, or in any way infringe on their autonomy.[115, 116]

91. Even if Ms. Doe stipulates she consented to the risk of pregnancy, it does not permit the state to force her to remain pregnant. Rather, the Supreme Court has announced a principle of broad application: a contract for service (already an odd characterization of her "consent") is consistent with the Thirteenth Amendment only if the contractor "can elect at any time to break it, and no law or force compels performance or a continuance of the service."[117]

92. Consent to servitude is simply irrelevant.[118]

93. It is an undeniable fact that forcing Black women to bear children was a part of slavery. Forcing Ms. Doe to do so is unjustifiable and violates both constitutions. It also provides a textual basis for denying the claim of Justices Rehnquist, White, Scalia, and Alito that the Constitution says nothing about

[114] Id, Johnsen, Pp. 624, Fetal rights laws would not only infringe on constitutionally protected liberty and privacy rights of individual women, but they would also serve to disadvantage women as women by further stigmatizing and penalizing them on the basis of the very characteristic that historically has been used to perpetuate a system of sex inequality.

[115] Id, Johnsen, Pp. 625, "Any attempt by the government—or anyone else, for that matter—to force another person to continue a pregnancy is a form of bodily assault. This behavior has surprisingly similar dynamics to domestic violence and sexual assault. The essence of rape is taking control over another person's body and forcing them to do something with their body that is against their will. Abortion bans do the same: They force pregnant people to do something with their bodies against their will. A comparable scenario would be if the government forced people to donate organs against their will. In both cases, the essence of this compulsion is the denial of bodily integrity and autonomy. Abortion opponents, including clinic protesters, use the same tactics as abusers: verbal harassment, threats, intimidation, misinformation, gaslighting, shaming, stalking and physical violence."

[116] Carrie N. Baker, "Forced Pregnancy Is Involuntary Servitude, Violates the 13th Amendment," Ms. Magazine," 05/23/2022, "Denial of bodily autonomy is the essence of violence against women. Reproductive coercion—whether by an intimate partner, an anti-abortion protester or the government—is a form of violence against women. Women have a right to control what happens to their bodies at all times. Forcing a person to continue a pregnancy is a form of bodily assault. Abortion bans and restrictions violate the fundamental human right to bodily autonomy and liberty guaranteed by the 13th and 14th Amendments of the U.S. Constitution."

[117] Clyatt, 197 U.S. at 215-16.

[118] Id., Koppelman, Pp. 8.

abortion.[119] If Georgia forces Ms. Doe to remain pregnant and give birth to the embryo defined by H.B. 481 as a "natural person," it will violate her United States constitutional protection[120] against slavery[121] and involuntary servitude.[122]

94. The Thirteenth Amendment declares that one cannot do to human beings the precise things that were done to slaves under antebellum slavery. Those things include compulsory childbearing. By refusing to do again what we once wrongly did, we keep faith in the commitments of the past that help constitute us as a nation.

95. Keeping faith in those commitments is what originalism is about. An originalist reading of the Amendment focuses on the wrongs that the Amendment sought to break from and forbids their reenactment. The original meaning of the Thirteenth Amendment supports a constitutional right to pre-quickening abortion.[123]

96. The injury of compulsory pregnancy for Ms. Doe has both individual and social aspects.[124] Forced pregnancy is a deprivation of her individual liberty, but

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[119] Koppelman, Andrew. "Originalism, Abortion, And The Thirteenth Amendment." *Columbia Law Review*, vol. 112, no. 7, 2012., Pp. 1943, "Slavery is a complex system. Property is familiarly regarded as a bundle of rights. Slavery is a bundle of disabilities. Each one of those disabilities is part of slavery and so raises Thirteenth Amendment concerns. The *Hodges* opinion assumes that, in light of the conceded power before the Civil War to impose specific legal burdens on certain races, the imposition of racist burdens could not be part of slavery. The Court's reasoning implies that a state could impose on free blacks something like the old documentation requirement, and Congress would have no power to prevent this. The documentation requirement was part of the bundle. So was loss of control over one's reproductive capacities and being treated as a mere instrument of reproduction. So, it will not do to respond that forced pregnancy is only part of the bundle and not the whole, especially when this part of the bundle was so integral a part of the wrong of slavery."

[120] *Id*., Ga. Const. art.I, sect. I, para. XXII.

[121] "Slavery is a complex system. Property is familiarly regarded as a bundle of rights. Slavery is a bundle of disabilities. Each one of those disabilities is part of slavery and so raises Thirteenth Amendment concerns. The *Hodges* opinion assumes that, in light of the conceded power before the Civil War to impose specific legal burdens on certain races, the imposition of racist burdens could not be part of slavery. The Court's reasoning implies that a state could impose on free blacks something like the old documentation requirement, and Congress would have no power to prevent this. The documentation requirement was part of the bundle. So was loss of control over one's reproductive capacities and being treated as a mere instrument of reproduction. So, it will not do to respond that forced pregnancy is only part of the bundle and not the whole, especially when this part of the bundle was so integral a part of the wrong of slavery. *Id*., Koppelman, Pp. 1943.

[122] 22 USC § 7102(8), "involuntary servitude" includes a condition of servitude induced by means of— (A) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process.

[123] Id., Pp. 1945

[124] Id, Douglas, Pp. 216-16, "The vicissitudes of life produce pregnancies which may be unwanted, or which may impair 'health' in the broad Vuitch sense of the term, or which may imperil the life of the mother, or which in the full setting of the case may create such suffering, dislocations, misery, or tragedy as to make an early abortion the only civilized step to take. These hardships may be properly embraced in the 'health' factor of the mother as appraised by a person of insight. Or they may be part of a broader medical judgment based on what is 'appropriate' in a given case, though perhaps not 'necessary' in a strict sense… The 'liberty' of the

that deprivation is selectively imposed on her as a woman — and women are a group that has traditionally been regarded as a servant caste, whose powers (unlike those of men) are directed to the benefit of others rather than themselves.[125] The injustice and illegality do not stop there. No law requires a human being to donate their organs, blood or body to another human being. If someone forces another person to donate a kidney, they are committing a crime. No law requires a parent to give their organs or even blood to their child, even if the child desperately needs it. Yet, abortion bans force pregnant women to donate their bodies to serve fetuses—a right that born children do not even have.

97. H.B. 481 prohibition against pre-quickening abortion imposes state criminal punishment on those who deviate from it. Whether as a slave or pregnant woman, the insult is the same: to the extent that she is either black or a woman, Ms. Doe is regarded as an instrument, a thing rather than a person, used to satisfy the needs of another rather than as an autonomous agent, and her dignity as a free person is violated.[126]

98. If Ms. Doe were to have a termination, or suspected termination, of her pregnancy in Georgia or another state, she could be prosecuted for murder under Georgia's law. As abortion and miscarriage are medically indistinguishable,[127] this means the law empowers officials to scrutinize, surveil, and criminalize not only Ms. Doe but all women seeking abortion care as well as all women with wanted pregnancies.[128]

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mother, though rooted as it is in the Constitution, may be qualified by the State for the reasons we have stated. But where fundamental personal rights and liberties are involved, the corrective legislation must be 'narrowly drawn to prevent the supposed evil.'"

[125] Id., Koppleman, Pp. 10-11, "Compulsory motherhood deprives women of both liberty and equality. And the Thirteenth Amendment argument responds to both of these injuries. The Thirteenth Amendment is both libertarian and egalitarian, because the paradigmatic violation deprives its victims of both liberty and equality. It compels some private individuals to serve others, and it does so as part of a larger societal pattern of imposing such servitude on a particular caste of persons. If the libertarian and egalitarian rules of decision are both plausible readings of the amendment, it is because each stresses one undeniable aspect of the paradigmatic case. The courts may invalidate laws that impose servitude only on individuals, as it said it was doing in *Bailey*, and Congress may outlaw practices that stigmatize, but do no more than stigmatize, traditionally subjugated groups, as in *Jones*."

[126] Id., Koppelman, Andrew, "Forced Labor, Revisited: The Thirteenth Amendment and Abortion" (2010). *Faculty Working Papers.* Paper 32, Pp. 10-11

[127] *Sistersong* Complaint, Pp.18

[128] Id. Pp.4

99. Society may be indifferent to the victims of pre-quickening abortion bans, most likely because it disproportionately affects poor, single, and nonwhite women. But their plight is real. Victims find themselves in a form of bondage, trapped in a cycle of sexual violence and degradation. By describing such abuse as "involuntary servitude," the physical and mental anguish of victims will hopefully resonate with courts struggling to define the scope of the law's protections. [129]

100. As rightly decided in *Roe v. Wade*, "With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother."[130]

101. If the law holds and the pre-quickening embryo/fetus is a person, then the state is forcing Ms. Doe into involuntary servitude, violating her protected rights under both Article XXII and Thirteenth Amendment. Consequently, she must be allowed to have a pre-quickening abortion, If Ms. Doe's pre-quickening embryo/fetus is not a person, as Ms. Doe contends, then the state has no compelling interest. Consequently, she must be entitled to a pre-quickening abortion.

102. It is either one or the other.

## SECTION VII
## PHYSICAL ABUSE OF A CHILD

103. Georgia law defines child abuse[131] as any physical, mental, or sexual injury to a child under the age of 18 or any act that causes or creates a substantial risk of harm to a child's health or welfare. In general, physical abuse refers to any intentional use of physical force or violence against a person that causes harm, injury, or physical pain.[132]

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[129] Aric K. Short, *Slaves for Rent: Sexual Harassment in Housing as Involuntary Servitude*, 86 NEB. L. REV. 838 (2008).
[130] Roe v. Wade – 410 U.S. 113 (1973)
[131] Georgia Code, Title 19 - Domestic Relations, Chapter 15 - Child Abuse, § 19-15-1. (January 1, 2022.)
[132] Georgia Maltreatment Codes, Rev. 01/01/2022

104. In general, physical abuse refers to any intentional use of physical force or violence against a person that causes harm, injury, or physical pain. In the case of forcing Ms. Doe to remain pregnant against her will, DFCS is subjecting her to physical abuse as there are physical consequences or harm to her health and well-being as a result. Forcing Ms. Doe to remain pregnant is considered physical abuse under Federal[133] and Georgia[134] state law.

105. As a young, low-income black youth with underlying factors, Ms. Doe fears for her well-being, health, and her very life by being compelled to remain pregnant pre-quickening,

106. The United States has the worst rate of maternal deaths[135,136] in the developed world. "Pregnancy itself poses a 'serious health risk," said Dr. Hern. "A woman's life and health are at risk from the moment that a pregnancy exists in her body, whether she wants to be pregnant or not."[137] These risks are particularly acute for women of color and low-income women in the United States. Death related to

[133] The Federal Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C.A. § 5106g), as amended by the CAPTA Reauthorization Act of 2010, defines child abuse and neglect as, at minimum: "Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation"; or "An act or failure to act which presents an imminent risk of serious harm." This definition of child abuse and neglect refers specifically to parents and other caregivers. A "child" under this definition generally means a person who is younger than age 18 or who is not an emancipated minor.

[134] The State of Georgia Mandated Reporter Law (O.C.G.A. §19-7-5) of 2016 defines child abuse as: Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child; Neglect or exploitation of a child by a parent or caretaker thereof; Endangering a child; Sexual abuse of a child; or Sexual exploitation of a child. "Child" under this definition means any person under 18 years of age. 2021 Georgia Code-Title 19-Domestic Relations, Chapter 15 - Child Abuse§ 19-15-1. (Effective January 1, 2022.) Definitions:" Child" means any person under 18 years of age. "Child abuse" means: Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child; Neglect or exploitation of a child by a parent or caretaker thereof; Sexual abuse of a child; or Sexual exploitation of a child. Ga. Code § 16-5-46 As used in this Code section, the term:(1) "Coercion" means:() Causing or threatening to cause bodily harm to any individual, physically restraining or confining any individual, or threatening to physically restrain or confine any individual; (5) "Labor servitude" means work or service of economic or financial value which is performed or provided by another individual and is induced or obtained by coercion or deception.

[135] Dr. Warren M. Hern, director of the Boulder Abortion Clinic "Anticipated abolition of Roe v. Wade after 49 years takes away freedom and health for many American women, " Daily Camera, January 22, 2022,"They die from hemorrhage, infection, pre-eclampsia (which can lead to fatal seizures), obstructed labor, amniotic fluid embolism, thromboembolism, a ruptured uterus, retained placenta, hydatidiform mole, choriocarcinoma and many other causes that fill the obstetrics textbooks."

[136] Id., "Pregnancy Kills. Abortion Saves Lives," New York Times, May 21. 2019. Women die from pregnancy. In 2019, 754 women died from pregnancy-related causes in the U.S. Another 50,000 to 60,000 women each year suffer severe harm to their health due to pregnancy, labor and childbirth.

[137] Carrie N. Baker, "Pregnancy and Childbirth Endanger Women's Lives and Health: "Pregnancy Is Not a Benign Condition," Ms. Magazine, 02/13/2022.

childbirth is particularly acute for young women, low-income women, and women of color. Black women are three times more likely to die from a pregnancy-related cause than white women.

107. Ms. Doe has factors that put her at higher-than-average risk of death from pregnancy, including her age (to be an early adolescent is more dangerous), high blood pressure, diabetes, and obesity.[138] Even if uncomplicated, pregnancy will take a tremendous toll on her body. Pregnancy will likely cause her nausea, fatigue, tender and swollen breasts, constipation, body aches, dizziness, sleep problems, heartburn and indigestion, hemorrhoids, itching, leg cramps, numb or tingling hands, swelling, urinary frequency or leaking, varicose veins, and carpal tunnel syndrome. Pregnancy will take over Ms. Doe's entire body, affecting her cardiovascular system, kidneys, respiratory system, gastrointestinal system, skin, hormones, liver, and metabolism. It will increase her blood volume by about 50 percent and will deplete calcium out of her bones.[139]

108. As her legal custodian, DFCS is forcing Ms. Doe to continue an unwanted pregnancy[140], endure the physical abuse it does to her body, and risk its fatal dangers. A legal pre-quickening abortion will protect her not only from the dangers of illegal abortion, but also from the dangers of pregnancy and childbirth. Ms. Doe does not want to assume these tremendous risks.

109. Yet Georgia DFCS officials and employee tasked with providing for Ms. Doe's health and welfare are forcing her to continue with a pregnancy despite the risks. Ms. Doe does not want this pregnancy. The state's custodial failure to respect Ms. Doe's right to pre-quickening abortion and subjecting this child to the terrifying threat the state will exercise its police power to criminally prosecute and imprison[141] her, is egregious physical and emotional abuse.

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[138] Id., Hern

[139] Id.

[140] H.B. 481 contains provisions related to dependent child abortion. The law requires that a physician who performs an abortion on a minor must obtain and maintain a copy of the written consent of the minor's parent or legal guardian, or a copy of the court order waiving the consent requirement. The physician must also report certain information about the abortion to the Georgia Department of Public Health. Under the law, a parent or legal guardian of a dependent child who obtains an abortion without the required consent or judicial waiver may be subject to criminal penalties, including fines and imprisonment.

[141] Id., Pp.17. Because Section 3's new definition of "natural person" is not limited to H.B. 481 and appears to apply to the relevant terms throughout the entire Georgia code, the impact of Section 3's new definition of

110. If not enjoined, HB 481 forces Ms. Doe, a non-consenting female child, into a life of involuntary servitude. The state, by compelling her to serve her fetus post-quickening against her will, is forcing her to carry, birth, be financially responsible for, and raise a child. This is the definition of involuntary servitude in its most malignant form.[142] If legally subjected to any period of involuntary servitude, Ms. Doe is entitled to reasonable compensation.

111. Ms. Doe argues she is entitled to monthly payments in compensation for all costs incurred in carrying the fetus, giving birth, and raising the child. This compensation includes, but is not limited to, expenses for housing, food, clothing, medical, dental, childcare, transportation, educational, prescribed medications, therapeutic services, and other miscellaneous costs from the date fetal heartbeat is detected until the child either turns eighteen years old or is emancipated.

112. Ms. Doe claims she is also entitled to compensation and reparations[143]for all personal injury,[144] she is now, and may in the future, endure as a result of the state denying her a pre-quickening abortion.

"natural person," when read in conjunction with other parts of the Georgia code, is vague and potentially vast. For example, under O.C.G.A. § 16-5-60, a person commits the crime of "Reckless Conduct" when he or she "causes bodily harm to or endangers the bodily safety of another person by consciously disregarding a substantial and unjustifiable risk that his act or omission will cause harm or endanger the safety of the other person." Under this provision, it is unclear what potentially "risky" behavior could be deemed criminally reckless since "person" is now redefined to mean an embryo/fetus. Section 3 renders numerous other provisions of the Georgia code similarly vague. See, e.g., O.C.G.A § 16-5-70 (cruelty to children); § 16-5-21 (aggravated assault); § 16-12-171 (sale or distribution to, or possession by, minors of cigarettes and tobacco-related objects); § 19-7-5 (reporting of child abuse).

[142] Id, Douglas, Pp. 214-15, "The Georgia statute is at war with the clear message of these cases—that a woman is free to make the basic decision whether to bear an unwanted child. Elaborate argument is hardly necessary to demonstrate that childbirth may deprive a woman of her preferred lifestyle and force upon her a radically different and undesired future. For example, rejected applicants under the Georgia statute are required to endure the discomforts of pregnancy; to incur the pain, higher mortality rate, and aftereffects of childbirth; to abandon educational plans; to sustain loss of income; to forgo the satisfactions of careers; to tax further mental and physical health in providing child care; and, in some cases, to bear the lifelong stigma of unwed motherhood, a badge which may haunt, if not deter, later legitimate family relationships."

[143] The making of financial and non-financial amends by federal and state government for laws, support and protection of slavery institutions and/or involuntary servitude.

[144] Georgia State Tort Claims Act (O.C.G.A. § 50-21-20 et seq.) waives the state's sovereign immunity in certain types of cases involving negligence or wrongful acts by state employees. Under this law, a person can bring a claim against the state of Georgia for personal injury or property damage caused by the negligence of a state employee acting within the scope of their official duties.

## SECTION VIII
## CONCLUSION

113. Since the *Dobbs* decision, angry American voters have mobilized across the country. In six different states, both Democratic and Republican, the voters overwhelmingly chose to keep abortion legal.[145] But in Georgia, HB 481 came into effect. In asking this Court to enjoin AB 481, Ms. Doe is exercising her constitutional rights. She has not yet tackled the elephant in the room. She will attempt to do so now.

114. Our Nation's legal roots may be in English soil, but our Nation's pre-quickening abortion history and the tradition began here. It is a history and tradition free of any one religion's doctrine becoming the law of the land. The official teachings of the Catholic Church now oppose all forms of abortion procedures whose direct purpose is to destroy a zygote, blastocyst, embryo, or fetus, since it holds that "human life must be respected and protected absolutely from the moment of conception." We cannot avoid asking if the *Dobbs* 6-3 ruling, joined by five Roman Catholic judges, and the enactment of H.B. 481, was more an article of White Chrisitan, Evangelical, and Catholic faith and the foisting of religious dogma on the people of Georgia.

115. At our Nation's founding, the Monarchists (Tories) believed kings and queens had the right to rule people because they were chosen by God.[146] The Papists believed it was the Pope who was empowered to rule as the Vicar of Christ.[147] The Founders were keenly aware of the centuries of Christian sectarian violence in Western Europe.[148] Vigilant against that happening in America, the Founders wisely insisted there be no state religion. Not because they chose to ignore religious beliefs and values, but to prevent one sect and its doctrines from taking over.[149]

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[145] Douglas Keith, "A Legitimacy Crisis of the Supreme Court's Own Making," Brennan Center for Justice, September 15, 2022.
[146] Gordon S. Wood, Classical Republicanism and the American Revolution, 66 Chi.-Kent L. Rev. 13 (1990). Pp. 1-4.
[147] Jeffrey A. Mirus, Ph.D., The Authority of the Pope, Catholic Culture,
[148] Wikipedia, Sectarian Violence among Christians.
[149] Library of Congress, Faith of Our Forefathers.

116. As Thomas Paine sagely observed, "A body of men holding themselves accountable to nobody ought not to be trusted by anybody."[150] Paine was warning us to be vigilant against any governing body that presumes to have delegated powers that it does not. The Georgia Constitution robustly protects women's individual liberties, rights, and personal decisions. Georgia law has always recognized the right of pregnant women to shift to the right of fetal life at only one crucial point: quickening. H.B. 481 breaks with this unbroken, deeply rooted individual liberty and freedom.[151]

117. Ms. Doe has a retained and enumerated right to pre-quickening abortion. She does not cede her retained power to the politicians in the Georgia legislature. She does, however, trust the judgment, power, and humanity of her fellow Georgians. It is only Georgia's voters who have the power to revoke that right.

118. Thomas Jefferson, in his final letter, wrote:

> "May it be to the world, what I believe it will be, (to some parts sooner, to others later, but finally to all) the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government. That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God. These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our

[150] *Id.*
[151] Id.

> recollections of these rights, and an undiminished devotion to them."[152]

Ms. Doe agrees. Whether it is a woman's right to choose, to same-sex marriage, contraception, travel, or to exercise any of our other inalienable retained rights, she believes it is "We the People" who are the masters of our fates and the captains of our souls.

[152] Thomas Jefferson's last known letter. It was written to Roger Weightman, 24 June 1826.