Amicus Curiae Brief of the American Association of Pro-Life Obstetricians & Gynecologists*

Gloria Kato Karungi, Plaintiff-Appellant vs. Ronaldlee Ejalu, Defendant-Appellee**

NOW COMES the American Association of Pro-Life Obstetricians & Gynecologists, (AAPLOG), a nonparty to this action, by and through its attorneys the Thomas More Society, pursuant to MCR 7.211 and MCR 7.212(H), and by leave of this Court files this Amicus Curiae Brief in support, of Plaintiff-Appellant taking the position that:

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**In the Court of Appeals, State of Michigan, Court of Appeals Case No. 337152, Oakland Circuit Court Case No. 2016-841198-DS; Daniel P. Marsh (P45304), Attorney for Plaintiff-Appellant, 53700 Van Dyke, Suite 101, Shelby Township, MI 48316; 810-300-3074; dan@danielpmarsh.com; and Daniel Weberman (P41644), Attorney for Defendant-Appellee, 7071 Orchard Lake Road, Suite 245, West Bloomfield, MI 48322; 248-737-4500; danielweberman@yahoo.com.

1.) human embryos are persons and 2.) this case is not about any so called "right of procreation" because procreation has already occurred. The American Association of Pro-Life Obstetricians & Gynecologists states the following:

Statement of Questions Involved

Amicus Curiae, AAPLOG focuses on the set of specific questions presented in the Plaintiff/ Appellant's Brief. AAPLOG proposes that the Court take judicial notice of scientific facts about the human embryo, especially the fact that the human embryo exists once fertilization has occurred. AAPLOG also points out the factual errors in legal case precedents discussing the nature and development of the human embryo. Finally, AAPLOG identifies the Federal Constitutional Rights involved in resolving disputes over the fate of human embryos. APPLOG does not address any other questions presented by the parties. Addressed by the *Amicus Curiae*, AAPLOG as the following questions presented by the Plaintiff/Appellant are:

I. Can the Court take judicial notice of current scientific fact, establish that human life begins at sperm-oocyte binding, and that frozen embryos are actual human beings with potential to complete life's cycle, not "potential" human beings, or some lesser form of human life to be treated as property?

Plaintiff/Appellant's (Karungi) answer: Yes.

Defendant/Appellee's (Ejahu) answer: Did not address the issue Circuit Court: Did not address the issue

Amicus Curiae's answer: Yes

II. Can the Court take judicial notice of current scientific facts establishing that Defendant became the embryo's natural father at fertilization and that he has no constitutional right to choose not to be the embryos' parent?

Plaintiff/Appellant's (Karungi) answer: Yes. Defendant/Appellee's (Ejahu) answer: Did not address the issue Circuit Court: Did not address the issue

Amicus Curiae's answer: Yes

III. Is there a Governmental interest in protecting human life when resolving parental disputes over frozen embryos?

Plaintiff/Appellant's (Karungi) answer: Yes. Defendant/Appellee's (Ejahu) answer: Did not address the issue Circuit Court: Did not address the issue

Amicus Curiae's answer: Yes

IV. When resolving parental disputes over frozen embryos, should such decisions be based on consideration of the embryos' best interest?

Plaintiff/Appellant's (Karungi) answer: Yes. Defendant/Appellee's (Ejahu) answer: Did not address the issue Circuit Court: Did not address the issue

Amicus Curiae's answer: Yes

Jurisdictional Statement

AAPLOG adopts the jurisdictional statement of the Plaintiff/Appellant. AAPLOG received an order dated August 8, 2017, giving AAPLOG leave to file an *amicus curiae* brief on behalf of Plaintiff/Appellant, Gloria Kato Karungi. This *amicus curiae* brief is submitted in response to that order.

Statement of Facts

AAPLOG adopts the factual statement contained in the brief of Plaintiff/Appellant.

Standard of Review

AAPLOG adopts the standard of review as contained in the brief of Plaintiff/Appellant. AAPLOG also states that pursuant to the Michigan Rules of Evidence, Mich. Rule Evid. 201 (a), (b), (c), (d), and (e), the court can take judicial notice of adjudicative facts at any stage of the proceedings.

Interest of the *Amicus Curiae*

A*micus Curiae,* American Association of Pro-Life Obstetricians & Gynecologists (AAPLOG), is a non-profit professional medical organization consisting of approximately four thousand six hundred members, of which at least four thousand are Obstetricians-Gynecologists' practicing medicine in the United States and several foreign countries. Its mission is to encourage the practice of medicine consistently with scientific truth and the Hippocratic Oath, both of which it views as orienting medicine, as a healing art, toward the well-being and flourishing of all human life. Its mission includes informing courts, legislatures and the general public of the scientific developments and their impact on the ethical practice of medicine.

Argument

I. Human embryos are persons.

A. Today there are scientific studies with photographs and films available to actually see when human life's development begins.

The Appellee-Father claims in his brief that an embryo is not a person, because the word "person" as used in the Fourteenth Amendment of the United States Constitution does not include the unborn, citing *Roe v. Wade,* 410 U.S, 113, 153, and 161-162 (1973).

In *Roe*, the Supreme Court, citing to the limited scientific knowledge at the time decided, to call unborn life "potential life." *Id.,*159. The Court said: "We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, *at this point in the development of man's knowledge,* is not in a position to speculate as to the answer." (emphasis added.)

Today, forty-four (44) years later, the Court can observe the scientific fact that a human embryo is a human organism who is growing and developing with full potential

from the moment of sperm-egg binding until death of the organism. The Court can do this by observing the facts of growth and development that AAPLOG is referencing in this brief. Among the symbolic sculptures at the exit of the United States Supreme Court is a statue of a turtle which signifies that the law moves slowly behind society. Now, forty-four years after *Roe v. Wade*, it is the time to re-examine known scientific facts of human development and allow the turtle of law to move to the point of recognizing that the law should protect human beings equally *in vitro* (in glass) or (*in vivo* in a uterus). In either case the law is dealing with a human being. AAPLOG submits that the developing human embryo is always a human being at each stage of development, beginning with sperm-egg binding bringing into being the human embryo.

The opinion in *Roe* was made before the use of *in vitro* fertilization procedures, to conceive human individuals such as Louise Brown, born July 25, 1978. In the last forty-four years since *Roe,* scientists have been able to use time lapse photography to observe the development of human embryos, such as the study done by Wong, Loewke, Bossert, Behr, Baer, Pera*., Non-invasive imaging of human embryos before embryonic genome activation predicts development to the blastocyst stage,* 28 Nature Biotechnology 10 1115, (2010). *See*, Day 3 of development to day 6 portion of time lapse photography study of a developing embryo. https://embryology.med.unsw.edu.au/embryology/index.php/Blastocyst_Day_3-6_Movie (accessed 8/17/17).

The senior author of the paper, Renee Reijo Pera, Ph.D., former professor of Obstetrics and Gynecology at Stanford Medical School and former director of the Center for Human Embryonic Stem Cell Research at Stanford's Institute for Stem Cell Biology and Reproductive Medicine, (who is now at Montana State University as Vice President for Research Creativity and Technology Transfer), studied and recorded in 2008, the early development of 100 out of 242 one cell human embryos created prior to 2002. Earlier, "More Accurate Prediction of Embryo Survival Enabled by Research," Stanford News and Medicine, 1-3 (2010), (http://med.stanford.edu./news/all-news/2010/10/earlier-more-accurate-prediction-of-embryo-survival-enabled-by-research.html) (accessed 8/14/17)). The embryos had been preserved in a frozen state from a one cell or zygote stage of development 12 to 18 hours after fertilization. *Id*. The scientists filmed the embryos with time-lapse video microscopy until the embryos had developed many cells in a hollow sphere ball shape called a blastocyst as seen in https://embryology.med.unsw.edu.au/embryology/index.php/Blastocyst_Day_3-6_Movie (accessed 8/15/17). The study found that cells within the early human embryo developed on a self-determined schedule (first 1, then 2, then 3, then 4, then 5, then 6, etc.,) and not in synchrony (not 2, 4, 6, 8, or 8 become 16 at the same time). (http://med.stanford.edu./news/all-news/2010/10/earlier-more-accurate-prediction-of-embryo-survival-enabled-by-research.html) (accessed 8/15/17). Each cell was making autonomous decisions. *Id*. Embryonic genes to develop the body were active in the embryo at the 8-cell stage. *Id*. At the 8-cell stage, not all cells expressed embryonic genes. *Id*. These scientific facts support the conclusion that the early embryo cells perform different tasks such as in gene expression, and yet work in

an integrated, coordinated organismic program to reveal the body plan and supportive structures. They behave not as a cell aggregate, or mere tissue, but function as a developing human being with the cells working in an organized manner for the good of the organism's growth and development, not simply for the good of the individual cell.

A collection of observable facts known today about the behavior and composition of the cells within the early embryo, obtained as a result of studying *in vitro* embryos, as well as embryos formed *in vitro* is contained in an online program entitled the Virtual Human Embryo (VHE), a 14,250-page illustrated atlas of human embryology which describes the 23 stages of observations in human development called the Carnegie Stages., www.prenatalorigins.org/virtual-human-embryo/ (accessed 8/17/17). The Carnegie Stages are named for a U.S. Institute which began collecting and classifying embryos based on external or internal morphological features to standardize 23 stages of human development. Id. Through the VHE, databases of film, research data, and explanation of scientific terms and source material is available for each of the Carnegie 23 stages of Human Development. The criteria and terminology of the Carnegie Stages was started by an embryologist, George L. Streeter, from 1942-48, was completed by embryologist, Ronan O' Rahilly and Mueller, in 1973, and revised in 1987 and in 2010. (O'Rahilly and Muller, Human Embryology & Teratology (New York: Wiley-Liss, 2001; O'Rahilly & Mueller, Developmental Stages in Human Embryos, Revised and New Measurements, 192 Cells Tissues Organs 73 (2010).

Not all scientists use the Carnegie Stages terminology to describe the observations in the developing embryo, and the different terminology used may affect the readers understanding of the observable facts. According to the standards of the Carnegie Stages, there are three substages or parts of Stage 1, a, b, and c. https://www.prenatalorigins.org/virtual-human-embryo/stage.php?stage (accessed 8/17/17). At Stage 1, the reproduced human being begins to exist as the "primordial embryo," at the first contact and penetration by sperm of the oocyte, and the embryo at this stage has also been called "penetrated oocyte." As the human embryo begins to develop, the pronuclei containing genetic information from the mother and pronuclei containing genetic information from the father come to the center of the cell adjacent to each other. *Id*. At this stage, the embryo has also been called an "ootid" (Carnegie Stage 1b). *Id.* At Carnegie Stage 1 c, the one cell embryo is called a zygote, when it is observed the pronuclei envelopes disappear and the chromosomes line up at the center of the one cell embryo to prepare to cleave to two cells revealing the unique gene set belonging to the created embryo. *Id*.

While the Carnegie collection had no stage 1 embryos, the VHE has previously published images and *in vitro* Stage 1 embryos data is in the VHE database. These observations of what happens in embryonic growth and development are available for each observable stage of human embryonic development are described in the VHE. Cells in the embryo vary from the beginning in one or more ways by timing of development, gene expression, shape, positioning and movement of the cell, and interactions with other cells.

B. Terminology can color ones understanding of observable fact.

1.) Kass v. Kass, 696 N.E. 2d 174, 175; 673 N.Y. S. 2d 350, 351 (1998) did not recognize the embryo as a human organism, but thought the "pre-zygote's" fate was bound to a contract for dispositional authority.

In comparing embryo documentation data, some have interpreted the fact that there are three Carnegie 1 stages to mean that prior to Stage 1c, the zygote stage, the one-cell embryo should be described as a "pre-zygote." For example, the New York Court of Appeals in *Kass v. Kass,* 696 N.E. 2d 174, 175; 673 N.Y. S. 2d 350, 351 (1998) at n.1 described "pre-zygotes" which are defined in the record as "eggs" that have been "penetrated by sperm but have not yet joined genetic material." The clinic form used by the progenitors in *Kass v. Kass* also described the disposition options for "the pre-zygote." *Id.,* at **176-77; **352-53. (The embryos in the *Kass* case were probably developed to stage 1b.)

Without any other scientific discussion, the *Kass* court indicated that the disposition of pre-zygotes did not involve a woman's right of privacy and bodily integrity and that the pre-zygotes would not be recognized as "persons" for constitutional purposes, citing *Roe v. Wade,* 410 U.S. 113, 162 and *Bryn v. New York City Health & Hosp. Corp.*, 286 N.E. 2d 887, appeal dismissed 410 U.S. 949) Id. at **179; ***3555. The *Kass* court also believed that it did not need to determine the legal status of the embryos because the parties' IVF agreement decided the question of who had the dispositional authority. *Id.* at **179 and *** 356. The *Kass* court did not hold a trial over the embryos legal status as human beings, and did not address whether the state of the scientific understanding of human development had changed since the *Roe* decision in 1973 to 1998.

2.) The court in Davis v. Davis, 842 S.W.2d 588, 593 (1992), described human embryos as developing from a loose packet of cells at the 4-8 cell stage to a multicellular entity at the 32-cell stage and that the first cellular differentiation of the new generation relates to the physiological interaction with the mother, thus justifying the term "pre-embryo" to describe the unimplanted embryos and ignoring that the embryos are human organisms, not mere cells or tissue.

Although several state courts have addressed the disposition of human embryos, only one court, the Circuit Court of Tennessee, Blount County, has taken evidence and heard scientific testimony relevant to the factual and legal questions raised here: namely, whether a frozen human embryo is a human being and deserving of legal protection as such. *Davis v. Davis*, No. E-14496 Blount County Cir. Ct. (1989), not reported in S.W.2d 1989, (1989 Tenn. Cir. Court) 1989 Tenn. App. Lexis 641 at *10 and note 11, *judg. vac. and cause remanded.*, *rev.*, 842 S.W.2d 588, 597 (Tenn. 1992) (*Davis* trial); *Davis v. Davis*, 842 S.W.2d 588, 597, (Tenn. 1992) *cert. den.* 507 U.S. 911 (1993). (*Davis*). Given the Tennessee Supreme Court decision's influence on subsequent embryo disposition cases, its findings should be reviewed in light of current science. AAPLOG requested in its motion for leave to file its amicus brief to discuss the unpublished opinion of the

Davis trial court, which took expert testimony on the issue of when human life begins, and to explain the differences between the trial court's scientific analysis of the issue as the scientific factual analysis accepted by the Tennessee Supreme Court, and comparing both to what today is scientifically known about the nature and development of the human embryo. A copy of the *Davis* trial court opinion is marked as Exhibit 1 and submitted, pursuant to MCR 7.215(c).

In *Davis*, the trial court conducted a bench trial during which it heard testimony of competing experts and evaluated that testimony and their credibility. The trial court then determined that the 4 to 8 cell frozen embryos before the court were human beings. (*Davis* trial 1989 Tenn. App. Lexis 641 at *13). The appellate court reversed, deciding the embryos were property. *Davis v. Davis*, (Sept. 13, 1990 Tenn. Ct. App.) 1990 Tenn. App. Lexis 642 (*aff'd*, *on other grounds*, 842 S.W.2d 588, 596 (Tenn. 1992) *cert. den*. 507 U.S. 911 (1993)). The Tennessee Supreme Court ultimately affirmed the appellate court's decision but on different grounds, finding that the embryos occupied an intermediate status between person and property. (*Davis,* 842 S.W.2d 588*,* 597). By the time the case reached the Tennessee Supreme Court, the parties had abandoned any argument that the embryos were human lives (*Davis,* 842 S.W.2d 588, 594 at fn. 14), so the court made its ruling about scientific analysis without the benefit of any advocacy for the embryos' status as human beings. (*Id.*) Therefore, the issue of the embryos' status as human beings was not properly before the Court and its opinion regarding the embryo's legal status was *dicta. Id.,* and fn.13.

At the trial in *Davis*, world-renowned human geneticist Dr. Jerome Lejeune in his expert testimony equated conception with fertilization, saying "[e]ach human has a unique beginning which occurs at the moment of conception." (*Davis* trial 1989 Tenn. App. Lexis 641 at *14) Dr. Lejeune's use of "conception" for fertilization or sperm-egg fusion reflected the word's common and long-held meaning, as opposed to the definition of conception as "implantation" adopted in 1965 by the American College of Obstetricians and Gynecologists (ACOG). American College of Obstetricians and Gynecologists *Terminology Bulletin. Terms Used in Reference to the Fetus*. No. 1. September 1965. ACOG at that time said that the change in definition was "selected deliberately because union of sperm and ovum, cannot be detected clinically unless implantation occurs." (*Id.*) This rationale, arrived at before the advent of advanced reproductive technology services, is outmoded. Richard Sosnowski, M.D., head of the Southern Association of Obstetricians and Gynecologists, has also criticized it as being without scientific justification in his *The Pursuit of Excellence: Have We Apprehended and Comprehended It?* American Journal of Obstetrics and Gynecology, Vol. 150, No. 2 (September 15, 1984) 117 ("I do not deem it excellent to play semantic gymnastics in a profession … It is equally troublesome to me that, with no scientific evidence to validate the change, the definition of conception as the successful spermatic penetration of an ovum was redefined as the implantation of a fertilized ovum. It appears to me that the only reason for this was the dilemma produced by the possibility that the intrauterine device might function as an abortifacient.").

The trial court found Dr. Lejeune's testimony to be clear and unrebutted, and concluded, in agreement with him, "that the cells of human embryos are comprised of differentiated cells, unique in character and specialized to the highest degree of distinction." (*Davis* trial 1989 Tenn. App. Lexis 641 at *26). The trial court concluded, also based on Dr. Lejeune's testimony, thatthe "life codes for each special, unique individual are resident at conception and animate the new person very soon after fertilization occurs." (*Davis* trial 1989 Tenn. App. Lexis 641 at *27). As discussed in this brief scientific research conducted since Dr. Lejeune's 1989 testimony fully validates that unique DNA, used by courts and others to identify a specific individual, is already present in the one cell zygote and at all subsequent developmental stages of the life of the human being, even after death. The Tennessee Supreme Court's 1992 decision, however, rejected Dr. Lejeune's testimony and embraced the opinions of the three other trial experts, whose opinions were based on statements of the Ethics Committee of the American Fertility Society (AFS) issued in 1986. (*Davis* trial 1989 Tenn. App. Lexis 641 at *17, *18, *19, *20, *21).

Ironically, the Tennessee Supreme Court rejected Dr. Lejeune's opinion that no such thing as a "pre-embryo" exists as unscientific, concluding that he exhibited "profound confusion between science and religion" (842 S.W.2d 588, at 593), but then approvingly cited the AFS *ethics* opinion statement in support of its own decision. The Supreme Court quoted from the [AF] Society's June 1990 report on "Ethical Considerations of the New Reproductive Technologies," published in the official Journal of the American Fertility Society, Volume 53, number 6, June 1990. *Davis*, 842 S.W.2d 588, 593-594 and 596. Chapter 8, "The biologic characteristics of the pre-embryo," (*id.* at 31S-33S), and Chapter 9, "The moral and legal status of the pre-embryo," (*id.* at 34S - 36S) were also quoted from. The 1990 report is a later edition of the AFS Ethics Statements quoted by the *Davis* trial court titled "Ethical Considerations of the New Reproductive Technologies," which appeared as "Ethical Considerations of the New Reproductive Technologies" in the Journal of the American Fertility Society, Supplement 1, Vol. 46, No. 3, 1986. (*Davis*, trial 1989 Tenn. App. Lexis 641 at *17).

The Tennessee Supreme Court also relied on an AFS assertion that, at the 8-cell stage, a single human being has not yet been established. 842 S.W.2d 588, 593. The court, thought that a single human organism did not come into existence until approximately 14 days after fertilization. 842 S.W.2d at 593-94. The Court found that after the first three rounds of division, an embryo is an "aggregate contain[ing] eight cells in relatively loose association" which could form a separate individual if a cell was separated from the other cells in the aggregate, and for this reason "is not yet established developmentally as an individual." 842 S.W.2d at 593. But since the finding of the Tennessee Supreme Court, empirical research has shown that a new human being at any stage of early development can never be characterized as a group of "cells in relatively loose association," as the Davis Court opined. To the contrary, "[H]uman organisms exhibit globally coordinated functions that promote the health and survival of the individual.

The zygote clearly exhibits such a coordinated, organismal behavior from the moment of sperm-egg fusion onward." Maureen A. Condic, When Does Human Life Begin: Scientific Evidence and Terminology Revisited, 8 U. of St. Thomas J. of L. & Pub. Pol., 44, 48 (2014) (emphasis supplied).[1]

It is now known that only cells in earlier stages, perhaps up to the 4-cell stage, may be totipotent (that is, "capable of generating a globally coordinated developmental sequence" necessary to constitute an organism.) Maureen L. Condic, *What Totipotency Is and Is Not,* 23 Stem Cells and Development 796, 797, text at Fig. 1 (2014). Even assuming that a 4-cell embryo possesses four totipotent cells, the embryo is not thereby comprised of four human beings. The four cells work in concert toward development unless and until disaggregated. Dr. Condic states:

> Embryos repair injury. They adapt to changing environmental conditions. Most importantly, they show coordinated interactions between parts (molecules, cells, tissues, structures, and organs) that promote the survival, health, and continued development of the organism as a whole.

Id.

> One human being is developing as the cells continue to divide.
>
> The significant role of 'community effects' in development . . . clearly illustrates that the behavior of cells in groups is distinct from the behavior of the individual cells comprising the group.

Id., 800.

The Davis trial court, noted that the three experts opposing Dr. Lejeune "rely at least to some degree on the report of the Ethics Committee of the American Fertility Society in forming the basis of their opinions." (1989 Tenn. App. Lexis 641 at *16). Dr. Charles Alex Shivers testified that "[a]t the time of fertilization, genetic controls are "locked in forever" and control who the preembryo will later be, but '. . . as far as we know . . . to my knowledge. . . there is no way to distinguish the cells' [at the zygote

[1] Available at http://www.embryodefense.org/MaureenCondicSET.pdf; In fact, investigations have revealed that the cells in the early embryo interact with each other to develop the embryo body together with the placenta and cord cells. Robert G. Edwards & Christoph Hansis, *Initial differentiation of blastomeres in 4-cell human embryos and its significance for early embryogenesis and implantation,* 11 Reprod. BioMed. Online 206 (2005), *reprinted*, 1 *Tenth Anniversary Issue* 94 (2010), available at http://edwards.elsevierresource.com/articles/initial-differentiation-blastomeres-4-cell-human-embryos-and-its-significance-early/fulltext (accessed 8/15/2017). Two of the cells in a four-cell embryo will often develop into the inner cell mass that has a role to play in body development. Another cell develops into the trophectoderm (the trophectoderm includes the placenta). The fourth cell of the four-cell stage will often develop into the germline, which will also play a role in human development. *Tenth Anniversary Issue* at 97. Even at the 4-cell stage, protein distributions in each cell can be different. For example, the fourth cell with mostly vegetal cytoplasm has small amounts of proteins leptin and STAT 3, whereas two cells have intermediate amounts and a third cell with mostly animal cytoplasm has large amounts. In addition, mRNA expression of proteins such as B-HCG secretions are different in trophectoderm cells as compared to cells that will reveal the inner cell mass.

stage][2]. . . [They are the same [undifferentiated] . . . .". Another expert, Professor John A. Robertson, an Industry Advisor for the AFS and attorney said that "[a]human embryo is an entity composed of a group of undifferentiated cells which have no organs or nervous system. That at about 10-14 days, the preembryo attaches itself to the uterine wall, develops its primitive streak and life then commences." Id. at *14. Dr. King, the treating IVF physician, testified that at about 14 days the group of embryonic cells begins to differentiate in a process that permits the eventual development of the different body parts which will become an individual. Id. at *13.

Davis's primary finding, adopting the position of the AFS that the embryo is only a "preembryo" before day 14, has been discredited. *Davis,* 593-594, 596-597. "The foreshortened term 'pre-embryo', which has been used in legal and clinical contexts, is not recommended." Federative International Committee for Anatomical Terminologies and International Federation of Associations of Anatomists, *Terminologia Embryologia,* p. 10, n. 32 (April 21, 2010) http://www.unifr.ch/ifaa/Public/EntryPage/ViewTE/TEe02.html (accessed 8/18/17). *See also, Terminologia Embryologia,* "Preface" and "User Guide," available at http://www.unifr.ch/ifaa/Public/EntryPage/PDF/TE%20Preface.pdf and General terms "embryo" http://www.unifr.ch/ifaa/Public/EntryPage/ViewTE/TEe01.html p. 3, n.15 (accessed 8/18/17) respectively. Ronan O'Rahilly & Fabiola Muller, in their *Human Embryology & Teratology,* 88 (3d ed. 2001), assert:

> Embryologists confirm that the term "preembryo" is scientifically inaccurate and ill-defined. The term 'preembryo' is not used here for the following reasons: (1) it is ill-defined because it is said to end with the appearance with the primitive streak or to include neurulation; (2) it is inaccurate because purely embryonic cells can already be distinguished after a few days, as can also the embryonic (not the preembryonic!) disc; (3) it is unjustified because the accepted meaning of the word embryo includes all of the first 8 weeks; (4) it is equivocal because it may convey the erroneous idea that a new human organism is formed at only some considerable time after fertilization; and (5) it was introduced in 1986 'largely for public policy reasons' (Biggers).

National and International forums and societies that have had the opportunity to express an opinion on *in vitro* fertilization and recent issues regarding embryonic stem cells "have, with very few exceptions, dropped the word 'preembryo' from their vocabulary." Modestor Coloma and Luis Pastor, *The Preembryo's Short Lifetime. The History of A Word,* 23 Cud. Bioet. 677, 690 (2012). http://www.redalyc.org/html/875/87525473007/index.html (accessed 8/15/17). Thus, the "preembyro" tissue status in *Davis* lacks a credible scientific foundation.

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[2] Note here that although a zygote usually refers to a one cell embryo, (although the Carnegie Stages do not label the one cell embryo a zygote until part 3 of development), Dr. Shivers is referring to multiple cells as zygote cells. *See,* Condic, *When Does Human Life Begin? The Scientific Evidence and Terminology Revisited,* Univ. of St. Thomas J. of Law and Pub. Policy, Vol. VII, 44, 47, 69-70;78; 79, fig.1 (2014); *(Condic, 2014).* (discussing different words used to describe human development).

Also, the *Davis* Court's statement that "the first cellular differentiation of the new generation relates to physiologic interaction with the mother, rather than to the establishment of the embryo itself," *Davis,* 594 is incorrect. *Davis* at 594, cited the work of lawyer and AFS industry advisor John A. Robertson who, in a law review article, criticized the *Davis* trial court for ignoring "the biological reality that the early embryos, while genetically unique, consist of a few undifferentiated cells that will first form the placenta before the embryo itself develops." Robertson, *In the Beginning: The Legal Status of Embryos,* 76 Va. L. Rev. 437, 482, 483 (1990). Robertson did not acknowledge that the embryo was already developing. Robertson recommended "that the party wishing to avoid reproduction should prevail whenever the other party has a reasonable chance of becoming a parent by other means." *Id.,* 476. The *Davis* decision essentially adopted Robertson's description of "biological reality" and his recommendation of a presumption in favor of decisions to terminate embryonic life.

Contrary to the scientific findings in *Davis* that that "the first cellular differentiation of the new generation relates to physiologic interaction with the mother, rather than to theestablishment of the embryo itself," *Davis,* 594, the scientific research shows evidence of the inner cell mass components being present in the *first* cell, and some subsequent cells in the embryo rather than not developing until after implantation. See, Robert G. Edwards & Christoph Hansis, *Initial differentiation of blastomeres in 4-cell human embryos and its significance for early embryogenesis and implantation.* 11 Reprod. BioMed. Online 206 (2005), *reprinted,* 1 Tenth Anniversary Issue 94 (2010), available at http://edwards.elsevierresource.com/articles/initial-differentiation-blastomeres-4-cell-human-embryos-and-its-significance-early/fulltext (accessed 8/3/17): and see, Wong, Loewke, Bossert, Behr, DeJonge, Baer, Pera, *Non-invasive imaging of human embryos before embryonic genome activation predicts development to the blastocyst stage,* 28 Nature Biotechnology 115, 119, 120, and fig. 6. (2010) (factual observations documented in 8 cell human embryos of timing of development and the expression of genes specific to the development of the human body).

As early as 2002 it was reported in *Nature*:

> Your world was shaped in the first 24 hours after conception. Where your head and feet would sprout, and which side would form your back and which your belly, were being defined in the minutes and hours after sperm and egg united.
>
> Just five years ago, this statement would have been heresy. Mammalian embryos were thought to spend their first few days as a featureless orb of cells. Only later, at about the time of implantation into the wall of the uterus, were cells thought to acquire distinct "fates" determining their positions in the future body. But by tagging specific points on mammalian eggs shortly after fertilization, researchers have now shown that they come to lie at predictable points in the embryo. Rather than being a naive sphere, it seems that a newly fertilized egg has a defined top–bottom axis that sets up the equivalent axis in the future embryo: What is clear is that developmental biologists will no longer dismiss early mammalian embryos as featureless bundles of cells.

Pearson, *Your Destiny Day One,* Nature 418, 14-15 (4 July 2002) | doi:10.1038/418014a; Available at http://www.public.iastate.edu/~zool.433/Lectures/mammal.egg.assym.pdf.

Reference is made to the VHE, Carnegie Stage 3-1 Figure 13; https://www.prenatalorigins.org/virtual-human-embryo/figure.php? id=415 (accessed 8/17/17) showing a Carnegie Stage 3 *in vivo* created embryo about 4 to 5 days old, also labeled a free blastocyst. The diagram reports the embryo was washed from a uterus after insemination and then transferred to the uterus of an infertile woman where the embryo developed to a normal term infant. *Id.,* Buster, J.E., Bustillo, M., Redi, I.A. Cohen, S.W., Hamilton, M. Simon, J.A., Thorneycroft, I.H., and Marshall, J.R. *Biologic and morphologic development of donated human ova recovered by nonsurgical uterine lavage*. Am. J Obstet Gynecol 153:211-217 (1985). The inner cell mass along with the trophoblast cells giving rise to the placenta are both present and were present before transfer to the uterus of the woman who birthed the baby. Other pictures of the inner cell mass presence in Stage 3 human embryos that are 90 to 144 hours old are available at the VHE https://www.prenatalorigins.org/virtual-human-embryo/figure.php?id=415 by clicking on the reference "inner cell mass (embryoblast)."

At the blastocyst stage of development, the inner cell mass, (not the placental cells), has stem cells to make the human body and there is a difference between mere cells and embryos that can affect legal determinations. See, *Sherley v. Sebelius,* 689 F.3d 776, 779 (D.C. Cir. 2012), *cert. den.* U.S. Sup. Ct. No. 12-454 (2013). To describe the human embryo as only a collection of cells, or a multicellar aggregate, or undifferentiated cells, and not recognize that the embryo is a created living human being in development, is to treat the embryo as cells or mere tissue that is property.

Defendant's/Father's Appellee exhibit, J, see Brief in Support of Defendant/Counter-Plaintiff's Response in Opposition to Plaintiff's Motion for Summary Judgment, and Plaintiff's Exhibit 1 referenced in exhibit J, at page 6, that indicates that the embryos in this case were to be developed to day 5, for preimplantation genetic diagnosis (PGD). Thus, assuming the embryos are 5 days old, they are well beyond the development of the 4 to 8 cell embryos described in the *Davis* case. Defendant/Father argues in footnote 2, on page 6 of exhibit J., that the cell taken from the embryo for PGD testing is totipotent, which may or may not be the case if the embryo was only developed to a 4 cell stage. See, Maureen L. Condic, *What Totipotency Is and Is Not,* 23 Stem Cells and Development 796, 797, text at Fig. 1 (2014). Yet it appears from the information provided that the embryos in this case are 5 days old, at the stage 3 blastocyst stage, where the inner cell mass can be differentiated from the cells that make up the placenta and cord. Defendant-Father also argues in this footnote 2 that conception is a process, believing that the human body does not exist until implantation. What the Defendant/ Father calls a process of conception, is really a process of human development. Conception has occurred. There is no evidence that the created human embryo organisms in this case have anything other than the appropriate human form consistent with their stage of human development. A human embryo does not suddenly become a human organism on

implantation into the uterus. A human embryo exists at fertilization and the development can be identified in factual observations of the living organism. Development takes place until death of the organism.

C. This court should not follow factually flawed case precedent that presents human embryos as cells, or tissue, or property, but take judicial notice of the facts that human embryos are human organisms, human beings, developing persons that develop from fertilization until death.

Since the *Davis* court's chief rationale for denying the humanity of the early embryo—the belief that a human embryo does not become a human being until implantation—is unsupported by current science, this court should no longer rely on *Davis* or its progeny to privilege a parent's desire to terminate embryonic life over the opposing parent's desire to protect offspring, or for denying an embryo's interests and rights as a human being. See e.g., *Kass v. Kass,* 696 N.E. 2d 174, 175-176, 179, fn.1 (N.Y. App. 1998) (quoting *Davis* on cell differentiation and using "pre-zygote" terminology and approving description in IVF clinic documents as property); *A.Z. v. B.Z.,* 725 N.E.2d. 1051, 1052, fn.1, 1056, fn.17, 1058 (Mass. 2000) (using terms "preembryos" and "pre-zygotes" and citing public policy not to "force procreation"); *J.B. v. M. B.,* 783 A. 2d 707 (N.J. 2001) (describing embryos as "cells stage of development," not as organisms); *Roman v. Roman,* 193 S.W. 3d 40, fn.7 (2006) (accepting clinic agreement reference to embryos as "joint property").

Sadly, as recent as 2016, two of three justices for the court of appeals in Missouri reported flawed scientific facts about when the human body begins development and failed to recognize that the human embryo is a human organism with a body in development, referencing 87 ALR5th 253 (originally published in 2001), which says at fn. 4:

> In this case, there was no evidence introduced at trial with respect to the science of IVF, related scientific terms, or the division or cell stages of the frozen pre-embryos at issue in this case. However, it appears the parties do not dispute the facts or science concerning the stages of development involved in IVF. As explained in American Law Reports:
>
> Typically, the [IVF] procedure begins with hormonal stimulation of a woman's ovaries to produce multiple eggs. The eggs are then removed by laparoscopy or ultrasound-directed needle aspiration and placed in a glass dish, where sperm are introduced. Once a sperm cell fertilizes the egg, this fusion, or pre-zygote, divides until it reaches the four-to-eight cell stages, after which several pre-zygotes are transferred to the woman's uterus by a cervical catheter. If the procedure succeeds, an embryo will attach itself to the uterine wall, differentiate, and develop into a fetus. As an alternative to immediate implantation, pre-zygotes may be cryopreserved indefinitely in liquid nitrogen for later use. 'Pre- embryo' is a medically accurate term for a zygote or fertilized egg that has not been implanted in a uterus. It refers to the approximately 14-day period of development from fertilization to the time when the embryo implants in the uterine wall and the 'primitive streak,' the precursor to the nervous system, appears. An embryo proper develops only after implantation. The term 'frozen embryos' is a term of art denoting cryogenically preserved pre-embryos.

Elizabeth A. Trainor, Annotation, Right of Husband, Wife, or Other Party to Custody of Frozen Embryo, Preembryo, or Pre-zygote in Event of Divorce, Death, or Other Circumstances, 87 A.L.R.5th 253 (originally published in 2001).

This Court's decision should be based on observable scientific facts, and not refer to such unscientific terms such as "preembryo," or to facts that infer the embryo body form does not begin in the very first cell or have the same human form that all of us had as human beings in that early stage of life's development, with changes in form during all visible prenatal and postnatal developmental stages, i.e., through childhood, adolescence, adulthood ceasing only at death. Creation of a new life happens in an instant, but development of life is a process that takes time and lasts until the demise of the organism. According to accepted scientific criteria, a human being, a human organism, is formed immediately upon the fusion of the plasma membranes of a sperm and an egg. Dr. Maureen Condic, *When Does Human Life Begin? The Scientific Evidence and Terminology Revisited,* Univ. of St. Thomas J. of Law and Pub. Policy, Vol. VII, 44, 75; 79, fig.1 (2014); *(Condic, 2014)*. Dr. Condic, a neurobiologist has testified:

> The unique behavior and molecular composition of embryos, from their initiation at sperm-egg fusion onward, can be readily observed and manipulated in the laboratory using the scientific method. Thus, the conclusion that a human zygote is a human being (i.e. a human organism) *is not a matter of religious belief, societal convention or emotional reaction. It is a matter of observable, objective fact.*

(emphasis added) *Planned Parenthood of Ind. v. Comm'r,* 794 F.Supp. 2d 892, 916-917 (S.D. Ind. 2011), aff'd, 699 F. 3d 962 (7th Cir. 2012), *cert. denied*, 2013 U.S. Lexis 413, 2013 WL 655224 (May 28, 2013).

Similarly, Dr. Renee Reijo Pera, Ph.D., Professor of Obstetrics and Gynecology and former Director of Stanford Center for Human Pluripotent Stem Cell Research and Education, commented "what makes us human . . . wasn't consciousness, and it wasn't love, and it wasn't spirituality but it just is. On day one a human sperm and a human egg come together and we have a human embryo." lecture at 10:04 (2010), https://www.youtube.com/watch?v=mkHhTT5Qqsg&t=5s (accessed 8/14/17).

The scientific conclusion that life begins at fertilization is confirmed by many other scientists.[3] Dr. Condic's 2014 paper cited over 100 scientific papers from 1995 onward

[3] Available at http://www.embryodefense.org/MaureenCondicSET.pdf; In fact, investigations have revealed that the cells in the early embryo interact with each other to develop the embryo body together with the placenta and cord cells. Robert G. Edwards & Christoph Hansis, *Initial differentiation of blastomeres in 4-cell human embryos and its significance for early embryogenesis and implantation*, 11 Reprod. BioMed. Online 206 (2005), reprinted, 1 Tenth Anniversary Issue 94 (2010), available at http://edwards.elsevierresource.com/articles/initial-differentiation-blastomeres-4-cell-human-embryos-and-its-significance-early/fulltext (accessed 8/15/2017). Two of the cells in a four-cell embryo will often develop into the inner cell mass that has a role to play in body development. Another cell develops into the trophectoderm (the trophectoderm includes the placenta). The fourth cell of the four-cell stage will often develop into the germline, which will also play a role in human development. Tenth Anniversary Issue at 97. Even at the 4-cell stage, protein distributions in each cell can be different. For example, the fourth cell with mostly vegetal cytoplasm has small amounts of proteins leptin and STAT 3, whereas two cells have intermediate amounts and a third cell with mostly animal cytoplasm has large amounts. In addition, mRNA expression

analyzing 26 separate developmental changes in the early embryo from sperm-egg binding through days 4-6. Condic, 2014, 49-68. Dr. Condic explains:

> Modern scientific evidence demonstrates that the one-cell human embryo or zygote, is formed at the instant of sperm-egg plasma membrane fusion. The zygote has unique material composition that is distinct from either gamete. It immediately initiates a series of cellular and biochemical events that ultimately generate the cells, tissues and structures of the mature body in an orderly temporal and spatial sequence. The capacity to undergo development is a defining characteristic of a human organism at the beginning of life ...

Id., at 75. See also *id.*, at 47-48.

Roe v. Wade, 410 U.S. 113 (1973) permitted pregnancy termination in specific gestational stages in balancing a state interest in "potential life" versus the mother's right to privacy and bodily integrity, and the termination of pregnancy, which can, and almost always does, result in termination of a child. But *Roe* is inapplicable where a mother desires to bring the embryos to birth. Furthermore, *Roe* does not prevent a state from having a compelling interest in protecting unborn life. See, *Webster v. Reproductive Health Services* 482 U.S. 490, 519 (1989). Today science reveals that the life potential is full for the developing human organism until demise, and human beings should not be described as "potential life."

AAPLOG urges this court to base its decision on accurate scientific knowledge that a human embryo, empirically observable at various stages of development (zygote, embryo, fetus, baby, child, adolescent, adult, elder, etc.), is a human organism and a human being in each developmental stage, the offspring of identifiable parents. The embryo is not property, nor is the embryo the same as cells or tissue, but a living human organism, a human being.[4] As a living human being, he or she enjoys the same unalienable human rights as any person to life, to parental and governmental protection of those rights (including the protection accorded by the 13th Amendment of the United States Constitution, and the protection of state statutes protective of children, and the Declaration Of Independence (1776).[5] A human being should have his or her

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of proteins such as B-HCG secretions are different in trophectoderm cells as compared to cells that will reveal the inner cell mass.

[4] Compare the composition a behavior of embryos to the HeLa cells that are used in many medical treatments and experiments. These cells were extracted from Henrietta Lacks but have never organized themselves to produce a clone of Henrietta, See, Skloot, R., *The Immortal Life of Henrietta Lacks*. Broadway Books, 2010, 2011 at p. 222, 237-38, 255, 289. A federal court has held that cells used in federally funded human embryonic stem cell lines (pluripotent cells derived from the inner cell mass of the human embryos) do not comprise a human organism. Sherley v. Sebelius 644 F.3d 388, 396 U.S. App. D.C.1 (U.S. Dist. Cal. Cir (2012) cert. den. U.S. Supreme Ct. No. 12-454 (2013).

[5] Plaintiff's- Mother's Appellant brief and Reply Brief references the Michigan laws that recognize a governmental interest in protecting unborn human. This country has previously struggled to achieve the recognition, enshrined in the 13th Amendment, that no human being may be enslaved or treated as property. The Davis Supreme Court was motivated by worry that affirmance of the court ruling would in requiring legal recognition of the right human embryos, effectively outlaw IVF programs in the state of Tennessee." Id. at 595. But this conclusion is unfounded. In Louisiana, an embryo is recognized as a

voice heard in court and not be kept stored away as property or destroyed whenever parents disagree as to his or her fate.

Live births have been reported from stored embryos a decade and more (even up to 20 years) after cryopreservation. Dowling-Lacey, Mayer, Jones, Bocca, Stadtmauer, Oehninger (2011) *Live birth from a frozen-thawed pronuclear stage embryo almost 20 years after its cryopreservation*. Fertility and Sterility, Vol. 95, No. 3, p. 1120e1-1120e.3 DOI: https://www.planer.com/docs/Birth-20year-frozen-thawed-pronuclear-embryo2010.pdf (accessed 8/17/17). If parental disputes about the fate of the embryos cannot be resolved through a court, then does the longest living parent become the final decision maker, or if both parents die do surviving next of kin decide the human organisms fate?

A "contemporaneous mutual consent" model prohibits embryo disposition until the parties agree. *In Re: Marriage of Witten*, (Iowa 2003) 672 N.W. 2d 768. The court's rationale in *Witten* was that embryos are not chattel to be disposed of via property distribution agreements, but that courts also should not force a "reproductive choice." (*Id*. at 783). *Witten,* however, failed to require evaluation of the best interests of the embryo, which the court did not recognize as a human being with rights, except to the extent the embryo's interests are championed by one of its parents. However this approach will leave one party hostage to the other who refuses to agree; and it risks pushing embryo disposition decisions to future generations, since frozen embryos can outlive their progenitors. The model has not been generally accepted for these reasons. See *Reber v. Reiss*, (Pa. 2012) 42 A.3d 1131 at 1136; *Szarfranski v. Dunston*, 2013, 993 N.E. 2d 502 at 512 (citing Strasser (2009) *You Take the Embryos but I get the House (and the Business): Recent Trends in Awards Involving Embryos Upon Divorce,* 57 Buffalo Law Rev. 1159, 1210), (remanded on other grounds) 2015 Il. App. (1st) 122975, cert. den. (Il. S. Ct. (9/30/2015) 122975 B.)

The *Witten* model was recently followed by the Missouri court in *McQueen v. Gadberry*, 507 S.W. 2d 127 (Mo. App. 2016). Yet as discussed below, the Missouri Court, like courts before it, failed to recognize that the human is not mere cells and tissue, but a human being with parents, and that parents have Constitutional rights to nurture and raise their offspring

II. This case is not about forced procreation as asserted by the defendant because procreation has already occurred.

A. Procreation has occurred.

AAPLOG believes that a party who voluntarily procreates through *in vitro* fertilization procedures does not have a privacy right to destroy embryos when the other parent seeks to protect the created life. Certainly this is not part of a "right not to procreate"

judicial person under the law, (LA-RS 9 §124, LA-RS 9 §128), yet IVF has not been outlawed. Advanced Reproductive Technology services treat infertile patients not only by cryopreserving embryos for later use, but gametes and reproductive tissues (such as an ovarian wedge) are also cryopreserved for later transfer. The extreme effect envisioned by the Supreme Court in Davis is not a necessary outcome of recognizing the full humanity of a human embryo.

because genetic parenthood begins after the gamete providers exercise the right to procreate by causing sperm-egg binding which creates a new developing human being. As explained, *supra* the composition of a one cell human embryo is disguisable from each gamete. This means that biological parenthood is established at the organism's inception, *i.e.*, fertilization. In this case, the Defendant-Father has already voluntarily exercised his procreational rights, and is the genetic parent of the embryos, who are not gametes, but human beings. He has no right, constitutional or otherwise, unilaterally to demand to destroy those whose lives he has procreated. He cannot undo that which he has already done, a so called right not to procreate makes no sense as applied to created human beings.

B. The defendant-father was not forced in ivf to give his sperm to be used to fertilize the plaintiff- mother's oocytes.

Undergoing IVF procedures is a difficult process for the mother, involving injection of drugs to achieve hyper-ovulation, surgical procedures under anesthetic to harvest the resulting oocytes, and a process for providing the father's sperm to fertilize the mother's oocyte. The Father- Defendant could readily foresee that by providing his sperm to combine with the Mother-Plaintiff's oocytes that it was foreseeable that human life could result. There is no recognizable right that can erase the biological fact that the Defendant is the Father of the embryos. Dead embryos with no molecular movement are not cryopreserved, but viable embryos are frozen to preserve their life for a time when their environment can change from the artificial *in vitro* womb to a human womb. The newly created life in development will continue in a nurturing environment consistent with the needs of the human being for each developmental stage. Development will continue to occur until the organism dies.

C. Procreated human beings have unalienable human rights.

The right to life, as a natural right, is not absolute, but it is "unalienable," meaning at least human life cannot be legally terminated at the whim of another. While, courts have generally found human embryos to occupy the status of property or quasi property, this view is erroneous for the reasons given. A few voices have been heard to recognize the scientific (and common sense) truth of the humanity of the human embryo. Dissenting Justice Burke stated: "[Once the legal status of personhood is properly accorded to all living human beings, human embryos, as living human beings, are entitled to the legal status of 'person' within the meaning of the federal Constitution." *Bryn v. New York City Health and Hosps. Corp.,* 286, N.E.2d 887, *app. dism.,* 410 U.S. 949, 891-897 (N.Y. App. 1972) Dissenting Justice Gunnan in *McQueen v. Gadberry*, 507 S.W. 2d 127 at 159, (Mo. App. 2016) stated that "Mr. Gadberry possesses no right to change his mind after creating the embryos he chose to create." Also, the trial judge in the *Davis* case found that the human embryos before him were fully human. 1989 Tenn. App. Lexis 641 *1. U.S. patent laws recognize that human embryos are not property by prohibiting patents of human organisms. 30 35 U.S.C. 1 Leahy-Smith America Invents Act, (2014) 125 stat. 284, Pub. Law 11229, at Section 33, 35 U.S.C. 101 note, Limitation on Issuance of Patents.

Courts can terminate legal parenthood, and some individuals may destroy human life, or death can occur, but the biological fact that new lives were created by the Defendant and Plaintiff with IVF procedures is scientifically established and cannot be undone. What the Defendant is seeking under the guise of a right against forced procreation, is a right to terminate parental duty by destruction of the created life. This court should find that there is no "right not to procreate" that is used to harm human lives already created.

D. Recognizing a "right not to procreate" applying to created human beings is not only is scientifically flawed, it would conflict with parents federal right to nurture offspring.

The Court in *Stanley v. Illinois* 405 U.S. 645, 651 (1972) summarized the rights and interests of parents regarding their offspring by stating:

> The Court has frequently emphasized the importance of the family. The rights to conceive and to raise one's children have been deemed "essential," *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923), "basic civil rights of man," *Skinner* v. *Oklahoma*, 316 U.S. 535, 541 (1942), and "[r]rights far more precious . . . than property rights," *May* v. *Anderson*, 345 U.S. 528, 533 (1953). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Prince* v. *Massachusetts* (1944) 321 U.S. 158, 166 (1944). The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment, *Meyer* v. *Nebraska, supra*, at 399, the Equal Protection Clause of the Fourteenth Amendment, *Skinner* v. *Oklahoma, supra*, at 541, and the 9th Amendment, *Griswold* v. *Connecticut*, (1965) 381 U.S. 479, 496 (Goldberg, J., concurring).

The Mother-Plaintiff, seeks to resolve the parental dispute over the custody of the created embryos in this case under the same principles applied in resolving the parental dispute over other created children. In parental custody disputes, *in vitro* unborn children are just as much entitled to equal protection of the laws and courts as *in vivo* unborn children. This Court should recognize those rights and should ensure that justice is effectuated for the human embryos before the Court, who are human beings, and whose life or death are hanging in the balance.

Relief Requested and Conclusion

For all of these reasons, the amicus requests this Court to take judicial notice: (1) that procreation whether in utero or in vitro, occurs at fertilization, when a fully human organism comes into being, with the full potential to complete life's cycle until demise; (2) that human embryos are never a mere aggregate of cells with only a potential for life, but a human organism, *ab initio* actual living human beings in development; (3) human embryos are entitled to parental and governmental protection in accordance with the 13th Amendment, the 9th Amendment and the due process clause of the 14th Amendment and to the same protections as other unborn children under the law in their state; (4) that no right "not to procreate" exists for a progenitor as to his or her already created

human embryos; (5) that any balancing of interests to determine the fate of embryos must include the interest in continued life of the living human embryos.

Respectfully submitted this 21st day of August 2017.

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