

IN THE SUPREME COURT OF MISSOURI

SC96751

**MARY DOE,
Plaintiff-Appellant,**

v.

**ERIC GREITENS, et al.,
Defendants-Respondents.**

**Appeal from the Circuit Court of Cole County, Missouri
The Honorable John E. Beetem, Judge**

**BRIEF AMICI CURIAE MISSOURI RIGHT TO
LIFE AND AMERICAN ASSOCIATION OF
PRO-LIFE OBSTETRICIANS AND GYNECOLOGISTS**

**JAMES S. COLE, #26787
General Counsel
MISSOURI RIGHT TO LIFE
P. O. Box 651
Jefferson City, MO 65102
Tel. (314) 737-8579
jscole78@gmail.com**

**THOMAS MORE SOCIETY,
A National Public Interest Law Firm
19 S. LaSalle St., Suite 603
Chicago, IL 60603
(312) 782-1680**

**ATTORNEYS FOR MISSOURI RIGHT
TO LIFE AND AMERICAN
ASSOCIATION OF PRO-LIFE
OBSTETRICIANS AND
GYNECOLOGISTS**

TABLE OF CONTENTS

Table of Contents i

Table of Authorities..... ii

Statement of Interest of Amici1

Statement of Facts2

Summary of Argument2

Argument3

I. The trial judge correctly dismissed Plaintiff's Second Amended Petition3

because the informed consent requirements of Mo. Rev. Stat. § 188.027

are based on verifiable scientific facts, not religious doctrines or beliefs.

A. “When does life begin?” is a scientific question, not a religious one.3

B. It is an observable scientific fact that the life of a new, genetically6

distinct organism of the human species begins at conception.

C. The trial judge correctly found that Appellant had failed to 12

plead facts from which a factfinder could conclude that the

State is promoting religious dogma.

Conclusion 16

TABLE OF AUTHORITIES

I. Cases

Bethman v. Fish, 462 S.W.3d 895 (Mo. App. 2015)..... 13

Gardner v. Bank of America, N.A., 466 S.W.3d 642 (Mo. App. 2015) 13

Gonzales v. Carhart, 550 U.S. 124 (2007)..... 5

National Abortion Fed’n v. Ashcroft, 330 F.Supp.2d 436 5
(S.D.N.Y. 2004)

Planned Parenthood of Ind. v. Comm’r, 794 F. Supp. 2d 892 11
(S.D. Ind. 2011)

Planned Parenthood Minnesota, N. Dakota, S. Dakota v. Rounds, 14
530 F.3d 724 (8th Cir. 2008)

Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992)..... 4

Roe v. Wade, 410 U.S. 113 (1973) 3, 4

Whole Women’s Health v. Hellerstedt, 136 S.Ct. 2292 (2016)..... 5

Willamette Indus., Inc. v. Clean Water Comm’n, 34 S.W.3d 197..... 13
(Mo. App. 2000)

2. Statutes

Mo. Rev. Stat. § 188.015..... 6

Mo. Rev. Stat. § 188.027..... 5, 14, 15

3. Journals and Texts

Blastocyst Day 3-6 Movie, https://embryology.med.unsw.edu.au/embryology/index.php/Blastocyst_Day_3-6_Movie	9
Connie C. Wong et al., <i>Non-Invasive Imaging of Human Embryos Before Embryonic Genome Activation Predicts Development to the Blastocyst Stage</i> , 28 NAT. BIOTECHNOL. 1115 (2010)	9
Helen Pearson, <i>Your Destiny, From Day One</i> , 418 NATURE 14 (2002)	10, 12
KEITH L. MOORE ET AL., THE DEVELOPING HUMAN: CLINICALLY-ORIENTED EMBRYOLOGY (10th ed. 2015)	7
Krista Conger, <i>Earlier, More Accurate Prediction of Embryo Survival Enabled by Research</i> , STANFORD NEWS & MED. (2010)	9
Maureen L. Condic, <i>When Does Human Life Begin: Scientific Evidence and Terminology Revisited</i> , 8 Univ. of St. Thomas J. Law & Pub. Policy 44 (2014)	6, 8
REBECCA SKLOOT, THE IMMORTAL LIFE OF HENRIETTA LACKS (2010).	8

Robert G. Edwards & Christoph Hanis, *Initial differentiation* 10, 13
of blastomeres in 4-cell human embryos and its significance
for early embryogenesis and implantation, 11 REPROD.
 BIOMED. ONLINE 206 (2005), reprinted in REPROD. BIOMED.
 ONLINE Tenth Anniversary Edition at 94 (2010)

RONAN O’RAHILLY & FABIOLA MULLER, HUMAN EMBRYOLOGY 7
 & TERATOLOGY (3d ed. 2001)

Sarah Zielinski, *Cracking the Code of the Human Genome/* 8
Henrietta Lacks’ ‘Immortal’ Cells, Smithsonian.com
 (Jan. 22, 2010)

Video: Renee Reijo Pera, Ph.D., *What Makes Us Human?* 11
 (Sept. 1, 2010)

INTEREST OF AMICI CURIAE

The American Association of Pro-Life Obstetricians & Gynecologists (“AAPLOG”) is a non-profit professional medical organization consisting of approximately 4,600 members, of whom at least 4,000 are Obstetricians-Gynecologists practicing medicine in the United States and several foreign countries. AAPLOG’s 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 scientific developments and their impact on the ethical practice of medicine.

Missouri Right to Life (“MRL”) is a not-for-profit organization composed of thousands of pro-life citizens from all areas of the State of Missouri. Founded in 1974 and affiliated with the National Right to Life Committee, MRL is the oldest and largest pro-life organization in Missouri. It is dedicated to addressing issues such as abortion, infanticide and euthanasia. MRL operates through its State office, six regional boards, and several dozen local chapters. MRL educates people about pro-life principles in science and public policy. Additionally, it provides the tools for pro-life citizens to urge their legislators and other governmental officials to enact and maintain pro-life laws and policies. MRL also sponsors a political action committee to enable pro-life citizens to have a voice in the election of their representatives in State and Federal government. MRL worked with other like-minded organizations to support enactment of what is now Mo. Rev. Stat. § 188.027, the statute that is under challenge by Appellant in this case.

STATEMENT OF FACTS

Amici defer to the facts as stated in the Amended Brief of Defendant and in the Circuit Court's opinion. LF 78-80.

SUMMARY OF ARGUMENT

The trial court correctly dismissed Appellant's Second Amended Petition, because Appellant's claims are fundamentally confused. Throughout her Petition and briefing, Appellant consistently conflates objective fact with subjective belief or conviction. *See, e.g.*, Appellants' Brief at 9 (claiming that whether a fetus is "part of her body" or a "separate unique, living human being" is a matter of religious belief); 13-14 (describing the facts that "[t]he life of each human being begins at conception," and that "[a]bortion will terminate the life of a separate, unique, living human being" as "a political and religious point of view").

By blurring the distinction between fact and belief, Appellant attempts to invoke constitutional and statutory protections for religious belief to prevent the State from offering to present to her materials containing scientific facts and an opportunity to make observations for herself. This Court should affirm the trial court's rejection of that strategy. *See* LF 84 ("Plaintiff is merely cloaking her political beliefs in the mantle of religious faith in order to avoid laws of general applicability she finds imprudent or offensive.") There is certainly no right to prevent the State from offering scientific facts as part of the informed consent process for a uniquely significant medical procedure. Therefore the trial court was correct to dismiss Appellant's Second Amended Petition, and this Court should affirm.

ARGUMENT

I. **The trial judge correctly dismissed Plaintiff's Second Amended Petition because the informed consent requirements of Mo. Rev. Stat. § 188.027 are based on verifiable scientific facts, not religious doctrines or beliefs.**

A. **“When does life begin?” is a scientific question, not a religious one.**

The question of when a genetically distinct, individual human organism comes into existence is a scientific question with a factual answer. The point in the process of reproduction at which a new individual human organism comes into existence is empirically determinable without reference to anyone’s values or beliefs. What philosophical, religious, or public policy implications the answer may have is a separate question.

The majority opinion in *Roe v. Wade*, 410 U.S. 113 (1973), promoted confusion of the factual and public policy aspects of this issue when it claimed that the Court “need not resolve the difficult question of when life begins.” *Id.* at 159.¹ Having already

¹ “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.” *Id.* at 159 (emphasis added). As is pointed out *infra*, scientific research since *Roe* has produced more knowledge concerning the biological beginning of human life than was available to the *Roe* Court.

determined that the burdens of pregnancy were unique to the woman alone, and finding that the federal constitution thus vested her with a right to abortion as a species of personal privacy, *see id.* at 153-54, the majority held that whatever the biological evidence might indicate, it would no longer permit the states to outlaw abortion, *see id.* at 162. “In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake.” *Id.*

Despite the confusion engendered by its ambiguous framing of the question, *Roe* does not indicate that there is no scientific answer to the biological question of when a unique human life begins or that the scientific facts of human development are irrelevant. In fact, *Roe* devoted significant attention to how empirical factors, including the growth of the unborn child, affect the balance of a woman’s rights and the interests of the State. *See id.* at 163-64.

Empirical science has also played an important role in subsequent Supreme Court abortion decisions. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the Court found that the State’s interest in promoting the nurturing of new human life to birth begins with conception and continues throughout the length of the pregnancy. *See Casey*, 505 U.S. at 846. As the Court further stated, “[R]equiring that the woman be informed of the availability of information relating to fetal development and the assistance available should she decide to carry the pregnancy to full term is a reasonable measure to ensure an informed choice,” even if it “might cause the woman to choose childbirth over abortion.” *Casey*, 505 U.S. at 883.

In the 2007 decision upholding the federal ban on partial birth abortions, *Gonzales*

v. Carhart, 550 U.S. 124 (2007), the Court based its decision in part on the reluctance of abortion doctors to provide the details of that gruesome procedure to women before performing it. *See id.* at 159 (quoting *National Abortion Fed’n v. Ashcroft*, 330 F.Supp.2d 436, 466 n.22 (S.D.N.Y. 2004) (“Most of [the plaintiffs’] experts acknowledged that they do not describe to their patients what [the D & E and intact D & E] procedures entail in clear and precise terms.”)). The Court instructed that the State has a powerful interest in assuring that all women know how the procedure will be carried out on the unborn human being they are carrying. *See id.* “It is, however, precisely this lack of information concerning the way in which the fetus will be killed that is of legitimate concern to the State.” *Id.*

And in its 2016 ruling on a Texas statute that tightened up the State’s regulation of abortion clinics, *Whole Women’s Health v. Hellerstedt*, 136 S.Ct. 2292 (2016), the Supreme Court found great significance in the lack of evidence that enacting stricter regulations had produced or would produce any empirical improvements in women’s health compared to the level of women’s health under previous regulations. *See id.* at 2315.

Missouri’s informed consent statute required that Plaintiff be provided (a) materials describing the development of the unborn human being she was carrying, (b) the opportunity to observe the movements and/or hear the heartbeat of that human being by means of ultrasound video and audio, and (c) a reasonable time to consider the implications of these things. *See* Mo. Rev. Stat. § 188.027.1(2), .3, .8, & .12; Second Amended Petition, ¶ 64 (LF 29). These are empirical means of ascertaining basic scientific facts

about the circumstances in which a woman makes a decision about abortion. They are not designed to answer religious questions. It is a fundamental error to confuse them with scriptures, creeds, confessions, sermons, or other means of religious instruction.

B. It is an observable scientific fact that the life of a new, genetically distinct organism of the human species begins at conception.²

Scientific research has demonstrated that the fusion of sperm and egg plasma membranes—“a rapid event that takes less than a second to complete”—*immediately* yields a new human organism. Maureen Condic, *When Does Human Life Begin? The Scientific Evidence and Terminology Revisited*, 8 U. ST. THOMAS J.L. & PUB. POL’Y 44, 46 (2014) (hereafter “Condic”); *see also id.* at 47, 75, 79 fig.1 (concluding, based on a survey of the latest embryological research, that “the zygote is formed in the first instant of sperm-egg plasma membrane fusion, with all subsequent events of the first day of life being acts *of* the zygote, not acts that *form* the zygote”).

A leading textbook in the field of embryology agrees:

Human development is a continuous process that begins when an oocyte (ovum) from a female is fertilized by a sperm (spermatozoon) from a

² Amici use the term “conception” to mean “the fertilization of the female egg with the male sperm,” as defined in Mo.Rev.Stat. § 188.015(3) and the Missouri Informed Consent Booklet. LF 50.

male . . .

* * *

Human development begins at fertilization when a sperm fuses with an oocyte to form a single cell, the zygote. This highly-specialized, totipotent cell . . . marks the beginning of each of us as a unique individual.

KEITH L. MOORE ET AL., THE DEVELOPING HUMAN: CLINICALLY-ORIENTED EMBRYOLOGY 1, 11 (10th ed. 2015).

Likewise, Drs. Ronan O’Rahilly and Fabiola Muller, who co-author a standard medical textbook on embryology, write:

The terms embryo (of ancient Greek origin) and fetus . . . have gradually become distinguished, and it is now accepted that the word embryo, as currently used in human embryology, means ‘an unborn human in the first 8 weeks’ from fertilization (COD). Embryonic life begins with the formation of a new embryonic genome (slightly prior to its activation). * * *

Just as postnatal age begins at birth, prenatal age begins at fertilization.

RONAN O’RAHILLY & FABIOLA MULLER, HUMAN EMBRYOLOGY & TERATOLOGY 87, 88 (3d ed. 2001).

Detailed observations underlie these conclusions. Immediately after plasma membrane fusion, the zygote, the “one-cell embryo that is formed by the union of sperm

and egg,” Condic, *supra* at 47, manifests both of the scientific indicia of a new organism: (1) it has a “unique molecular composition,” different from either of its progenitors; and (2) it “rapidly enters into a new pattern of cell behavior that is also distinct from either gamete.” Condic, *supra* at 46; *see also id.* at 47-48, 75.

From the very start, a human zygote (known as an embryo after the first cell division) is markedly different from other human body cells. The findings of over 100 scientific papers since 1995 show at least 26 developmental changes in the early embryo between the initial sperm-egg binding through days 4-6 thereafter. *Id.* at 49-68. While other human cells sustain their cellular life through complex behaviors, they do not exhibit a higher level of organization transcending their individual cells, as do human zygotes and embryos. *See id.* at 48.³

A human embryo, even as a single cell, is a complete organism—a *whole* being that

³ For example, a well-known line of human body cells, known as “HeLa cells” after Henrietta Lacks, the woman from whom they were first obtained, can grow and multiply indefinitely, but they cannot organize themselves to produce clones of Henrietta Lacks. *See* Sarah Zielinski, *Cracking the Code of the Human Genome/ Henrietta Lacks’ ‘Immortal’ Cells*, Smithsonian.com (Jan. 22, 2010), <http://www.smithsonianmag.com/science-nature/henrietta-lacks-immortal-cells-6421299/?no-ist> (last visited 10/30/2017); REBECCA SKLOOT, *THE IMMORTAL LIFE OF HENRIETTA LACKS* 222, 237-38, 255, 289 (2010).

directs its own development, first as a single cell, then in groups of interacting cells, tissues and structures, all in a specific spatial and temporal sequence. *Id.* The process of self-directed development that begins at the fusion of sperm and egg plasma continues uninterrupted throughout the new organism's life, ending only with his or her demise.

Since the time of *Roe v. Wade* in 1973, scientific knowledge of embryonic development has made great strides, in part because *in vitro* fertilization procedures have enabled scientists to observe and document the earliest moments of embryonic development. For example, Stanford researchers have recorded and analyzed the early development of 100 early human embryos using time-lapse video microscopy. See Krista Conger, *Earlier, More Accurate Prediction of Embryo Survival Enabled by Research*, STANFORD NEWS & MED. (2010), <http://med.stanford.edu/news/all-news/2010/10/earlier-more-accurate-prediction-of-embryo-survival-enabled-by-research.html> (last visited Oct. 30, 2017); Blastocyst Day 3-6 Movie, https://embryology.med.unsw.edu.au/embryology/index.php/Blastocyst_Day_3-6_Movie (last visited Oct. 30, 2017). Their observations revealed that certain crucial events occur as the embryo progresses from one cell to four cells within the first two days after fertilization. See *id.*; see also Connie C. Wong et al., *Non-Invasive Imaging of Human Embryos Before Embryonic Genome Activation Predicts Development to the Blastocyst Stage*, 28 NAT. BIOTECHNOL. 1115, 1119, 1120 & fig. 6 (2010). The Stanford study also demonstrated that individual cells within the early embryo develop “autonomously.” Conger, *supra*. The development of an embryo, it turns out, is an autonomous,

self-directed process of the embryo; it is not driven or determined by the woman who carries the embryo.

Nobel Prize recipient Robert Edwards, who helped create the first IVF baby, has also published a survey of embryological research demonstrating that the early embryo is not just a clump of undifferentiated 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 in REPROD. BIOMED. ONLINE Tenth Anniversary Edition at 94 (2010), <http://edwards.elsevierresource.com/articles/initial-differentiation-blastomeres-4-cell-human-embryos-and-its-significance-early/fulltext> (last visited 10/31/2017). According to Edwards, the individual cells of the 4-cell embryo already appear to be differentiated into precursors of various parts of the new human being. Two of the cells will likely develop into the inner cell mass that plays a role in the development of the human body. A different cell develops into the trophoctoderm, which includes the placenta. And the fourth cell will likely develop into the germline. *Id.* at 97. Protein distributions among the cells can also be different as early as the 4-cell stage. *Id.* at 95.

Thus, recent embryological findings have dispelled the myth that the early human embryo is an inert or featureless bundle of cells. On the contrary, from the moment of fertilization, the earliest human embryo is already a dynamic, inter-connected system on its own self-directed developmental trajectory. “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.” Helen Pearson, *Your Destiny, From Day One*, 418

NATURE 14-15 (2002), available at <http://www.public.iastate.edu/~zool.433/Lectures/mammal.egg.assym.pdf> (last visited 10/30/17).

The truth of the findings described above does not depend on anyone's beliefs. As Dr. Condic, whose work was quoted above, 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.

Planned Parenthood of Ind. v. Comm'r, 794 F. Supp. 2d 892, 916-17 & 917 n.9 (S.D. Ind. 2011), *aff'd*, 699 F. 3d 962 (7th Cir. 2012), *cert. denied*, 2013 Lexis 413, 2013 WL 655224 (May 28, 2013) (finding Condic's testimony more persuasive than evidence presented by the opposing party). *See also* Video: Renee Reijo Pera, Ph.D., Professor of Obstetrics and Gynecology at Stanford Medical School and Director of the Center for Human Embryonic Stem Cell Research and Education at Stanford University, *What Makes Us Human?*, at 10:04 (Sept. 1, 2010), <https://www.youtube.com/watch?v=mkHhTT5Qqsg> (last visited Oct. 29, 2017) (noting that, based on her research, when asked "what makes us human," her answer "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").

C. The trial judge correctly found that Appellant had failed to plead facts from which a factfinder could conclude that the State is promoting religious dogma.

As described above, the information that Appellant objects to being offered is all well-substantiated scientific data. For example, Appellant objects to having to acknowledge receipt of a booklet containing facts about embryological development, including the statement: “The life of each human being begins at conception. Abortion will terminate the life of a separate, unique, living human being.” Second Amended Petition, ¶ 38, LF 50. As Amici have explained, that factual claim is substantiated by a wealth of embryological data from sources that have nothing to do with the abortion debate and certainly are not influenced by any religious or “pro-life” agenda. *See, e.g.*, Helen Pearson, *Your Destiny, From Day One*, 418 NATURE 14-15 (2002) (Internet link provided *supra*). Yet, according to Appellant, “It is [her] deeply held religious belief that [that statement] is merely a political and religious statement and not based on the best scientific understanding of the world.” Second Amended Petition, ¶ 62.

Appellant’s pleading that the State’s Informed Consent Booklet (“Booklet”) does not present the best scientific understanding of the world is a conclusion, and she fails to plead any scientific facts to support that conclusion. Many of Appellant’s averments suffer from that same defect (e.g., conclusory averments that the State is promoting religious beliefs in the statement just quoted above, ¶¶ 80.f, 88.f, 95, 96.f, 104, & 105, and averments as to the “only” alleged interests of the State in offering the Booklet and opportunities to view an ultrasound and/or hear the unborn’s heartbeat, ¶¶ 77, 85, 93, &

102). On a motion to dismiss, the courts do not accept as true mere conclusions in a petition; a plaintiff must plead facts that support such conclusions. *See Gardner v. Bank of America, N.A.*, 466 S.W.3d 642, 646 (Mo. App. 2015); *Bethman v. Fish*, 462 S.W.3d 895, 901 (Mo. App. 2015). “Conclusory allegations of fact and legal conclusions are not considered in determining whether a petition states a claim upon which relief may be granted.” *Willamette Indus., Inc. v. Clean Water Comm’n*, 34 S.W.3d 197, 200 (Mo. App. 2000).

Appellant fails to plead any empirical facts that bear on the creation of individual human life whatsoever, except for the erroneous claim that the umbilical cord makes an unborn human into mere tissue of the mother’s body.⁴ *See* Second Amended Petition, ¶ 114. Common sense indicates the need to plead facts to support the claim that the unborn human being is merely tissue of the mother’s body, for obviously, in approximately half of pregnancies, the unborn human is male from the completion of fertilization and develops with his own organs, while the mother is female.

⁴ As indicated by Robert G. Edwards & Christoph Hansis, *supra*, the placenta, which is the special organ that facilitates exchange of nutrients from the mother’s blood to the unborn infant’s blood and wastes from the infant’s blood to the mother’s, is formed from the cells of the infant, not the mother. Robert G. Edwards & Christoph Hansis, *supra*, at 94 (describing one cell of a 4-cell embryo forming the trophoctoderm, which includes the placenta). The umbilical cord connects the placenta, a part of the unborn human, to the rest of the unborn human.

The State's Booklet utilizes text that comes from two sister states' departments of health, two web sites sponsored by the American College of Obstetricians and Gynecologists ("ACOG"), and materials on fathers and child support from the Missouri Department of Health & Social Services. *See* LF 51. ACOG is not known to be a religious organization. All the other sources are governmental agencies. None of these sources is religious in nature. The text of the booklet is more than half devoted to the development of the unborn child from conception to birth in two-week intervals. LF 52-61. The booklet does not contain one quote from a clergyman or clergywoman of any church, synagogue, mosque, or temple. There is not one summary from or citation to any religion's scriptures or other canonical or sacred writings. There is no mention of an afterlife, a soul, spiritual life, prayer, or even moral principles of any sort. The Booklet complies with the Legislature's mandate to provide "printed materials . . . which describe the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments," including "information about brain and heart functions, the presence of external members and internal organs during the applicable stages of development and information on when the unborn child is viable." Mo. Rev. Stat. § 188.027.1(2). Nothing in the pages of the Booklet could be remotely construed as promoting religion.

In the context of the Booklet, the statement, "The life of each human being begins at conception," reads as a statement of biology, not a principle derived from politics, philosophy, or religion. Appellant pleads no facts to the contrary. *Cf. Planned Parenthood Minnesota, N. Dakota, S. Dakota v. Rounds*, 530 F.3d 724, 735-36 (8th Cir.

2008) (finding the disclosure “[t]hat the abortion will terminate the life of a whole, separate, unique, living human being” to be both “truthful and relevant” because “the biological sense in which the embryo or fetus is whole, separate, unique and living should be clear in context to a physician”).

Appellant does not—and cannot reasonably—argue that Mo. Rev. Stat. § 188.027’s requirements that a qualified professional offer her the “opportunity to view . . . an active ultrasound of the unborn child and hear the heartbeat of the unborn child if the heartbeat is audible” amounts to anything other than the opportunity to make an empirical observation of the unborn human for herself. Mo. Rev. Stat § 188.027.1(4). Offering such an opportunity by way of ultrasound images and sounds of the heartbeat of the infant allows the woman to participate in basic scientific inquiry. She is not prevented from asking any questions about what she is seeing or hearing. She is not expected to even hear, much less accept, anyone’s opinion or judgment about what she is seeing or hearing. There is simply nothing religious about these procedures.

The provision of the Booklet to Plaintiff and offering her the opportunity to see ultrasound images and hear (if available) the heartbeat of the young human being actually advances one of her avowed religious tenets: that her religious beliefs are to comport with the “best scientific understanding of the world.” Second Amended Petition, ¶ 27(b). In its Booklet, the State of Missouri offered her biological data that comported with the “best scientific understanding of the world” relating to pregnancy and the human being developing inside her. It is self-contradictory for her to complain of the State’s offers of scientific information on the putative ground that her religious beliefs require her to adhere

to scientific information. Instead of engaging the scientific facts about her pregnancy, she sought (and seeks on behalf of others) to be exempt from the statutory informed consent requirements on the ground that receiving such information is a violation of her religious beliefs. Second Amended Petition, *inter alia*, ¶¶ 72, 80, 88, & 96.

As the trial court astutely observed, if the courts were to accept Appellant's argument that the provision of facts is a violation of her religious freedom, then "state-mandated warning labels on cigarettes and alcohol would violate the religious freedom of anyone with a deeply held belief that smoking or drinking is not bad for one's health." LF 84. Neither the First Amendment nor Missouri's Religious Freedom Restoration Act empowers every individual to selectively insulate himself or herself from factual information that he or she finds inconvenient or distressing.

CONCLUSION

For all the reasons stated above, your Amici Curiae respectfully urge this Court to affirm the judgment of the Circuit Court of Cole County, Missouri in this case.

Respectfully submitted,

/s/ James S. Cole
James S. Cole, Mo Bar #26787
General Counsel, Missouri Right to Life
P. O. Box 651
Jefferson City, MO 65101
(573) 635-5110
jcole@wasingerdaming.com

Gerard A. Nieters, Esq., #34164
Nieters & Associates, P.C.
19 Osprey Way
O'Fallon, MO 63368

Thomas Brejcha, President and
Chief Counsel
Tom Olp, Senior Counsel and
Co-Executive Director
Rita Lowery Gitchell, Special Counsel
Sarah E. Pitlyk, Mo Bar #60670,
Special Counsel
THOMAS MORE SOCIETY,
A National Public Interest Law Firm
19 S. LaSalle St., Suite 603
Chicago, IL 60603
(312) 782-1680

Attorneys for Amici Curiae, Missouri
Right to Life and American Association
of Pro-Life Obstetricians & Gynecologists

Certification Pursuant to Rule 84.06(c)

The undersigned certifies that the foregoing brief complies with the limitations on length contained in Mo. Civ. Rule 84.06(b), in that it contains approximately 4,330 words.

/s/ James S. Cole

Certification Pursuant to Rule 84.06(g)

The undersigned certifies pursuant to Mo. Civ. Rule 84.06(g) that the foregoing brief has been submitted to the Court in Adobe Acrobat “.pdf” format by electronic filing; that prior to the submission thereof, the electronic version was scanned for viruses; and that the brief was found to be virus-free.

/s/ James S. Cole

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Brief Amici Curiae was submitted to the Court for provisional filing and service upon counsel of record for the parties through the Court's electronic filing and service program, and another copy was sent directly by email to counsel as listed below, all on the 10th day of November, 2017.

D. John Sauer, Esq.
First Assistant and Solicitor
Jason S. Dunkel
Assistant Attorney General
P. O. Box 861
St. Louis, MO 63188
John.Sauer@ago.mo.gov
Jason.Dunkel@ago.mo.gov

Attorneys for Respondents

Robert Schultz, Esq.
Ronald J. Eisenberg, Esq.
Schultz & Associates LLP
640 Cepi Drive, Suite A
Chesterfield, MO 63005
reisenberg@sl-lawyers.com

W. James Mac Naughton, Esq.
7 Freedom Marksboro Road
Newton, NJ 07860
wjm@wjmesq.com

Attorneys for Appellant

/s/ James S. Cole