

FILED

JAN 27 2012

COURT OF APPEALS
OF THE STATE OF
WASHINGTON
BY _____

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

Case Number 304060

LAWRENCE CRONIN
VIRGINIA CRONIN
RICHARD HANSON
MICHAEL WALTERS
DOUGLAS TURNER,
Appellants

v.

SPOKANE POLICE DEPARTMENT, CITY OF SPOKANE, WA
Respondents

BRIEF OF APPELLANTS

Petitioners: Cronin, Hanson, Walters and Turner
Address: 6716 E. Big Meadows Rd., Chattaroy, WA 99003

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Statement

Opening Statement

“Our Mission to serve the People...” Washington State Court of Appeals, Mission Statement

“We the People of the United States, in order to...establish Justice...and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution of the United States of America.” United States Constitution

The Police cannot protect the people, if they do not know who the people are. Are the courts able to provide justice to the people if they or the people themselves do not establish a legal definition of who people are.....

Who are “people”? This is the essential question of this case.

Assignment of Error and Relief Requested

The Superior Court erred in granting the Police/City’s Motion to Dismiss our Petition for a Writ of Mandamus based on the arguments that we do not have standing and that the court does not have a basis under Washington law to issue the writ requested. CP 159.

Relief Requested: Standing and we ask the Court to mandate that the Police enforce the Homicide Laws. We do not ask the Court to make a new law. We are asking for a “question of fact” to be resolved, that is not in the law: Who is a human being; Who is a person? Similar “facts” have been decided in other cases and is legally necessary here, under the Mandamus Laws.

Issues Pertaining to Assignment of Error

Issue Number 1: *The Court erred in its interpretation of the laws regarding standing. The Petitioners do have standing.*

- A. (1) It is legally questionable if the issue of standing can be separated from the Petition itself and its arguments when the individuals the Petitioners “stand for”--conceived children--have not been defined as human beings or persons; have not been defined as non-human beings or non-persons; and, have not been defined as property.

Is it legally probable that by granting standing to the Petitioners , one is also granting standing to “someone” who is being represented or “stood for”, in this case to human beings and persons? If this is so, then we argue that standing cannot be separated from our Petition for a Writ of Mandamus. If this is so, then our Petition must be heard in order for the issue of “standing” to be resolved. If these are not human beings and persons, we cannot be granted standing; if they are, we can.

- (2) The Court erred in that it failed to recognize the legal fact that there exists no law or legal decision regarding who a human being or person is when it denied the Petitioners standing.

As this “question of fact” has not been decided in either the homicide or abortion laws, this justifies, in order for justice itself to take place, a jury trial on who is a human being and who is a person. How can the issue of whether or not to grant standing to the Petitioners be resolved if the Police or Courts do not know who they are standing for—if they are people? As benefit to the Petitioners relates to the issue of standing, how is there no benefit to the Petitioners that conceived children live?

Issue number 1, A(1) and (2), are argued based primarily on the United States v. The Amistad, 40 U.S. 518 (1841).

- B.** The Court did not recognize the importance of “public import and urgency” in this case as it relates to thousands of alive, created children, who because of homicide, are never born, and on a daily basis are being killed at buildings in Spokane, Washington.

As this sound legal argument has justified standing in another similar case, does this argument not justify standing in this case which represents the ultimate legal issue: human freedom and life or death for thousands of persons in Spokane, Washington?

Issue number 1, B is argued based on the case of O'Connor v. Matzdorff, 76 Wn. 2d 589, 458 P.2d 154 (1969)

Issue Number 2: *The Court erred in deciding that it does not have a basis under Washington Law to issue the Writ requested. The Court does have a basis under Washington State Laws and Federal Laws to issue the Writ.*

The Court does have a basis under Washington Law, specifically under the Homicide/Manslaughter laws and under the Ninth, Tenth and Fourteenth Amendments to the Constitution and case law to issue the Writ requested. The Court erred in not recognizing this case as a “cognizable and recognized claim”.

Do not conceived children--human beings and persons--and the Petitioners representing them, have the most important “cognizable and recognized claim”?; a claim involving life and death and whether all men who are “created equal” have the right to “life, liberty and the pursuit of happiness” as guaranteed by the Constitution of our country? Doesn't this claim represent the

question of whether the founding ideas of our nation still secure the rights for its people, including the right of living people-- children-- to be born into it?

Issue number 2 is argued based primarily on the United States v. The Amistad, 40 U.S. 518 (1841),

Statement of the Case

This case is about the ongoing deaths of children within the City of Spokane, Washington, at Planned Parenthood and other locations. Five individual citizens claim standing to report such deaths to the Police Department and to utilize the Mandamus Law to mandate that the Police do their governmental duty: enforce the Homicide laws equally and equitably everywhere within the City of Spokane. CP 3, 55. The Petitioners ask for a trial on “the question of fact”: Who is a human being, who is a person?; as this fact has not been determined in the law or the courts and

”is essential to the determination of the motion and affecting the substantial rights of the parties, and upon the supposed truth of the allegation of which the application for the writ is based.” **RCW 7.16.210 Mandamus, Questions of fact, how determined (2010)**, CP 54.

Simply because human beings and persons have not been

defined in law, this fact does not give the Police the right to define “human being” and “person” and not enforce the Homicide laws. The laws, especially the Ninth Amendment to the Constitution and the State’s Manslaughter laws, mandate the opposite: the Police must assume that there is a human being present and must carry out their number one duty: to protect the Public Safety. CP 5-6; 15, 25-28.

The Petitioners originally requested that the Spokane Police enforce the homicide laws and do so equally and everywhere within the City of Spokane, as is their legal duty, including at Planned Parenthood. The Police refused to do so. The Petitioners filed a Petition for a Writ of Mandamus to mandate that the Police abide by their legal duty to enforce the homicide laws. CP 4-5.

We, the Petitioners, are no different than the “lawyers of New York” described below by John Q. Adams, trying to save not slaves, but unborn human beings, in the same condition and in possession of the same rights as the human beings Adams describes,

“These Spaniards had been sued in the courts of the state of New York by some of my clients, for alleged wrongs done to them on the high seas—for cruelty, in fact, so dreadful, that many of their number had actually perished under the treatment. These suites were commenced by lawyers of New York—men of character in their profession.... I should pronounce them the FRIENDS OF HUMAN NATURE—men who were unable to see these, their fellow men, in the condition of these unfortunate Africans, seized, imprisoned, helpless, friendless, without language to complain, without knowledge to understand their situation or the means of deliverance—I say they could not see human beings in this condition and not undertake to save them from slavery and death, if it was in their power—not by a violation of the laws, but by securing the execution of the laws in their favor.” United States v. The Amistad, 40 U.S. 518 (1841), John Q. Adams, Argument for the Defense, Pgs. 51-52, HeinOnline: <http://heinonline.org> , Gonzaga University Law School, Spokane, WA

Our reasons for this case. Response to Police/City.

We appreciate the Appeals Court hearing our case.

We respond to the repeated City/Police arguments that we are involved in a “moral, ethical or political debate”, or that our “allegations are legal conclusions and/or political opinions to which no response is required.” CP 47, 48, 53, 54, 102, 156; PR 15. We have in our Petition and all subsequent briefs focused only on the legal issues at hand. Our Petition and subsequent briefs state rationally our legal arguments. We have asked the

City/Police for their justifications for asserting that our effort is a non-legal one. We have not received a response. RP 15, CP 106. If our effort is a non-legal one, they should provide rational proof for this assertion. Ultimately, we wish not to accuse or confront the Police but to win them over. The Police raise the issue of “truth”, which we discuss in light of irrational or “non court-decisions” affecting both us and the City/Police. CP 48, 54. 10-11, 14, 22-25.

We are five individuals, from four families in Spokane. We are of different political persuasions and different religious backgrounds. We decided we could no longer stand by and allow children to be killed in our society and continue to do nothing, to be silent. We are basing our actions not on polarization or confrontation, but on the same human reason and natural law that founded our nation. It is clear to us that children inside of their mothers are human beings from conception; no different than children outside of their mothers. One can search the scientific literature for a single article proving that a piece of property exists at conception, which at some later point becomes a human being. It won't be found. The exact opposite will be found. CP 20-21.

Although we have decided to act from a basis of reason and not polarization, we realize that this is not the cultural environment in which we are filing this case. We have been told by a respected law professor that “no lawyer in his right mind would take such a case”, as that individual would be “labeled”, ostracized from his or her profession and their careers ruined for doing so. A prominent attorney for The Thomas More Society, a well-respected national legal organization has acknowledged that he has been so labeled. Thomas More Society, 29 South LaSalle St., Chicago, IL, 60603, www.thomasmoresociety.org, last visited on January 9, 2012.

The Courts, the Government and the rights of the people, including those not born yet, are not dependent on legal counsel.

Throughout our history as a nation, many people of different backgrounds, have participated in founding and changing our country. We argue our case, based on the faith and hope that our country can right a terrible wrong. Our only desire is that you hear our case based on legal and rational arguments for “JUSTICE” sake. RP 9. United States v. The Amistad, 40 U.S. 518 (1841), John Q. Adams opening argument. Pgs. 3-5, HeinOnline <http://heinonline.org>.

We have not taken this action lightly. Because we have faith in our court system, and, as the Court is where this issue originated, this is where it must be justly resolved. Ultimately, we hope to convince the Court through the rational, and legally sound arguments that follow, based on the values expressed in the Declaration of Independence and the Constitution. We believe that this is what justice is all about.

Argument

Issue #1: *The Court erred in its interpretation of the laws regarding standing. CP 159.*

Superior Court Judge Moreno made errors in her granting the motion to Dismiss the Petition. We quote from her decision,

“Again, the question becomes whether or not there is a legal duty here. Frankly, I don’t have the authority to act on this whatsoever. The law is the law. I don’t make the law. The courts have nothing to do with making the law. We interpret the law, we apply the law, but we don’t make the law. So I don’t have a choice in the matter but to deny the petition for the writ and grant the dismissal.” PR 20.

We agree with this statement of the Court in so far as the laws that we are talking about actually exist. Our Petition argues that no such law does exist in regards to the issue of how a human

being is defined. There is no law or legal ruling on: who a human being or a person is. This fact was not determined by Roe v. Wade. Roe v. Wade, 410 U.S. 113, 159-160, 93 S.Ct. 705, 730. (1973). Our Petition case is based upon the answer to this one question. CP 10.

We agree with the Judge that her role cannot be to “make a new law”, or “interpret” a law that does not exist. If a fact is unclear and affects the truth of the allegations upon which the writ is based then the people should be given the opportunity to resolve the question of fact--who is a human being, who is a person?

Mandamus, RCW 7.16.210 (2010) This fact has not as yet been determined in law, but must be, so that the Homicide Laws can be enforced by the Police equally, everywhere. The Superior Court does have a choice as clearly stated in the Mandamus Act, to call upon a jury to decide this question of fact: Who is a human being, who is a person? CP 4-6, 54, 56-57, 106, 108-109. Such a choice has existed before and was acted upon by the Supreme Court.

A(1) and (2) The Amistad Case

The case which most directly relates to our appeal and which we will discuss to justify our positions is the case of United States v. The Amistad. This case contains strikingly similar legal issues to the ones which we have put forth in our Petition and which relate to this present action. We opened our October 28th Hearing with a reference to the Amistad case, the “slaves” in this case being defended by former President John Quincy Adams and Roger Baldwin. RP 9.

We take Mr. Baldwin’s opening statement as our own, with the noted changes reflective of our case in bold print,

“This case is not only one of deep interest in itself, as affecting the destiny of the unfortunate Africans (**unborn**), whom I (**we**) represent, but it involves considerations deeply affecting our national character in the eyes of the whole civilized world, as well as questions of power on the part of the government of the United States, which are regarded with anxiety and alarm by a large portion of our citizens. It presents, for the first time, the question whether the government, which was established for the promotion of JUSTICE, which was founded on the great principles of the Revolution, as proclaimed in the Declaration of Independence, can, consistently with the genius of our institutions, become a party to proceedings for the enslavement (**homicide**) of human beings cast (**conceived**) upon our shores, and found in the condition of freemen within the territorial limits of a FREE AND SOVEREIGN STATE?” United States v. The Amistad, Roger Baldwin, argument for the Defense, Pg. 4, HeinOnline: <http://heinonline.org> .

“The Amistad” was a Spanish ship that sailed from Cuba to the United States with ‘slaves’ from Africa. The ship and the slaves were argued to be the property of Spain. This case was first argued in the District Court of Connecticut. The United States Government, represented by President Van Buren and the Attorney General of the U.S. agreed with Spain and were prepared to return the Amistad slaves to Spain or Cuba, where the ship originated.

Returning to Judge Moreno’s opinion,

“.....before we would even get to the heart of the facts or to the meat of the matter, an individual has to have standing.” PR 19.

There are two legal “catch-22’s” related to the issue of standing:

1.) How can anyone obtain standing when the Court has not defined who a human being or person is--either before or after birth? Standing was granted in the Amistad case without a definition that the individuals so granted were human. Their Counsel was granted standing as well. We ask for the same Court decision here as was granted in Amistad;

2.) If individuals, in our case, unborn children, must be defined as human beings or persons prior to Counsel/Petitioners being

granted standing, then how can standing be granted unless the Petition for a Writ is heard first? As we note in our Petition, “The Petitioners have Standing by virtue of the preceeding and other arguments embodied within this Petition.” CP 4.

If “standing” itself is legally involved in defining who is a human being, who is a person, then logically and rationally, this issue needs to be decided prior to the issue of standing, or standing needs to be granted conditionally so that all of the issues in the Petition, including those relating to standing, can be heard. From this legal perspective, it can be argued that our entire case is about standing and cannot be separated from the arguments of our Petition.

As evidence of this point, we turn to Dred Scott v. Sandford, 60 U.S.393(1857), as discussed in our Petition: Chief Justice Taney,

“And if the plaintiff claims a right to sue in a Circuit Court of the United Stateshe must distinctly aver in his pleading that they are citizens of different States; and he cannot maintain his suit without showing that fact in the pleadings This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet and decide it.....The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as

such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution..... We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States." Dred Scott v. Sandford, 60 U.S. 393, 403-405, (1856), CP 11-12.

If Dred Scott, a slave, a non-human, non-citizen and not a person, but in legal fact, property, was pronounced to have no "standing" to bring his case on pages 4-5 of the Supreme Court's decision, why did the Court continue with their review of the case for a total of 99 pages? Based on this fact, we argue that legally-- he and his attorneys were granted "standing"--or that the entire case was fully heard prior to a decision on the point of "standing", as it was so legally interwoven with the question of whether he was a "citizen" or "person". No other rationale makes sense.

Returning to the case of the Amistad, fifty-four Africans were on the Amistad Schooner, including three female children. None of them were legally recognized as persons or human beings by our government, yet their attorneys were granted standing to defend them and to represent them in the District Court.

“After evidence had been given by the parties, and all the documents of the vessel and cargo, with the alleged passports, and the clearance from Havana had been produced the District Court made a decree, by which all claims to salvage of the negroes were rejected,the claims of Ruiz and Montez being included in the claim of the Spanish minister, and of the minister of Spain, to the negroes as slaves, or to have them delivered to the Spanish minister, under the treaty, to be sent to Cuba, were rejected.....” United States v. The Amistad, 40 U.S. 518 at 518, (1841)

This decision gave non-human “slaves” standing and it gave standing to their attorneys. Even though “Respondents”, these slaves were in legal fact granted “standing”. If this was not true, they would have been turned over to the libellants as property, as was eventually done with the ship and its cargo. Property cannot be granted standing.

These ‘slaves’ were considered property by the U.S. Government. This case was heard 18 years before Dred Scott would be told that he was not a Citizen and was not a person. It was 26 years before slavery was abolished by the Thirteenth Amendment. United States Constitution, Amendment XIII. The Africans were property, not people, yet all, including the legally defined non-human children, were represented by others who were granted standing by the Court as noted above. By rejecting claims on them as cargo or property, District Court Judge Judson was

granting "standing" to possibly free individuals, although not legally defined persons or human beings. And he granted standing to those who represented them.

Two related cases are important in this argument. John Q. Adams refers to these in Amistad. Pg. 7 herein. Two of the Amistad "slaves", Cinque and Fulah, were granted standing to file assault and false imprisonment suits against their captors: Cinque v. Montes and Fulah v. Ruiz, in the New York Court of Common Pleas in the Courtroom of Judge Inglis. They were filed in October of 1839 before the Amistad case itself was decided by the Supreme Court in 1841. According to reporter documentation at the time, the new Spanish minister to the United States, Pedro Argaiz, angrily protested the arrest of the two Spanish citizens,

"When, in what country, at what period of history has a slave been considered as enjoying civil rights?" Stamped With Glory: Lewis Tappan and the Africans of the Amistad by Doug Linder, Law Professor, University of Missouri-Kansas City, 2000.¹

Judge Inglis stated in his ruling,

"The question of bail is a preliminary one, and it is customary and proper to avoid as much as possible, the prejudging at this stage of the proceedings, of these matters connected with the merits of the case, **which will subsequently be submitted to the court and jury**.If the affidavits on the part of the plaintiff are positive and precise as to the injury inflicted, the defendants will not be discharged upon counter affidavits, **denying the right of action** except in some extraordinary case, where a summary

interposition would be justified by its appearing, beyond all doubt, on the face of the papers, that there could be no recovery on the **trial. The general rule, however, is, that a judge will not try the merits of the cause at chambers on affidavits....**

I cannot undertake to decide the question, whether the plaintiff is, or is not, the slave of Ruiz....The decision of this point in favor of the defendant would at once take away the whole substratum of the plaintiff's action, as a slave cannot have any remedies by civil action against his master. I pass by, therefore, without any further notice, those grave and difficult questions, both of **law and fact**, which I presume will hereafter afford ample room for the ingenuity and eloquence of counsel..... I assume, therefore, upon this interlocutory proceeding, that the plaintiff does not labor under any such legal disability as will take away his right of action against the defendant for a personal injury, without reference to the disputed point as to the relations of master and slave, **which involves the merits of the whole controversy.** The points, then, that remain to be considered, are, whether the affidavits show that the defendants have invaded the personal rights of the plaintiffs ;”

Judge Inglis delivered his decision,

“As respects the question of jurisdiction, there can be no doubt **that our courts have a right to take cognizance**, in their discretion, of injuries of this kind, even when committed by foreigners against foreigners on board of a foreign vessel, the forum of such causes is transitory, and follows the person of the defendant where the plaintiff can find him.... In this case, on the other hand, it would not be a proper exercise of discretion to refuse the entertaining of this action and to drive the plaintiff who claims to be in no way amenable to the Spanish laws, to seek a doubtful remedy, from the courts of a country within the jurisdiction of which, it is not probable that he will ever again voluntarily be found.”(**our emphasis**) Verbatim report, *Morning Courier and New York Enquirer*, October 26, 1839.²

A trial would take place for these two “non-human” plaintiffs.

This was also a “cognizable” case, as noted in Judge Inglis’s words. We compare this decision to Judge Moreno’s statement,

“The second issue that Mr. Treppiedi raises is whether or not there’s a cognizable or recognized claim here.” RP 20.

The newspapers of the time saw the “cognizance” and importance of this case also:

“Strange, that justice cannot be sought in a court of law for oppressed and imprisoned strangers among us, without incurring censure....the real object of the prosecution, was not to recover damages, but to bring *before a jury* the question of the right of these Africans to liberty.....That their testimony is admissible in court has been decided by Judge Inglis.”(original italics). *Pennsylvania Freeman*, from the *New Haven Record*, The Africans, Issue 10, November 14, 1839, in Slavery and Anti-Slavery, on-line legal resource, Gonzaga University Law Library.¹

“By this decision, which establishes that the Africans claimed as slavescan hold the slaveholders to bail, or, for want thereof, can imprison them and maintain suits for false imprisonment and assault and battery, a great point has been gained, whatever may be the issue of the trials.” *The British Emancipator: Under the Sanction of the Central Negro Emancipation Committee* (London, England), Wednesday, December 11, 1839; pg. 324, in Slavery and Anti-Slavery, on-line legal resource. British Library, Gonzaga University Law Library.¹

Cinque and Fulah and their attorneys were granted standing,

while not being defined as human beings- persons by the courts.

¹Newspaper accounts are quoted in this argument as secondary sources to the primary source quoting Judge Inglis, as the court records have not been discovered to date. Exhaustive research was done to locate these cases: New York City Public Library Archives, NYC, NY; New York State Law Library and Archives, Albany, NY; Harvard Law Library, Cambridge, MA and the New York County Clerk's Division of Old Records, NYC, NY, preceded by research here at the Spokane County Law Library and Gonzaga Law Library. We know they exist because of John Q. Adam’s reference to them, these and other documented accounts. We cite these to verify our primary source below.

²This is the primary source, Judge Inglis’s decision reported verbatim by a court reporter, who in 1839 documented his words and ruling. No standard court recording, indexing or documentation system existed at that time in our country. This would not be established until the 1870s. In 1839 this was one means of documenting and recording a case.

The Amistad case and the above two cases represent the highest legal truth and the essence of our case in regards to standing. If non-humans who land upon our shores cannot be tried and “executed” (John Q. Adams, below), how is it “JUSTICE” that human beings from conception can be so executed? RP 9. “Slaves” and “non-human” children and their Counsel were granted standing in these three cases. We argue from this, that there is no reason to deny us standing and the hearing of our Petition, given that unborn children have **not been defined by our government as non-human beings or non-persons, nor as property**, as the “slaves” had been.

The Government, in the form of the officials, the Police, have a duty under the Homicide and Manslaughter laws to err on the side of protecting human life. This duty is required of all of us as defined in these laws. This rationale, that they are human beings until proven otherwise, as Constitutionally based on the Ninth, Tenth and Fourteenth Amendments, is discussed in our Petition. CP 5-6, 8-9, 13-15, 19, 26, 28-35, 61-62. And it has been successfully argued prior to this by Attorney Roger Baldwin in Amistad (discussed below).

Granting standing to us in this case will not significantly change the issue of standing for any other case, other than perhaps those involving the unborn. And we believe that even that may be questionable. The Amistad case did not significantly change the status of the slaves or Africans in the United States. The Civil War had to be fought and won in order to accomplish that.

“Benefit” as justification for Standing

Judge Moreno,

“And in applying for a writ of mandamus, a person or a petitioner or a plaintiff has standing to bring that writ of mandamus when they have some beneficial interest in the duty that’s being asserted.” RP 19.

As per the Standing statute: we the Petitioners were aggrieved and prejudiced by the Police refusal to enforce the homicide laws, thereby allowing the deaths of innocent children at locations within the City of Spokane, WA, including at Planned Parenthood. We are as equal to and as aggrieved as any other citizens who report ongoing homicides, which homicides effect the safety and security of its citizens, and cause harm and hurt to the present and future life of the citizens and the community. The interests of the Petitioners are among those that the agency, the Spokane Police Department is required to consider when it

refused to enforce the Homicide laws equally in all locations and with all citizens within the City of Spokane. **RCW 34.05.530 (2010) Standing**, CP 4, 25-26, 55, 59-61, 107-108; PR 10, 15.

We claim the same benefits to ourselves and to the community as anyone else who is trying to stop homicides in our community.

What is the benefit to a community to recognize and stop homicides? It seems to us an odd question to ask. CP, Ibid.

We claim the same benefits as John Quincy Adams, the other attorneys and supporters of the freed African individuals who were not killed by being sent back to Spain or Cuba, as they surely would have been.

“One moment they are viewed as merchandise, and the next as persons. The Spanish minister, the Secretary of State, and every one who has had anything to do with the case, all have run into these absurdities. These demands are utterly inconsistent. First, they are demanded as persons, as the subjects of Spain, to be delivered up as criminals, to be tried for their lives, and liable to be executed on the gibbet. Then they are demanded as chattels, the same as so many bags of coffee, or bales of cotton, belonging to owners, who have a right to be indemnified for any injury to their property.” United States v. The Amistad, John Q. Adams, argument for the Defense, page 17, HeinOnline: <http://heinonline.org>

The attorneys in Amistad were granted standing to protect three female children, among the adults, who were not defined as human beings, but property. We claim the same benefit to saving

children's lives in Spokane, who have not been defined as property, as these three children were granted by the two lower courts and the Supreme Court in Amistad.

In our Petition and other briefs, we have clearly discussed the benefits to the Petitioners. CP, Ibid. Judge Moreno did not discuss, respond to, nor dispute our arguments. In her decision she did not state how we did not have benefit, nor state a justification for how we did not attain standing. RP 18-21. How does one prove benefit for the survival and births of thousands of people? How does one prove the loss of untold benefits to this community and our country, when we kill people before they even get here? We argue that this "benefit" is as self-evident as the self-evident statement, "All men are created equal". Must we ask Thomas Jefferson to defend why it is a benefit that all men are created or that once created, they are equal? It is self-evident that there are benefits to being born, after being created, in the first place. One is alive after being created. CP 28-31. Are not the benefits of living vs. the reality of dying self-evident? Declaration of Independence, paragraph 2, (1776).

Our benefit is the same as other people coming to the Police and having standing to mandate that the Police stop homicides in our

community. We compared our situation to that of others who know that there are dead bodies at the Spokane River, report this to the Police and ask the Police to enforce the Homicide Laws . CP 107. We have provided other arguments for benefit to ourselves, yet we also say, it is self-evident why people should be allowed to live. People must step forward, and “stand” for innocent people whose lives are being ended. Is this not what Thomas Jefferson and the Founders did themselves—they took a “stand”-- and offered their lives in order that all men who are created equal may grasp their inalienable right to life. They “stood up” to the King, who was killing them. CP 29-31.

B. O'Connor v. Matzdorff, 76 Wn. 2d 589, 458 P.2d 154 (1969)

This Writ of Mandamus was filed by a woman who was trying to recover damages from a party but did not have the fees to file the complaint in court. She and her attorney filed a writ of mandamus against the court to proceed in forma pauperis, as her legal action had been denied to her by the court for lack of the fee.

We refer the Court to our argument regarding this case's application here as stated in our ADDENDUM TO: REPLY TO RESPONSE TO PETITION....”. CP 59-61.

This decision granted standing to a poor person because it

“involves very deeply the interests of the public and in particular those of a regrettably large segment of our society. The right of the poor to obtain redress for wrongs, and to defend themselves when sued by the more affluent, is presently of nationwide concern,”CP, Ibid.

We argue that the deaths of over 40,000 individuals from homicide via abortion in Spokane, Washington since 1973, constitutes similar rationale as does the case of this poor woman seeking a Writ of Mandamus to recover damages from another party. CP 5. This woman and her Counsel, Mr. Ehlert, were given standing not just for her, but because in legal reality, she and her Counsel were “standing” for all similar individuals:

“We are convinced that the question presented in this case is of such significant public import and urgency that we are justified in assuming original jurisdiction.” CP 60.

The Petitioners similarly “stand” for individuals who are unseen, poor and destitute, including the worst type of destitution, to be unwanted. They have no money, no way to speak for themselves, no attorneys and no way to protect themselves. We argue that this constitutes the highest “public import and urgency” and is “presently of nationwide concern.” CP, Ibid., CP 27 “Gallup Poll”.

We discuss standing and benefits **RCW 34.05.530 (2010)** at length in our Petition, CP 4; in our Reply to Response to Petition, CP 55; , in the Addendum to Reply, CP 59-61; in our Response to: Motion to Dismiss CP 106-109; and at the Hearing. RP 8-13.

We note that both the Police/City and the Court were silent, did not discuss or comment on, our justifications for standing based on benefits to the Petitioners. PR 5, 19-20. Finally, we must express our opinion that there is something truly unseemly and disturbing about having to justify the benefits of allowing living children to be born into this world.

Issue #2: *The Court erred in deciding that it does not have a basis under Washington Law to issue the Writ requested.* CP 159.

Judge Moreno states as to "...whether or not there's a cognizable or recognized claim here." RP 20. We argue as noted above re: "cognizable" claim, compared to Amistad slaves, Cinque and Fulah. We argue forcefully and rationally that the Court here in Spokane needs to look further, as did the Amistad lawyers and the Supreme Court who rendered their decision, which decision was a direct result of looking further.

Judge Moreno states the question: "Do they[Police] have a duty to enforce the homicide laws against those who provide abortion services?" RP 20.

The answer to this question lies in a statement made by Abraham Lincoln in 1854,

"But if a Negro is a man, is it not to that extent, a total destruction of self-government, to say that he too shall not govern himself." October, 16, 1854: Paul Angle and Earl Miers, The Living Lincoln, pgs. 169-170 (1992). CP 30.

If abortion is the killing of a human being, then it is equal to homicide. Our petition must have merit. CP 20. But the Court goes no further than stating ... "abortions are legal." RP 20. Are they?..... According to Roe, abortions cannot be legal if they are the killing of persons. CP 13. How can we know whether we are committing homicide or not? Judge Moreno decided she could not go beyond "abortions are legal" to seek the facts and the truth regarding this most important question, which would be based upon the answer to the question: Who is a human being; Who is a person? This was the same argument Stephen Douglas used with Lincoln. Douglas "didn't care" whether "Negroes" were "men" or not. They can be killed because Negroes were slaves. Slavery was legal. Lincoln repeatedly pressed Douglas to look further. CP 29-31, 35. "Speech at Cooper Institute", The Living Lincoln, 319.

In her decision, the Judge states that she need look no further,

“Frankly, I don’t have the authority to act on this whatsoever. The law is the law....I don’t have a choice in the matter...”. RP 20.

Judge Moreno is here discussing the core elements of our Petition, not just standing. CP 4-6 RP, Ibid. The Court does not even consider that it has a choice: that the question needs to be considered via a jury trial, as the fact--who human beings and persons are--does not exist in the law or case decisions. The Court states that it can do nothing other than follow the law on Abortion. This is the Judge’s justification. There is nothing else she, the Judge, can do. The Court here made an error. The Law on Mandamus calls for a jury trial on questions of fact, not decided in law. In order that justice might be served, the Court must be willing to look further--into the facts, as was done in the Amistad case. CP 54.

The Amistad Court had a similar dilemma and the Court had a similar decision to make, whether to look further or not, into the fact: were these individuals slaves or free men. The Spanish presented the argument that it was not necessary to prove that these individuals were slaves; according to the law they quoted. It

was enough that the Spanish government said that they were. The U.S. Government and the President of the United States, Martin Van Buren, agreed with this position: they were property and slaves. United States v. The Amistad, argument for the Defense, John Q. Adams, Page 71-72, HeinOnline: <http://heinonline.org>

John Quincy Adams took a very different legal view and the only course that could provide justice, which the Supreme Court ultimately agreed with. Here he intensely discusses whether the Court must accept the word, in the form of a paper document, of the Governor General of Cuba as proof that these individuals were slaves or not. As the entire case was based on, are these slaves or free men, he wanted the Court to allow discussion on the question of fact as to whether these individuals were in fact slaves.

“There is the basis of his opinion; that the comity of nations requires, that such a paper, signed by the Governor General of Cuba, is conclusive to all the world as a title to property. If the life and liberty of men depends on any question arising out of these papers, neither the courts of this country nor of any other can examine the subject, or go behind this paper. In point of fact, the voyage of the Amistad, for which these papers were given, was but the continuation of the voyage of the slave trader, and marked

with the horrible features of the middle passage. That is the fact in the case, but this government and the courts of this country cannot notice that fact, because they must not go behind that document. The Executive may send the men to Cuba, to be sold as slaves, to be put to death, to be burnt at the stake, but they must not go behind this document, to inquire into any facts of the case. That is the essence of the whole argument of the late Attorney-General.” United States v. The Amistad, argument for the Defense, John Q. Adams, Page 71-72, HeinOnline: <http://heinonline.org>

Arguing against this, the Attorney General and U.S. President,

“But if this court will look behind this paper, is the evidence sufficient to contradict it?The question is not, as to the impression we may derive from the evidence; but how far is it sufficient to justify us in declaring a fact, in direct contradiction to such an official declaration.” United States v. The Amistad, U.S.40, Attorney General Gilpin for the United States Government, 545-546.

The Court, contrary to the Attorney General’s argument, did allow the question of the facts. As a result of discovering the fact that the Africans were not slaves, the Supreme Court ultimately freed the Amistad “slaves”— men, women and children. They would not have done so had they not been open to discussing the question of fact. We are seeking an answer to a “question of fact”: who is a human being, who is a person, which question deserves an honest answer in our courts, just as it did in the Amistad. **RCW 7.16.210 Questions of fact, how determined.**

Justice Story states in his decision for the Supreme Court's majority,

"This posture of the facts would seem, of itself, to put an end to the whole inquiry upon the merits. **But it is argued, on behalf of the United States, that the ship, and cargo, and negroes were duly documented as belonging to Spanish subjects, and this Court have no right to look behind these documents;** that full faith and credit is to be given to them; and that they are to be held conclusive evidence in this cause, even although it should be established by the most satisfactory proofs, that they have been obtained by the grossest frauds and impositions upon the constituted authorities of Spain. **To this argument we can, in no wise, assent.** There is nothing in the treaty which justifies or sustains the argument."**(our emphasis)** United States v. The Amistad, U.S. 40 at 594.

Just as in the Amistad case, we argue that there is nothing in the arguments of the City/Police which justifies not deciding the fact, not yet decided in law, of who a human being is. The Amistad case makes a powerful argument and sets a precedent for doing so-- for taking the only course of justice possible—the one that John Quincy Adams and the Supreme Court took.

The Supreme Court concluded,

"It is also a most important consideration in the present case, which ought not to be lost sight of, that, supposing these African negroes not to be slaves, but kidnapped, and free negroes, the treaty with Spain cannot be obligatory upon them; and the United States are bound to respect their rights as much as those of Spanish subjects. The conflict of rights between the parties under such circumstances, becomes positive and inevitable, and must be decided upon the eternal principles of justice and international

law..... A fortiori, the doctrine must apply where human life and human liberty are in issue; and constitute the very essence of the controversy.....the treaty with Spain never could have intended to take away the equal rights of all foreigners who should contest their claims before any of our courts to equal justice.....” (our emphasis) United States v. The Amistad, U.S. 40, 595-596. RP 12.

This is a profoundly powerful legal decision. It is similar to decisions in Cooper v. Aaron, 358 U.S. 1(1958) and Brown v. Board of Education of Topeka, 347 U. S. 483 (1954) related to the issue of segregation. CP 61-62, 108-109. Neither the “Treaty with Spain” nor the “separate but equal” laws can succeed in usurping or taking away a person’s rights, including “human life and human liberty”. Equal rights and equal justice cannot be excluded by any law, whether it be a treaty, a segregation law based on “separate but equal”, or abortion laws which are in contradiction to the laws which provide equal rights and justice. “Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking action....” Cooper v. Aaron, CP 62

The City’s argument that Mandamus cannot be used “where there is discretion” cannot logically nor legally outweigh these Supreme Court arguments. As we have argued, there is no discretion required “in enforcing the homicide laws everywhere and equally with all human beings and persons”. CP 5,17, 56, 63, 108.

We compare these legal decisions to our present one in which the Court has decided not to look into the fact of who a human being or person is. Looking further into the matter was accomplished in the above cases. "Questions of fact" were resolved. Dred Scott also resolved a question of fact, albeit "erroneously". CP 12. Roe admits that if this question of fact is decided for "personhood", "the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment." CP 13.

This question may also be at the heart of the matter of "standing", a point made by Adams,

"And as to the other idea, that these people should have an opportunity to prove their freedom in Cuba, how could that be credited as a motive, when it is apparent that, by sending them back in the capacity of slaves, they would be deprived of all power to give evidence at all in regard to their freedom!" United States v. The Amistad, argument for the Defense, John Q. Adams, page 66, HeinOnline: <http://heinonline.org>

According to Judge Moreno, because homicide is legal by another name, such as abortion, it is legal; therefore it follows, that we can look no further into the facts. "...the city is not violating any duty,

because they're following the law." RP 20. The Court fails to recognize that there is no law that states who a human being is, who a person is, which is a necessary fact to be determined for the equal enforcement of these laws, according to the Fourteenth Amendment. CP 13-15.

This is the major focus of our Petition and briefs. CP 1-35, 53, 54,56-57, 59-61, 107-109; PR 11. We argue in the Petition that Roe is irrational: this has been demonstrated by subsequent Supreme Court decisions which have dismantled Roe's logic and by the Roe Court's statement itself that they were not in a position to resolve the question of when life begins nor to speculate as to the answer. CP 10, 13, 53. We apply John Quincy Adams' statements and emotions regarding the Amistad slaves to Roe,

"One moment they are viewed as merchandise, and the next as persons.....all have run into these absurdities. These demands are utterly inconsistent." United States v. The Amistad, John Q. Adams, argument for the Defense, page 17, HeinOnline: <http://heinonline.org> CP 18.

"The moment you come, to the Declaration of Independence, that every man has a right to life and liberty, an inalienable right, this case is decided. I ask nothing more in behalf of these unfortunate men, than this Declaration..... Slavery acknowledged an evil, and the inveteracy of its abuse urged as an unanswerable argument for its perpetuity: the best of actions imputed to the worst of motives, and a bluster of mental energy to shelter a national crime behind a barrier of national independence." United States v. The Amistad, argument for the Defense, John Q. Adams, pages 89 and 110-111. HeinOnline: <http://heinonline.org>

Abraham Lincoln said essentially the same thing, that there is no problem with slavery(abortion) if an individual is property. Ibid, The Living Lincoln, pg. 169. CP 35. The difference between slavery and abortion is the form a person's Death takes..... nothing else. They are the same.

The most eloquent and powerful argument in Amistad was made by Roger Baldwin, who with John Quincy Adams , was an attorney for the Amistad "slaves". He argued that it was the *Government's responsibility to prove* that the Amistad Africans were not freemen but were property. The burden of proof lies with the Government:

"The Africans, when found by Lieutenant Gedney, were in a free State, where all men are presumed to be free, and were in the actual condition of freemen. The burden of proof, therefore, rests on those who assert them to be slaves. 23 U.S. 10 Wheat. 66; 2 Mason 459 When they call on the Courts of the United States to reduce to slavery men who are apparently free, they must show some law, having force in the place where they were taken, which makes them slaves,.....", and,

Mr. Baldwin made this incisive statement, "The Constitution as it now stands will be searched in vain for an expression recognizing human beings as merchandise or legitimate subjects of commerce", United States v. The Amistad, Roger Baldwin, argument for the Defense, pages 25 and 21, HeinOnline: <http://heinonline.org>

"These men were found free, and they cannot now be decreed to be slaves, but by making them slaves. By what authority will this court undertake to do this ?" United States v. The Amistad, John Q. Adams, argument for the Defense, Page 73-74, HeinOnline: <http://heinonline.org>

We argue as passionately as Baldwin and Adams. *The*
Petitioners argue that as a legal fact: Human beings and
persons exist from the moment of conception and have all
rights granted to them under the Constitution, including the
right to life. We argue this as no court or law has taken these
rights from the people and no legal definition of human beings or
persons exists in the courts or the law. What we argue, follows
from the Constitution, the Ninth, Tenth and Fourteenth
Amendments. United States Constitution and U.S. Constitution,
Amendments IX, X and IV. CP 9, 13-15.

All children who have not yet been born are free human beings.
What law exists which makes these children non-human, which
makes them property? It is an undisputed scientific fact that every
single human being's life, without exception, begins at conception.
CP 20-22. Which law, presently in existence, denies our being
human beings or persons until some point after conception? We
can find no such law. These children, equal to each of us, were
created from their moment of conception as human beings, just as
each of us were. We ask what Adams asked: **by what authority**
does the Government undertake to decree them to not be

human? No law or court in our great country has done so. By what authority then, do the Police have, as government officials, to not enforce the homicide laws? This is the argument presented in our Petition, based on the Constitution and its amendments, especially the Ninth, Tenth and Fourteenth. CP 1-35, 15.

Our statement above, the truth of which cannot be disputed in fact or in law, unless a jury trial is held on the question or until a court legally defines a human being and person, means abortion is illegal and unconstitutional. Abortion is homicide and cannot therefore be legal. The Police and the Government cannot, in pretense to some understood legal definitions of human beings and persons, which do not in fact exist, refuse to enforce the homicide laws equally and in every geographic location. CP 20.

If one looks further, as the Supreme Court has done in Amistad, Brown v. Board of Education, Cooper v. Aaron and other cases, it becomes clear that Judge Moreno's statement, "...the fact of the matter is that abortions are legal in the State of Washington." cannot take legal precedence over the rights of the citizens and that abortions are illegal in the State of Washington, as they are homicides of human beings and persons. Pg. 32 herein; RP 20.

In the Utah Supreme Court last month, a question of fact similar to our own, was allowed to proceed and was decided. This case involved an in-utero wrongful death suit filed in United States Federal District Court. Chief Justice Durham for the majority (four of five judges),

“[P5] The United States filed a motion in limine to exclude from trial all evidence regarding the plaintiffs’ damages for wrongful death. In response, the plaintiffs filed a motion to certify the following question to the Utah Supreme Court: “Does Utah Code Ann. § 78-11-6 allow a claim to be made for the wrongful death of an unborn child?” Noting that the plaintiffs’ proposed question for certification is dispositive of the motion in limine and that there is no controlling Utah law, the federal district court granted the plaintiffs’ motion to certify. We have jurisdiction pursuant to Utah Code section 78-A-3-102(1).”

“[P10] In my view, a plain language reading reveals that the term “minor child,” as used in this statute, includes an unborn child. The statute does not itself define the term “minor child,” but in general usage the term “child” may refer to a young person, a baby, or a fetus. BLACK’S LAW DICTIONARY 271 (9th ed. 2009)..... The term “minor,” then, may refer to the period from conception to the age of majority, thereby encompassing an unborn child.....”

“CONCLUSION

[P14] Utah Code section 78-11-6 allows an action for the wrongful death of an unborn child, beginning at conception.” Supreme Court of the State of Utah, 2011 UT 80, Carranza v. United States No. 20090409, pgs. 2 and 4, filed December 20, 2011.

We are not asking for the Court to make a new law, as Judge

Moreno states, “The law is the law. I don’t make the law.” RP 20.

We are asking the Court to mandate that the Police enforce the

Homicide Laws. We are asking for a “question of fact” to be resolved that is not in the law, as similar questions of fact were resolved in the Amistad and other cases, including the Utah case, via a decision, from the Superior Court or the Appeals Court, which is allowed under Mandamus: for a jury to define who is a human being or person. Until such is done, we have an equal right to state as legal fact and to ask the Appeals Court to rule in our favor that: “human beings” and “persons” exist from conception, as this right of individuals to legally be “human beings and persons” from conception with all of their Constitutional and State’s rights secured, has not been taken nor restricted from “the people” by any law or court in the land. CP 15-17, **RCW 7.16.210 Mandamus, Questions of fact, how determined (2010)**.

Why a Writ of Mandamus?

Judge Moreno discusses the Mandamus Law and questions our “right to be here....you have to follow procedure.” RP 19. Based on our efforts in filing this Petition, as discussed earlier, we argue that an appeal to the Mandamus Law is clearly legal and justifiable. It does exactly what the Supreme Court allows for in the “Little Rock Nine” case,

“Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But

revision of its errors must be by orderly process of law. The Court may be asked to reconsider its decisions, and this has been done successfully again and again throughout its history.” Cooper v. Aaron, 358 U.S. 1 (1958) CP 61-62, 108-109.

The Supreme Court does not limit the “orderly process of law” to “certain processes of law”. It does not specify that it has to be the best process or the only one available. We are trying to use the “orderly process of law” as relates to Mandamus to mandate that the Police enforce the Homicide Laws. This involves government officials not performing their duties. **RCW 7.16.160 (2010)**

Hundreds of other legal attempts have been made in cases similar to our own, such as lawsuits, etc. that the Court alludes to. CP 19. We disagree with the Court that we need to repeat those attempts prior to legally filing a Petition for a Writ; legal attempts related to Roe have taken place over the last 38 years since Roe. (See Thomas More Society in Chicago, IL, --past and present-- www.thomasmoresociety.org, last visited on January 9, 2012.)

We understand that this is an “extraordinary writ”. PR 19. Our case brings to light extraordinary issues that our society has not resolved, involving the life and death of its citizens on a massive scale, never before witnessed in human history. It is extraordinary that there has never been a legal definition of a human being or

person provided in our State's or country's legal system. This situation has continued for 38 years since Roe v. Wade, the Court refusing to resolve this question. CP 10-11. During this time, 50 million children have died in the United States, over 40,000 in the Spokane community alone. The un-clarity of this situation, the not-knowing of who a human being is began in the courts and must be resolved in the courts. As we state in our Opening Statement to this Appeal, this case is about who the "people" are. Only the Courts have the power to interpret the Constitution in this regard, i.e., who a "person" is.

U.S. Constitution. Court precedence for doing so exists in Amistad, Dred Scott, Brown v. Board of Education, and Cooper v. Aaron and in other State cases, such as the recent Utah decision. We seek clarification by requesting a jury trial on this unresolved fact which has not been determined in law. **RCW 7.16.210-240 (2010)**

There is no requirement that every other possible legal action must be taken prior to filing a Writ of Mandamus. PR 19. This would be impossible to accomplish, but rather, "The writ must be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of the law." **RCW**

7.16.170 (2010) It is clear in the history of our country since Roe, that there is no plain and adequate remedy. The plain, speedy and adequate remedy is to define who a human being and person is.

The Mandamus Law is available for the people to appeal to for specifically this type of case. It exists in order for ordinary citizens, like ourselves, to challenge the government's authority on matters pertaining to the people's rights, in this case to mandate that the Police enforce the Homicide Laws,

"The controlling legal principles are plain. The command of the Fourteenth Amendment is that no "State" shall deny to any person within its jurisdiction the equal protection of the Laws. A State acts by its legislative, its executive, or its judicial authorities..... It can act in no [358 U.S. 1, 17] other way. The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws.....This must be so, or the constitutional prohibition has no meaning.....[John Adams] was expressing the aim of those who, with him, framed the Declaration of Independence and founded the Republic. 'A government of laws and not of men was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power....

No one, no matter how exalted his public office or how righteous his private motive, can be judge in his own case. That is what courts are for." Cooper v. Aaron, 358 U.S. 1 (1958). CP 61-62, 108-109. RP 16.

Without a definition of who a human being and who a person is, by a court of law, the "rule by fiat" of the Police continues. The

Police must not judge who a human being or person is. The “courts” must define these terms in order to enforce these laws. The Police do not have the legal authority to do so. CP 5-6.

The City’s argument that the “the petitioners are seeking some type of an order in the circumstance where there’s discretion” RP 5, 17. is an attempt to justify that the Police have legal authority to decide who a person and human being is, ignore the homicide laws in those cases only and use this “exercise” of their “discretion” to avoid complying with the Homicide/ Manslaughter Laws, the Mandamus Laws, the Constitution and the IX, X and IV Amendments. They have no power or legal right to do this in any reported homicide cases. Once a human body has been found, or a person has been killed, the Police know what they must do—enforce the Homicide Laws. There is no discretion involved in enforcing the homicide laws equally and everywhere within the City of Spokane. “The Police are exercising discretion that they do not legally have a right to exercise.” CP 63, 108-109.

In all of our country’s history, no written law--Federal or State, no court decision and no Presidential Order has ever given the Police, any organization or any individual--male or female, the legal right to decide who a human being or person is. CP 6, 9, 14-15, 25, 27-28, 33-34, 63, 108-109.

Prayer for Relief

Our request should be heard and granted to the fullest extent by the Court based on our Petition, briefs, Hearing statement, this Appeal, the State and Federal Laws cited and argued via cases, as the Superior Court erred in:

- 1. interpreting the laws regarding standing:**
 - A. (1)in not recognizing that standing as a legal issue may not be able to be separated from the rest of the Petition's arguments;
(2)in failing to recognize the fact that there is no law regarding who a human being or person is; and in not granting that this question of fact needs to be decided by a jury as per the Mandamus Law;
 - B. in not recognizing the importance of "public import and urgency" in this case as it relates to thousands of alive, created children, who because of homicide, are never born, and are systematically being killed at buildings in Spokane, Washington.
- 2. deciding that they do not have a basis under Washington Law to issue the Writ requested.** They do have a legal basis, specifically under the Homicide/Manslaughter laws and under the Ninth, Tenth and Fourteenth Amendments to the Constitution. The Court erred in not recognizing this case as a "cognizable and recognized claim."

Our **Prayer for Relief** is: the Order Granting Respondents' Motion to Dismiss Petition for Writ of Mandamus be reversed and that the Writ be issued on its merits, as there is legal basis under Washington and/or Federal Laws; or that a jury trial be held on the question of fact: who is a human being, who is a person? and that once this has been decided by the jury, that our Petition be heard on its merits to its logical, legal and rational conclusion as per the Washington State Mandamus Law.

Legal Wisdom which influences and guides this case:

Engraved on the entrance to Gonzaga University Law School, Spokane, WA

"A certain lawyer asked Him, 'Master, which is the Greatest Commandment of the Law?'

Jesus said to him: 'You shall love the Lord your God with your whole heart, with your whole soul, and with all your mind. This is the greatest and the first commandment.

The second resembles it:

You must love your neighbor as yourself.

On these two Commandments hang the whole law...', Jesus Christ, Matthew 22: 38-40"

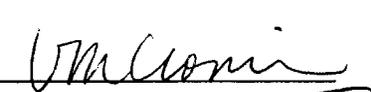
"All men are created equal."

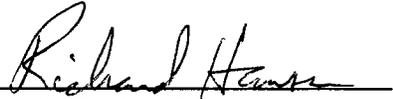
Thomas Jefferson, Declaration of Independence

"Every child comes with the message that God is not yet discouraged of man."
Rabindranath Tagore, India Poet and Nobel Laureate

Respectfully submitted on this 27th day of January, 2012.


LAWRENCE CRONIN


VIRGINIA CRONIN


RICHARD HANSON


MICHAEL WALTERS


DOUGLAS TURNER

[From the Courier and Enquirer.]

COMMON PLEAS.

Before Judge Inglis, (in chambers.)

In this case His Honor yesterday gave his decision, accompanying which he gives his opinion at length, which is as follows:

Jose Ruiz and Pedro Montez *ads.* Singweh, (African).—In this case the defendants were each held to bail in the sum of one thousand dollars for an alleged assault and battery upon and false imprisonment of the plaintiff.

The order under which the bail is demanded, was made, as is customary, *ex parte*, without hearing the defendants, and the present application is to discharge them on common or nominal bail, or to have the amount reduced.

The arguments of the counsel have, to a considerable extent, been directed to questions which it is not necessary now to consider.

The question of bail is a preliminary one, and it is customary and proper to avoid as much as possible, the prejudging at this stage of the proceedings, of those matters connected with the merits of the case, which will subsequently be submitted to the court and jury. The object of demanding bail is, that the plaintiff may have an effectual security for such damages as it may strike the judge, he has a probable chance of obtaining judgment for against the plaintiff.

If the affidavits on the part of the plaintiff are positive and precise as to the injury inflicted, the defendants will not be discharged upon counter affidavits, denying the right of action except in some extraordinary case, where a summary interposition would be justified by its appearing, beyond all doubt, on the face of the papers, that there could be no recovery on the trial. The general rule, however, is, that a judge will not try the merits of the cause at chambers on affidavits.

In this point of view, I cannot undertake to decide the question, whether the plaintiff is, or is not, the slave of the defendant Ruiz, which is a matter directly put at issue in the opposing affidavits. The decision of this point in favor of the defendant would at once take away the whole substratum of the plaintiff's action, as a slave cannot have any remedies by civil action against his master. I pass by, therefore, without say further notice, those grave and difficult questions, both of law and fact, which I presume will hereafter afford ample room for the ingenuity and eloquence of counsel, which are involved in the investigation that may arise in relation to the prohibition of the slave trade by Spain, the alleged abduction from Africa, importation of the plaintiff into Havana, and the rights which Ruiz may have acquired by a purchase made, as he alleges, openly and publicly, without any knowledge or notice of such fraudulent circumstances. I assume, therefore, upon this interlocutory proceeding, that the plaintiff does not labor under any such legal disability as will take away his right of action against the defendant for a personal injury, without reference to the disputed point as to the relations of master and slave, which involves the merits of the whole controversy.

The points, then, that remain to be considered, are, whether the affidavits show that the defendants have invaded the personal rights of the plaintiff; and if that fact be established, whether the amount

The affidavit of Singweh himself, of Oct. 7th, at New Haven, in which the original order to hold to bail was founded, is the only one that bears directly upon the point of the alleged assault and battery and false imprisonment by the defendants. The other affidavits on the part of the plaintiffs, merely show collateral facts, such as the non-residence of the defendants, and the manner in which the affidavits were interpreted to the Africans.

An objection was made to the plaintiff's affidavit, that it was not taken in due form of law; that it should have appeared on the *jurat* or certificate of Judge Huchcock, before whom it was taken, that Singweh was sworn in such a way, as to show that his statement was made with the force of the highest sanction known to his conscience, and that no circumstances appearing, it is to be presumed, either that the plaintiff was not sworn in a proper manner, according to his own form, or that his estimate of moral or religious responsibility is so low, that no oath could be properly administered to him. I do not consider the objection well taken.

The certificate states that the affidavit was taken by the aid of James Corey, who was sworn as interpreter, and interpreted the questions put to said deponent (Singweh,) and his answers thereto under oath, and said deponent declared that the said affidavit was true, and that God knew it to be true before me."

It thus appears that the interpreter was properly sworn, and that Singweh declared that the affidavit was true, and that God knew it to be true. According to the common law, which is unchanged, I believe, in this respect in the State of Connecticut, a person who believes in a Supreme Being and a future state of rewards and punishments, is a competent witness. If the witness swears or makes a declaration before God, it is presumed in the first instance, that he believes in the existence and power of the Being whom he invokes. If such be not the case, the burden of proving the contrary, lies on those who seek to exclude the testimony; nor can it be judicially assumed, as has been contended, that a native of Africa, even of the part of it where it is stated the plaintiff was born, is ignorant of the existence of a Supreme Being, or of his amazing attributes.

Independently of the argument which might be drawn from the almost universal belief on this subject, that pervades the whole human race, we know from the narrations of travellers that the image of their Creator, however darkened by superstition and idolatry, is not yet entirely effaced from the minds and hearts of the inhabitants of those regions.

It must be admitted, however, that the affidavit of the plaintiffs, although competent testimony to be read on this occasion, is very indefinite as to the times, and persons, and indeed in all its other details, a circumstance, however, which might have arisen from its having been procured in haste, from some actual or supposed necessity of speedy action for the arrest of the defendants.

The defendant states that the plaintiff was born in the *Mendi* country in Africa; that he was sold by Bumanah, son of Shakua, King of the *Fai* country, to a Spaniard, about six moons before the making of the affidavit; that he was brought to a village one day from Havana, where he was kept five days, whence he was taken to another village, where he staid five days more—the affidavit states further that he was then taken to Havana and put by force on board of a vessel; that on board the vessel, his hands were confined by irons at night, and that he

stated by whose means and directions he was put on board, or what person or persons had the control of him while there. He then proceeds to state that "he was beaten on the head by the cook, in presence of Pipi, (by which appellation it appears that the defendant, Ruiz, was known by the Africans on board of the vessel) and Montez, and that he was told one morning after breakfast, that the white men would eat them when they landed."

I see nothing in this affidavit which implicates the defendant Montez, in the slightest degree, any assault or battery upon, or imprisonment of the plaintiff. He was merely present at a battery on the plaintiff, by another person, but there is no allegation of his having joined in, advised or approved it, either before or after its commission."

Montez, therefore, cannot be considered a trespasser, either actually or by intendment of law, and there is no reason for his detention.

The allegation is stronger in the case of Ruiz, from the additional fact of his claiming to be the owner of Singweh. It is not stated, it is true, that such claim was made at the time of the beating, but I think the fair inference is, that such is the case.

The claim of ownership, then, by Ruiz, and his being present at the trespass committed on the plaintiff by the cook, without dissenting from it, made him a co-trespasser, and gave a right of action against him.

Whether it should be considered as sufficiently established on the face of the affidavit, that Ruiz was originally concerned in putting the plaintiff on board the vessel, and imprisoning him while there, I very much doubt. I can draw no inference from any quarter except the affidavits themselves, and it appears to be very doubtful whether the forced embarkation and the imprisonment of the plaintiff did not take place under the revision of other individuals, whose names are given, Montez & Ruiz being brought in as actors only, at the time of the trespass committed by the cook.

Looking at all the circumstances connected with this case, and without any wish to prejudice its merits before it is submitted to the proper tribunals, I can scarcely look upon it as one, in which the probability of the plaintiff's recovering any considerable damages at the hands of a jury, is of such a nature, as to require bail to an amount which would detain Ruiz in prison, or create serious inconvenience or delay in the procuring of it.

The affidavits do not connect Ruiz with the al-

leged abduction of Singweh from Africa, nor do any facts appear which are characterized by any circumstances of atrocity or oppression, beyond the alleged imprisonment itself. Ruiz alleges that the plaintiff was bought fairly and openly in Havana without his knowledge of his being fraudulently enslaved, and if the fact be so, although it would probably be no bar to the action, yet it would certainly go very strongly to the mitigation of damages.

It has been conceded too, by the plaintiff's counsel, on the argument that their object was not so much the recovery of damages as the restoration of the plaintiff to liberty, which they think can be more effectually obtained through the medium of this action than in any other way.

As respects the question of jurisdiction, there can be no doubt that our courts have a right to take cognizance, in their discretion, of injuries of this kind, even when committed by foreigners against foreigners on board of a foreign vessel, the forum of such causes is transitory, and follows the person of the defendant where the plaintiff can find him. This principle was recognized as long ago as the year 1817, by the Supreme Court of this State, in the case of *Gardner v. Thomas*, 14 John. Reps. 135—although in that particular case, the Court considered that the Court below had not exercised a sound discretion in entertaining the action under the peculiar circumstances that were there developed. In this case, on the other hand, it would not be a proper exercise of discretion to refuse the entertaining of this action and to drive the plaintiff, who claims to be in no way amenable to the Spanish laws, to seek a doubtful remedy, from the courts of a country within the jurisdiction of which, it is not probable that he will ever again voluntarily be found.

"Under all the circumstances of the case, I have come to the conclusion in which the other judges of this Court concur, that the defendant Montez be discharged from custody on filing common or nominal bail, and that the amount of bail which the defendant Ruiz is required to give, be reduced to two hundred and fifty dollars."

APPOINTMENTS BY THE PRESIDENT.—John Henry Young, to be Clerk to the Commissioner for running the boundary line between the United States and the Republic of Texas.

Charles Evans, of Florida, to be Marshal of the United States for the district of West Florida.

The interments at New Orleans during the week ending 30th instant, were 55 at the Bayou cemetery; 25 from the hospital—19 of yellow fever. At the Protestant cemetery, 4 interments—one of fever.

SPECIES.—The schooner *Banner*, at New Orleans from Vera Cruz, brings \$13,546 in specie.

1 of 1 DOCUMENT

**MIGUEL CARRANZA and AMELIA SANCHEZ, natural parents of JESUA M.V.
CARRANZA-SANCHEZ, deceased, Plaintiffs and Appellants, v. UNITED STATES and
JOHN and JANE DOES I-X, Defendants and Appellees.**

No. 20090409

SUPREME COURT OF UTAH

2011 UT 80; 698 Utah Adv. Rep. 9; 2011 Utah LEXIS 176

December 20, 2011, Filed

NOTICE:

THIS OPINION IS SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTER.

PRIOR HISTORY: [**1]

On Certification from the United States District Court for the District of Utah - Central Division.
Carranza v. United States, 2009 U.S. Dist. LEXIS 41197 (D. Utah, May 14, 2009)

CASE SUMMARY:

PROCEDURAL POSTURE: The United States District Court for the District of Utah, Central Division, submitted a certified question, asking the Supreme Court of Utah to determine whether Utah's wrongful death statute, Utah Code Ann. § 78-11-6, allows an action for the wrongful death of an unborn child.

OVERVIEW: Plaintiff mother received prenatal care at a federally-owned community health center. During one visit, she was instructed to go to a medical center, where it was determined that the fetus had no heartbeat; the mother gave birth to a stillborn child. Plaintiffs, the mother and father of the stillborn child, filed suit against the United States in federal district court, alleging medical negligence that resulted in the wrongful death of their child. Defendant United States filed a motion in limine to exclude from trial all evidence regarding the parents' damages for wrongful death, and the parents, in response, filed a motion to certify a question to the state supreme court regarding whether Utah Code Ann. § 78-11-6 allowed a claim to be made for the wrongful death of an unborn child. Upon considering the certified question, although there was no majority opinion, four members of the state supreme court held that the statute allows an action for the wrongful death of an unborn child because the term "minor child," as used in the statute, included an unborn child.

OUTCOME: The court answered the certified question in the affirmative.

CORE TERMS: minor child, fetus, wrongful death statute, unborn child, unborn, cause of action, plain language, encompass, usage, dictionary, quotation marks omitted, womb, absurd result, times, wrongful death, neglect, utero, heir, minor children, plain meaning, statutory language, custody, spouse, birth, wrongful act, contemplate, construing, guardian, prenatal, tortious

LexisNexis(R) Headnotes***Torts > Wrongful Death & Survival Actions > Deceased Persons***

[HN1] See Utah Code Ann. § 78-11-6 (Supp. 2006).

Civil Procedure > Appeals > Appellate Jurisdiction > Certified Questions

[HN2] On certification, the Supreme Court of Utah answers the legal questions presented without resolving the underlying dispute.

Governments > Legislation > Interpretation

[HN3] When interpreting statutes, a court's objective is to give effect to the legislature's intent. To discern legislative intent, the court looks first to the statute's plain language. If the language of the statute yields a plain meaning that does not lead to an absurd result, the analysis ends. The statutory text may not be plain when read in isolation but may become so in light of its linguistic, structural, and statutory context.

Torts > Wrongful Death & Survival Actions > Deceased Persons

[HN4] Utah Code § 78-11-6 (Supp. 2006) allows an action for the wrongful death of an unborn child, beginning at conception. This decision is limited to the statute as it existed before its amendment in 2009 and thus it does not address whether Utah Code section 78B-3-106(1) allows an action for the wrongful death of an unborn child.

COUNSEL: Kevin J. Sutterfield, Brett R. Boulton, Provo, for appellants.

Carlie Christensen, Jeffrey E. Nelson, Amy J. Oliver, Salt Lake City, for appellees.

JUDGES: CHIEF JUSTICE DURHAM authored an opinion, in which JUSTICE PARRISH joined. JUSTICE LEE authored an opinion, in which ASSOCIATE CHIEF JUSTICE DURRANT joined. JUSTICE NEHRING filed a dissenting opinion.

OPINION BY: DURHAM; LEE

OPINION

CHIEF JUSTICE DURHAM, opinion:

INTRODUCTION

[*P1] This case presents a single issue on certification from the U.S. District Court for the District of Utah: "Does Utah's wrongful death statute allow an action for the wrongful death of an unborn child?" At the time the claim was filed, Utah's wrongful death statute stated in relevant part that [HN1] "a parent or guardian may maintain an action for the death or injury of a minor child when the injury or death is caused by the wrongful act or neglect of another." UTAH CODE ANN. § 78-11-6 (Supp. 2006).¹

¹ The legislature has since amended the statute to apply only to the injury, not the death, of a minor child. UTAH CODE ANN. § 78B-3-102 (Supp. 2011). At the same time, the legislature amended Utah Code section 78B-3-106(1) [*2] to state that "when the death of a person is caused by the wrongful act or neglect of another, his heirs . . . may maintain an action for damages against the person causing the death." This decision does not address the certified question as applied to Utah Code section 78B-3-106(1).

[*P2] Although there is no majority opinion, four members of this court hold that the statute allows an action for the wrongful death of an unborn child; the term "minor child," as used in the statute, includes an unborn child.

BACKGROUND

[*P3] Appellant Amelia Sanchez received prenatal care at the Mountainlands Community Health Center in Provo, Utah, between December 28, 2005, and April 19, 2006. On April 19, 2006, Ms. Sanchez went to the Utah Valley Regional Medical Center, and it was determined that the fetus had no heartbeat. On April 20, 2006, Ms. Sanchez gave birth to a stillborn male.

[*P4] Ms. Sanchez and Miguel Carranza, the stillborn child's father, filed suit against the United States in federal district court.² They alleged medical negligence and requested damages for their pain and suffering, for the wrongful death of their child, and for expenses related to their child's death.

² Mountainlands Community Health [*3] Center, its employees, and its contracted physicians are Public Health Service employees under 42 U.S.C. § 233 (g). The federal district court therefore has jurisdiction under 28 U.S.C. § 1346.

[*P5] The United States filed a motion in limine to exclude from trial all evidence regarding the plaintiffs' damages for wrongful death. In response, the plaintiffs filed a motion to certify the following question to the Utah Supreme Court: "Does Utah Code Ann. § 78-11-6 allow a claim to be made for the wrongful death of an unborn child?" Noting that the plaintiffs' proposed question for certification is dispositive of the motion in limine and that there is no controlling Utah law, the federal district court granted the plaintiffs' motion to certify. We have jurisdiction pursuant to Utah Code section 78A-3-102(1).

STANDARD OF REVIEW

[*P6] [HN2] "On certification, we answer the legal questions presented without resolving the underlying dispute." *Iverson v. State Farm Mut. Ins. Co.*, 2011 UT 34, ¶ 8, 256 P.3d 222 (internal quotation marks omitted).

ANALYSIS

[*P7] At the time this claim was filed, Utah's wrongful death statute stated that "a parent or guardian may maintain an action for the

death or injury of a minor child [**4] when the injury or death is caused by the wrongful act or neglect of another." UTAH CODE ANN. § 78-11-6 (Supp. 2006).³

³ See *supra* ¶ 1 n.1.

[*P8] [HN3] When interpreting statutes, this court's objective "is to give effect to the legislature's intent." *Harold Selman, Inc. v. Box Elder Cnty.*, 2011 UT 18, ¶ 18, 251 P.3d 804 (internal quotation marks omitted). "To discern legislative intent, we look first to the statute's plain language." *Id.* (internal quotation marks omitted). If the language of the statute yields a plain meaning that does not lead to an absurd result, the analysis ends. *LPI Servs. v. McGee*, 2009 UT 41, ¶ 11, 215 P.3d 135. "[T]he statutory text may not be 'plain' when read in isolation, but may become so in light of its linguistic, structural, and statutory context." *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 9, 248 P.3d 465.

[*P9] This court has not yet reached the issue of whether the statute's reference to "minor child" includes an unborn child. See *State Farm Mut. Auto. Ins. Co. v. Clyde*, 920 P.2d 1183, 1187 n.4 (Utah 1996). In *Clyde*, the plaintiffs' minor daughter and her unborn child were both killed in an automobile accident. *Id.* at 1184. When the plaintiffs sued to recover damages [**5] for the death of their unborn grandchild, the court held that the plaintiffs were "not entitled to maintain an action under section 78-11-6" because they did "not qualify as the parents or guardians of [the] unborn child." *Id.* at 1186. Therefore, the court had no need to "decide the more general question of whether the death of a fetus can ever provide the basis for maintaining an action under section 78-11-6."⁴ *Id.* at 1187 n.4.

⁴ In *Clyde*, the court cited two cases that address the existence of a cause of action for the wrongful death of an unborn child. 920 P.2d at 1187 n.4. See generally *Webb v. Snow*, 102 Utah 435, 132 P.2d 114, 119 (Utah 1942) (holding that "damages are not awarded for 'loss of the unborn child' itself"); *Nelson v. Peterson*, 542 P.2d 1075, 1077 (Utah 1975) (citing *Webb*, 132 P.2d at 119) (holding that there is no cause of action for the wrongful death of a viable fetus). However, these cases do not address Utah Code section 78-11-6 in their analyses. Therefore, the certified question presents this court with a matter of first impression.

[*P10] In my view, a plain language reading reveals that the term "minor child," as used in this statute, includes an unborn child. The statute does not [**6] itself define the term "minor child," but in general usage the term "child" may refer to a young person, a baby, or a fetus. BLACK'S LAW DICTIONARY 271 (9th ed. 2009).⁵ The adjective "minor" is connected to the concept of legal minority: it modifies the term "child" to include a child who has not yet reached the age of majority. Therefore, "minor" sets an upper age limit on the term "child" at majority, but does not set a lower limit. The term "minor," then, may refer to the period from conception to the age of majority, thereby encompassing an unborn child.⁶

⁵ Statutory terms may have different meanings in different statutes. See, e.g., *Marion Energy, Inc. v. KFJ Ranch P'Ship*, 2011 UT 50, ¶¶ 18-20, P.3d . For instance, Utah courts have interpreted the term "child," as used in other statutes, to exclude an unborn child. See *Alma Evans Trucking v. Roach*, 714 P.2d 1147, 1148 (Utah 1986) (holding that the term "child," when defined to include a posthumous child, refers to "a child which has been born"); *Alt. Options & Servs. for Children v. Chapman*, 2004 UT App 488, ¶ 35, 106 P.3d 744 (noting that the statute, "for better or worse, clearly contemplates applicability only to children [**7] who have already been born" because it required "[t]he name, date, and place of birth of the child" (alteration in original) (internal quotation marks omitted)).

⁶ Five other states have addressed whether the term "minor child" includes an unborn child in the context of a wrongful death statute with varying results. Compare *Eich v. Town of Gulf Shores*, 293 Ala. 95, 300 So. 2d 354, 355 (Ala. 1974) (relying on "[l]ogic, fairness and justice" to interpret "minor child" to include a stillborn fetus), *Volk v. Baldazo*, 103 Idaho 570, 651 P.2d 11, 14 (Idaho 1982) ("We hold that a lower age limitation is neither implied [by the term 'minor child'] nor necessary. An unborn viable child traditionally has legal existence and rights and is easily considered within the meaning of the term 'minor child'."), and *Moen v. Hanson*, 85 Wn.2d 597, 537 P.2d 266, 267 (Wash. 1975) ("[N]o lower age limitation is implied by the term ['minor child'], because none is necessary; an unborn viable child traditionally has legal existence, personality and rights, and is easily considered within the 'minor child' definition." (citation omitted)), with *Stokes v. Liberty Mut. Ins. Co.*, 213 So. 2d 695, 700 (Fla. 1968) (looking to the legislature's use of the term [**8] "minor child" in other statutes to hold that a stillborn fetus is not a "minor child"), and *Kuhnke v. Fisher*, 210 Mont. 114, 683 P.2d 916, 918-19 (Mont. 1984) (holding that a fetus is not a "minor child" because it falls outside of the statutorily defined "period of minority").

[*P11] The United States argues that the legislature generally uses "the modifier 'unborn' when it intends to include an unborn child in statutory provisions." The United States is correct that the term "unborn child" appears elsewhere in the Utah Code, even in the same statute as the term "minor." See UTAH CODE ANN. § 75-7-303(6) (Supp. 2011)⁷ ("[A] parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed."). However, the legislature has adopted various formulae in different statutes, and my plain language interpretation of "minor child" in this statute yields no absurd results.⁸ See *Encon Utah, LLC v. Fluor Ames Kraemer, LLC*, 2009 UT 7, ¶ 73, 210 P.3d 263 ("When statutory language plausibly presents the court with two alternative readings, we prefer the reading that avoids absurd results." (internal quotation marks omitted)).

7 Although this case involves [**9] a 2006 statute, I cite to current versions of other statutes so long as there has been no substantive change from their 2006 versions.

8 Rather, recognizing the existence of a cause of action for the wrongful death of an unborn child is a logical result. *See Stidam v. Ashmore*, 109 Ohio App. 431, 167 N.E.2d 106, 108 (Ohio Ct. App. 1959) ("Suppose, for example, viable unborn twins suffered simultaneously the same prenatal injury of which one died before and the other after birth. Shall there be a cause of action for the death of the one and not for that of the other? Surely logic requires recognition of causes of action for the deaths of both, or for neither.").

[*P12] On the contrary, my analysis results in the recognition of a cause of action for the wrongful death of an unborn child, a conclusion that is consistent with other provisions of the Utah Code. First, this cause of action mirrors the Utah Criminal Code's protection for unborn children. *See, e.g.*, UTAH CODE ANN. § 76-7-301.1(1) (2008) ("It is the finding and policy of the Legislature . . . that unborn children have inherent and inalienable rights that are entitled to protection by the state of Utah pursuant to the provisions of the Utah Constitution."); [**10] *see also id.* § 76-5-201(1)(a) (Supp. 2011) (defining the offense of criminal homicide to include the death of "an unborn child at any stage of its development"). Second, recognizing a cause of action for the wrongful death of an unborn child falls in line with the Utah Judicial Code's statement that "the public policy of this state [is] to encourage all persons to respect the right to life of all other persons, . . . including . . . all unborn persons." *Id.* § 78B-3-109(1) (2008).

[*P13] In recognizing the existence of this cause of action, I acknowledge that a plaintiff may encounter difficulties in proving causation for the wrongful death of an unborn child. However, "the substantive rights resulting from wrongful death must be protected, regardless of the inherent practical difficulties." *Eich v. Town of Gulf Shores*, 293 Ala. 95, 300 So. 2d 354, 358 (Ala. 1974).

CONCLUSION

[*P14] [HN4] Utah Code section 78-11-6 allows an action for the wrongful death of an unborn child,⁹ beginning at conception.¹⁰ This decision is limited to the statute as it existed before its amendment in 2009 and thus it does not address whether Utah Code section 78B-3-106(1) allows an action for the wrongful death of an unborn child.

9 Thirty-six [**11] other states have recognized a cause of action for the wrongful death of an unborn child, some by statute and others by court decision. Amber N. Dina, Comment, *Wrongful Death and the Legal Status of the Preivable Embryo: Why Illinois Is on the Cutting Edge of Determining a Definitive Standard for Embryonic Legal Rights*, 19 REGENT U.L. REV. 251, 255 n.41, 256 n.42 (2006).

10 Three other state courts have also recognized an action for the wrongful death of an unborn child, beginning at conception. *Danos v. St. Pierre*, 402 So. 2d 633, 638 (La. 1981); *Connor v. Monkem Co.*, 898 S.W.2d 89, 92 (Mo. 1995); *Farley v. Sartin*, 195 W. Va. 671, 466 S.E.2d 522, 523 n.3, 534 (W. Va. 1995).

JUSTICE LEE, opinion:

[*P15] The question whether a fetus is a "minor child" under our wrongful death statute is a difficult one. It cannot properly be resolved by simple resort to dictionary definitions of the statutory text, as accepted definitions of "minor child" include both a narrow notion of a child postpartum and also a broader notion that encompasses a child *in utero*.

[*P16] Thus, Chief Justice Durham's opinion notes that some definitions of "child" encompass a "baby" or "fetus," *supra* ¶ 10¹ and that "minor" often refers to an individual [**12] under the age of a legally recognized minority (without any age floor), *supra* ¶ 10.² At the same time, the dissent cites an alternative notion of "child" as referring to a "child which has been born." *Infra* ¶ 30.

1 *See* BLACK'S LAW DICTIONARY 271 (9th ed. 2009) (defining "child" as "1. A person under the age of majority. . . . 5. A baby or fetus").

2 *See id.* at 1086 (defining "minor" as a "person who has not reached full legal age; a child or juvenile"). The Utah Legislature created a similarly top-bounded definition of minority, providing that "[t]he period of minority extends in males and females to the age of eighteen years." UTAH CODE ANN. § 15-2-1 (2009).

[*P17] Each side seeks to validate its construction as rooted in the statute's "plain language." *Supra* ¶ 10; *infra* ¶ 29. I fail to find a plain answer in the statutory text, however. I view the bare words of the statute to be susceptible to either a broad construction that includes unborn children or a narrow one that excludes them.

[*P18] Where both parties' interpretations fall within the range of meanings identified in dictionaries, it is unhelpful for the court to rest on the unelaborated assertion that our chosen construction is dictated [**13] by the "plain language." Too often, a court's conclusion that statutory language is "plain" is a substitute for careful analysis. At best, such unexplained conclusions are based on a judge's gestalt sense of the best meaning of the words in question. At worst, the bare insistence that statutory language is "plain" is cover (perhaps subconscious) for judicial policymaking.

[*P19] Any appearance of the latter is unacceptable. And the former is insufficient, as it gives no guidance to the drafters or targets of legislation as to how this court will interpret statutory language (beyond the unhelpful assurance that we will do what seems best and

label it "plain language"). In my view, then, we need to identify the linguistic and statutory cues that persuade us that one interpretation or the other is appropriate.

[*P20] Our commitment to the "plain language" of statutes is "simple to articulate in the abstract, but often difficult to apply in contested cases where both sides offer conceivable constructions of the language in question." *Olsen v. Eagle Mountain City*, 2011 UT 10, ¶ 9, 248 P.3d 465. "In such cases, the statutory text may not be 'plain' when read in isolation, but may become so in light of [*14] its linguistic, structural, and statutory context." *Id.* "[W]e do not interpret the 'plain meaning' of . . . statutory term[s] in isolation. Our task, instead, is to determine the meaning of the text given the relevant context of the statute (including, particularly, the structure and language of the statutory scheme)." *Id.* ¶ 12.

[*P21] For me, it is the context of the wrongful death statute that resolves the interpretive question presented in this case. Specifically, the basis for interpreting "minor child" to include children *in utero* is found in the nature and scope of the right of action recognized in the wrongful death statute. A reasonably informed reader would understand that the statute's cause of action encompasses claims for "death *or injury*" to a "minor child." UTAH CODE ANN. § 78-11-6 (2006) (emphasis added). In the case of fetal *injury*, there is no doubt that a cause of action would accrue at the time of a battery or other tortious harm to the fetus. The universal rule, in fact, is that prenatal injuries are actionable when a child survives the tortious act.³ And given that minor children have tort claims when they survive a tortious act *in utero*, it would be absurd to read the [*15] statute to foreclose such claim when the fetus is so battered that he dies in the womb. If a "minor child" includes a fetus who suffers tortious injury, surely that same term encompasses the same kind of being that suffers an even more horrific tortious act.

3 See *Wolfe v. Isbell*, 291 Ala. 327, 280 So. 2d 758, 761 (Ala. 1973), *superseded by statute as recognized in Mack v. Carmack*, So. 3d ,2011 Ala. LEXIS 141 (Ala. 2011); *Scott v. McPheeters*, 33 Cal. App. 2d 629, 92 P.2d 678, 679 (Cal. Ct. App. 1939), *superseded by statute as recognized by Wilson v. Kaiser Found. Hosp.*, 92 P.2d 678 (Cal. App. 1983); *Simon v. Mullin*, 34 Conn. Supp. 139, 380 A.2d 1353, 1357 (Conn. Super. Ct. 1977); *Greater S.E. Cmty. Hosp. v. Williams*, 482 A.2d 394, 396 (D.C. 1984); *Day v. Nationwide Mut. Ins. Co.*, 328 So. 2d 560, 562 (Fla. Dist. Ct. App. 1976); *McAuley v. Wills*, 251 Ga. 3, 303 S.E.2d 258, 260 (Ga. 1983); *Rapp v. Hiemenz*, 107 Ill. App. 2d 382, 246 N.E.2d 77, 79 (Ill. App. Ct. 1969); *Grp. Health Ass'n v. Blumenthal*, 295 Md. 104, 453 A.2d 1198, 1207 (Md. 1983); *Thibert v. Milka*, 419 Mass. 693, 646 N.E.2d 1025, 1026 (Mass. 1995); *Burchett v. RX Optical*, 232 Mich. App. 174, 591 N.W.2d 652, 655 (Mich. Ct. App. 1998); *Bennett v. Hymers*, 101 N.H. 483, 147 A.2d 108, 109 (N.H. 1958); *Smith v. Brennan*, 31 N.J. 353, 157 A.2d 497, 504 (N.J. 1960); *Endresz v. Friedberg*, 24 N.Y.2d 478, 248 N.E.2d 901, 905, 301 N.Y.S.2d 65 (N.Y. 1969); [*16] *Woods v. Lancet*, 303 N.Y. 349, 102 N.E.2d 691, 695 (N.Y. 1951); *Steison v. Easterling*, 274 N.C. 152, 161 S.E.2d 531, 533 (N.C. 1968); *Hopkins v. McBane*, 359 N.W.2d 862, 864 (N.D. 1984); *Williams v. Marion Rapid Transit, Inc.*, 152 Ohio St. 114, 87 N.E.2d 334, 337 (Ohio 1949); *Pino v. United States*, 2008 OK 26, ¶ 17, 183 P.3d 1001; *Carroll v. Skloff*, 415 Pa. 47, 202 A.2d 9, 11 (Pa. 1964), *overruled on other grounds by Amadio v. Levin*, 509 Pa. 199, 501 A.2d 1085 (Pa. 1985); *Sylvia v. Gobeille*, 101 R.I. 76, 220 A.2d 222, 224 (R.I. 1966); *Hall v. Murphy*, 236 S.C. 257, 113 S.E.2d 790, 793 (S.C. 1960); *Delgado v. Yandell*, 471 S.W.2d 569, 570 (Tex. 1971); *Seattle-First Nat'l Bank v. Rankin*, 59 Wn.2d 288, 367 P.2d 835, 838 (Wash. 1962); see also RESTATEMENT (SECOND) OF TORTS § 869(1) (1965) ("One who tortiously causes harm to an unborn child is subject to liability to the child for the harm if the child is born alive.").

[*P22] A contrary view would yield perverse incentives that the wrongful death statute cannot reasonably be read to countenance.⁴ If "minor child" did not extend to a fetus, tortfeasors would be better off killing a fetus in the womb (in which case they would escape liability) than to merely injure it (in which case they would be liable for the injuries or post-birth death of a fetus if it [*17] happens to be born alive, however fleeting its sojourn outside the womb). "It would be bizarre, indeed, to hold that the greater the harm inflicted the better the opportunity for exoneration of the defendant." *Eich v. Town of Gulf Shores*, 293 Ala. 95, 300 So. 2d 354, 355 (Ala. 1974). The legislature could not have intended such bizarre results under the wrongful death statute.⁵ I would read the statute to avoid such absurdities and would resolve the ambiguity in the meaning of "minor child" to preserve a workable legal regime in which unborn children have claims for both personal injury and wrongful death.

4 *Encon Utah, LLC v. Fluor Ames Kraemer, LLC*, 2009 UT 7, ¶ 73, 210 P.3d 263 ("When statutory language plausibly presents the court with two alternative readings, we prefer the reading that avoids absurd results." (internal quotation marks omitted)); see also *State v. Redd*, 1999 UT 108, ¶ 12, 992 P.2d 986 ("Where we are faced with two alternative readings, and we have no reliable sources that clearly fix the legislative purpose, we look to the consequences of those readings to determine the meaning to be given the statute. . . . In other words, we interpret a statute to avoid absurd consequences."); [*18] *Clover v. Snowbird Ski Resort*, 808 P.2d 1037, 1045 n.39 (Utah 1991) ("When dealing with unclear statutes, this court renders interpretations that will avoid absurd consequences." (internal quotation marks omitted)).

5 The dissent hypothesizes "absurdities" in two other statutes that supposedly ensue from a construction that recognizes a wrongful death claim for unborn children, *infra* ¶¶ 40-45, but the scenarios it imagines are hardly a necessary result of today's decision. Identical terms may be used in different statutes in different ways, and it is our role to construe each statute on its own terms, not to preserve consistency across the various volumes of the state code. The dissent's examples thus tell us nothing of any particular value to the resolution of this case.

First, the notion of a husband acquiring a statutory right to seize a fetus and "adjacent anatomical structures" of his wife upon her abandonment, *infra* ¶ 43 (citing UTAH CODE ANN. § 30-2-10), assumes a false equivalence between the abandonment statute and this one. In the context of the cited abandonment provision, "custody of minor children" would naturally be understood to encompass only children living in the household [*19] outside the womb, as "custody" is never granted in the dissent's absurd sense of removing a fetus and a womb from a mother and awarding it to a father.

Second, the dissent's hypothetical under the Public Safety Retirement Act is interesting, *infra* ¶ 44, but hardly telling with respect to the issue presented in this case. I do not know whether a fetus conceived at the time of a covered employee's death would be treated as a statutory beneficiary if the employee had no spouse at the time of death. On first blush that strikes me as plausible. But in any event the answer to that hypothetical tells us nothing about the construction of "minor child" in the wrongful death statute.

[*P23] The dissent's contrary conclusion rests principally on the assertion that this construction of "child" is "peculiar" and that the more "commonly understood" notion of the term "contemplates a child born and capable of separate existence." *Infra* ¶¶ 34, 36. I do not doubt that the phrase "minor child" is ordinarily used to refer to children postpartum and not *in utero*. But the question here is not which usage is ordinary or more common, for it is clear from the legal context of the statute that the legislature was [**20] not using "minor child" in its ordinary sense but in a sense that accounts for the undisputed right of a parent to sue for injury to a fetus who survives a tortfeasor's wrongful acts.⁶

⁶ See *Marion Energy, Inc. v. KFJ Ranch P'ship* 2011 UT 50, ¶ 14, P.3d ("[W]hen interpreting a statute, we assume, *absent a contrary indication*, that the legislature used each term advisedly according to its ordinary and usually accepted meaning." (emphasis added) (internal quotation marks omitted)); *O'Dea v. Olea*, 2009 UT 46, ¶ 32, 217 P.3d 704 (noting that ordinary usage is inferred "in the absence of evidence of a contrary intent").

[*P24] For that reason, the relevant question is not whether "minor child" is *ordinarily* used to encompass children *in utero*, but whether those words conceivably could be used in that way. I think the answer to that question is clearly yes. First, the term "child" is used extensively in the popular press to refer to the unborn,⁷ including in publications (like the New York Times) that could hardly be thought to be tainted by a so-called "anti-abortion political rhetoric," *infra* ¶ 32. And if the unborn count as children, they can hardly be disqualified by the addition of the [**21] adjective "minor." The dissent makes no effort to counter the standard meaning of "minor" cited by the majority, which encompasses anyone under the age of eighteen.

⁷ See, e.g., Ruth Palaver, *Unnatural Selection: The Two-Minus-One Pregnancy*, N.Y. TIMES MAG., Aug. 10, 2011, at MM22 (characterizing a fourteen-week-old fetus created "in a test tube" as a "child"); Lisa Balkan, *The Science of Boys and Girls*, MOTHERLODE (July 27, 2011, 12:15 p.m.), <http://parenting.blogs.nytimes.com/2011/07/27/the-science-of-boys-and-girls/> ("So, fetuses of different sexes might just be sending different signals from the inside to the outside. But what about the other direction? Are there external influences that determine the sex of a child in the first place?"); James C. McKinley, Jr., *Strict Abortion Measures Enacted in Oklahoma*, N.Y. TIMES, Apr. 28, 2010, at A14 ("A second measure . . . prevents women who have had a disabled baby from suing a doctor for withholding information about birth defects while the child was in the womb."); Amy Harmon, *Burden of Knowledge: Tracking Prenatal Health: In New Tests for Fatal Defects, Agonizing Choices for Parents*, NYTIMES.COM, June 20, 2004, <http://www.nytimes.com/2004/06/20/us/burden-knowledge-tracking-prenatal-health-new-tests-for-fetal-defects-agonizing.html?ref=amyharmon> [**22] (explaining that the results of a woman's fetal health screening showed that "the child had a high chance of having Down syndrome").

[*P25] Case law confirms this understanding of the role of the term "minor." This term simply clarifies that a parent's right to sue for death or injury of a child is cut off when the child reaches the age of majority.⁸ After the age of majority, the cause of action belongs to the child himself or to his spouse or heir, not to his parent.⁹

⁸ See, e.g., *Burt v. Ross*, 43 Wn. App. 129, 715 P.2d 538, 539 (Wash. Ct. App. 1986) (holding that parents had no wrongful death action for twenty-year-old child because she was over eighteen and therefore "not a minor child for the purposes of the wrongful death statute"); *Hanley v. Liberty Mut. Ins. Co.*, 323 So. 2d 301, 302-04 (Fla. Dist. Ct. App. 1975) (concluding that a parent's wrongful death action is cut off when her child reaches eighteen years).

⁹ See UTAH CODE ANN. § 78-11-7 (2006) ("[W]hen the death of a person not a minor is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death . . ."); *Switzer v. Reynolds*, 606 P.2d 244, 247 (Utah 1980) [**23] ("In Utah, . . . the wrongful death . . . cause of action . . . runs directly to the heirs . . ."); *Parmley v. Pleasant Valley Coal Co.*, 64 Utah 125, 228 P. 557, 558 (Utah 1924) ("When the death of a person not a minor is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death, or, if such person be employed by another person who is responsible for his conduct, then also against such other person." (quoting UTAH Comp. Laws § 6505 (1917))).

[*P26] Thus, if an unborn person can be called a "child," he can also be called a "minor child." The adjective "minor" changes nothing, except to add an upper-bound after which a parent has no right to sue. And since that construction is possible, I find it unavoidable, as a contrary conclusion attributes to the legislature a bizarre regime in which tortfeasors can avoid liability by killing and not just injuring their victims and surviving fetuses have claims that are foreclosed for their less fortunate counterparts. I would ground our construction of the statute on that basis and not on the notion that the statutory language [**24] is "plain."

DISSENT BY: NEHRING

DISSENT

JUSTICE NEHRING, dissenting:

[*P27] I respectfully dissent. The majority's conclusion that an unborn fetus is a "minor child" as used in Utah Code section 78-11-6¹ is wrong because (1) the plain meaning of "minor child" does not include a fetus, (2) a wrongful death cause of action may only be recognized through clear legislative direction, and (3) a construction of "minor child" that encompasses an unborn fetus creates absurd results under our laws.

1 UTAH CODE ANN. § 78-11-6 (Supp. 2006). As noted above, this statute has been renumbered and substantively altered since the relevant events. *See supra* ¶ 1 n.1.

I. THE PLAIN MEANING OF "MINOR CHILD" DOES NOT INCLUDE AN UNBORN FETUS

[*P28] At the time of the relevant events, Utah Code section 78-11-6 provided that "a parent or guardian may maintain an action for the death or injury of a *minor child* when the injury or death is caused by the wrongful act or neglect of another."² The majority concludes that the meaning of "minor child" in section 78-11-6 creates a cause of action for the wrongful death of a fetus.³ I disagree.

2 UTAH CODE ANN. § 78-11-6 (emphasis added).

3 *See supra* ¶ 2.

[*P29] Plain language analysis has two essential characteristics: [**25] (1) the definition of the term at issue must be accessible to the average English speaker⁴ and (2) the "plain" definition must actually be used by English speakers.⁵ The majority's definition fails on both counts. First, its definition is within the easy reach only of persons with an interest in wrongful death jurisprudence. More critically, the majority's definition of "minor child" is *never* used by English speakers in day-to-day conversation.

4 *Salt Lake City v. Ohms*, 881 P.2d 844, 850 n.14 (Utah 1994) ("The rule which should be applied is that laws, and especially foundational laws . . . , should be interpreted and applied according to the plain import of their language as it would be understood by persons of ordinary intelligence and experience." (internal quotation marks omitted)).

5 *O'Dea v. Olea*, 2009 UT 46, ¶ 32, 217 P.3d 704 ("When discerning the plain meaning of the statute, terms that are used in common, daily, nontechnical speech, should, in the absence of evidence of a contrary intent, be given the meaning which they have for laymen in such daily usage." (internal quotation marks omitted)).

[*P30] I challenge the assertion in Chief Justice Durham's opinion that "minor child" "in [**26] general usage . . . may refer to . . . a fetus."⁶ We previously recognized that the scope of the term "child" mandates an independent existence from a mother in *Alma Evans Trucking v. Roach*.⁷ In that case, we held that a fetus was not yet a child for purposes of death benefits, and stated:

We believe that the legislature used the word "child" in its *ordinary and usual sense*, viz., *a child which has been born*. . . . Until the child is born, it is usually referred to as a child in utero or a fetus. While the legislature ha[s] the power to award benefits to a child in utero, it clearly did not do so. It limited its award to children The unborn child in the instant case was [not] . . . a "child" until she was born.⁸

6 *See supra* ¶ 10.

7 714 P.2d 1147 (Utah 1986).

8 *Id.* at 1148 (emphasis added).

[*P31] I concede that the definition of a word used in one context may be simply wrong when used in other contexts. Thus, as an academic matter, the definition of "child" used in *Alma Evans Trucking* might, in fact, include a fetus in another context. But in *Alma Evans Trucking*, we determined that, absent specific evidence to the contrary, the definition of "child" in any context means a person who has [**27] been born. This is the "ordinary and usual" definition. To conclude that "child" means "fetus" is to adopt a definition that is both out of the realm of the ordinary and the usual.

[*P32] Contrary to Chief Justice Durham's assertion regarding the general usage of the term, I believe that our State's populace would find the reference to a fetus as a "minor child" quite bizarre. In fact, the usage of "minor child" to refer to a fetus is far from being general. It is unique. It is usage specific to anti-abortion political rhetoric--an issue with which we are not concerned here.

[*P33] Chief Justice Durham's opinion fails to observe that "our plain language analysis is not so limited that we only inquire into individual words . . . in isolation."⁹ Instead, the opinion parses the word "minor" from "child" and proceeds to analyze each word independently.¹⁰ The majority concludes that the only purpose of the word "minor" when used in combination with "child" is to fix an upper age limit beyond which one is no longer a "minor child."¹¹ Paradoxically, the majority declares that the word "child" has no lower age-limit.¹² Thus, reasons the majority, when the two words are combined, "minor child" is merely a [*28] temporal definition that means "beginning at conception" and enduring until the statutory age of majority.¹³

⁹ *Anderson v. Bell*, 2010 UT 47, ¶ 9, 234 P.3d 1147.

¹⁰ *See supra* ¶¶ 10, 24-26.

¹¹ *See supra* ¶¶ 10, 24-26.

¹² *See supra* ¶¶ 10, 24-26.

¹³ *Supra* ¶ 14.

[*P34] I am troubled by Chief Justice Durham's reliance on, what is in my view, a peculiar dictionary definition of "child" that extends childhood to a pre-viable fetus. Recently there has been much discussion about how we, as a court, go about the important work of ascertaining whether a word or phrase is "plain" and, if it is, how we come to know what it means. While dictionary definitions may be a useful starting point in plain language analysis, they are not determinative, and their use should not be indiscriminate.

[*P35] The need for caution against overreliance on dictionaries found support in the June 13, 2011 edition of the New York Times. In an article by Adam Liptak titled *Justices Turning More Frequently to Dictionaries, and Not Just For Big Words*, the Times recounts the growing appearance of dictionary definitions in United States Supreme Court opinions.¹⁴ Ironically, Mr. Liptak cites a 1988 survey of the lexicographic staffs of five publishers [*29] who concluded that the press is "the single most powerful influence in constituting the record of the English lexicon." While it would not be appropriate to place great reliance on the New York Times' usage of "minor child" or "minor children," given the press's influence on dictionary definitions, it merits noting that since 1851, the term "minor child" has appeared in the pages of the Times 2,886 times without ever referring to a fetus.

¹⁴ Adam Liptak, *Justices Turning More Frequently to Dictionaries, and Not Just For Big Words*, N.Y. TIMES, June 14, 2011, at All.

[*P36] When "minor child" is properly read as a "*harmonious whole*,"¹⁵ it becomes clear that the term comprehends something more than a time period. Instead, "minor child" must necessarily include a child--an independent being capable of life outside of its mother's womb. Only after establishing this independent existence may a child's minority begin. Until that point, a fetus's fate is unquestionably tied to that of its mother, and, so too, its recognition as a separate being. I believe that "minor child" is a commonly understood term that contemplates a child born and capable of a separate existence, and I see no reason to depart [*30] from that general usage here.

¹⁵ *Anderson*, 2010 UT 47, ¶ 9, 234 P.3d 1147 (quoting *Sill v. Hart*, 2007 UT 45, ¶ 7, 162 P.3d 1099).

II. A WRONGFUL DEATH CAUSE OF ACTION SHOULD BE EXTENDED TO AN UNBORN FETUS ONLY UPON CLEAR LEGISLATIVE DIRECTION

[*P37] Because I conclude that "minor child" is not synonymous with fetus, I find it improper for the majority to stretch the meaning of this term to create a cause of action for the wrongful death of a fetus. The State has a legitimate interest in protecting the "life of [a] fetus that may become a child."¹⁶ Yet, there is a distinction between fetus and child, and while the former may develop into the latter, neither encompasses the other. Despite this distinction and without any discussion of viability, the majority's interpretation of "minor child" expands childhood to encompass embryos that are incapable of an independent existence and life. However, this policy determination should be left to the legislature to explicitly so provide.¹⁷ Our expansion of the term "minor child" to encompass such an interest is unwise and unwarranted.

16 See *Planned Parenthood v. Casey*, 505 U.S. 833, 846, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).

17 Only six states extend liability for the wrongful death of a pre-viable fetus. [**31] They include Georgia, Illinois, Louisiana, Missouri, South Dakota, and West Virginia. With the exception of West Virginia, each state has done so pursuant to express legislative direction. Compare *Farley v. Sartin*, 195 W. Va. 671, 466 S.E.2d 522, 534 (W. Va. 1995) (construing statute that permits recovery for the wrongful death of a "person" to include the wrongful death of a nonviable unborn fetus), with 740 ILL. COMP. STAT. 180/2.2 (2010) ("The state of gestation or development of a human being . . . at death, shall not foreclose maintenance of any cause of action . . . arising from the death of a human being caused by wrongful act, neglect or default."), and S.D. CODIFIED LAWS § 21-5-1 (2010) (allowing a cause of action "[w]henver the death or injury of a person, including an unborn child, shall be caused by a wrongful act"), and *Porter v. Lassiter*, 91 Ga. App. 712, 87 S.E.2d 100, 102 (Ga. Ct. App. 1955) (allowing parent to recover for the "homicide of a child" when "child" is statutorily defined as a fetus that is "quick" or capable of moving in its mother's womb"), and *Danos v. St. Pierre*, 402 So. 2d 633, 638 (La. 1981) (allowing cause of action for wrongful death of fetus supported by legislative instruction [**32] that "a human being exists from the moment of fertilization and implantation"), and *Connor v. Monkem Co.*, 898 S.W. 2d 89, 91 n.6 (Mo. 1995) (construing wrongful death of a "person" to include that of a fetus where the state constitution provided that "laws . . . shall be interpreted and construed to acknowledge on behalf of the unborn child at every stage of development, all the rights, privileges, and immunities available to other persons").

[*P38] Our legislature has proven to be very adept and conscientious in making its intentions clear when its goal is to expand and protect the interests of fetuses. When that is the objective, our legislature unambiguously refers to "unborn" and not to "minor" children. Given this explicit difference and advised choice of words, it is by no means evident to me how reliance on Utah's Criminal Code, and in particular its commitment to protect the "unborn," helps answer the question of whether "minor child" includes a fetus in the context of Utah's wrongful death statutes.¹⁸ While a cause of action for the wrongful death of an unborn child may "fall[] in line" with other policies explicitly provided for by the legislature,¹⁹ this supposition does nothing [**33] to inform our interpretation of the unequivocally distinct language contained in our wrongful death statute.

18 See *supra* ¶ 12.

19 See *supra* ¶ 12.

[*P39] I am reluctant to make this point. I recognize that on occasion our legislature unintentionally creates ambiguities in statutes by not clearly stating its intentions in statutory text. But it is dangerous for us to interpret a statute in a way that assumes that had the legislature drafted the statute correctly, it would have manifested our intention at the expense of another. We do not interpret statutes by assuming which rights the legislature should want to protect. The more principled and prudent approach would be to interpret "minor child" in a manner that does not create new causes of action and to thereby alert the legislature to the interpretive dilemma and invite a legislative response. However, until the legislature acts to provide a different direction, we are bound by the language contained within the statute, which indicates that a wrongful death action may be maintained on behalf of a "minor" but not an unborn child.

III. CONSTRUING "MINOR CHILD" TO INCLUDE A FETUS LEADS TO ABSURD RESULTS

[*P40] I find no principled way to interpret "minor [**34] child" to include a fetus, and doing so affects not only the statute at issue, but also a vast swath of other Utah laws. Attempting to avoid the implications of construing "minor child" as including a fetus, the majority asserts--that such an interpretation yields no absurd result.²⁰ It claims that such an approach is justified because "the legislature has adopted different formulae [for defining 'minor child'] in different statutes."²¹ I disagree. The majority cites no evidence that the legislature intended such an unreasonably expansive definition of "minor child" in our wrongful death statute as opposed to the term's supposedly more limited use in other contexts. Moreover, even the legislature's ability to vary the meaning of a word is bound by the rational limits of the English language. Otherwise, the law as expressed by language would be rendered meaningless, and our interpretive tool of plain language analysis would be useless.

20 See *supra* ¶¶ 11, 26

21 See *supra* ¶¶ 11, 22 n.6.

[*P41] The purpose of our plain language analysis is to give effect to legislative intent as expressed by language according to its common and ordinary usage.²² When a term is ascribed its plain, common, and ordinary [**35] meaning, there is a presumption that the term is similarly understood in other contexts. Yet when the majority's interpretation of "minor child" is imported to other statutes utilizing the same term, the absurdities abound.

22 *Anderson v. Bell*, 2010 UT 47, ¶ 9, 234 P.3d 1147.

[*P42] For example, Utah's law governing property and homestead rights of married individuals states:

Neither the husband nor wife can remove the other or their children from the homestead without the consent of the other, . . . and if a husband or wife abandons his or her spouse, that spouse is entitled to the custody of the *minor children*, unless a court of competent jurisdiction shall otherwise direct.²³

²³ UTAH CODE ANN. § 30-2-10 (2007) (emphasis added).

[*P43] Under the majority's interpretation of "minor child," woe to the pregnant woman who abandons her husband and thereby must surrender her fetus and, presumably, adjacent anatomical structures to the custody of her husband. Given that a fetus does not have a separate existence outside the womb until birth, custody of the "minor child" could not be secured without granting a father custody of the womb in which it resides.

[*P44] A similarly absurd result would occur under the Public **[**36]** Safety Retirement Act. Section 49-14-503(1) states that "[i]f an inactive member who has less than 20 years of public safety service credit dies . . . if there is no spouse at the time of death, the member's *minor children* shall receive a refund of the member's member contributions or \$500, whichever is greater."²⁴

²⁴ *Id.* § 49-14-503(1) (Supp. 2011) (emphasis added).

[*P45] An absurd interpretation of this statute arises in the hypothetical circumstance where an active member dies after impregnating a woman not his spouse. If "minor child" is construed to include a fetus, a decedent's fetus carried by a woman not married to the decedent would be entitled to a refund of the decedent's contributions to the retirement fund. This would be the case whether or not the fetus was actually born and could potentially create an estate subject to probate for a fetus that does not survive full-term, but dies sometime between conception and birth. The idea that an unborn fetus can own property or may have an estate subject to probate even though the fetus was never born is unprecedented in our case law.

[*P46] I do not cite these examples for the purpose of commenting on the underlying policy, nor "to preserve **[**37]** consistency across various volumes of state code."²⁵ Rather, I cite these curious scenarios as a means of demonstrating that Utah law has, to this point, never considered the usual meaning of "minor child" to include a human embryo from the time of conception. In contrast, assigning "minor child" its ordinary and common meaning of a child born alive works no absurdity.

²⁵ *See supra* ¶ 22 n.6.

[*P47] Justice Lee's opinion asserts that the statute provides perverse incentives and functions absurdly if it disallows a parent to recover for the death of a fetus but allows recovery for prenatal injuries to a child born alive.²⁶ While this may or may not be true, policy as expressed in legislative language and the weighing of the incentives it creates is not this court's prerogative. We are tasked with construing statutes as written, according to the ordinary and common meaning of the language used. If the legislature intends to protect the rights of a fetus, it certainly has the linguistic skills to do so. However, interpreting "minor child" to achieve that goal strains the rational limits of the English language.

²⁶ *See supra* ¶ 22.

CONCLUSION

[*P48] Because the plain meaning of "minor child" contemplates only **[**38]** a child that has been born, I would not extend a claim for wrongful death to a fetus. If the legislature chooses to provide such a cause of action, it has the power to do so. But it has not done so here. The legislature did not contemplate "minor child" to include a fetus as evidenced by the term's use throughout our laws and the absurd results that such an interpretation would create. It is not this court's role to expand the law's reach as means of rectifying what may be deemed perverse incentives or bad policy.

the "peculiar institutions" of Africa, as well as of Cuba and a part of the United States! Is it a less crime for a poor benighted African to sell those who are slaves according to the laws and customs of the country, than for a high-born Spaniard, educated, as Ruiz had been, in Connecticut, to purchase men, just from the slave ship, knowing them to be the victims of that abominable traffic which the laws of his own and every civilized country denounce as the vilest of crimes? Further: Can men who are not willing to speak at all severely of the slavery and the slave trade which are legalized in this country, say, as the above mentioned editors do, that an African slave dealer can have no claim upon our human sympathies? Really we think there is "something morbid in the conduct of certain gentlemen." Must these little children and boys, who compose a large part of the whole, be cut off from the sympathy of the public, for the supposed crime of one of the number? There is no evidence that any of the number even possessed a slave in Africa. Mr. Tappan's supposed information to the contrary was obtained hastily, when the means of communication were very imperfect. It is not a crime, with what has been said, to purchase slaves, or to deal in slaves, even as a crime—unless they have recently become abolitionists! At any rate, they ought not to be ignorant that the claims of these Africans on our interest and our efforts in their behalf, does not rest at all on their personal character, but on the fact that they are victims of the accursed slave trade, and as such cast in the providence of God upon us for protection.

From the New Haven Record.
THE AFRICANS.

We have witnessed with regret the eagerness with which reports have been caught up and published, unfavorable to the Africans confined in this city, and the disposition manifested to misstate from the sympathy of the public, even to vilify it in favor of Ruiz and Montes. We refer to not the marvellous fabrications which have filled the columns of Bennett's Herald, but to papers which are accounted respectable. A paragraph indited by the editor of the Hartford Courier has had considerable circulation, in which it is stated that the business of Cinquez was to conduct slaves from the interior to the coast, to supply the slave ships; and the authorities given are the boy Antonio, who understands no African language, and the editor of the New Haven Herald, who, the day after the interpreters, Pratt and Covey, arrived, was "informed that Cinquez acknowledged that he had sold slaves."

We are now able to state on good authority, that three interpreters, Ferry, Pratt and Covey, each of them, affirm positively, that Cinquez has told them no such thing, nor any thing like it; nor do the witnesses who conducted the examinations with the two latter, and took minutes of all the answers, remember any such statement. Cinquez then said, as he says now, that he was the son of a chief, or head man, and he sometimes trafficked in merchandize. Pains have been taken again to examine Cinquez and several of the other prisoners in reference to this particular point. Cinquez denies ever having been engaged in the slave traffic and the others deny any knowledge of his having been so engaged.

But suppose all that has been said to be true. Are not slavery and the slave trade

Advantage has been taken of the prosecution of Montes and Ruiz, to make an impression unfavorable to the Africans, and favorable to their oppressors. The act of instituting the suit has been eagerly apprehended without waiting for enquiry, imputed to bad motives. Odium has been cast upon it as a measure of the abolitionists. Strange, that justice cannot be sought in a court of law for oppressed and imprisoned strangers among us, without incurring censure! Justly as these Spaniards deserve to suffer, the real object of the prosecution was, not to recover damages, but to bring before a jury the question of the right of these Africans to liberty.

The attempt has been made to discredit the testimony of the Africans. That their testimony is admissible in court has been decided by Judge Inglis. That the main facts of

their story are true, no one can doubt who is acquainted with the testimony and the manner in which it was taken. Not only are these facts altogether credible in themselves, but the Africans were examined separately, and cross-examined, and some of them examined not only through the interpreters, Pratt and Covey, but through Ferry, who uses a different language from them; and they all agree in testifying positively to these facts, and with every appearance of honesty and truth. It is the perfect coincidence of their separate testimony which gives it its strength.

The "dangerous weapons" which it was said in a way to excite alarm and suspicion, the prisoners had obtained, were nothing but common jack knives, some of which were brought them by the interpreters, inconsiderately, and without the knowledge of any one else, and others by boys who went in as visitors. It was very proper that the knives should be taken from them; but no one acquainted with the circumstances can suppose for a moment that they wanted them for any other purpose than their own amusement and convenience.

Those editors who do not choose to manifest any interest in favor of the Africans, ought at least be careful not to mislead the public respecting the case.

The Africans are making encouraging progress in acquiring the English language under their instructors, and their interest in the matter continues unabated.

From the Christian Reflector.

Pittsburgh, Pa., Sept. 26, 1833.

Dear Brother Grosvenor,—The time has been when there would seem to have been no need of your paper, nor of any other organ, than those already commenced; but, when the pride-reading, and pocket-searching, and soul-humbling doctrine of "Doing to others as we would have others do to us," is faithfully preached, there seems to be a general winning, and "the thoughts of many hearts are revealed."

Virginia, alone, sells annually SIXTY THOUSAND undying souls into the common market; and, in all probability, two-thirds or more are kind by professors of that religion of which the above is the fundamental law. An immense sum is thus received for these souls, every one of which, infinite, unending

struction shall have raised them in the scale of intelligence and civilization, they will know how to make a wiser use of their money. In one of the better trained districts of the parish no such habits prevail, nor has a gun been seen upon the shoulder of a negro for months together.

We find the following astounding announcement in the *Barbados Liberal*:—"Shaving of heads is again a part of our prison discipline, and practised, as before, upon every class of prisoners!" This is a part of the return to the illegal and gratuitous atrocities of the old slave-system, and calls for the immediate reprehension of the Colonial Secretary.

Our friends will peruse with interest the account we have elsewhere given, from an American paper, of the sentiments cherished and expressed towards the late governor of Jamaica in the United States. By the last trip of the Great Western Sir LIONEL SMITH arrived in this country, and he will soon learn how eminently his firm and liberal administration has endeared him to all the friends of freedom and humanity in Great Britain. A deputation from the British and Foreign Antislavery Society wait upon him by appointment this day.

We commend to the best attention of our readers Mr. SCOBLE's pamphlet on the recognition of Texas, which has issued from the press since our last, and is advertised in our columns of this day. With a frankness and promptness which have long been characteristic of him in the cause of suffering humanity, this distinguished philanthropist addresses himself to an exposure of the artful fallacies and reckless falsehoods, by which the agents and envoys of a province in rebellion have been endeavouring to act upon the public mind, and on the British government; and he has shown himself both well furnished for his work, and well skilled in it. The letters of which the pamphlet consists having already appeared in the *Emancipator*, we refrain from quotation; we hope that in their present form they will be more widely diffused, and more powerfully influential. We give below, however, the address to the Abolitionists of Great Britain by which the letters are introduced.

TO THE ABOLITIONISTS OF GREAT BRITAIN.

England, that will prevent its annexation to the United States.

But supposing that the recognition of Texas were followed by an increase of commerce, by a treaty for the abolition of the slave-trade, and by stipulations that it should not be annexed to the United States, are there no considerations which would outweigh these advantages? Great Britain occupies a distinguished position in the family of nations; and her moral power is not less felt, than her political power is dreaded. Has she not set a noble example to the nations of the earth in the abolition of the slave-trade, and in the emancipation of her enslaved population in the colonies, and in the protection she has determined to afford to the Aborigines within their vast dominions? Her people are distinguished for their generous philanthropy and religious principles, and are not content that the interests of humanity, and the cause of universal freedom, shall be sacrificed to a treaty of commerce with the enemies of both; and any government in the country that would outrage the moral feelings of the people, by recognising a state which had in these days established the system of slavery, and provided for its perpetuation, which had unblushingly opened its markets for the slave-trade—which had doomed to destruction or expatriation the Indians within its borders—and which had shown itself alike destitute of every human sympathy and principle of honour—must expect to hear the indignant rebuke of an insulted people. And further, should it so far forget the lofty position to which it has been raised, as to form an alliance with the liberty-destroying and slaveholding Texans, and thus compromise the moral dignity and Christian sentiments of the nation; it will then become you, the abolitionists of the land, to enter your solemn protest against the act, and to withdraw your confidence from such a government. But we would look for better things from those who now sway the destinies of this mighty empire.

It is worthy of remark, that the Missouri compromise, as it is termed, defined the exact limits beyond which slavery should not extend in the United States. Mason and Dixon's line fixed its northern boundary, and the Mexican empire its western limits. It thus became hemmed in by the free states of the great federal republic, by Mexico, and by the sea, and although it occupied a vast region, it became clear, that if it could not ultimately find an outlet, it must be abolished, or the most terrific results would follow. Texas is that outlet, and hence the vast importance attached to it by the southern States. Having now passed the Sabine, slavery will not pause in its career until it has reached the Pacific, unless the great principles maintained by the abolitionists of this country, of France, and of the United States prevail; or some signal visitation of Divine Providence overwhelm both it and its supporters in one common ruin.

In view of these things the State of Texas should be as much discouraged by the government of this country, as it is exalted by all good men. Let its cotton perish upon its fields, let its sugar never come to maturity, let its produce be covered with blight and mildew, rather than slavery inflict its tortures on him who tills the grounds, and its degradation on him who calls himself his Lord.

The only further news we have received since our last concerning the captive Africans in the United States, is, that Judge INGLIS and Judge OAKLEY, one in the Court of Common Pleas, and the other in the Supreme Court, each discharged MONTES on common bail, and reduced the sum for which RUIZ should be held to 250 dollars. By this decision, which establishes that the Afri-

Besides purchasing the control of several leading newspapers in London, and buying up every newspaper on the island save one, they omitted no opportunity to oppose and thwart the administration, in their legislative, judicial, and private capacities. On the other hand, the missionaries, the emancipated, and very many white and colored friends of impartial liberty, rejoiced in the benign and impartial government of this venerated chief magistrate, while the prayers of multitudes ascended continually for his temporal and spiritual prosperity. As an affecting proof of the respect and affection awarded to their late governor, and their deep regret at his departure, we learn that when the time came for his embarkation, the road for six miles was lined with the emancipated population, who turned out *en masse*, as it were, to bid adieu to the good old governor, while tens of thousands, amidst cries and sobs, exclaimed "massa governor, don't leave us, don't leave us, massa governor, for if you do, we be again sent to the dungeons."

We have had an interview with Sir Lionel Smith, who is of venerable appearance, frank and courteous manners, and somewhat advanced in years, having been in the military and civil service of his sovereign for about thirty-six years under the tropics. To our question, have you now entire confidence in the beneficial results of emancipation in Jamaica, he at once replied, "Certainly I have, if justice and equity are measured out to them; but if they are cruelly and perseveringly oppressed, there is no telling what human nature may be provoked to do." He said furthermore, that he had hoped that the United States would co-operate with Great Britain in suppressing the slave-trade, and in putting an end to slavery throughout the world; but he began to despair of the aid of America in this glorious work, believing that his own country will have to wage this great battle single handed.

The arrival of this excellent magistrate in this country is welcomed by the friends of the people of color and of the rights of man, and when he leaves our shores their best wishes will attend him, and their prayers will ascend for his safe and prosperous return to his family and native land, and afterwards to the new and distant post to which he has been transferred. There may he exhibit the same spirit of uncompromising hostility to oppression, the same paternal regard for the rights of the poor and defenceless, the same indifference to calumny, the same determination that, if he cannot be a popular magistrate among all classes, he will, at all hazards, do his duty, appealing for the rectitude of his intentions and the wisdom of his measures to the wise and good, to impartial posterity, and to God.—*New York Emancipator*. T.

PORTUGUESE SLAVE TRADE.

COPY OF A NOTE FROM LORD HOWARD DE WALDEN TO THE PORTUGUESE MINISTER OF FOREIGN AFFAIRS, BARON RIBEIRA DE SABROSA.

London, Nov. 15th, 1839.

The undersigned, &c., having transmitted to his government the number of the *Diario de Governo*, from which it appeared that her Most Faithful Majesty's government had issued an order, provisionally confirming a Convention relative to the slave trade under the Portuguese flag, and concluded between Lieutenant Tucker and the Governor General of Angola, has received instructions to acquaint her Most Faithful Majesty's government, through Baron R. de Sabrosa, that her Majesty's government has not confirmed the aforesaid convention (which was concluded by Lieutenant Tucker from laudable motives, but yet without any authorisation), the necessity of that Convention having ceased, in consequence of the general instructions which have been given to her Majesty's cruisers, with regard to the capture and detention of vessels found trafficking in slaves under the Portuguese flag.—The undersigned

Against these representations is objected their gross exaggeration. For of the whole population of the colonies, as stated, 77,000 only are free, and the rest slaves. Of this number 45,000 only enjoy the quality of French citizens. But in fact so far were the whole of these from being interested in the making of sugar, that out of 7,054 plantations devoted to the production of colonial commodities of various kinds, such as sugar, coffee, cotton, cocoa, spices, provisions &c., the sugar estates amounted only to 1,311, or about one-sixth of the whole. Taking the same proportion, the number of French colonists interested in sugar cultivation would be one-sixth of the French population, so that from 7,000 to 8,000 only would be the number.

The beetroot sugar-works in France are stated actually to number 600, which, assuming ten persons each to be directly interested in them as partners, these works being very generally established by companies *en commandite* or otherwise, would give the total number of 6,000 persons paying direct taxes, consumers of products and manufactures, and liable to be called upon for military service by the law of conscription. Adding to these the agricultural and manufacturing labourers employed, all free and personally interested in the labour of their hands, a further number of 175,000 persons are found dependent on the beetroot sugar industry, at the rate of 350 workmen being necessary for the fabrication of 100,000 kilogrammes of sugar, taking the whole production of 1837—38 at 30,000,000 kilogrammes. Assuming for their families an equal number with these labourers, then the total number of persons directly interested in the beetroot sugar industry in France, would be 350,000 individuals, which is a number almost equal to the whole population of the colonies, where the proportion concerned in and dependent on sugar cultivation alone is so much inferior.

In respect of the 50,000,000 value of merchandise exported to the colonies, it is affirmed that the larger proportion of that sent to the Antilles, or West India Islands, is destined for re-exportation, whilst much of it is not the real produce of French industry and agriculture. The advantages resulting from the employment of merchant shipping and the rearing of seamen for the Royal navy, are attempted to be depreciated upon reasoning which does not appear very conclusive. For where loss occurs upon sugar, it is asserted not to be borne by the colonist who sells and delivers on the spot, but by the shipowner, who brings it to market, and has to take his chance of profit or loss. The Royal navy, it is urged, is supplied chiefly, if not altogether, from the crews of coasting craft, and not from vessels engaged in long voyages, from which no recruits could be taken without endangering the navigation of the vessel.

For the beetroot sugar interest it is urged, that it has already taken such an extension, that 50,000,000 kilogrammes yearly are produced, giving employment to 356,000 workmen. The cultivation is established in 37 departments, in 47 it may take root, in 3 only it is refused. It contributes to the prosperity of agriculture, and is eminently favourable to the moral habits and the social improvement of all engaged in it. To the beetroot sugar is owing the reduction of price, which in 1815 was for refined 1*l.* 80*c.*, and now only about 78*c.* At the commencement of beetroot sugar-making the price of colonial sugar was 3*l.*, at present the price is 30*c.*, from which the tax of 5*l.* cents. is to be deducted. It is objected that colonial sugar is burdened with a duty of 16 cents; but in return it may be observed that the colonists pay no direct State charges, and the colonies cost annually to the State, 8,917,000*l.*, nearly all to protect the whites against the negroes, whose labour is indispensable in the making of sugar. The beetroot sugar industry, it is averred, is now in such a situation that either it must be totally ruined, or permitted to spread without further discouragement. The return on capital invested in it is said to be not more than from four to five per cent; but through the gradual perfection to which the refining process is reaching, it is considered that very shortly one per cent. more will be obtained in crystallised sugar, when it will stand no longer in need of protection, may be placed on the same level with colonial sugar, and will alone be able to furnish the whole quantity required for consumption, now divided with the colonies.

The extension of slavery, and the slave-trade in things which had been consecrated by a free people to liberty, cannot but be regarded with horror by every man who venerates the free institutions of this country, who loves his species, and who admits the sacred principles of the gospel to be binding upon his conscience. Texas, a splendid portion of the Mexican empire, was so consecrated, by the free government which overthrew the despotism of Spain in the New World; and it is in Texas that citizens of the United States have re-established slavery, and opened a new market for the purchase and sale of human beings! Texas has been wrested from its parent state, without a single plea that could justify the nefarious proceeding. Thither the most abandoned of mankind had resorted, principally from the slave states of the great republic; and after having defied the laws they were sworn to obey, broke out into rebellion, and triumphed in their iniquity.

The independence of this robber state has been acknowledged by the United States, and we grieve to say, by France also. An appeal has been made to the government of this great country, by the envoys she has sent hither, to follow their example; and there are not wanting among us men who publicly advocate the measure as of national importance. It has been my object to answer such, and to show that the national honour would be compromised by such an act.

It is said, that the commercial interests of the country would suffer by its non-recognition. That cannot be; for Texian vessels, with their produce, are allowed to enter British ports, on the same terms as if they still belonged to the Mexican Empire, although I could wish they were interdicted, as are Hittian ships at Jamaica, (most unwisely and unjustly in their case) until the rights of humanity are acknowledged, and the atrocious laws which at once establish slavery and the slave-trade, and provide for the expulsion of free people of colour and the native tribes from the soil, be repealed.

Our present relations with Mexico are of a very promising nature; and with due precaution, energy, and zeal on the part of the government, supported as it ought to be by the mercantile community, they can be permanently secured to us as a favoured nation, notwithstanding the intrigues in play against us through American influence. Santa Anna is well known to be friendly to Great Britain; it therefore becomes a serious inquiry, whether, by recognising Texas, we may make Mexico less our friend and ally than she is at present, and injure those very interests we wish to extend and maintain.

It is further said, that the non-recognition of Texas would prevent this country from entering into treaty with her for the suppression of the African slave-trade. I question much whether Texas would enter into any treaty with Great Britain for this purpose. I am inclined to believe she would follow her great model, the United States, in this matter, and refuse on constitutional grounds to make a treaty with us for the mutual right of search, and the capture of slavers bearing her flag. And what if she did? Should we be any nearer the attainment of our object by that means? The experience we have had of the inefficiency of treaties to suppress the slave trade, and of the untold miseries which have been inflicted on the enslaved Africans by the very treaties we have made, ought to teach us the folly of expecting to succeed in our efforts by that means. Besides, Texas has too deep a stake in the slave-trade to warrant the expectation that she would be more faithful to her engagements than Spain and Portugal, notwithstanding she has pronounced the African slave-trade to be piracy.

It is still further said, may not the recognition of Texas by this country prevent its annexation to the United States. Not, if that point be already decided on, which I firmly believe it is. The only thing that will prevent annexation, is the fear of war with this country by the United States. As to her anxiety to clutch Texas there can be no doubt; and with the understanding that exists between the two powers, she will wait some favourable opportunity, when this country is absorbed in what may be deemed more weighty matters, to make it her own. I should place no faith in any stipulations Texas might make to the contrary. It is not the recognition of Texas, but the power of

icans claimed as slaves by MONTES and RUIZ, can hold the slaveholders to bail, or, for want thereof, can imprison them, and maintain suits for false imprisonment and assault and battery, a great point has been gained, whatever may be the issue of the trials. Immediately on coming out of prison, Don MONTES took his passage for the island of Cuba. Dr. MADDEN, some years resident in that den of thieves, first as a Commissioner of the Mixed Court, and subsequently as her Britannic Majesty's superintendent of liberated Africans, had providentially arrived in New York, with much valuable evidence in the case of the Amistad, and would attend as a witness before the District Court on the trial of the Africans, which was fixed for the 19th of November. He says that the negroes taken in the Amistad were Bozal negroes, that is, recently imported; that they were purchased by MONTES and RUIZ at the Baracoon, or public receptacle and slave market for Bozal negroes; that RUIZ bought on account of his uncle, SATURNINO CARRIAS, a merchant of Puerto Principe; and that they were bought not for any estate of his, but for sale at that place. While in Boston Dr. MADDEN had prepared for publication a letter to Dr. CHANNING, on the slave-trade; and we rejoice to add that he may shortly be expected in England.

Varieties.

SIR LIONEL SMITH IN NEW YORK.

The late Governor of Jamaica arrived here in H. B. M. Brig *Serpent*, a few days since, and intends taking passage for England in the *Great Western*. He has been superseded by Sir Charles Metcalf, who arrived at Jamaica just before Governor Smith departed. When Sir Lionel Smith was appointed to the post of Governor of Jamaica, the planters were overjoyed. They hated the Marquis of Sligo the former Governor, because, although a planter, he was favourable to emancipation, and the enemy of oppression; and they expected that his successor, who was an old military commander, would be the friend and supporter of arbitrary power. Finding, however, that the new Governor was determined to administer the government impartially, and to support the laws with reference to both planters and labourers without favor or prejudice, the planters soon exhibited a hostile spirit, and, from being the warm admirers of Sir Lionel Smith, became his bitter enemies. The government at home wanting a man of his energy at the island of Mauritius, where the slaveholding spirit is rampant, and probably willing to conciliate the planters of Jamaica, have transferred Governor Smith from Jamaica to Mauritius.

The planters have accused the late governor of being a fanatic, and under sectarian influence, because, forsooth, his regard for justice and humanity imposed upon him the necessity of guarding the legal rights of the emancipated, and befriending the devoted missionaries.

(Signed)

HOWARD DE WALDEN.

TRANSLATION OF BARON RIBEIRA DE SAUROSA'S REPLY TO THE FOREGOING.

Foreign Office, Lisbon, Nov. 20, 1839.

The undersigned, &c., had the honour to receive Lord Howard de Walden's note of the 15th inst., acquainting him that the British government had not approved of the convention signed at Angola, by the Governor of that province, Vice-Admiral de Noronha, and by Lieut. Tucker, of the British navy, on the 9th of May, 1839, and the observance of which, provisionally, was enjoined by her Majesty the Queen, in an order from the Minister of Marine, dated the 30th of September last.

Her Majesty's government, in acknowledging this communication, cannot by any means admit the right which the British government arrogates by virtue of the bill presented to parliament, to give the instructions to which his Lordship alludes for the capture and disposal of vessels found trading in slaves under the Portuguese flag and south of the equator,—instructions in consequence of which, his Lordship says, the necessity for the said Convention had ceased, and against which her Majesty's government now renews the protest made by her Majesty's minister in London.

Meanwhile, the conclusion of that convention having been solicited in the name of the British government by Lieut. Tucker, her Majesty's government has the satisfaction of having shown, by its promptness in approving of it by the issue of the order above mentioned, the good faith with which it concurs, on its part, towards the total abolition of the slave trade, whenever its co-operation for that purpose is called for, within the bounds sanctioned by the general law of nations, and to the extent stipulated by treaties, conditions which the dignity of her Majesty's Crown cannot dispense with.

The undersigned avails himself, &c.,

SUGAR TRADE IN FRANCE.

The distress in which the sugar colonies of France have become involved, through the increase and successful competition of beetroot sugar, has on more than one occasion been noticed under this head. Some relief has recently been afforded to the colonial producers by a reduction of the heavy import duty, but this reduction effected by ordinance, has not satisfied them, being, as contended, far below what in justice they are entitled to. The beet root sugar makers, on the contrary, whose interests have already been somewhat damaged by this reduction of duty on colonial sugars, although somewhat more, perhaps, by the great extension of sugar works of late, with the occurrence of an unfavourable state of manufactures and trade, by which consumption has been affected, not only complain of the favour already shown, but contend vigorously against the claims of the colonies to any further consideration in the shape of a remission of impost, which in its consequences must, it is urged, prove entirely destructive to the home industry. As the late regulation of the duty was by Royal ordinance, it may be assumed that the reduction was a temporary expedient, until the whole question of the two interests could be brought before the Legislature for final adjudication. The opposing parties, therefore, are exercising respectively all their activity and influence to procure such a result as may be most favourable to their own views, and hence a keen contest is carried on through the press, by pamphlets, and before the commission of inquiry. For a proper comprehension of the subject here, a few of its leading points on both sides may be stated.

The sugar colonies of France are four in number, viz. Martinique, Guadaloupe, Bourbon, and Guiana. The whole population amounts to 360,000 individuals, and the production of sugar is estimated at 80,000,000 kilogrammes. The value of manufactures and other commodities exported to the colonies, is stated at 50,000,000 francs. This exportation is stated to employ 250 vessels, with crews of 5,000 men in the whole, and averaging two voyages in the year. From this are inferred the great benefits derived from the sugar colonies by the parent country, by the profits of trade, the revenues from the duties levied, the encouragement of merchant shipping, and the training of seamen for the Royal Navy.

Three plans are proposed to reconcile these conflicting interests, and to give relief to the market, at present surcharged with large unsaleable stocks. The one is to allow exportation direct from the colonies to other countries than France, re-exportation from France, and a reduction on refined sugars. The last is more especially urged, as this would enable the refiners to support the competition with other nations in foreign markets, and would cause the absorption of 20,000,000 to 30,000,000 kilogrammes of colonial sugars, to the refined produce of which it is proposed the reduction should alone be applicable.

It is unnecessary to pursue this subject into the important bearing these facts have upon our own colonies. They will strike at once every one connected with them.—*Times*.

THE SUGAR MARKET.

The accounts brought by the Alert packet from the West Indies are upon the whole very favourable, and lead to the expectation that the crops for 1840 will produce an average supply of sugar. It may be true, that in particular situations new canes have not been planted according to the usual routine of cultivating the plantations, either from the inability of the proprietors to defray the costs of such description of labour, or from a disinclination, on the part of the blacks, to work for certain masters upon any terms; we are not, however, to imagine that the estate will yield no sugar because new canes have not been planted, on the contrary, the old canes will become ratoonos, and it is well known that sugar from the ratoonos is of a quality superior to that from new canes, although the quantity may not be so large; and when we call to mind that the predictions of a failure in the crops of 1839, uttered with great earnestness and much plausibility in December 1838, have proved to be singularly inaccurate, we are slow to believe all that is now stated with regard to the shortness of crops for 1840. Moreover the extreme caution with which the buyers act, shows that the public at large participate in our opinion, and look for an average supply of sugar in the ensuing year.

High prices have stimulated an extended cultivation of sugar in the East Indies, since the equalization of the duty on it with West India sugar. From the 1st of January to the end of November, 1837, 69,490 bags of East India sugar were imported into London. For the same period of the present year 168,883 bags have been landed, showing an increase in 1839, over 1837 of 99,393 bags. Each bag contains about two cwt of sugar. It is expected that the importation of sugar from Bengal in 1840 will nearly double the weight landed in 1839.—*Sun*.

INSTRUMENTS OF SATAN!

The *Guiana Gazette* is very severe upon Sturge and Scoble, the *British Emancipator* and the *Barbados Liberal*. These are all so many instruments of Satan for the destruction of the colonies. As far as Demerara is concerned, much good is expected from the "rational plan of immigration" now in progress. "But," says this eminent writer, "in the presence and by the influence of those who would so much rejoice at our overthrow, even this fair, just, and reasonable scheme may be rendered abortive, if due care be not taken to secure a proper treatment of these immigrants on their arrival and location here." Exactly so. The instruments of Satan aforesaid are determined to watch the virtuous and pious planters, and prevent (or, at any rate, punish) their well-treatment of the poor labourer. The same worthy scribe informs his readers, that they must eschew long contracts for service; the binding of immigrants "to certain estates for a long period of time," and at a low rate of wages (he forgot this), will rouse indignation, "and the cry of slavery will be raised afresh." The devil's instruments will be upon them, slap dash, to remedy this evil, and they will have no peace in their honest vocation!—*Barbados Liberal*.

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