

IN THE
Supreme Court of the United States

ROBERT M. KERR, DIRECTOR,
SOUTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Petitioner,

v.

PLANNED PARENTHOOD SOUTH ATLANTIC, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

**BRIEF OF 137 WOMEN HURT BY
PLANNED PARENTHOOD ABORTIONS &
AND THEN THERE WERE NONE AS *AMICI
CURIAE* IN SUPPORT OF PETITIONER**

ALLAN E. PARKER, JR.
Counsel of Record for Amici Curiae
NATHAN T. SELTZER
MARY BROWNING
R. CLAYTON TROTTER
THE JUSTICE FOUNDATION
8023 Vantage Drive, Suite 1275
San Antonio, TX 78233
(210) 614-7157
aparker@txjf.org

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF APPENDICES	iii
TABLE OF CITED AUTHORITIES	iv
INTEREST OF <i>AMICI</i>	1
SUMMARY OF ARGUMENT.....	4
ARGUMENT.....	5
I. Planned Parenthood wants Federal Courts to award it State Medicaid funds, short-circuiting the democratic process in South Carolina	5
II. <i>Amici</i> experiences demonstrate that the abortion industry regularly perpetrates harm on women, a violation of responsibilities of Medicaid providers	6
A. As <i>Amici</i> Women Hurt by Planned Parenthood Abortions attest, abortion providers have demonstrated that their loyalty is to abortion, at the expense of their patients.....	6

Table of Contents

	<i>Page</i>
B. <i>Amici And Then There Were None</i> corroborate <i>Amici</i> Women Hurt by Planned Parenthood Abortions	8
CONCLUSION	12

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX A — NAMES OF <i>AMICI CURIAE</i>	1a

TABLE OF CITED AUTHORITIES

Page

CASES

Dobbs v. Jackson Women’s Health Org.,
597 U.S. 215 (2022).....4, 5

Doe v. Bolton,
410 U.S. 179 (1973)1

Roe v. Wade,
410 U.S. 113 (1973)1, 4

STATUTES AND OTHER AUTHORITIES

American Medical Association, Council on
Ethical and Judicial Affairs, Opinion 2.1.1
Informed Consent [https://www.ama-assn.org/
delivering-care/ethics/informed-consent](https://www.ama-assn.org/delivering-care/ethics/informed-consent)

Coleman, Priscilla, “Abortion and Mental
Health: Quantitative Synthesis and Analysis
of Research Published 1995-2009,” *The
British Journal of Psychiatry* (2011) 199,
DOI: 10.1192/bjp.bp.110.07723

Exec. Order No 2017-15, 41-9 S.C. State
Reg. 7, (Sept. 22, 2017).....5

INTEREST OF AMICI¹

Amici 137 Women Hurt by Planned Parenthood Abortions

Amici 137 Women Hurt by Planned Parenthood Abortions² are women who were injured by Planned Parenthood performed abortions.³ Most of the *Amici* Women Hurt by Planned Parenthood Abortions suffered grievous psychological injuries, but many suffered severe physical complications, as well. All were exposed to the risk of serious and permanent physical injury, as well as

1. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici Curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

2. Attached as Appendix A is the list of the initials or first names of the *Amici Curiae* Women. In order to protect their identities, some of the women have requested that we use initials only or first name only. These women's sworn affidavits or declarations made under penalty of perjury are on file at The Justice Foundation. Protecting the identity of women who have had abortions or seek abortions has been customary since *Roe v. Wade*, 410 U.S. 113 (1973) and *Doe v. Bolton*, 410 U.S. 179 (1973) where *Roe* and *Doe* both were pseudonyms.

3. *Amici* offer, as additional interest of *Amici*, their affidavits and declarations as women hurt by Planned Parenthood abortions (shared with permission).

Link to Full Declarations:

<https://www.dropbox.com/scl/fo/ee0euyno0nc94rw42zvv3/ACCjN40b4EkVxvsb3f2OL-c?rlkey=2i2liwzo4unfn5is5t8houhsb&dl=0>

serious psychological injuries,⁴ and thus have a profound interest in protecting other women in South Carolina, and across America, from such injuries.

Amici Women have experienced first-hand—some multiple times—the callous and predatory reality of the abortion industry, through Planned Parenthood, in certain particular cases. They argue the vast majority of women who go to high-volume abortion facilities are treated as a commodity, not a patient. The word “patient” will not be used in this Brief because *Amici* Women had no real doctor-patient relationship with their abortion facilities; only the legal fiction necessary to bill Medicaid. (See testimonies in Footnote 3.)

With increased use of abortion pills and telemedicine, this legal fiction of a “relationship” is even more attenuated and transactional. Certainly, with respect to *Amici* Women, there was no real doctor-patient relationship which is supposed to create “successful communication” which “fosters trust and supports shared decision making.”⁵ See Footnote 3, *supra*. With abortion pills, the procedure now becomes a mail order process.

4. See, e.g. “Women who had undergone an abortion experienced an 81% increased risk of mental health problems, and nearly 10% of the incidence of mental health problems was shown to be attributable to abortion.” See Coleman, Priscilla, “Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995-2009,” *The British Journal of Psychiatry* (2011) 199, 180-186, DOI: 10.1192/bjp.bp.110.07723. (A meta-analysis of 22 studies.)

5. American Medical Association, Council on Ethical and Judicial Affairs, Opinion 2.1.1 Informed Consent <https://www.ama-assn.org/delivering-care/ethics/informed-consent>

Amici Women know, and directly experienced, the misrepresentations and substandard health practices of the abortion industry. *Amici* Women hereby provide this Court with their credible perspectives as women who have experienced the pain, trauma, and deception associated with their abortions, which were performed by Planned Parenthood.

Amicus “And Then There Were None”

Amicus “And Then There Were None” (ATTWN) is a nonprofit organization that assists abortion workers in their exit strategy from the abortion industry. Founded by Abby Johnson in 2012, after her exit from Planned Parenthood, ATTWN has helped over 700 former abortion industry workers and whistleblowers with a network of resources and counseling services.

Many of these former abortion workers have witnessed horrific abuse of patients, staff, unborn babies, and fetal remains, resulting in PTSD symptoms and moral injury. Their firsthand accounts of these abuses are not isolated to a limited number of facilities but have been found in multiple locations and different organizations, throughout the abortion industry.

The abortion industry has made a business of the removal of human beings by labeling them “products of conception”, disguising their humanity. This sleight of hand furthers the ends—a profitable and economic enterprise—and their “clients” carry the brunt of the physical, emotional and moral costs.

These brave whistleblowers attest to the abuse of women by the abortion industry, including Planned

Parenthood, at great personal risk and cost. Because of this, the workers will be referred to by first name only, and personally identifying information has been removed or redacted.⁶

SUMMARY OF ARGUMENT

Roe v. Wade has been overturned. There is no Constitutional right to abortion. This Court held in *Dobbs* that “the authority to regulate abortion must be returned to the people and their elected representatives.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 292 (2022).

South Carolina’s elected governor decided to protect women from abortion by reasonably deciding to exclude abortion providers who harm women and children from Medicaid. The governor made the policy determination that—because money is fungible—state funds which flow into abortion providers allow those providers to pay administrative and operational costs that indirectly support abortion services.

For 49 years, the *Roe v. Wade* framework “led to the distortion of many important but unrelated legal doctrines.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 286. This lawsuit, brought by Planned Parenthood and its proxy, is an attempt to supplant the decision of elected officials in South Carolina with a *Roe*-polluted argument for Federal Court intervention in a State’s democratic process.

6. Names and identifying information of former workers who provided personal testimonies for this brief are on file with The Justice Foundation and are protected by attorney-client privilege. This information will be revealed only with permission of the amicus and individual being identified.

ARGUMENT

I. Planned Parenthood wants Federal Courts to award it State Medicaid funds, short-circuiting the democratic process in South Carolina

This Court held that in *Dobbs* the Constitution does not provide a right to abortion and returned authority to regulate abortion to the people and their elected representatives.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 302 (2022).

The people of South Carolina, by and through their elected governor, sought to exercise authority over abortion by depriving abortion providers of fungible state monies that abortion providers could use to subsidize their abortion activities. *See* Exec. Order No 2017-15, 41-9 S.C. State Reg. 7, (Sept. 22, 2017) (“ . . . abortion providers may be subsidized by State or local funds intended for other women’s health or family planning services, whether such non-abortion services are rendered directly by abortion providers or by affiliated physicians or professional medical practices.”).

Planned Parenthood’s argument thus requires Federal Courts to abrogate authority which was rightfully wielded by the people. The game of appellate ping-pong being played in this case appears to *Amici* to be an attempt to delay the inevitable vindication of State authority without any legally-plausible argument favoring abortion providers.

II. *Amici* experiences demonstrate that the abortion industry regularly perpetrates harm on women, a violation of responsibilities of Medicaid providers

These *Amici* submit their testimonies of pain and trauma inflicted by the abortion industry, not as a polemic, but as a warning to courts and the public.

A. As *Amici* Women Hurt by Planned Parenthood Abortions attest, abortion providers have demonstrated that their loyalty is to abortion, at the expense of their patients

From Testimony of Joetta, a Planned Parenthood Client

I actually wanted to leave and said I can't do this [r]ight before the doctor started the abortion, but they just pushed me back and told me to calm down and they started the procedure with me crying and saying I wanted to leave.

From Testimony of Donna, a Planned Parenthood Client

Planned Parenthood sedated Donna before her sonogram, inhibiting her ability to give free consent to the procedure.

They gave me valium and did a sonogram to show where the fetus was and discovered that I was pregnant with twins. My heart sank, and I asked if it was too late to change my mind. I thought the valium did damage to the fetus. The response I got was something to the effect that I wouldn't be able to care for two babies, if I couldn't care for one.

From Testimony of Virginia, a Planned Parenthood Client

They told me it was okay, it was just removing tissue, everyone does it and it doesn't even hurt. I was never given an ultrasound and I was calculated to be 12 weeks along, but the doctors found out during the abortion that I was actually 20 weeks along and I almost died along with my baby the day I had my abortion.

From Testimony of Laurie, a Planned Parenthood Client

After the abortion, I was brought into a sort of resting room to recover. Minutes later, I was told that they had to bring me back in because they hadn't gotten "all of it".

In the months following, I had quite a bit of cramping—more than the usual—but was still afraid to tell anyone or to see a doctor. Unbeknown[st] to me, my fallopian tubes were scarr[ed] and then they sealed themselves closed. 15 years later my husband and I tried to conceive. We tried for several years and then I sought infertility treatments. Little did I know my fallopian tubes were closed. I had three operations to open them, but each surgery failed. I was unable to conceive a child because of the scarring that had [occurred] from the abortion!

From Testimony of Mary, a Planned Parenthood Client

I remember beginning to cry out in pain and I was held down forcefully told to shut up. It was

cruel and ugly!!! I then was put in a room with multiple other women who sat around on chairs. We all had the look of death on our faces. No one spoke. We just tried not to look at each other. I remember being in horrible pain and was told I could go. All I did that night was cry. The whole experience was degrading and cruel.

These testimonies are not news to Planned Parenthood or other abortion providers. They have heard the women's screams and crying. The harm inflicted on women by abortion is extensive and ongoing. Providing the means for a mother to initiate the death of her own child—while downplaying the nature and consequences of that decision—impugns the ethics and decency of participating organizations and their leadership. *See* Footnote 3. Ms. Edwards lacks a private right to demand South Carolina fund Planned Parenthood against the wishes of its people. Whether providers of abortions have the right to be qualified providers under South Carolina Medicaid is an issue for that state's administrative appeals process.⁷ Federal courts have no role in second-guessing the South Carolina governor's decision, which lifts and supports the voices of all women injured by abortion, including *amici*.

**B. *Amici* And Then There Were None corroborate
Amici Women Hurt by Planned Parenthood
Abortions**

The following testimonies shed light on Planned Parenthood business practices and include instances of deviation from ethical and legal obligations.

7. Planned Parenthood allowed its administrative appeal, the remedial scheme created by the statute, to lapse. Pet. 9.

From Testimony of Eva, former Planned Parenthood clinical staffer

Eva recalls a woman bringing her aborted baby into the Planned Parenthood clinic, accusing them of lying to her.

I remember one woman in particular. She said that she was angry that the person who did the consultation at the clinic made her kill her baby. She actually brought the baby that she passed back to the clinic in a paper bag. The Nurse Practitioner told me to tell the woman to dump it. I was really tempted to see for myself what was in the bag but I told the NP to tell the patient herself. She did and she eventually convinced the woman to dump it.

From Testimony of Mayra, former Planned Parenthood Clinic Manager

Medicaid only pays for abortion in cases of rape and incest, due to the Federal Hyde Amendment. Clinic Manager Mayra alleges that Planned Parenthood uses this exception inappropriately:

I recall this instance where Planned Parenthood told the mother of a minor, about 14 years old, pregnant by a 17-year-old, how Medicaid could pay for the abortion by claiming the pregnancy was a result of rape. The mother knew that her daughter had not been raped and didn't want to ruin the boy's life just to pay for the abortion.

Medicaid pays for abortions in circumstances for incest and rape for undocumented people through [our State Medicaid] program. That required a lot of paperwork at the time, but it was a way for us to get paid to perform more abortions.

Mayra's experience demonstrates the double-billing by Planned Parenthood as, when a surgical follow-up was necessary, after a chemical pill abortion, Planned Parenthood billed twice—once for their chemical and once for the surgical abortion.

[Planned Parenthood] charged her insurance for the follow-up surgical procedure after already getting payment for the abortion pill.

Planned Parenthood knows it's double dipping. They know **42% of patients who take abortion pills (emphasis added)** will require a follow-up that either includes another set of pills or includes an aspiration for which they will charge again.

From Testimony of L., former Planned Parenthood Clinical Office Staffer

L. alleges that she was told to train other staff on administering nitrous oxide to patients, although she was not certified herself. Administering nitrous oxide requires several hours of formal and clinical training under her state's laws.

Without any formal medical education, I was asked to train clinic staff to administer Nitrous

Oxide to patients. I refused and said I wasn't comfortable with doing this. It isn't unusual for the clinic to train people in roles they weren't credentialed for. Employees often performed roles they were not properly trained to do.

From inside the abortion clinics, the view is clearly more cynical and abortion-focused than their clients could ever know. As *Amici* can attest, pregnant women in difficult situations are among the most vulnerable people in society, and the abortion industry readily exploits that vulnerability to achieve its aim—more abortions. Every dollar of South Carolina taxpayer money that is withheld from the abortion industry benefits women by funding qualified providers who will provide patient-focused medical care. This Court should allow the elected governor of South Carolina to execute his validly issued executive order.

These experiences demonstrate that abortion providers have a destructive tendency to push their deadly solution on every pregnant woman, regardless of her desire to get an abortion—or not. Any state would be justified in excluding abortion providers from receiving any State funds based on these ethical concerns. South Carolina cannot be penalized by federal courts for reaching that conclusion.

CONCLUSION

Amici ask this Court to grant *certiorari* and reject Planned Parenthood's attempt to use Federal Courts to collaterally attack valid State regulations protecting women like *Amici* Women Hurt by Planned Parenthood Abortions.

Respectfully Submitted,

ALLAN E. PARKER, JR.

Counsel of Record for Amici Curiae

NATHAN T. SELTZER

MARY BROWNING

R. CLAYTON TROTTER

THE JUSTICE FOUNDATION

8023 Vantage Drive, Suite 1275

San Antonio, TX 78233

(210) 614-7157

aparker@txjf.org

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
NAMES OF <i>AMICI CURIAE</i> 137 WOMEN INJURED BY PLANNED PARENTHOOD ABORTIONS.....	1a

**APPENDIX A — NAMES OF *AMICI CURIAE*
137 WOMEN INJURED BY PLANNED
PARENTHOOD ABORTIONS**

**Names of *Amici Curiae* 137 Women Injured by Planned
Parenthood Abortions**

Samantha, Donna, L.R., Shauna, Linda, Millie, Christina, Minda, Linette, Gina, Mary Anne, Bianca, B.J.H., R.M., Mary, Racheal, S.N., Taylor, Christine, Sheri, K.S., Sandy, Sonia, Kori, Catherine, V.M., C.K., Lorraine, Jeanne, Rachele, Judy, G.E., B.R., Regina, Paula, A.K., Michelle, Mary, Susan, Rachel, Ronda, R.H., Joan, Carol, E.J., B.J., Hilary, Jessica, Emily, Linda, M.P., Jennifer, Elaine, Michelle, Stephanie, R.B., Louise, Lisa, R.C., Katie, Mary Jean, Carrie E., Carrie, P., C.S. Donna, Virginia, Narda, Lianne, Linda, Cathy, Barbara, Ronda, Stacy, Virginia, Therese, S.K., Karen, Laura, Gwendolyn, D.P., Laurie, Jacqueline, Laura, Karen, K.R., Denise, Judi, K.F., Dianna, Beverly, Tara, Teresa, Joanne, Cindy, Michelle, Georgianne, K.E., Shirley, Theresa, Patricia, Joetta, Marla, Kathleen, Krista, Sherin, Gail, D.G., Nancy, Janice, Debbie, Patricia, Elizabeth, Lisa, Jane, Lynn, Laura, Nona, Amanda, Ashton, Randa, Susan, L.W., Mary, Mary C., Jessica, T.P., Julie, Adrienne, Karen, Teresa, C.S., L.H.G., Cheryl, Brenda, Lani.