

Nos. 23-235, 23-236

In the
Supreme Court of the United States

FOOD AND DRUG ADMINISTRATION, ET AL.,
Petitioners,

v.

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,
Respondents,

DANCO LABORATORIES, L.L.C.,
Petitioner,

v.

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,
Respondents.

**On Writs of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

**BRIEF OF PRIESTS FOR LIFE
AS *AMICUS CURIAE*
IN SUPPORT OF RESPONDENTS**

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**STATEMENT OF IDENTITY AND INTERESTS
OF *AMICUS CURIAE* PRIESTS FOR LIFE**

Pursuant to Supreme Court Rule 37, *Amicus Curiae* Priests for Life respectfully submits this brief in support of respondents, urging the Court to affirm the Fifth Circuit’s ruling to protect women who are harmed by the unregulated use of mifepristone.¹

Priests for Life

Priests for Life is a pro-life organization created to identify, educate, network, encourage, and mobilize Catholic and other Christian clergy and lay people to advance the protection of unborn children from abortion through prayer, education, preaching, teaching, publishing, and other religious methodologies.

To promote its mission, Priests for Life, along with Anglicans for Life, have developed the Silent No More Awareness Campaign (“Silent No More”).

Silent No More is a joint project whereby Christians make the public aware of the devastation that abortion brings to women and men. The campaign seeks to expose and heal the secrecy and silence surrounding the emotional and physical pain of abortion, including chemical abortions.

¹ No counsel for any 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 *Amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

The specific goals of Silent No More are as follows:

- To reach out to people hurt after abortion, encouraging them to attend abortion after-care programs.
- To invite those who are ready to break the silence by speaking the truth about abortion's negative consequences and the path to healing.
- To educate the public that abortion is harmful emotionally, physically, and spiritually to women, men, and families, so that it becomes unacceptable for anyone to recommend abortion as a "fix" for a problem pregnancy.
- To share the personal testimonies of hurt and healing to help others avoid the injury and pain caused by abortion.

It is through this Brandeis-style brief that Priests for Life presents to this Court the compelling testimonies of individuals who have been harmed by the adverse effects of chemical abortion.

SUMMARY OF THE ARGUMENT

In *Dobbs*, the Court noted the "damaging consequences" of the *Roe* decision. These "consequences" continue to corrupt the Food and Drug Administration (FDA), which arbitrarily and capriciously removed commonsense protections for women with regard to the distribution and use of drugs that chemically induce abortion, specifically including mifepristone.

In 2000, the FDA approved mifepristone under Subpart H by falsely labeling pregnancy a “serious and life-threatening illness.” Because mifepristone could not safely be approved without restrictions, the FDA conditioned its approval on numerous safeguards. Yet in 2016, the FDA removed important safeguards, failing to explain why it was proper to do so without a study showing their cumulative safety.

In 2021, the FDA removed the last-remaining doctor’s visit safeguard, allowing mail-order chemical abortions despite acknowledging that the safety studies on which it relied were “insufficient.”

The Fifth Circuit correctly required the FDA to address the problems and to adequately explain its decisions to remove critical safeguards in 2016 and 2021, which allowed chemical abortion drugs to be dispensed through the mail without any physical examination to diagnose gestational age or an ectopic pregnancy, both of which gravely affect the health and safety of pregnant women.

This brief presents the voices of women who have been harmed by chemical abortions in a real and lasting way, highlighting further the dangers of drugs such as mifepristone and the arbitrary and capricious way in which the FDA removed commonsense restrictions that would, at a minimum, help to mitigate some of the harmful effects of what can only be described as a diabolical procedure as its objective is to destroy innocent human life.

ARGUMENT

I. THE “DAMAGING CONSEQUENCES” OF *ROE* V. *WADE* HAVE CORRUPTED THE FDA.

“*Roe* was egregiously wrong from the start. Its reasoning was exceptionally weak, and the decision has had damaging consequences.” *Dobbs v. Jackson Women’s Health Org*, 142 S. Ct. 2228, 2243 (2022). These “damaging consequences” continue today and are realized in the arbitrary and capricious decisions of the FDA to remove commonsense safeguards for the use and distribution of mifepristone—a dangerous drug that could result in grave and serious consequences for the user (aside from the deadly effects it has on an unborn human life) if not administered properly or used under medical supervision.

Under the Administrative Procedures Act (APA), “arbitrary” and “capricious” agency actions are unlawful. 5 U.S.C. 706(2)(A). “The APA’s arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021). Under that standard, “the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation omitted).

The Fifth Circuit evaluated the data presented and properly concluded the following:

In loosening mifepristone’s safety restrictions, FDA failed to address several important concerns about whether the drug would be safe for the women who use it. It failed to consider the cumulative effect of removing several important safeguards at the same time. It failed to consider whether those “major” and “interrelated” changes might alter the risk profile, such that the agency should continue to mandate reporting of non-fatal adverse events. And it failed to gather evidence that affirmatively showed that mifepristone could be used safely without being prescribed and dispensed in person.

At this preliminary stage, the Medical Organizations and Doctors have made a substantial showing that the 2016 Amendments and the 2021 Non-Enforcement Decision violate the APA.

All. for Hippocratic Med. v. FDA, 78 F.4th 210, 256 (5th Cir. 2023).

This conclusion should not be disturbed.

II. CHEMICAL ABORTIONS ARE DANGEROUS AND HARMFUL TO UNSUSPECTING WOMEN AND MUST BE STRICTLY REGULATED BY THE FDA.

The abortion industry, which includes pharmaceutical companies, is more interested in profit

than women's health and safety. Unfortunately, abortion has also become sacrosanct for those with a certain political ideology, who will then resist any regulation, including commonsense safety regulations, that might make it more difficult for a woman to abort her baby. This is a regrettable aspect of the "dangerous consequences" *Roe* has had on our culture and society for the past fifty years.

This corrosive ideology has metastasized, and it has had a corrupting effect on governmental entities as well, including the FDA. This corruption is evidenced by the FDA's decisions to remove commonsense safeguards designed to protect women from the harm of chemical abortions. These decisions are arbitrary and capricious, as the Fifth Circuit correctly concluded.

Rachel's Vineyard, a project of Priests for Life, is a ministry for healing after abortion. Its founders have witnessed the loss and tragedy suffered by women and men whose lives had been profoundly changed in horrific ways because of abortion. The emotional and spiritual healing program for abortion loss has spread throughout the United States and to over 80 countries. Rachel's Vineyard is facilitated in over 30 languages on nearly every continent to help women and men process their grief and complicated emotions after abortion, including chemical abortions.

Those who help spread this program want to give others the experience of sharing the truth of what they suffered in a sacred process for grieving, reconciling, and recovery. Many were shocked once they learned they were not the only ones suffering silently from abortion. Many describe the repercussions and lifetime

impact as cruel and degrading. There is grief, sadness, enormous regret, and pain. They have learned to numb themselves with alcohol and drugs. Some reenact their trauma through promiscuity and repeat abortions, trapped in traumatic cycles of abandonment, rejection, abuse, and a sense of helplessness. Others mask their feelings through eating disorders or workaholic lifestyles as they combat depression, anxiety, and thoughts of suicide. Others have suffered permanent physical and reproductive damage from abortion, which rendered them unable to have children in the future.

After more than 50 years of abortion on demand, there is a mounting body of evidence of the harm caused by abortion, including chemical abortions. This harm is largely ignored or explained away by abortion proponents, as in this case, to the detriment of the women they claim to help.

All abortions can and do have a devastating impact on women and their families, in addition to ending the life of an unborn child.

Below is a sampling of testimonies of chemical abortion victims—persons who have been harmed in a profound way by these harmful drugs.²

Priests for Life believes it is imperative that this Court hear their voices, which are too often silenced by the very grief, pain, and suffering they experienced as a result of their abortion. These women are victims of

² Additional testimonies of those harmed by abortion in general can be found at <http://www.silentnomoreawareness.org/testimonies/index.aspx>.

the “damaging consequences” caused by *Roe*. Their testimonies demonstrate that chemical abortion is not only fatal to the unborn, it is exceedingly harmful to women. The collective voice of these victims cries out to this Court to affirm the Fifth Circuit.

CHEMICAL ABORTION TESTIMONIES

At a Planned Parenthood in North Carolina, Patricia was told by a doctor there was nothing to worry about with a chemical abortion. He said she might have “some bleeding or possibly clotting” and that complications were rare. Her experience was far different:

“The next day, at home alone with my infant son, I took the abortion pills. Within one hour I knew that everything the doctor had told me was a lie. I was bleeding so heavily, I believed I was dying. I was passing clots the size of baseballs, and I was in the worst physical pain of my life, worse than childbirth. The worst part of my experience was when I was sitting on the toilet and I felt myself pass a clot that felt strange. I looked into the toilet and saw my baby. It had a head, body, and tiny arms and legs. The shame and guilt that I felt at that moment, as I was forced to flush my aborted baby down the toilet, is impossible to describe.”

Jessica from Oregon was in a committed relationship when she became pregnant. The father didn’t want the baby and pressured her to abort.

“I reluctantly took the first abortion pill in the Planned Parenthood office. They gave me

another pill to take at home hours later. I cried hysterically for the hour drive home, wondering how I could be so cruel to kill my own baby. Not long after I took the second pill, I felt nauseous and light headed and stomach cramps started. I felt so weak that I just wanted to lay down, but I was in excruciating pain with heavy bleeding, and I felt that sitting on the toilet was best. I birthed my dead baby into my toilet. I was heartbroken when I saw that it had tiny fingers and toes. I bled a lot, and the abortion was excruciatingly painful, almost as painful as my two unmedicated full-term births.”

Dora from Texas remembers feeling numb before she took the second drug, the one that would expel her baby from her womb.

“I put the pills in my mouth and let them dissolve, within 10 minutes I started to feel intense cramps. When the cramps became unbearable, I made my way to the bathroom. I locked the door and experienced the most severe pain I had ever felt in my life. I sat on the toilet and bent over in pain. I grabbed a towel to bite on in order to keep from screaming and was nearly passing out. As I got up, I saw blood everywhere. I saw parts of my baby, an image I will never be able to erase from my mind. I fell to my knees in pain.”

Patricia in Georgia remembers everything about the day she aborted her child.

“On February 20, 2015, at 8.3 weeks, I took the abortion pill at a nearby clinic. I didn’t think much else of it, until it was time to take the four following pills the next day. That’s when the excruciating pain began. There were unbearable cramps, and something that felt as if they were contractions. That went on for hours until I felt a large lump leave me. Seconds later, I cried. I cried and couldn’t stop. I instantly regretted what I had just done.”

A civilized society would not allow chemical abortions. These women now find that their safe space and refuge, their home, has become the locus of painful and traumatic feelings and memories associated with their abortion experience. The FDA’s removal of important health and safety requirements with regard to the distribution and use of mifepristone is not only unconscionable, it is arbitrary and capricious. The testimonies of these women illustrate that there is nothing safe about chemical abortions. It is wrong to conclude otherwise.

CONCLUSION

The Court should affirm the Fifth Circuit’s order and remand for further proceedings.

Respectfully submitted,

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