Nos. 18-1323 & 18-1460

In The
Supreme Court of the United States

JUNE MEDICAL SERVICES L.L.C., *et al.*,

Petitioners,

v.

REBEKAH GEE, Secretary, Louisiana Department of Health and Hospitals,

Respondent.

REBEKAH GEE, Secretary, Louisiana Department of Health and Hospitals,

Petitioner,

v.

JUNE MEDICAL SERVICES L.L.C., *et al.*,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF *AMICUS CURIAE* AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS AND GYNECOLOGISTS IN SUPPORT OF REBEKAH GEE, SECRETARY, LOUISIANA DEPT. OF HEALTH AND HOSPITALS

BRADLEY S. TUPI
Counsel of Record
1470 Redfern Drive
Pittsburgh, PA 15241
(412) 616-2715
bradtupi@gmail.com

Attorney for American Association of Pro-Life Obstetricians and Gynecologists

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Whether *amicus*, the American College of Obstetricians and Gynecologists, functions as an authoritative medical association on issues related to abortion, whose opinions and standards should be understood as being guided by objective science, or as an abortion advocacy organization.

TABLE OF CONTENTS

	Page
INTEREST OF *AMICUS CURIAE*	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. DESPITE PROMOTING STRICT LIMITS ON THERAPEUTIC ABORTIONS SINCE ITS FOUNDING, ACOG CHANGED ITS POLICY FOR POLITICAL REASONS	3
II. IN EVERY MAJOR ABORTION CASE, THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS HAS CONSISTENTLY ARGUED AGAINST ANY LIMITATION OF ABORTION	17
CONCLUSION	28

TABLE OF AUTHORITIES

Page

CASES

Ayotte v. Planned Parenthood of Northern New England, 546 U.S. 320 (2006) 23

Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) 18

Doe v. Bolton, 410 U.S. 179 (1973) 2, 9, 10, 18

Glossip v. Gross, 135 S.Ct. 2726 (2016) 18

Gonzales v. Carhart, 550 U.S. 124 (2007) 4, 5, 24

Hartigan v. Zbaraz, 484 U.S. 171 (1987) 20

Hill v. Colorado, 530 U.S. 703 (2000) 23

McCullen v. Coakley, 573 U.S. 464 (2014) 25

National Institute of Family and Life Advocates v. Becerra, 138 S.Ct. 2361 (2018) 26

Ohio v. Akron Center for Reproductive Health, 497 U.S. 502 (1990) 21

Planned Parenthood Ass'n of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476 (1983) 18

Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992) 22

Roe v. Wade, 410 U.S. 113 (1973) 2, 9, 20

Rust v. Sullivan, 500 U.S. 173 (1991) 22

Schenck v. Pro-Choice Network of Western New York, 519 U.S. 357 (1997) 22

Simopoulos v. Virginia, 462 U.S. 506 (1983) 18

Stenberg v. Carhart, 530 U.S. 914 (2000) 14, 18, 23

TABLE OF AUTHORITIES – Continued

Page

Webster v. Reproductive Health Services, 492 U.S. 490 (1989) 21

Whole Woman's Health v. Hellerstedt, 136 S.Ct. 2292 (2016) 26

OTHER AUTHORITIES

ACOG, Item 4.1 Report of President, Transcript of Executive Board Meeting, 3–4 December 1971:8–31 11

ACOG, Item 5 Report of Committee on Obstetric-Gynecologic Practice, Minutes of the Executive Board Meetings, 1967–1970, 17 April 1970:2 10

ACOG, Item 6.2.13 Report of Therapeutic Abortion and Sterilization Committee, Transcript of Executive Board Meeting, November 1956:1 ....6, 7

ACOG, Item 6.39 Report of the Committee to Study Liberalization of the Laws Governing Therapeutic Abortion: Transcript of Executive Board Meeting, 9 May 1968:4 ....8, 9

TABLE OF AUTHORITIES – Continued

Page

American College of Obstetricians and Gynecologists – American Congress of Obstetricians and Gynecologists: What We Are and The Reasons Why, PowerPoint presentation (2015), available at: https://web.archive.org/web/20150604164111/http:/www.acog.org/-/media/Departments/District-and-Section-Activities/C3C6info.pdf?la=en (accessed December 20, 2019) 12, 13

American College of Obstetricians and Gynecologists (ACOG), *Manual of Standards in Obstetric–Gynecologic Practice* (Chicago: ACOG, 1959) 6, 8, 19

Amici Curiae Brief of the American Academy of Pediatrics, California, *et al.*, in Support of Respondents, *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361 (2018), 2018 WL 1110040 27

Brief for American College of Obstetricians and Gynecologists, *et al.*, as *Amici Curiae*, *Doe v. Bolton*, 410 U.S. 179 (1973), 1971 WL 128053 (U.S.) 19

Brief for American College of Obstetricians and Gynecologists, *et al.*, as *Amici Curiae*, *June Medical Services L.L.C. v. Gee*, 2019 WL 6609234 27

Brief for *Amici Curiae* Jill Stanek and the Association of Pro-Life Physicians in Support of Petitioner, *Gonzales v. Carhart*, 550 U.S. 124 (2007), 2006 WL 2281977 25

Page

Brief for Planned Parenthood Federation of America and Physicians for Reproductive Health as *Amici Curiae* Supporting Respondents, *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361 (2018), 2018 WL 111003 18

Brief for the American College of Obstetricians and Gynecologists, the National Abortion Federation, and Planned Parenthood Federation of America as *Amici Curiae* in Support of Respondents, *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997), 1996 WL 365807 23

Brief of *Amici Curiae* American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG), Senator Tom Coburn, M.D., Congressman Charles Boustany, Jr., M.D., Congressman Michael Burgess, M.D., Congressman Phil Gingrey, M.D., Congressman Dave Weldon, M.D., C. Everett Koop, M.D., Edmund D. Pellegrino, M.D. in Support of Petitioner, *Gonzales v. Carhart*, 550 U.S. 124 (2007), 2006 WL 1436688 ....17, 18

Brief of *Amici Curiae* American Association of Pro-Life Obstetricians and Gynecologists, *et al*., in Support of Petitioner, *Gonzales v. Carhart*, 550 US 124 (2007), 2006 WL 1436688 25

TABLE OF AUTHORITIES – Continued

Page

Brief of *Amici Curiae* American College of Obstetricians and Gynecologists, American Medical Women's Association, National Abortion Federation, Physicians for Reproductive Choice and Health, and American Nurses Association in Support of Respondent, *Stenberg v. Carhart*, 530 U.S. 914 (2000), 2000 WL 340117 23

Brief of *Amici Curiae* American College of Obstetricians and Gynecologists, American Medical Association, and Massachusetts Medical Society in Support of Respondents, *McCullen v. Coakley*, 573 U.S. 464 (2014), 2013 WL 6213247 25

Brief of *Amici Curiae* Congressman Ron Paul and Association of American Physicians and Surgeons in Support of Petitioner, *Gonzales v. Carhart*, 550 U.S. 124 (2007), 2006 WL 1436689 25

Brief of *Amici Curiae* the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics and the American Medical Women's Association in Support of Appellees, *Hartigan v. Zbaraz*, 484 U.S. 171 (1987), 1987 WL 881100 ....20, 21, 22

TABLE OF AUTHORITIES – Continued

Page

Brief of *Amici Curiae*, 52 Members of Congress in Support of Planned Parenthood Federation, Inc., *et al*., and Motion for Leave to File Brief Out of Time in Support of Respondents LeRoy Carhart, M.D., *et al*., In Related Case No. 05-380, *Gonzales v. Planned Parenthood Federation of America, Inc.*, 2006 WL 2736635 17

Brief of the American College of Obstetricians and Gynecologists and the American Medical Association as *Amici Curiae* in Support of Respondents, *Hill v. Colorado*, 530 U.S. 703 (2000), 1999 WL 1186250 23

Brief of the American College of Obstetricians and Gynecologists as *Amicus Curiae* Supporting Respondents, *Gonzales v. Carhart*, 550 U.S. 124 (2007), 2006 WL 2867888........................24

Brief of the American College of Obstetricians and Gynecologists, *et al*., as *Amici Curiae* in Support of Appellees, *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), 1989 WL 1127737 21

Brief of the American College of Obstetricians and Gynecologists, *et al*., as *Amici Curiae* in Support of Petitioners, *Rust v. Sullivan*, 500 U.S. 173 (1991), 1990 WL 10012642.......................21

Brief of the American College of Obstetricians and Gynecologists, *et al*., as *Amici Curiae* in Support of the Petitioners, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), 1992 WL 12006402 22

TABLE OF AUTHORITIES – Continued

Page

Brief of the American College of Obstetricians and Gynecologists, *et al*., as *Amici Curiae* in Support of Respondents, *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320 (2006), 2005 WL 2646471 24

"Bulletin for 2008: Maintenance of Certification," The American Board of Obstetrics and Gynecology (Nov. 2007), 10, 31, available at: http://www.cultureoflife.org/wp-content/uploads/2008/05/www.abog.org_pdf_MOC2008.pdf (accessed December 20, 2019)...14

C.A. Hartley and L.H. Somerville, *The Neuroscience of Adolescent Decision-Making*, 5 Current Opinions on Behavioral Science, 108–15 (2015), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4671080/ (accessed December 21, 2019...21

David C. Reardon, "The Abortion and Mental Health Controversy: A Comprehensive Literature Review of Common Ground Agreements, Disagreements, Actionable Recommendations, and Research Opportunities," *SAGE Open Med.* (October 29, 2018), available at: https://journals.sagepub.com/doi/full/10.1177/2050312118807624 (accessed December 22, 2019)............ 25

Email correspondence of Ralph Hale, M.D., F.A.C.O.G. and Allan T. Sawyer, M.D., personal files of AAPLOG president Donna Harrison (February 2009)..12

Page

"HHS Secretary Calls on Certification Group to Protect Conscience Rights," HHS Press Office (2008), available at: https://aul.org/2008/03/14/hhs-secretary-calls-on-certification-group-to-protect-conscience-rights/ (accessed December 20, 2019) 16

https://aaplog.org/about-us/history-of-aaplog/ (accessed December 20, 2019) 11, 12

https://aaplog.wildapricot.org/resources/Documents/AAPLOG%20formal%20complaint%20with%20HHS%20against%20ACOG.pdf (accessed December 21, 2019) 16

https://www.britannica.com/science/elective-abortion (accessed December 20, 2019) 4

Increasing Access to Abortion," ACOG Committee Opinion No. 613 (2014), available at: https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co613.pdf?dmc=1&ts=20191221T0422278366 (accessed December 20, 2019) 16, 17

Lara Cartwright-Smith and Sara Rosenbaum, *The Elusive Quest for Balance: the 2008 HHS Regulation Prohibiting Discrimination Against Health-Care Workers Based on Religious Beliefs*, 124 Public Health Reports 603–06 (2009) 16

Letter from R. Schmidt to C. Randall, President, ACOG, personal files of R. Schmidt, 7 September 1971 11

Page

Motion and Brief *Amicus Curiae* of Certain Physicians, Professors and Fellows of the American College of Obstetrics and Gynecology in Support of Appellees, *Doe v. Bolton*, 410 U.S. 179 (1973), 1971 WL 128057 19

Nancy Aries, *The American College of Obstetricians and Gynecologists and the Evolution of Abortion Policy, 1951-1973: The Politics of Science*, 93 American Journal of Public Health, 1810–19 (2003), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448057/#r17 (accessed December 22, 2019) .... *passim*

"Obama administration replaces controversial 'conscience' regulation for health-care workers," *The Washington Post*, February 19, 2011, available at: https://www.washingtonpost.com/national/health-conscience-rule-replaced/2011/02/18/AB7s9iH_story.html (accessed December 21, 2019) 16

R. Solinger, *"A Complete Disaster": Abortion and the Politics of Hospital Abortion Committees*, 1950–1970, 19 Feminist Studies (1993) 6

Royal College of Obstetricians and Gynaecologists, "Termination of Pregnancy for Fetal Abnormality in England, Scotland and Wales," at 29 (2010), available at: https://www.rcog.org.uk/globalassets/documents/guidelines/terminationpregnancyreport18may2010.pdf, (accessed December 23, 2019) 5

Page

"Teen Brain: Behavior, Problem Solving and Decision Making," American Academy of Child & Adolescent Psychiatry, *Facts for Families*, September 2016, available at: https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx (accessed December 21, 2019)................................21

"The Limits of Conscientious Refusal in Reproductive Medicine," ACOG Committee Opinion No. 385 (2007), available at: https://www.acog.org/-/media/Committee-Opinions/Committee-on-Etics/co385.pdf?dmc=1&ts=20170906T1956212396 (accessed December 20, 2019)......................14

"The War on Science," *National Review*, June 29, 2010, available at: https://www.nationalreview.com/corner/war-science-yuval-levin/ (accessed December 20, 2019)..13, 24

William C. Shiel, Jr., M.D., *Medical Definition of the Hippocratic Oath* (2018), available at: https://www.medicinenet.com/script/main/art.asp?articlekey=20909 (accessed December 20, 2019).........3

William Emery Studdiford, *The Common Medical Indications for Therapeutic Abortion*, 26 Bulletin of the New York Academy of Medicine (1950) 4

INTEREST OF *AMICUS CURIAE*[1]

The American Association of Pro-Life Obstetricians and Gynecologists ("AAPLOG") is the largest non-sectarian, pro-life physician organization in the world, with over 4,000 members across the United States and associate members on every continent. AAPLOG exists to equip its members and other concerned medical practitioners with an evidence-based rationale for defending the lives of both the pregnant mother and her unborn child.

AAPLOG believes that physicians and medical practitioners are responsible for the care and well-being of both the pregnant woman and her unborn child; that the unborn child is a human being from the time of fertilization; that elective abortion of human life at any time from fertilization onward constitutes the willful destruction of an innocent human being; and that, consistent with the Hippocratic Oath, this procedure should have no place in our practice of the healing arts.

AAPLOG is committed to educate abortion-vulnerable patients, the general public, lawmakers, pregnancy care center counselors, and our medical colleagues regarding the medical and psychological

---

[1] The parties in this case have filed blanket consents for *amicus* briefs. No counsel for any party authored this brief in whole or in part. No person or entity aside from *amicus*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

complications associated with induced abortion, as evidenced in the peer-reviewed scientific literature.

The Executive Director of AAPLOG is Donna Harrison, M.D. Dr. Harrison is a board-certified obstetrician/gynecologist, an Associate Scholar at the Charlotte Lozier Institute in Arlington, Virginia, an Adjunct Professor at Trinity International University in Deerfield, Illinois, and a Continuing Medical Education Speaker in the United States and internationally on topics including Maternal Mortality and Abortion Morbidity. She is Associate Editor of the peer-reviewed journal, "Issues in Law and Medicine."

AAPLOG has an interest in showing that *Amicus Curiae*, the American College of Obstetricians and Gynecologists ("ACOG" or "the College"), functions as a pro-abortion activist organization and as such does not represent the views of either its membership or the 85% of obstetricians and gynecologists in the United States who do not perform abortions.

SUMMARY OF ARGUMENT

The American College of Obstetricians and Gynecologists has always presented itself to the Court as a source of objective medical knowledge. However, when it comes to abortion, the College today is primarily a pro-abortion political advocacy organization.

Dating back to *Roe v. Wade* and *Doe v. Bolton*, ACOG has filed dozens of briefs in abortion cases but

has never in any instance filed or joined a brief in support of any limitation whatsoever on elective abortion, even when ample scientific evidence and the medical standard of care for other comparable procedures would support that limitation.

ARGUMENT

I. DESPITE PROMOTING STRICT LIMITS ON THERAPEUTIC ABORTIONS SINCE ITS FOUNDING, ACOG CHANGED ITS POLICY FOR POLITICAL REASONS.

The Hippocratic Oath forbids doctors to perform abortions. The ancient Oath contains the following promises:

> I will neither give a deadly drug to anybody who asked for it, nor will I make a suggestion to this effect. Similarly I will not give to a woman an abortive remedy.[2]

Physicians who practice in accordance with the Hippocratic Oath do not perform either elective abortions or euthanasia. When circumstances arise in which the continued union of the mother and her baby pose a genuine, imminent threat to the mother's life, then all OB-GYNs are trained to separate the mother and the baby. If this emergency separation takes place

---

[2] William C. Shiel, Jr., M.D., *Medical Definition of the Hippocratic Oath* (2018), available at: https://www.medicinenet.com/script/main/art.asp?articlekey=20909 (accessed December 20, 2019).

at a gestational age when the baby could survive outside of the womb, then the separation is done in a way to maximize the chances of survival for both mother and baby.

Only rarely is this emergency separation necessary before the baby can survive outside of the womb. These pre-viability separations were historically termed "therapeutic abortions." They posed no violation of Hippocratic ethics, because the decision facing the doctor was the loss of one life (that of the baby) or the loss of two lives (that of both the baby and the mother).

"Therapeutic" abortions were medically justified only to protect the life of the mother. By the 1950s, only a few medical conditions remained (ectopic pregnancy, rheumatic heart disease, cardiac failure) that required a therapeutic abortion.[3]

In contrast, an "elective" abortion is an abortion for which there is no medical indication, no threat to the mother's life.[4] The difference between an elective abortion and a delivery is that a delivery is designed to produce a live offspring and an elective abortion is designed to guarantee a dead offspring. The purpose of an elective abortion is to produce a dead baby, as delineated during testimony in *Gonzales v. Carhart*:

[3] *See* William Emery Studdiford, *The Common Medical Indications for Therapeutic Abortion*, 26 Bulletin of the New York Academy of Medicine, 721-35 (1950).

[4] https://www.britannica.com/science/elective-abortion (accessed December 20, 2019).

> Yet one doctor would not allow delivery of a live fetus younger than 24 weeks because "the objective of [his] procedure is to perform an abortion," not a birth. App. in No. 05-1382, at 408-409. The doctor thus answered in the affirmative when asked whether he would "hold the fetus' head on the internal side of the [cervix] in order to collapse the skull" and kill the fetus before it is born.

Gonzales v. Carhart, 550 U.S. 124, 139-40 (2007). "When undertaking a termination of pregnancy, the intention is that the fetus should not survive and that the process of abortion should achieve this."[5]

The failure to distinguish between abortions performed to save the mother's life ("therapeutic") and those performed to produce a dead baby ("elective") allows for the erroneous idea that elective abortions are "medical care." In fact, elective abortion solves no medical problem. Elective abortion treats no disease. The fact that an elective abortion is performed by a physician with drugs or surgery does not turn an elective abortion into medical care any more than an attack with a scalpel turns an assault into medical care. Consequently, a medical organization advocating for elective abortion has no more authority than any other abortion advocate.

---

[5] Royal College of Obstetricians and Gynaecologists, "Termination of Pregnancy for Fetal Abnormality in England, Scotland and Wales," at 29 (2010), available at: https://www.rcog.org.uk/globalassets/documents/guidelines/terminationpregnancyreport18may2010.pdf, (accessed December 23, 2019).

Formed in the 1950s, ACOG's position on abortion adhered to the Hippocratic Oath taken by all physicians at the time. Thus ACOG supported the criminalization of elective abortions.

ACOG's 1959 *Manual of Standards in Obstetric-Gynecologic Practice* permitted abortion only "where the death of the mother might reasonably be expected to result from natural causes, growing out of or aggravated by the pregnancy, unless the child is destroyed."[6] The *Manual* also mandated that abortions could be performed only in accredited hospitals.[7] ACOG's Committee on Maternal Welfare, noting that the justifications for therapeutic abortions were disappearing, "hoped that they may reach an absolute minimum within the foreseeable future," doing away with abortions altogether.[8]

---

[6] American College of Obstetricians and Gynecologists (ACOG), *Manual of Standards in Obstetric-Gynecologic Practice* (Chicago: ACOG, 1959), 35.

[7] R. Solinger, *"A Complete Disaster": Abortion and the Politics of Hospital Abortion Committees*, 1950-1970, 19 Feminist Studies 240-61 (1993).

[8] ACOG, Item 6.2.13 Report of Therapeutic Abortion and Sterilization Committee, Transcript of Executive Board Meeting, November 1956:1, *see* Nancy Aries, *The American College of Obstetricians and Gynecologists and the Evolution of Abortion Policy, 1951-1973: The Politics of Science*, 93 American Journal of Public Health, 1810-19 (2003), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1448057/#r17 (accessed December 22, 2019). This Brief relies upon the Aries paper extensively because it was based on the ACOG archives, transcripts of Executive Board meetings, videotaped oral histories, and interviews with physicians active

As of the 1950s, ACOG's contribution to public debate about abortion was based solely upon medical science. Dr. Duncan Reid of Harvard Medical School argued that "the medical profession should not become actively involved in debates about social mores. . . . [T]he emergence of abortion and sterilization as political issues would challenge the scientific basis on which physicians' decisions were based. Reid said, 'If it [abortion] becomes a social problem then the medical profession has to settle the social problem, and I think we, as doctors, are placed in a position where we do not belong.' "[9]

Dr. Reid correctly identified the core problem of ACOG's current abortion advocacy: Elective abortion exists to solve a social problem, not a medical one.

The philosophical bent of some key members in the ACOG leadership in the 1960s caused these members look for ways to use ACOG to advocate for elective abortion on demand. By utilizing an expansive definition of "health," the pro-abortion ACOG leaders began to make subtle changes in the College's abortion policy.[10] These changes were invisible to the common ACOG member, who was not privy to the deliberations of ACOG Committees.

---

with ACOG. Dr. Aries received support from ACOG to perform her research.

[9] ACOG, Item 6.2.13 Report of Therapeutic Abortion and Sterilization Committee, Transcript of Executive Board Meeting, November 1956:1, *see* Aries, *supra* at 1813.

[10] *See* Aries, *supra* at 1814-15.

Pro-abortion members on ACOG's Standards Committee unilaterally changed the criteria for therapeutic abortions.[11] In contrast to the 1959 *Manual of Standards in Obstetric-Gynecologic Practice*, which permitted abortion only "where the death of the mother might reasonably be expected to result from natural causes, growing out of or aggravated by the pregnancy," the 1968 Report of the Committee to Study Liberalization of the Laws Governing Therapeutic Abortion declared that "therapeutic" abortions were permissible "when continuation of the pregnancy may threaten the life of the woman *or seriously impair her health*"[12] (emphasis added). The 1968 draft provided for the first time: "In determining whether or not there is such risk to health, account may be taken *of the patient's total environment, actual or reasonably foreseeable*" (emphasis added).[13]

By altering the definition of "therapeutic" with a novel "health" component, one so broad as to encompass any and every possible elective reason for desiring an abortion, ACOG leadership, without debate from the membership, had reversed its adherence to the Hippocratic Oath, and now allowed for elective

---

[11] *See* Aries, *supra* at 1815.

[12] ACOG, Item 6.39 Report of the Committee to Study Liberalization of the Laws Governing Therapeutic Abortion: Transcript of Executive Board Meeting, 9 May 1968:4, *see* Aries, *supra* at 1815.

[13] ACOG, Item 6.39 Report of the Committee to Study Liberalization of the Laws Governing Therapeutic Abortion: Transcript of Executive Board Meeting, 9 May 1968:4, *see* Aries, *supra* at 1815.

abortion. This wording change in the ACOG Standards also set the stage for adoption of a similar "health" criterion later used in *Doe v. Bolton*, 410 U.S. 179, 192 (1973) ("[T]he medical judgment may be exercised in the light of all factors – physical, emotional, psychological, familial, and the woman's age – relevant to the wellbeing of the patient. All these factors may relate to health").

The *Doe* "health" exception allowed for no meaningful limitations upon elective abortion in the post-*Roe* era, since all factors can be related to "health." Despite these changes, the ACOG policy required two opinions that the abortion was in fact "medically indicated" and that abortions "be performed only in a hospital accredited by the Joint Commission on Accreditation of Hospitals."[14]

The swift evolution of ACOG's guidelines mirrored that of the growing political push for wider access to abortion. Indeed, the politics of abortion continued to change, based not on medical grounds but on the assertion of a woman's right to choose. When the state of New York legalized abortion in 1970, ACOG leadership responded by announcing – again without any input from membership – that its policies for "therapeutic

---

[14] ACOG, Item 6.39 Report of the Committee to Study Liberalization of the Laws Governing Therapeutic Abortion: Transcript of Executive Board Meeting, 9 May 1968:4, cited in Aries, *supra* at 1816.

abortions" would now apply to "elective abortions."[15] ACOG continued to demand pre-approval from two doctors and that abortions be performed in accredited hospitals.

By 1971, ACOG's leadership consisted of a narrowly pro-abortion majority. At that point, ACOG began advocating for liberalized abortion laws, again without engaging in any open discussion with its membership about elective abortion.[16] In 1971, ACOG approved a pro-abortion *amicus* brief in *Doe v. Bolton*.[17]

Dr. Richard Schmidt, a member of ACOG's Executive Board and one of the founding members of AAPLOG, protested the positions taken by ACOG in its *amicus* brief in *Bolton*. In particular, ACOG as an organization had never to that point declared that "a medically safe abortion should be an open option available to any woman who does not want to have the

---

[15] ACOG, Item 5 Report of Committee on Obstetric-Gynecologic Practice, Minutes of the Executive Board Meetings, 1967-1970, 17 April 1970:2, cited in Aries, *supra* at 1816.

[16] *See* Aries, *supra* at 1816 ("Three months after ACOG's Executive Board reaffirmed its original abortion policy, advocates for providing more liberal access to abortion found an administrative means to revise ACOG's policy without a divisive debate at the Executive Board or annual business meeting").

[17] *See* Aries, *supra* at 1817 ("In June 1971, the [ACOG] Executive Committee approved President Clyde Randall's endorsement of the *amicus curiae* brief filed by the James Madison Constitutional Law Institute in the case of *Doe v. Bolton*").

child."[18] Dr. Schmidt wrote in a letter to ACOG's president:

> I can find nothing in any statement of College policy, nor do I know of any consideration in any of the discussions leading to these policies, relating to the constitutional rights of a mother or to the nature of, or to the status of the fetus. On the contrary, the tendency has been to by-pass these questions as matters of personal conviction. . . . Again, my point is not the relative merits of these questions, but rather that they are inherent in the issue and have never been considered by the College.[19]

Opposition among its members notwithstanding, in 1972 ACOG published "Behavior Aspects of Abortion," extolling abortion on demand, and "The Management of Sexual Crises in the Female," advocating abortions for minors without parental consent.[20] Thousands of obstetricians and gynecologists, including some within ACOG leadership, disagreed with ACOG's departure from its tradition of safeguarding both the mother and her unborn baby.[21]

---

[18] ACOG, Item 4.1 Report of President, Transcript of Executive Board Meeting, 3-4 December 1971:8-31, *see* Aries, *supra* at 1817.

[19] *Letter from R. Schmidt to C. Randall, President, ACOG*, personal files of R. Schmidt, 7 September 1971, cited in Aries, *supra* at 1817.

[20] https://aaplog.org/about-us/history-of-aaplog/ (accessed December 20, 2019).

[21] https://aaplog.org/about-us/history-of-aaplog/ (accessed December 20, 2019).

Within a week after this Court decided *Doe* and *Roe*, dissenting ACOG members organized to form a pro-life contingent. Thirty-one obstetricians and gynecologists attended the founding of the American Association of Pro-Life Obstetricians and Gynecologists ("AAPLOG") in 1973. With several thousand members, AAPLOG functioned as the largest "special interest group" within ACOG for 40 years, from 1973 until 2013, until the College discontinued the "special interest group" designation.[22]

From the 1970s until now, ACOG has developed an increasingly radical abortion advocacy, leading to the formation of the American *Congress* of Obstetricians and Gynecologists, a 501(c)(6) lobbying organization, in 2010.[23] The *Congress* also operates under the acronym ACOG, which confuses the 501(c)(3) *College* with the 501(c)(6) *Congress*. Because ACOG does not separate the funding of the College from that of the Congress, many AAPLOG members, most of whom were still ACOG members at the time, protested the use of their funds for pro-abortion lobbying.[24] However,

---

[22] https://aaplog.org/about-us/history-of-aaplog/ (accessed December 20, 2019).

[23] *American College of Obstetricians and Gynecologists – American Congress of Obstetricians and Gynecologists: What We Are and The Reasons Why*, PowerPoint presentation (2015), available at: https://web.archive.org/web/20150604164111/http:/www.acog.org/-/media/Departments/District-and-Section-Activities/C3C6info.pdf?la=en (accessed December 20, 2019).

[24] *Email correspondence of Ralph Hale, M.D., F.A.C.O.G. and Allan T. Sawyer, M.D.*, personal files of AAPLOG president Donna Harrison (February 2009).

ACOG stated categorically that it would not allow members to designate their funds for the College alone, or prevent their funds from supporting the pro-abortion lobbying of the Congress.[25] Thus all ACOG members are forced to support the Congress financially, even if they do not agree with its pro-abortion advocacy.

In 1996, the U.S. Congress was working on legislation to ban the gruesome procedure called "intact D&X" (partial birth abortion). President Clinton refused to sign any bill that did not contain the expansive *Doe* "health" exception. A select committee of ACOG initially prepared a statement saying that ACOG "could identify no circumstances under which this procedure . . . would be the only option to save the life or preserve the health of the woman."

ACOG sent a pre-publication draft of the paper to the White House, where a senior staffer suggested that another sentence be added: "An intact D+X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and a doctor should be allowed to make this determination." ACOG included this political proviso in the position paper it released to the public.[26]

---

[25] ACOG PowerPoint, *supra* n. 22.

[26] "The War on Science," *National Review*, June 29, 2010, available at: https://www.nationalreview.com/corner/war-science-yuval-levin/ (accessed December 20, 2019).

Three years later, this Court decided *Stenberg v. Carhart*, which declared Nebraska's ban on partial-birth abortion unconstitutional. The Court's opinion quoted verbatim the passage from the ACOG statement containing the White House staffer's insertion:

> The District Court also noted that a select panel of the American College of Obstetricians and Gynecologists concluded that D&X "may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman."

Stenberg v. Carhart, 530 U.S. 914, 932 (2000). ACOG had successfully passed off a political statement as a scientific one.

In November 2007, ACOG published *Ethics Statement No. 385*, which required all OB-GYNs either to perform or refer for elective abortions.[27] The Statement provided that OB-GYNs who did not perform elective abortions must relocate their practices near someone who did. This coercive statement was followed in January 2008 by a revision of the American Board of Obstetrics and Gynecology's ("ABOG") *Maintenance of Certification Bulletin*, which made disobedience grounds for revocation of board certification:[28]

---

[27] "The Limits of Conscientious Refusal in Reproductive Medicine," ACOG Committee Opinion No. 385 (2007), available at: https://www.acog.org/-/media/Committee-Opinions/Committee-on-Ethics/co385.pdf?dmc=1&ts=20170906T1956212396 (accessed December 20, 2019).

[28] "Bulletin for 2008: Maintenance of Certification," The American Board of Obstetrics and Gynecology (Nov. 2007), 10, 31,

5. Revoked Certificate

(. . .)

b. Cause in this case may be due to, but is not limited to, licensure revocation by any State Board of Medical Examiners, violation of ABOG or ACOG rules and/or ethics principles. . . .

(. . .)

REVOCATION OF DIPLOMA OR CERTIFICATE

2. Consequences of License Revocation, Restriction or Surrender

> (. . .)
>
> f. [T]he physician shall have violated any of the "Ethical Considerations in the Practice of Obstetrics and Gynecology" currently published by the American College of Obstetricians and Gynecologists and adhered to by the Board.

Ethics Statement No. 385 put Hippocratic physicians at real legal and professional risk, because most hospitals require board certification for hospital privileges, and accusations of unethical behavior can result in revocation of state licensure. ACOG's overreach was met with universal protest from Hippocratic physician organizations including AAPLOG, the Catholic Medical Association, and the Christian Medical and Dental

---

available at: http://www.cultureoflife.org/wp-content/uploads/2008/05/www.abog.org_pdf_MOC2008.pdf (accessed December 20, 2019).

Association. Their protests to the Department of Health and Human Services resulted in the promulgation of the HHS Conscience Rules,[29] later rescinded by the Obama Administration.[30]

In November 2014, ACOG published its *Committee Opinion No. 613*, "Increasing Access to Abortion," which stated, in pertinent part:

> The American College of Obstetricians and Gynecologists . . . is committed to improving access to abortion. Access to abortion is threatened by state and federal government restrictions, limitations on public funding for abortion services and training, stigma violence against abortion providers and a dearth of abortion providers. Legislative restrictions fundamentally interfere with the patient-provider relationship and decrease access to abortion for all women and particularly for

---

[29] Lara Cartwright-Smith and Sara Rosenbaum, *The Elusive Quest for Balance: the 2008 HHS Regulation Prohibiting Discrimination Against Health-Care Workers Based on Religious Beliefs*, 124 Public Health Reports 603-06 (2009); *see also* "HHS Secretary Calls on Certification Group to Protect Conscience Rights," HHS Press Office (2008), available at: https://aul.org/2008/03/14/hhs-secretary-calls-on-certification-group-to-protect-conscience-rights/ (accessed December 20, 2019); *see also* https://aaplog.wildapricot.org/resources/Documents/AAPLOG%20formal%20complaint%20with%20HHS%20against%20ACOG.pdf (accessed December 21, 2019).

[30] "Obama administration replaces controversial 'conscience' regulation for health-care workers," *The Washington Post*, February 19, 2011, available at: https://www.washingtonpost.com/national/health-conscience-rule-replaced/2011/02/18/AB7s9iH_story.html (accessed December 21, 2019).

> low-income women and those living long distances from health care providers. The American College of Obstetricians and Gynecologists calls for advocacy to oppose and overturn restrictions, improve access, and mainstream abortion as an integral component of women's health care.[31]

This is not a statement of medical science, but of political advocacy.

II. IN EVERY MAJOR ABORTION CASE, THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS HAS CONSISTENTLY ARGUED AGAINST ANY LIMITATION OF ABORTION.

ACOG's shift from a medical organization opposed to abortion to a pro-abortion advocacy organization was invisible to the outside world. As a result, ACOG has often been cited as the principal medical authority on women's medicine.[32] This Court has cited ACOG's

---

[31] "Increasing Access to Abortion," ACOG Committee Opinion No. 613 (2014), available at: https://www.acog.org/-/media/Committee-Opinions/Committee-on-Health-Care-for-Underserved-Women/co613.pdf?dmc=1&ts=20191221T0422278366 (accessed December 20, 2019).

[32] *See*, *e.g*., Brief of *Amici Curiae*, 52 Members of Congress in Support of Planned Parenthood Federation, Inc., *et al*., and Motion for Leave to File Brief Out of Time in Support of Respondents LeRoy Carhart, M.D., *et al*., In Related Case No. 05-380, *Gonzales v. Planned Parenthood Federation of America, Inc.*, 2006 WL 2736635, at 6. *See also* Brief of *Amici Curiae* American Association of Pro-Life Obstetricians and Gynecologists (AAPLOG), Senator Tom Coburn, M.D., Congressman Charles Boustany, Jr.,

abortion policies and guidelines as examples of medical standards.[33]

"But just because a purported expert says something does not make it so." *Glossip v. Gross*, 135 S.Ct. 2726, 2786 (2016) (Sotomayor, J., dissenting). To the extent ACOG's positions are political rather than scientific, such reliance on the College was misplaced.

It is the substance of an assertion that makes it "scientific knowledge," not the identity of the person making the claim. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 590 (1993) ("The adjective 'scientific' implies a grounding in the methods and procedures of science. Similarly, the word 'knowledge' connotes more than subjective belief or unsupported speculation").

ACOG's *amicus* brief in *Doe v. Bolton*, 410 U.S. 179 (1973), argued that the statutory "saving life" test was

---

M.D., Congressman Michael Burgess, M.D., Congressman Phil Gingrey, M.D., Congressman Dave Weldon, M.D., C. Everett Koop, M.D., Edmund D. Pellegrino, M.D. in Support of Petitioner, *Gonzales v. Carhart*, 550 U.S. 124 (2007), 2006 WL 1436688, at 6. *See also* Brief for Planned Parenthood Federation of America and Physicians for Reproductive Health as *Amici Curiae* Supporting Respondents, *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361 (2018), 2018 WL 111003, at 20 ("Moreover, the statement itself lacks scientific support and is opposed by major medical organizations like the American College of Obstetricians and Gynecologists").

[33] *Stenberg v. Carhart*, 530 U.S. 914, 916 (2000). *See also Simopoulos v. Virginia*, 462 U.S. 506, 517 (1983), and *Planned Parenthood Ass'n of Kansas City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 495-96 (1983) (Blackmun, concurring in part).

vague, because the words "save" and "life" themselves were vague:

> The word "save" has a broad range of possible meanings. The Random House Dictionary lists, *inter alia*, "to rescue from danger or possible harm, . . . to avoid . . . the waste of, . . . to treat carefully in order to reduce wear, fatigue, etc. . . . Life may mean the vitality, the joy, the spirit of existence, as well as merely not dying.[34]

The argument was a complete contradiction of ACOG's own practice guidelines issued just 12 years earlier, when ACOG advised that therapeutic abortion was only indicated where necessary to save the life of the mother.[35]

Certain dissenters within ACOG filed their own brief – a thorough medical review of the biological humanity of the unborn child, whom they considered a patient under their care along with the mother, as well as the risks of abortion to women, with a bibliography of 150+ medical citations.[36]

---

[34] Brief for American College of Obstetricians and Gynecologists, *et al*., as *Amici Curiae*, *Doe v. Bolton*, 410 U.S. 179 (1973), 1971 WL 128053 (U.S.) at 5-6.

[35] American College of Obstetricians and Gynecologists (ACOG), Manual of Standards in Obstetric-Gynecologic Practice (Chicago: ACOG, 1959), 35.

[36] Motion and Brief *Amicus Curiae* of Certain Physicians, Professors and Fellows of the American College of Obstetrics and Gynecology in Support of Appellees, *Doe v. Bolton*, 410 U.S. 179 (1973), 1971 WL 128057 at 65-79.

Other than brief polling of ACOG members in the 1970s regarding wording for "therapeutic abortion" (to which only 65% of the membership responded, out of which only 50% approved of the expanded "health" definition), ACOG members have not been polled about the extreme pro-abortion positions the College has taken in its *amicus* briefs in abortion cases.[37]

Since 1973, ACOG has entered the fray in every major abortion case, always in favor of the most extreme position advancing elective abortion:

- In *Roe v. Wade*, 410 U.S. 113 (1973), the College argued against the Texas abortion statute, asserting that it unconstitutionally interfered with the physician's right to practice medicine and deprived patients of their right to medical treatment, a sharp departure from ACOG's 1970 position that elective abortion was not a medical issue but a social issue.[38]
- In its *amicus* brief in *Hartigan v. Zbaraz*, 484 U.S. 171 (1987), ACOG argued against a 24-hour waiting period as well as parental notification requirement for minors seeking abortions, asserting that the only interest served by the Illinois statute at issue was to discourage pregnant minors from choosing abortion.[39]

---

[37] *See* Aries, *supra* at 1815.

[38] *See* Aries, *supra* at 1816.

[39] *See*, *e.g.*, Brief of *Amici Curiae* the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics and the American Medical Women's Association in Support

Waiting periods and parental consent are standard of care for other comparable surgical procedures on minors, because it is recognized in both the legal and medical fields that adolescents do not have the developmental maturity to make complex, much less irrevocable, decisions.[40]

- In its *amicus* brief in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), ACOG argued for public funding for abortion.[41]

- In *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990), the College argued against a mandatory parental notification law.[42]

---

of Appellees, *Hartigan v. Zbaraz*, 484 U.S. 171 (1987), 1987 WL 881100.

[40] C.A. Hartley and L.H. Somerville, *The Neuroscience of Adolescent Decision-Making*, 5 Current Opinions on Behavioral Science, 108-15 (2015), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4671080/ (accessed December 21, 2019); *see also* "Teen Brain: Behavior, Problem Solving and Decision Making," American Academy of Child & Adolescent Psychiatry, *Facts for Families*, September 2016, available at: https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx (accessed December 21, 2019).

[41] *See*, *e.g*., Brief of the American College of Obstetricians and Gynecologists, *et al*., as *Amici Curiae* in Support of Appellees, *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989), 1989 WL 1127737.

[42] *See*, *e.g*., Brief of the American College of Obstetricians and Gynecologists, *et al*., as *Amici Curiae* in Support of Petitioners, *Rust v. Sullivan*, 500 U.S. 173 (1991), 1990 WL 10012642.

- In *Rust v. Sullivan*, 500 U.S. 173 (1991), ACOG's *amicus* brief advocated federal funding for family planning clinics' abortion-related activities, claiming that otherwise the "fundamental right of patients in Title X programs to choose to terminate their pregnancies" would be burdened.[43] This was a political, not a medical argument.

- In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), ACOG argued against Pennsylvania's spousal notification, informed consent, parental consent, medical emergency, and disclosure requirements as unconstitutional.[44] Again, these were not medical, but philosophical arguments.

- In *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997), ACOG joined with the National Abortion Federation and Planned Parenthood Federation of America as *amici curiae*, arguing in support of an injunction prohibiting

---

[43] *See*, *e.g*., Brief of *Amici Curiae* the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics and the American Medical Women's Association in Support of Appellees, *Hartigan v. Zbaraz*, 484 U.S. 171 (1987), 1987 WL 881100.

[44] *See*, *e.g*., Brief of the American College of Obstetricians and Gynecologists, *et al.*, as *Amici Curiae* in Support of the Petitioners, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), 1992 WL 12006402.

sidewalk counselors within buffer zones outside abortion clinics.[45]

- In *Stenberg v. Carhart*, 530 U.S. 914 (2000), ACOG again filed a joint *amici* brief with the National Abortion Federation, as well as Physicians for Reproductive Choice, arguing in opposition to Nebraska's ban on partial-birth abortion.[46]

- In *Hill v. Colorado*, 530 U.S. 703 (2000), ACOG argued in support of a 100-foot buffer zone outside abortion clinic.[47] Again, this was not a medical, but a philosophical argument.

- In its joint *amici* brief with the American Medical Association in *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320 (2006), ACOG made the political argument, without scientific justification, that parental notification before

---

[45] *See*, *e.g.*, Brief for the American College of Obstetricians and Gynecologists, the National Abortion Federation, and Planned Parenthood Federation of America as *Amici Curiae* in Support of Respondents, *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357 (1997), 1996 WL 365807.

[46] *See*, *e.g.*, Brief of *Amici Curiae* American College of Obstetricians and Gynecologists, American Medical Women's Association, National Abortion Federation, Physicians for Reproductive Choice and Health, and American Nurses Association in Support of Respondent, *Stenberg v. Carhart*, 530 U.S. 914 (2000), 2000 WL 340117.

[47] Brief of the American College of Obstetricians and Gynecologists and the American Medical Association as *Amici Curiae* in Support of Respondents, *Hill v. Colorado*, 530 U.S. 703 (2000), 1999 WL 1186250 at 6.

a minor undergoes an abortion would "significantly jeopardize" her health, "impose inappropriate ethical and practical burdens on physicians," and cause complications in any minors that "require immediate abortions."[48]

- In *Gonzales v. Carhart*, 550 U.S. 124 (2007), the College filed an *amicus* brief opposing the federal ban on the brutal partial birth abortion method – which it exclusively and euphemistically referred to as "intact D&E" – asserting without any scientific justification whatsoever that partial birth abortion had significant safety benefits, was necessary to prevent serious harm, and was safest for women with certain conditions.[49] ACOG also asserted that "a medical consensus recognizes that intact D&E offers health benefits," despite the fact that ACOG's own statement revealed that ACOG could identify no situations in which intact D&E would be the best or only option – *i.e.*, there were no health benefits.[50]

[48] Brief of the American College of Obstetricians and Gynecologists, *et al*., as *Amici Curiae* in Support of Respondents, *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320 (2006), 2005 WL 2646471 at 5-6.

[49] Brief of the American College of Obstetricians and Gynecologists as *Amicus Curiae* Supporting Respondents, *Gonzales v. Carhart*, 550 U.S. 124 (2007), 2006 WL 2867888 at 10-13.

[50] "The War on Science," *National Review*, June 29, 2010, available at: https://www.nationalreview.com/corner/war-science-yuval-levin/ (accessed December 20, 2019).

(AAPLOG and numerous other physicians as *amici* urged the exact opposite in their briefs.[51])

- In *McCullen v. Coakley*, 573 U.S. 464 (2014), ACOG filed a brief asserting that "induced abortion does not lead to psychological harms" in support of an act creating buffer zones surrounding abortion clinics.[52] This contradicted well-established scientific knowledge about long-term psychological harm in the majority of women who present to abortion clinics with known risk factors for adverse psychological outcomes.[53]

---

[51] *See*, *e.g.*, Brief of *Amici Curiae* American Association of Pro-Life Obstetricians and Gynecologists, *et al*., in Support of Petitioner, *Gonzales v. Carhart*, 550 US 124 (2007), 2006 WL 1436688. *See also*, *e.g.*, Brief of *Amici Curiae* Congressman Ron Paul and Association of American Physicians and Surgeons in Support of Petitioner, *Gonzales v. Carhart*, 550 U.S. 124 (2007), 2006 WL 1436689. *See also*, *e.g.*, Brief for *Amici Curiae* Jill Stanek and the Association of Pro-Life Physicians in Support of Petitioner, *Gonzales v. Carhart*, 550 U.S. 124 (2007), 2006 WL 2281977.

[52] Brief of *Amici Curiae* American College of Obstetricians and Gynecologists, American Medical Association, and Massachusetts Medical Society in Support of Respondents, *McCullen v. Coakley*, 573 U.S. 464 (2014), 2013 WL 6213247 at 25.

[53] David C. Reardon, "The Abortion and Mental Health Controversy: A Comprehensive Literature Review of Common Ground Agreements, Disagreements, Actionable Recommendations, and Research Opportunities," *SAGE Open Med.* (October 29, 2018), available at: https://journals.sagepub.com/doi/full/10.1177/2050312118807624 (accessed December 22, 2019).

- In *Whole Woman's Health v. Hellerstedt*, 136 S.Ct. 2292 (2016), ACOG argued against the Texas admitting privileges requirement, despite the fact that admitting privileges for ambulatory surgical facilities performing surgical procedures comparable to abortion were required for accreditation as well as for Medicaid reimbursement by the Centers for Medicare & Medicaid Services. Although surgical abortion procedures require anesthesia as well as the insertion of instruments into the uterine cavity, and although abortion occasionally results in perforation through the uterus into the abdominal cavity, necessitating open surgery to correct bowel and bladder damage, ACOG argued that "[a]bortion procedures . . . do not require an incision into a woman's body and do not entail exposure of sterile tissue to the external environment, and performance of such procedures does not require a hospital-based or related out-patient setting."

- In *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361 (2018), ACOG – again joining with the National Abortion Federation as *amici* – defended California's Reproductive FACT Act, which forced pro-life pregnancy care centers to post a sign telling women how to obtain free or low-cost abortion from the state government. ACOG sided with California in the attempt to target those with pro-life viewpoints, in violation of

> their free speech rights, claiming that any delay in obtaining an abortion posed health risks to pregnant women, and that any such delay made it more likely that some women would be denied abortions.[54]

In the instant case, ACOG appears again as *amicus curiae*, purportedly speaking for all of its members to "oppose medically unnecessary laws or restrictions that serve to delay or prevent care," citing the fact that "ACOG's briefs and guidelines have been cited by numerous courts, including this Court, seeking *authoritative medical data* regarding childbirth and abortion"[55] (emphasis added).

It is no coincidence that all of the supposedly "authoritative medical data" that ACOG presents favors the practice of abortion in every instance that this Court considers whether to limit it. A thorough review of ACOG's advocacy efforts did not reveal a single instance where the organization recognized the plurality of opinion about abortion within the ACOG membership or supported the limitation of abortion in any way, for any reason.

As shown above, ACOG has not formulated its pro-abortion advocacy as a result of member input or

---

[54] *Amici Curiae* Brief of the American Academy of Pediatrics, California, *et al.*, in Support of Respondents, *National Institute of Family and Life Advocates v. Becerra*, 138 S.Ct. 2361 (2018), 2018 WL 1110040 at 8.

[55] Brief for American College of Obstetricians and Gynecologists, *et al.*, as *Amici Curiae*, *June Medical Services L.L.C. v. Gee*, 2019 WL 6609234 at 3.

scientific inquiry, but rather as a top-down imposition of the political opinions of ACOG leadership. AAPLOG would respectfully submit that ACOG's *amicus* briefs should be interpreted by the Court for what they are: political advocacy consistently favoring abortion.

ACOG's arguments should not be understood to communicate the opinion of its members as professional obstetricians and gynecologists, because unlike the radical pro-abortion position presented in ACOG's legal advocacy, ACOG's members are not monolithic in their views on abortion, and 85% of OB-GYNs in the U.S. do not perform elective abortions. AAPLOG was formed precisely because ACOG did not represent the views of thousands of pro-life obstetricians and gynecologists across the country.

In sum, because the American College of Obstetricians and Gynecologists zealously advocates for unlimited elective abortion as a political position, and for complete self-regulation by the practitioner of abortion as a policy matter, the Court should not rely on ACOG as a neutral authority on the scientific data or the medical literature.

CONCLUSION

Amicus American Association of Pro-Life Obstetricians and Gynecologists respectfully submits that this Court should read ACOG's *amicus* brief not as an authoritative recitation of settled science, but as a partisan advocacy paper on behalf of a mere subset of

American obstetricians and gynecologists. The Court should affirm the decision of the Court of Appeals and uphold the Louisiana Unsafe Abortion Protection Act.

Respectfully submitted,

Bradley S. Tupi
Counsel of Record
1470 Redfern Drive
Pittsburgh, PA 15241

Attorney for American Association of Pro-Life Obstetricians and Gynecologists

December 27, 2019