

Nos. 18-1323, 18-1460, VIDED

In The
Supreme Court of the United States

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

Petitioners,

v.

DR. REBEKAH GEE, in her official capacity as Secretary
of the Louisiana Department of Health and Hospitals,

Respondent.

DR. REBEKAH GEE, in her official capacity as Secretary
of the Louisiana Department of Health and Hospitals,

Cross-Petitioner,

v.

JUNE MEDICAL SERVICES L.L.C., on behalf of its
patients, physicians, and staff, d/b/a HOPE MEDICAL
GROUP FOR WOMEN; JOHN DOE 1; JOHN DOE 2,

Cross-Respondents.

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

**AMICUS CURIAE BRIEF OF 2,624 WOMEN
INJURED BY ABORTION, OPERATION OUTCRY,
AND THE JUSTICE FOUNDATION IN SUPPORT
OF RESPONDENT AND CROSS-PETITIONER**

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INTEREST OF *AMICI CURIAE*¹**1. 2,624 WOMEN INJURED BY ABORTION**

Amici Women Injured by Abortion² are women who were injured by their own abortions and the abortion industry. Most of the *Amici* Women Injured by Abortion suffered grievous emotional, and psychological injuries, but many suffered severe physical complications as well. All were exposed to the risk of serious physical injury,³ as well as serious psychological injuries,⁴ and thus have a profound interest in protecting other women from such injuries.

¹ All parties have consented to the filing of this Brief. 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.

² Appendix A contains the list of the initials, first names, or full names of the *Amici Curiae* Women Injured By Abortion. These women's *sworn affidavits or declarations under penalty of perjury* are on file at The Justice Foundation. Protecting the identity of women has been customary since *Roe v. Wade*, 410 U.S. 113 (1973) and *Doe v. Bolton*, 410 U.S. 179 (1973).

³ The record below documents that the Petitioners below have had patients who had to go to emergency rooms or hospital admission over the years. *See* FN16, Fifth Circuit Opinion below, 905 F.3d 787 at 793 (5th Cir. 2018). While there may be differences in opinion as to the degree of risk, *it is undisputed that some women will require hospital admission after abortion.*

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*

Unlike some of the other post-abortive women filing briefs in this case, such as the legal professionals in this case,⁵ *Amici Women Injured By Abortion* have no personal relationships with any of the Supreme Court Justices. None have received genius awards. Instead of their abortions leading to fame and glory, they led to pain and suffering. Their downward path of pain needs to be acknowledged.

In fact, the trauma caused by their abortions *kept* them from fully participating in the social and economic life of the nation. Some had abortions in college, but they had to drop out of school because of their abortion trauma. Some became addicted to drugs or suffered intimate partner violence because they felt unworthy of love. They believed they had murdered their own children, experiencing these feelings from inner conviction, not imposed stigma.⁶ Many became poor and impoverished because of the traumatic consequences of their abortions, including suicide attempts. *Amici* also know and speak for the voiceless women who actually committed suicide after their abortions, including one lawyer. Her testimony before

(2011) 199, 180-186, DOI: 10.1192/bjpp.110.07723. (a meta-analysis of 22 studies).

⁵ See *Amicus* Brief for Michele Coleman Mayes, *et al.* in this case.

⁶ See also Brief of Women Injured By Abortion in *Wayne Stenehjem, et al. v. MKB Management Corp, et al.*, Supreme Court Docket Case No. 15-627.

her suicide is part of the record of Operation Outcry. See Dropbox Link for 4,660 Sworn Testimonies.⁷

A new study⁸ further documents that women who experience abortion have increased risk of suicidal ideation, though the abortion industry fails to disclose such studies to courts or women considering abortions, either because of their ideological bias or financial self-interest. See also www.afterabortion.org for other studies.

Amici Women Injured By Abortion have experienced firsthand, some multiple times, the callous reality of the abortion industry. They and the vast majority of women who go to high volume abortion facilities are treated as a business asset or customer, not as a patient. There may be an appearance of compassion, as long as the patient is choosing abortion, which is in the doctors' financial interest. Therefore, the word "patient" will not be used in this Brief because there is no real doctor/patient relationship in most abortion facilities, only the legal technicality of a doctor/patient relationship.

⁷ See Dropbox link to Operation Outcry Women's Testimonies <https://www.dropbox.com/sh/t0i6esr58vwy2df/AAC8IVWfkKPITs0zVKkI78yZa?dl=0>

⁸ Affective and Substance Abuse Disorders Following Abortion by Pregnancy Intention in the United States: A Longitudinal Cohort Study, Sullins, Donald Paul, *Medicina* 2019, 55(11), 741; <https://doi.org/10.3390/medicina55110741> (Nov. 15, 2019) ("Compared to corresponding births, abortion of wanted pregnancies are associated with a greater risk of negative psychological affect, particularly depression and suicide ideation. . . .")

The *Amici* Women’s experience, and the Record, demonstrate that it is standard practice for a woman to not even see the doctor until she has paid her money and is prepped for the abortion.⁹ A normal doctor/patient relationship does not exist, despite the industry rhetoric that the decision should be left to the woman and her doctor alone. With respect to almost all *Amici* Women there was no “successful communication” which “fosters trust and supports shared decision making” as required by the AMA.¹⁰

Amici Women Injured By Abortion know firsthand the misrepresentations and substandard health practices of the abortion industry. *Amici* Women will provide this Court with the experience of women who have been wounded by the abortion industry, as opposed to the abortion industry’s self-interested perspective.¹¹

⁹ ROA. 7574-7575, ROA. 7667, ROA.7730-7731, ROA. 7891-7894, ROA. 8228-8229, ROA. 10162. *See Gee* Cross-Petition, p.26.

¹⁰ 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>.

¹¹ Far more women injured by abortion (2,624) have filed *Amicus Curiae* briefs than the ones filed by post-abortive abortionists and industry advocates, such as in the *Amicus* Brief of Holly Alvarado, *et al.* on file in this case. E.g., Amanda Williams, on the Holly Alvarado *Amicus* Brief, is the Executive Director of the Lilith Fund, which has filed suit in Texas to set aside all abortion facility regulations, including sanitation requirements and even that only a doctor may perform abortions. (*Whole Woman’s Health Alliance, et al. v. Ken Paxton, et al.*, U.S. District Court Docket Number A: 18-CV-00500-LY.) Similar lawsuits have been

Because *Amici* Women were injured by the actions of the abortion industry, neither the Abortionists/Petitioners nor the abortion businesses represent their interest. The owners of abortion businesses often are non-doctors like Amy Hagstrom-Miller in *Whole Woman's Health*.¹² In fact, the Abortionists' interest is *adverse* to *Amici's* interests. Therefore, *Amici* Women Injured By Abortion feel strongly that abortionists should not be allowed to overcome their health and safety interests and that of other women by asserting third-party standing.

The existence of 2,624 *Amici* Women Injured By Abortion proves the abortion industry does not speak for all women. The Abortion Industry tells all women that abortion is "safe" for all women, yet these women suffered injuries that lasted for a lifetime in many cases. Listening to the *Amici* Women's experiences will aid the Court in achieving justice.

Amici Women know firsthand: the failure of the abortionists to obtain fully informed, voluntary consent; the conflicts of interest; the deception; and the psychological and physical injuries which they suffered as abortion consumers. *Amici* Cynthia Collins, a Woman Injured By Abortion, testified before the Louisiana Legislature about her hemorrhaging as a result of her abortion, which required emergency treatment.

filed in five other states. See *Amicus* Brief of Indiana, *et al.* at the *cert.* petition phase in Docket #18-1460, p.15-16.

¹² See *Amicus* Brief of Whole Women's Health in this case, p.1.

It is not unusual for victims of injurious business practices to seek consumer protection from their legislature. Her testimony as a female citizen hurt by her abortion was convincing to the Louisiana Legislature and the Fifth Circuit. *See* Opinion below, 905 F.3d 787 at 792 (5th Cir. 2018).¹³

Cynthia also counsels and assists many other women who are deeply traumatized by their abortions, not by stigma, but by their own reaction to what they have done. Just because some women are pleased with their abortions does not mean the voice of those injured by abortion should be ignored. The thousands of testimonies collected by Operation Outcry constitute a far more voluminous record than this Court has ever had access to before.¹⁴ When the women victims of the abortion industry seek consumer protection for themselves and others, their voices should be heard and heeded. In what other industry are victims told their product supplier gets to argue in court for them because the business knows best what they really need. Please listen to the women. They are not adequately represented by granting third-party standing to abortion industry doctors or businesses.

¹³ Cynthia Collins, Founder of Louisiana Abortion Recovery Alliance, regularly receives testimonies of women injured by abortion on a regular basis. The testimonies in App. E were received by her in Nov. or Dec. 2019 and permission was given to share them with the Court.

¹⁴ To view 4,660 testimonies of Women Injured By Abortion, go to <https://www.dropbox.com/sh/t0i6esr58vwy2df/AAC8IVWfkKPITs0zVKkI78yZa?dl=0>.

2. OPERATION OUTCRY

In 2000, Norma McCorvey, the “*Roe*” of *Roe v. Wade*,¹⁵ and Sandra Cano, the “*Doe*” of *Doe v. Bolton*,¹⁶ were seeking to reverse their own cases which brought “constitutionalized” abortion to America.¹⁷ While representing them, The Justice Foundation collected women’s testimonies through a project called “Operation Outcry” to give voice to women injured by abortion. Operation Outcry has now collected approximately 4,660 legally admissible testimonies of women from all over the country.¹⁸ This includes 94 testimonies from Louisiana women. Nationally, these injuries include physical complications such as punctured uteruses, punctured colons, sterility, excessive bleeding, near death experiences and other subsequent physical complications. It also includes the “devastating psychological consequences,” including suicide attempts, recognized by the Court as early as *Planned Parenthood v. Casey*¹⁹ (hereafter “*Casey*”).

¹⁵ *Roe v. Wade*, 410 U.S. 113 (hereafter “*Roe*”).

¹⁶ *Doe v. Bolton*, 410 U.S. 179 (hereafter “*Doe*”).

¹⁷ *McCorvey v. Hill*, 385 F.3d 846 (5th Cir. 2004) (*cert. denied*) (Supreme Court Docket No. 04-967) *Cano v. Baker*, 435 F.3d 1337 (11th Cir. 2007) (*cert. denied*) (Supreme Court Docket No. 05-11641).

¹⁸ 4,660 Testimonies of Women Injured By Abortion <https://www.dropbox.com/sh/t0i6esr58vwy2df/AAC8IVWfkKPITs0zVKkI78yZa?dl=0>

¹⁹ 505 U.S. 833 at 882 (1992).

3. THE JUSTICE FOUNDATION

The Justice Foundation is a 501(c)3 non-profit public interest litigation foundation. In 1998, a significant number of women injured by abortions, including those with punctured uteruses, punctured colons, and other severe injuries, contacted The Justice Foundation for assistance. A woman in Texas died that year from an insufficiently regulated abortion.

At that time, pursuant to these women's requests, and that of two young female lawyers, The Justice Foundation formed a Women's Health Protection Task Force. The Texas Department of Health failed to adequately inspect abortion facilities and did not even respond adequately to actual complaints of injured women, which The Justice Foundation documented. Texas finally began to adopt serious regulations for the protection of women's health in 1999. The state has a legitimate interest in protecting women's health from the "onset of pregnancy." *Gonzales v. Carhart*, 550 U.S. 124, at 145 (2007); *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

In 2001, 11 Texas women injured by the abortion industry brought suit on their own behalf against the Texas Department of Health **for failing to enforce** the existing regulations that had been passed. Under the regulations in 2001, the Department of Health would actually notify the abortion industry before the inspections, thus giving the abortionists time to cover up unsanitary and unhealthy conditions or fix serious

compliance problems. These women, represented by The Justice Foundation, successfully asserted their legal rights in court. Just as women who want no abortion restrictions could be helped by groups like the ACLU, without giving blanket third-party standing to the abortion industry.

In 2003, Texas settled the lawsuit by these 11 courageous women by making a significant number of agreements to enhance abortion facility regulation, including common-sense, unannounced inspections in Texas.²⁰ Thus, injured, female abortion customers in Texas asserted their own rights and won more legal protection for women. It was women injured by abortion who called for and achieved more health regulation. The Court should not hinder these efforts by giving third-party standing to every abortionist who wishes to oppose women seeking more protection.

◆

SUMMARY OF ARGUMENT

Women Injured By Abortion were deceived, misrepresented, inadequately protected, less than adequately informed and severely injured by the abortion industry. *Amici* Women Injured By Abortion are deeply distressed and disturbed by third-party standing claims made by those whose financial interest and

²⁰ *Elizabeth Herrera, et al. v. The State of Texas, et al.*, Cause No. 2002-02958, 125th Judicial District Court of Harris County, Texas.

ideological bias are in direct conflict with women seeking full, impartial, professional information, as well as all forms of health and safety protections of the highest order.

The Abortion Industry's conflict of interest and ideological bias, as demonstrated in the opposing *Amicus* briefs in this case, is so deep it allows the industry perhaps to only see, but certainly to only present, one side of a complex, controversial issue to their customers. Thus, the abortion industry should not receive third-party standing to represent the interests of women seeking abortions or unbiased, professional information about abortion. In addition, the experience of the original plaintiffs in *Roe* and *Doe* demonstrates that the abortion industry should not have third-party standing.

In addition, while primarily focusing on third-party standing in this case, *Amici* also believe this case demonstrates the unworkability of the Court's abortion jurisprudence, and urge reversal of *Roe*, *Doe* and *Casey* as well.



ARGUMENT

- 1. NO “CLOSE RELATIONSHIP” EXISTS BETWEEN THE ABORTION INDUSTRY AND ITS CUSTOMERS. THE ABORTION INDUSTRY SHOULD BE DENIED THIRD-PARTY STANDING BECAUSE IT DOES NOT EVEN PRESENT ALL THE RELEVANT FACTS ABOUT THE NATURE AND ADVERSE CONSEQUENCES OF ABORTION TO ITS CUSTOMERS. TO DO SO CONFLICTS WITH ITS OWN FINANCIAL INTEREST OR IDEOLOGICAL BIAS IN FAVOR OF ABORTION.**

One of the most fundamental and important duties of any doctor is to obtain the *voluntary* and fully informed consent of the person seeking care, particularly in abortion cases, *Casey*, at 881. Anyone seeking professional advice on the most controversial issue in America today, abortion, would expect a “professional” counselor to present the controversial issue fairly. Whether that professional be a financial advisor, lawyer, accountant or some other professional, one would expect a fair and balanced presentation. But even more so if the professional is a medical doctor. One would expect that when a controversial procedure is involved, the doctor would then be extremely careful to present *all the relevant facts of the issue fairly* so that the patient could make a voluntary, fully informed decision as to what course of action they want to follow.

Wouldn't that be the absolute *minimum* standard of law, morality and decency? The American Medical Association agrees:

“Informed consent to medical treatment is fundamental in both ethics and law. Patients have the right to receive information and ask questions about recommended treatments so that they can make well-considered decisions about care.”²¹

However, thousands of *Amici* Women know from experience the abortion industry in America absolutely fails to *fairly* address the abortion issue which is the most controversial issue in America today. The facts below show that this failure exists in Louisiana as well. The doctors perform very brief procedures on drugged patients whom they never saw and will never see again. ROA. 7574-7575, ROA. 7667, ROA.7730-7731, ROA. 7891-7894, ROA. 8228-8229, ROA. 10162. *Amici* Women Injured By Abortion agree.

Because the abortion industry does not properly represent the true interests of the pregnant mothers, they do not provide adequate information about how a woman can keep her child, or the true nature of the procedure and its *sui generis* risks.²²

What is the nature of abortion? What is it? What are its consequences? Based on their experience, *Amici* now know abortion is the taking of “**infant life**” which “some women come to regret” as the Supreme Court itself has acknowledged in *Gonzales v. Carhart*, 550

²¹ 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>.

²² See 4,660 Operation Outcry Testimonies link: <https://www.dropbox.com/sh/t0i6esr58vwy2df/AAC8IVWfkKPITs0zVKkI78yZa?dl=0>

U.S. 124, at 159 (2007) (hereinafter *Gonzales*). Even if one disagrees, the abortion industry does not present both sides, but only tells women abortion is merely a “termination of pregnancy” or “removing the products of conception” or just removing a “mass of tissue.” It does not offer even the basic facts which the Supreme Court has stated are true. Supporters of abortion speak only of abortion’s effect on one person, the woman, completely ignoring the “**infant life**” in the womb.

Fortunately, new Safe Haven laws²³ in every state allow freedom from child care if women feel that freedom is needed to become lawyers, or whatever life choices the woman may wish to pursue, while still protecting the child’s very life. Safe Haven laws also avoid all post-abortive trauma related to causing the death of another human being. *See* Section 4, *infra*.

The abortion industry fails to tell women even what the Supreme Court stated in *Gonzales*:

“Respect for human life finds an ultimate expression in the bond of love the mother has for her child. The Act recognizes this **reality** as well. Whether to have an abortion requires a difficult and painful moral decision. *Casey. supra*, at 852-853; 112 S. Ct. 2791 (Opinion of the Court). While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude **some women come to regret their choice to abort the infant**

²³ *See* www.nationalsafehavenalliance.org.

life they once created and sustained. See Brief for Sandra Cano, [the “Doe” of *Doe v. Bolton*] *et al.* [Ed. -180 Women of Operation Outcry Injured By Abortion] as *Amici Curiae* in No. 05-380, pp. 22-24. **Severe depression and loss of esteem can follow.** See *ibid.*” *Gonzales v. Carhart* 550 U.S. 124, at 159 (emphasis added).

This Supreme Court decision is completely ignored in the discussion between an abortionist and the woman in the abortion facility. Usually, it is not discussed because there is almost never as a matter of routine procedure *any discussion at all* between the abortionist and the woman as the record below indicates. The actual experience of Louisiana *Amici Women* also documents this industry failure. See Appendix B.

2. THE ACTUAL EXPERIENCE OF 94 LOUISIANA WOMEN INJURED BY ABORTION SHOWS THE ABORTION INDUSTRY IN LOUISIANA INJURES WOMEN.

Amici Women Injured By Abortion have signed sworn affidavits or declarations under penalty of perjury (not just provided emails) in which they were asked: “*Were you adequately informed of the nature of abortion, what it is, what it does? ___ Yes ___ No.*” How can consent be “informed” without that data? *Amici Women* were also asked: “*How did your abortion affect you?*” Here are some typical answers from Louisiana women to these questions:

“No explanation.”

Mavis

“The Delta Woman’s Clinic, Baton Rouge, made it seem it was a harmless procedure both physically (no indications of what could possibly happen) and also no emotional or spiritual education.²⁴ Every day of my life, (I am 54 yrs. old with one child 27 yrs. old) it robbed me of my spiritual well-being for 33 yrs.”

Janice C.

“Delta Clinic, N.O.L.A. No, not one word, just pay and get your service and leave. It caused [me] to be very shameful and emotionally damaged. I felt like a sleaze and a cheater and a deceiver and a lying tramp.”

Janice M.

“No. Very briefly. Was not led to believe that the fetus was a baby. It was described as fetal tissue. I experienced depression, anger, remorse and a rocky marriage for many years. I also experienced two miscarriages within the next ten years following my abortion. I was robbed of sexual satisfaction.”

S.P.P.

“There was no information at all. In the procedure room, the doctor explained what he was about to do. (Suction curettage) . . . I was so emotionally devastated by the guilt. I used

²⁴ Whole Woman’s Health states that they do provide “spiritual counsel”, including answers to questions like, “Do you think I will go to hell?” Brief of Whole Woman’s Health Alliance, at p.20. So they are assuming the role of spiritual advisors also. Most of the industry’s responses are designed to procure abortions or soothe the consciences of those concerned about the “infant life” in the womb. See App. D, Roe’s Affidavit.

alcohol and drugs to dim this pain. I couldn't stand to be by babies." **Jane**

"No. I was young – my mother encouraged me to do it – I thought or assumed that it was just a blood tissue being formed. I became emotionally unstable, a heavy spirit of condemnation, depressed, always crying – broken marriage . . . two miscarriages." **Regina**

"No. In many ways it changed me immensely. I lived for many years with alcohol problems, depression, anger and sexual promiscuity. I had to live every day knowing that I killed my baby and that it didn't have to happen." **Jennifer**

"No. I was given reasons to perform the abortion and how it would help my situation." **Denise**

"No. I was given incomplete information as to risks involved and procedure. Was given little information regarding procedure." **C.C.**

"No. Told it was just tissue." **Mary**

"No. I was rushed in and rushed out. I and many other women were in groups. Like an assembly line." **M.L.**

"No. It was treated as a trivial thing sort of like changing oil." **Frieda**

"No. In 1991, I did not know it was a baby. It had a heartbeat, DNA, fingerprints, could suck its thumb, and grip his or her hand around my fingers." **Candace**

“No. I was told that this was just a blob of tissue at this point.” ***Kathleen***

“No person told me the emotional baggage you carry after having an abortion. It is not an answer to a quick fix. This choice lasts for your entire life. It never goes away.” ***Geralyn***

“No. The only things they did for me at the murder mill were to take my temperature and blood pressure. PERIOD.” ***Cynthia***

“No. I was not given any information regarding the procedure or risks!” ***Michelle***

“No. They did not explain very much except not to yell – that if I started screaming out in pain that the doctor would stop the procedure.” ***Tammy***

“No. I was told that the baby was just tissue and nothing more and that the doctors would take care of it.” ***Marie***

“No. I made an appointment and was brought into a waiting room. A nurse took my vital signs, signed consent forms and she gave me a red pill that she said would cause dilation. An hour or two later, I was brought into another room where the abortion was performed. . . . The experience was cold and it felt “dirty.” ***Catherine***

“No. I went to the clinic on Acadian Thruway and paid the money for the abortion. I was told that I had to wait 24 hours for the procedure to be done. I came back the next day and it was done.” ***Sharon***

“No. I was told by Planned Parenthood that it was not a baby, that it was no more than an enlarged egg!” **Karen**

“No. My baby was called a blob of tissue and I was told that the procedure would be a little uncomfortable. It was the most excruciating pain that to date I have ever felt. I literally felt the life being sucked out of me.” **Jeanine**

“No. No one informed me of the emotional or physical pain it would cause.” **Kerri**

“No. Went through Planned Parenthood and was encouraged to move forward with the abortion.” **Laura**

“No. I was not given any information AT ALL! I was simply told it wouldn’t take long, it wouldn’t hurt, and I would be able to go on with my life until it was a better time to have children. The “Dr.” never spoke one single word to me! He didn’t call me by my name, he didn’t ask how I was doing, he didn’t give me any information at all as to what he was about to do. The only words spoken were by the nurse and she threatened to strap me down if I didn’t stop crying!” **Marcia**

Further samples of Louisiana *Amici* Women experiences are given in Appendix B. *See also* 4,660 Operation Outcry Testimonies from all fifty states.²⁵ The only

²⁵ *See* Dropbox link to 4,660 Operation Outcry Women’s Testimonies (94 from Louisiana) <https://www.dropbox.com/sh/t0i6esr58vwy2df/AAC8IVWfkKPITs0zVKki78yZa?dl=0>

purpose in the abortion clinic's counseling is to sell abortions. *See also* Affidavit of Norma McCorvey, the "Roe" of *Roe v. Wade*, Section 5, *infra*. Of course, if a woman is desperate for abortion to solve her child care problem, which usually is a social rather than medical issue, and she is told she is doing the only possible right thing, she may feel compassion and reassurance. The guilt and suffering may come right away or later, which only the woman suffers, not the doctor.

Abortionists fail to tell women that the consequences of abortion can be "devastating psychological consequences" *Casey*, at 882, or "severe depression and loss of self-esteem" *Gonzales*, at 159. Even though the Supreme Court since 1992 has held that women can suffer "devastating psychological consequences," the abortion industry only presents one side to the public and women in its mass media campaign and in abortion facilities. It portrays abortion as totally safe and of value to women as it does in its briefs to this Court.

The abortion industry doesn't even tell the women what Justices Ginsburg, Stevens, Souter and Breyer admitted in their dissent in *Gonzales* that: "The Court is surely correct that, for most women, abortion is a **painfully difficult decision.**" FN7 at 183. The abortionist, on whom much of the weight of the judicial philosophy of *Roe v. Wade* rests, only spends five to seven minutes performing the procedures. ROA.8228-8229. Usually it is other office staff who deal with the women, if at all. *Id. Amici* Women agree. Therefore, women are not adequately represented by granting

third-party standing to abortion industry businesses who routinely fail in this most basic of duties.

Planned Parenthood is the largest single provider of abortions in America. It is a billion dollar business in both income and net assets, more precisely a 1.665 billion dollar business annually.²⁶ Half a billion dollars of their revenues come from the government. By any measure, the abortion industry is a billion dollar business with total assets of 2.165 billion.²⁷ They represent their business, which they should be allowed to do, but they do not, cannot, justly represent all women. The abortion industry has suppressed the voices of women injured by abortion. It should not take compelled speech statutes to force the abortion industry to present both sides of the argument. Yet it does.

²⁶ The basic financial numbers from the 2017-2018 *Planned Parenthood Federation of America Annual Report*:

Total Income.....	\$1,665.1 million
Government.....	\$ 563.8 million
Donations	\$ 630.8 million
Non-Government clinic income	\$ 365.7 million
Other.....	\$ 104.8 million
Profits	\$ 244.8 million (emphasis added)
Abortions	332,757

²⁷ National Office & Affiliate Financial Data Combined Balance Sheet: National Office and Affiliates June 30, 2018

Total Assets	2,165.6
Total Liabilities	283.9
Net Assets	1,881.7

Source – Summary from <https://www.plannedparenthood.org/about-us/facts-figures/annual-report>.

For example, South Dakota passed an informed consent statute which required that abortion providers inform their patients “that an abortion terminates the life of a whole, separate, unique, living human being.” S.D.C.L. Section 34-23A-10.1(1)(b). The term human being is used in the biological sense as an individual living member of the species of *Homo sapiens*. See, S.D.C.L. Section 34-23A-1(4). The Planned Parenthood affiliate which performs abortions in South Dakota sued the state alleging that the compelled disclosure violated the physician’s Fourteenth Amendment right of free speech. The U.S. Court of Appeals held the disclosure was a statement of scientific fact – not a statement of ideology – and relevant to the decision of a pregnant mother contemplating whether or not to consent to an abortion. *Planned Parenthood v. Rounds*, 530 F.3d 724 (8th Cir. 2008) (*en banc*). Despite this loss, the industry does not tell women that a court has found these facts to be true, except perhaps in South Dakota.

In *Gonzales v. Carhart*, the Supreme Court held in cases of medical disagreement:

“The Court has given state and federal legislatures wide discretion to pass legislation in areas where there is medical and scientific uncertainty.” (*Internal citations omitted*).

This traditional rule is consistent with *Casey*, which confirms the State’s interest in promoting respect for human life at all stages in the pregnancy.

Physicians are not entitled to ignore regulations that direct them to use reasonable alternative procedures. The law need not give abortion doctors unfettered choice in the course of their medical practice, nor should it elevate their status above other physicians in the medical community.²⁸ (emphasis added)

If the Supreme Court can recognize this divergence in the evidence, this split among experts, then shouldn't every medical professional simply as a duty of their own ethics *voluntarily* tell women these facts? Then they can present other facts as well and let women make their decision, but they do not. Either profit interests or ideology commits them to presenting only one side.²⁹

The abortion industry cannot be the one to regulate itself when these regulations are needed. Even if a few practitioners have high standards, low or no regulation allows very bad actors to join the industry as Amici Women can attest.³⁰

²⁸ *Gonzales*, 550 U.S. at 163.

²⁹ In fairness, perhaps due to the nature of abortion itself, which “terminates” not only a pregnancy, but an “**infant life**,” only the truly ideologically committed can continue in the business. See *Amicus* Brief of Whole Women’s Health, et al. in this case, p.33 “Amici’s staff, like those in most abortion clinics, choose to do their work out of a strong sense of duty and in the interest of social justice.”

³⁰ See Gosnell Report, <https://cdn.cnsnews.com/documents/Gosnell,%20Grand%20Jury%20Report.pdf>.

3. THE ABORTION INDUSTRY SHOULD BE DENIED THIRD-PARTY STANDING BECAUSE IT DOES NOT SCREEN FOR INVOLUNTARY ABORTIONS BECAUSE TO DO SO CONFLICTS WITH ITS OWN FINANCIAL INTEREST OR IDEOLOGICAL BIAS IN FAVOR OF ABORTION. INVOLUNTARY ABORTION FROM THE BEGINNING IS SHOWN IN THE TESTIMONY OF SANDRA CANO, THE FORMER “MARY DOE” OF *DOE V. BOLTON* WHO WAS A VICTIM OF AN ATTEMPTED INVOLUNTARY ABORTION. SHE ALSO ASKED THIS COURT TO REVERSE HER OWN CASE – *DOE V. BOLTON*.

Of its 4,660 declarations and affidavits of Women Injured By Abortion, Operation Outcry has collected approximately 2,389 testimonies of women who swore that someone “pressured” them into having an abortion. See link to Operation Outcry Women’s testimonies, question 8, *supra*.³¹ Those who pressure women into having abortions can range from Planned Parenthood or other abortionist personnel, parents, the father of the child or his parents, abusive teachers, human traffickers, workplace supervisors guilty of sexual harassment, other family or even friends. Even school counselors have been sued by students who were pressured or coerced to have abortions. See

³¹ See Dropbox link to Operation Outcry Women’s Testimonies <https://www.dropbox.com/sh/t0i6esr58vwy2df/AAC8IVWfkKPITs0zVKkI78yZa?dl=0>

Arnold v. Bd. of Ed. of Escambia County, Alabama, 880 F.2d 305 (11th. Cir. 1989) (*rev'd on other grounds*).

One of the unfortunate consequences of legalizing abortion is that it allows others to force women to have abortions to solve their problem, not the woman's. The three most common types of forced abortion are:

1. Adult parents forcing a minor daughter to get an abortion against her will.
2. An adult male forcing a woman to abort his child.
3. Human trafficking or prostitution where the father is unknown.

But despite the experience of thousands of women, the routine practice of the abortion industry does not screen for such coercion, thus proving they are inappropriate actors to receive blanket standing to act on behalf of women. In fact, South Dakota passed a law to protect women from coerced abortions, and Planned Parenthood sued, claiming that it is unconstitutional for a state to protect women against people who have imposed their will upon the pregnant mothers and have thereby made it impossible for the women to effectuate their own truly voluntary decision.³²

³² *Planned Parenthood Minnesota, North Dakota, South Dakota and Carol E. Ball, M.D. Plaintiffs v. Dennis Daugaard, Governor, Alpha Center, et al. and Black Hills Crisis Pregnancy Center, d/b/a/ CareNet Pregnancy Resource Center, Intervenors*. Southern District of the South Dakota Federal District Court, Docket Number 11-04071-KES.

Even one of the Court's most famous decisions in this arena, *Doe v. Bolton*, was an attempted involuntary abortion. The following excerpts from the affidavit of Sandra Cano, the "Mary Doe" of *Doe v. Bolton* show that her case involved an attempt at involuntary abortion.

Sandra Cano previously filed a Rule 60 Motion as the original Plaintiff in *Doe v. Bolton* to reverse her own case. *Cano v. Baker*, 435 F.3d 1337 (11th Cir. 2007) (Supreme Court Docket No. 05-11641) (*cert. denied*). She stated:

"2. In 1973, I was the woman designated as 'Mary Doe', the Plaintiff in *Doe v. Bolton*, 410 U.S. 179 (1973), the companion case to *Roe v. Wade*, 410 U.S. 113 (1973). Although the courts understood that 'Mary Doe' was not my real name, what the courts did not know was that, contrary to the facts recited in my 1970 Affidavit, I neither wanted nor sought an abortion. I was nothing but a symbol in *Doe v. Bolton* with my experience and circumstances discounted and misrepresented. During oral arguments before the United States Supreme Court one of the Justices stated that it did not matter whether I was a real or fictitious person. This is where the Court was so very wrong. It did matter. I was a real person, and I did not want an abortion."

"5. I was a trusting person and did not read the papers placed in front of me by my lawyer. I truly thought Margie Pitts Hames was having me sign divorce papers. I did not even

suspect that the papers related to abortion until one afternoon when my mother and my lawyer told me that my suitcase was packed to go to a hospital, and that they had scheduled an abortion for the next day. They advised me that my doctor, Dr. Donald Block, was going to perform an abortion. I told both my mother and my lawyer that I would not have an abortion. Not then. Not ever. They persisted in their demands upon me.”

“6. When the demand for an abortion persisted, I fled to Oklahoma and stayed at the home of my ex-husband’s grandmother. I remained in Oklahoma until my mother and lawyer assured me that they would cease their pressuring me to have an abortion. I was relieved that the ordeal was ended. Because they promised never to force me to have an abortion, I returned to Georgia.”

“16. . . . I never had an abortion, but I know what it is like to feel responsible for one. I know what it is like to feel like a mother who helped terminate the life of her own child. After *Doe v. Bolton* was decided and I was told about my involvement, I felt responsible for the experiences to which the mothers and babies were being subjected.” . . . “I have felt that experience that the death of a child is my fault; the helplessness the mother feels as events occur around her without any power to stop them;”

“19. I have been forced to live with the consequence of this false compassion for too long

for me not to bring to the attention of the Court the fact that abortion is not in a woman's interest, and the fact that legalization of abortion began with manipulations and misrepresentations. Too many women who lost their children through abortion have told me of their emptiness, their sadness, the void in their lives, and how others forced them to have abortions and then blamed the abortion on the mother."

"21. *Doe v. Bolton* and my circumstances were misused. *Doe v. Bolton* was a fraud upon the court. ***Doe v. Bolton* was a secret case about abortion, which is a secret procedure. This secretiveness allows others to prevail upon the mother and others can act against her interest.** Women have told me how they were forced to have an abortion against their will. If it was alleged that I spoke for other women in *Doe v. Bolton*, then I gladly speak for other women in this case to say that abortion is too coercive by nature; too much the will of others; too much the will of a society which finds abortion more convenient for it than a commitment to the well-being of the mother and the child." (*emphasis added due to the secretive nature of the names and proceedings in this case, with doctor names concealed and sealed records*)

"24. . . . Today this Court has the opportunity to review, not just the real facts surrounding *Roe v. Wade* and *Doe v. Bolton*, the original abortion decisions, but the opportunity to review the testimony of hundreds of

women who have real, true, experiences with abortion and not perpetuate the *Doe v. Bolton* fraud upon the Court.”

/s/Sandra Cano a.k.a. “Mary Doe” of *Doe v. Bolton*. See Appendix C for full Cano Affidavit filed in Supreme Court Docket # 05-11641 with the Court.

4. LOUISIANA’S SAFE HAVEN LAW ELIMINATES THE NEED FOR ABORTION. THE LAW MEETS WOMEN’S UNWANTED CHILD CARE NEEDS WITHOUT INJURING WOMEN. ACT 620 DOES NOT CONSTITUTE AN “UNDUE BURDEN” SINCE ALL BURDEN OF UNWANTED CHILD CARE HAS BEEN TRANSFERRED TO SOCIETY. THEREFORE IT IS CONSTITUTIONAL UNDER GONZALES V. CARHART AND PLANNED PARENTHOOD V. CASEY.

The Louisiana Safe Haven law represents a far better alternative to relieve women from the burden of “unwanted” child care than abortion. If any woman is unable to care for the baby, after birth, they can bring the newborn, up to sixty days old, to an emergency designated facility, medical facility, hospital, fire or police department, public health unit or child advocacy center in Louisiana. La. Child Code Ann. Arts. 1149-53; Dept. of Children and Family Services, www.dcfslouisiana.gov. All 50 states have similar drop off laws. See www.nationalsafehavenalliance.org. Even if *Roe*, *Doe* and *Casey* were reversed today, no woman would have

to care for an unwanted child. Whatever states choose to do with abortion, even if this Louisiana law were upheld, no woman would have to care for an unwanted child. Upholding the Fifth Circuit Opinion, even if abortion access were rare in Louisiana because of its gruesome nature, would mean justice for the child, mercy for the mother, and love for the newborns who would be dropped off at no charge (unlike abortions). The children would be quickly adopted by over a million people waiting to adopt newborns in America.³³ Safe Haven is equally available to all.

5. THE ABORTION FACILITY EMPLOYEE EXPERIENCE OF NORMA MCCORVEY, THE FORMER “ROE” OF *ROE V. WADE*, HELPED CONVINCER HER THAT THE INDUSTRY DOES NOT PROTECT WOMEN’S HEALTH AND SAFETY AND THUS IT SHOULD NOT BE GIVEN THIRD-PARTY STANDING.

Norma McCorvey, the former “*Roe*” of *Roe v. Wade*, came to this Court in *McCorvey v. Hill*, 385 F.3d 846 (2004) (*cert. denied*) (Supreme Court Docket No. 04-967) seeking to reverse *Roe v. Wade*. She filed a Rule 60 Motion in the Dallas District Court to set aside the judgement in her case. The original district court denied the motion in two days without hearing any of the

³³ The number of couples waiting to adopt newborns is approximately two million per year. https://www.americanadoptions.com/pregnant/waiting_adoptive_families. Approximately six million women per year (10% of women of childbearing age) are infertile. Female Infertility, HHS.gov.

over 5,000 pages of evidence, including Operation Outcry affidavits, on the erroneous grounds her Rule 60 motion was filed too late. This ruling, without even holding a hearing, was ruled erroneous by the Fifth Circuit. *Id.* However, the Fifth Circuit ruled the case was moot, and this Court denied *cert. Ibid.*

Judge Edith Jones concurred, but urged this Court to reconsider *Roe*:

“In sum, if courts were to delve into the facts underlying *Roe*’s balancing scheme with present day knowledge, they might conclude that the woman’s “choice” is far more risky and less beneficial, and the child’s sentience far more advanced than the *Roe* Court knew.” *McCorvey v. Hill* 385 F.3d 846 at 852, (5th Cir.) (*cert. denied*).

With Safe Haven laws now available in every state, now is the time for reversal.

Norma’s Affidavit, Appendix D, shows that Norma actually worked in the abortion industry. She documents the tragedy, squalor and callousness that are present in a self-regulated or low-regulated abortion industry. She states:

“19. In 1992, I began working in abortion facilities where I was always in control. I could either make a woman stay or help her leave. My duties were similar to those of a LVN or an RN, such as taking patients’ blood pressure and pulse and administering oxygen, although I never took any statistics or temperatures. Basically, I would stand inside the

procedure room, holding the women's hands, and say things to distract them by saying, "What is the most exciting, or happiest period of your life?" Meanwhile the abortionist was performing what is represented as a "painless" procedure and the women are digging their nails into me in an effort to endure the pain."

"20. I worked in several abortion facilities over the years. In fact, I even worked at two facilities at the same time. They were all the same with respect to the condition of the facilities and the "counseling" the women receive. One clinic where I worked in 1995 was typical: Light fixtures and plaster falling from the ceiling, rat droppings over the sinks; backup sinks, and blood splattered on the walls. But the most distressing room in the facility was the "parts room." Aborted babies were stored here. There were dead babies and baby parts stacked like cordwood. Some of the babies made it into buckets and others did not, and because of its disgusting features, no one ever cleaned the room. The stench was horrible. Plastic bags full of baby parts that were swimming in blood were tied up, stored in the room and picked up once a week. At another clinic, the dead babies were kept in a big white freezer full of dozens of jars, frozen in blood. The abortion clinic's personnel always referred to the dismembered babies as "tissue."

"21. While all the facilities were much the same, the abortion doctors in the various clinics where I worked were very representative

of abortionists in general. The abortionists I knew were usually of foreign descent with the perception that the lax abortion laws in the United States present a fertile money-making opportunity. . . .”

“22. . . . *Early in my abortion career, it became eviden[t] that the “counselors” and the abortionists were there for only one reason – to sell abortions.* (emphasis added). . . . There was no informed consent. *In my opinion, the only thing the abortion doctors and clinics cared about was making money.* (emphasis added). No abortion clinic cared about the women involved. As far as I could tell, every woman had the name of Jane Roe.”

“25. *In all of the clinics where I worked, the employees were forbidden to say anything that might talk the mother out of an abortion.* (emphasis added).

“26. *After I saw all the deception going on in the abortion facilities, and after all the things that my supervisors told me to tell the women, I became very angry. I saw women being lied to, openly, and I was part of it. There’s no telling how many children I helped kill while their mothers dug their nails into me and listened to my warning, “Whatever you do, don’t move!” Because I was drunk or stoned much of the time, I was able to continue this work for a long time, probably much longer than most clinic workers.* (emphasis added) It is a high turnover job, because of the true nature of the business. The abortion business is an

inherently dehumanizing one. A person has to let her heart and soul die or go numb to stay in practice. The clinic workers suffer, the women suffer, and the babies die. I can assure this Court that the interest of these mothers is not a concern of abortion providers. I obviously advocated legalized abortion for many years following *Roe v. Wade*. *But, working in the abortion clinics forced me to accept what abortion really is: It is a violent act which kills human beings and destroys the peace and the real interests of the mothers involved.*" (emphasis added).

/s/ Norma McCorvey a/k/a Jane Roe of *Roe v. Wade*. See full affidavit at Appendix D (also filed with this Court in *McCorvey v. Hill*, Docket #04-967).

6. A CONFLICT OF INTEREST RULE SHOULD BE ADOPTED.

Amici Women Injured By Abortion oppose third-party standing of the abortion industry for any reason, but a conflicts of interest rule should be adopted. Under such a rule, any potential conflict of interest between the industry and the women would fail the "close relationship" test and thus third-party standing should be denied.

In this case, e.g., the benefits (however large or small) of hospital admitting privileges are clearly for the benefit of the patient. However, the burden of getting admitting privileges clearly rests solely on the

doctor. He cannot easily pass this cost on to the consumer. That may help explain why the Fifth Circuit found so many of the doctors below failed to make a good faith effort to get admitting privileges. The burden is on the doctor; there is no undue burden on any woman. But the doctors' self-interested approach kept them from applying. That is a clear conflict of interest.

CONCLUSION

WHILE ACT 620 CAN AND SHOULD BE UPHOLD UNDER CURRENT CASE LAW, AMICI ALSO URGE THE COURT TO REVERSE *ROE V. WADE*, *DOE V. BOLTON*, AND *PLANNED PARENTHOOD V. CASEY*

While this case can be upheld even under *Gonzales* and *Casey* since it does not in fact prevent thousands of Louisiana hospital admitted doctors from performing abortion whatsoever, *Amici* urge the complete reversal of *Roe*, *Doe* (as the original *Roe* and *Doe* themselves have requested), and *Casey*. The Court's abortion jurisprudence has proven unworkable in practice as this case and its history so abundantly demonstrate. Safe Haven laws provide a social safety net in every state. The *Roe* "liberty" interest in freedom from unwanted child care can still be granted to women, without killing the "infant life" in the womb, or causing horrible abortion trauma in women.

The lack of qualified doctors willing to perform abortion in Louisiana is caused not by the law, but by the nature of abortion, which is killing an “**infant life**.” *Gonzales, supra*. Thousands of obstetricians and gynecologists in Louisiana have hospital admitting privileges, but few are willing to actually take “**infant life**,” *Gonzales*. There are many other reasons for reversing *Roe* as set forth in Clarke D. Forsythe, “A Draft Opinion Overruling *Roe v. Wade*.”³⁴ See also *Amicus Curiae* Brief of Melinda Thybault, Individually, and on Behalf of The Moral Outcry Petition Signers on file in this case.

PRAYER

Amici respectfully request that this Court affirm the decision below, that the Louisiana Unsafe Abortion Protection Act be upheld as constitutional; that third-party standing be denied; and that *Roe v. Wade*, *Doe v. Bolton* and *Planned Parenthood v. Casey* be reversed, overturned, cancelled and annulled because abortion hurts women. In the 21st century, there is a far better

³⁴ “A Draft Opinion Overruling *Roe v. Wade*” by Clarke D. Forsythe, 16 *Georgetown J. of Law & Public Policy* (Spring 2018), <https://www.law.georgetown.edu/public-policy-journal/wp-content/uploads/sites/23/2018/10/16-2-Draft-Opinion.pdf>.

alternative to abortion through Safe Haven laws. No woman will ever be unduly burdened by child care.

Respectfully submitted,

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