

Nos. 18-1323, 18-1460

In The
Supreme Court of the United States

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 Conditional Cross-Petition For
Writ Of Certiorari To The United States
Court Of Appeals For The Fifth Circuit**

**AMICI CURIAE BRIEF OF 2,556 OPERATION
OUTCRY WOMEN INJURED BY ABORTION
AND THE JUSTICE FOUNDATION
IN SUPPORT OF CROSS-PETITIONER**

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INTEREST OF *AMICI CURIAE*¹**A. 2,556 OPERATION OUTCRY WOMEN HURT BY ABORTION**

Amici Operation Outcry Women Injured by Abortion² are women who were injured by their own abortions and their abortionists. Most of the *Amici* Women Injured by Abortion suffered grievous 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

¹ All parties received notice of and have consented to the filing of this Brief. The Justice Foundation is a 501(c)(3) non-profit legal corporation that handles cases pro-bono in cases of great public importance. The Foundation is supported by private contributions of donors who have made the preparation and submission of this brief possible. 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 Attached as Appendix A is the list of the initials, first names, or full names of the *Amici Curiae* Women. In order to protect their identities, some of the women have requested that we use initials only or first name only. These women's sworn affidavits or declarations made under penalty of perjury are on file at The Justice Foundation. Protecting the identity of women who have had abortions or seek abortions has been customary since *Roe v. Wade*, 410 U.S. 113 (1973) and *Doe v. Bolton*, 410 U.S. 179 (1973) where *Roe* and *Doe* both were pseudonyms.

³ The record below documents that the clinics and doctors below have had patients who had to go to emergency rooms or hospital admission over the years. For example, see n.16, Fifth Circuit Opinion below, *Medical Services, et al. v. Gee*, 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.

injuries,⁴ and thus have a profound interest in protecting other women from such injuries. All of the *Amici Women* have experienced abortion in actual practice, not just theory.

Amici Women have experienced first-hand, 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. 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 technical or legal fiction of a doctor/patient relationship. It is standard practice for a woman to not even see her doctor until she has paid her money and is prepped for the abortion. A normal doctor-patient relationship does not exist despite the fundamental expectation espoused in *Roe v. Wade*, 410 U.S. 113 (1973) (hereafter “*Roe*”), that the decision should be left to the woman and her doctor alone. Certainly with respect to *Amici Women* there was no “successful communication” which “fosters trust and supports shared decision making.”⁵

⁴ See, e.g., “Women who had undergone an abortion experienced an 81% increased risk of mental health problems, and nearly 10% of the incidence of mental health problems was shown to be attributable to abortion.” See Coleman, Priscilla, “Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995-2009,” *The British Journal of Psychiatry* (2011) 199, 180-186, DOI: 10.1192/bjp.bp.110.077230 (A meta-analysis of 22 studies).

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

Amici Women know and experienced first-hand the misrepresentations and substandard health practices of the abortion industry in practice. *Amici* Women, in this brief, will provide this Court with actual women's perspectives on abortion, as opposed to the abortion industry's perspective.

Because *Amici* Women were injured by the actions of the abortion industry, neither the Abortionists/Petitioners ("Abortionists") nor the abortion businesses represent their interest. In fact, the Abortionists' interest is *adverse* to *Amici* Women's interests, and thus *Amici* Women feel strongly that abortionists should not be allowed to represent their health and safety concerns through third party standing. The mere existence of *Amici* Women proves the abortion industry does not speak for all women. Listening to the *Amici* Women's unique and different perspective as women "patients" injured by abortion 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. Cynthia Collins, a woman hurt by abortion, testified before the Louisiana Legislature about her hemorrhaging as a result of her abortion, which required emergency treatment. Her testimony as a citizen was convincing to the Louisiana Legislature and the Fifth Circuit. See Opinion below, 905 F.3d 787 at 792 (5th Cir. 2018). The thousands of testimonies collected by Operation Outcry constitute a far more voluminous record than this Court can read at this time, but when the women victims of the

abortion industry seek consumer protection for themselves and others, their voices should be heard and heeded. They are not adequately represented by granting third party standing to abortion industry doctors or businesses.

B. THE JUSTICE FOUNDATION

The Justice Foundation is a 501(c)(3) non-profit public interest litigation corporation formed in 1993 to litigate for limited government, free markets, private property and parental rights, and since 1998, for protecting women's health. 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 in 1998 from an unregulated abortion. At that time, pursuant to these women's requests, and of two young female lawyers, The Justice Foundation formed a Women's Health Protection Task Force to investigate claims that the Texas Department of Health was not adequately regulating or inspecting abortion facilities. Abortion facilities were severely under-regulated at that time. 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 2000, on behalf of Norma McCorvey, the “*Roe*” of *Roe v. Wade*, and Sandra Cano, the “*Doe*” of *Doe v. Bolton*, who were seeking to reverse their own cases which brought abortion to America, The Justice Foundation created a project called “Operation Outcry” to give voice to women injured by abortion. Their voices need to be heard. Operation Outcry has now collected approximately 4,600 legally admissible testimonies of women from all over the country. This includes approximately 92 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, and also include the “devastating psychological consequences” recognized by the Court as early as *Planned Parenthood v. Casey*⁶ (hereafter “*Casey*”).

In 2001, The Justice Foundation represented 11 Texas women injured by the abortion industry in Texas and brought suit 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 notify the abortion industry before the inspections giving the abortionists time to cover up unsanitary and unhealthy conditions or fix serious medical compliance problems. In 2003, the State of Texas settled the lawsuit with The Justice

⁶ *Planned Parenthood v. Casey*, 505 U.S. 833 at 882 (1992).

Foundation's female clients by making a significant number of agreements to enhance abortion facility regulation, including common-sense, unannounced inspections in Texas. Thus, injured, female abortion patients in Texas have sought and won more legal protection for women. This Court should not hinder these efforts by giving third party standing to every abortionist who wishes to oppose women seeking more protection.

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SUMMARY OF ARGUMENT

Amici Women support the judgment of the Fifth Circuit below, and oppose the grant of *Certiorari* to the abortion industry in the main case, and only file this *Amicus Curiae* Brief in Support of Cross-Petitioner's Cross-Point on Appeal. Only if *cert.* is granted in the main case, then the cross-question presented on standing of the abortion industry to represent women seeking abortions should also be taken.

Amici Women Hurt By Abortion sought abortions, or also commonly at first just sought information on abortion and then were misled into getting an abortion, and were deceived, misrepresented, inadequately protected, less than adequately informed and severely injured by the abortion industry. *Amici* Women Hurt By Abortion are deeply distressed and disturbed by third party standing claims made by those whose financial interest and ideological bias are in direct conflict with women seeking full, impartial, professional

information and health and safety protections of the highest order.

Their conflict of interest and ideological bias is so deep it allows the industry perhaps to only see, but certainly to only present one side of a complex, controversial point of view 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.

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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 OF THE MOST CONTROVERSIAL ISSUE OF THE DAY TO ITS CUSTOMERS BECAUSE TO DO SO CONFLICTS WITH THEIR 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, even in abortion cases, *Casey*, at 881. If one was seeking professional advice on the most controversial issue in America today, anyone would expect that the professional counselor would 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 certainly even more so if the professional were a medical doctor, one would expect that when a controversial procedure is involved, that the doctors 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 need to follow. Wouldn't that be the *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.”⁷

However, *Amici* Women know the abortion industry in America, including these Counter-Respondents, absolutely fails to address the issue fairly which is the most controversial issue in America today (and for 46 years), and of the greatest importance to many of the women considering whether to have an abortion. 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,

⁷ 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>

ROA.7891-7894, ROA.8228-8229, ROA.10162.” See *Gee Cross-Petition*, p. 26. A doctor has a professional duty to disclose facts necessary to obtain his or her patient’s informed consent to submit to the proposed medical treatment or procedure. The informed consent process must ensure that the patient understands the nature of the procedure and its risks, benefits, and alternatives (including foregoing the proposed treatment). *Id.* However, because the abortion industry does not properly represent the true interests of the pregnant mothers, they do not provide any information about how a woman can keep her child, or the true nature of the procedure and its *sui generis* risks.

What is the nature of abortion? What is it? What are its consequences? Is it the taking of “infant life” which “some women come to regret” as the Supreme Court itself has acknowledged in Justice Kennedy’s opinion in *Gonzales v. Carhart*, 550 U.S. 124, at 159 (2007) (see below) or is it merely a “termination of pregnancy” or “removing the products of conception” or just removing a “mass of tissue” as the abortion industry advocates?

Clearly, everyone with an open mind can admit that there are two sides to this question, which has deeply divided America. Therefore, if you are a professional with a professional duty to disclose all of the information relevant to a patient’s decision, should not the abortionist voluntarily fairly present all the relevant facts on this question and present a balanced perspective on both sides, and then let the woman decide what she thinks about this issue?

The abortion industry fails to tell women even what the Supreme Court per Justice Kennedy stated in *Gonzales v. Carhart*:

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

Justice Kennedy’s majority opinion is completely ignored in the discussion between an abortionist and the woman in the abortion clinic. First of all, 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, *supra*. The actual experience of *Amici Women Hurt By Abortion* also documents this industry failure.

Amici Women have signed sworn affidavits or declarations under penalty of perjury in which they were asked: “*Were you adequately informed of the nature of abortion, what it is, what it does?* ___ Yes ___ No.” Answering this question is part of a doctor’s duty. 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) emotional or spiritual education. 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 alcohol and drugs to dim this pain. I couldn’t stand to be by babies.” *Jane*

“No. I was young – 16 yrs. old and 17 yrs. old – 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. I had no idea that the salt injection would cause the baby to struggle, flail and finally die, nor that I would give delivery to a dead baby. I have had depression, drug dependency, relationships filled with abuse, loss of confidence and esteem . . .” **Parry**

“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 given 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 just told I needed to abort my baby because I was not going to be able to carry the child full term.” **June**

“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. I was told the lie that “it” was a blob of cells. I was not told that there were a million couples waiting to adopt or told of any services to help me have the baby. I was only given a choice between 1 or 3 abortion clinics. I was not told of the dangers of abortion or the mental or emotional effects.” **S.K.**

“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. Not at all. At the time of my abortion, there was no informed consent in my state so

I was given no information about the procedure or fetal development. They took my cash, gave me some birth control pills for later and told me to wait for my name to be called.” **Susan**

“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. I was not informed of the psychological after effects and the risk of mental illness.”
C.K.

“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 *Amici* Women’s Louisiana experiences are given in Appendix B. The only purpose in the abortion clinic’s counseling is to sell abortions. See Affidavit of Norma McCorvey, the “*Roe*” of *Roe v. Wade*, at Appendix C. As the evidence in this case shows, there is no close “doctor-patient relationship” where women are told both sides and then allowed to make their own decision. See Brief of Cross-Petitioner, p. 5-6, 10-12.

Instead, the abortionists fail to tell women that the consequences of abortion can be “devastating psychological consequences.” *Casey*, at 883. Or “severe depression and loss of self-esteem.” *Gonzales*, at 159. Even though the Supreme Court of the United States since

1992 has said 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 to portray abortion as totally safe and only of value and benefit to women.

The abortion industry doesn’t even tell the women what Justice Ginsburg admitted in her dissent in *Gonzales v. Carhart* that: “The Court is surely correct that, for most women, abortion is a “painfully difficult decision.” n.183. The abortionist, on whom the whole weight of the judicial philosophy of *Roe v. Wade* rests, only spends five to seven minutes performing the procedures. Cross-Petition’s Brief, p. 6, ROA.8228-8229. Usually it is other office staff who deal with the women, if at all. *Id.*

Unfortunately, abortion practitioners across the nation fail to perform their duty to present all the relevant facts, both positive and negative for abortion, so that women can make an informed decision. Obtaining informed consent is a moral and legal duty of all physicians, see *AMA, supra*. Women are not adequately represented by granting third party standing to abortion industry businesses. 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.⁸ Half a billion dollars of their revenue comes from

⁸ The basic financial numbers from the 2017-2018 Planned Parenthood Federation of America Annual Report:

the government. By any measure, the Abortion Industry is a big 2 billion dollar business with total assets of 2.165 Billion.⁹ They represent their business, which they should be allowed to do, but they do not, cannot, justly represent all women. It should not take compelled speech statutes to force them to present both sides of the argument. Yet it does.

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 Sioux Falls, South Dakota, sued the state in an action brought pursuant to 42 U.S.C. § 1983 alleging that the

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
Abortions	332,757

⁹ 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>

compelled disclosure violated the physician's Fourteenth Amendment right of free speech. An *en banc* court of the U.S. Court of Appeals for the Eighth Circuit held that the disclosure was a statement of scientific fact – not a statement of ideology as maintained by Planned Parenthood – and that it was a truthful statement of fact relevant to the decision of a pregnant mother contemplating whether or not to sign a consent for an abortion. *Planned Parenthood v. Rounds*, 530 F.3d 724 (8th Cir. 2008) (*en banc*).

In *Gonzales v. Carhart*, the Supreme Court held per Justice Kennedy's majority opinion that there was competing scientific evidence to support a ban on partial birth abortion, and 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.

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. Profit or ideology commits them to presenting only one side.

And the abortion industry cannot be the one to regulate itself when these regulations are needed. Even if some practitioners have high standards, low or no regulation allows very bad actors to join the industry as *Amici* Women can attest. They are not adequate parties to be given third party standing to police themselves. No other industry in America gets such protection, which would amount to a license to injure with impunity.

2. THE ABORTION INDUSTRY SHOULD BE DENIED THIRD PARTY STANDING BECAUSE IT DOES NOT SCREEN FOR INVOLUNTARY, FORCED, COERCED OR UNDULY PRESSURED ABORTIONS BECAUSE TO DO SO CONFLICTS WITH THEIR OWN FINANCIAL INTEREST OR IDEOLOGICAL BIAS IN FAVOR OF ABORTION

Operation Outcry has collected approximately 2,389 testimonies of women who indicated that someone "pressured" them into having an abortion. This can range from Planned Parenthood or other abortionist personnel, parents, the father of the child, abusive teachers, workplace supervisors guilty of sexual

harassment, other family or friends. Even school counselors have been successfully sued by students who were pressured or coerced to have abortions. See *Arnold v. Bd. of Ed. of Escambia County, Alabama*, 880 F.2d 305 (11th Cir. 1989) (upholding a claim of coerced abortion by a government official as a violation of the right to choose) (later partially reversed on other procedural grounds). But the routine practice of the abortion industry is not to screen for such coercion, thus proving they are inappropriate actors to receive blanket standing to act on behalf of women. In fact, South Dakota has 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.¹⁰

3. LOUISIANA ABORTIONISTS' MISCONDUCT DOCUMENTED BY THE RECORD DEMONSTRATES THEY SHOULD NOT BE GIVEN THIRD PARTY STANDING

Based on publicly available records, the known abortion facilities and abortion doctors in Louisiana

¹⁰ *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.

have shown evidence of conduct which should disqualify them from being able to assert the rights of third parties, specifically women seeking abortions or information about abortions. Their conduct fully demonstrates or is strong evidence of failure to meet accepted medical care standards in the practice of abortion, a conflict of interest which should disqualify them from third party standing. In no surprise to *Amici Women*, the Plaintiff clinic and other abortionists in Louisiana have committed numerous serious regulatory violations. App. 38a n. 56, see Cross-Petitioners' Brief, p. 11-13, for specific lists, some of which are sealed. *Id.*

4. THE ABORTION FACILITY EMPLOYEE EXPERIENCE OF NORMA MCCORVEY, THE FORMER "ROE" OF *ROE V. WADE*, HELPED CONVINCED 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 (5th Cir. 2005) (cert. denied) (Supreme Court Docket No. 04-967). She filed a Rule 60 Motion in the Dallas District Court to set aside the judgment in her case, but could not get the federal courts to even consider her arguments. The original district court denied the motion in two days without hearing any of the over 5,000 pages of evidence, including Operation Outcry affidavits, on the erroneous grounds the Rule 60 motion was filed too late, which was acknowledged as

error by the Fifth Circuit. *Id.* However, the Fifth Circuit ruled the case was moot, and this Court denied *cert. Ibid.*

In Norma's case, Judge Edith Jones stated:

“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. 2005).

The Affidavit of Norma McCorvey, filed in that case and attached here as Appendix C, 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.” . . .

“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. While the manners of the abortionists and the uncleanliness of the facilities greatly shocked me, the lack of counseling provided the women was also a tragedy. *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.” . . .

“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. While the abortionists’ counseling was non-existent,

my counseling technique gradually became different depending on my mood and stage of my career. The experience of abortion began to take its toll on me.” . . .

“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. 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.”

5. A CONFLICT OF INTEREST RULE SHOULD BE ADOPTED AT A MINIMUM

Amici Women oppose third party standing of the abortion industry for any reason, but at a minimum a conflict of interest rule should be adopted. Under such a rule, any conflict of interest between the industry and the women would fail the “close relationship” test and thus third party standing would be denied.

Lawyers, courts and even doctors can easily understand conflicts of interest analysis. 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 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.



PRAYER

Amici respectfully pray this Court deny *cert.* in the main case and allow the Louisiana law to go into effect. If *cert.* is granted, then Cross-Petitioners' Cross-Appeal on standing should be granted as well.

Respectfully submitted,

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