

Nos. 23-235, 23-236, VIDED

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In The  
**Supreme Court of the United States**

U.S. FOOD AND DRUG ADMINISTRATION, ET AL.,  
*Petitioners,*

v.

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,  
*Respondents.*

and

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

v.

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,  
*Respondents.*

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

**BRIEF OF AMICI CURIAE  
WOMEN INJURED BY ABORTION  
IN SUPPORT OF RESPONDENTS**

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**INTEREST OF *AMICI CURIAE*  
WOMEN INJURED BY ABORTION<sup>1</sup>**

*Amici* 2,743 Women Injured by Abortion<sup>2</sup> 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, as well as serious psychological injuries,<sup>3</sup> and thus have a profound interest in protecting other women from such injuries. All of the *Amici* Women have personally experienced abortion.

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<sup>1</sup> 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.

<sup>2</sup> Attached as Appendix 1 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. Protecting the identity of women who have had abortions or seek abortions has been customary since *Roe v. Wade*, 410 U.S. 113 (1973) (abrogated by *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022)), and *Doe v. Bolton*, 410 U.S. 179 (1973) (abrogated by *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022)), where *Roe* and *Doe* both were pseudonyms.

<sup>3</sup> 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 Priscilla K. Coleman, *Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995-2009*, BRIT. J. PSYCHIATRY (2011) Sep;199(3):180-6, DOI: 10.1192/bjp.bp.110.077230 (meta-analysis of 22 studies).

## SUMMARY OF ARGUMENT

Physicians and associations of physicians – Respondents – have Article III standing to bring this action. They are the ones in direct contact with the women and girls needing care. The emergency room physicians are the ones to whom the FDA and the abortion industry are passing off women and girls in medical crisis.

This causes direct injury to the physicians providing the care, by the very nature of what is creating the emergency – a child’s death and a physically and emotionally traumatized mother. Respondents come face to face with this, regularly, as a result of FDA’s actions approving the chemical-induced death of the child, and the removal of the minimum safeguards in place prior to 2016. The injuries to Respondents are directly related to FDA’s actions in approving the drug for market and the subsequent actions of the agency, thereafter. Danco, as the manufacturer of the approved chemical abortifacient, is equally culpable for this harm. Respondents have standing to bring this action. The injury to Respondents is directly related to FDA’s actions, and the harm can be redressed by affirming the District Court.

Much harm has come to women from abortion. The FDA has chosen to look away from the harm, arbitrarily and capriciously superfluous. Its actions of approving the drug, then eliminating minimal safeguards (REMS) *and* removing the reporting of almost all adverse events, combined with no physician prescriber and mail-order delivery is arbitrary and capricious. The FDA has chosen to look away from the pain and the

harm to women and girls for which it is responsible. This brief is an invitation to stare into the ugly truth of abortion – to *not* look away.

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## ARGUMENT

### **I. Respondents Have Article III Standing to Challenge the FDA’s Actions Because Respondents – Doctors and Associations of Doctors – are Directly Injured Because They Treat Women and Girls Who Are Showing Up in ER’S By the Hundreds of Thousands**

#### **A. The FDA Arbitrarily Ignored the Voices of Women Hurt by Chemical Abortion – It is *Not* Like “Taking a Tylenol”**

Women with firsthand accounts of their own experiences of chemical abortion can present the best evidence of the harm of abortion. Many accounts of women arriving in ER’s with serious injuries are included in the evidence in the record below. This brief will not discuss the record, in detail, since it will be covered by many other briefs. *Amici* have their own horrific experiences.

*Amici* are extremely grateful to the physicians and medical organizations who have attempted to ensure proper medical protections for patients like them.

*Amici* strongly support the right of these medical doctors and associations of doctors to represent *Amici*’s rights as injured parties. *Amici* were injured by



abortion. If doctors in this case are not granted standing, then *Amici* and women like them will have no representation before the Courts.

The abortion industry wants more volume, and more profits, with no boundaries. The abortionists and medication manufacturer have a conflict of interest with women seeking abortions who will be damaged by Petitioners' actions. Abortionists have been granted standing to *set aside* protections for the health of women. *See June Med. Servs. L.L.C. v. Russo*, 140 S. Ct. 2103 (2020) (abrogated by *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2028 (2022)). Equal justice requires standing to be granted to those doctors whose interests are in *reducing* harm to women, as such interest is congruent with the interests of women who will be injured by abortion.

As the *Amici's* experience below shows, women are routinely not adequately informed of the *true* nature of abortion and routinely not provided any follow-up care. The FDA and abortion industry have created a process – chemical abortion – to avoid seeing the woman at all, while delegating the physician's duty and follow-up care to non-physicians, or emergency room doctors, such as Respondents. High volume, low- or no-doctor contact methods of obtaining abortion-producing drugs, by mail or common carrier, increases profits for the sellers and increases the risk of harm and death to women and girls.

## **B. The Balance of Harms Weighs in Favor of Upholding the Decisions Below**

Abortion-producing drugs result in deep pain and injury to women as they shockingly see their dead babies in their own homes.<sup>4</sup> The harm of abortion to women has been known for decades.<sup>5</sup>

Even ardent abortion defender Justice Ginsburg wrote that “for most women, abortion is painfully difficult.” *Gonzales v. Carhart*, 550 U.S. 124, 183 n.7 (Ginsburg, J., dissenting).

## **C. It is Arbitrary and Capricious for the FDA to Call This Drug a “Termination of Pregnancy” and Ignore the Reality Faced by the Women Who See “My Baby”**

These are women’s actual chemical abortion experiences as written in their own words.<sup>6</sup> Warning: these accounts describe “particularly gruesome or barbaric

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<sup>4</sup> Link to Expanded Statements of Women’s Abortion Pill Experience: <https://www.dropbox.com/scl/fi/0dfjxtbnxnlrrsfd40ul3/Expanded-Statements-of-Amici.docx?rlkey=hhy9cqz3ql2oijut4u5w005wz&dl=0>.

<sup>5</sup> See 4,794 Testimonies of Women Injured by Abortion Collected by Operation Outcry, a project of The Justice Foundation. These women’s sworn affidavits or declarations made under penalty of perjury are available here: <https://www.dropbox.com/scl/fo/e9inhs1lduj4du26hod9z/h?rlkey=z4ggh2g6s8tnjh17qxyzgmj8x&dl=0>.

<sup>6</sup> The excerpts of the women’s statements included in this brief are condensed versions of more complete versions in Expanded Statements of Women’s Abortion Pill Experience, *supra* note 4.

medical procedures.” See *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 301 (2022).<sup>7</sup>

**#1 Amicus Abby Johnson: “ . . . (P)raying that I wouldn’t die”**

“ . . . I had a surgical abortion. . . . I was given conscious sedation. . . .

. . . I started volunteering for Planned Parenthood. Shortly after. . . I chose a chemical abortion. . . I was told by the clinic staff that it would be more ‘natural’ . . . ‘like having a heavy period’. I was given the . . . pill in the clinic and [was] told that [it] would ‘stop the pregnancy.’ I was told to insert 800mcg of Misoprostol vaginally 24 hours later. Within 30 minutes. . . I began to hemorrhage and pass clots . . . intense cramping. I had never experienced pain so severe. . . I began to vomit. . . I was passing clots the size of lemons. I . . . scooped my baby up . . . and . . . wasn’t sure what to do. No one had prepared me for that . . . It felt wrong . . . but . . . **I dropped my child in the toilet**, closed my eyes, and flushed.

I hemorrhage[d] for hours. . . I just laid on my bathroom floor. . . Blood was everywhere. . . I remember falling asleep on the floor and praying that I wouldn’t die. I bled and passed large clots for eight weeks. The cramps were debilitating. . . I went back to volunteer at Planned Parenthood . . . my goal

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<sup>7</sup> Part of the women’s statements are in bold for emphasis throughout the brief. That emphasis has been added.

. . . [was] to convince every chemical abortion patient to have a surgical abortion. . . . I didn't want any woman to go through what I had gone through. . . .”

**#2 Katherine: “I thought I was going to die”**

“ . . . I hated myself! . . . Chemical abortion was my answer . . . a couple of pills and the whole thing will be over. I was given a pill to take at the clinic and sent home with pills to place internally . . . intense cramping . . . bleeding . . . large pieces of bloody tissue . . . nausea . . . weakness. **I thought I was going to die** there all alone. I was sure I needed medical attention but I was so afraid of the exposure. . . .”

<https://www.silentnomoreawareness.org/testimonies/testimony.aspx?ID=2329>

**#3 Amicus Kelly Lester: “I felt like I was walking through hell.”**

“I had four abortions in my life. My first was at 15-years-old and was a surgical abortion. I used the abortion pill for my second abortion at 19-years-old because my first abortion was traumatic. I thought the pill would be easier, less traumatic on my body, and well, it was cheaper than going the surgical route. The baby's father was against the idea and didn't put money towards it so overall, it seemed like the better option.

But it wasn't. It was one of the most horrific experiences of my life. I was told by the abortion clinic that it wasn't a big deal, that it was easy and private. I was in the first trimester but I don't remember how far along, probably near the end of those first 12 weeks as I tended to do things at the last minute. The clinic didn't even do an ultrasound, just a urine test to prove I was pregnant.

The bleeding and the pain started almost immediately and it was intense. The pain lasted for two days and I felt like I was in full-blown labor. I was alone, in one of my bathrooms in my apartment. I was doing drugs just to try to numb the pain. And in the end, I ultimately broke my lease and moved out because I couldn't stand to be in the apartment any longer and experience the trauma again every time I used the bathroom.

Years later, after another abortion, I ended up working for that same clinic where I had my abortion pill abortion. I had to tell women the same things I was told when they asked for the abortion pill – that it was like a heavy period and not a huge deal. But I took so many calls from women who were going through that same, intense pain I went through years earlier and felt duped by the clinic.

I have since left the abortion industry and my drug-fueled life behind and now work to get workers out of the abortion industry and testify in front of committees and organizations telling my own story. There are some huge

missing pieces in the public fight over access to abortion pills, pills which apparently non-pregnant women in the United States have been stockpiling for the last 18 months.

I wouldn't wish any of my abortion procedures on anyone, especially the abortion pill experience. **I felt like I was walking through hell.**

Women don't deserve that.<sup>8</sup>

**#4 Courtney: "I felt like I aided in the murder of my child. . . ."**

" . . . I couldn't change my mind . . . it would make the staff mad. . . . I was given . . . RU-486 . . . to take . . . in the clinic. They never told me . . . [it] would . . . starve my baby to death . . . they just said it would stop my pregnancy and keep my "embryo" from becoming a baby. They made it seem as **safe . . . as taking a Tylenol**. They then gave me a second pill (Cytotec) to take the next day.

They didn't tell me . . . it was to induce strong contractions to expel my baby's corpse-. . . just . . . it was necessary to ensure my abortion was successful. I took the second pill . . . , expecting [what] they had told me.

. . . – I experienced very intense, painful cramps as my body expelled my baby . . . into

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<sup>8</sup> I had 4 abortions. The abortion pill was the worst, but women aren't getting the full story. Kelly Lester is Outreach Director for And Then There Were None. Her story is featured on <https://www.littlepillsthatkill.com/>.

the toilet. . . . A toilet. I wish . . . I would've . . . buried it.

This abortion was . . . harder . . . than the surgical abortion. . . . I aided in the murder of my child. . . . I was told a pill was “easier and safer” than a surgical abortion; it’s not.”

<https://www.silentnomoreawareness.org/testimonies/testimony.aspx?ID=2256>

**#5 Patricia: “Everything the Doctor Told Me Was a Lie. . . . I believed I was dying”**

“ . . . the ‘abortion pill’ . . . I viewed as an ‘easy way out.’

. . . I returned to planned parenthood and spoke with the . . . doctor. . . . He told me . . . there was nothing to worry about, that I would have ‘some bleeding, and possibly clotting’ . . . complications . . . were rare, I believed him.

. . . [A]t home alone with my infant son, I took the abortion pills. Within one hour I knew that everything the doctor had told me was a lie. I was bleeding so heavily, I believed I was dying. I was passing clots the size of baseballs, and I was in the worst physical pain of my life, worse than childbirth. . . . I looked into the toilet and saw my baby. It had a head, body, and tiny arms and legs. The shame and guilt. . . . I felt . . . as I was forced to flush my aborted baby down the toilet, is impossible to describe. . . .

About 3 weeks later, I woke up . . . covered in blood, and still bleeding. I rushed to the ER . . . my body had not passed all of my former pregnancy. A doctor used several giant q-tips to scrape my insides, and I had weekly visits to my OBGYN. . . .” <https://www.silentnomoreawareness.org/testimonies/testimony.aspx?ID=4202>

**#6 *Amicus* Tracy Reynolds – A Phone Worker for an abortion recovery program.**<sup>9</sup> “ . . . (T)here has been an increase in calls for abortion recovery regarding the traumatic effects of . . . the ‘abortion pill’. These calls often occur in the middle of the night from women who have taken the ‘abortion pill’ without understanding the effects and with no medical professional’s supervision.” For example:

**#7 From C.: ‘ . . . my tiny baby floating in the toilet bowl . . . ’** ‘ . . . my husband felt . . . [it was] too soon after our marriage to have a baby . . . He strongly pressured me to take the ‘abortion pill’. . . . I did not receive any information . . . about medical/emotional consequences. It was the most traumatic experience I’ve ever had, seeing my tiny baby floating in the toilet bowl . . . followed by excessive bleeding. I still have nightmares and I will never forget. . . . [We] are now trying to conceive but . . . my progesterone levels were off, which . . . could be an after effect of the abortion pill. . . .’

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<sup>9</sup> *Amicus* Tracy Reynolds works for a non-profit that provides hope and healing for those broken through traumatic events, including abortion.



### **D. FDA Ignores Improper Disposal of Human Remains**

**#8 From *Amicus Serena – She Found His Grace (SFHG)*.**<sup>10</sup> *SFHG* runs a hotline and has other forms of ministry which enables abortion-wounded women to seek help. . . . “Women who take the abortion pill contact us pretty quickly because of seeing their babies and because of the medical trauma they are too embarrassed to talk to anyone about.” Following are some of the contacts received by *SFHG*.

#### **#9 My 9-week unborn child sits in my freezer**

“I took the first pill. . . . I felt my baby pass. . . . **I bled so much that I passed out.** Nobody prepared me for the amount of blood I lost. **I ended up in the ER.** I spent hours there. . . .

I felt like I murdered my child. . . . I have so much hate in my heart.

My 9-week unborn child sits in my freezer. I’m trying to find the strength to bury her. . . .”

#### **#10 I couldn’t bear to flush my baby down the toilet . . .**

“ . . . I took the pills and was told I had to wait over 24 hours. After being in a lot of pain for over 24 hours. I knew it didn’t work. I went to the ER on Christmas Day to see if I could change my mind. . . . I . . . went home. . . . I

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<sup>10</sup> *She Found His Grace*, <https://www.shefoundhisgrace.org>.

. . . [felt] a big clot drop, then came a **tiny perfectly formed 10-week baby and I lost it. I couldn't bear to flush my baby down the toilet so I got him out and washed him off.** I was frozen in guilt, shame, and regret. **I plan to bury him behind my house.** I can't stop crying and I feel so ashamed.”

**#11: I got sick with a bad case of sepsis and almost lost my life. . . .**

“ . . . I walked around for a month with my dead babies inside of me. . . . I took **another dose of abortion pills** and. . . . I was in pain and bleeding but nothing came out. I was walking around a whole week in pain before I got sick with a bad case of sepsis and almost lost my life.

I . . . started to feel uneasy, clammy, and in pain. . . . I was across the street from the hospital and barely walked myself over for help. I was covered in blood and stabbing pains in my stomach. I was in the hospital for 4 days treating my infection.

[I delivered] my twins and kept them in the . . . fridge for a month before my dad flew out to help me bury them. . . .”

### **E. FDA Undervalues Irreparable Harm to Women From Deceptive Marketing**

More reports from Serena of SFHG:

#### **#12 It didn't seem like it was an abortion since it was a pill. . . .**

“ . . . a day I will never forgive or forget. I had . . . been anti-abortion but in a domestic violence relationship. . . . **It didn't seem like it was an abortion since it was a pill.** I was delusional. . . . My [boyfriend] at the time almost killed me and my dog. . . . He choked my dog. . . . He told me that my grandma needed to take me to Planned Parenthood. . . . I started to bleed and went to the ER. The sac came out and I lost my baby. . . . I flushed my baby down the toilet. I am forever sorry. . . . I went down a path of destruction after my abortion. My abortion will affect me for the rest of my life. . . .”

#### **#13 I just died a little bit and I'm not the same person**

“I regret my abortion so much. . . . I think about it [every day]. I did it out of fear . . . [M]y family disapproved and were not supportive. I . . . was pregnant at 19. . . . Taking the pill was traumatizing when I saw my baby in the [sac]. **I just died a little bit and I'm not the same person I was.**”

My boyfriend and I miss our baby and regret taking the abortion pill. . . .”

**#14 I fainted from the amount of blood lost and had to be carried out**

“ . . . I [took] the pill. Everything seemed to [be] normal. I passed the [baby].

I never stopped bleeding. [I thought] it was the abortion followed by my period. A few weeks [passed] and I [started] losing a lot of blood. And ‘another’ pops out. The blood clots got larger. **I fainted from the amount of blood lost and had to be carried out** of my apartment by my [boyfriend] and our Roommate. **I thought I was going to die.** 10-hour ER visit and lots of meds. . . . It was the scariest thing I’ve ever gone through

I regret my decision.

**#15 I looked in the toilet. . . .**

“I was 9 weeks and 5 days and took mine orally. The only time I was in pain was when I was passing the baby. The first cramps started when I started my second pills and then slowly [it] got better . . . after I finished them. . . . I bled excessively. **I looked in the toilet when the baby came out and ended up throwing up.** . . . I regret looking. . . . I’ll never get that image out of my head. . . .”

**#16 I hated myself . . . things trigger me. . . .**

“My partner paid for it. . . . I was 1 month [and] . . . 2 ½ weeks [when] I terminated. I took the pills at the clinic, came home and instantly felt a wave of depression splash over

me. The next day I took the rest and started bleeding instantly. Within 45 min . . . a mandarin sized clot came out. I . . . believed was the embryo . . . from that moment **I hated myself.**

. . . things trigger me. . . . What would my child have become? The instant [feeling] of regret filled me and I cried. . . .”

**#17 I’m haunted by [my baby’s] eyes. . . .**

“I’ve recently had my abortion. . . . It’s painful and brings up all sorts of emotions. . . . [I]t is indeed traumatizing. . . . I feel guilt and sadness of what could’ve been, because I [saw] [its] eyes before I flushed it away. . . . No one prepared me for this. . . . **[Every day] I burst into bouts of tears because it was my baby, but I couldn’t undo it. . . . I’m haunted by [its] eyes. . . .**”

**#18 I thought I wasn’t going to make it.**

“ . . . I had a medical [chemical] abortion and it was traumatic. I got very sick, couldn’t stop throwing up and was out of commission for days. I was told to take another dose as I may be sick because I didn’t get rid of everything I was supposed to. [After] that second dose the sickness went away but **I ended up having nonstop gushing blood** [and went to] the emergency room. By the time I arrived I was so dizzy I just about fainted on the gurney. It was SO SCARY. I thought I wasn’t going to make it.”

**#19 they proceeded to scrape my womb repeatedly and with each scrape being rougher**

“I was supposed to be admitted and monitored . . . but they decided otherwise, they gave me an oral pill and inserted another vaginally and I was sent home and told to wait for the whole procedure to be completed. . . . [T]he wors[t] pains of my life, got super sick and the fetus ended up coming out but there were residual products. I went back to the hospital told the Dr.’s . . . that I felt like there was still something in my womb. . . . [They] did an ultrasound and . . . there was . . . and they decided . . . they would clean my womb. . . . [T]hose two Dr.’s gave me a pain injection because I’d feel some “mild discomfort”. . . . **[T]hey proceeded to scrape my womb repeatedly** . . . each scrape being rougher [than] the previous, I could feel myself get numb from the pain from my waist down to my legs. **I pleaded with them to stop . . . they just continued to scrape and scrape and scrape.** . . . [At] some point I felt like I was about to pass out. . . . I was screaming and pleading with them to stop.”

**#20 I was on the shower floor SCREAMING. . . .**

“Mine was so bad I was on the shower floor SCREAMING, throwing up, bleeding everywhere, the pain was unbearable and unimaginable . . . and I have had brain surgery!!! . . . NOBODY prepared me for the HUGE amount

of blood and chunks, the intense excruciating pain, the nausea. . . . I was in the most pain I have ever felt, I almost wanted to die. . . . It was the most traumatic thing I have ever experienced and I still feel a sense of being numb. . . .”

**#21 the most pain I have ever been in, in my life**

“[I] took the mifepristone. . . . They told me . . . to wait thirty minutes, take the ibuprofen and anti-nausea meds . . . wait another thirty minutes and then insert the 4 misoprostol tablets vaginally . . .

I laid there for about an hour . . . suddenly I shot awake with a sharp cramp. . . . I was in the most pain I have ever been in, in my life. The cramps were nothing like I ever . . . expected. I was . . . writhing in pain with a heating pad that did . . . nothing. . . . I . . . was screaming into my pillow . . . [O]nce I started [bleeding] it came in floods. . . .”

**#22 It’s just sitting in my bathroom. . . .**

“I took my second pills . . . & this little sac came out of me. . . . I’ve been crying ever since. My husband is asking if I want to bury it & **it’s just sitting in my bathroom** until I make up my mind. I feel VERY overwhelmed. . . .”

**#23 . . . I can't cope and can't live with myself after what I have done.**

"I'm 18 and . . . just had my abortion. I passed my baby today and my heart broke. I have a one-year-old son . . . I absolutely HATE myself for this and I honestly feel like **I can't cope and can't live with myself after what I have done.**"

**#24 . . . I had to catch my baby and pull it out of my body. . . .**

" . . . only on day 5-6 of life after losing my baby due to . . . abortion. . . . I'm . . . find[ing] it hard to even look my little boy . . . (he's 12months old). I have to keep [going] to the car to sit . . . and cry. **I had to catch my baby and pull it out of my body. . . . I wrapped my poor angel in tissue and have kept it ever since** . . . and yes I will get rid of it soon. I'm only 18 and I'm completely and utterly traumatized. . . . I regret my decision. . . . I can't live with myself any longer, I can't cope with it any longer and I just don't know what to do. Everything hurts far too much to [bear]."

**#25 . . . the baby came out full force. . . .**

"I took the pills and went to take a shower. . . . I heard 2 pops and when I stood up **the baby came out full force.** I was extremely traumatized. I was 10 weeks and 6 days [pregnant]."



Excluding effects such as these in the FDA warnings and labeling is arbitrary, capricious, and misleading, and irreparably injures women as shown below:

**#26 A.C.: . . . told me to call 911 . . . :**

“As I waited . . . at . . . Walmart . . . for my hydrocodone, I felt the rush of blood. . . . I . . . look[ed] down at my jeans and was shocked to see. . . . I was covered in blood; from the top of the inseam down to my knees. . . . Tears began to flood my eyes . . . horror and embarrassment. . . . I couldn’t imagine this was . . . a heavier than normal period, . . . my shock . . . turn[ed] into sorrow when I . . . found the sac with my tiny baby in it. . . . **I held her for a moment before folding up the toilet paper and setting it into the feminine products bin.** . . . I picked up my cell phone to call [the clinic], . . . a monotone, stoic voice . . . **told me to call 911** . . . they were ‘unable to help me through the phone. . . .’ I hung up the phone . . . and lied there in the fetal position. . . .”

“The bleeding continue[d] for days. . . . **There was also a smell** . . . [that] reminded me . . . of what I had done. No one prepared me for this. . . . I hope they never . . . know the horror of abortion . . . a part of me, along with my baby, died that day . . . , I can share my experience in hopes to bring awareness and

put an end to this **disgusting practice they call healthcare.**<sup>11</sup>

**#27 From Stephanie – Phone coach for helpline<sup>12</sup>**

**‘ . . . the cat had eaten the baby’**

“ . . . helpline is a 24-hour, 7-day a week, 365 days a year helpline

“A caller had a chemical abortion the day prior . . . the baby [is] in front of her on the counter and, ‘it has hands and feet and toes and fingers and eyes and she cannot flush the baby down the toilet. . . .’ . . . Her father told her to call somebody . . . she called Helpline. She . . . struggles with depression . . . [and] cannot imagine just throwing the baby in the trash or down the toilet. . . .”

“ . . . she was broken up and crying . . . wrapping the baby up and storing the baby in the freezer until . . . the ground thawed [enough] to bury the baby.

. . . [S]he began to scream . . . she felt like she was going to faint . . . she laid her baby on the counter while we were talking and when she turned around **the cat had eaten the baby.** She was crying hysterically. . . .”<sup>13</sup>

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<sup>11</sup> Quoted from A.C.’s email to counsel.

<sup>12</sup> Stephanie is a volunteer phone coach for a helpline for people who need help after abortion. Stephanie has handled close to 600 calls.

<sup>13</sup> Quoted from *Amicus* Stephanie’s email to counsel.

It is dangerous, arbitrary, and capricious for the FDA to dehumanize this “infant life” per *Gonzales*, 550 U.S. 124, at 159, and force the woman to view the baby’s corpse in her own home. This type of irreparable harm heavily weighs the preliminary injunction balance in favor of enjoining the abortion producing drug, as required by Comstock Act. 18 U.S.C. § 1461.

**#28 Amicus Yolanda** has been a volunteer coach for another helpline for women hurt by abortion for a little over a year and a half. She has taken 282 contacts, which are in the form of text messages or phone calls.

“One of the most difficult experiences is when callers are reaching out for medical assistance because of complications from taking RU-486. When she asks them if they have contacted the company from where they received the pills, they frequently either don’t have any information or there’s no answer. Some are in the midst of full-blown emergencies and need medical attention. Some are just scared. They don’t know what to expect and are all alone.”

The following are situations Yolanda encountered:

### **String still attached**

A woman called . . . at 1a.m. She took . . . mifepristone and – **she was holding the fetus in her hand but the “string” was still attached** and she didn’t know what to do with it.

### **Parents down the hall**

A young girl called who took mifepristone and was in the process of having her abortion in her bedroom and wanted someone to talk to. She was scared and didn't know what to expect. I asked her if she had any support from her parents. They were in the other room and didn't know what she was doing.

### **15-year-old niece buried her baby, dug up, re-buried, dug up again . . . where to bury the baby?**

A woman was calling for her 15-year-old niece who was sobbing in the background. She had buried, dug up and reburied her aborted baby. No one could calm her down. After the baby was aborted, **she put it in a small box and buried it**, in a high traffic area in their yard. **So she dug it up and reburied it again.** She was told to move it because there was a problem with where she buried him the second time. This 15-year-old now has **a graveyard in her backyard.**

“These are just a few of the calls I’ve taken . . . the Abortion pill has not only changed their lives but mine as well.”<sup>14</sup>

The FDA fails to account for dead babies in toilets and backyards. What do you do with chemical waste? No other drug produces human remains for disposal by lay individuals.

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<sup>14</sup> Quoted from *Amicus* Yolanda’s email to counsel.

Injuries to women are also unreported because online or email sellers encourage women to report complications as being the result of **miscarriage**, not abortion. For example, AidAccess.org,<sup>15</sup> an online abortion pill distributor, sends an email when chemicals for a do-it-yourself at-home abortion are shipped. The email says:

“ . . . There are no blood tests that can show that you have taken Misoprostol, so there will be no way to prove that you tried to do an abortion. . . . If you think you might have a complication you should go to a doctor immediately. You do not have to tell the medical staff that you tried to induce an abortion; if you choose, you can tell them that you think you had a spontaneous miscarriage. Doctors have the obligation to help in all cases. . . .”

Abortion purveyors – Danco, the FDA, *et al.* – rely on ER doctors being available to clean up the mess while being lied to about causation.

#### **F. It Is Undeniably True That Abortion Pills Increase the Risk, Frequency, and Harm of Coerced and Forced Abortion**

The failure to have direct supervision by a licensed medical physician, along with mail and common carrier delivery, increases the irreparable harm, including that of pressured, coerced or forced abortions. For

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<sup>15</sup> Email on file with *Amici* attorneys. Also see AidAccess, *Homepage*, <https://aidaccess.org> (last visited Feb. 29, 2024).

example, an attorney from Houston pleaded guilty to assault of a pregnant woman related to his attempts to cause his wife to abort their baby by putting an abortion-inducing drug in her water.<sup>16</sup>

Here are more examples of forced or unduly pressured abortions more fully described in Expanded Statements of Women’s Abortion Pill Experience, *supra* note 4:

**#29 “ . . . my boyfriend and parents insisted. . . .”**

‘ . . . **my boyfriend and parents insisted** . . . I was too young and I should have an abortion. I live . . . where abortion is . . . illegal, so my boyfriend took me to New Mexico. . . . I paid \$900 for a chemical abortion. When I returned. . . . I was in severe pain and started bleeding profusely. **I was afraid to go to the ER** . . . because abortion is illegal. . . . I called the helpline and they . . . [said] I needed to go to the ER.’

**#30 “ . . . my boyfriend strongly pressured me. . . .”**

‘ . . . **my boyfriend strongly pressured me** to have an abortion. . . . [It] was too soon in our relationship . . . He suggested . . . the abortion pill, . . . a website . . . made it sound

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<sup>16</sup> Daniela Hurtado & Courtney Fischer, *Man accused of putting abortion-inducing drug in wife’s water takes deal, to serve 180 days in jail*, ABC13.com (Feb. 7, 2024), <https://abc13.com/houston-abortion-case-attorney-mason-herring-accused-of-forcing-induction-to-have-an/14395435/>.

very easy and ‘just like taking a Tylenol’. It was the most horrific experience I’ve ever been through . . . no information given about what I would experience . . . and that I would . . . expel the baby. I bled excessively and for weeks had nightmares. . . .<sup>17</sup>

**#31 Boyfriend giving RU-486 pills because they had unprotected sex**

One man was calling for his girlfriend who had had a chemical abortion using . . . RU-486 . . . a few months before and since they had unprotected sex, started giving her more of the pills. . . .<sup>18</sup>

**#32: “. . . he said he would kill me and my oldest child.”**

“ . . . **I was forced to have an abortion.** . . . I was pregnant and . . . he didn’t want this baby . . . he would make sure it didn’t [survive]. **He said he would kill me.** . . . He threatened if I didn’t get rid of it he would kill me and my oldest child. . . . I would run away . . . he said he would find us and kill us. He would punch me in the stomach as hard as he could to try to miscarry the baby. I finally agreed. . . . **He wouldn’t stop threatening my life [and] my other child.** [If it] was just me, I would have run away . . . but he threatened not only my life but my one-year-old as well.

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<sup>17</sup> Quoted from *Amicus* Tracy Reynolds’ email to counsel.

<sup>18</sup> From *Amicus* Yolanda contact.

. . . I was alone and scared. . . . **I wanted to tell them I was being forced but I was [too] scared** [that] he would come after me.

. . . I was alone the entire process. My cramps got so intense I found myself on the bathroom floor. I made it to the toilet. . . . I dissociate from it a lot. I have had 2 or 3 miscarriages after. . . .”

Without physician supervision, and by ignoring the Comstock Act, which prohibits the mailing of abortion-producing drugs, 18 U.S.C. § 1461, the FDA abortion-producing drug protocol does not adequately screen for, or prevent unduly pressured, coerced, or forced abortions. Of the 4,794 Operation Outcry testimonies of Women Injured by Abortion, over 2,000 women, say they were pressured by someone else into having an abortion.<sup>19</sup> Coerced abortion is a common problem throughout the United States, and the FDA’s 2016 and 2021 changes make forced or coerced abortions even more likely.

One Texas mother has already been arrested for forcing her child to take an abortion pill.<sup>20</sup> These events will be much more frequent if the FDA’s 2021 changes remain operative.

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<sup>19</sup> See 4,794 testimonies of Women Injured by Abortion collected by Operation Outcry. <https://www.dropbox.com/scl/fo/e9inh s1lduj4du26hod9z/h?rlkey=z4ggh2g6s8tnjh17qxyzgmj8x&dl=0>.

<sup>20</sup> César Rodriguez, *Affidavit: Mother tried forcing pregnant daughter to have an abortion*, Laredo Morning Times (Apr. 5, 2023), <https://www.lmtonline.com/local/article/laredo-police-woman-tried-forcing-teen-daughter-17880448.php>.



Stopping this abuse is a far greater benefit for women and girls and prevents irreparable harm.

## **II. The FDA's 2016 and 2021 Actions were Arbitrary and Capricious Because the Actions Failed to Take into Account the Harm to Women and Minors**

Women hurt by abortion-producing drugs are routinely faced with this question: “What do I do with my baby?” For some, the septic system has become a graveyard. For others, their backyard. Others have flushed their babies down the toilet, and the public sewer system has become the graveyard. Some women are keeping their babies in their freezer until the ground thaws or until they can figure out what to do. One woman left her baby in the feminine products disposal in the Walmart bathroom. And for another traumatized woman, the *family cat* was discovered *eating* her baby while she was considering what to do. See p.28 and Expanded Statements of Women's Abortion Pill Experience, *supra* note 4.

## **III. Comstock Act Violated**

There is a reason the Comstock Act was passed. It is the only federal law directly expressing Congress's view on abortion pills and explicitly criminalizes the mailing or delivery of drugs “for producing abortion.” 18 U.S.C. § 1461. An abortion-producing drug is not medicine.

#### **IV. Abortion is Not Healthcare**

The FDA has clearly not considered the threat to the public health of having no acceptable plan for disposing of the millions of aborted babies, not to mention the total disregard for the humanity of the lives targeted for destruction by the drugs.

The arbitrary and capricious actions of the FDA do not protect women and girls. The FDA action lends the stamp of approval, the imprimatur of legitimacy, to abortion drugs. This action, combined with the appearance of the FDA protocol being “safe” and involving the medical community, works together to mislead women and girls, that it is acceptable, natural, normal, even routine. Just stay home, take some drugs that kill your baby, and dispose of the baby’s remains yourself.

The State of South Dakota required abortionists to tell women that “abortion will terminate the life of a whole, separate, unique, living human being.” S.D. Codified Laws § 34-23A-10.1(1)(b).

This truth was upheld in federal court. *See Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 737-738 (8th Cir. 2008) (en banc) (the required statutory disclosure is “truthful, non-misleading and relevant to the patient’s decision to have an abortion”).

No other medical procedure known to the human race kills one human being for the convenience or even protecting the health of another human being. Abortion does. Abortion is not healthcare, nor is it a solution

to a medical problem. It is an illegitimate solution to a social problem: what to do with an “unwanted” child.

## **V. FDA Failed to Consider A Safer Alternative**

The Safe Haven laws in all 50 states are a much safer method of eliminating the burden of parenting. *See Dobbs*, 597 U.S., at 259 n.45 (referencing Safe Haven laws). It is arbitrary and capricious for the FDA to fail to consider this alternative when weighing risks and benefits. This Court should consider Safe Haven laws when weighing the harms under the preliminary injunction standard.

Safe Haven Laws in all fifty states eliminate the burden of unwanted children without killing the child and administering a death sentence, an execution cocktail to the child in the womb. These laws avert all abortion-related trauma as *Amici Women Injured by Abortion* describe in horrifying detail.

Throughout the history of the United States, most states at most times made abortion a crime. *See Dobbs* Appendix A, discussing criminal abortion laws at the passage of the 14th Amendment. If abortion were uncontroversial “healthcare” no rational state would criminalize abortion. But States have rational “legitimate interests” in such laws. *Dobbs* states:

“These legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical

procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability.”

*Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 301 (internal citation omitted).

It is arbitrary and capricious for the FDA to ignore the harm to women and girls taking or being given the abortion drug. This “drug,”<sup>21</sup> when it is effective, always results in the death of an “infant life.” This Court has stated “. . . 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. as *Amici Curiae* in No. 05-380, pp. 22-24. Severe depression and loss of esteem can follow.” *Gonzales v. Carhart* 550 U.S. 124, 159 (2007).

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## CONCLUSION

Considering the FDA-approved chemical abortion regimen any type of “healthcare” is truly a hard pill to swallow. It is not healthcare. It is not safe. It ignores harm to women and girls. The FDA’s actions are fruit of the poisonous tree of *Roe*. Don’t look away from what the aftermath of *Roe* and the FDA’s actions have done.

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<sup>21</sup> Comstock Act (codified at 18 U.S.C. § 1461).

**PRAYER**

This court should affirm the lower court, lift the Fifth Circuit Stay, and find the District Court's grant of preliminary relief was proper.

Respectfully submitted,

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