

Nos. 25A1207, 25A1208

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

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DANCO LABORATORIES, LLC, APPLICANT

*v.*

LOUISIANA, ET AL., RESPONDENTS

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GENBIOPRO, INC., APPLICANT

*v.*

LOUISIANA, ET AL., RESPONDENTS

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**On Applications for Administrative Stay and for Vacatur of Stay Pending  
Appeal from the United States Court of Appeals for the Fifth Circuit**

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**BRIEF OF *AMICUS CURIAE* DAVID  
BOYLE IN SUPPORT OF NO PARTY**

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**AMICUS CURIAE STATEMENT OF INTEREST**

The present *amicus curiae*, David Boyle (hereinafter, “Amicus”),<sup>1</sup> may have written the Court various times in the past about abortion issues—“citations omitted”, and indeed, Amicus writes this “brief brief” free of any citations whatsoever in the main text portion, which may be an interesting exercise in itself. It may also be appropriate, since much of this brief is about the omissions by both sides in the instant case, and one may not have to cite what isn’t there.

Amicus also has a strong interest in saving American (and other) life in general, whether baby or mother; and likes to see Court practice in general be fair, which may be difficult if both sides may lack sufficient interest in State sovereignty—when it comes to States on the *other* side. So, Amicus writes here for no (“neither”) party, with questions/observations more than with specific recommendations.

**SUMMARY OF ARGUMENT**

“Blue States” and “red States”, or their respective allies, in this case may trumpet State sovereignty to support their own side, but may not respect the other side’s State sovereignty sufficiently: e.g., blue States may discount red States’ sovereign interest in blue States’ not sending abortion pills to kill red States’ fetuses; and red States may discount blue States’ sovereign interest in their own citizens’ health care. (And may also discount their own, red States’, citizens’ interest in receiving telehealth mifepristone if those citizens’ lives are threatened by pregnancy complications.) Thus, if State sovereignty is important, and human life is

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<sup>1</sup> No party or its counsel wrote or helped write this brief, or gave money for it, *see* S. Ct. R. 37.

important, then the Court may want to consider those factors more deeply, and with more consideration for both sides in the case, than either side is doing right now.

## ARGUMENT

### I. THE STATES, OR THEIR ALLIES, HERE, DO NOT SHOW MUCH RESPECT FOR THE OTHER SIDE'S SOVEREIGNTY RE THE ABORTION-PILLS ISSUE

First off, for the sake of simplification, Amicus is going to call Louisiana and its allies, “red States”, and Danco Laboratories, LLC and GenBioPro, Inc. and their allies, “blue States”. (Obviously, a company is not a State; but again, simplification/abbreviation.) If this case were just about what the FDA thinks about mifepristone (“abortion pills”), not about State sovereignty, that would be one thing. It seems, though, that both sides may think State sovereignty is important—if it helps *them*.

For example, blue States may trumpet the importance of their own sovereignty, saying that they should be allowed to do what they want with mifepristone, and not have red States dictate what blue States do. Blue States may also say that if they legally shield abortion-pill providers in their States from liability to red States’ lawsuits, even if blue-State residents are shipping mifepristone to red States and killing many red-State fetuses/embryos/babies, that is blue States’ right, and red States must just live (or die, as the case may be for fetuses) with the consequences.

Conversely, red States may trumpet the importance of *their* own sovereignty, saying that they want to protect fetuses/embryos/babies from being aborted, and that blue States should not be able to evade or ignore red States’ expressed desire to do that, by legally shielding blue-State abortion-pill providers from liability to red

States' lawsuits; and moreover, that remote, telehealth provision of mifepristone should be nationally forbidden, even in the blue States that allow telehealth abortion pills, and blue States must just live (or die/be injured, as the case may allegedly be for women with complicated pregnancies) with the consequences.

Therefore, it seems, the two sides are not taking State sovereignty fully seriously, if "sauce for the goose is sauce for the gander", and State sovereignty is to protect everybody, not just one side. If this is a morass, is there a way out, or not?

**II. ARE THERE WAYS THAT THE STATE SOVEREIGNTY OF BOTH SIDES CAN BE RESPECTED, OR NOT? E.G., PREVENTING BLUE STATES' SHIPPING MIFEPRISTONE TO RED STATES, BUT NOT INTERFERING WITH BLUE STATES' MIFEPRISTONE USE WITHIN BLUE STATES**

If, say, the question in the case is purely binary, e.g., whether the FDA "spigot" allowing telehealth mifepristone is open or shut, then there may not be many nuanced solutions available, since telehealth mifepristone might be either nationally allowed (subject to red States' restrictions/practices), or nationally banned. But if there is somehow any way to have nuance, or cabin/qualify FDA rulings on mifepristone, that could respect all States' sovereignty, that might show more respect to State sovereignty than either blue or red States are showing here.

For example, what if the Court somehow let red States seriously prevent blue States from sending abortion pills to kill red-State children *in utero*, whether directly (e.g., allowing red-State lawsuits against blue-State pill-providers), or indirectly (e.g., requiring the FDA, or other authorities, to deny blue-State pill-providers the right to mail mifepristone to red States)... but not preventing blue States from offering telehealth abortion-pills within their own blue-State territory?

Whether such an option may, or may not, be legally or practically possible, at this point or even in future litigation, Amicus can at least mention it. (By the way, Amicus is not supporting abortion in any way; but if State sovereignty is to be taken seriously—and many people seem to think it should—, maybe it shouldn't be a one-way street overly favoring either blue or red States, in this case, or other cases.) The option above would seem to respect all States' sovereignty, not just red or blue.

If there are other nuanced solutions available, maybe those could happen too. But Amicus felt bound to mention the possible solution above, at least to provide food for thought. When blue, or red, States say, "State sovereignty is good for me... *but not for thee*", that is a problem, whether morally, legally, or aesthetically.

### **III. AVOIDING KILLING AND NEEDLESS DEATH/INJURY MAY BE A POINT FOR THE COURT TO CONSIDER HERE**

Sovereignty over one's own body, whether that of the fetus over her/his own body, enough to preserve the fetus' life (and "fetal libertarianism" is an interesting concept...), or that of a pregnant woman who doesn't want to die, is also important, not just State sovereignty. Having life, not death, may promote liberty and pursuit of happiness. Thus, the learned and honorable Court may want to consider all lives in play here, either fetal or post-fetal, as important.

Blue States here, generally speaking, do not seem to see fetal/embryonic life as especially important, even sometimes using the borderline-Orwellian term "abortion care" instead of "abortion". (Does a fetus being aborted consider that to be "care" towards herself?) And some abortions may be coerced, by intimate-partner violence or otherwise. By contrast, red States here may value the life of the fetus greatly.

Conversely, red States may discount the life/health of those pregnant women who may claim really to need telehealth mifepristone, not just for convenience or whim, but to save their lives; and may discount blue States', or their residents', desire to help such extremely-ill women, whether in blue or red States. Too, issues of disability or other access-related problems could conceivably hurt women who claim to need telehealth mifepristone to avoid life-threatening situations.

Thus, both red and blue States may not take human life seriously enough here, and may consider only fetal, or non-fetal, lives, respectively, to be especially worth saving. But all lives, including Black (or any color) lives, matter. If the Court can exhibit respect for all human life, at whatever stage, this may not be a bad thing.

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There are literally life-or-death issues here, more than in some other, non-abortion cases. Considering such issues fairly, whether through the prism of State sovereignty, or that of respecting fetal/post-fetal life, or other relevant prisms, should not discredit the Court in anyone's eyes. Naturally, scientific, medical, and regulatory matters, *vis-à-vis* the FDA or otherwise, are very important for this case—but they are not the only important matters in the case.

### CONCLUSION

Whatever the Court decides re the Fifth Circuit stay-issues, it may want to consider State sovereignty, evenly and fairly applied, and the value of human life in or out of the womb. Amicus humbly thanks the Court for its time and consideration.

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Respectfully submitted,

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