**ORIGINAL**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

**OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE**, on behalf of itself and its members; **TULSA WOMEN'S REPRODUCTIVE CLINIC, LLC**, on behalf of itself, its physicians, its staff, and its patients; **ALAN BRAID, M.D.**, on behalf of himself and his patients; **COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, INC.**, on behalf of itself, its physicians, its staff, and its patients; and **PLANNED PARENTHOOD OF ARKANSAS & EASTERN OKLAHOMA**, on behalf of itself, its physicians, its staff and its patients,

**Petitioners,**

*v.*

**JOHN O'CONNOR**, in his official capacity as Attorney General for the State of Oklahoma; **DAVID PRATER**, in his official capacity as District Attorney for Oklahoma County; **STEVE KUNZWEILER**, in his official capacity as District Attorney for Tulsa County; **LYLE KELSEY**, in his official capacity as Executive Director of the Oklahoma State Board of Medical Licensure and Supervision; **KATIE TEMPLETON**, in her official capacity as President of the Oklahoma State Board of Osteopathic Examiners; and **KEITH REED**, in his official capacity as the Commissioner of the Oklahoma State Board of Health,

**Respondents.**


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AMICUS BRIEF OF ELLIOT INSTITUTE, AND OKLAHOMA FAITH ~~PARTNERS~~ LEADERS


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## INTEREST OF AMICI

The Elliot Institute engages in research and education on the physical and psychological effects of pregnancy loss, including abortion and natural losses. Active for over thirty years, the Elliot Institute's research has been published in dozens of peer-reviewed medical journals.

Oklahoma Faith Leaders is an Oklahoma non-profit corporation that encourages, educates and equips Oklahoma's faith community to connect with their elected leaders, fostering communication and action to provide a strong, united voice for the moral direction of Oklahoma. Oklahoma Faith Leaders works on behalf of six denominations across the state, including the Baptist General Convention of Oklahoma, the Catholic Conference of Oklahoma, Oklahoma Assemblies of God, Church of God Heartland District, New Horizons Conference of the International Pentecostal Holiness Church, and the Northeast Oklahoma District of the Church of the Nazarene.

Because your *amici* care for both mothers and their unborn children, this brief address Petitioner's claim that fetal safety and maternal safety are inherently conflicted. This conflict may not be addressed adequately by other parties.

Contrary to Petitioner's claims, abortion is not low-risk. Abortion is designed to end the life of one of the two patients involved. Further, the risk of a woman's premature death is elevated by abortion, as are her risks of mental health problems, including substance abuse and suicidal behaviors. The abortion industry also increases the risk of women being pressured into unwanted abortions. These facts are all inconsistent with Petitioner's claims.

## QUESTION PRESENTED

Is it true that abortion is one of the safest medical procedures performed in the United States, and far safer than carrying a pregnancy to term, as claimed at Application ¶ 26?

## SUMMARY OF ARGUMENT

The answer to the question presented is **NO**.

Petitioners challenge laws that protect vulnerable persons: pregnant mothers and their unborn children. According to Petitioners, the welfare of these unborn children conflicts with the welfare of the women carrying them. Petitioners then claim abortion is "one of the safest medical procedures performed in the United States and is far safer than carrying a pregnancy to term." Application at ¶ 26. The implication is that abortion frees women from health risks.

These claims promise freedom and health to women, who are often in difficult circumstances that cause them to question whether abortion might provide them an escape.

Some courts, including the *Roe* court, have uncritically accepted and repeated such claims about abortion's safety. The "only explanation" of the *Roe* trimester framework, says *Dobbs,* was the assumption that "first trimester mortality in abortion may be less than mortality in normal childbirth." *Dobbs v. Jackson*, 142 S.C.t. 228,2268 (2022) *citing Roe v. Wade*, 410 U.S. 113, 163 (1973). Thus, abortion providers trying to invent *Roe*-like schemes in the states repeat the fiction.

But abortion does not provide health, safety, or freedom to children or mothers. In fact, literally every linked-records study of the deaths associated with pregnancy finds that abortion is associated with a higher risk of death. The claim that abortion is safer than childbirth is a fiction, resting on demonstrably flawed premises and refuted by study after study.

Further, the best medical evidence shows that abortion contributes to a decline in the mental and physical health of women. Petitioners seek an unfettered right to abortion, which increases the risk of women being pressured into unwanted abortions.

For the reasons stated above, your *amici* sought the Court's leave, in this brief, to focus on

this important question of safety. The interests of mother and child are not opposed to each other. Laws that protect one will also protect the other.

## ARGUMENT

### I. Abortion Increases the Risk of a Woman's Premature Death.

According to Petitioners, abortion is "one of the safest medical procedures performed in the United States…" Application at ¶ 26. This is plainly false.

Literally every record-linkage study examining reproductive outcomes associated with mortality (eleven in total, from the United States, Finland, and Denmark) has shown that abortion is associated with an increased risk of premature death among women exposed to abortion.[1] Each additional abortion increases the risk of an early death by approximately 50%. At least a part of this increased risk is due to elevated rates of death from suicide, substance abuse, and accidents[2] within a year of an abortion.

These studies are based on linking all death certificates for women of reproductive age to comprehensive medical records for all pregnancy outcomes. These studies also reveal that less than 1% of abortion-associated deaths can be identified based on death certificates alone, precisely because coroners are almost always unaware of a previous abortion.

The faulty claim that abortion is safer than childbirth currently rests upon a 2012 publication

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[1] David Reardon & John Thorp, *Pregnancy Associated Death in Record Linkage Studies Relative to Delivery, Termination of Pregnancy, and Natural Losses: A Systematic Review with a Narrative Synthesis and Meta-Analysis*, SAGE Open Medicine 5 (2017), https://doi.org/10.1177/2050312117740490.

[2] This excess mortality strongly indicates excess risk-taking or perhaps unreported suicides.

by two abortion providers, Elizabeth Raymond and David Grimes.[3] Their conclusion that abortion is fourteen times safer than childbirth is based solely on an inappropriate comparison of (1) abortion deaths voluntarily reported to the CDC and (2) maternal mortality rates compiled by the National Center for Health Statistics. But since there is no systematic reporting or investigation of abortion-associated deaths, the data is flawed. For example, the maternal mortality set only counts miscarriages where the mother dies. Such differences make direct comparison inapt. In fact, the Director of the CDC has specifically stated that these two statistics are not comparable, a conclusion that is bolstered by numerous other analyses.[4] Another researcher said the current data "make[s] these comparisons a fool's errand."[5]

In short, abortion advocates consistently ignore the best available evidence from record-linkage studies because those studies prove abortion is linked to elevated rates of death for women. Instead, they tout a single article that compares two sets of data that do not count comparable deaths. The best available evidence shows abortion is linked to more, not fewer, deaths.

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[3] *See, e.g., The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstet. Gynec.* 215, 215-16 (2012).

[4] *See* David Reardon, *Rebuttal of Raymond & Grimes*, 79 Linacre Q. 259 (2012), http://tinyurl.com/RGmyth. *See also* Byron Calhoun, *Systematic Review: The Maternal Mortality Myth In The Context Of Legalized Abortion*, 80 Linacre Q. 264 (2013); Letter from Julie Louise Gerberding, Director CDC Public Health Service to Walter M. Weber (July 20, 2004)(on file at tinyurl.com/CDC-Repudiates).

[5] John Thorp, *Public Health Impact of Legal Termination of Pregnancy in the US: 40 Years Later*, 2012 Scientifica 1, 4.

## II. Abortion Contributes to Mental Health Problems.

The fact that at least some women do have trouble coping with abortion is shown in case studies developed by mental health providers from both pro-choice[6] and pro-life[7] perspectives. These clinical cases cannot identify the rates of mental illness among the national population of women who have had abortions. But they do confirm a causal connection between abortion and mental health problems in at least *some* cases.

In a 2008 literature review, the American Psychological Association Task Force on Mental Health and Abortion questioned when, if ever, a single abortion of an unwanted pregnancy is the sole cause of subsequent mental health problems. But they agreed that abortion is a contributing factor in

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[6] *See* Ava Torre-Bueno, *Peace After Abortion* (1997); Trudy Johnson, *Bringing Abortion Aftercare Into The 21st Century*, Counseling Today (2013), http://ct.counseling.org/2013/01/bringing-abortion-aftercare-into-the-21st-century/; Candice De Puy & Dana Dovitch, *The Healing Choice: Your Guide to Emotional Recovery after an Abortion* (1997); Dana Goldstein, *The Abortion Counseling Conundrum*, Am. Prospect (2008), https://prospect.org/article/abortion-counseling-conundrum/; Naomi Stotland, *Abortion: Social Context, Psychodynamic Implications*, Am.J. Psychiatry., 1998;155(7):964-967.

[7] Theresa Burke & David Reardon, *Forbidden Grief: The Unspoken Pain of Abortion* (2007); Susan Layer, *Postabortion Grief: Evaluating the Possible Efficacy of a Spiritual Group Intervention*, Res.Soc. Work Prac., 2004;14(5):344-350, doi:10.1177/1049731504265829; Philip Ney & Adele Wickett, *Mental Health and Abortion: Review and Analysis*, Psychiatry J. Univ. Ottawa, 1989;14(4):506-516.

mental illness, stating "it is clear that some women do experience sadness, grief, and feelings of loss following termination of a pregnancy, and some experience clinically significant disorders, including depression and anxiety."[8] Moreover, they listed fifteen risk factors identifying women at greatest risk of negative reactions to abortion. Analyses from numerous studies show that most women having abortions possess one or more of these risk factors.[9]

Several studies have tried to identify rates of mental health problems attributable to abortion, the best studies to date are analyses of the National Longitudinal Study of Adolescent to Adult Health (Add Health) which include extensive longitudinal interviews with 8,005 females at 15, 22, and 28 years of age, each.[10] No other studies have controlled for as many confounding variables.

After accounting for all the control variables, these studies found that women who had

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[8] Brenda Major, *et al.*, *Report of the APA Task Force on Mental Health and Abortion* (2008), http://www.apa.org/pi/women/programs/abortion/mental-health.pdf.

[9] *See* David Reardon, *The Abortion and Mental Health Controversy: A Comprehensive Literature Review of Common Ground Agreements, Disagreements, Actionable Recommendations, and Research Opportunities.* SAGE Open Med., 2018;6:205031211880762, http://tinyurl.com/DR-abortionreview.

[10] Donald Sullins, *Abortion, substance abuse and mental health in early adulthood: Thirteen-year longitudinal evidence from the United States*, SAGE Open Med., 2016 Sep 23; 4:2050312116665997, http:// tinyurl.com/sullins1; Donald Sullins, *Affective and Substance Abuse Disorders Following Abortion by Pregnancy Intention in the United States : A Longitudinal Cohort Study*, Medicina, 2019;55(11):1–21, http://tinyurl.com/sullins2.

abortions were 45% more likely to have an increase in the number of mental health problems, with a 33% increased risk of affective disorders, and a 53% increased risk of substance abuse disorders. Each abortion increased risks of subsequent mental health problems. This "dose effect" is a strong indication of a causal connection.

The Add Health studies also calculated "population attributable fractions" ("PAF"). PAF estimates the percentage of an outcome attributable to exposure to an abortion experience after statistically removing the effects associated with the available control variables. This calculation revealed 10.7% of all substance abuse disorders, 6.2% of affective disorders, and 8.7% of all mental health problems observed in the Add Health population were attributable to abortion. Most striking: the elevated risk was four times higher for women whose first abortion was prior to the age of twenty.

The Add Health data also reveals that the women at highest risk of more negative outcomes are those who report aborting pregnancies they wanted or intended to keep. This finding is consistent with the American Psychological Association's Task Force on Mental Health and Abortion 2008 report which included in their list of 15 risk factors (a) abortion of a "wanted or meaningful" pregnancy and (b) "perceived pressure from others." The latter risk factor is especially troubling given that fully 64% of women reporting a history of abortion have identified themselves as feeling pressured to abort by others.[11]

Notably, the Add Health data is available to all researchers and has certainly been reanalyzed by abortion proponents. To the knowledge of your *amici*, abortion proponents have not published any refutation of this data.

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[11] Vincent Rue, *et al.*, *Induced Abortion and Traumatic Stress: A Preliminary Comparison of American and Russian Women,* Med. Sci. Monit., 2004; 10(10): SR5–SR16, http://tinyurl.com/64perc.

## III. Abortion Is Often Imposed on Women Contrary to Their Own Personal Desires.

Pregnancy and the prospect of bringing a child into the world affects the mother. But it also brings new responsibilities to male partners, parents, relatives, employers, health care providers and society at large. A woman can face pressure from any of these quarters, contrary to her own maternal desires or moral beliefs. These pressures often result in forced abortions. In some cases, women have been surreptitiously given abortion-inducing drugs by their male partners. In others, violence is used to overcome her will, especially against women enslaved in sex trafficking. Victims of incest are also particularly subject to forced abortions, as their abuser attempts to hide evidence of the crime.

Even when there is no criminal conduct, as many as 64% of American women acknowledging a history of abortion report having felt pressured to abort by others. This pressure typically comes from their male partners, parents, employers and social services officials. The degree of pressure can vary from simply withholding support for having the child, to threats of abandonment, to violent verbal and physical abuse.

The problem of women feeling pressured to consent to abortions is amplified by the fact that 40-65% of women undergoing abortion feel great ambivalence about their decisions. This ambivalence can arise from either emotional attachment to the child, desires to be a mother, moral reservations about abortion, or any number of similar concerns. The presence of ambivalence about the abortion decision is itself a risk factor for feelings of regret, loss, grief and guilt.

The idea that women only choose to abort "unwanted" pregnancies is a pernicious myth. Indeed, a recent study of women seeking abortion found that only 42% were willing to describe the pregnancy as "unwanted." The best evidence indicates that the majority of women considering abortion have mixed feelings of attachment, including desires to keep the pregnancy "if only" they were able to receive support from others.

## IV. Many Women Seeking Abortions Are in a Crisis Situation That Makes Them Vulnerable to Manipulation or Defective Decision Making

Experts on crisis counseling have found that those who are in a state of crisis are increasingly vulnerable to outside influences and have less trust in their own opinions and abilities to make the right decision. Such "heightened psychological accessibility" can lead to a situation where parents, counselors, or others in authority can have enormous influence over a woman's decision.

In light of the above facts, abortion clinic counselor Uta Landy, a former executive director of the National Abortion Federation (to be clear, a stridently pro-abortion group), encourages clinical counselors to be aware of the fact that: "[s]ome women's feelings about their pregnancy are not simply ambivalent but deeply confused."[12] This confusion can lead to what Landy herself describes as "defective decision making." The risks associated with defective decision-making are made worse when abortion counselors fail to take adequate time to fully discuss risks and alternatives. Even when counselors do have sufficient time, stressed patients may pretend they are understanding and considering the information given to them even though they are really only consenting to the abortion due to pressure from others.

## CONCLUSION

Abortion is risky. The notion, that abortion is safer than childbirth rested on statistical errors; more rigorous peer-reviewed studies now show the opposite. The Court should decline Petitioner's invitation to find a new, *Roe*-like right in Oklahoma's Constitution; there is no time at which abortion is 'less risky' than pregnancy itself, despite the faulty claims that enabled *Roe*.

Indeed, the ruling requested by Petitioners is *opposed* to the rights of life, liberty, and pursuit

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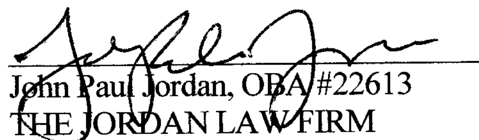
1. *Abortion counselling. A new component of medical care*, Clin. Obstet. Gynaecology, 1986;13(1):33-41, https://pubmed.ncbi.nlm.nih.gov /3709012/.

of happiness guaranteed by Oklahoma's Constitution.

If this Court analyzes the 'safety' of elective abortions, it must do so consistent with the considerable weight of the literature, which shows that abortion is more dangerous than childbirth. Abortion increases the risk of death, mental illness and numerous other ills. The pressures to abort can lead to defective decision making, even according to abortion advocates.

Respectfully Submitted,



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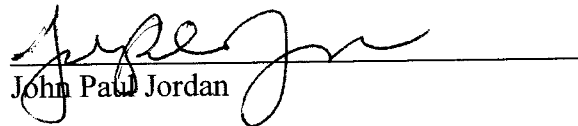

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