

No. 19-1392

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

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THOMAS E. DOBBS, STATE HEALTH OFFICER OF  
THE MISSISSIPPI DEPARTMENT OF HEALTH, et al.,

*Petitioners,*

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, et al.,

*Respondents.*

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

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**BRIEF OF AMICI CURIAE ADVANCING  
AMERICAN FREEDOM, INC.; MINNESOTA FAMILY  
COUNCIL; CENTER FOR POLITICAL RENEWAL;  
THE FAMILY LEADER (IOWA); FAMILY HERITAGE  
ALLIANCE; AND NEBRASKA FAMILY ALLIANCE  
IN SUPPORT OF PETITIONERS**

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 OTHER AUTHORITIES	
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Renzo Downey, <i>Poll Shows Strong Support for Parental Consent Legislation</i> , FLA. POL. (Feb. 13, 2020), <a href="https://floridapolitics.com/archives/319018-parental-consent-support-at-2-to-1-in-latest-st-pete-polls-survey/">https://floridapolitics.com/archives/319018-parental-consent-support-at-2-to-1-in-latest-st-pete-polls-survey/</a> .....	15
Stephanie Ebbert, <i>Poll Finds Support for—and Discomfort with—Expanding Abortion Access in Mass.</i> , BOST. GLOBE (Dec. 11, 2020, 4:40 AM), <a href="https://www.bostonglobe.com/2020/12/11/metro/poll-shows-support-discomfort-with-expanding-abortion-access-mass/">https://www.bostonglobe.com/2020/12/11/metro/poll-shows-support-discomfort-with-expanding-abortion-access-mass/</a> .....	15
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Stanley K. Henshaw & Kathryn Kost, <i>Parental Involvement in Minors’ Abortion Decisions</i> , 24 FAM. PLAN. PERSP. 196 (1992) .....	24
Jacquelyn A. Harvey-Knowles, <i>An Examination of Women’s Decision-making Processes During Unplanned Pregnancy</i> , 13 QUAL. RSCH. REP. COMMC’N 80 (2012) .....	20

## TABLE OF AUTHORITIES—Continued

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KAISER FAM. FOUND. & MTV, <i>SEX LAWS: YOUTH OPINION ON SEXUAL HEALTH ISSUES IN THE 2000 ELECTION</i> (October, 2000), <a href="https://www.kff.org/wp-content/uploads/2000/09/3069-t-young-people-have-mixed-views.pdf">https://www.kff.org/wp-content/uploads/2000/09/3069-t-young-people-have-mixed-views.pdf</a> .....	16
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Sigrid Luhr, <i>Signaling Parenthood: Managing the Motherhood Penalty and Fatherhood Premium in the U.S. Service Sector</i> , 34 GENDER AND SOCIETY 259 (2020).....	9
Michael Males, <i>Teens and Older Partners</i> , RECAP (2004), <a href="http://recapp.etr.org/recapp/index.cfm?fuseaction=pages.TheoriesDetail&amp;PageID=393#ageGap">http://recapp.etr.org/recapp/index.cfm?fuseaction=pages.TheoriesDetail&amp;PageID=393#ageGap</a> .....	23

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Michael Males, <i>Adult Involvement in Teenage Childbearing and STD</i> , 346 LANCET 64 (1995) .....	24
Elizabeth Miller & Jay Silverman, <i>Reproductive Coercion and Partner Violence: Implications for Clinical Assessment of Unintended Pregnancy</i> . 5 EXPERT REV. OBSTETRICS & GYNECOLOGY 511 (2010) .....	11
Alysia Montaña, <i>Nike Told Me to Dream Crazy, Until I Wanted a Baby</i> , N.Y. TIMES (May 12, 2019), <a href="https://www.nytimes.com/2019/05/12/opinion/nike-maternity-leave.html">https://www.nytimes.com/2019/05/12/opinion/nike-maternity-leave.html</a> .....	9
Ann M. Moore, et al., <i>Male Reproductive Control of Women who Have Experienced Intimate Partner Violence in the United States</i> , 70 SOC. SCI. MED. 1737 (2010) .....	12
NAT'L CTR. FOR HEALTH STAT., DHHS PUB. NO. (PHS) 95-1257, REP. TO CONG. ON OUT-OF-WEDLOCK CHILDBEARING (1995), <a href="http://www.cdc.gov/nchs/data/misc/wedlock.pdf">http://www.cdc.gov/nchs/data/misc/wedlock.pdf</a> .....	22
GRAEME R. NEWMAN, U.S. DEPT. OF JUST., OFF. OF CMTY. ORIENTED POLICING SERVS., THE EXPLOITATION OF TRAFFICKED WOMEN 6 (2006), <a href="http://www.cops.usdoj.gov/Publications/e02061007.pdf">http://www.cops.usdoj.gov/Publications/e02061007.pdf</a> .....	11
PEW RSCH. CTR. FOR THE PEOPLE AND THE PRESS, ABORTION AND THE RIGHTS OF TERROR SUSPECTS TOP COURT ISSUES (Aug. 3, 2005) .....	15



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David C. Reardon, <i>The Abortion and Mental Health Controversy: A Comprehensive Literature Review of Common Ground Agreements, Disagreements, Actionable Recommendations, and Research Opportunities</i> . 6 SAGE OPEN MED. (2018), <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6207970/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6207970/</a> .....	20
MARK REGNERUS & JEREMY UECKER, <i>PREMARITAL SEX IN AMERICA</i> (2011).....	6, 7
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WIRTHLIN GROUP SURVEY, <i>PUBLIC OPINION, MAY-JUNE 1989, LIFE/CONTEMPORARY AMERICAN FAMILY</i> (December 1981).....	15

**STATEMENT OF *AMICI* INTEREST<sup>1</sup>**

Founded by Vice President Mike Pence, Advancing American Freedom, Inc. (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, most fundamental among them respect for the sanctity of human life, as well as those that foster American prosperity at home and American strength abroad. AAF defends, promotes, and amplifies pro-life policies adopted in recent years that protect the right to life and seeks to restore respect for the sanctity of life to its foundational place at the center of American law.

Minnesota Family Council and four additional family policy organizations are nonprofit organizations that promote research and education to encourage, strengthen and protect American families, including pro-life policies. This group of like-minded organizations further believe that all human beings are made in the image and likeness of God and that the family is the basic unit of society. Flourishing families depend upon healthy marriages and strong relationships between parents and children. Minnesota Family Council, Center for Political Renewal, The Family Leader (Iowa), Family Heritage Alliance, and Nebraska Family Alliance work to secure the sanctity of human life

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<sup>1</sup> As required by Rule 37.2(a), counsel of record for each party has consented to the filing of this amici brief. Pursuant to Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no person other than the *amici* and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

in Minnesota and states across the country, respectively, to limit the continuing damage that *Roe v. Wade* and its progeny have inflicted on the relationships of men to women, and on those of parents with their children.



### SUMMARY OF THE ARGUMENT

In *Roe v. Wade*, this Court held that the Fourteenth Amendment contained an implied right of privacy requiring judicial protection of abortion. 410 U.S. 113 (1973). In *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), a plurality of this Court affirmed *Roe*'s holding in large part based on its view that “people have organized intimate relationships and made choices that define their views of themselves and their places in society in reliance on the availability of abortion in the event that contraception should fail.” *Id.* at 856. There was little or no record support for the plurality’s novel finding of “societal reliance” on a right to abortion. *See Casey*, 505 U.S. at 992 (Scalia J., dissenting) (noting that the plurality “relies extensively on non-record materials, and in reliance upon them adds a number of factual conclusions of its own”); *Planned Parenthood of S.E. Penn. v. Casey*, 744 F. Supp. 1323, 1329–1372 (E.D. Pa. 1990), *aff’d in part, rev’d in part*, 947 F.2d 682 (3d Cir. 1991), *aff’d in part, rev’d in part*, 505 U.S. 833 (1992). Indeed, undermining any notion of reliance on the availability of abortion, the Justices candidly admitted that “[a]bortion is customarily chosen as an unplanned response to the consequence of

unplanned activity or to the failure of conventional birth control.” *Casey*, 505 U.S. at 856.

Societal developments since *Roe* and *Casey* were decided indicate that this Court’s disregard for the value of human life, and its minimization of society’s fundamental interest in protecting unborn children, have substantially harmed people’s “views of themselves and their places in society,” *Casey*, 505 U.S. at 856, and that these harms have been particularly damaging to women. A number of deleterious social conditions have emerged that bear some relationship to current unfettered access to abortion. See Lynn Marie Kohm, *Roe’s Effect on Family Law*, 71 WASH. & LEE L. REV. 1339 (2014) (characterizing legal developments as reflecting “an expansion of the concept of increasing individuality and a contracting sense of community”); David M. Smolin, *The Jurisprudence of Privacy in a Splintered Supreme Court*, 75 MARQ. L. REV. 975, 980–83 (1992) (stating that the Court erred in creating “certain implicit constitutional understandings about the relationship between government and the family”).

Among these developments are first, declining formation of families with accompanying increases in family instability and single parent households (many living in poverty). Second, unrestricted access to abortion in some instances encourages pregnancy discrimination by employers who, based on the Court’s jurisprudence and abortion advocates’ public rhetoric, see pregnancy as just one personal choice among many. Third, both women and children’s mental well-being and happiness have suffered. Fourth, non-marital

sexual activity has increased with simultaneous increases in unintended pregnancies, and coerced abortions. Finally, abortion has increasingly been justified (and made available) as a tool of eugenics—for the elimination of “excess” unborn children, or children of the wrong sex, race, or suffering from a disability. See *Box v. Planned Parenthood*, 139 S. Ct. 1780, 1783–1793 (2019) (per curiam) (Thomas, J., concurring).

In short, the *Casey* plurality’s factual assumptions about the role of abortion in people’s lives took no account of potential societal harms that have actually come to pass in the wake of *Roe*. Based on the actual harms that have emerged, in part due to unfettered access to abortion, this Court should overrule both cases, and return the power to ban or regulate pre-viability abortions to the states.

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◆

## ARGUMENT

### **I. *Roe* and *Casey* have changed societal expectations regarding sex thus contributing to the destabilization of family formation.**

A group of women scholars and professionals have carefully analyzed public data on the relationship of abortion and various indicators of women’s social and economic participation and have provided that data to this Court. Brief of 240 Women Scholars and Professionals and Pro-life Feminist Organizations, as *Amici Curiae* Supporting Petitioners, *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392. These *amici* have

identified several harmful effects that may have resulted from unlimited access to abortion. Among them is that “easy access to abortion tends to change sexual behavior in favor of greater sexual risk-taking, which disincentivizes contraceptive use and leads to more uncommitted sexual relations.” *Id.* at 35.

In their introduction to *Promises I Can Keep: Why Poor Women Put Motherhood Before Marriage*, sociologists Kathryn Edin and Maria Kefalas note “Children born to married mothers face only one quarter the chance of experiencing parental breakup by age five as those born to unmarried women. Unmarried partners who break up often move to new relationships with astonishing speed. . . . But these new relationships are often also unstable.” KATHRYN EDIN & MARIA KEFALAS, *PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE 2* (2011). They note that from 1982 through 2011, “the rate of nonmarital childbearing among white high school dropouts has doubled—from 21 percent to 43 percent—while the change has been even more dramatic among those whites with a high school diploma but no college degree—increasing from 5 percent to 34 percent.” *Id.* at 3.

Non-marital households are not necessarily “single-parent households”; but increasingly may be led by a cohabiting couple. Gretchen Livingston, *The Changing Profile of Unmarried Parents*, PEW RSCH. CTR. (Apr. 23, 2018), <https://www.pewresearch.org/social-trends/2018/04/25/the-changing-profile-of-unmarried-parents/>. Nonetheless, cohabiting relationships are less stable than marriage, and therefore subject to a more intense

form of the “marriage-go-round” described in Andrew Cherlin’s book with that title. *See* ANDREW J. CHERLIN, *THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY* (2010). Such instability has negative effects on the well-being of children, as measured by financial security, educational achievement, as well as emotional and physical health. For example, “16% of unmarried parents living with a partner are living below the poverty line, while about one-fourth (27%) of solo parents are. In comparison, just 8% of married parents are living in poverty.” Livingston, *supra*.

While it is unclear what the exact relationship of the current access to abortion is to declining marriage rates, the data shows a high correlation for young white women between abortion, drinking, and a large number of sexual partners outside of marriage. MARK REGNERUS & JEREMY UECKER, *PREMARITAL SEX IN AMERICA 30* (2011). Having more sexual partners makes stable marriages and families more difficult to achieve. With sex readily available outside of marriage many young adults see marriage an encumbrance.

Their decision to delay makes sense from a sexual economic perspective: they can access sex relatively easily outside of marriage, they can obtain many of the perceived benefits of marriage by cohabiting rather than marrying, they encounter few social pressures from peers to marry, they don’t wish to marry someone who already has a child, and they want to experience the joys and freedoms of singleness as long as they can.

REGNERUS & UECKER, at 175. *See also* George A. Akerlof, Janet L. Yellen & Michael L. Katz, *An Analysis of Out-of-Wedlock Childbearing in the United States*, 111 Q. J. ECON. 277, 281 (1996) (“By making the birth of the child the physical choice of the mother, the sexual revolution has made marriage and child support a social choice of the father.”); Helen Alvaré, *Abortion, Sexual Markets and the Law in PERSONS, MORAL WORTH AND EMBRYOS* 261 (Steven Napier ed., 2011).

*Amici* do not claim that this Court’s abortion jurisprudence is the direct cause of the decline of marriage and the instability of family formation today. Rather the claim is more modest, but important. Sexual markets develop in response to innumerable factors, some cultural, some economic, some physical. To many the availability of abortion disconnects sex from childbearing, and seemingly reduces the personal cost and risk in having multiple sexual partners. This, in turn, leads to increased sexual activity, which leads to more unplanned pregnancies with partners who are only marginally connected emotionally and unwilling to commit to the rewarding, but challenging, task of raising a child together. Thus, children either become victims of abortion or are born into homes with more limited resources than if a sexual ethics of commitment and exclusivity were the norm. This is just one of the bitter fruits of *Roe* and its progeny.



## **II. Broad access to abortion has contributed to devaluing of mothers in the marketplace.**

“[W]idespread availability of abortion and ‘abortion as equality’ arguments also confirm public and private actors’ inclinations to avoid expensive accommodations for women with children in educational and work settings.” Brief of 240 Women Scholars and Professionals, *supra*, at 38. The data provided by these scholars and professional women undermines the *Casey* plurality’s claim that unfettered access to abortion has facilitated women’s ability “to participate equally in the economic and social life of the nation.” *See Casey*, 505 U.S. at 856.

*Roe*’s proclamation that abortion is purely a woman’s private decision has fostered employer disregard and even disdain, for pregnancy. *Roe*, 410 U.S. at 153. A tragic example of this resulted from the hiring and training practices of the District of Columbia in the early 2000’s. Three Washington, D.C., emergency medical services workers had abortions after a supervisor threatened that new employees would be fired if they became pregnant or took medical leave during their first year of employment. Andrew DeMillo, *Two Women Also Tell Of Abortions; Workers Come Forward After First D.C. Report*, WASH. POST, Sept. 1, 2001, at B01. After reports of these events emerged, it was revealed that the District of Columbia has required pregnancy tests for female applicants to the police, fire, and emergency medical services for years. If a woman’s pregnancy test was positive, any offer of employment

was “put on hold.” Andrew DeMillo, *D.C. Pregnancy Test Requirement Dropped*, WASH. POST, Sept. 20, 2001, at B01. Conditioning women’s employment on not being pregnant at the time of hiring, and firing women if they became pregnant during the first year of employment clearly violated, and still violates, federal anti-discrimination law. See Pregnancy Discrimination Act, Pub. L. No. 95-555, 92 Stat. 2076 (1978) (codified as amended at 42 U.S.C. § 2000e-(k)). Yet it took a public outcry before the policy was changed.

Sadly, twenty years later women continue to suffer from pregnancy discrimination in all walks of life, from Olympic track stars to stockbrokers and big firm lawyers to Walmart bakery workers. See Alysia Montaña, *Nike Told Me to Dream Crazy, Until I Wanted a Baby*, N.Y. TIMES (May 12, 2019), <https://www.nytimes.com/2019/05/12/opinion/nike-maternity-leave.html>; Natalie Kitroeff & Jessica Silver-Greenberg, *Pregnancy Discrimination Is Rampant Inside America’s Biggest Companies*, N.Y. TIMES (Feb. 8, 2019), <https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html>; *William v. Morrison & Foerster LLP*, No. 18-CV-02542-JSC, 2020 WL 1643977 (N.D. Cal. Apr. 2, 2020) (suit brought by associates claiming that they were subject to the “motherhood penalty,” whereby mothers suffer discrimination in hiring, pay and promotion, compared to childless women and men). See also Sigrid Luhr, *Signaling Parenthood: Managing the Motherhood Penalty and Fatherhood Premium in the U.S. Service Sector*, 34 GENDER AND SOCIETY 259 (2020) (“In fact, Crittenden argues that ‘the pay gap

between mothers and nonmothers under the age of thirty-five is now larger than the wage gap between young men and women.’”) (quoting ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* 94 (2001)).

This discrimination continues to exist, notwithstanding that pregnancy discrimination has been against the law for over 40 years. Pregnancy Discrimination Act, 42 U.S.C. § 2000e-(k)). Yet, pregnancy discrimination is entirely consistent with the logic of abortion jurisprudence, which treats continuing a pregnancy as a woman’s purely personal choice, and deems anticipated economic impact alone sufficient justification to terminate the life of an unborn child. *See Casey*, 505 U.S. at 887–898 (striking down requirement that husbands’ be notified of wives’ intention to obtain abortions); *United Automobile Workers v. Johnson Controls, Inc.*, 499 U.S. 187 (1991) (fetal protection policy excluding fertile women from part of manufacturing process, based on evidence that workplace exposure to lead could permanently damage women’s reproduction health, violated Title VII prohibition against sex discrimination); and *Hill v. Colorado*, 530 U.S. 703 (2000) (upholding statute creating 8-foot floating no-speech zones surrounding women entering abortion clinics).

### **III. *Roe* and *Casey* Did Not Anticipate the Coercive Potential of Easy Access to Abortion.**

Employers are not alone in attempting to coerce women to abort. “Reproductive coercion” is a form of Intimate Partner Violence in which someone uses threats or violence to enforce his or her decision regarding the pregnancy outcome of another. Elizabeth Miller & Jay Silverman, *Reproductive Coercion and Partner Violence: Implications for Clinical Assessment of Unintended Pregnancy*. 5 EXPERT REV. OBSTETRICS & GYNECOLOGY 511 (2010). This can include “forcing a female partner to terminate a pregnancy when she does not want to, or injuring a female partner in a way that may cause a miscarriage.” COMMITTEE ON UNDERSERVED WOMEN, AMERICAN COLLEGE OF OBSTETRICS AND GYNECOLOGY, REPRODUCTIVE AND SEXUAL COERCION, OPINION NO. 554 (2013), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2013/02/reproductive-and-sexual-coercion>. Victims of human trafficking are particularly susceptible to efforts to force them to abort. GRAEME R. NEWMAN, U.S. DEPT. OF JUST., OFF. OF CMTY. ORIENTED POLICING SERVS., THE EXPLOITATION OF TRAFFICKED WOMEN 6 (2006) (Clients and handlers of trafficked women in the sex trade deny the women prenatal care or medical care in case of pregnancy, infections or injury, and force them to have abortions), <http://www.cops.usdoj.gov/Publications/e02061007.pdf>.

Studies reveal reproductive coercion can sometimes be exercised through demands that a woman

continue her pregnancy, but it is far more common that sexual partners (or others) demand that a woman abort her child. Ann M. Moore, et al., *Male Reproductive Control of Women who Have Experienced Intimate Partner Violence in the United States*, 70 SOC. SCI. MED. 1737 (2010). Some men threatened to hurt the woman with the intention of bringing about the end of the pregnancy. *Id.* at 1741. Moore's study revealed that of women experiencing reproductive coercion, 75% of the pregnancies ended in abortion. In the majority of cases the abortions were due to the partner's demands for abortion. *Id.*

Reproductive coercion is particularly common among those who have no, or only a weak, emotional connection with the pregnant woman. See Lynn Marie Kohm, *Roe's Effect on Family Law*, 71 WASH. & LEE L. REV. 1339, 1352–53, 1372–74 (2014). Victims of human trafficking are particularly likely to be subjected to coercion by their handlers.

Abortion has sometimes been described as “a man's solution to what he perceives to be the woman's problem.” That is precisely the view of women and their place in the world that *Casey* encourages, teaching society that it has no responsibility, duty, or even ability to revere and protect unborn children in a wide array of circumstances. The foregoing studies demonstrate that this Court's teaching has harmed women's relationships with men and employers alike. See Kohm, *supra*, at 1352–53, 1372–74.

**IV. This Court's abortion jurisprudence reduces the role of parents in guiding children at a time when their children most need help.**

*Roe* and *Casey* created not only open access to abortion, but an expectation that abortion is an option that women and girls should consider. George A. Akerlof, Janet L. Yellen & Michael L. Katz, *An Analysis of Out-of-Wedlock Childbearing in the United States*, 111 Q. J. ECON. 277, 281 (1996). This has been particularly damaging to young girls, who are more vulnerable to manipulation by those having an interest in making the abortion decision for them. “The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors.” *Pierce v. Society of Sisters*, 268 U.S. 510, 535 (1925). Ironically, the Court’s abortion exception to the general rule that parental consent is required for major life decisions by children has actually made such manipulation far easier, while sometimes depriving the girls and the courts of crucial information. *H. L. v. Matheson*, 45 U.S. 398, 411 (1981) (“Parents can provide medical and psychological data, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.”); *Bellotti v. Baird*, 443 U.S. 622, 641 (1979) (*Bellotti II*) (plurality opinion) (Parents are more likely to “know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals” and to be “able to distinguish the

competent and ethical from those that are incompetent or unethical.”); *Planned Parenthood Ass’n of Kansas City, Mo., Inc. v. Ashcroft*, 462 U.S. 476, 489 (1983) (“[N]ot all abortion clinics, particularly inadequately regulated clinics, conform to ethical or generally accepted medical standards . . . The Sun-Times of Chicago . . . disclosed widespread questionable practices in abortion clinics in Chicago.”) (citing Pamela Warrick & Pamela Zeckman, *The Abortion Profiteers*, CHI. SUN-TIMES, Special Reprint 1978, at 25–26)).

This Court has described parents’ right to care for their children as “perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (overturning Washington visitation statute which unduly interfered with parental rights). *See also Moore v. East Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion) (“[T]he institution of the family is deeply rooted in this Nation’s history and tradition.”).

More directly relevant to this case, the Court has opined:

[P]arents generally “have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations.” Surely, this includes a “high duty” to recognize symptoms of illness and to seek and follow medical advice. *The law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life’s difficult decisions.*

*Parham v. J.R.*, 442 U.S. 584, 602 (1979) (emphasis added) (rejecting the claim that minors had right to adversarial proceeding prior to commitment for treatment related to mental health by their parents).

Pregnancy also benefits greatly from medical care and advice. And, given the Court’s pronouncement in *Parham*, and this Court’s historical protection of parental involvement in the medical care of their children, most Americans would expect parental involvement to be unquestionable.<sup>2</sup>

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<sup>2</sup> For almost forty years opinion polls have consistently reflected nearly 70% of the American public support parental consent or notification laws. *See, e.g., Abortion*, GALLUP, <https://news.gallup.com/poll/1576/abortion.aspx> (last visited July 28, 2021) (finding that 71% favor requiring parental consent for abortion “for women under 18”); PEW RSCH. CTR. FOR THE PEOPLE AND THE PRESS, ABORTION AND THE RIGHTS OF TERROR SUSPECTS TOP COURT ISSUES (Aug. 3, 2005) (finding that 73% favor requiring parental consent prior to a minor obtaining an abortion); GALLUP/CNN/USA TODAY POLL, ABORTION (Jan. 15, 2004) (finding that 73% favor requiring parental consent for abortion “for women under 18.”); CBS NEWS/NY TIMES POLL (Jan. 15, 1998) (finding that 78% favor requiring parental consent before a girl under 18 years of age could have an abortion); AMERICANS UNITED FOR LIFE, ABORTION AND MORAL BELIEFS, A SURVEY OF AMERICAN OPINION (1991); WIRTHLIN GROUP SURVEY, PUBLIC OPINION, MAY-JUNE 1989, LIFE/CONTEMPORARY AMERICAN FAMILY (December, 1981) (finding that 78% of those polled believed that “a girl who is under 18 years of age [should] have to notify her parents before she can have an abortion”). *See also* Stephanie Ebbert, *Poll Finds Support for—and Discomfort with—Expanding Abortion Access in Mass.*, BOS. GLOBE (Dec. 11, 2020, 4:40 AM), <https://www.bostonglobe.com/2020/12/11/metro/poll-shows-support-discomfort-with-expanding-abortion-access-mass/> (finding that 40% of Massachusetts residents do not support lowering the age of abortion without parental or judicial consent to 16); Renzo Downey, *Poll Shows Strong*



Yet, in the wake of *Roe*, abortion activists challenged the right of parents to guide and care for their minor daughters experiencing unplanned pregnancies. In *Bellotti II*, the Court echoed the sentiments expressed in *Pierce*, acknowledging that “minors often lack the experience, perspective and judgment to avoid choices that could be detrimental to them.” 443 U.S. 640 (plurality opinion). Yet the Court almost inexplicably rejected its long standing view of parental care and authority: “We therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents’ consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained.” *Id.* at 643.

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*Support for Parental Consent Legislation*, FLA. POL. (Feb. 13, 2020), <https://floridapolitics.com/archives/319018-parental-consent-support-at-2-to-1-in-latest-st-pete-polls-survey/> (finding that 63% of Floridians support legislation requiring minors to seek approval from their parents before obtaining an abortion).

Young people also overwhelmingly support legal requirements that a parent be notified or give consent prior to a minor obtaining an abortion. A 2005 poll of one thousand high school seniors revealed that two-thirds believe that “a woman under 18 [should] be required by law to get the permission of a parent before she can have an abortion.” HAMILTON COLL. NAT’L YOUTH POLLS & ZOGBY INT’L, GUNS, GAYS AND ABORTION (Jan. 2006), <http://www.hamilton.edu/news/polls/HotButtonFinalReport.pdf>. A Kaiser Family Foundation/MTV Survey of 603 people ages 18-24 found that 68% favored laws requiring parental consent prior to performance of an abortion on girls under 18. KAISER FAM. FOUND. & MTV, SEX LAWS: YOUTH OPINION ON SEXUAL HEALTH ISSUES IN THE 2000 ELECTION (October, 2000), <https://www.kff.org/wp-content/uploads/2000/09/3069-t-young-people-have-mixed-views.pdf>.

The Court thus abandoned its long-standing presumption that parents act in the best interest of their children and invented a constitutional exception unique to the context of abortion that clinics and others who are not acting in a girls' best interest can easily exploit and abuse. No other medical procedure or treatment performed on a minor is subject to such a constitutional limitation on parental authority, absent some showing of parental misconduct or neglect.

The Court continued undermining long-standing recognition of the foundational nature of parent-child relationships, while depriving young girls of parental protection from exploitation and outside influence that is not in her best interest. In *Ohio v. Akron Ctr. for Reprod. Health*, 497 U.S. 502 (1990) (*Akron II*), the Court held that judicial proceedings to bypass parental consent must include a prohibition of the court notifying the minor's parents, guardian, provide closed hearings to preserve the minor's anonymity, and all records must be kept confidential and not be considered public records. *Id.* at 513.

While it is not unusual for courts to allow litigants to proceed using a pseudonym, *Singleton v. Wulff*, 428 U.S. 106, 117 (1976) (noting frequent use of pseudonyms), the prohibition of informing a parent is *sui generis*. *Amici* are unaware of any other judicial proceeding in which the question of whether a person will be deprived of his or her constitutional rights can be adjudicated to finality with no notice or opportunity to be heard. *See Carey v. Piphus*, 435 U.S. 247, 266–67 (1978) (procedural due process protects from

the mistaken or unjustified deprivation of life, liberty, or property); *Fuentes v. Shevin*, 407 U.S. 67, 81 (1972) (even temporary deprivation of property requires notice and opportunity to be heard); *Stanley v. Illinois*, 405 U.S. 645 (1972) (statute depriving unmarried fathers of the care and custody of children without any showing of the father’s unfitness violated due process).

In contexts outside abortion, this Court has emphasized that parents’ relationship with their children is not only constitutionally protected, but entitled to the highest levels of procedural safeguards. *Santosky v. Kramer*, 455 U.S. 745, 758 (1982) (“In parental rights termination proceedings, *the private interest affected is commanding*; the risk of error from using a preponderance standard is substantial; and the countervailing governmental interest favoring that standard is comparatively slight.”) (emphasis added). Yet abortion jurisprudence teaches that the weightiest decision a young girl is likely ever to make, irrevocably affecting both the life of the unborn child and her own long-term mental, emotional, and physical health, is one from which her parents are uniquely excludable.

It is heartbreaking to imagine being the parent of a young girl facing an unexpected pregnancy who resolves to “go it alone” because she can’t bear to disappoint her parents. Yet, with judicial bypass available, it is reasonable to assume that some girls will make exactly that mistake, sometimes at the urging of a boyfriend, and often with the aid of the abortion provider.

*Santosky* protects the rights of all parents, even those who are ultimately found unfit, while *Bellotti II* and its progeny deprive even the best parents of notice and their right to be heard when their daughter wants a secret abortion. This Court's departure through its abortion jurisprudence from the law's traditional protection of life and family continues to fundamentally undermine and damage the parent-child relationship.

Unsurprisingly, this Court's disregard of parents' rights relating to their pregnant daughters has encouraged public officials in some areas to similarly disregard the foundational importance of parent-child relationships. For example, in 1983, former California Attorney General John K. Van de Kamp issued an opinion concluding that *this provision permits schools* to "excuse a pupil from regularly scheduled classes to obtain medical services, including an abortion", and that schools "*are under no legal duty to notify the parents or guardian of a public school pupil who is excused from school early to obtain medical services. . . .*" 66 Op. Cal. Att'y. Gen. 244 (1983) (emphasis added). In response to this opinion, California Education Code § 46010.1 reversing his decision was promptly passed.

In some jurisdictions, school districts have been sued for secretly facilitating students' abortions. For example, in *Arnold v. the Board of Educ.*, 880 F.2d 305 (11th Cir. 1989), a federal court of appeals reinstated the claim by parents that a school district had violated the parents' constitutional rights by assisting their daughters in procuring an abortion and refraining from discussing the matter with the parents. While the

complaint alleged that the school district's actions were unlawful, they are the predictable consequence of current abortion jurisprudence, which diminishes the role of parents in these crucial life decisions, and the Court's regrettable reordering of parent-child relationships.

**a. Coerced abortions result in their own harms to women.**

As discussed earlier, pressure and coercion to abort are common. For example, one study reported that 31% of women made their pregnancy-option decision based on persuasive messages from others. Jacquelyn A. Harvey-Knowles, *An Examination of Women's Decision-making Processes During Unplanned Pregnancy*, 13 QUAL. RSCH. REP. COMMC'N 80 (2012). The adverse psychological impact of coerced abortions is one of the rare areas of agreement between mental health professionals, regardless of the professional's stance on abortion generally. See David C. Reardon, *The Abortion and Mental Health Controversy: A Comprehensive Literature Review of Common Ground Agreements, Disagreements, Actionable Recommendations, and Research Opportunities*, 6 SAGE OPEN MED. (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6207970/>.

The most frequently reported long-term effect of abortion, particularly among those who had been coerced to abort, is a prolonged feeling of guilt. Fantasies involving the aborted fetus were the second most frequently mentioned long-term experience. Half of the

participants referred to their abortions as “murder” and 44% voiced regret about their decision to abort. Other long-term effects included depression (44%), feelings of loss (31%), shame (27%), and phobic responses to infants (13%). For 42% of these women, the adverse psychological effects of abortion endured over 10 years. D. Brown, T.E. Elkins & D.B. Larson, *Prolonged Grieving After Abortion: A Descriptive Study*. 4 J. CLINICAL ETHICS 118 (1993).

This Court should overrule *Roe* and *Casey*, based on the harms society has experienced over the last fifty years.

As the *Casey* plurality observed, “minors will benefit from consultation with their parents and children will often not realize that their parents have their best interests at heart.” 505 U.S. at 895 (plurality opinion). As noted earlier, in *Bellotti II* this Court recognized that “minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.” 443 U.S. at 635. The decision to abort a child is “one that for some people raises profound moral and religious concerns.” *Id.* at 640. In the vast majority of cases, pregnant girls need and benefit from parental involvement, just as they do with any other condition that involves their physical and emotional health.

It is only due to the distortions that *Roe v. Wade*, and its progeny like *Bellotti II*, introduced into American law that good parents can now be secretly deprived of their rights to guide, protect, and care for their

daughters during such a stressful time in their daughters' lives.

*Roe v. Wade* and *Planned Parenthood v. Casey* should be overturned, and this Court should repudiate the harmful precedents requiring societal indifference to women's decisions to bear a child and restore the rights of parents to guide and protect their daughters in the same manner they do for any other medical condition.

**V. *Roe* has led to increased sexual activity by minors, often resulting in grave harm.**

*Roe* and *Casey*'s legacy of reliance on abortion has resulted in dramatic increases of sexual activity among adolescents, including sex between minors and adults, fostering a variety of social problems including increased sexual assaults, pregnancy, and coerced abortions.

**a. *Roe* reflected and accelerated changing social norms that has resulted in increasing sexual assault on girls by adult men.**

Tragically, since *Roe* was decided, many teens who have obtained abortions have become pregnant as the result of statutory rape. National studies reveal “[a]lmost two thirds of adolescent mothers have partners older than 20 years of age.” See NAT’L CTR. FOR HEALTH STAT., DHHS Pub. No. (PHS) 95-1257, REP. TO CONG. ON OUT-OF-WEDLOCK CHILDBEARING (1995),

<http://www.cdc.gov/nchs/data/misc/wedlock.pdf>. “In fact, data indicate that, among girls [whose first sexual encounter occurred before the age of] 14 or younger when they first had sex, the majority of these first intercourse experiences were nonvoluntary. Evidence also indicates that among unmarried teenage mothers, two-thirds of the fathers are age 20 or older, suggesting that differences in power and status exist between many sexual partners.” *Id.*

Committees of Congress have heard repeated testimony of young girls who had been coerced into obtaining abortions to hide a sexual relationship with an adult man. *Child Interstate Abortion Notification Act: Hearing on HR 748 before the Subcomm. on the Constitution, H. Comm. on the Judiciary, 109th Cong.* (2005) (statement of Marsha Carroll). The frequency of adult men impregnating teens is documented in Michael Males, *Teens and Older Partners*, ReCAPP (2004), <http://recapp.etr.org/recapp/index.cfm?fuseaction=pages.TheoriesDetail&PageID=393#ageGap>. Prior research by Dr. Males revealed that:

71%, or over 33,000, were fathered by adult post-high-school men whose mean age was 22.6 years, an average of 5 years older than the mothers. . . . Even among junior high school mothers aged 15 or younger, most births are fathered by adult men 6–7 years their senior. *Men aged 25 or older father more births among California school-age girls than do boys under age 18.*



Michael Males, *Adult Involvement in Teenage Child-bearing and STD*, 346 LANCET 64 (1995) (emphasis added).

A survey of 1500 unmarried minors having abortions revealed that among minors who reported that neither parent knew of the abortion, 89% said that a boyfriend was involved in deciding or arranging the abortion (and 93% of those 15 and under said that a boyfriend was involved). Stanley K. Henshaw & Kathryn Kost, *Parental Involvement in Minors' Abortion Decisions*, 24 FAM. PLAN. PERSP. 196 (1992). Further, 76% indicated that a boyfriend helped pay the expenses of the abortion. Clearly, several young girls who obtained abortions without their parents' knowledge were encouraged to do so by a sexual partner who could be charged with statutory rape, and who feared that the continuation of the pregnancy would lead inevitably to the discovery of the crime. *Roe* and its progeny are the catalyst to these social atrocities, protecting men who would otherwise be criminally charged. *Roe* has turned statutory rape laws designed to protect young women into a license to cover up crimes against them.



**CONCLUSION**

For the reasons set forth above, we urge this Court to overrule *Planned Parenthood v. Casey*, 505 U.S. 833 (1992) and *Roe v. Wade*, 410 U.S. 113 (1973).

Respectfully submitted,

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