Nos. 23-235, 23-236

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.

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

AMICI BRIEF OF OPERATION RESCUE AND WEST VIRGINIANS FOR LIFE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI[1]

Amicus, Operation Rescue, is a leading pro-life advocacy organization in the United States and has worked for decades to expose abortion abuses. Among other things, Operation Rescue has developed peaceful, legal strategies for exposing the illegal violations by both abortion clinics and abortion providers that endanger women and end preborn lives. Despite its efforts to expose wrongdoers and protect women and preborn babies, Operation Rescue has found that those charged with enforcing health and safety regulations have frequently refused or neglected to do so in the context of abortion. The FDA's actions in this case are no outlier to that disappointment.

Amicus West Virginians for Life (WVFL), celebrating its 50th year, is the state's oldest and largest pro-life group, with more than 35 local pro-life chapters. WVFL works through education, legislation, and political action to protect those threatened and harmed by abortion, infanticide, and euthanasia.

WVFL has been successful in working with the people of West Virginia and the state legislature to pass fourteen pieces of legislation to protect women and their babies, including Women's Right to Know Act, Unborn Victims of Violence Act, Parent's Right to Know Act, Born-Alive Abortion Survivors Protection Act, and Unborn Child with Down Syndrome

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Protection and Education Act. The passage of the Unborn Child Protection Act prevented all abortions except for medical emergencies, rape and incest when reported to state authorities, and babies with disabilities incompatible with life. It solidified West Virginia's commitment to protecting fetal life, and to protecting women from the harms associated with abortion. Moreover, WVFL worked to promote funding for the over forty pregnancy help centers in the state that serve to assist women in need, so that no woman is without the help and support she needs during and after pregnancy.

When the last abortion facility in West Virginia stopped performing abortions, it transferred its operations to a new abortion business just over the border and urged women to cross over the border for abortions. Amicus believes these abortions will largely be chemical (mifepristone and misoprostol) abortions given to women in one state and used by those women in West Virginia, thus putting West Virginia women and babies at risk. This process of crossing state lines to obtain abortions has the potential for many problems and much mischief. WVFL believes that West Virginia should have the ability to protect its citizens, including from the harm caused by the abortion pill at issue in this case.

SUMMARY OF ARGUMENT

This case addresses the FDA's approval of, and loosening of restrictions on, the drug Mifeprex, which is used for medical abortions. Abortion, contrary to the assertion that it is somehow safer than childbirth and beneficial to women, is unsafe for both women and preborn children, and is frequently used as a tool by nefarious actors to control and harm women.

ARGUMENT

The district court properly concluded that, for multiple reasons, the FDA's approval of, and loosening the REMS for, the "abortion pill" was illegal. The Fifth Circuit properly affirmed as to the relaxation of the REMS governing abortion pills. As the district court noted, so-called medication abortions have harmed countless women. Halting the FDA's approval and facilitation of this human pesticide spares many more women (and their children) from harm, including death, going forward.

A key premise of the FDA's approval of, and subsequent loosening of regulations surrounding, abortion drugs is the assertion that availability of abortion drugs is somehow beneficial to women. The recurrent assumptions are that (1) abortions are safe and (2) women want and need abortion, and hence ready access to abortion, including abortion drugs, is therefore a "pro-woman" position. Such a view, however, completely disregards the adverse health effects of medication abortions. This view also disregards the reality that all too often abortion is a means of exploiting women – typically by irresponsible or indifferent men or others wielding power over those women. This amicus brief addresses these oft-neglected sides of the equation.

I. MEDICATION ABORTION IS NOT SAFE.

A. Abortion Pills Induce Pregnancy Loss and Thus Inherently Cause Harm.

Abortion pills by their very design cause an adverse event: miscarriage.

Pregnancy loss is a dreaded complication of certain medications. Consequently, medical authorities take efforts to warn pregnant women which drugs to avoid during pregnancy. *See*, *e.g.*, *Medicines to Avoid When Pregnant*, WebMD (June 8, 2023), https://www.webmd.com/baby/medicines-avoid-pregnant ("Some drugs can harm a developing baby or cause a miscarriage or stillbirth."); *Medicine and Pregnancy*, CDC, http://tinyurl. com/4zahm7hr (Apr. 10, 2023) ("Some medicines may cause birth defects, pregnancy loss, prematurity, infant death, or developmental disabilities."); Chaunie Brusie, *Medications You Should Avoid During Pregnancy*, Healthline (May 7, 2019), https://www.healthline.com/health/pregnancy/category-c-drugs. The whole point of abortion pills, however, is to cause that adverse event. As petitioner FDA concedes:

> Mifepristone is approved for use in a regimen with another drug, misoprostol, to end an early pregnancy. A patient who follows the two-drug regimen experiences cramping and bleeding similar to that associated with a miscarriage.

FDA Br. Federal Pet'rs 4 [hereinafter FDA Pet. Br.]; *see also id*. at 36 ("[C]ramping and bleeding . . . typically occur shortly after taking misoprostol"); Danco Laboratories, LLC Br. 6 [hereinafter Danco Pet. Br.] (abortion pill drugs used "for the medical termination of intrauterine pregnancy").

It is therefore flatly misleading to claim that, of the women who take abortion pills, "fewer than *one-tenth of one percent* experienced *any* adverse event." Danco Pet. Br. 10. To the contrary, *every single one* of those women experience an adverse event: pregnancy loss. Diana Cuenca, *Pregnancy Loss: Consequences for Mental Health*, Frontiers Glob. Women's Health, Jan.

23, 2023, at 1 ("A pregnancy loss, in all its forms, whether it miscarriage, abortion, or fetal loss, is today one of the most common adverse pregnancy outcomes today."). That the loss may have been *sought* by someone (not necessarily the woman, *infra* Section II) for nonmedical reasons (financial, relational, etc.) does not alter the reality of the loss. A woman who blinds herself with chemicals suffers an adverse event even if she desires the outcome. Char Adams, *Woman Claims She Blinded Herself with Drain Cleaner to Fulfill Her Life-Long Dream of Being Disabled: 'I Should Have Been Blind from Birth,'* People (Oct. 1, 2015, 4:45 PM), https://people.com/celebrity/jewel-shuping-blinds-herself-with-drain-cleaner/.

The question whether, or under what conditions, people should be able to cause self-harm – or, in this case, harm to innocent third parties (prenatal humans) – should not be distorted by pretending that the physical harm is not physical harm.

B. Abortion Is Not Safer than Childbirth.

Petitioners and their amici repeat the claim that "women are at least 14 times more likely to die during childbirth than during any abortion procedure." ACOG Amici 26-27; *see* FDA Pet. Br. 39 ("[P]regnancy itself entails a significantly higher risk of serious adverse events, including a death rate 14 times higher than that associated with legal abortion."). The ultimate source for this claim is typically the article (cited by ACOG at footnote 45 of their amici brief), Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childhood in the United States*, 119 Obstet. & Gynecol. 215 (2012). But this claim – that continuing pregnancy is more deadly than abortion – is

unsupported and false. *See* Amicus Brief of the Elliot Institute in Support of Petitioners, *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) (No. 19-1392) [hereinafter Elliot *Dobbs* Amicus], http://tinyurl.com/ 27u 2tdh3. Not only is the statistical comparison underlying the claim flawed in multiple ways, Elliot *Dobbs* Amicus § II, but peer reviewed medical research strongly indicates that in fact *abortion is more dangerous* than childbirth, Elliot *Dobbs* Amicus § III (citing multiple studies). Following is a brief review of the flaws underlying the claim that abortion is safer than childbirth.

The faulty claim rests upon a comparison of pregnancy mortality (formerly called "maternal mortality") and abortion mortality statistics published by the federal Centers for Disease Control and Prevention (CDC). *See, e.g.*, Raymond & Grimes, *supra*, at 215-16. The comparison is fundamentally flawed for multiple reasons.

First, abortion deaths also count as "pregnancy deaths," thereby misleadingly inflating the measure of deaths supposedly from childbirth. Elliot *Dobbs* Amicus at 16 n.17. This point bears emphasis: when a woman dies from abortion, that death counts *both* as an abortion mortality *and* as a pregnancy mortality. With such an approach, the results are mathematically stacked against childbirth ever being deemed safer than abortion. Consider: *even if every single woman in a single year who had an abortion died from the procedure, and only one woman that year died from a miscarriage or complication of childbirth, the total number of deaths in the "pregnancy mortality" category for that year would still exceed the total deaths in the "abortion mortality" category*. This makes comparison of the two figures absurd.

Second, pregnancy mortality is measured per childbirth, not per pregnancy, Elliot *Dobbs* Amicus at 17 n.14, and thus pregnancy mortality is artificially inflated. That is, the relevant maternal population excludes those who experience miscarriages and stillbirths, but *if such women die, their deaths are nevertheless included in the pregnancy mortality total*. Thus, the relevant baseline population is reduced by excluding cases of pregnancy losses (no live birth), yet the total deaths still include those maternal deaths resulting from these very same excluded – uncounted – pregnancies. For example, even though many women survive ectopic pregnancies, the supposed pregnancy mortality rate for the subset of all ectopic pregnancies will be infinitely high. There will be *some maternal deaths* in the numerator but *no live births* in the denominator, yielding an infinitely large fraction. Obviously, this is a misleading, useless statistic. But this error will in turn infect and distort the overall pregnancy mortality rate by adding to the numerator (deaths) while not adding to the denominator (live births). Hence, the pregnancy mortality figure, contrary to its title, does *not* accurately depict the mortality risk of pregnancy. Instead, the statistic *overstates* the risk.

Third, the overall pregnancy mortality figures do not account for the stage of gestation. A high percentage of maternal deaths are associated with miscarriages early in pregnancy. This matters. For example, a woman entering her second trimester faces zero risk of a first-trimester death from ectopic pregnancy. But the undifferentiated pregnancy mortality rate incorporates those first-trimester deaths, and thus does not reflect the actual risk going forward. For a woman who is beyond any given stage of pregnancy and considering the relative risks of

continued pregnancy versus abortion, it makes no sense to compare abortion mortality with pregnancy mortality *throughout* pregnancy; the figures would have to be adjusted to subtract out deaths occurring at stages of pregnancy that have already passed. Yet pregnancy mortality statistics do not make this adjustment and thus are not properly comparable to abortion mortality statistics.

Fourth, abortion deaths are underreported. One simply cannot make a fair assessment of abortion deaths without knowing how many have occurred. Yet one published study found that, in Finland, *an astounding 94% of abortion-associated deaths were not identified from death certificates or cause-of-death registries alone*. Mika Gissler et al., *Methods for Identifying Pregnancy-associated Deaths: Population-based Data from Finland 1987-2000*, 18 Paediatric & Perinatal Epidemiology 448, 451, tbl. 2 (2004). This problem infects the United States as well. *See* Elliot *Dobbs* Amicus at 13-15 (citing sources).

Fifth, abortion mortality statistics likely will not include many delayed deaths that result from abortion, Elliot *Dobbs* Amicus at 15 n.11, such as those reflected in an increased rates of suicide or other longer-term fatal post-abortion outcomes, even though studies show a greater risk of death from these and other causes after abortion (as opposed to childbirth). A fair comparison of abortion with continued pregnancy, like a fair comparison of smoking with nonsmoking, would have to take into account not just immediate consequences, but also all other statistically significant increased death risks.

In short, the claim that abortion is 14 times safer (or, indeed, safer at all) than continuing pregnancy is embarrassingly unsupported and inaccurate. No serious advocate should make that assertion.

II. ABORTION, RATHER THAN AN ACT OF FEMALE AUTONOMY, IS TOO OFTEN A HANDY TOOL FOR THOSE PURSUING NEFARIOUS PURPOSES AT THE EXPENSE OF WOMEN.

Contrary to the clichéd pro-abortion argument that abortion is a woman's *choice* that brings freedom, many women, if not an overwhelming majority, "choose" abortion because they are pressured – or coerced – by others. Often, that pressure comes from those who prioritize their own interests above the best interests and wishes of the pregnant woman: "once abortion becomes available, it becomes the most attractive option for everyone *around* the pregnant woman." Frederica Mathewes-Green, *When Abortion Suddenly Stopped Making Sense*, Nat'l Rev. (Jan. 22, 2016) (emphasis in original). Moreover, abortion can serve as a tool for furthering broader eugenic or racist goals. *Jackson Women's Health Org. v. Dobbs*, 945 F.3d 265, 284-85 (5th Cir. 2019) (Ho, J., concurring in judgment), *rev'd on other grounds*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022); *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1782-93 (2019) (Thomas, J., concurring). Petitioners reference "women choosing" abortion pills, *e.g.,* Danco Pet. Br. at 17, 21, 27, 31; FDA Pet. Br. at 28 ("A patient's decision to take mifepristone . . ."). Women *take* abortion pills; whether that action reflects their *choice* is a different question.

In a study that compared the experiences of Russian and American women with abortion, 64% of the American women surveyed reported feeling pressured by others to obtain an abortion. Vincent M. Rue, et al., *Induced Abortion and Traumatic Stress: a Preliminary Comparison of American and Russian*

Women, 10 Med. Sci. Monitor 9 (2004).[2] Another study, published in the *Journal of American Physicians and Surgeons*, similarly found that nearly 74% of the post-abortive women surveyed admitted "that their decision to abort was [not] entirely free from even subtle pressure from others to abort," over 58% "reported aborting to make others happy," and 28.4% of the women specifically chose abortion "out of fear of losing their partner if they did not abort." Priscilla K. Coleman, Ph.D., *Women Who Suffered Emotionally from Abortion: A Qualitative Synthesis of Their Experiences*, 22 J. Amer. Physicians & Surgeons 113, 115 (2017).[3] Sixty-six percent of the women reported "know[ing] in their hearts that they were making a mistake when they underwent the abortion." *Id.* Even the abortion-sympathetic Guttmacher Institute reports that 12% of women seeking abortions gave as a "specified reason[]" for their abortion that a "[h]usband or partner wants me to have the abortion." Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 Persps. on Sexual & Reprod. Health 110, 113 (2005) (Table 2). These statistics reveal that a substantial number of women in America who supposedly "choose" abortion, rather

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[2] Study participants were "[w]omen who had experienced a pregnancy loss (spontaneous abortion, induced abortion, stillbirth, or adoption) [who] were asked to participate in a study of women's reactions to a pregnancy loss. Data were collected in 1994 at U.S. and Russian healthcare facilities (public and private hospitals, and health care clinics). . . . The sample in [this] study includes only those women who had one or more induced abortion and no miscarriages, stillbirths, or adoptions . . . ." *Id.*

[3] The women who responded to this survey were women who voluntarily contacted crisis pregnancy centers for post-abortion care.

than being empowered to make a "choice," are being pressured by others into abortions they may not want. As one former abortion supporter observed, "No one wants an abortion as she wants an ice cream cone or a Porsche. She wants an abortion as an animal, caught in a trap, wants to gnaw off its own leg." Mathewes-Green, *supra* p. 9 (internal quotation marks omitted). This becomes even clearer when examining specific types of coercion to abort.

Abortion and Human Trafficking

Human trafficking is a widespread and highly profitable crime that spans the entire world. *See* 2023 Trafficking in Persons Report, U.S. Dep't of State (2023), http://tinyurl.com/3p8dbwwf. Roughly two-thirds of this $150 billion industry arises out of commercial sexual exploitation, or sex trafficking, *ILO Says Forced Labour Generates Annual Profits of US $ 150 Billion*, Int'l Lab. Org. (May 20, 2014), https://tinyurl.com/yn9wwdsx. The National Human Trafficking Hotline's most recent statistics from 2021 show 10,360 unique *reported* cases of human trafficking in the United States alone. Hotline Statistics, Nat'l Hum. Trafficking Hotline Data Rep. 4, https://tinyurl.com/ys4w6xpw.[4] Of those 10,000+ cases, 7,499 of them were sex trafficking cases and another 400 cases were sex and labor related, meaning over 76% of all reported human trafficking

[4] As noted in the 2019 Data Report, the "[t]rafficking situations learned about through the Trafficking Hotline likely represent only a small subset of actual trafficking occurring in the United States. Therefore, this data must not be confused with the prevalence of human trafficking in the United States." Nat'l Hum. Trafficking Hotline 2, *available at* https://tinyurl.com/2nwe7dfj (*see* "About this Data" box).

cases in the United States in 2021 involved some sort of sexual exploitation. *Id*. at 5-6.

According to a 2005 report funded by the Department of Justice, "[h]uman traffickers are engaged in a wide range of crimes both against their victims (rape, assault, extortion, homicide, forced abortions, etc.) and against the state . . . ." Kevin Bales & Steven Lize, *Trafficking in Persons in the United States: A Report to the National Institute of Justice* 6 (2005), https://tinyurl.com/3ah32n3z. Another study found "[t]he prevalence of forced abortions is an especially disturbing trend in sex trafficking." Laura J. Lederer & Christopher A. Wetzel, *The Health Consequences of Sex Trafficking and Their Implications for Identifying Victims in Healthcare Facilities*, 23 Annals Health L. 61, 73 (2014), https://tinyurl.com/3hvjednk. The survivors of sex trafficking studied "reported that they often did not freely choose the abortions they had while being trafficked." *Id*. at 73.

> One victim noted that "in most of [my six abortions,] I was under serious pressure from my pimps to abort the babies." Another survivor, whose abuse at the hands of her traffickers was particularly brutal, reported seventeen abortions and indicated that at least some of them were forced on her.

Id. at 73-74. Forced abortions in the context of sex trafficking, whether by subtle or more forceful pressure, cannot in any way be viewed as a liberating "choice" for women. Yet, the abortion industry does little if anything to combat forced abortion at the hands of sex traffickers.

In 2017, a former Planned Parenthood employee stated that Planned Parenthood did not "train[] employees how to spot and report sex trafficking – but [instead] how not to get caught saying incriminating things to undercover journalists." Bradford Richardson, *Planned Parenthood Failed to Take Sex Trafficking Seriously After Infamous Sting, Ex-Employee Says*, Wash. Times (Jan. 17, 2017), https://tinyurl.com/yec5dcnw. The training responded to "Live Action's 2011 investigation [which] caught on camera eight Planned Parenthood workers at seven facilities who were willing to help a man who identified himself as a sex trafficker covertly obtain abortions and other reproductive health care services for minors as young as 14." *Id.* If abortion providers give a pass to one who openly admits to trafficking, they are even more likely to "serve" pimps and traffickers who pretend to be the woman's boyfriend or relative. And relevant here, remotely authorizing abortion pill distribution makes it that much easier for the pimp to hide behind the computer screen.

Abortion and Sexual Predators

Abortion supplies a handy means for sexual predators to conceal obvious evidence – pregnancy and childbirth – of their exploitation. *See, e.g.*, *United States v. Raniere*, 2019 U.S. Dist. LEXIS 84634 (EDNY May 3, 2019) (abortions for women impregnated by leader of apparent cult); Cole Waterman, *Saginaw Man Gets Prison Time for Raping Minor, Trying to Force Her into Getting Abortion*, MLive Michigan (Aug. 23, 2023), https://tinyurl.com/ejhn5dk8; Danielle Cinone, *'ABUSED FOR YEARS' 'Evil' Father, 51, 'Raped Daughter, 10, and Got Stepdaughter Pregnant Several*

Times – But Performed Sick Home Abortions,' The U.S. Sun, https://tinyurl.com/4au3bs7v (May 18, 2020, 3:54 PM); Tonya Alanez, *58 Porno Videos of 15-Year-Old Girl Lead to Davie Man's Arrest*, S. Fla. Sun Sentinel (Oct. 23, 2019, 8:00 PM), https://tinyurl.com/tbff54wz ("The victim stated that she got pregnant from the defendant and he took her to the clinic to have an abortion"); Carole Novielli, *Man Took 14-Year-Old For Three Abortions After Impregnating Her, Clinics Ignored the Rapes*, Life News (July 30, 2014), https://tinyurl.com/5a9mcfk4; David McFadden, *Probation Revoked for Man in Impregnating 11-Year-Old, Forcing to Get Abortion*, ABC13 News, https://tinyurl.com/mrwddyzt (July 19, 2018, 4:40 AM); *Settlement Reached in Suit over Teen Abortion*, The Columbus Dispatch, (Apr. 28, 2011, 11:15 AM), https://tinyurl.com/3cnrdemh (soccer coach impregnated 14-year-old, then pretended to be her father in consenting to the abortion). Again, remote dispensing facilitates such exploitation.

Abortion and Domestic Abuse

Abortion violently takes the life of a prenatal child. Often, the woman getting an abortion is also a victim of violence – which greatly influences the woman's "choice." One study revealed that among women who chose abortion, "the probability of being a victim of [intimate partner violence] in the past year . . . was almost three times higher than for women [who chose to continue their pregnancy]." Dominique Bourassa, MD, & Jocelyn Bérubé, MD, *The Prevalence of Intimate Partner Violence Among Women and Teenagers Seeking Abortion Compared with Those Continuing Pregnancy*, 29 J. Obstetrics Gynaecology Can. 415, 415 (2007).

According to abortion advocates, a woman should be able to obtain an abortion as a means of escaping future abuse. The truth, however, is that abortion does not free a woman from abuse.

> A survey of 1127 women undergoing a second or subsequent abortion found that they were more likely to have experienced abuse by a male partner, sexual abuse or coercion. Of women presenting for a first abortion, 24% reported a major conflict and fights with the man involved in the pregnancy; 30% of women having a second abortion reported relationship violence; and women having a third or subsequent abortion were >2.5 times as likely to report a history of physical or sexual abuse by a male partner.

Gillian Aston & Susan Bewley, *Abortion and Domestic Violence*, 11 The Obstetrician & Gynaecologist 163, 165 (2009).

Consider the following examples:

- Christine Polissek, *Pregnant Woman Was Allegedly Killed by Navy Officer — and Family Says It Happened After She Refused Abortion*, People (Aug. 18, 2022, 5:21 PM), https://tinyurl.com/4b25f9cp.
- Eryn Taylor, *Police: Man Beats Girlfriend After She Refuses to Have an Abortion*, News Channel 3 (Sep. 5, 2016), https://tinyurl.com/2xr64yju (man beat his girlfriend because she refused to get an abortion; he "told the woman she needed to get rid of her baby," and when she refused, the man "allegedly began hitting her with his fist and began choking her. The victim frantically tried

to get out of the car, but [he] pulled her back in. He then parked the car, pulled the victim out and reportedly began kicking her in the head creating a large gash to her head.").

- Joe Nelson, *Charges: Pregnant Woman Beaten by Duo After Refusing to Have an Abortion*, Bring Me The News: Minn. News (May 1, 2021), https://tinyurl.com/4narfjmz (woman, six months pregnant, was beaten by two men who "specifically targeted her abdomen"; woman stated that the father "consistently pressured her to have an abortion and threatened to get people to jump her and cause her to lose the baby. She told police that [he] once told her, 'I'm gonna get somebody to stomp that baby out of you.'").
- *Ohio Man Dominic Holt-Reid Sentenced to 13 Years for Attempted Forced Abortion*, CBS News (June 10, 2011), https://tinyurl.com/bdza6k2z (man took his pregnant girlfriend to abortion clinic at gunpoint; prosecutor said man grabbed Burgess by the neck and began strangling her while saying, "We are not having this baby, Yolanda").

Countless further instances could be added. *See, e.g.*, Micaiah Bilger, *When She Refused Abortion, Her Boyfriend Threatened to Kill Their Unborn Baby With a Coat Hanger*, LifeNews (Mar. 14, 2022), http://tinyurl.com/46jv98bu (linking to forty-eight other instances). The abortion, rather than freeing the woman, only adds to the list of emotional and physical traumas she has suffered.

It cannot be ignored, particularly in this case, that it is much *easier for an abuser to force a woman to*

ingest abortion pills than to drag her to a facility for a surgical abortion. *E.g.* Jerry Lambe, *Attorney Who Secretly Slipped Abortion Pills in Wife's Drink 7 Times Because Pregnancy Would 'Ruin His Plan' Sentenced to 6 Months*, Law&Crime (Feb. 8, 2024, 11:42 AM), http://tinyurl.com/4b9spy6p; Nancy Dillon, *California man accused of forcing pregnant girlfriend to take miscarriage pills at gunpoint*, N.Y. Daily News (Dec. 12, 2019), http://tinyurl.com/36z4jd4d; *Doctor Gets 3 Years for Spiking Drink to Induce Abortion* (May 19, 2018); http://tinyurl.com/p8952j64; *Cops: NY Man Forced Woman to Swallow Abortion Pill*, Associated Press (Dec. 5, 2014), http://tinyurl.com/4pmzu33s.

Abortion and Male Irresponsibility

Abortion also provides an escape hatch for irresponsible men generally. Some will use drastic means for imposing their will, *e.g.*, Associated Press, *Man Uses Sex Video in Abortion Plot*, L.A. Times (Nov. 8, 1998), https://www.latimes.com/archives/la-xpm-1998-nov-08-mn-40405-story.html (threatening to distribute a sex tape of an ex-girlfriend unless the woman agreed to get an abortion). Others will exert less blatant pressure, perhaps suggesting an abortion would preserve the relationship or that waiting until "a better time" would be wise. *E.g.*, Michele Corriston, *Charlie Sheen's Ex-Fiancée Brett Rossi on Their Allegedly Abusive Relationship: 'It Was Just So Toxic and So Violent,'* People (Dec. 7, 2015), https://people.com/crime/charlie-sheens-ex-brett-rossi-opens-up-about-allegedly-abusive-relationship/ (describing Brett Rossi, a woman who "alleges . . .. she had [an] abortion after 'much pressure and threats' from Sheen"). *See* 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, 1739 (2010) (describing a study where roughly 74% of women who experienced intimate-partner violence also experienced "reproductive control").

There are many examples of shiftless and sneaky men accessing abortion pills for nefarious purposes even prior to the changes made by the FDA that made access to these pills easier. *E.g.*, Kathryn Mannie, *Man Gets 22 Years in Prison for Slipping Abortion Pill Into Pregnant Girlfriend's Drink*, Inside Edition (Oct. 11, 2018), https://tinyurl.com/ 2vfdaybv; Mark Osborne, *Former Doctor Who Slipped Abortion Drug into Girlfriend's Tea Sentenced to 3 Years in Prison*, ABC News (May 19, 2018), http://tinyurl.com/ 236tmhws; Josh Saul, *Man Slipped Pregnant Girlfriend Abortion Pills: Prosecutors*, N.Y. Post (Mar. 18, 2014, 2:27 AM), http://tinyurl.com/wzjy8mjn.

Congress created procedures for the FDA to protect consumers. But abusers and traffickers who use abortion pills are not the kind of consumers the FDA should be assisting.

Abortion and Employer Coercion

Abortion has apparently long been an appealing "solution" for an employer who does not want pregnancy or childcare to hamper an employee's devotion to the company. *See, e.g.*, Marcie Bianco & Merryn Johns, *Classic Hollywood's Secret: Studios Wanted Their Stars to Have Abortions*, Vanity Fair (July 15, 2016), http://tinyurl.com/ n2nn6uha. The passage of the Pregnancy Discrimination Act of 1978 (five years after *Roe v. Wade*) reflects this very real concern with employer hostility to pregnancies that are "inconvenient" for the employer. Cases illustrate

the problem as well. *See, e.g.*, *Bergstrom-Ek v. Best Oil Co.*, 153 F.3d 851 (8th Cir. 1998) (manager repeatedly pressured employee to have an abortion, contending bearing child would wreck her life and her career); Jessica Hopp & Greg Sandoval, *Mystics Coach Was Cited in Pregnancy Suit*, Wash. Post (Sept. 16, 2002) (head coach allegedly told assistant to choose between aborting or quitting; suit was settled); Lindsay Watts, *Exclusive: Another DC Police Officer Says She Was Told End Pregnancy to Keep Her Job*, Fox5 (Oct. 20, 2021), http://tinyurl.com/mux42brm.

Abortion and Eugenics and Racism

As Justice Thomas noted in his concurring opinion in *Box v. PPINK*,

> the use of abortion to achieve eugenic goals is not merely hypothetical. The foundations for legalizing abortion in America were laid during the early 20th-century birth-control movement. That movement developed alongside the American eugenics movement. And significantly, Planned Parenthood founder Margaret Sanger recognized the eugenic potential of her cause.

139 S. Ct. at 1783 (Thomas, J., concurring). It is well-known that Sanger, Planned Parenthood's founder, embraced eugenics. Indeed, Planned Parenthood's current CEO has now admitted as much. Alexis McGill Johnson, *I'm the Head of Planned Parenthood. We're Done Making Excuses for Our Founder*, N.Y. Times (Apr. 17, 2021), http://tinyurl.com/mut5xjs2. Planned Parenthood is the major abortion provider in this country, recently doing 383,460 abortions per year. Planned Parenthood, Annual Report 2020-2021,

https://tinyurl.com/PP2020-21. A report from the Center for Urban Renewal and Education highlights that "[b]lack women have the highest abortion ratio in the country, with 474 abortions per 1,000 live births. Percentages at these levels illustrate that more than 19 million black babies have been aborted since 1973," Star Parker, et al., Center for Urban Renewal & Education, *Policy Report: The Effects of Abortion on the Black Community* 3 (2015), https://tinyurl.com/4fu47w3v. In addition, "79% of Planned Parenthood's surgical abortion facilities are strategically located within walking distance of African and/or Hispanic communities." *Id.* And while blacks make up only about 14% of the population of the United States, Christine Tamir, et al., *Facts About the U.S. Black Population*, Pew Rsch. Center (Mar. 25, 2021), *available at* https://tinyurl.com/ch4va2e4, they get 39% of the abortions, *Reported Legal Abortions by Race of Women Who Obtained Abortion by the State of Occurrence*, Kaiser Fam. Found. https://tinyurl.com/ynw6u6cu (describing 2021 data), meaning that black babies are aborted far in excess of their proportion of the population.

Indeed, abortion is publicly defended as protecting certain segments of the population, disproportionately racial minorities, from having more children than would supposedly be good for society. *See, e.g.*, Jacqueline Mitchell, *Abortion Restrictions May Be Linked to Rise in Children Entering Foster Care*, Harvard Medical School News & Research (Nov. 16, 2023), https://tinyurl.com/3n5h3f9b ("'Policies that restrict abortion may contribute to the overrepresentation of racial and ethnic minority children in the foster care system, perpetuating inequities and further straining

vulnerable populations'") (quoting study author Ashley O'Donoghue).

Meanwhile, abortion appears to be the principal means for eliminating Down syndrome children. Julian Quinones & Arijeta Lajka, *'What Kind of Society Do You Want to Live In?': Inside the Country Where Down Syndrome is Disappearing*, CBS News (Aug. 15, 2017), https://tinyurl.com/2s395xhh ("Other countries aren't lagging too far behind [Iceland] in Down syndrome termination rates. According to the most recent data available, the United States has an estimated termination rate for Down syndrome of 67 percent (1995-2011); in France it's 77 percent (2015); and Denmark, 98 percent (2015)"). And, of course, Down syndrome is merely one example of a disability that is targeted for extermination through abortion. But abortion is not a "cure." It simply gets rid of the one with the disability. Easy access to abortion pills facilitates do-it-yourself eugenics.

CONCLUSION

This Court should affirm the judgment of the court of appeals.

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