No. 1-10-1463

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE HOPE CLINIC FOR WOMEN LTD.; and
ALLISON COWETT, M.D., M.P.H.,
Plaintiffs-Appellants,

v.

BRENT ADAMS, Acting Secretary of the Illinois Department of Financial and Professional Regulation, in his official capacity; **DANIEL BLUTHARDT**, Director of the Division of Professional Regulation of the Illinois Department of Financial and Professional Regulation, in his official capacity; and **THE ILLINOIS STATE MEDICAL DISCIPLINARY BOARD**,
Defendants-Appellees.

On Appeal from the Circuit Court of Cook County,
County Department—Chancery Division
Honorable Daniel A. Riley, Judge Presiding

BRIEF OF AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, AMERICAN CONGRESS OF OBSTETRICIANS AND GYNECOLOGISTS, AMERICAN MEDICAL WOMEN'S ASSOCIATION, AMERICAN PSYCHIATRIC ASSOCIATION, ILLINOIS CHAPTER OF THE AMERICAN ACADEMY OF PEDIATRICS, ILLINOIS PSYCHIATRIC SOCIETY, ILLINOIS PUBLIC HEALTH ASSOCIATION, AND SOCIETY FOR ADOLESCENT HEALTH AND MEDICINE AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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POINTS AND AUTHORITIES

INTERESTS OF *AMICI*

The following leading Illinois and national medical and public health organizations submit this brief as *amici curiae* in support of Plaintiffs' challenge to the Illinois Parental Notice of Abortion Act of 1995 (the "Act"). As leading experts in their fields, *amici* write to correct the inaccurate and misleading data set forth in the *Amicus Curiae* Brief of Illinois Legislators filed in Support of Defendants-Appellees. As demonstrated below and as described in the Brief of the Plaintiffs-Appellants, the Act does not further or protect the best interests of minors.

The **American College of Obstetricians and Gynecologists** is a non-profit educational and professional organization founded in 1951. The College's objectives are to foster improvements in all aspects of health care of women; to establish and maintain the highest possible standards for education; to publish evidence-based practice guidelines; to promote high ethical standards; and to encourage contributions to medical and scientific literature. The College's companion organization, the **American Congress of Obstetricians and Gynecologists**, is a professional organization dedicated to the advancement of women's health and the professional interests of its members. Sharing more than 54,000 members, the College and the Congress are the leading professional associations of physicians who specialize in the health care of women. The Illinois Section of the Congress has 2,237 members, many of whom would be affected by the Act. The College and the Congress recognize that the issue of support for or opposition to abortion is a matter of profound moral conviction to its members and respect the need and responsibility of its members to determine their individual positions on abortion. As

organizations, they oppose unnecessary regulations that limit or delay access to medical care, including abortion.

The **American Medical Women's Association** ("AMWA") is an organization of women physicians, medical students and other persons dedicated to serving as the unique voice for women's health and the advancement of women in medicine. AMWA has high respect for each member and her right to hold whatever moral, religious, and philosophical beliefs her conscience dictates, and to practice her profession and order her personal life accordingly.

The **American Psychiatric Association** ("APA"), with more than 36,000 members, is the Nation's leading organization of physicians who specialize in psychiatry. The APA opposes all constitutional amendments, legislation, and regulations curtailing family planning and abortion services to any segment of the population. The APA has recently reaffirmed its long-held position that the freedom to act to interrupt pregnancy must be considered a mental health imperative with major social and mental health implications.

The **Illinois Chapter of the American Academy of Pediatrics** ("ICAAP") is an organization of approximately 2,000 pediatricians in Illinois. ICAAP's mission is to promote the right of all children to live happy, safe, and healthy lives, to ensure children receive quality medical care from pediatricians (the most qualified physicians to deliver this care), and to assess and serve the needs of its membership. Members of ICAAP treat pregnant minors and encourage and support voluntary parental involvement in matters of sexuality, pregnancy, abortion and childbirth. ICAAP, however, opposes mandating this

communication and supports protecting the right to confidential care when considering abortion, as consistent with the policy of the national American Academy of Pediatrics.

The **Illinois Psychiatric Society** ("IPS") is an organization of approximately 1,100 psychiatrists in Illinois. IPS's mission is to advocate for the highest quality care for patients with psychiatric disorders which include substance use disorders, to represent the profession of psychiatry, and to serve the professional needs of its membership.

Founded in 1940, the **Illinois Public Health Association** ("IPHA"), an affiliate of the American Public Health Association, is Illinois' oldest and largest voluntary organization devoted exclusively to matters of public health. As a professional society for those engaged or interested in public health, the Association is devoted to fulfilling its mission, which is to lead and advance the practice of public health. On behalf of its 6,000 members, IPHA works to improve the public's health by promoting prevention and awareness, access to quality care, and overall health and well-being of Illinois residents, including the diverse health needs of women and children.

The **Society for Adolescent Health and Medicine** ("SAHM") is a multidisciplinary organization composed of health care professionals who have dedicated their lives to the care of adolescents. SAHM is committed to improving the physical and psychosocial health and well-being of all adolescents. SAHM works to promote public and professional awareness of the health-related needs of adolescents and supports confidential access to quality health care, including reproductive health services, for all adolescents.

INTRODUCTION

Rather than promoting the Act's asserted justification, protecting the best interests of minors, the Act will in fact subject minors to the increased physical risks of carrying a pregnancy to term or of delayed abortion procedures. Indeed, the Act's premise that abortion causes "serious and long-lasting" negative "medical, emotional, and psychological consequences" for minors—and that parental notice laws such as the Act protect against these consequences—is contradicted by the weight of scientific authority. Contrary to the assertions in the brief of *Amici Curiae* Illinois Legislators ("*Amici* Legislators"), there is no reliable evidence that parental involvement laws decrease minors' abortion or birth rates. Nor does the weight of scientific evidence support *Amici* Legislators' unfounded claim that abortion causes serious long- and short-term physical risks to minors, particularly as compared to the alternative of carrying a pregnancy to term, which unquestionably presents far greater health risks than abortion. Finally, contrary to *Amici* Legislators' claims, the most recent comprehensive reviews of the available literature on abortion and mental health have concluded that there is no valid scientific evidence showing that women facing unplanned pregnancies who have an elective abortion are at greater risk of mental health problems than those women who choose to carry their pregnancies to term.

ARGUMENT

I. PARENTAL INVOLVEMENT LAWS HAVE NOT BEEN SHOWN TO AFFECT ABORTION RATES OR BIRTH RATES AMONG MINORS

Relying on some studies that are methodologically unsound and others that are misunderstood, *Amici* Legislators contend that parental notice laws decrease both abortion rates and birth rates among minors. Neither contention withstands scrutiny.

Amici Legislators first assert that parental involvement laws decrease minors' demand for abortion, citing studies that purport to show a lower rate of abortions among minors in states with parental involvement laws as compared to states without such laws.[1] The methodological limitations of these studies are well-documented. Each study cited by *Amici* Legislators relies on data that tracks *the state in which an abortion procedure occurred*, not the state in which the woman resided.[2] As a result, a recent review of the scientific literature explains, these studies "overestimate the decline in abortions associated with the law, not only because of resident minors' leaving the state for an abortion, but because of declines in nonresident minors' entering the state for an abortion."[3] That is, the studies overstate the decline in abortion rates because they

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[1] *See* New, *Analyzing the Effect of State Legislation on the Incidence of Abortion Among Minors: A Report of the Heritage Center for Data Analysis*, 12 Catholic Soc. Sci. Rev. 187 (2007), *available at* http://www.catholicsocialscientists.org/CSSR/ (under archival volume XII); Haas-Wilson, *The Impact of State Abortion Restrictions on Minors' Demand for Abortions*, 31 J. Human Resources 140, 145 (1996), *available at* http://www.smith.edu/economics/faculty_haas-wilson.php; Haas-Wilson, *The Economic Impact of State Restrictions on Abortion: Parental Consent and Notification Laws and Medicaid Funding Restrictions*, 12 J. Policy Analysis & Management 498, 509 (1993), *available at* http://www.smith.edu/economics/faculty_haas-wilson.php.

[2] *See* Dennis et al., *The Impact of Laws Requiring Parental Involvement for Abortion: A Literature Review*, Guttmacher Institute 7, 12-13, 15 (2009), *available at* http://www.guttmacher.org/pubs/ParentalInvolvementLaws.pdf.

[3] *Id.* at 7.

account for neither resident minors who travel out of the state for an abortion because of the law, nor nonresident minors who would have traveled into the state but for the law.

Amici Legislators claim that one study "found that *both in- and out-of-state abortions* of minors in Massachusetts declined by 15 percent following passage of the state's parental consent statute,"[4] but this is simply untrue. In fact, this study reached precisely the opposite conclusion, finding that "Massachusetts minors continue to conceive, abort, and give birth *in the same proportions* as before the law was implemented" and "the vast majority of minors who would have had abortions in Massachusetts were it not for the parental consent law are accounted for by the 1,872 minors who went out of state for their abortions."[5] In reality, this study documented a 300% increase in out-of-state abortions among Massachusetts minors in the eight months following the enactment of the parental consent law.[6]

Indeed, even *Amici* Legislators concede that evidence shows that minors often travel to other states to avoid parental involvement laws.[7] And most of the studies *Amici* Legislators cite in an attempt to argue, notwithstanding the evidence to the contrary, that parental involvement laws reduce in-state abortion rates among minors without

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[4] Br. of Illinois Legislators as *Amici Curiae* ("*Amici* Legislators Br.") 5 (citing Cartoof & Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, 76 Am. J. Pub. Health 397 (1986), *available at* http://ajph.aphapublications.org/cgi/reprint/76/4/397) (emphasis added).

[5] Cartoof & Klerman at 399 & 400 (emphasis added).

[6] *Id.* at 398.

[7] *Amici* Legislators Br. 4-5 (citing C. Ellertson, *Mandatory Parental Involvement in Minors' Abortions: Effects of the Laws in Minnesota, Missouri, and Indiana*, 87 Am. J. Pub. Health 1367 (1997)).

increasing out-of-state abortion rates either fail to report out-of-state abortion rates,[8] or otherwise fail to support *Amici* Legislators' position. The Blum study noted that "relatively few" minors seeking abortions in Minnesota were even aware of that state's three-year-old parental involvement law, belying the conclusion that the law could have affected minors' decisions.[9] Studies of other states also contradict *Amici* Legislators' assertion. The Donovan study, for example, concludes that a decline in abortion rates in Massachusetts was likely "substantially offset" by an increased rate of abortions in neighboring states.[10]

Finally, *Amici* Legislators wrongly contend that parental involvement laws not only reduce the abortion rate among minors, but at the same time lower minors' birth rate. The primary support for *Amici* Legislators' counterintuitive argument is a 1996 study by Kane and Staiger[11] that rests on the unfounded assumptions that minors are not only aware of abortion laws and the location of abortion clinics, but that they actually use this knowledge when making the decision whether to engage in sexual intercourse and whether to use contraception if they do so; focus groups and surveys amply demonstrate

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[8] *See* Phillip B. Levine, *Parental Involvement Laws and Fertility Behavior*, 22 J. Health Econ. 861 (2003), *available at* http://www.uwlax.edu/faculty/nunley/Reading_List_Eco_435_Law_Econ/Levine%20(2003,%20JHE).pdf; James L. Rogers et al., *Impact of the Minnesota Parental Notification Law on Abortion and Birth*, 81 Am. J. Pub. Health 294 (1986).

[9] Blum et al., *The Impact of a Parental Notification Law on Adolescent Abortion Decision-Making*, 77 Am. J. Pub. Health 619, 619 (1987).

[10] Donovan, *Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortions*, 15 Family Planning Perspectives 259, 266 (1983); *see also* Cartoof & Klerman at 399-400.

[11] Kane & Staiger, *Teen Motherhood and Abortion Access*, 111 Quarterly J. Econ. 467, 470 (1996), *available at* http://www.dartmouth.edu/~dstaiger/pub.html.

the fallacy of such assumptions.[12] Perhaps even more importantly, Kane and Staiger in fact conclude that there is "no strong evidence that parental consent laws influenced teen birth rates."[13] Other studies come to the same conclusion—that parental involvement laws have no demonstrable effect on birth rates.[14]

II. THE PHYSICAL RISKS OF ABORTION ARE LESS THAN THE PHYSICAL RISKS OF CARRYING A PREGNANCY TO TERM

Contrary to the claims of *Amici* Legislators, abortion is one of the safest medical procedures available today.[15] Nor can *Amici* Legislators argue that the Act protects the well-being of pregnant minors by helping them to avoid the physical health risks of abortion, because those risks are demonstrably less than the risks associated with the alternative of carrying a pregnancy to term. What *Amici* Legislators fail to explain is that the relevant analysis is not whether abortion presents a physical risk to minors—all medical and surgical procedures pose some risks—but whether abortion presents a *greater* risk to pregnant minors than the alternative, which is carrying a pregnancy to term. It does not. Moreover, in describing the purported physical risks posed by

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[12] *See, e.g.*, Ellertson at 1372.

[13] Dennis et al. at 13. Nor does the 1994 Ohsfeldt and Gohmann study cited by *Amici* support their claim any better. *See* Ohsfeldt & Gohmann, *Do Parental Involvement Laws Reduce Adolescent Abortion Rates?*, 12 Contemporary Econ. Pol'y 65 (1994). The averages reported in the Ohsfeldt-Gohmann study's index in fact showed "an increase in the pregnancy rate." Dennis et al. at 12. Ohsfeldt and Gohmann's erroneous conclusion to the contrary "reflects confusion between relative and absolute changes." *Id.*

[14] *See, e.g.*, Cartoof & Klerman at 400 ("Massachusetts minors continue to conceive, abort, and give birth in the same proportions as before the [parental involvement] law was implemented."); *id.* (suggesting small increase in birth rate could be attributed to parental involvement law).

[15] *See* Bartlett et al., *Risk Factors for Legal Induced Abortion-Related Mortality in the United States*, 103 Obstet. & Gynecol. 729, 729 (2004).

abortion, *Amici* Legislators rely on out-of-date studies, political "white papers" (as opposed to recognized scientific literature), or unsupported assertions.

Amici Legislators attempt to make much of the fact that abortion, as with any medical or surgical procedure, carries some risks; however, it is the lower comparative risk of induced abortion versus carrying a pregnancy to term that reveals both the irrationality of the Act and the harms it poses. Not only is induced abortion one of the *least* risky procedures in modern medicine, but well-accepted statistics show that it is far safer than carrying a pregnancy to term.[16] The mortality rate for all abortions is 0.6 per 100,000 procedures, whereas the mortality rate for full-term pregnancy is 7.1 per 100,000 births.[17] The mortality rate for adolescents who give birth is even worse, at twice that of adult women.[18]

Amici Legislators make the further unsupported assertions that "researchers believe that smaller cervixes make it more difficult to dilate or grasp with instruments" and that minors are "more susceptible [to infection] because their bodies are not yet fully developed and do not yet produce the protective pathogens [*sic*] found in the cervical mucus of older women."[19] In fact, cervical size is correlated with a woman's body size

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[16] *See* Grimes, *Estimation of Pregnancy-Related Mortality Risk by Pregnancy Outcome, United States, 1991 to 1999*, 194 Am. J. Obstet. & Gynecol. 92, 92 (2005).

[17] Alan Guttmacher Institute, *In Brief: Facts on Induced Abortion in the United States* (2008). The risks of pregnancy ignored by *Amici* Legislators include gestational hypertension, preeclampsia, and eclampsia. These risks are notably higher in adolescents than in adult women. *See, e.g.*, Wallis et al., *Secular trends in the Rates of Preeclampsia, Eclampsia, and Gestational Hypertension, United States, 1987-2004*, 21 Am. J. Hypertension 521, 523-524 (2008).

[18] Klein et al., *Adolescent Pregnancy: Current Trends and Issues*, 116 Pediatrics 281, 283 (2005).

[19] *Amici* Legislators Br. 9.

and whether she has given birth in the past, rather than with age.[20] It is unclear what *Amici* Legislators were trying to convey in claiming that minors lack "protective pathogens" found in adult women—a "pathogen" is "a microorganism that causes disease," Oxford English Dictionary (online ver. Nov. 2010), and thus cannot be "protective"—but in any case, *Amici* Legislators again fail to offer any scientific support for their claim.

Amici Legislators' discussion of medical abortion fares no better.[21] *Amici* Legislators cite the adverse events reported to the Food and Drug Administration related to the use of mifepristone (sometimes known as RU-486) through 2005, but fail to distinguish between serious adverse events and minor adverse events, and even more significantly, provide no information as to the total number of users of the drug during that period. In fact, from 2000 through the end of 2005, mifepristone had been used in approximately 531,000 abortion procedures.[22] As a result, even assuming that every "adverse event" cited by *Amici* Legislators was serious and related to the use of the drug, such events occurred in only approximately 0.2% of abortions using mifepristone. In addition, although the FDA has not specifically examined the effects of mifepristone in

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[20] *See, e.g.*, Phelps et al., *Mifepristone Abortion in Minors*, 64 Contraception 339, 339 (2001).

[21] *Amici* Legislators Br. 9 (citing Staff Report, *The FDA and RU-486: Lowering the Standard for Women's Health*, prepared for the Chairman of the House Subcommittee of Criminal Justice, Drug Policy and Human Resources 25 (Oct. 2006), *available at* http://www.usccb.org/prolife/issues/ru486/SouderStaffReportonRU-486.pdf).

[22] Finer et al., *Effect of Mifepristone on Abortion Access in the United States*, 114 Obstet. And Gynecol. 3, 3 (2009), *available at* http://journals.lww.com/greenjournal/fulltext/2009/09000/effect_of_mifepristone_on_abortion_access_in_the.21.aspx.

adolescents, at least one academic study has indicated that induced abortion with the drug is "highly effective and well tolerated" in adolescents age 14- to 17-years old.[23]

Amici Legislators also point to studies indicating a link between abortion and the risk of subsequent pre-term birth, stressing the attendant risks to the mother. But *Amici* Legislators fail to acknowledge that adolescents are far more likely to deliver pre-term than are adults, making pre-term birth a serious risk for minors *carrying a pregnancy to term*.[24] It is irrational to require parental notice to protect minors from pre-term birth in subsequent pregnancies, when Illinois does not require parental notice for minors to carry to term, which is at least as likely—if not more so—to result in pre-term births.[25]

Amici Legislators' final attempt to link abortion with breast cancer is unavailing. The alleged "link" between abortion and breast cancer has been thoroughly debunked by mainstream medical authority. Exhaustive research by leading medical organizations and specialists in cancer research has determined conclusively that there is no link between abortion and breast cancer, in minors or in adult women.[26]

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[23] Phelps et al. at 342.

[24] *See, e.g.*, Meis et al., *Factors Associated with Preterm Birth in Cardiff, Wales*, 173 Am. J. Obstet. & Gynecol. 597 (1995).

[25] *Amici* Legislators claim that "abortion" is a risk factor for placenta previa (when the placenta partially or entirely covers the cervical opening) in subsequent pregnancies is similarly flawed. The only relationship demonstrated between abortion and placenta previa occurs with multiple sharp curettage procedures, which are not typically performed in the United States. *Williams Obstetrics* 247 (Cunningham et al. eds., 22d ed. 2005).

[26] ACOG Committee Opinion No. 434, *Induced Abortion and Breast Cancer Risk* (June 2009) (citing, *inter alia*, Beral et al., *Breast Cancer and Abortion: Collaborative Reanalysis of Data from 53 Epidemiological Studies, Including 83,000 Women With Breast Cancer From 16 Countries, Collaborative Group on Hormonal Factors in Breast Cancer*, 363 The Lancet 1007, 1014 (2004) ("Hence, the totality of the worldwide epidemiological evidence indicates that pregnancies ending as either spontaneous or induced abortions do not have adverse effects on women's subsequent risk of developing

III. ABORTION DOES NOT INCREASE PSYCHOLOGICAL RISKS FOR MINORS

There is simply no evidence to support *Amici* Legislators' claim that abortion "poses drastic risks" for the psychological health of women, and that these risks "inflict minors with particular force."[27] Given the total lack of support for their position, *Amici* Legislators do not make a sustained argument to support this assertion. Instead, they provide a bulleted list of statistics that purports to demonstrate a *causal* connection between abortion and psychological harm. Examined more fully, however, these statistics do not address whether abortion causes the asserted harm as opposed to merely that the two tend to occur in the same population of women. *Amici* Legislators also rely on statistics drawn from studies that are riddled with methodological flaws and use other statistics entirely out of context (and in direct conflict with the actual conclusions of the studies from which they are drawn). In fact, the most recent comprehensive surveys of the available evidence have consistently concluded that properly conducted, methodologically robust studies demonstrate no heightened risk of significant adverse psychological consequences resulting from an abortion.

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breast cancer."); National Cancer Institute, *Summary Report: Early Reproductive Events and Breast Cancer Workshop* (2003), *available at* http://www.cancer.gov/cancertopics/ere-workshop-report). While "early" childbirth does appear to provide some protection against breast cancer, "early" childbirth is defined as birth of a first child before the age of 25, with risk of breast cancer rising only for women who first give birth after age 30. *See* Albrektsen et al., *Breast Cancer Risk by Age at Birth, Time Since Birth and Time Intervals Between Births: Exploring Interaction Effects*, 92 Br. J. Cancer 167, 169 (2005). Surely, the State does not purport to be protecting minors from cancer by forcing them to carry unwanted pregnancies to term so that they can obtain the protective benefits of an early pregnancy.

[27] *Amici* Legislators Br. 14.

A. Methodologically Sound Studies Repeatedly Demonstrate No Causal Connection Between Abortion And Psychological Harm

The weight of existing scientific evidence undercuts *Amici* Legislators' claim that abortion causes psychological harm. As Professor Nancy Adler describes at length in her affidavit, the American Psychological Association ("APA") has "conducted two comprehensive reviews of the scientific literature relating to psychological responses after abortion—the first in the late 1980s and the most recent in 2006."[28] The first review, published in 1990, concluded that "for the vast majority of women having an elective first-trimester procedure, abortion poses no psychological hazard," and instead, "the predominant emotional responses to abortion were relief and happiness."[29]

The 2006 report of the APA's Task Force on Mental Health and Abortion ("APA Task Force"), which was published in 2008, is consistent with the findings from the first review.[30] It concluded that "[t]he best scientific evidence published indicates that among adult women who have an unplanned pregnancy the relative risk of mental health problems is no greater if they have a single elective first-trimester abortion than if they deliver that pregnancy."[31] Most importantly, the study noted 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. However, [the APA Task Force]

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[28] Adler Aff. ¶ 11 (C00128); *see* Adler et al., *Psychological Responses After Abortion*, 248 Science 41 (1990); Major et al., *Report of the APA Task Force on Mental Health and Abortion* (2008), *available at* http://www.apa.org/pi/women/programs/abortion/mental-health.pdf (*Report of the APA Task Force*).

[29] Adler Aff. ¶ 14 (C00129-130) (citing *Psychological Responses After Abortion* 41).

[30] *Id.* ¶ 19 (C00131) (citing *Report of the APA Task Force* 21).

[31] *Id.* ¶ 20 (C00131) (quoting *Report of the APA Task Force* 4).

> reviewed no evidence sufficient to support the claim that an observed association between abortion history and mental health was caused by the abortion *per se*, as opposed to other factors.[32]

Subsequent reviews of available evidence have reached conclusions nearly identical to the two APA reviews.[33] Although there are fewer studies that specifically focus on the psychological responses of adolescents,[34] one study conducted by Professor Adler and two colleagues (a study cited by *Amici* Legislators[35]) concluded that "adolescents who had abortions were at no greater risk for psychological distress than adolescents in the general population."[36]

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[32] *Report of the APA Task Force* 4.

[33] *See, e.g.*, Steinberg & Finer, *Examining the Association of Abortion History and Current Mental Health: A Reanalysis of the National Comorbidity Survey Using a Common-Risk-Factors Model*, 72 Social Science and Medicine 72 (2010) (Author Version available at http://coe.ucsf.edu/coe/news/choose_images/steinburgj_socscimed.pdf) ("When prior mental health and violence experience were controlled in our models, no significant relation was found between abortion history and anxiety disorders."); Robinson et al., *Is There an "Abortion Trauma Syndrome"? Critiquing the Evidence*, 17 Harvard Rev. Psychiatry 268, 276 (2009) ("The most well-controlled studies continue to demonstrate that there is no convincing evidence that induced abortion of an unwanted pregnancy is per se a significant risk factor for psychiatric illness."); Charles et al., *Abortion and Long-Term Mental Health Outcomes: A Systematic Review of the Evidence*, 78 Contraception 436, 448-449 (2008) ("A clear trend emerges from this systematic review: the highest quality studies had findings that were mostly neutral, suggesting few, if any, differences between aborters and their respective comparison groups in terms of mental health sequelae.").

[34] *See* Adler Aff. ¶ 23 (C00133).

[35] *See Amici* Legislators Br. 17 & n.68.

[36] Adler Aff. ¶ 24 (C00133-134) (citing Pope et al., *Post-Abortion Psychological Adjustment: Are Minors at Increased Risk?*, 29 J. Adolescent Health 2 (2001)); *see also id.* ¶¶ 25-29 (C00134-135) (describing study); Warren et al., *Do Depression and Low Self-Esteem Follow Abortion Among Adolescents? Evidence from a National Study*, 42 Perspectives on Sexual & Reproductive Health 230, 233 (2010) ("The young women in this study who had an abortion were no more likely to become depressed or have low self-esteem within the year of the pregnancy or five years later than were their peers whose pregnancies did not end in abortion."); Quinton et al., *Adolescents and Adjustments to Abortion: Are Minors at Greater Risk?*, 7 Psychology, Public Policy &

Notably, *Amici* Legislators themselves cite two studies that reach precisely this conclusion, finding *no* demonstrated causal link between abortion and psychological disorders. *Amici* Legislators cite a statistic from the study conducted by Bradshaw and Slade[37] indicating that "[u]p to 30 percent of women experience extremely high levels of anxiety and stress one month after abortion."[38] But Bradshaw and Slade themselves conclude from their review of "recent longitudinal studies looking at long-term outcomes following abortion, as compared to childbirth," that "women who have abortions do[] no worse psychologically than women who give birth to wanted or unwanted children."[39] Likewise, *Amici* Legislators cherry-pick a single statistic about a particular manifestation of psychiatric illness (deliberate self-harm, or DSH) from a 1995 British study that is among the most well-regarded by reviewers of the literature,[40] even though that study concludes that "[r]ates of total reported psychiatric disorder were no higher after

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Law 491, 507 (2001) ("minors are not at greater risk than adults for postabortion depression either in the short-term or long-term").

[37] Bradshaw & Slade, *The Effects of Induced Abortion on Emotional Experiences and Relationships: A Critical Review of the Literature*, 23 Clinical Psychol. Rev. 929 (2003), *cited in Amici* Legislators Br. 16 & n.62. The same statistic is quoted out of context in Coleman, *Induced Abortion and Increased Risk of Substance Abuse: A Review of the Evidence*, 1 Current Women's Health Issues 21 (2005), *cited in Amici* Legislators Br. 16 & n.62.

[38] *Amici* Legislators Br. 16. The study actually reported that "up to 30% women reported clinical levels of anxiety or high levels of general distress 3 or 4 weeks after abortion." Bradshaw & Slade at 948.

[39] Bradshaw & Slade at 948, *quoted in Report of the APA Task Force* 5.

[40] *See Amici* Legislators Br. 18 & n. 78 (citing Gilchrist et al., *Termination of Pregnancy and Psychiatric Morbidity*, 167 Brit. J. Psychiatry 243 (1995)). The APA Task Force characterizes this article as "the strongest study reviewed." *Report of the APA Task Force* 58. Another review gave the Gilchrist study a "Very Good" rating, one of only four studies to receive such a designation; none were rated higher. Charles at 440.

termination of pregnancy than after childbirth."[41] With respect to the cherry-picked statistic, "[t]he authors concluded that the DSH findings are most likely explained by confounding variables, such as adverse social factors, associated both with the request for termination and with subsequent self-harm."[42]

B. Numerous Methodological Flaws In The Studies Cited By *Amici* Legislators Vitiate Any Attempt To Draw A Causal Connection Between Abortion And Psychological Harm

Every other study cited by *Amici* Legislators either suffers from one or, in many instances, multiple methodological flaws. For example, *Amici* Legislators cite one study as saying that "[d]epression was reported in 20 percent of women who aborted,"[43] but fail to mention that that study did not take into account the women's prior psychological history, or the incidence of depression in the comparable population of women who did not abort.[44] Properly conducted studies should include "pre-abortion and post-abortion measures of psychological well-being."[45] Such measures are critical because "women who come in for abortions are already experiencing the stress and anxiety of dealing with an unwanted pregnancy," and it is very difficult to separate that psychological factor from the effect of the abortion unless pre-abortion measures are taken.[46]

Amici Legislators also rely on studies that fail to take account of appropriate comparison groups. In order to draw a valid conclusion about the risks of negative

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[41] *Report of the APA Task Force* 65 (quoting Gilchrist at 243).

[42] Robinson at 274 (citing Gilchrist at 243).

[43] *Amici* Legislators Br. 16 (citing Congleton & Calhoun, *Post-Abortion Perceptions: A Comparison of Self-Identified Distressed and Nondistressed Populations*, 39 Int'l J. Soc. Psychiatry 255 (1993)).

[44] *See* Congleton & Calhoun at 256-258.

[45] Adler Aff. ¶ 15 (C00130).

[46] *Id.*

psychological effects of abortion, it is critical to make observations of appropriate comparison groups, meaning here those "women who carry *unwanted* pregnancies to term."[47] However, *nine* of the studies cited by *Amici* Legislators neither made comparisons to this group, nor otherwise controlled for the intendedness or wantedness of the pregnancy. For instance, despite *Amici* Legislators' claim that one of these studies[48] "controlled for all relevant factors,"[49] the APA Task Force criticized this study for failing to "assess the *intendedness* or *wantedness* of the pregnancy," and emphasized that the methodological failing of this study is critical given that

> approximately 90% of pregnancies that are aborted are unintended, compared to only 31% of those that are delivered. Thus, although these were young women, it is reasonable to assume that at least some of the women in the delivery group were delivering a planned and wanted child. Delivery of a planned and wanted child would be expected to be associated with positive outcomes and is not a viable option for women facing an unintended pregnancy.[50]

Another study cited by *Amici* Legislators failed to control for wantedness of pregnancy even though information in the data set was available to include such a control.[51] *Amici* Legislators also cite three related studies, all of which draw from the same data on Finnish women,[52] but each suffers not only from "lack of information about pregnancy

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[47] Robinson at 270 (emphasis added).

[48] Fergusson et al., *Abortion in Young Women and Subsequent Mental Health*, 41 J. Child Psychol. & Psychiat. 16 (2006), *cited in Amici* Legislators Br. 15 & n.54-59.

[49] *Amici* Legislators Br. 16.

[50] *Report of the APA Task Force* 89 (citation omitted).

[51] Cougle et al., *Depression Associated with Abortion and Childbirth: A Long-Term Analysis of the NLSY Cohort*, 9 Med. Sci. Monitor CR157 (2003) (cited in *Amici* Legislators Br. 16 & n.60); *see also Report of the APA Task Force* 55 (criticizing Cougle study for neglecting to incorporate available data about intendedness and wantedness).

[52] *See* Gissler et al., *Suicides After Pregnancy in Finland*, 1987-94: Register

wantedness," but also from "lack of assessment of other critical variables known to co-vary with both pregnancy outcome and mental health (*e.g.*, prior reproductive history, prior mental health problems, violence exposure, etc.)."[53] In the absence of such controls, the differences highlighted by *Amici* Legislators between women who gave birth and those who terminated their pregnancies simply cannot be attributed to that choice.[54]

Linkage Study, 313 Brit. Med. J. 1431 (1996); Gissler et al., *Injury Deaths, Suicides and Homicides Associated with Pregnancy, Finland 1987-2000*, 15 Euro. J. Public Health 459 (2005); Gissler et al., *Pregnancy-Associated Deaths in Finland 1987-1994: Definition Problems and Benefits of Record Linkage*, 76 Acta Obstetrica et Gynecologica Scandinavica 651 (1997). These studies are cited by *Amici* Legislators at pp. 18-19, and notes 76, 77, and 80, respectively. It is also worth noting that the 1997 study, cited by *Amici* Legislators to support the claim that "childbirth appears to have a protective effect against suicide," *Amici* Legislators Br. 19 & n.80, concluded that the increased risk of suicide for women with a recent abortion was likely explained by "factors related to social class and lifestyle." Gissler et al. (1997) at 655.

[53] *Report of the APA Task Force* 29.

[54] As reported by the APA Task Force, two additional studies cited by *Amici* failed to control for the intendedness or wantedness of the pregnancy that was subsequently aborted (citations to *Amici* Legislators Br. in parentheses): Coleman et al., *State-Funded Abortions Versus Deliveries: A Comparison of Outpatient Mental Health Claims Over 4 Years*, 72 Am. J. Orthopsychiatry 141 (2002) (16 & n.63), and Reardon & Ney, *Abortion and Subsequent Substance Abuse*, 26 Am. J. Drug & Alcohol Abuse 61 (2000) (20 & n.85). The 2009 update to the Task Force Report noted that another study cited by *Amici* Legislators did not include "detailed contextual information relevant to the decision to have an abortion, such as information about the wantedness or intendedness of the pregnancy or reasons for the abortion." Major et al., *Abortion and Mental Health: Evaluating the Evidence*, 64 Am. Psychologist 863, 878 (2009) (*2009 Update*) (citing, *inter alia*, Pedersen, *Abortion and Depression: A Population-Based Longitudinal Study of Young Women*, 36 Scandinavian J. Pub. Health 424 (2008)). (Notably, the Pedersen study "found no correlation between teenage abortion and subsequent depression." Pedersen at 426.) Yet another study cited by *Amici* Legislators (at 17 & n.70) was rated as "Poor" in a separate literature review due to its "multiple inappropriate comparisons, including comparing aborters to a composite category of women who had miscarried, given birth, were not pregnant, or were pregnant at the time of the 2nd follow-up." Charles at 448 (citing Rees & Sabia, *The Relationship Between Abortion and Depression: New Evidence from the Fragile Families and Child Wellbeing Study*, 13 Med. Sci. Monitor 430 (2007)).

Furthermore, several studies cited by *Amici* Legislators are based on the self-reporting of the study participants *after* the outcome of the pregnancy, whether birth or termination.[55] Such "[r]etrospective reporting is subject to a large number of distortions and biases," given that "measures taken nearer an event are more likely to be accurate than measures taken at a time distant from the event."[56] One such study compounded this flawed approach by attempting to draw "conclusions about [the] prevalence of postabortion mental health problems in the general population from samples of women who had self-identified as having postabortion mental health problems."[57]

Other methodological problems in studies cited by *Amici* Legislators include the small sample size of the populations studied (either in the entire population or in the final sample used for analysis),[58] as well as the fact that the population studied was drawn from a nation with very restrictive abortion laws. The Fergusson study, for example, is based on survey data from New Zealand; in order to obtain an abortion there, the woman

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[55] Studies cited by *Amici* that are based on subsequent self-reporting include (citations to *Amici* Legislators Br. in parentheses): Rue et al., *Induced Abortion and Traumatic Stress: A Preliminary Comparison of American and Russian Women*, 10 Med. Sci. Monitor SR5 (2004) (16 & n.61); Congleton & Calhoun (16 & n.65); Coleman & Nelson, *The Quality of Abortion Decisions and College Students Reports of Post-Abortion Emotional Sequelae and Abortion Attitudes*, 17 J. Soc. & Clinical Psychology 425 (1998) (17 & n.66).

[56] *Report of the APA Task Force* 19.

[57] *Id.* at 87 (citing Congleton & Calhoun).

[58] Studies cited by *Amici* Legislators that are criticized in the Report of the APA Task Force as having unduly small sample sizes include Fergusson; Congleton and Calhoun; Coleman and Nelson; Pope et al., *Post-Abortion Psychological Adjustment: Are Minors at Increased Risk?*, 29 J. Adolescent Health 2 (2001) (cited in *Amici* Legislators Br. at 17 & n.68), and the study summarized in the press release cited in footnote 82 of *Amici* Legislators' brief (Coleman, *Resolution of Unwanted Pregnancy During Adolescence Through Abortion Versus Childbirth: Individual and Family Predictors and Consequences*, 35 J. Youth and Adolescence 903 (2006)); *see also 2009 Update* 878 (criticizing 2008 Pedersen study as "small").

"must prove to two specialist consultants that the pregnancy would seriously harm the life, physical, or mental health of the woman, that the woman is severely mentally handicapped, or that the pregnancy was the result of rape or incest."[59] As a result, the study is likely biased toward the inclusion of "vulnerable, high-risk women in the abortion group."[60] The combined effect of the flaws in the studies cited by *Amici* Legislators is to undercut entirely the claim that abortion *per se* leads to psychological harm, especially in light of methodologically sound studies that have found no such causal link.

CONCLUSION

For the reasons set forth above, *Amici* medical and public health organizations join Plaintiffs in urging this Court to reverse the decision of the circuit court.

Respectfully submitted,

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[59] Robinson at 275-276.

[60] *Id.* Another cited study examined Nigerian women in late pregnancy, concluding that factors such as polygamy, difficult pregnancies and previous abortions correlated to increased anxiety and depression. *See* Fatoye et al., *Emotional distress and its correlates among Nigerian women in late pregnancy*, 5 J. Obstet. & Gynecol. 504 (2004), *cited in Amici* Legislators Br. 17 & n.71. In Nigeria, however, abortion is even more restricted than in New Zealand, and is permitted only to save the life or health of the mother. *See* Henshaw, *The Incidence of Induced Abortion in Nigeria*, 24 Int'l Family Planning Perspectives 156 (1998).

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the appendix pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

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CERTIFICATE OF SERVICE

I, Kimberly Parker, certify that on January 18, 2011, I caused three copies of the Brief for American College of Obstetricians and Gynecologists, American Medical Women's Association, Illinois Chapter of the American Academy of Pediatrics, Illinois Public Health Association, and Society for Adolescent Medicine as *Amici Curiae* in Support of Plaintiffs-Appellants to be served by overnight courier upon the following counsel:

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