

No. 23-10362

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ALLIANCE FOR HIPPOCRATIC MEDICINE, *et al.*,
Plaintiffs-Appellees,

v.

U.S. FOOD AND DRUG ADMINISTRATION, *et al.*,
Defendants-Appellants,

DANCO LABORATORIES, LLC,
Intervenor-Defendant-Appellant.

On Appeal from the United States District Court for the
Northern District of Texas, Case No. 2:22-cv-00223-z

On Motion for Stay Pending Appeal

**AMICUS CURIAE BRIEF OF THE AMERICAN CENTER FOR LAW AND
JUSTICE IN SUPPORT OF PLAINTIFFS-APPELLANTS' OPPOSITION
TO MOTIONS FOR STAY OF DISTRICT COURT'S ORDER**

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Dated: April 11, 2023

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal. In addition to the persons or entities listed by the parties and other amici:

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INTEREST OF AMICUS¹

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of human life. The ACLJ has submitted amicus briefs, *inter alia*, in a variety of abortion-related cases, including in the district court in this case. The ACLJ offers this brief to add perspective on the consequences of relaxing the availability of abortion medications. Specifically, amicus details how abortion (and abortion pills in particular) facilitates, not women’s empowerment, but the exploitation of women by third parties for their own selfish interests.

INTRODUCTION

The district court properly concluded that the FDA’s approval of the “abortion pill” was illegal. As that court further noted, medication abortions have harmed countless women. Halting the FDA’s approval of this human pesticide spares many more women (and their children) from harm, including death, going forward. To stay the stay – to restore approval of the abortion pill – is therefore to unleash further harm on women and their children. There is no reason, much less an urgent need, for this Court to order such a result.

¹ No counsel for any party authored this brief in whole or in part. No person or entity aside from amicus, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. The parties consented to the filing of this brief.

This case challenges the FDA’s approval of, and subsequent loosening of regulations surrounding, abortion drugs. A key premise of the FDA’s actions is the assertion that availability of abortion drugs somehow benefits women. The recurrent assumption is that women want and need abortion and that ready access to abortion, including abortion drugs, is therefore a “pro-woman” position. Such a view completely disregards not just the adverse health effects of medication abortions, referenced in the decision below, but also the reality that all too often abortion is a means of *exploitation* of women – typically by men or others wielding power over those women. The ACLJ addresses this oft neglected side of the equation herein.

While this amicus brief does not address whether federal law, viz. 18 U.S.C. § 1461, forbids the mailing of abortion pills, the ACLJ has addressed that issue previously in an analysis that supports the district court’s ruling. *See* Letter to Attorney General Merrick Garland, “Response to OLC Opinion,” (Feb. 8, 2023), *available at* http://media.aclj.org/pdf/LTR---Garland---OLC-Opinion-ACLJ-Response-to-AG---02.08.2023_Redacted.pdf.

ARGUMENT

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 *choice* made by women that brings freedom, many women, if not an overwhelming majority of

women, “choose” abortion because they are pressured – or coerced – by others. Often, that pressure to have an abortion comes from those who prioritize their own self-interest 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).

One study found that 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*, 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*,

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.*

22 J. Amer. Physicians & Surgeons 113, 115 (2017).³ 66% 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 than being empowered to make a “choice,” are actually 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. 3 (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 generates an estimated \$150 billion worldwide per year. . .,” 2021 Trafficking in Persons

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

Report, U.S. Dep't of State (July 26, 2021 3:00 PM), <https://www.state.gov/reports/2021-trafficking-in-persons-report/>, with two-thirds of that \$150 billion stemming from 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> (last visited Jan. 16, 2023).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 cases in the United States in 2021 involved some sort of sexual exploitation. *Id.* at 5-6.

According to a 2005 Department of Justice-funded report, “[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*

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 <https://tinyurl.com/2nwe7dfj> (last visited Jan. 24, 2023) (*see* “About this Data” box).

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 cannot in any way be viewed as a liberating “choice” for women. 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. Ranieri*, 2019 U.S. Dist. LEXIS 84634 (E.D. N.Y. May 3, 2019) (abortions for women impregnated by leader of apparent cult); Tonya Alanez, *58 porno videos of 15-year-old girl lead to Davie man’s arrest*, S. Fla. Sun Sentinel (Oct. 23, 2019)

(“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); David McFadden, *Probation revoked for man in impregnating 11-year-old, forcing to get abortion*, ABC13 News (July 19, 2018); *Settlement reached in suit over teen abortion*, The Columbus Dispatch (Apr. 28, 2011) (soccer coach impregnated 14-year-old, then pretended to be her father in consenting to the abortion). Again, remote dispensing makes such exploitation even easier.

Abortion and Domestic Abuse

Abortion is a violent act that 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).

Abortion advocates may claim that acceding to the abuser's desires will reduce future abuse. The truth, however, is that abortion even as appeasement 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 as well the following examples:

- 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 and “told the woman she needed to get rid of her baby” by aborting, 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, *Charge: 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, 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*, CBSNews.com (June 10, 2011) <https://www.cbsnews.com/news/ohio-man-dominic-holt-reid-sentenced-to-13-years-for-attempted-forced-abortion/> (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) (listing, after article, numerous other instances, with links). Rather than freeing the woman, abortion only adds to the list of emotional and physical traumas she has suffered.

Further, 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.*, Nancy Dillon, *California man accused of forcing pregnant girlfriend to take miscarriage pills at gunpoint*, N.Y. Daily News (Dec. 12, 2019); AP, *Doctor Who Spiked Girlfriend’s Drink with Abortion Drug Sentenced to 3 years in Jail*, News18 (May 21, 2018);

AP, *Police: NY man forced woman to swallow abortion pill*, Fox News (Jan. 8, 2015).

Abortion and Male Irresponsibility

Abortion also provides an escape hatch for irresponsible men in general. While some may resort to drastic methods for imposing their will, *e.g.*, AP, *Man Uses Sex Video in Abortion Plot*, L.A. Times (Nov. 8, 1998) (threat of distributing sex tape to family to extort woman's acceding to abortion), countless 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 Corrison, *Charlie Sheen's Ex-Fiancée Brett Rossi on Their Allegedly Abusive Relationship: 'It Was Just So Toxic and So Violent,'* People (Dec. 7, 2015) (Rossi suit "alleges . . . she had [an] abortion after 'much pressure and threats' from Sheen"). See Elizabeth Dwoskin, *Coerced Abortions: A New Study Shows They're Common*, Daily Beast (Oct. 8, 2010).

Again, "easy access" to abortion pills also means easy access for shiftless and sneaky men as well. *E.g.*, Kathryn Mannie, *Texas lawyer charged after allegedly slipping abortion drug into wife's drink*, Global News (Nov. 11, 2022); *Man Gets 22 Years in Prison for Slipping Abortion Pill Into Pregnant Girlfriend's Drink*, Inside Edition (Oct. 11, 2018); Mark Osborne, *Former doctor who slipped abortion drug into girlfriend's tea sentenced to 3 years in prison*, ABCNews (May 19, 2018);

Kate Scanlon, *Doctor charged after allegedly slipping abortion pill into his girlfriend's drink*, *The Blaze* (Dec. 14, 2017); Josh Saul, *Man slopped pregnant girlfriend abortion pills: prosecutors*, *N.Y. Post* (Mar. 18, 2014).

Abortion and Employer Coercion

Abortion has apparently long been an appealing “solution” for an employer who does not want pregnancy or child care 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). 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, *DC assistant chief: I was told ‘have an abortion or be fired,’* *Fox5* (Oct. 20, 2021).

CONCLUSION

This Court should deny the motions to stay the district court's ruling.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 11, 2023, the above amicus curiae brief was filed with this Court via the CM/ECF system, which will send notice of said filing to all counsel of record.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that, pursuant to Rules 27, 29, and 32 of the Federal Rules of Appellate Procedure, the brief was prepared in Times New Roman, 14-point font and its word count is 2,572, which is no more than half of the allotted 5,200 words for Plaintiffs' response to the stay motions.

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