

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

**BRIEF OF BUSINESS LEADERS AS *AMICI*
CURIAE IN SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

Your *amici* are leaders of several businesses that support the right to life for the pre-born.² They have sought to develop employment opportunities for mothers, and believe that pregnant women need not pit motherhood against economic security. Even if the right to life could be balanced against economic interest, these *amici* believe that the future human capital of unborn Americans represents incalculable, positive economic benefit.

For example, *Amicus* Shannon O. Royce, J.D., leads the Christian Employers Alliance, a nonprofit dedicated to uniting, equipping, and representing Christian-owned businesses, protecting religious freedom, and providing the opportunity for employees, businesses, and communities to flourish. As a female leader of a nonprofit focused on business development, Royce understands the many expanded opportunities offered to women in today's workforce, which allow women to fully participate in the American economy, and the ways for employers to support them.

Your *amici* contrast with petitioners and their *amici*, such as the National Asian Pacific American

¹ Pursuant to Rule 37.6, counsel for amici curiae certifies that no counsel for a party authored the brief in whole or in part. No person other than the amici curiae or their counsel made a monetary contribution to fund the preparation or submission of this brief.

² A complete list of *Amici Curiae* is contained at Addendum A.

Women’s Forum, who claim that access to abortion pills “has a direct impact on the economic security and financial well-being of women....” Brief *Amicus Curiae* of AANHPI, Black, and Immigrant Women’s Orgs., in Support of Petitioners at 10.

Thus, your *amici* have an interest in countering the incorrect claim that abortion-causing drugs are necessary to women’s meaningful economic participation in the United States, and in showing that these economic policy concerns should not affect the FDA’s review of pills designed to take a pre-born human life.

SUMMARY OF ARGUMENT

In *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833 (1992), a plurality of the Supreme Court of the United States held that the abortion regime established by *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022), should be upheld because of the “reliance interests” women had developed. *Casey*, 505 U.S., at 856. Indeed, the plurality believed that a right to abortion was required to ensure a woman’s ability to “participate equally in the economic and social life of the nation.” *Id.*

The dissent, however, pointed out that “[s]urely it is dubious to suggest that women have reached their ‘places in society’ in reliance upon *Roe*, rather than as a result of their determination to obtain higher education and compete with men in the job market, and of society’s increasing recognition of their ability to fill positions that were previously thought to be reserved

only for men.” *Id.*, at 956-57 (Rehnquist, C.J., dissenting).

As was the case three decades ago, these fears are still unfounded. Yet a number of abortion advocates echo the claim, going so far as to say that “[w]omen’s economic contributions often depend on having access to comprehensive reproductive health services.”³

To the contrary: women have never needed to abort children to make meaningful economic contributions. The economic contributions of mothers should not be pitted against the economic contributions of their children. Motherhood is a positive economic contribution to the future. And that is especially true in today’s competitive workforce that increasingly offers flexible hours, work-from-home opportunities, and increasing opportunities for women.

Amici are a group of business leaders from across the United States who support the right to life of all Americans, including pre-born children. They include CEOs, presidents, and other leaders concerned about economic development. The drugs at issue end human lives. But your *amici* believe the best

³ Kate Bahneta, *Linking Reproductive Health Care: Access to Labor Market Opportunities for Women*, *Ctr. for Am. Progress* (Nov. 21, 2017), <https://www.americanprogress.org/issues/women/reports/2017/11/21/442653/linking-reproductive-health-care-access-labormarket-opportunities-women>; cited in Brief of Amicus Curiae NAACP Legal Defense & Educational Fund, Inc., in Support of Petitioners, at n. 13.

way to protect mothers and their pre-born children is also the best way to secure future economic success.

As a result, these *amici* have an interest in countering the unsupportable assertion that abortion is an economic benefit to the nation

While some businesses may benefit from avoiding maternity leave, it has never been necessary for women to have an abortion to participate meaningfully in the American economy. The abortion-focused approach is short-sighted and ignores the expanded role of women in the workforce even as abortion rates have dropped. It also ignores the health benefits that come from promoting family values and work-life balance among employees. Moreover, in an era of increased teleworking and flexible employment arrangements, a woman has no need to abort her pre-born child to continue working.

At the same time, businesses-such as those of *amici*-are working to increase the support provided to women who desire to have both children and a career.

ARGUMENT

I. NO EVIDENCE SUPPORTS THE CLAIM THAT WOMEN MUST ABORT THEIR CHILDREN TO PARTICIPATE FULLY IN THE ECONOMY.

The now-overturned *Casey* plurality argued that “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” 505 U.S., at 856. At the time, the claim was thinly supported by a footnote; in context, the work claimed almost the opposite: increased abortion rights resulted from other advances in women’s lives; abortion was not the cause of the improvements.⁴

In reality, the half-century before *Roe* had seen a dramatic expansion in social and economic opportunities for women. But those advances did not result from abortion access.

Since *Roe*, abortion proponents have tried to bolster the economic case for abortion and failed. Even in the briefing in these cases, a primary source of economic claims about abortion are the so-called “Turnaway Studies” (so-called because they compared women denied late-term abortions-*i.e.*, who were turned away from abortion clinics-with women who received abortions earlier in their pregnancies). Supposedly, women

⁴ See, *e.g.*, Rosalind Petchesky, *Abortion and Woman’s Choice: The State, Sexuality and Reproductive Freedom* 109, 133, n. 7 (2d. ed., Northeastern University Press 1990).

able to abort fared better economically and educationally.⁵

But not only were those studies funded by abortion proponents, they also lacked proper controls, had abysmal follow-up rates, and hid their data from independent researchers (all contrary to scientific practices).⁶

Recently, proponents have tried to bolster the Turnaway Studies, in a National Bureau of Economic Research Working Paper by Sarah Miller and others.⁷ But they reveal shockingly *little* economic impact, which dissipates quickly. The paper uses a “decomposition” analysis. According to labor economists Nichole Fortin and others, “the goal of decomposition methods are often quite ambitious, which means that strong assumptions typically underlie these types of exercise.”⁸ But decomposition methods “may not necessarily deepen our understanding of the mechanisms

⁵ See, e.g., Diana Greene Foster, *The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having – or Being Denied – an Abortion* (2020).

⁶ See, e.g., David C. Reardon, *The Embrace of the Proabortion Turnaway Study: Wishful Thinking? Or Willful Deceptions?* 85 LINACRE Q. 204, 210 (2018)(freely available at <https://pubmed.ncbi.nlm.nih.gov/30275603/>).

⁷ Sarah Miller et al., *The Economic Consequences of Being Denied an Abortion* (Nat’l Bureau of Econ. Rsch., NBER Working Paper No. 26662, 2020).

⁸ Nicole Fortin, et al., *Decomposition Methods in Economics* at 1; (Nat’l Bureau of Econ. Rsch., NBER Working Paper No. 16045,

underlying the relationship between factors and outcomes. ...[they provide] hypotheses or explanations to be explored in more detail.” Ultimately, the Miller paper finds no statistical significance to many markers of credit access or borrowing; it finds *one tenth* of a standard deviation increase in bills not paid after 30 days, or \$1,750⁹ – an effect that quickly tails off and becomes statistically unobservable after a few years. It is not present at all in states with strong Temporary Aid to Needy Families (TANF). There is almost no statistically significant, ongoing impact on access to credit or mortgage.

These tiny economic effects can hardly be said to prevent women from participating in the economic system. And they do not show that abortion restriction causes economic hardship over the long term; they show that a relatively small policy change in aid to families can obviate any short-term financial issues altogether. Given the future economic productivity of the mother and child, the more humane policy is to support mothers, not to offer abortion-causing drugs as an economic “support.”

It is unclear why the preferred policy outcome of these disputed studies is to abort more human beings rather than increase efforts to support mothers and their children.

2010) (https://www.nber.org/system/files/working_papers/w16045/w16045.pdf)

⁹ Miller, *supra*, at 4.

Indeed, there have been countless advances by women in the last half-century. Along with women being elected to the U.S. House of Representatives, the U.S. Senate, and governorships, a raft of legislation had been passed promoting women's ability to participate in the workplace. These included the Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (banning sex-based wage discrimination), the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (banning sex discrimination in employment, education, or public accommodations), and the Equal Employment Act of 1972, Pub. L. No. 92-261, 86 Stat. 103 (requiring employers to provide equal access to jobs for similarly qualified individuals).

There have also been advances in women's educational and occupational choices. As abortion rates declined from 1990 to 2016, the percentage of women in the workforce with a college degree rose from 24.5% to 41.6%; at the same time, women's earning as a percentage of men's income rose from 70.9% to 81.9%¹⁰ The number of women-owned businesses also increased from 5.4 million in 1997 to 11.6 million in 2017.¹¹

¹⁰ See Brief of 240 Women Scholars and Professionals, and Pro-life Feminist Organizations in Support of Petitioners (as amici curiae) in *Dobbs v. Jackson Women's Health Org.*, No. 19-1392 (U.S. July 29, 2021), p. 32.

¹¹ See Nat'l Ass'n Women Bus. Owners, *Women Business Owner Statistics* (2023), <https://2023.nawbo.org/resources/women-business-owner-statistics>.

While motivated activists have tried to argue otherwise, there is no reason to believe the myth that women must be able to abort their preborn children to participate fully in the economy.

II. FEARS THAT SENSIBLE ABORTION LIMITATIONS WILL HARM BUSINESSES ARE OVERSTATED AND IRRELEVANT.

Abortion advocacy groups have also claimed that if abortion-causing drugs are limited, companies may choose to relocate (whether intrastate or internationally) based on less restrictive abortion policy. This concern is likely incorrect, and regardless, it is inappropriate for judicial inquiry.

First, sensible protections of women and preborn children do not deter out-of-state businesses from relocating to a state with more favorable business climate. For example, after passage of the widely discussed “heartbeat bill”, Texas keeps attracting more corporate relocations and expansions than any other state.¹² Indeed, the state won the Governor’s Cup for job creation and capital investment even after enacting what some called the “most restrictive” abortion laws in the country.¹³

¹² Office of the Texas Governor, *Texas Economic Development, Business Climate* (2024) <https://gov.texas.gov/business/page/business-climate>.

¹³ Office of the Texas Governor, *Texas Wins Site Selection’s Governor’s Cup for Record Shattering 11th Consecutive Year* (Mar. 1,

Similarly, even after enacting pro-life legislation, Florida has continued to see economic growth.¹⁴

There is no convincing evidence that less restrictive abortion policy in a state or nation restricts economic growth. There is no good economic policy reason to rush pills through the approval process (or to avoid the process altogether).

III. *AMICI* AND BUSINESSES LIKE THEM ARE DEVELOPING RESOURCES FOR WOMEN WHO BECOME PREGNANT AND WISH TO CONTINUE THEIR CAREERS.

Finally, as much as petitioners and their *amici* are worried about the effects that preventing women from aborting their children will have on the economy, such concerns will be allayed by the steps *amici* here (along with other businesses) are taking to ensure that women can choose to keep both their children and their careers.

Examples of such resources provided by *amici* include:

2023), <https://gov.texas.gov/news/post/texas-wins-governors-cup-for-record-shattering-11th-consecutive-year>.

¹⁴ Louis Jacobson, *How has Florida Fared economically under DeSantis' Watch?*, TampaBay.Com (May 25, 2023), <https://www.tampabay.com/news/florida-politics/2023/05/25/de-santis-florida-president-economy-unemployment-wages-politics-fact/>. (“On most key metrics examined, DeSantis has reason to tout success”)

- Increased teleworking opportunities (already ubiquitous and easy to implement after the COVID-19 pandemic) and flexible working schedules.

- Paid maternity and paternity leave.

- Childcare reimbursement and tuition assistance.

Amici seek to safeguard the vital role women play in the economic life of the United States. And *amici* will continue working to ensure that women understand their importance to the nation and its economy.

CONCLUSION

The Court should rule in favor of respondents.

Respectfully submitted,

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Addendum A – List of Individual *Amici*

List of individual *Amici Curiae*, including relevant experience and company:¹⁵

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2. **Abraham Manthei**
Managing Member
Manthei Capital
3. **Kenneth Auer**
CEO/Owner
Rock Solid Warrior LLC and
Ninja Master Software LLC
4. **Brion Collins**
Managing Partner
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¹⁵ Institutions of individual *Amici Curiae* are listed for identification purposes only. The opinions expressed are those of the individual *amici*, and not necessarily of their affiliated institutions.

5. **Carter Smith, RN, BSN**
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