

No. 26-30203

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**IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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**STATE OF LOUISIANA, BY AND THROUGH ITS ATTORNEY GENERAL, LIZ MURRILL; ROSALIE MARKEZICH, PLAINTIFFS-APPELLANTS/CROSS-APPELLEES,**

**v.**

**FOOD & DRUG ADMINISTRATION; MARTY MAKARY, COMMISSIONER, U.S. FOOD & DRUG ADMINISTRATION; RICHARD PAZDUR, IN HIS OFFICIAL CAPACITY AS DIRECTOR, CENTER FOR DRUG EVALUATION & RESEARCH, U.S. FOOD & DRUG ADMINISTRATION; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ROBERT F. KENNEDY, JR., SECRETARY, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, DEFENDANTS-APPELLEES,**

**v.**

**GENBIOPRO, INC.,  
INTERVENOR-APPELLEE/CROSS-APPELLANT,**

**v.**

**DANCO LABORATORIES, L.L.C., INTERVENOR-APPELLEE/CROSS-APPELLANT.**

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF LOUISIANA No. 25-CV-1491,  
HON. DAVID C. JOSEPH**

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***AMICI CURIAE* BRIEF OF 2,796 WOMEN INJURED BY ABORTION, THE  
JUSTICE FOUNDATION AND ITS CENTER AGAINST FORCED ABORTIONS,  
AND THE NATIONAL ASSOCIATION OF CHRISTIAN LAWMAKERS  
IN SUPPORT OF  
PLAINTIFFS-APPELLANTS/CROSS-APPELLEES**

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**CERTIFICATE OF INTERESTED PERSONS**

*Louisiana, et al., v. Food and Drug Administration, et al.*

Pursuant to Fifth Circuit Rule 28.2.1, the undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal:

The State of Louisiana;

Rosalie Markezich;

Danco Laboratories, LLC;

GenBioPro;

The National Association of Christian Lawmakers;

The Center Against Forced Abortions;

The Justice Foundation;

Government Officials and Agencies involved with Regulating Women's Healthcare and named in the pleadings.

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**Interest of 2,796 *Amici Curiae* Women Injured by Abortion, The Justice Foundation and Its Center Against Forced Abortion, the National Association of Christian Lawmakers, and The National Institute of Family Law Advocates<sup>1</sup>**

2,796 *Amici* Women Injured by Abortion<sup>2</sup> are women who were injured by their own abortions. These *Amici* Women suffered grievous psychological injuries, and many suffered severe physical complications, as well. *Amici* Women have a profound interest in protecting other women and have a highly relevant perspective to aid the Court.

The Justice Foundation (TJF) is a 501(c)(3) non-profit, charitable, public interest litigation corporation which, since 2000, has represented Women Injured by Abortion, at no charge, in cases affecting women's health related to abortion. TJF has helped give women's testimony a voice in significant national litigation.<sup>3</sup>

Center Against Forced Abortions: The Justice Foundation has now collected 4,855 legally admissible affidavits or declarations under penalty

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<sup>1</sup> Pursuant to FRAP 29(a)(2), counsel for *Amici* certify that all parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief.

<sup>2</sup> [See Exhibit 1](#)- List 2,796 *Amici* Women Injured by Abortion (women's names reflected as authorized by each woman.)

<sup>3</sup> This Court has stated “ . . . *some women come to regret their choice to abort the infant life they once created and sustained...Severe depression and loss of esteem can follow.*” *Gonzales v. Carhart* 550 U.S. 124, 159 (2007).

of perjury from Women Injured By Abortion. As these were collected, it became clear that once abortion was made legal, or widely accessible, one of the ways abortion hurts women is that it allows others to force, coerce, or unduly pressure them to have an abortion. The most common forced abortions are: (1) parents or guardians forcing a minor; (2) The father of the child (as in Plaintiff Rosalie's case); and (3) prostitution and human trafficking. To prevent such common injuries TJJF founded and operates its Center Against Forced Abortions.<sup>4</sup>

National Association of Christian Lawmakers: The mission of the National Association of Christian Lawmakers, a 501(c)3 organization is to bring federal, state, and local lawmakers together in support of clear biblical principles. It does this by meeting regularly to discuss major issues and to propose model statutes, ordinances, and resolutions to address major policy concerns from a biblical worldview. The Louisiana State Chair is State Senator Mark Abraham.

### **Summary of Argument**

The State of Louisiana (hereinafter, Louisiana) and Rosalie Markezich (hereinafter, Rosalie), Appellants, have Article III standing to

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<sup>4</sup>[www.thejusticefoundation.org/CAFA/](http://www.thejusticefoundation.org/CAFA/)

bring this action. Rosalie is similarly situated to other Louisiana women and those across the country who are coerced or pressured into ingesting abortion-producing drugs. Louisiana bears the consequences of the arbitrary and capricious actions of the FDA by bearing the burden of funding the real medical care of those who: (1) voluntarily receive mail-ordered abortion-producing drugs; as well as, (2) those who are deceived into thinking the pills are “safe” (see reports *infra*); and (3) those pressured or coerced into unwanted abortions. Appellants, as well as *Amici* Women, come face to face with this as a direct result of FDA’s actions removing essential protections, including in-person visits and allowing mail dispensation through its 2023 Risk Evaluation and Mitigation Strategies (REMS).

The FDA’s approval of the abortion-producing drug protocol, and the removal of the minimum safeguards, **has produced** and **will produce** injuries to women like Rosalie and those reflected in this brief, *infra*. This harm is directly caused by FDA’s actions. Women like Rosalie, who have been injured once, are still vulnerable to further male violence.

This harm is exacerbated by the fact that the FDA abortion-producing protocol is in contravention of the federal law known as the

Comstock Act, 18 U.S.C. §§ 1461 & 1462 (1873). That Act prohibits mailing abortion-producing drugs (or sending by common carrier) into Louisiana, whose elected officials have set reasonable parameters on access to abortion. These parameters are designed to protect women, minor girls and infants<sup>5</sup>. The direct harm to women can be redressed by providing the remedies Louisiana requests.

The FDA has arbitrarily and capriciously chosen to look away from the harm caused by their abortion-producing protocol. Its actions of eliminating minimal safeguards (REMS), including lack of any physician involvement, AND removing the reporting of almost all adverse events short of death, COMBINED with mail-order delivery contrary to federal law, is arbitrary and capricious. This brief presents the ugly truth of the FDA abortion-producing drug protocol.

## **Argument**

### **I. Louisiana and Rosalie Have Article III Standing to Challenge the FDA's Actions Because They Were and Are Directly Affected By The FDA's 2023 REMS**

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<sup>5</sup> *Gonzales*, at 159.

Women with first-hand accounts of their experiences of FDA-approved abortion can present the best evidence of the harm of abortion. The abortion pill is an even more horrific experience than surgical abortion, which lends credibility to the experience of Rosalie and the steps Louisiana has taken to protect its women and minor girls.

*Amici* are extremely grateful to Rosalie for having the courage to come forward to stand in the gap for others unable to raise their voices. She is exposing the ugly exploitation of women by FDA's regulatory scheme that violates the federal Comstock Act.<sup>6</sup>

*Amici* strongly support the right of Rosalie to seek redress for her injuries and bring light to the injuries of the many women like *Amici* Women. This case is different from *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024) (a/k/a *Alliance III*). Rosalie and others who are forced to have an abortion may still fear for their lives and their safety. Before the 2023 REMS, a man could not legally go online and buy drugs to force an abortion. If Rosalie and Louisiana are not granted standing, there will be no redress or prevention of the injury to *Amici* and women like

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<sup>6</sup> See U.S.C. §§ 1461 & 1462.

them, chilling the resolve of more injured women to come forward. As the accounts of *Amici* demonstrate, women have been traumatized. Coming forward risks being re-traumatized, particularly if the harm is ignored or minimized.

As this brief will show, women are inadequately informed of the true nature of chemical abortion and are not provided any follow-up care by on-line abortion pill providers.

**#32 *Amicus* Elizabeth Henschel<sup>7</sup>: “eating disorders,... suicidal ideations”**

“I bled profusely, had severe cramping, nausea, sweating. Bleeding lasted over a month. I developed PTSD from the trauma of seeing my child. ... My partner and staff at the Planned Parenthood pressured me and lied about the viability of my baby. I did not feel free to leave.... I still suffer from PTSD following my abortion. I suffered broken relationships **Eating disorders**, overwhelming guilt, sadness, and **suicidal ideations**. ... This medication is dangerous.”

**#3 *Amicus* Kelly Lester: “I felt like I was walking through hell.”**

“I had four abortions in my life. My first was at 15-years-old and was a surgical abortion. I used the abortion pill for my second abortion at 19-years-old because my first abortion was traumatic. I thought the pill would be easier,

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<sup>7</sup> [See Expanded Statement of Women’s Abortion Pill Experience here.](#)

less traumatic on my body, and well, it was cheaper than going the surgical route. . . .

But it wasn't. It was one of the most horrific experiences of my life. I was told by the abortion clinic that it wasn't a big deal, that it was easy and private. I was in the first trimester, but I don't remember how far along, probably near the end of those first 12 weeks . . .

The bleeding and the pain started almost immediately and it was intense. The pain lasted for two days and I felt like I was in full-blown labor. I was alone, in one of my bathrooms in my apartment. I was doing drugs just to try to numb the pain. And in the end, I ultimately broke my lease and moved out because I couldn't stand to be in the apartment any longer and experience the trauma again every time I used the bathroom.

. . .

**I felt like I was walking through hell.** Women don't deserve that.<sup>8</sup>

### **#5 Patricia: "Everything the Doctor Told Me Was a Lie . . . I believed I was dying":**

. . . [A]t home alone with my infant son, I took the abortion pills. Within one hour I knew that **everything the doctor had told me was a lie**. I was bleeding so heavily, **I believed I was dying**. I was passing clots the size of baseballs, and I was in the worst physical pain of my life, worse than childbirth . . . I looked into the toilet and saw my baby. It had a head, body, and tiny arms and legs. The shame and guilt . . . I felt . . . as I was forced to flush my aborted baby down the toilet, is impossible to describe....

About 3 weeks later, I woke up . . . covered in blood, and still

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<sup>8</sup> [I had 4 abortions. The abortion pill was the worst, but women aren't getting the full story \(foxnews.com\)](#) by Kelly Lester.

Kelly Lester is Outreach Director for And Then There Were None. Her story is featured on <https://www.littlepillsthatkill.com/>.

bleeding. I rushed to the ER . . .my body had not passed all of my former pregnancy. A doctor used several giant Q-Tip's to scrape my insides, and I had weekly visits to my OBGYN....”

<https://www.silentnomoreawareness.org/testimonies/testimony.aspx?ID=4202>

The FDA has created a process – by removing the in-person evaluation and through mail-order abortion-producing drugs - to avoid seeing the woman, at all. This reinforces a system of high-volume dispensing of dangerous pills to women and minor girls in states that have tried to protect them. The black label warning on the FDA-approved drug identifies this as “possible harm including death.”<sup>9</sup> Louisiana and other states have exercised their sovereign right to protect their citizens from this harm, but to no avail.

Respondent drug manufacturers have argued that Rosalie lacks standing because it is unlikely she will be injured again. To a person unfamiliar with women who have been traumatized by abortion, it might seem that she could avoid repeating that harm by avoiding that man. However, the evidence from women hurt by abortion is that many women

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<sup>9</sup> Black Label Warning on FDA Drug:

[https://www.dropbox.com/scl/fi/6kltlwy7vyibtagucosd3/020687s020lbl\\_Page\\_02.jpg?rkey=jgxiyfqv2l0pkgbnj3vdivkkn&st=urznqmk&dl=0](https://www.dropbox.com/scl/fi/6kltlwy7vyibtagucosd3/020687s020lbl_Page_02.jpg?rkey=jgxiyfqv2l0pkgbnj3vdivkkn&st=urznqmk&dl=0)

feel worthless after an abortion, feel unable to cope with life, attempt suicide or engage in other destructive behaviors. One of those destructive behaviors is allowing men to abuse them because they feel worthless. See 4,861 Testimonies of Women Hurt by Abortion at FN 20. It would be a sterile analysis to deny the reality of harm to women like Rosalie and, thereby, deny standing. There are many, many other women in Louisiana and around the country who have endured coerced abortions.<sup>10</sup>

Louisiana asks for the 2023 REMS to be stayed. Congress has prohibited the use of any express company or other common carrier or interactive computer service for any drug, medicine, article, or thing designed, adapted, or intended for producing abortion. See the Comstock Act, *Id. Amici* support enforcement of the federal government's legal prohibition on sending abortion-procuring drugs through common carriers or mail. This Court should stay the illegal FDA's 2023 REMS.

*Amici* speak because of the injuries they have incurred through abortion and on behalf of their unborn children

## **II. The FDA Acted Arbitrarily and Capriciously By Ignoring the Injury to Women from Abortion-Producing Drugs**

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<sup>10</sup> <https://www.40daysforlife.com/en/scumbags>

The FDA acted arbitrarily and capriciously by ignoring the harm to women hurt by abortion-producing drugs, especially by incrementally eroding the protections intended through REMS for “safe” administration of this drug. These REMS resulted in women actually seeing their aborted babies and being faced with personally disposing of their child’s remains. Whether they wanted abortion or not, this is a horror that women did not expect. Many were led to understand it’s not a baby yet. This action by the FDA is a gateway to exploitation and undeniable, irreparable injury to women.

Here are more women’s actual drug-induced abortion experiences in their own words.<sup>11</sup> **Warning:** these accounts are raw and real.<sup>12</sup>

**#1 Amicus Abby Johnson: “ . . . (P)raying that I wouldn’t Die”**

“...I started volunteering for Planned Parenthood. . . . Shortly after...I chose a chemical abortion...I was told by the clinic staff that it would be more ‘natural’... ‘like having a heavy period.’ I was given the...pill in the clinic and [was] told that [it] would ‘stop the pregnancy.’ I was told to insert 800mcg of Misoprostol vaginally 24 hours later. Within 30

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<sup>11</sup> Link to Expanded Statements of Women’s Abortion Pill Experience: <https://www.dropbox.com/scl/fi/whla6w2czqfehommhstqo/2026-Expanded-Statements-of-Amici-LA.pdf?rlkey=iqkbvk64xczbsldpntluc133e&st=zrjl0ffc&dl=0>

<sup>12</sup> Part of the women’s statements are in bold for emphasis throughout the brief. That emphasis has been added. *Dobbs* allows states such as Louisiana to ban “particularly **gruesome and barbaric**” procedures. *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, at 301 (2022) (emphasis added).

minutes...I began to hemorrhage and pass clots...intense cramping. I had never experienced pain so severe...I began to vomit...I was passing clots the size of lemons. I...scooped my baby up...and...wasn't sure what to do. No one had prepared me for that...It felt wrong...but...**I dropped my child in the toilet**, closed my eyes, and flushed.

I hemorrhage[d] for hours...I just laid on my bathroom floor...Blood was everywhere...I remember falling asleep on the floor and praying that I wouldn't die. I bled and passed large clots for eight weeks. The cramps were debilitating . . .

I went back to volunteer at Planned Parenthood . . .my goal . . .[was] to convince every chemical abortion patient to have a surgical abortion . . .I didn't want any woman to go through what I had gone through . . .”

**#2 Katherine: “I thought I was going to die”:**

“ . . . I hated myself! [after a prior surgical abortion] . . . Chemical abortion was my answer . . .a couple of pills and the whole thing will be over. I was given a pill to take at the clinic and sent home with pills to place internally . . . intense cramping . . .bleeding . . .large pieces of bloody tissue . . .nausea . . .weakness. **I thought I was going to die** there all alone. I was sure I needed medical attention, but I was so afraid of the exposure . . .”

<https://www.silentnomoreawareness.org/testimonies/testimony.aspx?ID=2329>

**#4 Courtney: “I felt like I aided in the murder of my child...”:**

“ . . .I couldn't change my mind . . .it would make the staff mad . . .I was given . . .RU-486 . . .to take . . .in the clinic.

They never told me . . .[it] would . . .starve my baby to death . . .they just said it would stop my pregnancy and keep my "embryo" from becoming a baby. They made it seem as **safe** . . .**as taking a Tylenol**. They then gave me a second pill (Cytotec) to take the next day.

They didn't tell me . . .it was to induce strong contractions to expel my baby's corpse-...just . . .it was necessary to ensure my abortion was successful. I took the second pill . . ., expecting [what] they had told me.

. . . I experienced very intense, painful cramps as my body expelled my baby. . .into the toilet...A toilet. I wish . . .I would've . . .buried it.

This abortion was . . .harder...than the surgical abortion . . .I aided in the murder of my child . . .I was told a pill was "easier and safer" than a surgical abortion; it's not."

<https://www.silentnomoreawareness.org/testimonies/testimony.aspx?ID=2256>

**#6 Amicus Tracy Reynolds– A Former Phone Worker for an Abortion Recovery Program**<sup>13</sup> “ . . .(T)here has been an increase in calls for abortion recovery regarding the traumatic effects of . . .the ‘abortion pill.’ These calls often occur in the middle of the night from women who have taken the ‘abortion pill’ without understanding the effects and with no medical professional’s supervision.” For example:

**#7 From C.: ‘ . . .my tiny baby floating in the toilet bowl. . .’**

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<sup>13</sup>Amicus Tracy Reynolds worked for a non-profit that provides hope and healing for those broken through traumatic events, including abortion.

‘... my husband felt... [it was] too soon after our marriage to have a baby . . . He strongly pressured me to take the ‘abortion pill’... I did not receive any information . . .about medical/emotional consequences. It was the most traumatic experience I’ve ever had, **seeing my tiny baby floating in the toilet bowl** . . . followed by excessive bleeding. I still have nightmares and I will never forget . . . [We] are now trying to conceive but . . . my progesterone levels were off, which . . .could be an after effect of the abortion pill . . .’

**#12 It didn’t seem like it was an abortion since it was a pill. . .**

“... a day I will never forgive or forget. I had . . .been anti-abortion but in a domestic violence relationship . . . **It didn’t seem like it was an abortion since it was a pill.** I was delusional . . . My [boyfriend] at the time almost killed me and my dog . . . He choked my dog . . . He told me that my grandma needed to take me to Planned Parenthood . . . I started to bleed and went to the ER. The sac came out and I lost my baby . . . I flushed my baby down the toilet. I am forever sorry . . . I went down a path of destruction after my abortion. My abortion will affect me for the rest of my life . . .”

**#13 I just died a little bit and I’m not the same person**

“I regret my abortion so much... I think about it [every day]. I did it out of fear because my family disapproved and were not supportive. I . . . was pregnant at 19 and . . . and I got the abortion pill . . . Taking the pill was traumatizing when I saw my baby in the [sac]. **I just died a little bit and I’m not the same person I was. . . .**”

**#14 I fainted from the amount of blood lost and had to be carried out**

“...I [took] the pill. Everything seemed to [be] normal. I passed the [baby].

I never stopped bleeding. [I thought] it was the abortion followed by my period. A few weeks [passed] and I [started] losing a lot of blood. And ‘another’ pops out. The blood clots got larger. **I fainted from the amount of blood lost and had to be carried out** of my apartment by my [boyfriend] and our Roommate. **I thought I was going to die.** 10-hour ER visit and lots of meds . . . It was the scariest thing I’ve ever gone through . . .”

**#15 I looked in the toilet . . .**

“ . . . I bled excessively. **I looked in the toilet when the baby came out and ended up throwing up...** I’ll never get that image out of my head...”

**#16 (1/3/24): I hated myself ...**

“My partner paid for it . . . I was 1 month [and] . . . 2 ½ weeks [when] I terminated. I took the pills at the clinic, came home and instantly felt a wave of depression splash over me. The next day I took the rest and started bleeding instantly. Within 45 min . . . a mandarin sized clot came out. I . . . believed was the embryo . . . from that moment **I hated myself. . .**”

**#17 (1/08/24): I’m haunted by [my baby’s] eyes ...**

“I’ve recently had my abortion . . . It’s painful and brings up all sorts of emotions . . . [I]t is indeed traumatizing . . . I feel guilt and sadness of what could’ve been, because I [saw] [its] eyes before I flushed it away . . . No one prepared me for this . . . **[Every day] I burst into bouts of tears because it was my baby, but I couldn’t undo it . . . I’m haunted by [its] eyes. . .**”

**#18 (1/24/24): I ended up having nonstop gushing blood.**

“... I had a medical [chemical] abortion and it was traumatic. I got very sick, couldn’t stop throwing up and was out of commission for days. I was told to take another dose as I may be sick because I didn’t get rid of everything I was supposed to. [After] that second dose the sickness went away but I ended up having nonstop gushing blood [and went to] the emergency room. . .”

**#19 (2/1/24): they proceeded to scrape my womb repeatedly**

“I was supposed to be admitted and monitored . . .but they decided otherwise, they gave me an oral pill and inserted another vaginally and I was sent home and told to wait for the whole procedure to be completed . . . [T]he wors[t] pains of my life, got super sick and the fetus ended up coming out but there were residual products. I went back to the hospital told the Dr.’s . . . that I felt like there was still something in my womb . . . [They] did an ultrasound and . . .there was . . .and they decided . . .they would clean my womb . . . [T]hose two Dr.’s gave me a pain injection because I’d feel some “mild discomfort”. . . **[T]hey proceeded to scrape my womb repeatedly** . . . each scrape being rougher [than] the previous, I could feel myself get numb from the pain from my waist down to my legs . **I pleaded with them to stop . . .they just continued to scrape and scrape and scrape** . . . [At] some point I felt like I was about to pass out . . . I was screaming and pleading with them to stop.”

**#20 (2/1/24): I was on the shower floor SCREAMING. .**

“Mine was so bad I was **on the shower floor SCREAMING**, throwing up, bleeding everywhere, the pain was unbearable and unimaginable . . .and I have had brain

surgery!!! . . . NOBODY prepared me for the HUGE amount of blood and chunks, the intense excruciating pain, the nausea . . .”

**#21 (1/31/24): the most pain I have ever been in, in my life**

“ . . . I laid there for about an hour . . . suddenly I shot awake with a sharp cramp . . . I was in the most pain I have ever been in, in my life. The cramps were nothing like I ever . . . expected. I was . . . writhing in pain with a heating pad that did . . . nothing . . . I . . . was screaming into my pillow . . . [O]nce I started [bleeding] it came in floods...”

**#22 (01/31/24): It’s just sitting in my bathroom...**

“I took my second pills . . . & this little sac came out of me . . . I’ve been crying ever since. My husband is asking if I want to bury it & **it’s just sitting in my bathroom** until I make up my mind. I feel VERY overwhelmed. . .”

**#23 (2/8/24): . . . I can’t cope and can’t live with myself after what I have done.**

“I’m 18 and . . . just had my abortion. I passed my baby today and my heart broke. I have a one-year-old son . . . I absolutely HATE myself for this and I honestly feel like **I can’t cope and can’t live with myself after what I have done.**”

**#24 (2/8/24): . . . I had to catch my baby and pull it out of my body . . .**

“ . . . only on day 5-6 of life after losing my baby due to . . . abortion . . . I’m . . . find[ing] it hard to even look my little boy . . . (he’s 12 months old). I have to keep [going] to the car to sit . . . and cry. **I had to catch my baby and pull it out of my body . . . I wrapped my poor angel in tissue and have kept it ever since . . .** and yes, I will get rid of it soon. I’m only 18 and I’m completely and utterly traumatized . . .

I regret my decision . . . I can't live with myself any longer, I can't cope with it any longer and I just don't know what to do. Everything hurts far too much to [bear].”

Excluding effects such as these in the FDA warnings and labeling is arbitrary,

capricious and misleading and irreparably injures women. The FDA

ignoring these harms to women is removing protections in the 2023

REMS is arbitrary and capricious.

**#26 From *Amicus* Stephanie – Phone coach for helpline<sup>14</sup>  
'...the cat had eaten the baby'**

“... helpline is a 24-hour, 7-day a week, 365 days a year helpline.”

“A caller had a chemical abortion the day prior . . .the baby [is] in front of her on the counter and, ‘it has hands and feet and toes and fingers and eyes and she cannot flush the baby down the toilet...’ . . .Her father told her to call somebody . . .she called Helpline. She . . .struggles with depression . . .[and] cannot imagine just throwing the baby in the trash or down the toilet . . .”

“ . . . she was broken up and crying . . .wrapping the baby up and storing the baby in the freezer until . . .the ground thawed [enough] to bury the baby.

. . . (S)he began to scream . . .she felt like she was going to faint . . .she laid her baby on the counter while we were

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<sup>14</sup> *Amicus* Stephanie is a volunteer phone coach for a helpline for people who need help after abortion. Stephanie has handled over 900 calls.

talking and when she turned around **the cat had eaten the baby**. She was crying hysterically . . .”<sup>15</sup>

It is dangerous, arbitrary, and capricious for the FDA to dehumanize this “infant life” at the time of abortion, as recognized in *Gonzales*, 550 U.S. 124, at 159. The FDA protocol creates the process whereby women will see their babies’ corpses in their own homes. This type of irreparable harm heavily weighs the balance of harm in favor of enjoining the abortion-producing drug’s availability without an in-person exam and through direct mail distribution, as required by the evidence and the Comstock Act. *Id.* In weighing the harms, surgical abortions would still be available in states where abortion is legal.

**#27 Amicus Yolanda** has been a volunteer coach for another helpline for women hurt by abortion for a little over a year and a half. She had over 282 contacts from different people . . . in the form of texts and phone calls.

The following are situations from Yolanda:

**String still attached**

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<sup>15</sup> Quoted from *Amicus* Stephanie’s email to counsel.

A woman called... at 1a.m. She took... mifepristone and - **she was holding the fetus in her hand, but the "string" was still attached** and she didn't know what to do with it.

### **Parents down the hall**

A young girl called who took mifepristone and was in the process of having her abortion in her bedroom and wanted someone to talk to. She was scared and didn't know what to expect. I asked her if she had any support from her parents. They were in the other room and didn't know what she was doing.

### **15-year-old niece buried her baby, dug up, re-buried, dug up again . . . where to bury the baby?**

A woman was calling for her 15-year-old niece who was sobbing in the background. She had buried, dug up, and reburied her aborted baby. No one could calm her down. After the baby was aborted, **she put it in a small box and buried it** in a high traffic area in their yard. **So she dug it up and reburied it again.** She was told to move it because there was a problem with where she buried him the second time. This 15-year-old now has **a graveyard in her backyard.**"<sup>16</sup>

The FDA fails to account for dead babies in toilets and backyards.

No other drug produces human remains for disposal by lay individuals.

### **III. Abortion Pills Increase the Risk and Frequency of Injury Through Coerced or Forced Abortion**

No direct supervision by a licensed medical physician, along with mail and common carrier delivery, increases the likelihood of women like

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<sup>16</sup> Quoted from *Amicus* Yolanda's email to counsel.

Rosalie suffering this irreparable harm. These factors, combined, expand the number of unduly pressured, coerced, or forced abortions. For example, an attorney from Houston plead guilty to assault of his wife for his attempts to cause her to abort their baby by putting an abortion-inducing drug in her water.<sup>17</sup>

Here are more examples of forced or unduly pressured abortions more fully described in FN 7:

**#28 “... my boyfriend and my parents insisted . . .”**

‘ . . . **my boyfriend and parents insisted** . . .I was too young and I should have an abortion. I live ... where abortion is . . .illegal, so my boyfriend took me to New Mexico . . . I paid \$900 for a chemical abortion. When I returned . . .I was in severe pain and started bleeding profusely. I was afraid to go to the ER . . . because abortion is illegal . . . I called the helpline and they ... [said] I needed to go to the ER.’

**#29 “ . . .my boyfriend strongly pressured me . . .”**

‘ . . . **my boyfriend strongly pressured me** to have an abortion . . . [It] was too soon in our relationship . . . He suggested . . .the abortion pill, ...a website ... made it sound very easy and ‘just like taking a Tylenol.’ It was the most horrific experience I’ve ever been through . . .no information

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<sup>17</sup> Adam Zuvanich, Houston Public Media | Posted on February 8, 2024, 3:03 PM (Last Updated: February 9, 2024, 5:21 PM):

<https://www.houstonpublicmedia.org/articles/court/2024/02/08/476976/houston-attorney-accused-of-slipping-abortion-drugs-into-pregnant-wifes-drinks-pleads-guilty-sentenced-to-jail/>

given about what I would experience . . .and that I would . . .expel the baby. I bled excessively and for weeks had nightmares...'<sup>18</sup>

**#30 Boyfriend giving RU-486 pills because they had unprotected sex**

One man was calling for his girlfriend who had had a chemical abortion using...RU-486...a few months before and since they had unprotected sex, started giving her more of the pills...<sup>19</sup>

**#31: "...he said he would kill me and my oldest child."**

**" . . . I was forced to have an abortion . . . He said he would kill me . . . He threatened if I didn't get rid of it he would kill me and my oldest child . . . he said he would find us and kill us. He would punch me in the stomach hard as he could to try to miscarry the baby. I finally agreed . . . He wouldn't stop threatening my life [and] my other child. [If it] was just me, I would have run away . . . but he threatened not only my life but my one-year-old as well.**

. . . I was alone and scared . . .**I wanted to tell them I was being forced but I was [too] scared [that] he would come after me.**

. . . I was alone the entire process. My cramps got so intense I found myself on the bathroom floor. I made it to the toilet. . . I dissociate from it a lot. I have had 2 or 3 miscarriages after . . ."

Without requiring physician supervision, and by ignoring the Comstock Act, 18 U.S.C. § 1461, the FDA does not adequately perform

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<sup>18</sup> Quoted from *Amicus* Tracy's email to counsel.

<sup>19</sup> From *Amicus* Yolanda contact.

its function to protect the public, particularly women and minor girls, from unduly pressured, coerced, or forced abortions. Of the 4,861 Operation Outcry testimonies of Women Injured by Abortion, approximately 2,000 say they were pressured by someone else into having an abortion.<sup>20</sup> Rosalie is not alone. Coerced abortion is a common problem throughout the United States, and the FDA's changes to the REMS protocol directly increases the risk of forced or coerced abortions.

One Texas mother has already been arrested for forcing her child to take an abortion pill.<sup>21</sup> These events will be much more frequent if the FDA's REMS protocol, in its current form, remains operative. In weighing the benefit to the public, stopping this abuse is a far greater benefit to women and minor girls and prevents irreparable harm than the financial harm claimed by the drug manufacturers.

#### **IV. The Comstock Act and Balancing the Harms**

##### **A. The Comstock Act**

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<sup>20</sup> 4,861 Testimonies of Women Hurt By Abortion:

<https://www.dropbox.com/scl/fo/bkcp3jz1rt37r9xxnauf/AA11Qpq5TBqkMQoCt8jPWWA?rlkey=hb7ighzmyg9c1bf0o4x2gf2zd&st=i6mlvo0z&dl=0>

<sup>21</sup>As reported by ABC13, *MSN* 2/8/24: <https://www.lmtonline.com/local/article/laredo-police-woman-tried-forcing-teen-daughter-17880448.php>

Through the Comstock Act, enacted shortly after the Fourteenth Amendment, Congress put restrictions on mailing or sending through common carrier abortifacients, e.g., abortion-producing drugs. Congress made a crime the very conduct the FDA encourages and permits through the FDA 2023 REMS.

There is a reason the Comstock Act was passed. It is the only federal law directly expressing Congress's view on abortion pills and explicitly criminalizes the mailing or delivery of drugs "for producing abortion" 18 U.S.C. § 1461. An abortion-producing drug is not medicine, according to Congress. An abortion-producing drug destroys human life which is the antithesis for why the FDA exists, in the first place.

As citizens of the United States, Rosalie, and other Louisiana citizens similarly situated, need the Comstock Act to be enforced for her and for their protection. The state protections are rendered impotent by the FDA's 2023 REMS and the FDA's blatant violation of the Comstock Act by allowing the distribution of abortion-producing drugs through the mail and common carrier into its borders.

## **B. Women Suffer Other Harm, Including the Personal Disposal of Human Remains**

The FDA abortion-producing drug protocol is horrendous. It assists the abortion industry in shifting the responsibility for the disposal of human remains to the individual. See the problems created:

**#8 From *Amicus* Serena, Founder - *She Found His Grace (SFHG)*.**<sup>22</sup> Serena runs a hotline and has other forms of ministry which enables abortion-wounded women to seek help . . . “Women who take the abortion pill contact us pretty quickly because of seeing their babies and because of the medical trauma they are too embarrassed to talk to anyone about.” Following are some of the contacts received by Serena’s group.

**#9 My 9-week unborn child sits in my freezer**

“I took the first pill . . . I felt my baby pass... **I bled so much that I passed out.** Nobody prepared me for the amount of blood I lost. **I ended up in the ER.** I spent hours there . . .

.

I felt like I murdered my child... I have so much hate in my heart.

My 9-week unborn child sits in my freezer. I’m trying to find the strength to bury her...”

**#10 I couldn’t bear to flush my baby down the toilet .**

..

“...I took the pills... After being in a lot of pain for over 24 hours . . .I went to the ER . . .to see if I could change my mind... I was told my uterus was empty. I . . . went

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<sup>22</sup> *She Found His Grace*, <https://www.shefoundhisgrace.org>.

home...I...[felt] a big clot drop, then came a tiny perfectly formed 10-week baby and I lost it. **I couldn't bear to flush my baby down the toilet** so I got him out and washed him off. I was frozen in guilt, shame, and regret. I plan to bury him behind my house . . .”

**#11: I got sick with a bad case of sepsis and almost lost my life. . .**

“...I walked around for a month with my dead babies inside of me... I took another dose of abortion pills and . . . I was in pain and bleeding but nothing came out. I was walking around a whole week in pain before **I got sick with a bad case of sepsis and almost lost my life.**

Proper balancing of the harms, the public interest and equity require the Court to conclude that a stay at this point will save multitudes of women from irreparable injury. Rolling back the 2023 REMS will protect women from exploitation and trauma. It will begin to eliminate backyards and sewer systems and freezers all across America being modern-day graveyards.

States have rational, "legitimate interests" in such laws . *Dobbs* states:

“These legitimate interests include respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of **particularly gruesome or barbaric medical procedures**; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability.”

*Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2284 (2022) p. (internal citation omitted, emphasis added).

As indicated by this Court, abortion pills are “particularly gruesome or barbaric.”

### **Conclusion**

Considering the FDA-approved drug-induced abortion regimen any type of lawful regulatory program is a fallacy. It is not safe. The FDA acted arbitrarily and capriciously by bringing the drug to market, by lessening safety restrictions (including the 2023 REMS), and keeping it on the market and available through the mail, without supervision by a doctor. Louisiana has laws specifically designed to protect both the mother and the baby. The FDA’s actions are fruit of the poisonous tree of *Roe*.<sup>23</sup>

The FDA has run roughshod over the sovereign authority of Louisiana to determine what is and is not acceptable within its borders, resulting in tangible injuries. Do not look away from the over-reach of the FDA. Look at this reality, directly. Don’t shrink back. Eroding Louisiana’s laws robs that state of its powers and treats its citizens just

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<sup>23</sup> *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2284 (2022)

like those in California or New York.

### Prayer

This Court should:

- a) Affirm the lower court's finding that Louisiana and Rosalie have standing;
- b) Affirm the lower's finding that Appellants are likely to prevail on the merits;
- c) Reverse the lower court's ruling denying the §705 Stay and enter that stay;

Respectfully Submitted,

/s/ Mary J. Browning

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### **CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 6,495 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) [or current applicable exclusion rule].

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook.

*/s/ Mary J. Browning*  
Mary J. Browning

### **CERTIFICATE OF SERVICE**

I certify that on June 22, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished through the appellate CM/ECF system.

/s/ Mary J. Browning

Mary J. Browning

### **ECF CERTIFICATIONS**

I certify that the required privacy redactions have been made pursuant to 5th Cir. R. 25.2.13, the electronic submission is an exact copy of the paper submission, and the document has been scanned for viruses and is free of viruses.

/s/ Mary J. Browning

Mary J. Browning

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No. 26-30203 State of Louisiana v. FDA  
USDC No. 6:25-CV-1491

Dear Ms. Browning,

You must electronically file a "Form for Appearance of Counsel" within 14 days from this date. You must name each party you represent, see Fed. R. App. P. 12(b) and 5th Cir. R. 12 & 46.3. The form is available from the Fifth Circuit's website, [www.ca5.uscourts.gov](http://www.ca5.uscourts.gov). If you fail to electronically file the form, the brief will be stricken and returned unfiled.

Sincerely,

LYLE W. CAYCE, Clerk

*Christy Combel*

By: \_\_\_\_\_  
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