IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA, REPRODUCTIVE HEALTH AND COUNSELLING CENTER, WOMEN'S HEALTH SERVICES, INC., WOMEN'S SUBURBAN CLINIC, ALLENTOWN WOMEN'S CENTER, and THOMAS ALLEN, M.D., on behalf of himself and all others similarly situated,	
Plaintiffs-Appellees, v.	Case No. 90-1662
ROBERT P. CASEY, N. MARK RICHARDS, ERNEST PREATE, personally and in their official capacities, and MICHAEL D. MARINO, personally and in his official capacity, together with all others similarly situated,	
Defendants-Appellants.	

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
HONORABLE DANIEL H. HUYETT, PRESIDING

BRIEF AMICUS CURIAE OF AMERICAN ACADEMY OF MEDICAL ETHICS IN SUPPORT OF APPELLANTS

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STATEMENT OF INTEREST OF AMICUS CURIAE

The American Academy of Medical Ethics is an educational and lobbying organization with approximately 20,000 physician members, incorporated to respond to the challenges to established medical ethics emerging in recent decades. The Academy supports the rights of patients to be provided full and accurate medical information and any other necessary information with which to render informed decisions pertaining to their medical treatment, including abortion. The Academy has previously pursued its interests before the federal courts through participation as amicus curiae in cases including Webster v. Reproductive Health Services, 109 S.Ct. 3040 (1989).

The Academy submits this Brief in support of Appellants and asks this court to reverse the decision of the United States District Court for the Eastern District of Pennsylvania.

ARGUMENT

I. THE INFORMED CONSENT PROVISIONS OF THE ACT ARE CONSTITUTIONALLY PERMISSIBLE UNDER CURRENT SUPREME COURT JURISPRUDENCE.

The district court erred in finding unconstitutional the informed consent provisions of the Pennsylvania Abortion Control Act.[1] Planned Parenthood of Southeastern Pennsylvania, et al. v. Casey, et al., No. 88-3228 (E.D. Pa. 1990). The court's opinion dismisses the Commonwealth's substantial and well-recognized interest in protecting the health of women in the Commonwealth who may seek an abortion. Moreover, the district court's understanding of abortion jurisprudence is frozen in time and ignores totally the Supreme Court's decision in Webster v. Reproductive Health Services, 109 S.Ct. 3040 (1989). As such, the district court's constitutional analysis is tied to a standard of judicial review that is no longer valid. Planned Parenthood of Minnesota v. Minnesota, 910 F.2d 479, 486 (8th Cir. 1990). Webster permits states to enact reasonable regulatory legislation consistent with state interests; the district court ignored this. Accordingly, the judgement of the district court should be reversed.

A. The Proper Standard Of Review For A Facial Challenge Of Unconstitutionality Is To Show That There Are No Circumstances Under Which The Law May Be Constitutional.

Appellees' facial challenge to the informed consent provision of the Pennsylvania statute fails to meet the appropriate burden. Recently, the Supreme Court cautioned against the difficulty of

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[1] Pa. Cons. Stat. Ann. tit. 18, sec. 3205(a) (Purdon Supp. 1990-1991), set forth in Appendix A.

substantiating a facial claim of unconstitutionality:

> A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. The fact that the [relevant statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid, since we have not recognized an 'overbreadth' doctrine outside the limited context of the First Amendment.

United States v. Salerno, 481 U.S. 739, 745 (1987) (emphasis supplied). The district court apparently ignored the Supreme Court's admonition that "the elementary rule is that every reasonable construction must be resorted to in order to save a statute from unconstitutionality," DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades, 108 S.Ct. 1392, 1397 (1988), and that it must be shown "from the text of the Law and from actual fact that a substantial number of instances exist in which the Law cannot be applied constitutionally". New York State Club Ass'n v. City of New York, 108 S.Ct. 2225, 2235 (1988).

This facial challenge standard applies to state abortion statutes as well. In its most recent decision regarding abortion, the Supreme Court stated that "[t]he Court of Appeals should not have invalidated the Ohio statute on a facial challenge based upon a worst-case scenario that may never occur." Ohio v. Akron Center for Reproductive Health, Inc., 110 S.Ct. 2972, 2981, (1990). Likewise, in Webster, the Court reviewed a Missouri abortion statute and concluded that the "Court of Appeals' interpretation also r[an] 'afoul of the well-established principle that statutes

will be interpreted to avoid constitutional difficulties.'" 109 S.Ct. at 3054 (citing Frisby v. Schultz, 108 S.Ct. 2495, 2501 (1988).[2]

The court below made no effort to interpret the informed consent provision constitutionally. Similarly, appellees faltered in proving their burden of showing that "no set of circumstances exists" under which the statute may be applied constitutionally. In most, if not all, cases, presenting a woman with information regarding the benefits and burdens of a decision to abort, and any options available to her will advance the state's legitimate interest in maternal health and deliberate decisionmaking.

B. The Supreme Court Has Long Recognized the Power of the State to Protect the Health of Its Citizens Through the Exercise of Legislative Authority.

Pennsylvania's attempt to protect those women within the Commonwealth who are considering whether to have an abortion,

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[2] See also Justice O'Connor's concurring opinion, in which she discussed the arguments raised by appellees against Missouri's preamble: "I agree with the Court, therefore, that all of these intimations of unconstitutionality are simply too hypothetical to support the use of declaratory judgment procedures and injunctive remedies in this case." 109 S.Ct. at 3059. (O'Connor, J., concurring in part, concurring in the judgment.) She likewise rejected the facial challenge to the ban on the use of public facilities and employees for non-life-threatening abortions.

> [T]here may be conceivable applications of the ban on the use of public facilities that would be unconstitutional. . . . Maher, Poelker, and McRae stand for the proposition that some quite straightforward applications of the Missouri ban on the use of public facilities for performing abortions would be constitutional and that is enough to defeat appellees' assertion that the ban is facially unconstitutional.

through passing abortion-specific informed consent legislation, is a legitimate exercise of the Commonwealth's police power. At the core of the Commonwealth's police power is the authority to protect public health. Barsky v. Board of Regents, 347 U.S. 442, 449 (1954). This authority is nowhere more important than in its relation to the medical field, where regulation is necessary for the Commonwealth to ensure that its important interest in public health is served. In an unbroken line of decisions, the Supreme Court has recognized the state's police power to regulate the medical profession in the interest of citizen well-being. See, e.g., McNaughten v. Johnson, 242 U.S. 344 (1917); Watson v. State of Maryland, 218 U.S. 173 (1910); Missouri ex rel. Hurwitz v. North, 271 U.S. 40 (1926); Whalen v. Roe, 429 U.S. 589 (1977). In Barsky v. Board of Regents, the Court stated clearly:

> It is elemental that a state has broad powers to establish and enforce standards of conduct within its borders relative to the health of everyone there. It is a vital part of a state's police power. The state's discretion in that field extends naturally to the regulation of all professions concerned with health.

347 U.S. at 449.

The scope of the Commonwealth's right to guard public health through the regulation of the medical profession is broad.[3]

[3] In the last several decades, the trend in legislatures and courts has been toward greater governmental regulation of service providers and manufacturers. This oversight is designed to empower consumers with information necessary for their informed participation in the marketplace, and for their protection from inferior goods and services. Accordingly, consumer protection laws such as information disclosure requirements, codified standards of care and product safety minimums have been widely enacted. Appropriately, the medical profession has also been increasingly required to meet statutory standards of competence and care, as

Pennsylvania, like all states, has strict statutory regulations governing educational and professional requirements for medical practice licensure. Through such licensure requirements, the Commonwealth may define the minimum standards for those who will practice medicine within the Commonwealth. Statutorily-created medical boards and medical practice acts also regulate medical practice, the degree of skill required for continued licensure, as well as professional ethics and behavior. Pa. Cons. Stat. Ann. tit. 63, §422.1, et seq. (Purdon Supp. 1990-91). The commercial aspects and scope of practice are likewise regulated closely by statute. See e.g., Pa. Cons. Stat. Ann. tit. 35, §448.101 et seq. (Purdon Supp. 1990-91). The Supreme Court has consistently upheld such legislation as an appropriate exercise of the state's police power. See, e.g., Collins v. Texas, 223 U.S. 288 (1912); Barsky v. Board of Regents, 347 U.S. 442 (1954); Williamson v. Lee Optical Co., 348 U.S. 483 (1955); Friedman v. Rogers, 440 U.S. 1 (1979).

Informed consent statutes are an important component of the Commonwealth's medical regulatory framework. Informed consent laws ensure that patients are informed fully of the attendant benefits and burdens of a proposed treatment and any available options to the treatment. Informed consent laws reject the earlier paternalism which permitted the physician to disclose to the patient only as much information as he deemed fit. Instead, these

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well as, patient protective measures. Such regulation of the medical profession is especially important given the often irreversible nature of medical treatment.

statutes are premised on a respect for patient autonomy and the patient's right to self-determination. Canterbury v. Spence, 464 F.2d 773 (D.C. Cir. 1972). In Canterbury, the court rejected a physician's right to withhold relevant information and stated that the physician's duty is to disclose "all risks potentially affecting the decision." 464 F.2d at 787.

Informed consent statutes reflect the movement toward providing the patient with more information and a greater role in medical decisionmaking. Nearly every state has enacted laws requiring physicians to obtain the informed consent of the patient prior to treatment.[4] In addition, an increasing number of states

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[4] Alaska Stat. sec. 09.55.556 (1989); Ariz. Rev. Stat. Ann. sec. 12-563 (1982); Ark. Stat. Ann. sec. 16-114-206 (1987); Cal. Penal Code secs. 2670.5-2674 (West 1982) (prisoners' right to give informed consent to organic therapy); Colo. Rev. Stat. secs. 13-20-401, -402 (1987) (written informed consent needed for electroconvulsive treatments); Del. Code Ann. tit. 18, sec. 6852 (1989); Fla. Stat. Ann. sec. 766.103 (West Supp. 1990); Ga. Code Ann. sec. 31-9-6.1 (1985); Haw. Rev. Stat. sec. 671-3 (1985); Idaho Code sec. 39-4301-4306 (1985); Iowa Code Ann. sec. 147.137 (West 1989); Ky. Rev. Stat. Ann. sec. 304.40-.320 (Baldwin 1987); La. Rev. Stat. Ann. sec. 40:1299.40 (West 1977); Me. Rev. Stat. Ann. tit. 24, sec. 2905 (Supp. 1989-1990); Mass. Gen. Laws Ann. ch. 111, sec. 70E (West 1983) (health care patients "have the right...to informed consent to the extent provided by law"); Mich. Comp. Laws Ann. sec. 333.20201 (West 1980) (health care patients' right to give informed consent to treatment); Minn. Stat. Ann. sec. 144.651 (West 1989) (health care patients' right to give informed consent to treatment); Mo. Ann. Stat. sec. 198.088 (Vernon 1983) (nursing home patients' right to give informed consent to experimental treatment); Neb. Rev. Stat. sec. 44-2816 (1988); Nev. Rev. Stat. sec. 41A.110 (1987); Nev. Rev. Stat. sec. 449.710 (health care patients' right to give informed consent to treatment) (1987); N.H. Rev. Stat. Ann. secs. 507-C:1, -C:2; N.Y. Pub. Health Law sec. 2805-d (McKinney 1985); N.Y. Pub. Health Law secs. 2440-2446 (McKinney 1985) (right to give informed consent to experimental research); N.C. Gen. Stat. sec. 90-21.13 (1985); Ohio Rev. Code Ann. sec. 2317.54 (Anderson 1981); Or. Rev. Stat. sec. 677.097 (1989); Or. Rev. Stat. sec. 441.605 (1989) (nursing home patients' right to give informed consent to treatment); Pa. Cons. Stat. Ann.

require that informed consent be obtained for specific procedures, such as sterilization, breast cancer treatment, etc. See, e.g., Pa. Cons. Stat. Ann. tit. 35, §5641 (Purdon Supp. 1990-91) (breast cancer treatment); Pa. Cons. Stat. Ann. tit. 35, §521.13 (prenatal examination for syphilis). The increasing number of procedure-specific informed consent statutes evidences their recognized importance.

> The diversity of such statutes demonstrates that... states take an active role in making judgments about the minimum amount and kinds of information that patients should be told. By making such judgments, states protect the public health and the integrity of medical care decision-making. Although such statutes do not always conform to the precise informational needs of every individual patient in every possible setting, the state unquestionably has the authority to make judgments, based on a reasonable patient perspective, about what patients generally need to know in order to make a minimally informed decision about medical treatment.[5]

The physical and emotional dangers posed by a medical treatment decision, its often irremediable consequences, and the Commonwealth's obvious interest in the public's physical and psychological health support the Commonwealth's right to ensure that medical treatment decisions are fully informed.

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tit. 40, sec. 1301.103 (Purdon Supp. 1990-1991); Tenn. Code Ann. sec. 29-26-118 (1980); Tex. Rev. Civ. Stat. Ann. art. 4590i, secs. 6.01-.07 (Vernon Supp. 1989-1990); Utah Code Ann. sec. 78-14-5 (1987); Vt. Stat. Ann. tit. 12, sec. 1909 (Supp. 1989-1990); Va. Code Ann. secs. 37.1-234, -235 (Supp. 1989) (informed consent must be obtained in order to conduct human research); Wash. Rev. Code Ann. secs. 7.70.050, 7.70.060 (Supp. 1989-1990).

[5] Jipping, Informed Consent to Abortion: A Refinement, 38 Case W. L. Rev. 329, 359 (1988).

The Commonwealth's interest in ensuring that patients seeking medical care within its borders are fully informed and that they are given the opportunity to make an informed choice regarding their care is not nullified merely because the medical treatment contemplated is abortion. Rather, the Commonwealth's interests supporting informed consent requirements are even more compelling in the abortion context. First, abortion is nearly always an elective procedure. Torres & Forrest, Why Do Women Have Abortions?, 20 Family Planning Perspectives 169 (1988) (less than two-per-cent of the 1.5 million abortions performed annually in the United States are for clinically-indicated reasons). Second, the abortion decision is an irreversible one. Decisions to abort based on incomplete information are believed to be a major cause of the psychological trauma many women experience following an abortion. A. Speckhard, The Psycho-Social Aspects of Stress Following Abortion (1987). Third, "[a]bortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of potential life." Harris v. McRae, 448 U.S. 297, 325 (1980). In addition to the Commonwealth's interest in informed decisionmaking, abortion implicates the Commonwealth's interest in fetal life. Informed consent statutes help ensure that the Commonwealth's interest in fetal life is not compromised by abortion decisions made without an opportunity to weigh the nature of the decision. These legitimate state interests strongly support abortion-specific informed consent statutes.

C. Webster Acknowledged a State's Ability to Adopt Reasonable Abortion Regulations That Further A State's Legitimate Interest in Protecting the Health of Its Citizens.

1. Webster adopted a "rational basis" standard of review for abortion regulations.

Webster altered substantially the state of abortion jurisprudence. In unambiguous language, the Court departed from the strict judicial scrutiny employed in earlier abortion decisions and upheld the statute under a rational basis standard. ("The Missouri testing requirement here is reasonably designed to ensure that abortions are not performed where the fetus is viable---an end which all concede is legitimate---and that is sufficient to sustain its constitutionality." Webster, 109 S. Ct. at 3058). The Court clarified further that its decision would allow more abortion regulation than had been permitted previously: "There is no doubt that our holding today will allow some governmental regulation of abortion that would have been prohibited under the language of cases such as Colautti v. Franklin [cit. omit.] and Akron v. Akron Center for Reproductive Health, Inc.". Id. Without overruling Roe, the Webster Court "substantially cut back the doctrines of Thornburgh and City of Akron"[6] which---through subjecting abortion regulations to strict judicial scrutiny---had eviscerated the state's ability to enact any regulations touching on abortion.

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[6] Wardle, "Time Enough": Webster v. Reproductive Health Services and the Prudent Pace of Justice, 41 Fla. L. Rev. 881, 914 (1989).

In place of the strict scrutiny used to strike the abortion statutes at issue in Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 ((1986) and Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416 (1986),[7] the Webster Court found that such statutes would be upheld if they were reasonably related to legitimate state interests. Webster, 109 S. Ct. at 3058. However, the district court ignored the Court's guidance in Webster and instead relied on the now-defunct

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[7] In Thornburgh and Akron, sharply divided Courts invalidated abortion-specific informed consent requirements. The Akron ordinance required that the woman be told she is pregnant; that the unborn child is a human life from the moment of conception; information regarding, fetal gestational age and anatomical and physical description of the fetus at that age; that abortion is a major surgical procedure that can result in serious complications and may leave unaffected or worsen any existing psychological problems, or result in severe emotional disturbances; and that assistance agencies are available. Akron, 462 U.S. at 423. The Court invalidated the informed consent requirements, concluding that "because abortion is a medical procedure, that the full vindication of the woman's right necessarily requires that her physician be given 'the room he needs to make his best medical judgment.'" Id. at 427 (quoting Doe v. Bolton, 410 U.S. 179, 192 (1973)). The majority also stated that to be constitutional, the informed consent provisions must be justified by a "vital state need". Akron, 462 U.S. at 448.

The Thornburgh statute required that the pregnant woman be told that there may be detrimental physical and psychological effects which are not accurately foreseeable; that there are particular risks associated with the particular abortion procedure to be used; information regarding gestational age of the child; that medical assistance may be available for prenatal care; and that the father is responsible for child support. The majority acknowledged that a "[r]equirement that the woman give what is truly a voluntary and informed consent, as a general proposition, is, of course, proper and is not unconstitutional." Thornburgh, 476 U.S. at 760. However, the majority concluded that the Commonwealth's attempt to ensure that women seeking abortions were adequately informed amounted to the "antithesis of informed consent." Id. at 764.

Thornburgh/Akron analysis to strike nearly all of Pennsylvania's Abortion Control Act, including the informed consent requirements. Because the informed consent provisions of the statute are reasonably related to Pennsylvania's legitimate interests in protecting maternal health, they are constitutional under the standard articulated in Webster and the district court's decision should be reversed.

In Webster, the Court upheld a Missouri statute that, among other things, prohibited public employees[8], public facilities[9] and public funds[10] from being involved in assisting or performing abortions not necessary to save the mother's life; that required testing of fetal gestational age of potentially viable fetuses and that prohibited abortions on viable fetuses[11]; and that stated that life began at conception.[12] The Court found that these were reasonable attempts by Missouri to advance its policy preference of childbirth over abortion and to protect its interest in preserving fetal life. In reviewing provisions prohibiting state employees, funds and facilities from being involved in the performance or assistance of abortions, the Court affirmed its decisions in Maher v. Roe, 432 U.S. 464 (1977), Poelker v. Doe, 432

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[8] Mo. Rev. Stat. 188.210 (1986).

[9] Mo. Rev. Stat. 188.215 (1986).

[10] Mo. Rev. Stat. 188.205 (1986).

[11] Mo. Rev. Stat. 188.029 (1986).

[12] Mo. Rev. Stat. 1.205 (1986).

U.S. 519 (1977); and Harris v. McRae, supra, which upheld policies that funded or provided facilities for childbearing, but not for abortion. The Court stated that "Nothing in the Constitution requires States to enter or remain in the business of performing abortions... [T]he State need not commit any resources to facilitating abortions, even if it can turn a profit by doing so." Webster, 109 S. Ct. at 3052.

In examining the statute's fetal viability testing requirements, the Webster Court found it was constitutional for the state to perform tests on fetuses of twenty or more weeks gestational age so as to prevent the abortion of viable fetuses. In upholding this provision, a plurality of the Court "abandon[ed] the trimester framework"[13] of Roe and held that the state's interest in fetal life existed throughout pregnancy. Id. at 3056-58 (quoting with approval the separate dissents of Justices White and O'Connor in Thornburgh stating that the state's interest in fetal life is as compelling before viability as after it).

The Webster decision rejects both the result and the standard of review employed in Thornburgh. The Webster Court also repudiated Thornburgh for isolating abortion qua surgical procedure and stated that the principles of informed consent as embodied in the Pennsylvania statute would be valid for any medical procedure, including abortion.

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[13] 109 S. Ct. at 3057 n.15 (Chief Justice Rehnquist's opinion was joined by Justices White and Kennedy).

2. Webster rejected legislative intent as a basis on which to invalidate otherwise valid legislation.

As important as the Court's relaxing the standard by which abortion regulations would be reviewed, is the Court's repeated deference to legislative judgments and the construction given such statutes by the state. In Webster, the Court repudiated the Thornburgh and Akron analysis which looked to the "anti-abortion character of the statute and its real purpose," Thornburgh, 476 U.S. at 764[14] (emphasis added), to invalidate otherwise constitutional legislation. The Webster Court rejected this approach, "indicating that the intent to restrict or regulate abortion to the extent permitted under the Constitution was not a 'bad' intent. The likelihood that otherwise valid state legislation is intended to deter or will deter some women from choosing abortion is no longer an acceptable reason for courts to strike down abortion legislation."[15] Likewise, the Webster Court three times accepted the construction of the challenged statutes urged by Missouri's Attorney General. In so doing, the Court rejected Thornburgh's "unprecedented canon of construction" under which a "permissible reading of a statute [restricting abortion] is to be avoided at all costs." Thornburgh, 476 U.S. at 812 (White, J., dissenting). By embracing Missouri's narrowing

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[14] Justice Blackmun repeatedly referenced the legislature's motive as a factor contributing to the unconstitutionality of Pennsylvania's statute. See, 476 U.S. at 752, 759, 762, 763, 764, 767.

[15] Wardle, supra at 916.

interpretations of its statutes, the Webster Court made clear that such constructions, if plausible, were to be accepted by lower federal courts in these cases in order to sustain a statute's constitutionality or to avoid a constitutional question. See, Webster, 109 S. Ct. at 3050, 3053-54, 3054-55.[16]

3. The district court ignored these changes and employed the Thornburgh/Akron analysis.

Notwithstanding Webster's explicit departure from decisions such as Thornburgh and others expanding the Roe doctrine, the district court pretends Webster left such decisions fully intact.[17] Instead of acknowledging that Webster "allow[s] some governmental regulation of abortion that would have been prohibited" under previous cases, Webster, 109 S. Ct. at 3058, the district court focuses on the undebated point that Roe itself has not been overruled nor its core holding essentially modified. Slip Op. at 135-37. This erroneous assumption leads him to apply the discarded constitutional analysis employed in Thornburgh and Akron to strike the informed consent provisions of Pennsylvania's law.

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[16] See also, Webster, 109 S. Ct. at 3061 (O'Connor, J., concurring in part, concurring in the judgment) ("The Court today has accepted the State's every interpretation of its abortion statute".); Id. at 3068-69 n.1 (Blackmun, J., concurring in part, dissenting in part).

[17] Although Judge Huyett ignores Webster's deference to legislative judgments in his analysis of the constitutionality of Pennsylvania's Abortion Control Act, he invites the public to elect those whose legislative judgments---i.e., laws protecting legalized abortion-on-demand---are more in keeping with Roe v. Wade. Slip Op. at 190-91. Interesting, too, is that it is only in his impassioned conclusion that Judge Huyett recognizes that Webster did work a change in the constitutional status of the right to abortion. Slip Op. at 190-91.

Judge Huyett's response to Webster, however, is inadequate. That "Roe v. Wade [cit. omit.] and the fundamental constitutional right of women to decide whether to terminate a pregnancy[] survive[s]" 109 S. Ct. at 3067 (Blackmun, J., dissenting), does not mean that Webster changed nothing. Judge Huyett notes correctly that the Webster majority declined to reconsider Roe itself. Slip Op. at 136. However, he errs in concluding that all of Roe's progeny live-on, untouched. The decisions cited to demonstrate that Webster in no way modified abortion law are inapposite. To a one, they speak only to the more general proposition that Roe has not been overruled, or its core holding essentially changed. Relevant to this court's inquiry is whether Webster changed the standard of review to be used to evaluate abortion regulations. It did. Those decisions looking beyond the question of whether Webster overruled Roe recognize this fact. In reversing a district court's invalidation of a fetal disposal law, the Eighth Circuit noted Webster's impact on the standard of review to be applied to regulations that do not pose absolute, or serious obstacles on the abortion decision. In Planned Parenthood of Minnesota v. Minnesota, the court found that "the Supreme Court appears to have adopted a less rigorous standard of review than the strict scrutiny analysis." 910 F.2d 479, 486 (8th Cir. 1990). Judge Huyett ignored the impact Webster had on the substantive due process standard applicable to abortion regulations.

II. THE COMMONWEALTH OF PENNSYLVANIA MAY PROPERLY ENSURE THAT A WOMAN RECEIVES SUFFICIENT INFORMATION TO ENABLE HER TO DECIDE INTELLIGENTLY, KNOWINGLY AND VOLUNTARILY WHETHER TO TERMINATE HER PREGNANCY.

A. Requiring That a Physician Provide A Woman With Reasonable Medical Information Regarding the Nature of the Abortion Procedure, the Probable Gestational Age of the Unborn Child and the Medical Risks Associated with Carrying Her Child to Term, Ensures that the Information is Medically Accurate and Tailored to Meet Her Individual Needs.

The decision whether or not to abort is one of the most important decisions a woman may make during her lifetime. "The medical, emotional, and psychological consequences of abortion are serious and can be lasting...." H.L. v. Matheson, 450 U.S. 398, 411 (1981). The decision to abort is final and irrevocable. It is a decision that should not be taken lightly because "[a]bortion is inherently different from other medical procedures because no other procedure involves the purposeful termination of a potential life." Harris, 448 U.S. at 325.

In light of this reality, the Supreme Court has consistently recognized the significance of the act of abortion and the often stressful circumstances under which the decision is made:

> The decision to abort, indeed is an important and often a stressful one, and it is desirable and imperative that it be made with the full knowledge of its nature and consequences. The woman is the one primarily concerned, and her awareness of the decision and its significance may be assured, constitutionally, by the State ....

Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 67 (1976).

The Pennsylvania statute is designed to ensure not only the well-being of a pregnant woman, but also that the woman who is

deciding whether to have an abortion does not make her choice without being fully informed of the potential risks and consequences of her decision upon herself and the fetus she carries.

Abortion counseling regarding the nature of the procedure and the possible risks involved makes good medical sense. Supporters of legal abortion and the leading medical authorities on abortion agree that women need to be aware of the procedure and involved in the decision. Specifically, the National Abortion Federation guidelines "encourage exploration of all possible outcomes" and urge a discussion of the procedure and its concomitant risks and benefits designed to provide "the woman with accurate information."[18]

This advice is echoed in what has become the standard handbook for physicians who perform abortions. The recommended consent form contained therein details some specific risks of the procedure.[19] Further, the American College of Obstetricians and Gynecologists [ACOG] recommends "options" counseling that includes a full disclosure of the procedure, alternatives to abortion, and an opportunity for the woman to ask questions. ACOG asserts that the woman should "be allowed sufficient time for reflection prior to

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[18] National Abortion Federation, Standards for Abortion Care 4 (1987).

[19] W. Hern, Abortion Practice at 270-271 (1984).

making an informed decision."[20]

This renewed emphasis on abortion counseling also stems from an increased awareness of the possible physical and psychological risks women may encounter. Approximately twenty percent of all abortion patients suffer psychologically from the abortion experience. Abortion Counseling: To Benefit Maternal Health, 15 Am. J. L. & Med 483, 487 (1989). Also, an additional percentage of women suffer physically from the procedure. Id. Physical complications increase with the number of prior induced abortions. Levin, Association of Induced Abortion with Subsequent Pregnancy Loss, 243 J. Am. Med. Ass'n 495 (1980). In spite of these known dangers, it was recently reported that a significant percentage of abortion patients do not receive pre-abortion counseling. Abortion Counseling, supra at 487.[21] Pennsylvania has a clear interest in protecting the health of its citizens and ensuring that their decision to choose abortion is made intelligently and with the

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[20] The American College of Obstetricians and Gynecologists, Standards for Obstetric-Gynecologic Services, at 63, 84 (6th ed. 1985).

[21] Clearly, not all women who undergo abortions receive full and adequate information prior to making their decision. In the legislative hearings held prior to the enactment of the Pennsylvania law, three women testified that they did not receive adequate information or counselling prior to obtaining abortions in the commonwealth. (Affidavits of Theresa Long, Susan H. Jennings and Jaclyn Pickel attached hereto as Appendix B.) There is no reason to believe that these women are not representative of perhaps thousands of women who have obtained abortions in Pennsylvania and also of those who may choose abortion in the future without benefit from this law. While plaintiff clinics purport to provide counseling and information to women, there is no indication that all clinics in the Commonwealth provide even minimal information.

benefit of the full information necessary to make such an important decision.

Requiring that the physician personally disseminate the medical information to the woman ensures not only that the information is medically accurate but also that it is tailored to meet her individual needs. The Supreme Court has previously objected to certain provisions in informed consent abortion statutes because the Court determined that they unduly interfered with the physician-patient relationship. A requirement regarding the dissemination of information ensures the creation of, and does not interfere with a physician-patient relationship. Approximately 80% of abortions are performed in free-standing clinics. Torres & Forrest, Why Do Women Have Abortions?, supra. The primary business of such clinics is to perform abortions. Zekman & Warrick, The Abortion Profiteers, Chicago Sun-Times, Nov. 12, 1978. Normally women who undergo an abortion at a free-standing abortion clinic do not return to the clinic for follow-up care, nor do they continue a physician-patient relationship with the physician who performed the abortion.

In fact, the woman's first encounter with the physician who performs the abortion in the free-standing clinic is when she is gowned and on the operating table, after her decision to have the abortion has already been made. Danforth, 428 U.S. at 91 n.2. In such a situation, the physician is simply acting as a technician. As Justice O'Connor noted in her Akron dissent, "the record in this case shows that the [physician-patient] relationship is

nonexistent." Akron, 462 U.S. at 473.

In addition, the clinic's economic survival depends upon women choosing abortion. There is a strong economic incentive for such clinics to encourage abortions.[22] This stands in sharp contrast to the traditional hospital or physician with a more diverse practice providing a wide range of health care services and whose goal is to heal the patient. Such diverse care is not the goal of the abortion clinic.

Under existing Pennsylvania law and practice, the physician is entitled to withhold relevant information and make the abortion decision, not in consultation with the pregnant woman, but rather for her. The statute before this court would reverse this practice and ensure that women receive the necessary information in order to make an informed choice regarding their own medical care and the irrevocable decision to terminate a pregnancy.

When one moves outside the abortion context, however, informed consent requirements are commonplace and noncontroversial. Increasingly, states are legislating specific informed consent requirements that include the disclosure of certain specified risks

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[22] Baton Rouge Morning Advocate, June 21, 1990, at 1A, col. 2 (comments of Carol Everett, a former owner and operator of an abortion clinic in Dallas):

> "Would you please remember that abortion is not about right, abortion is not about choices, abortion is ... about money." Everett said. "Abortion is a skillfully marketed product sold to a woman when she needs help. They don't give her help. The only choice they have is abortion."

for medical procedures such as breast cancer treatment,[23] hysterectomies,[24] sterilizations[25] and HIV testing.[26]

Pennsylvania has followed this trend with regard to breast cancer treatment. Current law requires that women sign a consent form set forth in the statute prior to surgery attesting that they have been informed of "medically accepted alternatives to radical mastectomy." Pa. Cons. Stat. Ann. tit. 35, 5641 (Purdon Supp.

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[23] Cal. Health & Safety Code sec. 1704.5 (West Supp. 1990); Fla. Stat. Ann. secs. 458.324, 459.0125 (West Supp. 1990); Ga. Code Ann. sec. 43-34-21 (1988); Haw. Rev. Stat. sec. 671-3(c) (1985); Ky. Rev. Stat. Ann. sec. 311.935 (Baldwin 1987); Mich. Comp. Laws Ann. sec. 333.17013 (West Supp. 1990-1991); Minn. Stat. Ann. sec. 144.651(9) (West 1989); N.J. Rev. Stat. Ann. sec. 45:9-22 (West Supp. 1989-1990); N.Y. Pub. Health Law sec. 2404 (McKinney Supp. 1990); Pa. Cons. Stat. Ann. tit. 35, sec. 5641 (Purdon Supp. 1990-1991); Va. Code Ann. sec. 54.1-294 (1988).

[24] 42 C.F.R. secs. 441.250-.259 (1989); Cal. Health & Safety Code secs. 1690, 1691 (West Supp. 1990); Md. Health-Gen. Code Ann. sec. 19-348 (1990) (hospital in-patients' opportunity to receive papanicolaou smear); Ohio Rev. Code Ann. sec. 3701.60 (Anderson 1988) (hospital in-patients' opportunity to receive uterine cytologic examination).

[25] 42 C.F.R. secs. 441.250-.259 (1989); Cal. Welf. & Inst. Code secs. 14191, 14192 (West 1980); Conn. Gen. Stat. Ann. secs. 45-78q, -78r (West 1981); Ky. Rev. Stat. Ann. secs. 212.341-.347 (Baldwin 1982); Me. Rev. Stat. Ann. tit. 34-B, secs. 7003, 7004 (West 1988); Or. Rev. Stat. secs. 436.225-.325 (1989); Utah Code Ann. sec. 62A-6-102 (1989); Va. Code Ann. sec. 54.1-2974 (1988).

[26] Cal. Health & Safety Code secs. 1603.1, 1603.3 (West Supp. 1990); Del. Code Ann. tit. 16, secs. 1201, 1202 (Supp. 1988); Fla. Stat. Ann. secs. 381.609, 381.6105, 641.3007 (West Supp. 1990); Haw. Rev. Stat. sec. 325-16 (Supp. 1989); Ill. Ann. Stat. ch. 111 1\2, paras. 7303-7309 (Smith-Hurd 1988); Me. Rev. Stat. Ann. tit. 5, sec. 19203-A (1989); Md. Health-Gen. Code Ann. sec. 18-336 (1990); Mich. Comp. Laws Ann. sec. 333.5133 (West Supp. 1990-1991); Mont. Code Ann. secs. 50-16-1001--50-16-1007 (1989); N.Y. Pub. Health Law sec. 2781 (McKinney Supp. 1990); N.Y. Ins. Law sec. 2611 (McKinney Supp. 1990); Or. Rev. Stat. sec. 433.045 (1989); R.I. Gen. Laws secs. 23-6-12--23-6-14 (1989); W. Va. Code sec. 16-3C-2 (Supp. 1989); Wis. Stat. Ann. sec. 144.025 (West 1989).

1990-1991).

Similarly, California's statute regarding blood transfusions directs the State Department of Health Services to develop and annually review a "standardized written summary which explains the advantages, disadvantages, risks and descriptions of autologous blood and directed and non-directed homologous blood...." Cal. Health & Safety Code sec. 1645. This summary must be provided by the physician to the patient. Id. Similarly, with respect to breast cancer treatment, the California Department of Health Services is required to develop a standardized written summary to be given by the physician to the patient informing her of the "advantages, disadvantages, risks and descriptions of the procedures with regard to medically viable and efficacious alternative methods of treatment...." Cal. Health & Safety Code sec. 1704.5. Finally, Massachusetts requires that maternity patients receive a detailed explanation upon admission to a hospital regarding the annual rate of primary caesarean sections and other related matters. Mass. Public Health Ch. 111, sec. 70E (West 1990). States, including Pennsylvania, can and do require a physician to provide a patient with a standardized description and written summary of the risks for medical procedures other than abortion.

Even under Akron and Thornburgh, however, the statute is constitutional. Unlike the statutes at issue in Akron and Thornburgh, the Pennsylvania statute does not preclude the physician from independently exercising his judgment, nor does it

require the disclosure of a long list of risks. Moreover, this law does not require the physician to provide an exhaustive list of risks of abortion without identifying the probability of each such risk occurring, something the Court described as a "parade of horribles." Akron, 462 U.S. at 445. The Pennsylvania statute requires that the physician exercise his professional judgment to inform the woman of the nature of the abortion procedure, the particular threat to her of encountering certain risks from an abortion, as well as any risk she might encounter in carrying her child to term, and any other medical information the physician believes is relevant. It is unwise to assume that anyone other than a physician can provide this specific medical information and tailor it to the individual needs of each woman.

Furthermore, it is reasonable to require that the physician personally inform the patient of the gestational age of the fetus. First, the physician's superior skill and knowledge suggests that he, rather than a less qualified individual, make this assessment. Second, the sharing of this information by the physician to his patient serves to enhance the physician-patient relationship.[27] Requiring that a woman be told the probable gestational age of her unborn child, by a physician, is Pennsylvania's acknowledgement of its interest in protecting unborn life throughout a woman's pregnancy. Justice O'Connor, in her Akron dissent, which she reaffirmed in her opinions in Thornburgh and Webster, stated that

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[27] The physician-patient relationship is the cornerstone of the Court's decision in Roe. Roe, 410 U.S. at 153.

"the state's interest in potential human life is likewise extant throughout pregnancy." City of Akron, 462 U.S. at 461 (O'Connor, J., dissenting); Thornburgh, 476 U.S. at 828 (O'Connor, J., dissenting); Webster, 109 S.Ct. at 3060 (O'Connor, J., concurring in part, concurring in the judgment).

The Supreme Court has consistently held that a state has authority to "make value judgments favoring childbirth over abortion." Maher, supra at 474; Webster, 109 S.Ct. at 3050. The statute before the Court requiring that a physician provide a woman with information regarding the gestational age of her unborn child is consistent with Pennsylvania's legitimate right to ensure that any decision against childbirth is a fully informed one.

B. Pennsylvania Has Correctly Determined that Printed Materials to Assist a Woman in Making Her Decision be Available, If She Chooses to View Them.

The Pennsylvania statute further requires that women be told of the availability of certain printed materials that will further aid their decision-making process. These materials describe the unborn child, list agencies which offer alternatives to abortion, state that medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and which state that the father of the child is liable for support.

Pennsylvania is making these materials available to the woman if she chooses to take them. There is no requirement that the woman either take or read the materials prior to having an abortion. By making these materials available to the woman, Pennsylvania has determined that such information is relevant to

a woman's decision. To forbid women from having the opportunity to make this choice to receive additional information portrays a patronizing attitude toward women--an attitude that assumes women are such poor decision makers, so fragile and so easily "confused" that they need not be provided with information relevant to their future health or necessary to the exercise of a meaningful choice regarding elective surgery.

Making available to a woman a description of her unborn child furthers two important state interests. First, information on fetal development insures that, in deciding whether or not to have an abortion, a woman has an opportunity to use her own personal values, including her view of the time at which human life begins. If she is informed about fetal development and concludes that the unborn child is indeed a human life, then she can act accordingly, in light of her own values. If she concludes that the unborn child is not life and decides to abort it, then she will have minimized the risk of future potential psychological harm arising from post-operative reflection prompted by obtaining fetal information not made available to her before the abortion took place. Second, providing such information furthers Pennsylvania's interest in protecting unborn life throughout a woman's pregnancy. If a woman's own personal values recognize that an unborn child is indeed a human life, then providing her with medical and biological information, which she might not otherwise have access to, will allow her to act in light of her own values to protect the unborn child.

The Supreme Court has expressed concern that informed consent statutes for abortion are motivated by a desire to dissuade women from seeking an abortion. Presumably, no legislature, including Pennsylvania, would take the time to pass an informed consent statute unless it determined that there was a real probability that patients were too often opting unwittingly for a particular medical procedure; for example, choosing mastectomies instead of less radical treatment.

It would be a different situation if Pennsylvania were to require that the woman receive false information as to fetal development or only physiological information tending to support the argument that the fetus should not be aborted. The information to be made available to her under the statute is not harmful; it is simply factual. If the woman chooses not to have an abortion, it is not because the state has dissuaded her, but rather because she has received complete information on the physiological characteristics of her fetus and alternatives to abortion and has made her own decision. It is remarkable that the lower court chose to view the truth as a burden on the exercise of a constitutional right.

"Choice" is a misnomer when applied to a woman accepting abortion when it is the only course open to her, when she has not been informed about resources or alternatives. Indeed, if as abortion advocates fear, providing relevant, balanced and truthful information about fetal development, alternatives to abortion and medical care assistance to pregnant women dissuades women from

having an abortion, this only confirms the legitimacy of Pennsylvania's fear that the fetus is being unnecessarily aborted through an uninformed decision.

C. A Twenty-Four Hour Waiting Period May Properly be Imposed in Order that a Woman May Adequately Contemplate the Decision Whether or Not to Undergo the Abortion Thus Making a Truly Informed Decision.

The Pennsylvania statute requires that a woman wait twenty-four hours after she has received the information necessary to make an informed decision regarding her pregnancy before undergoing an abortion, if that is the decision that she makes. This waiting period does not apply in cases of a medical emergency.

The Akron Court struck down a 24-hour waiting period because it took away the physician's exercise of judgment as to whether, and for how long, an individual patient should postpone the abortion procedure. Akron, 462 U.S. at 450-451.

The Supreme Court, however, has indicated that waiting periods are acceptable. Last term, the Court upheld twenty-four hour and forty-eight hour waiting periods for parental notice statutes. Ohio v. Akron Center for Reproductive Health, 110 S.Ct. 2972 (1990); Hodgson v. Minnesota, 110 S.Ct. 2926 (1990).

Further, Kentucky's informed consent sterilization statute requires a 24-hour waiting period.[28] If states may impose their view over that of the physician's as to the appropriate waiting period for sterilization, a procedure that will irrevocably terminate all reproductive capability, why is it any different

[28] Ky. Rev. Stat. Ann. 212.347 (Baldwin 1982).

legally when a state seeks to do so for abortion? Indeed, because most abortions are performed in clinics, where the physician-patient relationship may be tenuous, if it exists at all, Pennsylvania's "intrusion" upon that relationship is less than it is for procedures such as breast cancer treatment and sterilization for which the physician-patient relationship is more developed.

As numerous experts testified at the trial, the reasonable, additional time of reflection, away from the clinic that is trying to "sell" the abortion to the woman, is necessary to allow her the opportunity to reflect upon the information she has received and the decision that, one way or another, will remain with her for the rest for her life.

CONCLUSION

Webster permits the Commonwealth to enact legislation that advances legitimate state interests. Pennsylvania interest in protecting the health and deliberate decisionmaking of women in the Commonwealth who may seek abortions is served by the abortion-specific informed consent statute. The district court erred in applying strict judicial scrutiny and in finding this provision unconstitutional. Accordingly, and for the foregoing reasons, the decision of the court below should be reversed.

Respectfully submitted,

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November 5, 1990

APPENDIX A

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18 Pa. Cons. Stat. Ann. § 3205(a) (Purdon 1983 and 1990 Supp.). In pertinent part, the statute reads, as follows:

> Except in cases of medical emergency, consent to an abortion is voluntary and informed if and only if:
>
> (1) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician has orally informed the woman of:
>
> (i) The nature of the proposed procedure or treatment and of those risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision of whether or not to undergo the abortion.
>
> (ii) The probable gestational age of the unborn child at the time the abortion is to be performed.
>
> (iii) The medical risks associated with carrying her child to term.
>
> (2) At least 24 hours prior to the abortion, the physician who is to perform the abortion or the referring physician, or a qualified physician assistant, health care practitioner, technician or social worker to whom the responsibility has been delegated by either physician, has informed the pregnant woman that:
>
> (i) The department publishes printed materials which describe the unborn child and list agencies which offer alternatives to abortion and that she has right to review the printed materials and that a copy will be provided to her free of charge if she chooses to review it.
>
> (ii) Medical assistance benefits may be available for prenatal care, childbirth and neonatal care, and that more detailed information on the availability of such assistance is contained in the printed materials published by the department.
>
> (iii) The father of the unborn child is liable to assist in the support of her child, even in instances where he has offered to pay for the abortion. In the case of rape, this information may be omitted.
>
> (3) A copy of the printed materials has been provided to the pregnant woman if she chooses to view these materials.
>
> (4) The pregnant woman certifies in writing, prior to the abortion, that the information required to be provided under paragraphs (1), (2) and (3) has been provided.

APPENDIX B

APPENDIX B

I, Theresa A. Long, had an abortion in 1976 at the Good Samaritan Hospital in Lebanon County, Lebanon, Pennsylvania.

I had not originally intended to abort. When the Ob.-Gyn. clinic personnel found out I was single & pregnant they escorted me to a private room where a doctor & nurse explained about a simple surgical procedure to remove the product of conception. They never called it an abortion, but referred to it as a D&E. They told me that I didn't have much time & had to make a decision in 2-3 wks. before the 2nd trimester. They never showed me fetal development pictures. They never told me about any risks involved. They never called my unborn child a baby - only a fetus. They never offered any other alternatives to my situation. I asked if my unborn child would feel pain & I was told, No — it wasn't formed yet. I was never told it had a heartbeat already & brainwaves, as I discovered years later.

There had been no support if I chose to keep my baby. It seemed no one cared that I had conceived a child — just that I had a problem to get rid of. I felt as though it was my only option considering the circumstances. That it was okay because it was legal & that it was the best choice since my doctor even suggested it.

I was put to sleep for the surgery. Upon awakening I realized my baby had been killed. Up until this point I had been "numb". I suffered psychologically & wanted to punish myself. I became severely depressed which led to a suicide attempt 5 mo. later. At this time I was hospitalized for 3 mo. & had counseling for 1 yr. afterwards.

I regret that I was rushed to end my baby's life at 11 wks.

Theresa A. Long, known to me to be the person above, affirmed that the above is true and correct to the best of her information, knowledge and belief.

Theresa A. Long
Theresa A. Long

Betty Jo Wick
NOTARY PUBLIC
My Commission Expires: 4/7/89
Lebanon, Lebanon Co., PA

NOTARIAL SEAL
BETTY JO WICK, NOTARY PUBLIC
Lebanon, Lebanon County
My Commission Expires April 7, 1989

October 10, 1989

I, Judy Puhl, had an abortion in late March of 1977 at Harrisburg Reproductive Health Center. At that time, as Judy (Geri) Kistler, I had gone to Planned Parenthood in Lancaster for my pregnancy test. Upon learning the result were positive, the counselor at PP suggested that, at the age of eighteen, it would be a burden to have a baby so young with my future ahead of me. When I told her that I really wanted my baby, did not want an abortion, and just wanted someone to help me tell my parents, she continued talking about abortion, never mentioned any alternatives, such as adoption, and gave me three pamphlets on abortion clinics outside of Lancaster County. Since I was eight to ten weeks pregnant, and could only go on Saturdays, the counselor suggested Harrisburg and gave me the phone to call and make an appointment. I told her that I wasn't ready to move that fast and again said that I didn't want an abortion but just wanted somebody to help me tell my parents. Since she wasn't offering me any positive help, I left and for the next few days fought with my boyfriend constantly because he also wanted me to have an abortion. I finally called Harrisburg and made my appointment.

At the clinic, before my abortion, a counselor talked with a group of about ten girls on birth control and what type would be best for each girl. Before we went to change to go to the waiting room, the counselor asked each person in the room to tell everyone else whose idea it was to have the abortion. I was sitting in the middle of the group and everyone up until me had said that they wanted their abortion. I thought this was my last chance to cry for help and I told them all that I did not want an abortion but that I wanted to have my baby and needed someone to help me tell my parents. I also said that I didn't want to marry my boyfriend because I wasn't ready for marriage; but, because his parents had to get married with him, and because his father was abusive, he wanted me to have an abortion because he wanted to prove to his parents that he could marry a girl and "do it the right way." The counselor seemed irritated and said, and I quote, "You are being romantic and your boyfriend is being realistic." It was at that point that I

knew she didn't care for me at all but I was still too scared and couldn't walk out of that horrible place. Needless to say I had the abortion and cannot describe the loss, pain, guilt and suffering that I have felt since then. I immediately set out to have another baby to replace the one taken from me and married my boyfriend for that reason only. Since that reason isn't a good one for marriage, it would be easy to understand the marriage problems that we had to face late. After my marriage was almost destroyed I sought counseling to find out why my personality had changed so much. I praise the Lord for healing me, my husband, and our marriage and for blessing us with four beautiful, precious children who truly are our heritage.

Sincerely,
Jerilyn Pickel

[redacted] May 3, 1993

Laura M. Flores

Susan H. Jennings
858 Hosler Road
Manheim, Pennsylvania 17545

October 11, 1989

Dear Gentlemen or Madam:

I had an abortion at the Reproductive Health and Counseling Center, Crozer Chester Medical Center Annex, 15th & Upland Avenue, Chester, Pennsylvania 19013 in April, 1985.

I was not shown any pictures of fetal development. I did not receive any counseling of alternative options, such as adoption. I was not warned of possible emotional and physical consequences of abortion.

To the best of my recollection, the "counselor" instructed me to check

off the reason for my desire to abort from a list of reasons which she gave to me. After I had checked off the reason relating to "Family," she said "That's good enough," and snatched the paper from my hand. I then recall being quickly ushered to the next phase of the assembly line.

Since the abortion, I have suffered from mental and emotional anguish, guilt, depression and grief which has been detrimental to my well being and has affected other family members. This has strengthened my resolve to warn other women about abortion and the resulting devestation.

Sincerely,

Susan H Jennings

Susan H Jennings

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF LANCASTER

Affirmed to before me, a Notary Public, this 11th day of October 1989.

Pamela S Plasterer

PAMELA S. PLASTERER, NOTARY PUBLIC
MANHEIM BORO, LANCASTER COUNTY
MY COMMISSION EXPIRES MARCH 31, 1990

CERTIFICATE OF BAR MEMBERSHIP

I, John E. McKeever, hereby certify that I am a member in good standing of the Bar of the Third Circuit Court of Appeals.

John E. McKeever
Suite 3600
1600 Market Street
Philadelphia, Pennsylvania 19094

Date: November 5, 1990