

In the  
United States Court of Appeals  
for the Seventh Circuit

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Nos. 98-2043 & 98-2262  
D.C. No. 96-C-0374-C  
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ELIZABETH KARLIN, M.D.; et al  
Plaintiffs-Appellants  
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vs.

Appeal from the  
United States District  
Court for the Western  
District of Wisconsin,  
The Honorable Judge  
Barbara B. Crabb

-----  
C. WILLIAM FOUST, in his official capacity as  
District attorney for Dane County and a representative  
of the class of all district attorneys in Wisconsin; et al  
Defendants-Appellees  
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BRIEF OF CERTAIN MEMBERS OF THE WISCONSIN LEGISLATURE AS AMICI  
CURIAE IN SUPPORT OF THE DEFENDANTS-APPELLEES  
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## STATEMENT OF THE INTEREST OF THE AMICI

Amici curiae are members of the Wisconsin Legislature who strongly support the public policy of the State of Wisconsin that requires pregnant women to be informed of specific information prior to undergoing an abortion. The bill enacting these provisions, codified as Wis. Stat. Ann § 253.10 (West 1991), as amended by 1995 Wis. Act 309, 1996 Wis. Legis. Serv. No. 8 (West), passed by an overwhelming margin in the Wisconsin Assembly of 59-37 and in the Senate 17-16.

Amici curiae agree with the lower court that the Wisconsin statute requiring informed consent prior to undergoing an induced abortion is constitutional (with certain limited exceptions) based on the United States Supreme Court's decision in Planned Parenthood v. Casey, 112 S.Ct. 2791 (1992). Further, the amici curiae assert that empirical evidence suggests that post-abortive women may suffer psychological trauma associated with undergoing an induced abortion. Therefore, physicians must be required to inform women prior to undergoing an abortion of the possible adverse psychological trauma associated with induced abortions.

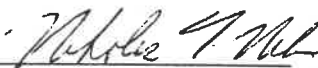
## CERTIFICATE OF INTEREST

The undersigned, counsel of record for Members of the Wisconsin Legislature, amici curiae, furnishes the following list in compliance with Circuit Rule 26.1:

1. List of Amici Curiae:

Representative David A. Brandemuehl (Rep., 49<sup>th</sup> District)  
Senator Roger M. Breske (Dem., 12<sup>th</sup> District)  
Senator Gary F. Drzewiecki (Rep., 30<sup>th</sup> District)  
Representative John G. Gard (Rep., 89<sup>th</sup> District)  
Representative Robert G. Goetsch (Rep., 39<sup>th</sup> District)  
Representative Mark Green (Rep., 4<sup>th</sup> District)  
Representative Scott L. Gunderson (Rep., 83<sup>rd</sup> District)  
Representative Eugene H. Hahn (Rep., 47<sup>th</sup> District)  
Representative Michael Huebsch (Rep., 94<sup>th</sup> District)  
Representative David Hutchison (Rep., 1<sup>st</sup> District)  
Representative Neal J. Kedzie (Rep., 43<sup>rd</sup> District)  
Representative Frank G. Lasee (Rep., 2<sup>nd</sup> District)  
Representative Alvin R. Ott, Jr. (Rep., 3<sup>rd</sup> District)  
Representative John J. Ryba (Dem., 90<sup>th</sup> District)  
Senator Timothy L. Weeden (Rep., 15<sup>th</sup> District)  
Senator Robert T. Welch (Rep., 14<sup>th</sup> District)  
Representative Wayne W. Wood (Dem., 44<sup>th</sup> District)  
Representative Robert K. Zukowski (Rep., 69<sup>th</sup> District);

2. Amici are individual Wisconsin legislators;
3. Counsel for the Amici is the General Counsel of Americans United for Life, a not-for-profit public interest law firm headquartered in Chicago, Illinois.

  
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Dated this 6<sup>th</sup> day of August, 1998.

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## STATEMENT OF THE ISSUES

- I. Did Wisconsin reasonably enact legislation requiring physicians to inform women prior to undergoing an induced abortion of the risk of possible psychological trauma associated with abortion based on the empirical evidence suggesting that some post-abortive women suffer psychological trauma associated with abortion?

## JURISDICTIONAL STATEMENT

Amici curiae incorporate by reference the Jurisdictional Statement as presented in the Defendants-Appellees Brief.

### STATEMENT OF THE CASE

The amici curiae incorporate by reference the Statement of the Case as presented in the Defendants-Appellees' Brief.

### STATEMENT OF THE FACTS

The amici curiae incorporate by reference the Statement of the Facts as presented in the Defendants-Appellees' Brief.

### SUMMARY OF THE ARGUMENT

Wisconsin furthered important and legitimate interests by enacting Wis. Stat. § 253.10. The enactment of an informed consent law promotes Wisconsin's interests in protecting the health and safety of both women and unborn children. In an effort to protect women, Wis. Stat. § 253.10 constitutionally requires physicians to inform women of the psychological risks of abortion prior to undergoing an induced abortion. Empirical evidence suggests that a woman with predisposing factors, such as guilt or depression, may suffer psychological trauma associated with the induced abortion. Some physicians' disagreement as to the extent of psychological trauma associated with undergoing induced abortions should not preclude physicians from informing women of the possibility of such a risk, thus allowing a woman to make an autonomous decision based on what she believes are the relevant factors in her situation. Wis. Stat. § 253.10(3)(c)1.f. does not require physicians to express that they believe psychological trauma will occur, rather the statute merely requires the doctor to provide truthful and not misleading information about the risk of psychological trauma.



## STANDARD OF REVIEW

Amici curiae incorporate by reference the Standard of Review as presented in the Defendants-Appellees' Brief.

## ARGUMENT

### **I. Introduction**

By enacting Wis. Stat. § 253.10, Wisconsin has furthered its two important and legitimate goals concerning the protection of the unborn child and women contemplating abortion. This legislation ensures that women are allowed to make informed decisions concerning whether to undergo an induced abortion. In Planned Parenthood v. Casey, 505 U.S. 833 (1992), the United States Supreme Court upheld, among other things, Pennsylvania's informed consent law. The Court held that a State must be permitted "to further its legitimate goal of protecting the life of the unborn by enacting legislation aimed at ensuring a decision that is mature and informed, even when in so doing the State expresses a preference for childbirth over abortion." Id. at 883. Wis. Stat. § 253.10's requirement that physicians inform women of the medical risks associated with induced abortion, including psychological trauma, is a reasonable measure to ensure an informed choice. Consequently, as the lower court decided correctly, Wis. Stat. § 253.10 cannot be considered a substantial obstacle, i.e. an undue burden, to obtaining an abortion and is therefore, constitutional. Id.

Requiring physicians to inform women of psychological trauma associated with abortion is only one of the several medical risks that women must be informed of prior to undergoing an

induced abortion.<sup>1</sup> The U.S. Supreme Court affirmatively noted in Planned Parenthood v. Casey the need for women to be informed of health risks when it stated:

Those decisions [Akron I and Thornburgh], along with Danforth, recognize a substantial government interest justifying a requirement that a woman be apprised of the health risks of abortion and childbirth. It cannot be questioned that psychological well-being is a facet of health. Nor can it be doubted that most women considering an abortion would deem the impact on the fetus relevant, if not dispositive, to the decision. In attempting to ensure that a woman apprehend the full consequences of her decision, the State furthers the legitimate purpose of reducing the risk that a woman may elect an abortion, only to discover later, with devastating psychological consequences, that her decision was not fully informed. If the information the State requires to be made available to the woman is truthful and not misleading, the requirement may be permissible. (citations omitted) Id. at 882.

Since empirical evidence suggests that a woman with predisposing factors may suffer psychological trauma associated with abortion, women must be informed of the risk of psychological trauma associated with abortion to fully apprehend the consequences of her decision. Plaintiffs argue that there is no empirical evidence to establish a risk of psychological trauma. This brief addresses plaintiffs' argument by demonstrating that Wisconsin acted reasonably in its requirements based on the present empirical evidence. Full knowledge of all medical risks, including those that are psychological, enable women to consider all of the factors for themselves, resulting in an autonomous decision not burdened by a physician's bias concerning which factors are relevant.

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<sup>1</sup> The statute reads in pertinent part:

(c) Informed consent. Except if a medical emergency exists, a woman's consent to an abortion is informed only if all of the following first take place:

...

f. The medical risks associated with the particular abortion procedure that would be used, including the risks of infection, psychological trauma, hemorrhage, endometritis, perforated uterus, incomplete abortion, failed abortion, danger to subsequent pregnancies and infertility.

Wis. Stat. § 253.10(3)(c)1.f. (West 1996).

**II. Wisconsin reasonably enacted legislation requiring physicians to inform women prior to undergoing an induced abortion of the risk of possible psychological trauma associated with abortion based on the empirical evidence suggesting that some post-abortive women suffer psychological trauma associated with abortion.**

Wis. Stat. 253.10(3)(c)1.f.'s requirement that a physician inform women that psychological trauma may be associated with an induced abortion is supported by empirical evidence suggesting that women with predisposing factors may be at a higher risk for adverse psychological sequelae after undergoing an induced abortion. These predisposing factors include but are not limited to having low self-efficacy and self-image, having a lack of social support, being unmarried, suffering from prior or present depression and mental illness, as well as holding a religious conviction against abortion. See Nancy E. Adler et al, Psychological Responses After Abortion, Science 41-43 (1990)(“Women who are terminating pregnancies that are wanted and personally meaningful, who lack support from their partner or parents for the abortion, or who have more conflicting feelings or are less sure of their decision beforehand may be at relatively higher risk for negative consequences.”); Catherine Cozzarelli, Personality and Self-Efficacy as Predictors of Coping with Abortion, 65 J. Personality and Soc. Psychol. 1224-1236 (1993)(“Self-efficacy was found to be a strong, proximal predictor of adjustment, both immediately after the abortion and 3 weeks later.”); Kathleen N. Franco et al, Psychological profile of dysphoric women postabortion, 44 JAMWA 113-15 (1989)(“Besides having multiple abortions, other risk factors for postabortion dysphoria identified in this study were premorbid psychiatric illness, lack of family support, ambivalence, and feeling coerced into having an abortion.”); Brenda Major & Catherine Cozzarelli, Psychosocial Predictors of Adjustment to Abortion 48 J. Soc. Issues 121-142 (1992)(“This review considers ... personal conflict, attributions for the

pregnancy, coping expectations, perceived social support, perceived social conflict, the relationship with the male partner, specific coping styles, the woman's general level of psychological functioning prior to discovery of the pregnancy, and specific life events that occur subsequent to the abortion.”); Pallus Mueller & Brenda Major, *Self-Blame, Self-Efficacy, and Adjustment to Abortion*, 48 *J. Social Issues* 121-142 (1992)(“The present study, combined with our earlier study (Major et al., 1985) points to several additional psychological factors that may place women at somewhat higher risk for experiencing problems after an abortion: low perceived self-efficacy for coping with the abortion, blaming the pregnancy on another person, and blaming the pregnancy on their character.”); Jo Ann Rosenfield, *Emotional Responses to Therapeutic Abortion*, 45 *Am. Fam. Physician* 137-140 (1992)(“A number of factors contribute to emotional difficulty after abortion.”); Nada L. Stotland, *Psychiatric issues in Abortion, and the Implications of Recent Legal Changes for Psychiatric Practice*, in *Psychiatric Aspects of Abortion* 1-16 (1991)(“Risk factors for psychiatric sequelae include prior psychiatric illness, psychosocial stress, and an abortion decision brought about by external pressure (Moseley et al. 1981).” *Id.* at 9.); G. Zolese & C.V.R. Blacker, *The Psychological Complications of Therapeutic Abortion* 160 *Brit. J. Psychiatry* 742-749 (1992)(“Certain groups are especially at risk from adverse psychological sequelae; these include those with a past psychiatric history, younger women, those with poor social support, the multiparous, and those belonging to sociocultural groups antagonistic to abortion.”).

This list of factors is significant when compared to facts concerning women who undergo induced abortions. The Allen Gutmacher Institute's (AGI) January 1997 *Facts in Brief: Induced Abortion* stated that two-thirds of women undergoing induced abortion were never married. In fact, Wisconsin Department of Health and Social Services reported in 1994 that 69 percent of

women who had abortions had never been married and 15 percent were divorced, separated, or widowed. Center for Health Statistics, Wisconsin Department of Health and Social Services, Reported Induced Abortions in Wisconsin v (1994). Consequently, the majority of women undergoing an induced abortion have at least one predisposing factor, which may cause these women to be at a high risk for psychological trauma associated with undergoing an induced abortion. Further, a 1981 study found that women in Holland who were divorced, widowed, or separated had a significantly higher rate of psychiatric admission after undergoing abortion than women who delivered. Henry P. David et al, Postpartum and Postabortion Psychotic Reactions, Fam. Plan. Persp., 1981, at 88-92. These facts indicate that the majority of women undergoing induced abortions have at least one predisposing factor (unmarried) that may put them at a higher risk for adverse psychological sequelae after the abortion.

Some women experience guilt, anxiety, depression, or regret after undergoing an abortion. Brenda Major & Catherine Cozzarelli, Psychosocial Predictors of Adjustment to Abortion 48 J. Soc. Issues 121, 129 (1992). After studying two samples of women who underwent first-trimester abortions that were neither rape nor incest victims and were typical of the population of women who have abortions, Brenda Major and Catherine Cozzarelli concluded that some post-abortive women suffered psychological trauma. Id. at 122. Women with low levels of preabortion coping self-efficacy were significantly more depressed both thirty minutes after abortion, as well as three weeks after the abortion, than women with high preabortion coping self-efficacy. Id. 129. It should also be noted that 79 percent of the women in the study samples were single. This again indicates that the majority of post-abortive women had at least one, if not more, predisposing factor.

The risk of psychological trauma associated with induced abortions is further evidenced by looking at the increase in suicide rates among post-abortive women. See Mika Gissler et al, Suicides after pregnancy in Finland, 1987-94: register linkage study, 313 BMJ 1431-1438 (1996). The 1996 study focusing on suicides after pregnancy found that the suicide rate of women who delivered their child was significantly lower than women who had spontaneous or induced abortions. Id. “The suicide rate after an abortion was three times the general suicide rate and six times that associated with birth.” Id. at 1433. This study used information of suicides in all women of reproductive age and concluded that the increased rate of suicide in post-abortive women was associated either with common risk factors for abortion and suicide or with the negative effects of abortion on a woman’s mental wellbeing. Id. at 1434. Although this study was inconclusive as to the direct cause for the increased suicide rate in these women, this study does supports Wisconsin’s requirement that women undergoing induced abortions be informed of the risk of psychological trauma associated with induced abortions, so that they may make a properly informed decision. Therefore, such information furthers Wisconsin’s interest in promoting the health and safety of women by working to prevent suicide among post-abortive women by helping women with predisposing factors to prepare for the possible adverse psychological effects.

### CONCLUSION

The myth that induced abortion is not associated with a risk of psychological trauma is undermined in light of the studies and research presented. Wisconsin has an important and legitimate interest in requiring its physicians to inform women of all risks associated with abortion, including psychological trauma. Wis. Stat. § 253.10(3)(c)1.f. does not require

physicians to express that they believe psychological trauma will occur, rather the statute merely requires the doctor to provide truthful and not misleading information about the risk of psychological trauma. Consequently, the lower court's decision should be affirmed.



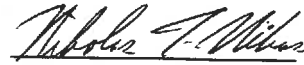
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Dated this 6<sup>th</sup> day of August, 1998.

Certificate of Compliance

I certify that pursuant to Circuit Rule 32, based on the word count of the word-processing system used to prepare the foregoing brief, it contains 3,032 words.



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Dated this 6<sup>th</sup> day of August, 1998.



Certificate of Service

I certify that on this 6<sup>th</sup> day of August, 1998, two copies of the foregoing amicus brief were sent by United States Post Office Express Mail to each of the following:

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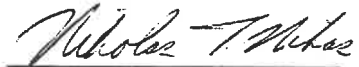
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