

Testimony of

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"The Consequences of Roe v. Wade and Doe v. Bolton"
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Prepared Testimony of
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Good afternoon Chairman Brownback, Senator Feingold, Members of the Subcommittee, and other distinguished guests. My name is Teresa Stanton Collett and I

am a Professor of Law at the University of St. Thomas School of Law in Minneapolis, Minnesota.

I am honored to have been invited to testify on the consequences of Roe v. Wade and Doe v. Bolton.² My testimony represents my professional knowledge and opinion as a law professor who writes on the topic of family law, and specifically on the topic of abortion. It also represents my experience in assisting legislators and citizen groups across the country evaluate proposed abortion laws during the legislative process and defending such laws in the courts. I am currently serving as special attorney general for the State of Oklahoma assisting in the defense of two abortion related laws of that state, and I have served as a member of the Texas Supreme Court Subadvisory Committee

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¹ 410 U.S. 113 (1973).

² 410 U.S. 173 (1973).

³ Nova Health Systems v. Gandy, 388 F.3d 744 (10th Cir. 2004) (abortion provider did not have standing to sue state offices asserting facial challenge to abortion liability law which contained only civil damages) (motion for rehearing pending); and Nova Health Systems v. Edmondson, No. 05-5085 (10th Cir.) (abortion provider has challenged procedural aspects of the judicial bypass contained in the newly enacted parental

² charged with proposing court rules implementing the parental notification in that state. I also currently represent a group of New Hampshire legislators before the United States Supreme Court in defense of that state's parental notification law.⁴ My testimony today is not intended to represent the views of my employer, the University of St. Thomas, or any other organization or person.

Contrary to the intention of their authors and proponents, Roe v. Wade and Doe v. Bolton have significantly undermined the well being of women and children in the United States, as well as seriously damaged the political fabric of American civil society. Due to the time constraints of the committee, my testimony today will just address the first issue. Throughout this country's history women have struggled to gain political, social, and economic equality.⁵ By 1972 however, the year before Roe and Doe were decided, women were making considerable strides towards achieving these goals. According to a 1972 report by the United States Census Bureau, "Women who had completed 4 (sic) years or more of college were as likely as men with the same education to be professional, technical, administrative, or managerial workers."⁶ In 1964 Margaret Chase

Smith became the first woman in our nation's history to be nominated for the presidency of the United States by a national political party.⁷ In 1967 Muriel Seibert became the first woman to own a seat on the New York Stock Exchange, and five short years later Juanita Kreps became the first woman director of that eminent institution. Women were notification law).

4 *Planned Parenthood of Northern New England v. Heed*, 390 F.3d 53 (1st Cir. 2004) sub nom *Ayotte v. Planned Parenthood of Northern New England*, cert. granted, No. 04-1144.

5 See e.g. Letter of Abigail Adams to John Adams, dated March 31, 1776 suggesting in the drafting of the laws for the new country that he "remember the ladies", lest they "foment a rebellion" and not hold themselves "bound by any laws in which we have no voice or representation."

6 U.S. Bureau of the Census, *Current Population Reports, Series P-20*, No. 242, "Educations Attainment: March 1972," at 2 U.S. Government Printing Office, Washington, D.C. , 1972.

7 It was at the Republican National Convention.

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making great progress in our society, and it is not by means of denying their capacity to conceive and bear children. Rather than furthering these achievements while accommodating the unique maternal capacity of women, Roe and Doe adopted the sterile "male model" of society effectively forcing women to conform to ideal of childlessness in order to gain equality.⁸

It was no accident that the early feminists, such as Elizabeth Cady Stanton and Susan B. Anthony, opposed abortion. They saw it as a tool of oppression, manifesting men's domination and mistreatment. Elizabeth Cady Stanton wrote, "When we consider that women are treated as property, it is degrading to women that we should treat our children as property to be disposed of as we see fit."⁹ Susan B. Anthony was of the same opinion. "Guilty? Yes. No matter what the motive, love of ease, or a desire to save from suffering the unborn innocent, the woman is awfully guilty who commits the deed. It will burden her conscience in life, it will burden her soul in death; But oh, thrice guilty is he who drove her to the desperation which impelled her to the crime!"¹⁰ In their newspaper devoted to women's equality, *The Revolution*, Matilda Joslyn Gage wrote "[This] subject lies deeper down in woman's wrongs than any other...I hesitate not to assert that most of [the responsibility for] this crime lies at the door of the male sex."¹¹ So strongly did these women reject abortion that they put the solvency of their publication, *The Revolution*, at risk rather than accept advertisements from abortionists.

8 "The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." *Planned Parenthood v. Casey*, 505 U.S. 833, 856 (1992).

9 Letter to Julia Ward Howe, October 16, 1873, recorded in Howe's diary at Harvard University Library.

10 Susan B. Anthony, *The Revolution*, 4(1):4 July 8, 1869.

11 Matilda Joslyn Gage, *The Revolution*, 1(14):215-6 April 9, 1868.

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By their rejection of abortion, these women demanded something more meaningful (and more radical) than what the majorities of the Roe and Doe Courts ordered - they demanded equality as full women, not as chemically or surgically altered surrogates of men. The early feminists understood that abortion on demand, not motherhood, posed the real threat to women's rights. The early feminists recognized that abortion was the product, not of choice, but of pressure, particularly from the men in women's lives. The current regime of abortion which Roe instigated has not changed this sad fact. A 1998 study published by the Guttmacher Institute, a research affiliate of Planned Parenthood, indicates that relationship problems contributed to the decision to seek abortions by 51% of American women.

Underlying this general reason are such specific ones as that the partner threatened to abandon the woman if she gives birth, that the partner or the woman herself refuses to marry to legitimate the birth, that a break-up is imminent for reasons other than the pregnancy, that the pregnancy resulted from an extramarital relationship, that the husband or partner mistreated the woman because of her pregnancy, or that the husband or partner simply does not want the child. Sometimes women combined these

reasons with not being able to afford a baby, suggesting the importance of having a partner who can offer both emotional and financial support.¹²

The simple fact is that today, as in the 19th century, for many women abortion is the man's solution for what he views as the "woman's problem."¹³

Roe's harmful effects on women have not been confined to the social realm.

Medical science has shown that abortion damages women's physical and mental health as

12 Akinrinola Bankole, Susheela Singh and Taylor Haas, Reasons Why Women Have Induced Abortions: Evidence from 27 Countries, 24 International Family Planning Perspectives 117 (1998) citing statistics from Aida Torres and Jacqueline Darroch Forrest, Why Do Women Have Abortions?, 20 Family Planning Perspectives 169 (July/August 1988).

13 To date, when women have resisted the pressure to obtain an abortion, the courts have rejected claims by their sexual partners that men should be able to avoid paternal obligations since they did not choose to become fathers. See e.g. Wallis v. Smith, 22 P.3d 682 (N.M. 2001) (rejecting man's claim for contraceptive fraud).

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well.¹⁴ By aborting their pregnancies, women lose the health benefits that childbirth and its accompanying lactation bring, including reduced risk of breast, ovarian, and endometrial cancer.¹⁵

One-third of all women in the U.S. will suffer from cancer in their lifetime.¹⁶

Cancer is the second leading cause of death in the United States. ¹⁷

Breast cancer is the most common cancer diagnosed in women, and the second leading cause of cancer death in women.¹⁸ It is estimated that about 211,240 women in the United States will be diagnosed with invasive breast cancer in 2005, and about 40,410 women will die from the disease.¹⁹ One of the recognized risk factors for breast cancer is having no children or delaying childbearing until after the age of thirty.²⁰

In 1970 the World Health Organization published the results of an international study of breast cancer and reproductive experience involving 250,000 women from seven areas. The study established that women having their first child under age 18 have only about one-third the breast cancer risk of those whose first birth is delayed until age 35 or older. The researchers also noted that "data suggests an increased risk [of breast cancer] associated with abortion contrary to the reduction in risk associated with full-term births."²¹

14 See ELIZABETH RING-CASSIDY & IAN GENTLES, WOMEN'S HEALTH AFTER ABORTION (2d. 2003).

15 See John M. Thorp et al., Long-term Physical and Psychological Health Consequences of Induced Abortion: Review of the Evidence, 58 Obstetrical & Gynecological Survey 67 (2003); V. Beral et al, Does Pregnancy Protect Against Ovarian Cancer?, THE LANCET (May 20, 1978) at 1083 ("pregnancy - or some component of the childbearing process - protects directly against ovarian cancer"); and G. Albrektsen et al., Is the Risk of Cancer of the Corpus Uteri Reduced by a Recent Pregnancy? A Prospective Study of 765, 756 Norwegian Women, 61 INT'L. J. CANCER 485 (1995).

16 American Cancer Society, Cancer Facts and Figures: 2005 at 2, available at .

17 Id. at 1.

18 Id. at 9

19 Id.

20 Id.

21 B. MacMahon, Age at First Birth and Breast Cancer Risk, 43 BULLETIN OF THE WORLD HEALTH ORGANIZATION, 209 (1970). See also P.M. Layde et al, The Independent Associations of Parity, Age at

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Childbirth also has a protective effect against ovarian cancer.²² Ovarian cancer is the seventh most common cancer, but ranks fourth as the cause of cancer death in women.²³ It causes more deaths than any other cancer of the female reproductive system.²⁴ The American Cancer Society estimates that there will be about 22,220 new cases of ovarian cancer in this country in 2005. About 16,210 women will die of the disease. While less common than breast cancer, it is more likely to be fatal. Childbirth reduces this risk.²⁵

Endometrial cancer is a cancer that develops from the inner lining of the uterus.

In 2005, 40,880 new cases of endometrial cancer are expected to be diagnosed, and 7,310 women are expected to die from this cancer.²⁶ Researchers have found that the process of

childbirth results in the shedding of malignant or pre-malignant cells which lead to endometrial cancer.²⁷ This protective effect increases with each birth.²⁸

In contrast, abortions render women thirty percent more likely to develop breast cancer²⁹ and also increase the likelihood of developing cervical³⁰ and ovarian cancer.³¹

First Full Term Pregnancy, and Duration of Breastfeeding with the Risk of Breast Cancer, 42 J. CLINICAL EPIDEMIOLOGY 963 (1989).

22 V. Beral et al, Does Pregnancy Protect Against Ovarian Cancer?, THE LANCET (May 20, 1978) at 1083 ("pregnancy - or some component of the childbearing process - protects directly against ovarian cancer"); and D. Purdie et al, Reproductive and Other Factors and Risk of Epithelial Ovarian Cancer: An Australian Case-Control Study, 62 INT'L J. OF CANCER 678 (1995) (finding a reduced risk of ovarian cancer with increasing number of children).

23 American Cancer Society, Cancer Facts and Figures: 2005 at 10, available at .

24 Id. at 16.

25 See n. 22 supra.

26 American Cancer Society, Cancer Facts and Figures: 2005 at 20, available at .

27 G. Albrektsen et al., Is the Risk of Cancer of the Corpus Uteri Reduced by a Recent Pregnancy? A Prospective Study of 765, 756 Norwegian Women, 61 INT'L. J. CANCER 485 (1995).

28 L.A. Brinton et al, Reproductive, Menstrual, and Medical Risk Factors for Endometrial Cancer: Results from a Case-Control Study, 167 AMERICAN J. OBSTETRICS & GYNECOLOGY 1317 (1992).

29 RING-CASSIDY, supra note 14, at 17. "Since 1957, evidence linking induced abortion to the later development of breast cancer has been observed in 23 of 37 studies worldwide, including 10 of 15 U.S. studies." Id. See also Joel Brind, et al. Induced Abortion as an Independent Risk Factor for Breast Cancer: A Comprehensive Review and Analysis, 50 J. EPIDEMIOLOGY & COMMUNITY HEALTH 481; and Nancy Kreiger, Exposure, Susceptibility, and Breast Cancer Risk: A Hypothesis Regarding Exogenous Carcinogens, Breast Tissue Development, and Social Gradients, Including Black/White Differences in 7

Abortion also creates numerous health hazards for subsequent pregnancies, including increasing the likelihood of death during childbirth.³² Furthermore, women who have had abortions experience varying degrees of emotional distress³³ and are more likely to exhibit self-destructive behaviors, including suicide.³⁴

While it is often said that abortion is significantly safer than completing the pregnancy, the fact is we simply don't have the statistical information to know. Abortion providers have concede this fact in the published literature.³⁵ Yet any attempts to remedy Breast Cancer Incidence, 13 BREAST CANCER RESEARCH AND TREATMENT 205 (1989). See generally John Kindley, The Fit Between the Elements for an Informed Consent Cause of Action and the Scientific Evidence Linking Induced Abortion with Increased Breast Cancer Risk, 1998 WIS. L. REV. 1595 (1998).

30 David A. Grimes, Sequelae of Abortion, in MODERNMETHODS OF INDUCING ABORTION 95, 105 (David T. Baird et al. eds., 1995).

31 RING-CASSIDY, supra note 14, at 35. "[C]hildbirth provides women with protection from cancers of the reproductive system." Id.

32 See RING-CASSIDY, supra note 14, at 41. "These complications include: cervical damage leading to future problems in carrying a pregnancy to term; uterine damage resulting in placenta previa which increases the morbidity and mortality risks for both mother and infant; and ectopic pregnancy. Data indicate that in the past twenty years the incidence of these complications has risen sharply. Studies reveal that induced abortion can put a woman at a seven-fold increased risk of placenta previa and a 30 to 510 per cent increased risk of delivering a premature infant. Children born prematurely are at an enormously increased risk of developing cerebral palsy. Ectopic pregnancies are reaching epidemic proportions, the rates having doubles or triples in many parts of the world in direct proportion to the increase in induced abortions." Id. Abortion also increases the risk of infertility, pelvic inflammatory disease, and Chlamydia trachomatis. Id. at 64-69. For a thorough discussion of abortion's contribution to maternal mortality see id. at 85-98.

33 RING-CASSIDY, supra note 14, at 131. See also Anna Glasier, Counseling for Abortion, in MODERN METHODS OF INDUCING ABORTION 112, 117 (David T. Baird et al. eds., 1995); Jo Ann Rosenfeld, Emotional Responses to Therapeutic Abortion, 45 AM. FAM. PHYSICIAN 137, 138 (1992) ("Teenagers who do not tell their parents about their abortion have an increased incidence of emotional problems and feelings of guilt.") Additional sources are collected and discussed in Thomas R. Eller, Informed Consent Civil Actions for Post-Abortion Psychological Trauma, 71 NOTRE DAME L. REV. 639 (1996). For cases

involving claims of psychological injury see *Edison v. Reproductive Health Servs.*, 863 S.W.2d 621 (Mo. Ct. App. 1993), and *Showery v. State*, 678 S.W.2d 103 (Tex. App.--El Paso 1984, writ ref'd). 34 RING-CASSIDY, *supra* note 14, at 189. "Post abortion behaviors tend to be self-destructive and include suicide, both actual and attempted; deliberate self-harm such as mutilation and other punishments; unconscious self-harm in the form of substance abuse, smoking, and various eating disorders; and unstable, often abusive and battering, relationships. . . . [T]he suicide rate following abortion is six times greater than that following childbirth, and three times the general suicide rate." *Id.* See also Mika Gissler, *Suicides After Pregnancy in Finland 1987-1994: Register to Linkage Study*, 313 BRIT. MED. J. 1431, 1433 (1996); and H. David et al., *Postpartum and Postabortion Psychotic Reactions*, 13 FAMILY PLANNING PERSPECTIVES 889 (1981).

35 "The primary limitation of many U.S. studies is that they use data on average characteristics of abortion patients, rather than directly matching records, and they rely on complicated algorithms and corrections that introduce opportunities for measurement error." J. Richard Udry, *A Medical Report Linkage Analysis of Abortion Underreporting*, 28 FAMILY PLANNING PERSPECTIVES, 228 (1996) available at <www.agi8 this critical lack of public health information are furiously fought by abortion-rights advocates.³⁶

Yet women are not the only ones harmed by the mentality reflected in the *Roe* and *Doe* holdings. It is often said that these Courts did not understand the physical development of the unborn at the time the cases were heard. Yet I recently had occasion to go back and read the briefs presented to the *Roe* Court and was amazed by the amount of detail concerning the development of the unborn child, even in 1973. While there were no pictures as compelling as tiny Samuel Armas' hand apparently grasping the finger of the perinatal surgeon who was repairing his spine while Samuel was still in his mother's womb³⁷ or those currently available from a 4-D ultrasound system, our common humanity was made clear by the Attorney General of Texas from the medical materials available, even at that time. The failure of the Court to engage this material in its opinion deeply troubles me.

usa.org/pubs/journals/2822896.html>. See also Stanley K. Henshaw, *Unintended Pregnancy and Abortion: A Public Health Perspective in A CLINICIAN'S GUIDE TO MEDICAL AND SURGICAL ABORTIONS* at 20 (Maureen Paul et al., eds. 1999) ("The abortion reporting systems of some countries and states in the United States include entries about complications, but these systems are generally considered to underreport infections and other problems that appear some time after the procedure was performed."); Haishan Fu et al., *Measuring the Extent of Abortion Underreporting In the 1995 National Survey of Family Growth*, 30 FAMILY PLANNING PERSPECTIVES 128 (1998) available at <www.agiusa.org/pubs/journals/3012898.html>; Alan Guttmacher Institute, *Issues in Brief: The Limitations of U.S. Statistics on Abortion* (1997) available at ; and Audrey F. Saftlas et al., *Pregnancy-Related Morbidity in CDC's Public Health Surveillance for Women, Infants, and Children, From Data to Action: CDC's Maternal & Child Health Monograph 1994* at 137, available at ("no nationally representative data about legal abortion-related morbidity have been available or collected since the 1970's"); and David Reardon, *The Cover-Up: Why U.S. Abortion Mortality Statistics Are Meaningless* available at www.afterabortion.org/PAR/V8/n2/abortiondeaths.html.

36 See e.g. *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)(contesting statistical reporting requirement of Pennsylvania law).

37 The photo and story can be found at *Doctors Give Little One a Hand*, *The Tennessean* (Sept. 7, 1999) available at <http://www.tennessean.com/sii/99/09/07/fetus07.shtml>.

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Courts have traditionally recognized some rights in unborn children,³⁸ and medical science continues to demonstrate with increasing veracity that even at the earliest stages of development, an unborn child is a human being.³⁹ Even *Roe* recognized that the States have a compelling interest in protecting this human life.⁴⁰ Nevertheless, this decision authorized expectant mothers to choose abortion over life, and since 1973, over thirty-nine million legal abortions have been performed in the United States.⁴¹ In this country alone, roughly 700 pregnancies per year continue after an initial abortion attempt, and children born after these failed attempts are likely to suffer from developmental abnormalities.⁴² Also, as previously noted, children conceived after an abortion and carried to term run a higher risk of prenatal complications.⁴³

Perhaps even more troubling is the mounting evidence that abortion has contributed to the reemergence of the idea of children as possessions. In 1972, one year before the *Roe v. Wade* decision, there were 2.05 reported abuse cases per 1,000 children, according to the U.S. Bureau of the Census. In April, 2004 the U.S. Department of Health and Human Services reported 12.3 out of every 1,000 children were victims of abuse or neglect. In the six short years from 1986 to 1993 the total number of children

38 See Jack Balkin, ed., *WHAT ROE SHOULD HAVE SAID* (NYU Press 2005), at 191 (Collett). "[S]tates have recognized a child's right to sue for prenatal injuries. Family law courts have recognized the right of the unborn child to sue for the financial support of his parents. Unborn children have long been included as heirs and testamentary beneficiaries of decedents." *Id.*

39 See BALKIN, *supra* note 38, at 207 (Paulsen) ("A conceived human embryo is, biologically, human life. . . . There is simply no room for disagreement with the scientific and medical evidence concerning the biological beginning of human life."); *id.* at 191 (Collett) ("At five and a half weeks the fetal heartbeat is similar to that of an adult, and at forty-three days of gestation brain waves can be noted. 'By the end of the first trimester (12th week) the fetus is a sentient moving being.'" (quoting ARNOLD GESELL, *THE EMBRYOLOGY OF BEHAVIOR* 65 (1945))).

40 See *Roe v. Wade*, 410 U.S. 153, 164-65 (1973).

41 BALKIN, *supra* note 38, at 5.

42 RING-CASSIDY, *supra* note 14, at 124-25. In one highly documented case in Canada, a child born after a botched abortion was left without oxygen for forty minutes until she was taken to intensive care. The child consequently developed cerebral palsy. *Id.* at 125.

43 See *supra* note 32 (discussing the increased risk of premature birth and ectopic pregnancy after an

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endangered quadrupled.⁴⁴ While many factors may have contributed to this increase, the attitude that we are free to dispose of human life that is "unwanted" certainly must be among them.

With the advent of in vitro fertilization, technology that only became available five years after *Roe v. Wade*, some would-be parents now dream of "custom-order" children resulting in today's debate regarding the morality of selecting the sex and other characteristics of a child. The parameters of this debate have expanded so far as to include those who defend the right of two deaf lesbians to intentionally create a deaf child.⁴⁵

All of these facts lead me to agree with a recent opinion of Judge Edith Jones of the United States Court of Appeals for the Fifth Circuit:

Hard and social science will of course progress even though the Supreme Court averts its eyes. It takes no expert prognosticator to know that research on women's mental and physical health following abortion will yield an eventual medical consensus, and neonatal science will push the frontiers of fetal 'viability' ever closer to the date of conception. One may fervently hope that the Court will someday acknowledge such developments and re-evaluate *Roe* and *Casey* accordingly.⁴⁶

Some of us think that day needs to be now.

Thank you, Mister Chairman, for allowing me the time to appear before the committee and to extend my remarks in the form of this written testimony. (abortion).

44 Andrea J. Sedlak and Diane D. Broadhurst, *THIRD NATIONAL INCIDENCE STUDY OF CHILD ABUSE AND NEGLECT* (1996).

45 Liza Mundy, *A World of Their Own*. *The Washington Post*, 31/3/2002, p.W22.

46 *McCorvey v. Hill*, 585 F. 3d 846, 852-53 (5th Cir. 2004) (Jones, J. concurring). </www.agiusa.</www.agi8