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ABORTION IS NOT HEALTH CARE

In recent years pro-abortion groups have radically altered their messaging strategy, abandoning the slogan of "choice" to claim instead that abortion is simply essential health care for women. References to abortion or abortion "services" have been replaced in pro-abortion literature by the euphemism "abortion care." By claiming an objective basis in medicine, abortion supporters seek to marginalize health care providers and others who disagree with them, dismissing these Americans as not living up to "the standard of care."

But this claim is contrary to the facts. Abortion is a marginal practice, neither performed nor accepted by most health care providers; it does not improve (and can even jeopardize) women's life and health; and American law has recognized for decades that it is not "just another medical procedure." Far from being integral to our health care system, abortion is something that supporters *seek* to impose on that system by force of law.

Abortion is a Marginal Practice in the Health Care System

- In 2011, a randomized survey of practicing ob/gyns in the U.S. showed that only 14% provide abortions.[1] A later study in 2019 suggested that this may have increased to 24%, but that study did not survey the full range of practicing ob/gyns.[2] A 2018 study found that only 7% of ob/gyns in private practice had performed even one abortion in 2013 or 2014.[3] None of these studies support the claim that abortion is integral to women's reproductive health care since the vast majority of ob/gyns do not provide it.

- The Guttmacher Institute (former research affiliate of Planned Parenthood) reported in 2019 that 95% of abortions are done in outpatient clinics, with 60% provided by "specialized" clinics (where *most* patient visits are for abortion); only 3% are performed in hospitals, and a little more than 1% in physicians' offices. 74% of abortions are done by facilities that do a thousand abortions or more a year; 16% are done by facilities that do 5,000 or more a year.[4] 89%

[1] D. Stulberg *et al*., "Abortion Provision Among Practicing Obstetrician-Gynecologists," *Obstetrics & Gynecology* 118.3 (September 2011) 609-14.

[2] The 2019 study surveyed only fellows or junior fellows of the American College of Obstetricians and Gynecologists who belong to the Collaborative Ambulatory Research Network; the 2011 study surveyed a randomized sample of all practicing ob/gyns in the U.S.. D. Grossman et al., "Induced Abortion Provision Among a National Sample of Obstetrician–Gynecologists," *Obstetrics & Gynecology* 133.3 (March 2019) 477-83; D. Stulberg *et al*., op. cit., at 610.

[3] S. Desai et al., "Estimating Abortion Provision and Abortion Referrals Among United States Obstetrician-Gynecologists in Private Practice," *Contraception* 97 (2018) 297-302.

[4] R. Jones et al., *Abortion Incidence and Service Availability the United States, 2017*, Guttmacher Institute (September 2019) at 16 (Table 3).

of U.S. counties have no clinic providing abortions.[5] These are hardly the statistics one would expect from a procedure that is supposedly "essential" to women's health.

- Pro-abortion groups now seek to disconnect abortion from medical practice even more, by promoting "self-managed" (i.e., self-induced) abortion.[6] Abortion advocate Dr. Daniel Grossman recently co-authored a *Washington Post* column urging the Biden administration to ensure that the abortion drug mifepristone can be "prescribed via telemedicine" and "provided by mail" to women[7] – although he has also co-authored a study showing that such "medication abortion" has *four times* the complication rate of first-trimester aspiration abortions.[8]

Modern Medicine Knows the Unborn Child is a Patient, Not a Disease

- Underscoring decades of progress in fetal therapy, the most recent edition of the standard textbook *Williams Obstetrics* includes an entire section on "The Fetal Patient," and book-length accounts by medical experts document this specialty in greater detail.[9] Researchers at the University of Texas Medical Branch are developing "a new medicine delivery system that could reduce the incidence of pre-term labor and premature birth by allowing physicians to treat the 'fetus as the patient'."[10] Other new advances in treatments for the unborn child emerge on a regular basis.[11]

- It has been the policy of the American Academy of Pediatrics since 1988 that the unborn child is a patient eligible for treatment by the pediatrician. The Academy reaffirmed this policy in 2017: "Pediatrics is a multifaceted specialty that encompasses children's physical, psychosocial, developmental, and mental health. Pediatric care may begin *periconceptionally* and continues *through gestation*, infancy, childhood, adolescence, and young adulthood."[12]

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[5] Id. at 7.

[6] See *Blueprint for Sexual and Reproductive Health, Rights, and Justice* (May 2019) at 38-9.

[7] H. Palacio and D. Grossman, "How the Biden administration should standup for abortion rights," *The Washington Post*, January 27, 2021.

[8] U. Upadhyay *et al*., "Incidence of emergency department visits and complications after abortion," *Obstetrics & Gynecology* 125.1 (January 2015) 175-183.

[9] See: F. Cunningham et al., *Williams Obstetrics*, 25th edition (McGraw Hill 2018), Section 5 ("The Fetal Patient"); M. Harrison et al., *The Unborn Patient: The Art and Science of Fetal Therapy*, 3rd edition (Saunders 2001).

[10] UTMB News Release, "UTMB team proves potential for reducing pre-term birth by treating fetus as patient," January 22, 2021.

[11] E.g., C. Davies, "Surgery in the womb: miracle maker for NHS's tiniest patients," *The Guardian*, 29 January 2016. Says the fetal surgery expert featured in this article: "There is no better reward in life than a woman coming along to show you her baby, and sending photographs to say: 'Thank you, this baby would not have been born.' How can you judge that? Against what? That is the ultimate reward."

[12] American Academy of Pediatrics, "Policy Statement: Age Limit of Pediatrics," *Pediatrics* 140.3 (2017): e20172151 (emphasis added).

- Some abortion supporters claim that restrictions on public funding of abortion are "racist." But this begs the key question. Black women in the U.S. already have an abortion rate three times that of white women.[13] If Black unborn children are patients, it is the drive to eliminate even *more* of these children with taxpayer funds that smacks of racism. That drive is led by, among others, Planned Parenthood, now accused by hundreds of its own current and former employees of being founded by "a racist, white woman" and of continuing her legacy, especially at its flagship affiliate in New York.[14]

The "Stigma" of Performing Abortions Is Due to What Abortion Is

- A major reason for the isolation of abortion providers is that mainstream medical professionals do not accept or respect abortion as part of regular medicine. "Abortion stigma persists," said physicians supporting abortion in 2014, "even though it has been over 40 years since *Roe v. Wade*," and this leads to "burnout and compassion fatigue among abortion care providers."[15] Supporters complain that other medical professionals see abortion as "dirty work" done by those not competent enough for legitimate medical practice.[16]

- This is because abortion is an act of violence against someone who could be a physician's patient, as some abortion practitioners admit. A physician who supports and performs second-trimester abortions writes: "Abortion is different from other surgical procedures… It is disingenuous to argue that removing a fetus from a uterus is no different from removing a fibroid… There is violence in abortion, especially in second trimester procedures." She acknowledges "the violence and, frankly, the gruesomeness of abortion."[17]

- Regarding the "D&E" (dilation and evacuation) abortion technique, practitioner Dr. Warren Hern has written that those performing or assisting in it "are having strong personal reservations about participating in an operation which they view as destructive and violent." He adds: "We have reached a point in this particular technology where there is no possibility of denying an act of destruction. It is before one's eyes. The sensations of dismemberment flow through the forceps like an electric current."[18]

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[13] K. Kortsmit et al., *Abortion Surveillance — United States, 2018*, Morbidity and Mortality Weekly Reports, Surveillance Summary 69 (No. SS-7) (2020) 1–29 at 6.

[14] See: *Save PPGNY* (June 18, 2020); V. Richardson, "Planned Parenthood 'steeped in white supremacy,' employees, supporters charge," *The Washington Times*, July 5, 2020.

[15] L. Martin et al., "Abortion providers, stigma and professional quality of life," *Contraception* 90 (2014) 581-7 at 581.

[16] L. Harris et al., "Physicians, abortion provision and the legitimacy paradox," *Contraception* 87 (2013) 11-16 at 11, 12-13.

[17] L. Harris, "Second Trimester Abortion Provision: Breaking the Silence and Changing the Discourse," *Reproductive Health Matters* 16 (31 Supplement) (2008) 74-81 at 75, 76-7.

[18] W. Hern and B. Corrigan, "What about us? Staff reactions to D & E," *Advances in Planned Parenthood* 15.1 (1980) 3-7 at 7.

- Increasingly, supporters of abortion acknowledge that it takes a human life. One writes: "I believe that's what a fetus is: A human life…. Here's the complicated reality in which we live: All life is not equal… [A] fetus can be a human life without having the same rights as the woman in whose body it resides. She's the boss."[19]

Abortion Does Not Improve Women's Health; Instead It May Jeopardize It

- Women seeking abortions overwhelmingly report they are *not* doing so for "health" reasons. In a 2013 survey, only 6% cited any concern for their own health among the reasons for the abortion.[20]

- When Congress debated legislation on health care providers' right of conscientious objection to abortion in 2011, four experts with many decades of experience in high-risk obstetrics and emergency medicine wrote that they have found no need for conscience laws to have exceptions, as they had never encountered a case where an emergency abortion was necessary to preserve the life or health of the mother.[21]

- After the Hyde amendment became law in 1976, banning federal funding of most abortions, officials at the U.S. Center for Disease Control said it would increase low-income women's deaths and force them to have unsafe later-term abortions as they tried to collect funds for an abortion. Later they had to admit they were wrong: "For poor women, it appears that restriction of public funding for legal abortions has not markedly increased the number of illegal abortions, but has reduced the number of legal abortions, *especially those at later gestational ages, which would have cost more and been at greater risk of complications.*"[22]

- A ten-year study published by the *British Medical Journal* found that the states in Mexico with "less permissive" abortion policies had significantly lower maternal mortality rates than states with more permissive policies.[23] In Chile, an ongoing *reduction* in maternal mortality due to improved education and health care continued at the same rate after passage of a law against abortion.[24]

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[19] M. Williams, "So what if abortion ends life?", *Salon*, January 23, 2013.

[20] M. Biggs et al., "Understanding why women seek abortion in the US," *BMC Women's Health* 13.29 (2013) 1-13 at 6 (Table 2).

[21] Letters by Drs. Edward Read, John Thorp, Byron Calhoun, and Steve Calvin in *Cong. Record*, October 13, 2011, pages H6877-8.

[22] R. Selik et al., "Effects of Restricted Public Funding for Legal Abortions: A Second Look," *American Journal of Public Health* 71.1 (January 1981) 77-81 at 77 (emphasis added).

[23] E. Koch et al., "Abortion legislation, maternal healthcare, fertility, female literacy, sanitation, violence against women and maternal deaths: a natural experiment in 32 Mexican states," *BMJ Open* 5.2: e00601 (Feb. 23, 2015).

[24] E. Koch et al., "Women's Education Level, Maternal Health Facilities, Abortion Legislation and Maternal Deaths: A Natural Experiment in Chile from 1957 to 2007," *PLOS ONE* 7.5: e36613 (May 4, 2012).

- Abortion can adversely affect a woman's ability to carry a later pregnancy to term. "A literature review retrieved 49 studies that demonstrated at least 95 percent confidence in an increased risk of preterm birth (PB), or surrogates such as low birth weight or second-trimester spontaneous abortion, in association with previous induced abortions," and a greater impact in the case of two or more prior abortions.[25] This is especially troubling in light of evidence that women who end a first pregnancy by abortion experience more lifetime pregnancies, and are more likely to end later pregnancies with abortion, than women who carry to term.[26]

Abortion Endangers Women's Lives

- The abortion industry poses its own risks to women's lives and health. A former abortion practitioner writes: "For years, many abortion clinics have gotten away with shoddy practices that no surgery center would be likely to get away with. This is surely because abortion workers, legislators and law enforcement fear that they will be accused of restricting access to abortion if they hold abortion clinics accountable."[27]

- After abortion practitioner Kermit Gosnell was charged with murder and other crimes in 2011, online magazine *Slate* published a series showing that legal abortions endanger many women's lives in the U.S. due to shoddy and unsafe conditions in some abortion clinics.[28]

- The U.S. Centers for Disease Control report that induced abortion has caused 519 women's deaths from 1973 to 2017, all but 57 of them due to legal abortions.[29] This figure may be a substantial understatement.[30]

- A study of women born in Denmark over a 30-year period found that women who had undergone abortions had a higher mortality rate than women who had given birth. "Increased risks of death were 45%, 114% and 191% for 1, 2 and 3 abortions, respectively, compared with no abortions after controlling for other reproductive outcomes and last pregnancy age…. Finally,

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[25] B. Rooney and B. Calhoun, "Induced Abortion and Risk of Later Premature Births," *Journal of American Physicians and Surgeons* 8.2 (Summer 2003) 46-9 at 46.

[26] J. Studnicki et al., "Pregnancy Outcome Patterns of Medicaid-Eligible Women, 1999-2014: A National Prospective Longitudinal Study," *Health Services Research and Managerial Epidemiology* 7 (2020) 1-10 at 1.

[27] K. Aultman, "I was an abortionist. The abortion industry isn't willing to prioritize patient safety," *USA Today*, January 22, 2020.

[28] W. Saletan, "The Back Alley: How the Politics of Abortion Protects Bad Clinics," *Slate*, February 16-25, 2011.

[29] *Abortion Surveillance — United States, 2018*, note 10 supra, at 29 (Table 14).

[30] See: D. Reardon, "The Cover-Up: Why U.S. Abortion Mortality Statistics Are Meaningless," *The Post-Abortion Review* 8.2 (April-June 2000).

decreased mortality risks were observed for women who had experienced two and three or more births compared with no births."[31]

- In 1996, public health officials in Finland found: "The risk of suicide after birth is half of that among women of reproductive age in general. Suicides are more common after a miscarriage and especially after an induced abortion than in the general population." The suicide rate after abortion was almost six times higher than after a birth (34.7 per 100,000 women versus 5.9). The officials reported in 2014 that this remains a serious problem, and other developed countries have found a similar trend.[32]

- A difference in death rates was found among low-income women on Medicaid in California, where the state Medicaid program funds elective abortion. "Compared with women who give birth, those who had abortions were more likely to subsequently die of suicide, accidents, homicide, mental disease, and cerebrovascular disease. Previous psychiatric disease does not appear to explain the higher relative death rates."[33] A later meta-study, reviewing 11 studies from three countries, concluded: "Within a year of their pregnancy outcomes, women experiencing a pregnancy loss are over twice as likely to die compared to women giving birth…. Both miscarriage and termination of pregnancy are markers for reduced life expectancy."[34]

- Some researchers have claimed that abortion is safer than childbirth for women. However, this field of study has been plagued by underreporting and other flaws.[35] Some of these are corrected by the "record linkage" or "data linkage" approach used above, in which death certificates are compared with other official health data on pregnancies, births, abortions and deaths.[36] Using more complete data, two researchers recently concluded: "In the United

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[31] P. Coleman et al., "Reproductive history patterns and long-term mortality rates: a Danish, population-based record linkage study," *European Journal of Public Health* 23.4 (August 2013) 569–574 at 569.

[32] M. Gissler et al., "Suicides after pregnancy in Finland, 1987-94: register linkage study," *British Medical Journal* 313 (1996): 1431. On later developments see A. Sobie, "Suicides After Abortion Remain High in Finland Despite Better Screening Guidelines," *National Right to Life News Today*, December 19, 2014 (quoting and providing citations to primary sources).

[33] D. Reardon et al., "Deaths Associated With Pregnancy Outcome: A Record Linkage Study of Low Income Women," *Southern Medical Journal* 95.8 (August 2002) 834-41 at 834.

[34] D. Reardon and J. Thorp, "Pregnancy associated death in record linkage studies relative to delivery, termination of pregnancy, and natural losses: A systematic review with a narrative synthesis and meta-analysis," *SAGE Open Medicine* 5 (2017) 1-17 at 1.

[35] See B. Calhoun, "The maternal mortality myth in the context of legalized abortion," *The Linacre Quarterly* 80.3 (2013) 264-76.

[36] For example, Finnish public health experts found: "Without data linkages, 73% of all pregnancy-associated deaths would have been missed; the percentage after induced and spontaneous abortions was even higher." M. Gissler et al., "Methods for identifying pregnancy-associated deaths: population-based data from Finland 1987-2000," *Paediatric and perinatal epidemiology* 18.6 (November 2004) 448-55 at 448.

States, the death rate from legal induced abortion performed at 18 weeks gestation is more than double that observed for women experiencing vaginal delivery."[37]

American Law Does Not Treat Abortion as Just Another Medical Procedure

- The notion that the U.S. Supreme Court's abortion decisions declare abortion to be on the same level as mainstream health care is false. In a series of decisions issued shortly after its 1973 *Roe v. Wade* decision, culminating in a decision upholding the Hyde amendment in 1980, the court rejected the argument that abortion is simply a medical procedure to be treated by the government like any other: "Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life." *Harris v. McRae*, 448 U.S. 297, 325 (1980). In later decisions the court abandoned the confusing phrase "potential life" to refer straightforwardly to a legitimate governmental interest in respecting "the life of the unborn."[38]

- The federal Emergency Medical Treatment and Active Labor Act (EMTALA) recognizes the unborn child as a patient, not as an unwanted medical condition. It forbids hospital emergency rooms to transfer a patient to another facility due to inability to pay if he or she has an "emergency medical condition," defined as a condition that without treatment may be expected to result in "placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy." The hospital must help stabilize the condition of mother *and* child.[39]

- The federal government's State Children's Health Insurance Program (SCHIP) allows states to enroll unborn children as recipients of insurance coverage throughout a pregnancy, making the child and his or her mother eligible for health care which they would not otherwise receive under Medicaid. Federal SCHIP regulations define "child" as "an individual under the age of 19 including the period from conception to birth." Like EMTALA, they define an "emergency medical condition" as one that could result in "serious jeopardy to the health of the individual or, in the case of a pregnant woman, the health of a woman or her unborn child" (42 CFR §457.10). As of 2016, 15 states and the District of Columbia were providing coverage for unborn children under this option.[40]

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[37] P. Marmion and I. Skop, "Induced Abortion and the Increased Risk of Maternal Mortality," *The Linacre Quarterly* 87.3 (August 2020) 302-10 at 302.

[38] The court has said that by regulating abortion "the State . . . may express profound respect for the life of the unborn." *Planned Parenthood* v. *Casey*, 505 U.S. 833, 877 (1992). In later upholding a federal ban on partial-birth abortion, the court said such a ban "expresses respect for the dignity of human life," and it reaffirmed government's "legitimate interests in regulating the medical profession in order to promote respect for life, including life of the unborn." *Gonzales v. Carhart*, 550 U.S. 124 at 157, 158 (2007).

[39] 42 USC §1395dd (e)(1)(A)(i) and (e)(3)(A).

[40] Association of State and Territorial Health Officials, *Factsheet: State Children's Health Insurance Program (S-CHIP) Coverage During Pregnancy* (2016).

- Ever since the *Roe v. Wade* decision of 1973, Congresses and presidents of both major parties have helped enact and maintain numerous laws protecting a right to decline involvement in abortion, abortion coverage, and abortion training. Some of these laws depend on the existence of a moral or religious objection on the part of an individual or organization, but others reflect a broader principle that abortion is not the *kind* of procedure that health care providers or others should be *required* to participate in as though it were essential health care. Laws of the latter variety include: the abortion-neutral amendment to the Civil Rights Restoration Act of 1988, 20 USC §1688 (federal law against sex discrimination does not require an institution to provide abortion or abortion benefits); the Coats/Snowe amendment of 1996, 42 USC §238n (federal accreditation and funding for ob/gyn residents and residency programs may not be withheld because they do not receive or provide abortion training); a Medicare Advantage provision included in Labor/HHS appropriations bills every year since 1998 (against forbidding participation in the program by providers who decline involvement in abortion); the Hyde/Weldon amendment included in Labor/HHS appropriations bills every year since 2004 (forbidding federal agencies, and state and local governments receiving federal funds, to discriminate against health care providers and health plans that decline involvement in abortion); and provisions of the Affordable Care Act of 2010 (forbidding discrimination against providers and insurers that decline involvement in abortion), 42 USC §18023 (b)(1)(A) and (b)(4).[41]

Conclusion

These sources all point to the same reality: Abortion is not health care. It is different because it does violence to a very young child, has no clear justification in terms of women's health, and may attack women's health and their very lives. Since the legalization of abortion in 1973, legal actions by all three branches of the federal government have repeatedly reflected this fact.

February 2021

[41] For a compilation of the texts and citations see USCCB Secretariat of Pro-Life Activities, "Current Federal Laws Protecting Conscience Rights" (February 2021).