

No. 04-3379

THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

LEROY CARHART, M.D., *et al.*,
Plaintiffs-Appellees,

v.

JOHN ASHCROFT,
In his official capacity as Attorney General of the United States,
Defendant-Appellant.

On Appeal from the United States District Court for the District of Nebraska
District Court No. 4:03-CV-3385
Judge Richard G. Kopf

**BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY,
CHRISTIAN MEDICAL ASSOCIATION, ALLIANCE DEFENSE FUND,
NATIONAL ASSOCIATION OF EVANGELICALS, FOCUS ON THE
FAMILY, FAMILY RESEARCH COUNCIL, CONCERNED WOMEN FOR
AMERICA and ETHICS & RELIGIOUS LIBERTY COMMISSION OF
THE SOUTHERN BAPTIST CONVENTION,
IN SUPPORT OF DEFENDANT-APPELLANT**

STEVEN H. ADEN
Counsel of Record
GREGORY S. BAYLOR
M. CASEY MATTOX
CHRISTIAN LEGAL SOCIETY
CENTER FOR LAW AND
RELIGIOUS FREEDOM
4208 Evergreen Lane, Suite 222
Annandale, Virginia 22003
(703) 642-1070 ext. 3502
Counsel for Amici

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
CORPORATE DISCLOSURE.....	1
STATEMENTS OF INTEREST and AUTHORITY TO FILE	1
INTRODUCTION	1
ARGUMENT.....	2
I. CONGRESS CORRECTLY CONCLUDED THAT THERE IS NO NECESSITY FOR A HEALTH EXCEPTION TO THE BAN	2
A. The District Court Misstated and Misapplied the Supreme Court’s Standard for Determining Whether a Health Exception is Required	2
B. The District Court’s Conclusion that the Health Exception is Required is Not, in Fact, Supported by the Evidence that the Court Cites.....	6
II. THE STATUTE DOES NOT BAN STANDARD D&E ABORTIONS, SO IT DOES NOT IMPOSE ANY UNDUE BURDEN UPON A WOMAN’S RIGHT TO AN ABORTION	12
CONCLUSION.....	16
CERTIFICATE OF COMPLIANCE.....	17
CERTIFICATE OF SERVICE.....	18
APPENDIX.....	A-1

TABLE OF AUTHORITIES

<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> 505 U.S. 833 (1992).....	3, 11
<i>Roe v. Wade</i> 410 U.S. 113 (1973).....	3
<i>Stenberg v. Carhart</i> 530 U.S. 914 (2000).....	<i>passim</i>
<i>Stenberg v. Carhart</i> 331 F. Supp.2d 805 (D. Neb. 2004).....	<i>passim</i>

OTHER AUTHORITIES

American Medical Association Board of Trustees Factsheet on H.R. 1122 (June 1997)	14
CONGRESSIONAL FINDING (1), Pub. L. No. 108-105, § 2, 117 Stat. 1201 (2003)	10

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the *amici curiae*, Christian Legal Society, Christian Medical Association, Alliance Defense Fund, National Association of Evangelicals, Focus on the Family, Family Research Council, Concerned Women for America, and Ethics and Religious Liberty Commission of the Southern Baptist Convention state that they are nonprofit corporations, have no parent corporations and issue no publicly held stock.

STATEMENTS OF INTEREST OF *AMICI CURIAE* AND AUTHORITY TO FILE¹

The *amici*, which can be fairly said to represent millions of Americans, are deeply committed to the preservation of the sanctity of human life. A detailed statement of interest for each of the *amici* is found in the Appendix to this brief. Consent to file this brief has been obtained from counsel for both parties.

INTRODUCTION

The district court's decision that the Partial-Birth Abortion Ban Act of 2003 is unconstitutional is not compelled by the United States Constitution or Supreme Court precedent. Moreover, the ruling is the product of flawed reasoning and erroneous legal interpretation. Specifically, the court below erred in concluding that the Constitution requires the Act to contain an exception for the health of the

¹ Counsel for a party did not author this brief, in whole or in part. No one, other than *amici curiae*, their members, or their counsel, has made a monetary contribution to the preparation and submission of the brief.

mother and that the statute imposes an undue burden on a woman's right² to have an abortion. Contrary to the district court's finding, the ban does not encompass standard dilation and extraction (hereinafter "D&E") abortions.

ARGUMENT

I. CONGRESS CORRECTLY CONCLUDED THAT THERE IS NO NECESSITY FOR A HEALTH EXCEPTION TO THE BAN.

With the benefit of evidence gleaned from extensive inquiry, Congress concluded that the Partial-Birth Abortion Ban Act of 2003 (hereinafter "Ban" or "Act") did not require an exception for the health of the mother because the banned procedure would never be the only way to preserve the health of the mother. A careful review of the district court's opinion reveals two fundamental errors made by the court in reaching the conclusion that such an exception is required. First, the district court misstated and misapplied the standard announced by the United States Supreme Court for determining whether or not a health exception is required. Second, the district court's conclusion that the health exception is required is not supported by the evidence that the court cites.

A. The District Court Misstated and Misapplied the Supreme Court's Standard for Determining Whether a Health Exception is Required.

² While *amici* are of the firm belief that the U.S. Constitution does not confer any "right" to abortion, *amici* recognize that the prevailing view of the U.S. Supreme Court is otherwise. Thus, *amici* may refer herein to a woman's "right" to an abortion, but does so for the sole purpose of making its legal arguments in the framework of existing Supreme Court abortion jurisprudence.

In *Stenberg v. Carhart*, 530 U.S. 914 (2000) (hereinafter “*Stenberg*”), the Supreme Court considered whether or not the “established principles” of its earlier decision, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), required Nebraska’s statute banning partial-birth abortion to include a health exception. In *Casey* the joint opinion had held that, “subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.” 505 U.S. at 879 (joint opinion of O’Connor, Kennedy, and Souter, JJ.)(quoting *Roe v. Wade*, 410 U.S. 113 (1973)).

In *Stenberg*, the majority concluded that the Nebraska statute was unconstitutional under *Casey* because it lacked a health exception. 530 U.S. at 930. The Court explained:

By no means must a State grant physicians “unfettered discretion” in their selection of abortion methods. But where substantial medical authority supports the proposition that banning a particular abortion procedure could endanger women’s health, *Casey* requires the statute to include a health exception when the procedure is “necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.”

Id. at 938 (quoting *Casey* at 879)(internal citations omitted). The district court’s restatement and application of this standard renders it virtually unrecognizable. In effect, the district court has created a new and different, more onerous standard.

The first of the court's numerous restatements of the standard is as follows:

In other words, where a plaintiff-doctor presents some evidence showing a need for a particular surgical procedure, the burden of persuasion rests upon the *government* (Congress) to “convince[] us that a health exception is never necessary to preserve the health of women.” *Id.* at 1008 (emphasis in original).

331 F.Supp.2d 805, 1008 (D. Neb. 2004). The court has taken the quote out of context from the majority's opinion in *Stenberg*. The entire *Stenberg* quote reads as follows: “In sum, Nebraska has not convinced us that a health exception is ‘never necessary to preserve the health of women.’” 530 U.S. at 937-38 (*quoting* Reply Brief for Petitioners). Reading the quote in context, it is clear that the majority was not suggesting that whenever a single doctor presents “some evidence” showing an abstract “need” for a particular procedure, then the government carries the burden of persuasion to demonstrate that a health exception is never necessary. Indeed, the *Stenberg* opinion does not even mention “burden of persuasion.” Rather, the majority was merely stating that, in fact, the State had not convinced the Court of a claim made in its brief—that a health exception would never be necessary to preserve the health of women. The district court has thus inappropriately taken a conclusion that was specific to the evidence in *Stenberg* and created from it a universal rule.

The district court's subsequent restatements of the standard for determining whether or not a health exception is required are as follows:

[T]he case-deciding question may be properly stated as follows: Is there substantial evidence in the relevant record from which a reasonable person could conclude that there is *no substantial medical authority* supporting the proposition that banning “partial-birth abortions” could endanger women’s health? *Id.*

One might also phrase the question this way: Is there substantial evidence in the relevant record from which a reasonable person could conclude that the banned procedure is *never necessary, in appropriate medical judgment*, for the preservation of the health of the woman? *Id.* (emphasis in original).

While at first glance the differences between the Supreme Court’s description of the relevant analysis and the district court’s restatement of it may seem to be one of semantics, a careful examination reveals that these restatements represent a critical departure from the guidance of the High Court. They reveal that, right at the outset, the district court has embarked on a novel analytical journey by placing the burden of persuasion on the government to prove that “no substantial medical authority support[s] the proposition that banning ‘partial-birth abortions’ could endanger women’s health.” *Id.* In short, the district court’s standard imposes upon the government the burden of persuasion to prove the *converse* of what the Supreme Court held is the actual benchmark for determining when a health exception is required.

Of course, proving a negative is a tall order under any circumstances. But while courts considering abortion regulations have emphasized that absolute certainty in the medical field is rare and should not be required, the district court

effectively requires the government to demonstrate an absolute *lack* of any fringe medical group that shares an abstract belief that a ban on partial-birth abortions could endanger women's health. *Cf. Stenberg*, 530 U.S. at 937 (“Doctors often differ in their estimation of comparative health risks and appropriate treatment.”). *Amici* submit that the existence of a handful of abortionists who claim that partial-birth abortions are medically necessary would not constitute “substantial medical authority.” In any event, as *amici* will discuss *infra*, the abortionists in this case who “support” the banned procedure do not actually claim that partial-birth abortions are ever the only way to preserve a woman's health. Indeed, such a claim would have been directly contrary to the evidence.

The district court's standard surely amounts to a grant of “unfettered discretion” to physicians in their selection of abortion methods. *Amici* implore this Honorable Court to overturn the district court's dramatic rewriting of the Supreme Court's standard for evaluating the necessity of a statutory health exception to an abortion regulation.

B. The District Court's Conclusion that the Health Exception is Required is Not, in Fact, Supported by the Evidence that the Court Cites.

The second fundamental error in the district court's holding that the Act must include an exception for the health of the mother in order to survive constitutional scrutiny arises from the fact that the Congressional and trial evidence does not indicate, as the court states, that the banned procedure is sometimes

necessary to preserve the health of the mother. This error can be further traced to two defects in the court’s reasoning. First, the court placed undue weight on the fact that certain physicians “opposed” the ban as a general proposition. Second, the court erroneously equated the availability of some health benefits from the banned procedure with medical *necessity* of the procedure to preserve the health of the mother.

The district court purports to disprove the first Congressional Finding that a “medical ... *consensus* exists that the practice of performing a partial-birth abortion ... is never medically necessary” with evidence from both the Congressional record and the trial record. 331 F.Supp.2d at 1009-10. However, the “evidence” the court elicits in support of its conclusion does not establish that the banned procedure is sometimes medically *necessary*, but rather that, in the court’s own words, “there is a substantial body of medical opinion supporting use of the banned procedure to preserve the health of women.” *Id.* at 1008. *Amici* respectfully submit that there is a vast difference between evidence that a procedure is sometimes medically *necessary* and evidence of some *support* for the procedure among the medical community.

While the district court’s opinion includes numerous excerpts of medical testimony, it is important to recall that a health exception is only required when substantial medical authority supports the proposition that the banned procedure is

necessary to preserve women's health. In fact, in the portion of the district court's voluminous opinion devoted to summarizing the evidence of "Existence of Medical Debate Regarding Safety and Necessity of Abortion Procedures," the section entitled, "Medical Necessity" consists of a single sentence stating, "Defense witness Dr. Bowes testified that there is 'no consensus in the medical community that an intact D&X is never medically necessary.'" *Id.* at 974. Even if this testimony of Dr. Bowes were sufficient to constitute "substantial medical authority," the difference between a lack of consensus that an intact D&X is never necessary and "substantial medical authority" that the procedure *is* sometimes necessary to preserve a woman's health cannot be ignored.

In the portion of its opinion in which the court concludes that the health exception is required, what one finds is an abundance of references to "opposition to the ban" and "support for the banned procedure in certain circumstances." The evidence cited by the court that most nearly approximates the actual standard (*i.e.*, that the banned procedure is "necessary to preserve the health of the mother") is the statement by Dr. Stanley Zinberg, Vice President of Clinical Practice Activities of the American College of Obstetricians and Gynecologists (ACOG) that "there are rare occasions when Intact D&X is the most appropriate procedure" and "[I]n these instances, it is medically necessary." *Id.* at 1071 (*quoting* Def.'s Ex. 897, at S12982). However, ignoring the inherent weakness of this statement, the ability of

Dr. Zinberg’s statement to substantiate the proposition that D&X is ever medically necessary is belied by the official statement of ACOG itself. An ACOG Statement of Policy, reproduced in the district court’s opinion, states that:

A select panel convened by ACOG could identify no circumstances under which [the intact D&X], as defined above, would be the only option to save the life or preserve the health of the woman. An intact D&X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman’s particular circumstances can make this decision.”

Id. at 977 (emphasis added). Note that ACOG makes a distinction between the phrases “best or most appropriate procedure” and “only option to ... preserve the health of the woman.”

At first glance, it is puzzling that ACOG insists upon stating that the D&X “may be the best or most appropriate procedure in a particular circumstance to ... preserve the health of a woman” even after admitting that its panel of experts was unable to identify *any* circumstances under which the D&X would be the only option (read, “medically necessary”) to preserve the mother’s health. However, the bias that underlies this apparent contradiction is plainly revealed in the last sentence of the quoted portion. “The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.” *Id.*

Nonetheless, the United States Supreme Court has stated, in no uncertain terms, that physicians are not entitled to *carte blanche* in choosing abortion

methods. *See Stenberg*, at 938. Rather, legislative bodies may intervene in “medical decision-making” to protect the unborn and partially-born. It is the considered opinion of our nation’s elected legislators that medical evidence indicates that partial-birth abortion, or D&X, is never medically necessary to preserve the health of the mother. See Congressional Finding (1), Pub. L. No. 108-105, § 2, 117 Stat. 1201 (2003). *Amici* respectfully submit that the existence of “opposition to the ban” or “support for the banned procedure” among some fringe portion of the medical community simply does not constitute “substantial medical authority” that the Ban could “endanger women’s health.”

The second analytical defect that led to the court’s flawed conclusion that the statute requires a health exception in order to survive constitutional scrutiny is the court’s erroneous equating of the alleged existence of some health benefits of the banned D&X procedure with a finding that the Ban endangers women’s health, or that partial-birth abortions are necessary to preserve the health of women. “[T]he trial evidence establishes that a large and eminent body of medical opinion believes that partial-birth abortions provide women with significant health benefits in certain circumstances.” 331 F.Supp.2d at 1016. The portion of the court’s opinion in which the court explains its conclusion that the health exception is necessary contains repeated references to these alleged health benefits. However, *amici* submit that the belief of some doctors that a particular procedure may offer

certain health benefits is simply not equivalent to “substantial medical authority” that banning the procedure could “endanger women’s health.” This is because, assuming that the banned procedure offers some health benefits, that fact, in and of itself, would not indicate that alternative procedures are unsafe or that the banned procedure is necessary to preserve the health of the mother. As Justice Kennedy wrote, “Unsubstantiated and generalized health differences which are, at best, marginal, do not amount to a substantial obstacle to the abortion right.” *Stenberg*, 530 U.S. at 967-68 (Kennedy, J. and Rehnquist, C.J., dissenting)(*citing Casey*, 505 U.S. at 874, 876 (joint opinion of O’Connor, Kennedy, and Souter, JJ.)).

Examination of the evidence that does directly address the proper question (*i.e.*, is a D&X ever *necessary* to preserve the health of the mother) reveals that no health exception is necessary. In fact, the district court’s own opinion includes several pages of “Testimony Establishing That Intact D&E [and/or D&X] Is Not Medically Necessary, Is Not The Safest, And Is Not The Only Abortion Option.” 331 F.Supp.2d at 930-940.

To the extent that the court’s opinion cites evidence that the *D&E* procedure may be necessary for preservation of the mother’s health, it confuses the issue. *See id.* at 1016. For, as *amici* will demonstrate below, Congress has not banned the D&E procedure, but rather the D&X procedure. The mere fact that the D&X bears some similarity to the D&E, or even that the former may be considered a subset of

the latter, is irrelevant. The appropriate standard, applied to the statute in question, asks only if the ban of the D&X procedure endangers women's health.

II. THE STATUTE DOES NOT BAN STANDARD D&E ABORTIONS, SO IT DOES NOT IMPOSE ANY UNDUE BURDEN UPON A WOMAN'S RIGHT TO AN ABORTION

The district court held that "Because the ban reaches the D&E abortion method used by physicians like Dr. Carhart, the law is an undue burden and unconstitutional." *Id.* at 1030. In fact, the Act does not ban standard D&E abortions, and its prohibition of the type of abortion described by Dr. Carhart is not an undue burden on a woman's right to an abortion.

A review of the various descriptions and definitions of the standard D&E procedure reveals that it is accomplished by pulling the fetus apart while it is inside the mother's body. *See, e.g., Stenberg*, 530 U.S. at 925. The "intact D&E," on the other hand, "involves removing the fetus from the uterus through the cervix 'intact,' *i.e.*, in one pass, rather than in several passes." *Id.* at 927. Where the fetus presents head first, or vertex, the doctor collapses the skull and then proceeds to extract the entire fetus through the cervix. *Id.* The D&X abortion procedure, which is banned by the Act, entails the physician's pulling the fetus by its feet out of the uterus and through the cervix until only the head remains inside the mother's body. *Id.* With the head trapped inside the mother's body and the rest of the fetus

dangling outside, the physician proceeds to use a sharp instrument to pierce the skull and drain its contents before completing the delivery. *Id.* at 928.

The district court summarizes its conclusion that the ban “reaches certain D&E abortions” as follows:

Thus, the evidence shows that Carhart will sometimes deliver an intact living fetus past the navel outside the woman’s body, but, performing a standard D&E, the fetal body is thereafter removed in pieces rather than intact. For example, he is sometimes able to get the entire fetal body up to the chest out of the cervix before performing a destructive act, and, critically, the trunk of the fetus past the navel is outside the woman’s body. Then, he performs the dismemberment procedure, the hallmark of all D&E abortions. It is in that and similar circumstances that the ban applies to D&E procedures.

Id. at 1036. The district court’s logic is that because Dr. Carhart’s method involves dismemberment it is a D&E, and because it can be labeled a D&E it cannot be banned under *Stenberg*. The court is wrong on both counts.

First, the described procedure does not appear to be consistent with either a standard D&E (where the fetus is pulled apart while still inside the mother) or an intact D&E (where the fetus is not pulled apart at all, but rather delivered “intact” after having his or her skull collapsed and drained). *See Stenberg* at 925-26. Certainly, it is not a D&E as described in *Stenberg*.

One of the primary reasons for distinguishing between a vertex or head-first presentation intact D&E and a breech presentation D&E (“D&X”) is that the former, like the standard D&E, involves killing the fetus while it is still inside the

mother. The latter, on the other hand, involves killing a fetus that is entirely born except for its head. See American Medical Association Board of Trustees Factsheet on H. R. 1122 (June 1997), in App. To Brief for Association of American Physicians and Surgeons, *et al.*, as *Amici Curiae*) (“The D&X differs from the D&E because in the D&X the fetus is ‘killed *outside* of the womb...’”) (emphasis in original).

If the “hallmark” of the D&E procedure were dismemberment alone, as the district court concludes, it would be an oxymoron to refer to a variation of the procedure as an “intact D&E.” It appears, rather, that the feature common to all D&Es save the breech-presentation intact D&E, or D&X, is the killing of the fetus inside the mother. So, to the extent that Dr. Carhart’s version of the D&E abortion entails delivery of a live fetus past the navel *prior to* dismemberment, that procedure (whatever its label) is indeed banned by the Act. Moreover, such a ban is entirely appropriate under *Stenberg*, since the procedure is not a standard D&E at all but is more akin to a D&X.

Second, even if the district court correctly labeled the type of abortion procedure described in the excerpt above as a D&E abortion, the Act is not invalid under *Stenberg*. *Stenberg* held that Nebraska’s partial-birth abortion ban imposed an undue burden on a woman’s right to an abortion because it applied to the commonly-used D&E procedure as well as to D&X. *Stenberg*, 530 U.S. at 938.

This finding was based upon the fact that the statute failed to employ sufficiently detailed language in describing the type of procedure to which the ban applied. Specifically, the Court held that because the statute forbade “deliberately and intentionally delivering into the vagina a living unborn child, *or a substantial portion thereof*, for the purpose of [killing the unborn child],” it did not distinguish between a D&X and a D&E in which a foot or arm is drawn through the cervix *as part of the dismemberment process*. *Id.* (emphasis added). The Court was concerned that the statute may have prohibited the more standard D&E (where the fetus is dismembered inside the womb) as opposed to the “intact D&E” or D&X.

By employing a specific anatomical landmark (the child’s navel), Congress avoided the pitfall that doomed Nebraska’s statute; the Act clearly does not apply to a standard D&E abortion even when an arm or leg is “drawn through the cervix as part of the dismemberment process.” *Id.* at 939. Rather, the ban applies only to D&X or partial-birth abortions. Notably, in her concurrence Justice O’Connor opined that state statutes such as the Act in question that ban partial-birth abortions but define that term to exclude procedures “involving dismemberment of the fetus prior to removal from the body of the pregnant woman” are constitutional. *Id.* at 951. This is further confirmation that the partial-birth abortion procedure described by Dr. Carhart may be banned under *Stenberg*.

CONCLUSION

Amici respectfully submit that the district court's holding that the Partial-Birth Abortion Ban Act of 2003 is unconstitutional is not compelled by the U.S. Constitution or by Supreme Court precedent. Moreover, the analysis that produced the ruling below is marred by fundamental flaws in reasoning and in application of the High Court's abortion jurisprudence. For these reasons, *amici* implore the Court to reverse the decision and uphold the Act.

Respectfully submitted,

_____/s/_____

Steven H. Aden

Counsel of Record

Gregory S. Baylor

M. Casey Mattox

Christian Legal Society

Center for Law and

Religious Freedom

4208 Evergreen Lane, Suite 222

Annandale, Virginia 22003

(703) 642-1070, Ext. 3503

Counsel for *Amici*

CERTIFICATE OF COMPLIANCE

As required by Fed. R. App. P. 32(a)(7)(C), I certify that this brief is proportionally spaced and contains 3658 words. I relied on a word processor to obtain this count and it is Microsoft Word 2000.

I certify that the information above is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

_____/s/_____
Steven H. Aden

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused two true and accurate copies of the foregoing Brief *Amici Curiae* of Christian Legal Society, *et. al.*, in support of Defendant-Appellant to be served by United States Mail, postage prepaid, on December 7, 2004 upon:

Jerry M. Hug
Alan G. Stoler, P.C.,L.L.O.
1823 Harney Street
Historic Library Plaza
Omaha, NE 68102

Paul D. Boeshart, Asst. U.S.
Attorney
U.S. Attorney's Office
100 Centennial Mall, N.
487 Federal Building
Lincoln, NE 68508-3865

Priscilla J. Smith
Janet L. Crepps
Nan E. Strauss
Suzanne Novak
The Center for Reproductive Law
& Policy
120 Wall Street
18th Floor
New York, NY 10005

Teal Luthy Miller
U.S. Department of Justice
Antitrust Division, Appellate
Section
601 D. Street, N.W.
Patrick Henry Building
Washington, D.C. 20530

James Joseph Lynch, Jr.
Brad Dacus
James Griffiths
The Pacific Justice Institute
2740 Howe Avenue
Sacramento, CA 95821

_____/s/_____
Steven H. Aden

APPENDIX

DETAILED STATEMENTS OF INTEREST OF *AMICI CURIAE*

The Christian Legal Society, founded in 1961, is a nonprofit interdenominational association of over 4,000 Christian attorneys, law students, judges, and law professors with chapters in nearly every state and at over 140 accredited law schools. Since 1975, the Society's legal advocacy and information division, the Center for Law and Religious Freedom, has worked for the protection of religious belief and practice, as well as for the autonomy from the government of religion and religious organizations, in the Supreme Court of the United States and in state and federal courts throughout this nation. Further, the Society has a keen interest in promoting the sanctity of human life.

The Christian Medical Association (CMA) was founded in 1931 and today represents more than 16,000 members -- mostly practicing physicians from the entire range of medical specialties. These members share a common commitment to the principles of biblical faith and the integration of those principles with professional practice. Among other functions, CMA hosts an Ethics Commission that involves many medical professionals who are recognized in the field of ethics. Ethical positions taken by the Association are ultimately voted on by nearly 100 representatives of the membership. The Association advocates the respect and protection of human life from its earliest beginnings.

The Alliance Defense Fund (ADF) is a nonprofit public interest law firm founded in 1993 to aggressively defend the sanctity of life, religious liberties, and traditional family values. Our goal is to reform American law so that all human life will be respected and protected from conception until natural death. To accomplish this goal, ADF has trained hundreds of attorneys to litigate sanctity of life issues. ADF's network of over 700 attorneys has participated in litigation and *amicus curiae* briefs opposing all forms of abortion, including "partial-birth" abortion, public funding of abortion, and efforts to legalize euthanasia. We have also participated in litigation supporting parent consent and informed consent laws, and defending pro-life advocates' free speech rights.

The National Association of Evangelicals (NAE) is a nonprofit association of evangelical Christian denominations, local churches, organizations, institutions, and individuals that includes more than 50,000 local churches from 51 denominations, as well as over 250 other religious ministries. NAE serves a constituency of over 20 million people. The Association believes that religious freedom is a gift of God and vital to the limited government which is our American constitutional republic.

Focus on the Family is a California Nonprofit Religious Corporation committed to strengthening the family in the United States and abroad. The president of Focus on the Family, James C. Dobson, Ph.D., is a child psychologist

who has written extensively on child rearing and family relations. Dr. Dobson hosts and Focus on the Family distributes a daily radio broadcast about family issues that reaches approximately 1.7 million listeners each day in the United States, Canada and around the world. Focus on the Family publishes and distributes Focus on the Family magazine and other literature that is received by more than 2 million households each month. Focus on the Family's has actively promoted the sanctity of human life and has appeared in numerous cases before this Court as amicus curiae. Focus on the Family actively promotes public policies which provide protection for infants, children and women and is specifically concerned about the trend in American life toward the acceptance of infanticide.

The Family Research Council is a non-profit public policy organization dedicated to preserving the integrity of the family and protecting the interests of mothers and children in the context of abortion. Our legal policy experts are continually sought out by federal and state legislators for assistance and advice on abortion and related issues. The Family Research Council has participated in numerous amicus curiae briefs in the United States Supreme Court and federal courts on the subject of abortion. Our research on current medical and legal issues surrounding abortion enables us to provide unique assistance to courts in cases such as this.

Concerned Women for America (“CWA”) is the nation’s largest public policy organization for women. Located in Washington, D.C., CWA is a non-profit organization that provides policy analysis to Congress, state and local legislatures and assistance to pro-family organizations through research papers and publications. CWA seeks to inform the news media, the academic community, business leaders and the general public about marriage, family, cultural and constitutional issues that affect the nation. CWA has participated in numerous amicus curiae briefs in the United States Supreme Court, lower federal courts and state courts.

The Ethics & Religious Liberty Commission of the Southern Baptist Convention is the moral concerns and public policy agency of the Southern Baptist Convention, the Nation's largest Protestant denomination, with over 16 million members in 42,000 autonomous local churches. The Commission is charged with addressing public policies affecting the sanctity of human life, ethics, and religious liberty.