

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

MKB MANAGEMENT CORP., D/B/A RED RIVER WOMEN'S CLINIC;
AND KATHRYN L. EGGLESTON, M.D.,
Plaintiffs-Appellees,

v.

WAYNE STENEHJEM, IN HIS OFFICIAL
CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF
NORTH DAKOTA, ET AL.,
Defendants-Appellants,

BIRCH BURDICK, IN HIS OFFICIAL CAPACITY AS
STATE ATTORNEY FOR CASS COUNTY,
Defendant.

**MOTION TO FILE *AMICUS CURIAE* BRIEF OF
AMERICAN PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF
PLAINTIFFS-APPELLEES**

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August 13, 2014

Pursuant to Fed. R. App. P. 29(b), the American Psychological Association (“APA”) respectfully moves for leave to file the accompanying brief, attached as Exhibit 1, as *amicus curiae* in support of Appellees. While Appellees have consented to the filing of the brief, Appellants do not consent.

STANDARD

Under Federal Rule of Appellate Procedure 29(b), the criteria for admitting an *amicus* brief are (1) the movant has an interest, (2) the *amicus* brief is “desirable,” and (3) “the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b); *see also Neonatology Assoc., P.A. v. Comm’r*, 293 F.3d 128, 131 (3d Cir. 2002) (Alito, J.).

BACKGROUND

On August 6, a week before the deadline for the APA’s *amicus* brief, counsel for the APA contacted counsel for Appellants by e-mail to request consent to file an *amicus* brief in this appeal. Counsel for Appellants responded on August 7, stating that the state would not consent. That same day, counsel for APA requested the reason for Appellants’ refusal. Counsel for Appellants responded on August 8, stating, first, that he did not have authority from his client to consent, and second, that “given who your client is, it appears you will seek to include facts or expert opinions that are not contained within the record.”

Upon information and belief, counsel for Appellees had previously provided consent for various *amici* to file briefs in support of Appellants. Two such *amicus* briefs, one from Lutherans for Life and one from Women Injured by Abortion, were filed in support of Appellants, on July 11 and July 30, 2014, respectively.

ARGUMENT

I. The APA Has an Interest in this Proceeding.

The APA is a voluntary nonprofit scientific and professional organization that represents the field of psychology in the United States. The APA's mission includes advancing the creation, communication, and application of psychological knowledge for the betterment of society and improvement of people's lives. In 2008, the APA's Task Force on Mental Health and Abortion issued a report that is the authoritative review of the scientific literature on mental health and abortion ("APA Report"). That Report was discussed in the expert declarations of both Dr. Coleman and Dr. Shuping, submitted by the Appellants in the district court. *See* Declaration and Expert Report of Priscilla K. Coleman, PhD at ¶¶ 32 (APP-384-85) (discussing APA Report), 54 (APP 393-94); Declaration and Expert Report of Martha W. Shuping, M.D. at ¶¶ 214, 238, 272 (APP 567, 578-579, 588) (discussing APA Report); *see also* Report of the South Dakota Task Force to Study Abortion, attached as an exhibit in support of Appellants' response to Plaintiff's

Motion for a Preliminary Injunction in the district court, at 46 (APP 171) (discussing APA).

Thus, Appellants' apparent view that the matters that will be discussed in the APA's *amicus* brief will be outside the record of this appeal is not correct. The conclusions of the APA Task Force are indisputably part of the record on appeal, given that Appellant's own experts addressed the APA Report in their own expert reports. Moreover, given the misstatements about the APA and the APA Report by Appellants' own experts, the APA has a clear interest in submitting an *amicus* brief in this appeal.

II. The APA's *Amicus* Brief is Desirable and Relevant to the Disposition of the Case.

The APA's proposed *amicus* brief would provide the Court with important scientific information relevant to the Court's consideration of this case. In particular, the brief explains the APA Task Force's finding that

the most methodologically sound research indicates that among women who have a single, legal, first-trimester abortion of an unplanned pregnancy for nontherapeutic reasons, *the relative risks of mental health problems are no greater than the risks among women who deliver an unplanned pregnancy.*

APA Report, at 92 (emphasis added). This information is particularly important in light of Appellants' emphasis on mental health issues in their briefing on appeal. See, e.g., Brief of Appellants at 25 (citing conclusions by Dr. Coleman and Dr.

Shupak that “‘abortion has a significant and profoundly adverse effect on the mental, emotional, cognitive, and psychological health, safety and overall well-being of women’”); 26 (“[w]omen that have an abortion are at a much greater risk of adverse mental health outcomes when compared to women that give birth to their unborn child”); 27 (referring to the “known adverse mental health consequences and problems for women that have had abortions”). As demonstrated by the APA Report and the proposed APA *amicus* brief, the claims by Appellants in their briefing on appeal regarding the association between mental health and abortion are not supported by the facts. The proposed *amicus* brief is thus both desirable and relevant to the matters at issue in this case.

Appellants’ position appears to be that the APA’s proposed *amicus* brief is not desirable because it cites material outside the record. As an initial matter, the APA Report and other matters discussed in the proposed *amicus* brief are within the record, as described above. Even if they were not, however, that is not a proper basis to withhold consent. It is commonplace for *amicus curiae* to bring to the Court’s attention facts or information that the parties had not provided. *See* 4 Am. Jur. 2d Amicus Curiae § 1 (amicus briefs “assist the court by broadening its perspective on the issues raised, and facilitate informed judicial consideration of a wide variety of information”). *See also Hall v. Florida*, 134 S. Ct. 1986, 1994, 1995, 2000, 2001 (2014) (relying on brief of APA as *amicus curiae* regarding

technical information and views of clinical authorities about IQ and IQ tests); *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 60 (2004) (relying on brief of *amicus curiae* and studies cited therein regarding environmental consequences of off-road vehicles); *cf. State v. Kuhlman*, 722 N.W.2d 1, 3 (Minn. Ct. App. 2006) (“An amicus brief ... may provide articles and information that are in the public domain and may have escaped a reviewing court’s attention.”), *aff’d*, 729 N.W.2d 577 (Minn. 2007).

Indeed, providing a different perspective and pointing to relevant information not raised by the parties is a key value of *amici*. *See, e.g.*, Committee Notes on Rules, 1998 Amendment to Federal Rule of Appellate Procedure 29 (“An *amicus curiae* brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court.”); *Neonatology Associates*, 293 F.3d at 132 (noting that “[s]ome amicus briefs collect background or factual references that merit judicial notice”) (citation omitted). Notably, Appellants’ own *amicus*, Lutherans for Life, appears to recognize this point. The Lutherans’ *amicus* brief cites numerous sources outside the record, including *Hyppolytus, circa 228.A.D.; quoted in The Ante-Nicene Fathers: The Writings of the Fathers Down to A.D. 325* (Alexander Roberts, Sir James Donaldson, eds., Charles Scribner’s Sons, 1903); John Witte, Jr., *Law and Protestantism: The Legal Teachings of the Lutheran Reformation*

(Cambridge University Press, 2002); Martin Luther, “*Lectures on Genesis*,” *Luther’s Works*, (Concordia Publ’g House 1959); and Roman Law of the Twelve Tables, Table IV:1. In light of this use of references outside the record by Appellants’ own *amici*, Appellants’ stated justification for their refusal to grant consent to the APA’s *amicus* brief is disingenuous, and should be rejected.

Finally, it is important for the Court to hear a balanced set of views from both sides of the case. As two *amicus* briefs have already been filed in support of Appellants, it would be unfair to exclude *amicus* participation on behalf of Appellees.

CONCLUSION

The APA’s proposed *amicus* brief would add valuable information and a perspective that no other party in the proceeding is in a position to provide. The proposed *amicus curiae* respectfully requests that the Court grant the motion for leave to file the attached brief.

August 13, 2014

Respectfully submitted,

/s/ Kimberly Parker

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of August, 2014, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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EXHIBIT 1

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 29(c), the American Psychological Association has no parent corporation or publicly-held corporation that owns 10% or more of its stock.

August 13, 2014

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STATEMENT OF INTEREST¹

The American Psychological Association (“APA”) is a voluntary nonprofit scientific and professional organization that represents the field of psychology in the United States. With over 130,000 members, it is the largest association of psychologists in the United States. The APA’s mission includes advancing the creation, communication, and application of psychological knowledge for the betterment of society and improvement of people’s lives. In furtherance of these goals, the APA regularly appoints task forces made up of leading scholars in the subfields of psychology, to review, evaluate, and report on social science research that bears on important topics of public and scholarly interest.

In 2008, the APA published the Report of the APA Task Force on Mental Health and Abortion (“APA Report”).² This Report was based on the Task Force’s extensive review of then-existing studies examining the relationship, if any, between abortion and mental health. The Report was criticized by Appellants’

¹ Pursuant to Fed. R. App. P. 29(c)(5), *amicus* states that no party’s counsel authored this brief in whole or in part, and that no party or person other than *amicus*, its members, and its counsel contributed money towards the preparation or filing of this brief.

² American Psychological Association, Task Force on Mental Health and Abortion, *Report of the APA Task Force on Mental Health and Abortion* at 3 (2008), available at <http://www.apa.org/pi/women/programs/abortion/mental-health.pdf> (hereinafter “APA Report”).

expert Dr. Priscilla K. Coleman, whose declaration was relied upon by Appellants for the proposition that abortion has significant adverse effects on women's mental health. That conclusion is incorrect based on the best scientific evidence. The APA submits this *amicus* brief to respond to Appellants' criticisms of the APA Report, to rebut Appellants' position that abortion causes adverse mental health effects, and in support of the District Court's conclusion that "[t]he State of North Dakota has presented no reliable medical evidence to justify the passage of this troubling law." APP-2063.

INTRODUCTION

In 2013, the North Dakota Legislature passed H.B. 1456, a law that makes it a criminal offense to perform an abortion if an embryonic or fetal "heartbeat" has been detected. The law therefore bans abortions beginning at approximately six weeks of pregnancy, with only limited exceptions.

Appellants' arguments in support of the law include the claim that abortion has significant adverse effects on women's mental health and that H.B. 1456 furthers the state's interest in protecting the mental health of women who may seek to obtain an abortion. *See, e.g.*, Appellants' Brief at 23-27, 41. In fact, the APA Task Force's authoritative review of the scientific literature demonstrates that women who have an abortion following an unplanned pregnancy are at no greater

relative risk of mental health problems than those who deliver an unplanned pregnancy.

In a Declaration and Expert Report submitted in support of Defendants before the District Court, Dr. Priscilla Coleman questioned the findings of the APA Report. See Declaration and Expert Report of Priscilla K. Coleman, PhD (“Coleman Declaration”), at 15-16, APP 384-385. A careful review of the methodology used in the APA Report demonstrates that Dr. Coleman’s criticisms are unfounded. Moreover, additional research conducted since the APA Report was published has confirmed the Report’s conclusions.

A. Background on the APA Report

In 2006, the APA’s Council of Representatives established the Task Force on Mental Health and Abortion (“Task Force”), and charged it with “collecting, examining, and summarizing the scientific research addressing the mental health factors associated with abortion, including the psychological responses following abortion, and producing a report based upon a review of the most current research.”³

This review followed a similar review conducted in 1989, in which a panel of experts convened by the APA reviewed the scientific literature on the

³ APA Report at 5-6.

psychological effect of legal, elective, first-trimester abortions on women in the United States. The 1989 review panel concluded that it was rare that a woman experienced a “severe negative reaction[] after [a] legal, nonrestrictive, first-trimester abortion[].”⁴ The panel recognized that while some women experienced severe distress or psychopathology following an abortion, the research did not show that these symptoms were causally linked to abortion. After the 1989 Report was issued, new studies were published regarding the relationship between abortion and women’s mental health. Conflicting reviews of the published studies prompted the APA’s Council of Representatives to convene the new Task Force to review the literature published since the 1989 report. After two years of extensive review of the relevant studies, the Task Force issued its report in 2008.

1. Background of the Task Force Members

The APA Board of Directors selected six members of the psychology research community to serve on the Task Force based on their research areas and expertise. Each member had extensive experience and is highly esteemed in the scientific community. Drs. Brenda Major and Nancy Felipe Russo, each of whom was also a member of the 1989 Task Force, have conducted extensive research in the area of reproductive health. Dr. Linda Beckman is an expert in reproductive

⁴ *Id.* at 5 (internal citation omitted).

technology, access to quality health care and contraception, decision making, and sexual behavior. Drs. Mary Ann Dutton and Carolyn West were selected due to their work related to violence/trauma, sexual behaviors, and minority populations. Finally, Dr. Mark Appelbaum was selected for his expertise as a methodologist. His participation was viewed as critical because some of the most important questions the Task Force addressed related to the methodological soundness of the relevant research studies.

2. The Task Force's Review

The Task Force undertook a thorough, two-year process for reviewing and evaluating the then-existing studies analyzing the relationship between abortion and mental health. The Task Force “considered its mission not only to review, but also to critically and objectively evaluate the quality of the scientific evidence without regard to the direction of its findings in order to draw conclusions about the mental health implications of abortion based on the best scientific evidence available.”⁵

First, the Task Force searched for relevant studies—*i.e.*, English-language, peer-reviewed articles published since 1990⁶—using key word searches in two

⁵ *Id.* at 6.

⁶ The 2008 APA Report only reviewed literature that was published after the 1989 APA Report.

widely used and comprehensive scientific journal databases. The Task Force also reviewed the reference sections of the articles identified during the key word search for additional relevant studies, and several studies that were not found during the key word search were brought to the attention of the Task Force by reviewers.⁷ These steps ensured that the Task Force cast the widest net in collecting relevant studies, a key component of any legitimate systemic literature review.

Second, a minimum of two task force members read the abstract of each article and determined independently whether the study should be included based on the following four criteria. Each study had to (i) be of a quantitative nature; (ii) be published in a peer-reviewed journal; (iii) include at least one post-abortion measure related to mental health; and (iv) focus on induced abortions (as opposed to spontaneous abortions).⁸

Third, after the abstract review, two task force members then read each article in full and made a second determination of whether the articles continued to meet the four criteria. Each article that met the criteria was then coded, summarized, and further evaluated by at least two other task force members. No

⁷ APA Report, at 21.

⁸ *See id.*

task force member was allowed to evaluate his or her own work. No studies were excluded based on whether they found or did not find negative mental health consequences of abortion.⁹

Finally, the Task Force organized the articles based on whether the study included a comparison group of women who did not have an abortion.

3. Nature of the Studies Examined

Overall, the Task Force identified fifty empirical papers that were published in English, in peer-reviewed journals, post-1989 that compared the mental health of women who had an induced abortion to the mental health of comparison groups of women.

In addition, the Task Force identified and reviewed twenty-three studies that did not include a comparison group.¹⁰ While the absence of a comparison group means that such studies do not address the question of relative risk, the Task Force concluded that these studies can be “useful for identifying factors that predict individual variation in women’s psychological experience following abortion,” and can help address questions relating to the “prevalence of harm associated with abortion to the extent that their sample is representative of the population to which

⁹ *See id.*

¹⁰ *See id.* at 22.

one wants to generalize.”¹¹ These studies may also suggest other variables that account for the presence of mental health problems in some women who had abortions.

4. Peer Review of the APA Report Prior to Publication and Approval

Once the Task Force completed a draft of the APA Report, it circulated an initial draft to twenty-six outside reviewers. The APA boards and committees were also invited to identify and appoint individuals to review the preliminary draft of the Report. The initial list of reviewers contained thirty-three names, and the APA contacted all of the potential reviewers on the list. Twenty-one outside reviewers ultimately submitted detailed responses to the Report, which were considered during a subsequent revision process.

Once the revised draft was complete, it was reviewed and vetted by fourteen APA boards and committees and presented to the APA Council of Representatives for the Council’s approval. The APA Council of Representatives is the policy-setting body of the APA, made up of 164 members, all of whom hold doctoral degrees in psychology-related fields. These multiple reviews provided the series of checks and balances that helped ensure that the Report met the APA’s highest standards for scientific integrity.

¹¹ *Id.* at 72.

B. Methodological Problems Affecting Research on Abortion and Mental Health

In its evaluation of the relevant literature, the Task Force conducted a close and critical examination of the studies that assessed post-abortion mental health. The Task Force members identified a range of methodological problems in these studies. Identifying methodological limitations in any research study is of critical importance because such limitations undercut the studies' conclusions. The Task Force's determination of the conclusions that could be drawn from each study depended on the nature and severity of the methodological problems present in each study.

For example, the Task Force identified the best studies as those that included appropriate comparison groups (individuals who are similar in all key respects to the individuals being studied, except for the characteristic or event being examined—in this context, for example, comparing a group of women who have abortions to women who are denied or unable to obtain an abortion and carry to term an unwanted pregnancy).¹² Failing to use appropriate comparison groups becomes especially problematic when wantedness of a pregnancy is not controlled for. Studies that group together women who terminate unplanned pregnancies (92% of U.S. abortions) with women who terminate wanted pregnancies and then

¹² See APA Report, at 15-16.

compare the combined abortion group to women who carry wanted pregnancies to term will likely bias the results towards a finding of negative mental health impacts in the abortion group as compared to the delivery group.

One of the most serious methodological problems present in the studies reviewed by the Task Force was the failure to take into account risk factors for mental health problems that were present prior to the pregnancy that resulted in abortion.¹³ Substantial research has found that systemic and personal characteristics that predispose women to have unintended pregnancies also predispose them to have psychological and behavioral problems.¹⁴ Greater exposure to these factors, such as poverty and intimate-partner violence, among women who have abortions may put such women at a higher risk for negative mental health outcomes.¹⁵ Exposure to domestic violence, for example, is a strong predictor of physical and mental health problems, including suicide, posttraumatic stress disorder, depression, and substance abuse. All of these co-occurring risk factors “must be considered in order to make sense of any mental health problems observed *subsequent* to abortion.”¹⁶ The failure to adequately control for these co-

¹³ *See id.* at 16.

¹⁴ *See id.* at 12.

¹⁵ *Id.*

¹⁶ *Id.* at 12 (emphasis added).

occurring risk factors makes it impossible to interpret the meaning of any observed correlations between abortion and mental health problems.¹⁷

Similarly, several studies improperly inferred causation from correlation.¹⁸ Although correlation is a necessary prerequisite for causation, the simple existence of a correlation, by itself, does not provide a sufficient scientific basis for making causal inferences. More specifically, based solely on data showing a relationship between abortion history and mental health variables (*e.g.*, substance abuse and depression), some studies inappropriately concluded that abortion *caused* these mental health outcomes to occur. Such an analysis is deeply flawed as a scientific matter, because not only is it possible that the causation flows the other way (*e.g.*, women who use drugs have been shown to be likely to have unwanted pregnancies and abortions), but it is also very possible that a third variable correlated with both incidence of abortion and poor mental health (*e.g.* poverty or exposure to violence) is responsible for both outcomes and thus the apparent correlation.¹⁹ The Task Force reviewers were careful to identify studies that wrongly extrapolated causation from research that only shows correlation.

¹⁷ *See id.* at 56.

¹⁸ *Id.* at 19.

¹⁹ *See id.*

ARGUMENT

I. THE BEST SCIENTIFIC RESEARCH CONCLUDES THAT AN ADULT WOMAN WHO HAS AN ELECTIVE ABORTION OF AN UNPLANNED PREGNANCY IS AT NO GREATER RELATIVE RISK OF ADVERSE MENTAL HEALTH EFFECTS THAN A WOMAN WHO DELIVERS AN UNPLANNED PREGNANCY.

The APA Task Force’s careful and comprehensive report concluded that, among adult women who have an elective abortion of an unwanted pregnancy, the relative risks of mental health problems *are no greater* than the risks among women who deliver an unplanned pregnancy. More recent research, including a 2009 update by the APA Task Force and other reviews, further supports this conclusion.

A. The APA Report

After an extensive review of the available evidence, the APA Task Force determined that “the prevalence of mental health problems observed among women in the United States who had single, legal, first-trimester abortion for non-therapeutic reasons *was consistent with normative rates of comparable mental health problems* in the general population of women in the United States.”²⁰ As the Task Force’s review shows, Dr. Coleman’s claim that “[t]here is consensus among most social and medical science scholars that a minimum of 20% of women

²⁰ APA Report, at 91 (emphasis added).

who abort suffer from serious, prolonged negative psychological consequences,” Coleman Dec., APP-384, is not correct. Noting that while some women do experience some sadness, grief, and feelings of loss, the Task Force found “no evidence sufficient to support the claim that an observed association between abortion history and a mental health problem was caused by the abortion per se, as opposed to other factors.”²¹

In addition to assessing the issue of prevalence of post-abortion mental health problems, the Task Force also considered the relative risk of mental health problems following abortion as compared to the alternatives. During this evaluation, the Task Force paid close attention to the methodological issues in the studies. For example, the Task Force determined that the methodological limitations of the secondary analyses of medical records and existing public data sets—including the failure to adequately control for co-occurring risks and prior mental health—made it “impossible to determine whether any observed differences between abortion groups and comparison groups reflect consequences of pregnancy resolution or preexisting differences between groups or methodological

²¹ APA Report, at 91.

artifact.”²² This problem made it impossible to draw conclusions based on such research regarding relative risks of abortion compared to its alternatives.²³

In contrast, the Task Force identified one study—the Gilchrist study²⁴—that did contain the appropriate comparison group and overall rigor from which to draw conclusions regarding relative risks.²⁵ The Task Force concluded that this study—which found that women who terminated an unplanned pregnancy did *not* have a higher rate of a reported psychiatric disorders than women who had an unplanned pregnancy and carried the pregnancy to term—was the best scientific research available on the issue.²⁶

Accordingly, the Task Force determined—based on its entire review—that,

the most methodologically sound research indicates that among women who have a single, legal, first-trimester abortion of an unplanned pregnancy for nontherapeutic

²² *Id.* at 56-57.

²³ *Id.* at 57.

²⁴ A.C. Gilchrist et al., *Termination of pregnancy and psychiatric morbidity*, BRIT. J. OF PSYCHIATRY 167, 243-248 (1995).

²⁵ APA Report, at 89.

²⁶ *Id.* at 89-90. In addressing “[w]hat appears to be a discrepancy between the conclusions of [the APA Report] and those of Fergusson et al. (2006)” —on which Dr. Coleman relies (see Coleman Decl., ¶ 29 (APP-384))—the Task Force found the outcome differences were likely due to sampling and design issues in Fergusson, such as the comparative sample size (*i.e.*, 6410 in Gilchrist; 48 in Fergusson). See APA Report, at 89-90.

*reasons, the relative risks of mental health problems are no greater than the risks among women who deliver an unplanned pregnancy.*²⁷

B. More Recent Research

Research conducted since the 2008 publication of the APA Report confirms the Task Force’s conclusion that elective abortion of an unplanned pregnancy does not place a woman at a higher relative risk for adverse mental health effects than carrying the unplanned pregnancy to term.

1. The APA Task Force’s Updated Report

In 2009, the APA updated its 2008 Task Force Report by considering six additional papers.²⁸ The APA’s conclusion did not change: “[T]he relative risk of mental health problems among adult women who have a single legal, first-trimester abortion of an unwanted pregnancy for nontherapeutic reasons is no greater than the risk among women who deliver an unwanted pregnancy.”²⁹

2. The Academy of Medical Royal Colleges 2011 Review

In 2011, the Academy of Medical Royal Colleges (“AMRC”) published a systematic literature review of the best available evidence regarding induced

²⁷ APA Report, at 92 (emphasis added).

²⁸ See Brenda Major et al., *Abortion and Mental Health: Evaluating the Evidence*, 64 AM. PSYCH. 863 (2009).

²⁹ *Id.* at 885 (internal citations omitted).

abortion and mental health outcomes.³⁰ The research was funded by the United Kingdom Department of Health and conducted by the National Collaborating Centre for Mental Health at the Royal College of Psychiatrists. The steering group—comprised of nineteen doctors and mental health experts, including representatives from the Royal College of Psychiatrists, the Royal College of Obstetricians and Gynaecologists, the National Collaborating Centre for Mental Health, and the Department of Health—conducted a narrative review and quantitative meta-analysis of studies conducted after 1990 that satisfied eligibility criteria.³¹

The AMRC steering group concluded that “for the majority of mental health outcomes, there was no statistically significant association between pregnancy

³⁰ See National Collaborating Centre for Mental Health, Academy of Medical Royal Colleges, *Induced Abortion and Mental Health: A Systematic Review of the Mental Health Outcomes of Induced Abortion, Including Their Prevalence and Associated Factors* (Clare Taylor & Nuala Ernest, eds. 2011), available at http://www.nccmh.org.uk/reports/ABORTION_REPORT_WEB%20FINAL.pdf (hereinafter “AMRC Review”).

³¹ AMRC Review, at 21, 25-26. After ensuring that studies met basic eligibility standards (*e.g.*, use of an appropriate sample and a validated measure of mental health), the steering committee also graded the quality of the eligible studies based on their methodological strengths and weaknesses. See AMRC Review, at 25, 32.

resolution and mental health problems.”³² According to the report, this conclusion “largely confirmed the findings of the APA . . . review[.]”³³ As to the specific question of whether mental health problems are more common in women who have an induced abortion as compared with women who deliver an unwanted pregnancy, AMRC researchers found that women who had an abortion were no more likely to experience mental health problems than those who had delivered an unwanted pregnancy.³⁴

AMRC researchers determined that the most reliable predictor of post-abortion mental health problems was a pre-abortion history of mental health problems.³⁵ Relatedly, the largest confounding factor in existing studies was the prevalence of mental health problems *before* abortion; studies that controlled for prior mental health problems reported substantially lower prevalence rates of post-abortion mental health problems than studies that failed to apply such controls.³⁶

³² *Id.* at 125. Although researchers found a statistically significant association between abortion and (1) increased rates of self-harm and (2) *lower* rates of psychosis, these effects were small and determined to be prone to bias. *Id.*

³³ *Id.*

³⁴ *Id.* at 113.

³⁵ *Id.* at 8.

³⁶ *Id.* at 121.

In addition to conducting their own narrative review and meta-analysis, AMRC researchers evaluated three prior systematic reviews of studies that examined the relationship between abortion and mental health. The AMRC steering group assessed the 2008 APA Report, a 2008 review conducted by researchers at Johns Hopkins Bloomberg School of Public Health (the “Charles Review”³⁷), and the 2011 review conducted by Appellants’ expert Priscilla Coleman (the “Coleman Review”³⁸). While AMRC researchers critiqued the Charles Review for its narrow field of inquiry and the APA Report for including some lower quality studies,³⁹ the AMRC steering committee fundamentally accepted and confirmed the conclusions reached both by the APA Task Force and Charles.⁴⁰

In contrast, the steering committee identified “[a] number of methodological problems with the meta-analysis conducted in the Coleman review,” “bring[ing]

³⁷ See Vignetta E. Charles et al., *Abortion and Long-Term Mental Health Outcomes: A Systematic Review of the Evidence*, 78 CONTRACEPTION 436 (2008).

³⁸ See Priscilla K. Coleman, *Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995–2009*, 199 BRIT. J. PSYCHOL., 180 (2011).

³⁹ See AMRC Review, at 119. AMRC researchers noted that many of the relevant studies were of a poor or only fair quality, *id.* at 18, suggesting the inclusion of lower quality studies was likely unavoidable in a wide-ranging examination like the APA Report.

⁴⁰ *Id.* at 125.

into question both the results and conclusions.”⁴¹ Particularly problematic was the Coleman Review’s failure to control for previous mental health problems—the very factor that the AMRC researchers found to be the strongest predictor of post-abortion mental health outcomes.⁴² Thus, the AMRC review undermines a critical basis for Dr. Coleman’s conclusion in the present case: that women who have an abortion are at an increased risk of adverse mental health effects. Dr. Coleman’s conclusions thus should not justify the state’s purported interests in H.B. 1456.

3. Additional Research

Other researchers have reached conclusions similar to the AMRC. For example, the Charles Review concluded that “the highest-quality research available does not support the hypothesis that abortion leads to long-term mental health problems.”⁴³ Charles found that the *highest quality* studies were the *least likely* to show a causal relationship between abortion and mental health problems. Conversely, the studies with the most flawed methodology tended to show negative mental health consequences as a result of abortion.⁴⁴

⁴¹ *Id.* at 18.

⁴² *Id.* at 19.

⁴³ *See* Charles, *supra*, at 449.

⁴⁴ *Id.* at 448-449.

Several studies led by Julia Steinberg, a Professor at the University of California, San Francisco, have come to similar conclusions. In a 2014 study, Dr. Steinberg evaluated whether women’s risk of experiencing clinical mental health problems is higher after a first abortion, as compared with after a first childbirth.⁴⁵ Like the AMRC Review, the Steinberg study found that, in models adjusted for pre-pregnancy mental health, there were no statistically significant associations between abortion and subsequent anxiety, mood disorders, impulse-control disorders, eating disorders, or suicidal ideation.⁴⁶ Steinberg concluded that these results support the view that factors *other than* abortion—primarily pre-abortion mental health—drive the correlation between abortion and mental health disorders.⁴⁷

In a separate paper, Dr. Steinberg and her colleagues evaluated the 2011 Coleman Review and “strongly question[ed] the quality of this meta-analysis,”⁴⁸ which they described as “shot through with methodological and analytical errors

⁴⁵ See Julia R. Steinberg et al., *Abortion and Mental Health, Findings from the National Comorbidity Survey-Replication*, 123 OBSTETRICS & GYNECOLOGY 263 (2014).

⁴⁶ *Id.* at 267.

⁴⁷ *Id.* at 268.

⁴⁸ See Julia R. Steinberg et al., *Fatal Flaws in a Recent Meta-Analysis on Abortion and Mental Health*, 86 CONTRACEPTION 430, 430-431 (2012).

and shortcomings.”⁴⁹ In particular, Dr. Steinberg’s team identified seven errors in Dr. Coleman’s methods, analysis, and reasoning.⁵⁰ Dr. Steinberg further noted that *all* recent reviews *except for* Dr. Coleman’s concluded that “in the aggregate, termination of an unintended pregnancy does not cause mental health problems compared to carrying an unintended pregnancy to term.”⁵¹

In another recent paper, Dr. Steinberg and colleagues analyzed self-esteem and life satisfaction of women who had an abortion, based on data from the Turnaway Study, a longitudinal study that compares three groups of women: (1) women denied an abortion because they were just over the facility’s gestational limit; (2) women who received an abortion and were just under the facility’s gestational limit; and (3) women who received a first trimester abortion.⁵² The researchers concluded that there is “no increased risk of low self-esteem or life

⁴⁹ *Id.* at 436.

⁵⁰ *Id.* at 431.

⁵¹ *Id.* at 430. Susan Cohen, of the Guttmacher Institute, has made nearly the same observation, noting the “overwhelming consensus in the legitimate scientific community that there is no causal link between abortion and mental health disorders.” Susan A. Cohen, *Still True: Abortion Does Not Increase Women’s Risk of Mental Health Problems*, GUTTMACHER POL. REV., at 13 (Spring 2013).

⁵² See M.A. Biggs et al., *Does abortion reduce self-esteem and life satisfaction?* QUALITY OF LIFE RESEARCH (April 2014), available at <http://link.springer.com/article/10.1007/s11136-014-0687-7/fulltext.html>.

dissatisfaction following an abortion relative to being denied one.”⁵³ Other research based on the Turnaway Study analyzed tobacco and alcohol use, and found no evidence that tobacco or alcohol use increased among women who had abortions.⁵⁴

Therefore, the vast majority of research on this subject has confirmed the APA Report’s overall conclusion that a woman who has an elective abortion of an unplanned pregnancy faces no greater relative risk of mental health problems. This severely undercuts one of the State’s primary justifications for H.B. 1456.

⁵³ *Id.*

⁵⁴ See Sarah C.M. Roberts et al., *Receiving versus being denied an abortion and subsequent tobacco use*, MATERNAL AND CHILD HEALTH JOURNAL (2014), available at <http://link.springer.com/article/10.1007/s10995-014-1515-y>; Sarah C. M. Roberts et al., *Receiving versus being denied an abortion and subsequent drug use*, DRUG ALCOHOL DEPEND. (2013), available at <http://dx.doi.org/10.1016/j.drugalcdep.2013.09.013>.

CONCLUSION

For the reasons set forth above, the decision of the District Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 29(d).

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