

No. 19-1392

IN THE
Supreme Court of the United States

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE
MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,
Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,
Respondents.

On Writ of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit

**BRIEF OF *AMICUS CURIAE*
GOOD COUNSEL, INC.
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICUS CURIAE**

Founded in 1985, Good Counsel, Inc. is a 501(c)(3), faith-based, not-for-profit organization operating supportive residential care and community-based services for homeless expectant and new mothers and their children in the Catholic social tradition. Mothers from any location, including those with mental health or addiction challenges, receive help in Good Counsel's homes.

In support of the Court's decision on the pending appeal, and to assist the future mothers who may one day arrive at a Good Counsel home seeking help with a crisis pregnancy, Good Counsel respectfully offers its perspective of decades observing women who have chosen and who have chosen not to have abortions.

SUMMARY OF ARGUMENT

The Court should no longer conclude, as did the plurality in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), that *stare decisis* requires upholding *Roe v. Wade*, 410 U.S. 113 (1973), because women require broad access to abortion to achieve economic and social equality and because society has come to rely on its availability. These conclusions are not true. Raising even an expected child is no easy task, but if a

* All parties have received the required notice of this brief and have consented to its filing. No counsel for a party authored any portion of this brief, nor did such counsel or party make a monetary contribution to the preparation or submission of this brief. All statements made by this *amicus curiae* are on file with its counsel. Mothers in need may visit www.goodcounselhomes.org or call (800) 723-8331.

woman is lovingly helped, her motherhood does not prevent her participation in life but complements it.

It is simply not the case that abortion guarantees more choices to women facing an unplanned pregnancy. Instead, the Nation's over-reliance on its availability stifles these women. The ease of procuring an abortion causes people who should be a mother's support network to pressure her toward doing so. They wrongly consider abortion an easy exit from the perceived tragedy of an unexpected child, usually heedless of the trauma that it causes women—even those who willingly choose it.

These realities, which the *Casey* plurality failed to consider, undermine its *stare decisis* analysis. The Court should decline continued reliance on that doctrine to uphold *Roe v. Wade* and instead should recognize a broad right in the States to regulate abortion as each finds most appropriate.

ARGUMENT

I. ***Stare Decisis* Does Not Support Upholding *Roe v. Wade* Because Abortion Is Not Necessary for Women Unexpectedly Pregnant to Achieve Economic and Social Equality.**

In *Casey*, a plurality of this Court declined to reverse “the essence of *Roe*'s original decision,” even while rethinking central aspects of the framework *Roe* had created. *Casey*, 505 U.S. at 869. The *Casey* plurality based this conclusion on multiple factors relevant to the *stare decisis* doctrine. *Id.*, 505 U.S. at 854–69. But decades of experience of *amicus curiae* Good Counsel have shown that two such factors no longer weigh in favor of upholding “the essence of *Roe*'s original decision”—they support reversing it.

They are the questions of whether the rule at issue “is subject to a kind of reliance that would lend a special hardship to the consequences of overruling and add inequity to the cost of repudiation,” and “whether *Roe*’s premises of fact have so far changed in the ensuing two decades as to render its central holding somehow irrelevant or unjustifiable in dealing with the issue it addressed.” *Casey*, 505 U.S. at 855.

With respect to the first question, the plurality concluded that “[t]he *ability of women to participate equally* in the economic and social life of the Nation has been *facilitated* by their ability to control their reproductive lives.” *Id.* at 856 (emphasis added) (*citing* R. Petchesky, *Abortion and Woman’s Choice* 109, 133, n.7 (rev. ed. 1990)). As to the second question, the plurality focused only on the trimester framework of *Roe*. *See Casey*, 505 U.S. at 861. It did not mention any of the myriad other factors relevant to the question of “whether facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification.” *Id.* at 855 (*citing Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 412 (1932) (Brandeis, J., dissenting)).

The plurality’s holding implied a choice: either abortion must be widely available, or women will be less able to “participate equally” in economic and social life. It therefore supported the continued desirability of *Roe* on the presumption that women burdened with raising a baby somehow cannot achieve what others can achieve, and that abortion must remain legal so that women facing an unplanned pregnancy may keep all their options open.

Good Counsel now advises the Court that the *Casey* plurality had it exactly backwards. The supposed choice between motherhood and equality is an illusion. Women facing unplanned pregnancies do not need a quick fix to achieve their potential. They need what everyone needs in times of crisis: love and support. Yet the availability of abortion often has the perverse effect of robbing women of these, as their family, friends, and even the unplanned baby's father urge them toward the quick fix, usually without considering what harm an abortion can entail.

In this way the widespread availability of abortion, and the desperate choice into which it drives many women, means that abortion does not facilitate equality and freedom as the *Casey* plurality envisioned but undermines them. In the process, it subjects women to an abuse as dreadful as any tolerated in our Nation's history, under the guise of a constitutional guarantee that denies the child his own rights to life and equality. The Court should depart from *Casey's* application of *stare decisis* so that each State may address the legality of abortion as its citizens find most appropriate, making Good Counsel's mission less necessary, not more.

II. Many Women Have Achieved Economic and Social Equality in Spite of the Harms Caused by Legalized Abortion.

Good Counsel's perspective is based on its experience helping women who achieved their potential not because of abortion, but in spite of it. The following are just a few real-life examples.

A. “Anna”

One month after Good Counsel opened its first home in Hoboken, New Jersey, Anna was one of the first women coming to seek help with her unplanned pregnancy. (Names in this brief are not the women’s real names.) She had legally emigrated to the United States and happily held a good job as a live-in nanny performing childcare and light household chores. But she unexpectedly became pregnant. As with countless other women Good Counsel has served in the years since, Anna’s family in her native country, her friends in this country, and the father of her baby all told her to “simply” seek an abortion. They said that, otherwise, she would ruin her life, lose her job, and lose the place she was staying.

Instead, Anna found Good Counsel, where she received housing, supportive counseling, and items essential for her and her baby during her entire stay in the home, and even afterward: food, clothing, diapers, stroller, crib, toiletries, free babysitting, and much more. She was able to return to part-time work as a nanny. But she was so grateful for the help, and such an organized and diligent worker, that she later came to work for Good Counsel, helping other mothers. Anna later moved away and married, and still stays in touch.

B. “Kelly” and “Rosemary”

Good Counsel regularly serves women whose situations are more dire. One woman, Kelly, had spent her adult life addicted to drugs until she became pregnant in her late twenties. She later said that this was the first time she had thought about getting sober. “I never thought anything good could come out of my body,” Good Counsel’s President and

co-founder recalls her saying. Kelly could have had an abortion to facilitate her return to addiction. Instead, she sought a maternity home and found Good Counsel willing and able to help women with serious substance abuse problems. She was given her own room to stay throughout the pregnancy. Good Counsel helped her attend a twelve-step program and receive addiction counseling. She also attended individual counseling sessions and life-skills programs common to all mothers in the homes, including child growth and development, cooking, job readiness, and spirituality. Kelly gave birth to a healthy baby boy. She stayed sober, got a job working for a veterinarian, and eventually moved out on her own. She later came back and made a donation to Good Counsel so that she could help mothers like herself.

Rosemary became pregnant with the second child of the same man, her live-in boyfriend. He emphatically did not want another child and pushed her toward abortion, even physically abusing her with the hope of causing one. Rosemary and her first child came to Good Counsel. They found a place to stay and encouragement to have her baby, finish her education, and, after giving birth, look for a job. Later in her pregnancy, Rosemary achieved her home health aide certificate and, after her daughter was born, worked as a home health aide. She proved exceptionally suited to that role and even before moving into her own apartment said that she would go back to school to become a nurse. Today she has found her niche working with the sick and elderly.

Kelly's and Rosemary's unplanned pregnancies opened up new worlds to them that they perhaps never would have found if they had simply elected abortion. Without relying on the availability

of that procedure, they achieved, and in view of their particular situations maybe even exceeded, equal participation in economic and social life.

C. “Joan” and “Maria”

Joan’s and Maria’s examples show that the availability of abortion puts women into situations where they can easily make tragic mistakes. Joan had never completed high school. She came to Good Counsel after her doctor told her that her unborn child had a genetic defect that would likely cause his death before birth or very shortly thereafter. The doctor’s only treatment advice was to strongly suggest abortion. Joan knew enough to refuse that advice, but did not know what to do next. She asked her friends and searched online, eventually finding Good Counsel. There, she was helped to consult another doctor who gave her a second opinion. When Joan’s baby was born, he lacked the feared genetic defect and had only a hole in his heart—certainly serious, but not a terminal illness. After two surgeries, he was fine. Good Counsel’s President says that “by one year old he was running around with the other kids in our daycare, and you couldn’t even see the scars on his little chest.”

Maria is a college student who found Good Counsel not because she needed it, but because she wanted to volunteer. She called her mother to say that she had found a great place in the Bronx that helps women and children. Maria’s mother then told her for the first time, “I was a resident mother in that home when you were born.” Maria thus discovered that love and support had helped not only her mother, but herself, in a way that abortion would have made impossible.

III. The Hardships Suffered by Other Mothers Who Choose Or Are Pushed Toward Abortion Further Undermine the *Casey* Plurality's Conclusion.

These examples show that abortion is not a prerequisite to women's equality or achievement. Instead, Good Counsel's experience is that it can often frustrate their potential and cut them off from opportunities—especially when they are part of a socially disadvantaged group less well positioned to handle crisis pregnancies. But not all mothers seek alternatives, and not all who do are success stories. About half of the approximately 150 women who come to Good Counsel homes each year have already had one abortion, usually in their teenage years. That experience has proven not to be empowering. On the contrary, nearly all of these women have expressed their willingness to lose their home, job, family, and relationship with the baby's father if it means not having to undergo another abortion.

Some of the women completing their stay with Good Counsel are welcomed with their new baby back to the life and family they had before the unplanned pregnancy. Good Counsel has even assisted many in reuniting with children who were removed by social service agencies because of previous lack of housing stability. Yet many are not so fortunate. Particularly devastating to these women is that in most cases, the unplanned baby's father chooses not to become involved. Fewer than one in ten fathers come to terms with the mother's choice not to abort and visit their infant son or daughter in a Good Counsel home. How many reunite with mothers after they leave a home is not clear, but Good Counsel is aware that most such mothers become involved with men who are not their

baby's father. The fathers' reliance on the availability of abortion has facilitated their disconnection from these women and from their own children.

Time and again, abortion proves not to be the great equalizer that the *Casey* plurality envisioned. Instead, it is a source of great sadness and discord, and its widespread legality actually increases Good Counsel's clientele. Over time, Good Counsel's homes would become far less necessary if this Court's precedents did not so severely and unjustly restrict the States from addressing the legality of abortion in the way that each deems best.

CONCLUSION

The *Casey* plurality's reasoning fails to support its conclusion that the availability of abortion is necessary to facilitate women's equal participation in society. The facts underlying *Roe's* central holding have now "come to be seen so differently" as to have "robbed the old rule of . . . justification." *Casey*, 505 U.S. at 855 (*citing Burnet*, 285 U.S. at 412 (Brandeis, J., dissenting)). These aspects of the *stare decisis* analysis no longer justify upholding *Roe*.

Respectfully submitted,

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