

MAJOR POINTS FOR EIGHTH CIRCUIT CASE UPHOLDING SOUTH DAKOTA INFORMED CONSENT STATUTE

On June 27th, 2008, the United States Court of Appeals for the Eighth Circuit reversed a lower court injunction prohibiting the South Dakota Informed Consent statute from going into effect. The most important parts of this statute are as follows:

1. The woman must be informed in writing that the abortion will terminate the life of a whole, separate, unique, living human being; that the pregnant woman has an existing relationship with that unborn human being and that the relationship enjoys protection under the United States Constitution and under the laws of South Dakota; that by having an abortion, her existing relationship and her existing constitutional rights with regards to that relationship will be terminated; A description of all known medical risks of the procedure and statistically significant risk factors to which the pregnant woman would be subjected, including: depression and related psychological distress; and increased risk of suicide ideation and suicide.
2. The physician himself must certify in writing that all the information has been provided to the pregnant woman and that he/she is satisfied that the pregnant woman has actually read the materials which are required to be disclosed, and that the physician believes that she understands the information imparted.

This is critical because the women must actually read the material, rather than simply being made available to her which is frequently ignored by women in other states, and the requirement that the physician must show that she understands the material requires a real doctor-patient relationship which is usually absent from abortion in most places.

The major significance of this case to Operation Outcry is that this is the second major court in the United States, with the Supreme Court being the first, to recognize the pain of abortion and make it a major factor in upholding a statute restricting or limiting abortion. This is an informed consent statute. The required disclosure facts must not only be true but must be relevant to the woman's decision.

The Eighth Circuit Court of Appeals cited to the Supreme Court opinion in the partial birth abortion decision, *Gonzales v. Carhart*. The Eighth Circuit, en banc (in whole) cited the portion of the Supreme Court's opinion which referenced the specific pages of The Justice Foundation's brief (on behalf of Sandra Cano and 180 women hurt by abortion) where Operation Outcry women actually gave their testimonies about the destructive impact of abortion on their life. See excerpt attached for actual testimonies. Thus, this second court was influenced by the Supreme Court's ruling, but this Court made an independent determination about the pain of women that could come from not being fully informed, and held this post abortion pain justified South Dakota informing women of difficult information they may not want to hear.

Here is what the Eighth Court said about abortion and women’s pain:

“Whether to have an abortion requires a difficult and painful moral decision. While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained. Severe depression and loss of esteem can follow. [TJF Brief cited here by Supreme Court.]

In a decision so fraught with emotional consequence some doctors may prefer not to disclose precise details of the means that will be used, confining themselves to the required statement of risks the procedure entails. From one standpoint this ought not to be surprising. Any number of patients facing imminent surgical procedures would prefer not to hear all details, lest the usual anxiety preceding invasive medical procedures become the more intense. This is likely the case with the abortion procedures here in issue.

It is, however, precisely this lack of information concerning the way in which the fetus will be killed that is of legitimate concern to the State. The State has an interest in ensuring so grave a choice is well informed. It is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event, what she once did not know: that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form.

It is a reasonable inference that a necessary effect of the regulation and the knowledge it conveys will be to encourage some women to carry the infant to full term, thus reducing the absolute number of late-term abortions.” (Citations to Supreme Court are omitted.)

The Eighth Circuit Court (7-4 ruling) also said that Planned Parenthood did not prove that the statement “It is a living human being that is killed in abortion” is a false, misleading or untrue statement. It is truthful, non-misleading and relevant to the patient’s decision. The Court rejected the argument that “human being” was a metaphysical, religious or ideological statement but was instead one grounded in fact and science.

Below are the exact portions of The Justice Foundation’s Brief cited by the Supreme Court and thus by reference the Eighth Circuit Court. It shows the power of the women’s testimony. P. 22-24 from Brief. It also shows why we need more of this.

No. 05-380

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In The

Supreme Court of the United States

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ALBERTO R. GONZALES,
ATTORNEY GENERAL,
Petitioner,

v.

LEROY CARHART, ET AL.,
Respondents.

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**On Writ Of Certiorari To The
United States Court Of Appeals
For The Eighth Circuit**

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**BRIEF OF SANDRA CANO, THE FORMER
“MARY DOE” OF *DOE V. BOLTON*, AND
180 WOMEN INJURED BY ABORTION AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

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Dr. David Reardon, one of the world’s leading experts on the effects of abortion on women, further demonstrates the devastating psychological consequences of abortion. Dr. Reardon states that following temporary feelings of relief, there is emotional “paralysis” or post-abortion “numbness,” guilt and remorse, nervous disorders, sleep disturbances, sexual dysfunction, depression, loss of selfesteem, self-destructive behavior such as suicide, thoughts of suicide, and alcohol and drug abuse, chronic problems with relationships, dramatic personality changes, anxiety attacks, difficulty grieving, increased tendency toward violence, chronic crying, difficulty concentrating, flashbacks, and difficulty in bonding with later children.⁷⁹

The real life experiences of the post-abortive women also confirm what the research has discovered. The women were asked: ***How has abortion affected you?*** Typical responses from their sworn Affidavits⁸⁰ which are located at Appendix B included depression,⁸¹ suicidal App. B at 13-14. Teresa Renee Zell (North Carolina) – “Depression, nightmares, hospitalizations, suicidal thoughts and actions, guilt, anger

at myself and those who forced the abortion, fear, eating disorder, alcoholism, low-self esteem, anxiety, stress.” App. B at 26. Camelia M. Murphy (Texas) – “I have suffered with low-self esteem, self-hatred, suicidal impulses, constant anxiety (especially about sex and about making decisions) . . . ” App. B at 95.

⁷⁹ “The Aftereffects of Abortion,” www.afterabortion.info/complic.html (calling abortion a public health issue and listing the physical and psychological effects of abortion).

⁸⁰ In addition, approximately 2,000 similar Affidavits from postabortive women were given to the Task Force on Abortion in South Dakota which provided evidence that led to that State’s ban.

⁸¹ For example, Cynthia Carney (Oklahoma) – “For 23 years, I went into crying spells, depression, suicidal thoughts. Emotionally it devastated me.” App. B at 31. Elizabeth Campbell (California) – “I suffered from depression, migraine headaches, low-self-esteem. No self-worth . . . ” App. B at 32. D.Q. (Tennessee) – “It has completely messed up my life. It was not the best way to start out in marriage. I was depressed, didn’t want my husband to touch me, felt guilty, had suicidal thoughts, cried a lot, *terribly* depressed!” App. B at 11. S.O. (Florida) – “For twenty-eight years, I have mourned, gone thru depression around Victoria’s birthdate, became angry as the years passed.” App. B at 15-16.

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thoughts,⁸² flashbacks,⁸³ alcohol and/or drug use,⁸⁴ promiscuity,⁸⁵

⁸² For example, Donna M. Razin (Florida) – “Deep regret – initially I was suicidal – as the years have progressed I have developed a heightened level of bitterness and anger and self-hate.” App. B at 12.

Kim Marie Blackowiak (Minnesota) – “Yes, I was extremely sad, depressed, and suicidal after my abortion. After my abortion – I used drugs and alcohol frequently to numb the feelings.” App. B at 33.

Brandie M. Atwood (Arkansas) – “Abortion turned a 14-year-old school girl into a suicidal teenager that lived with feelings of guilt, rejection, and helplessness.” App. B at 35.

⁸³ For example, C.R. (Georgia) – “Yes. I feel emotionally scarred. Years went by of hiding it. Then something started triggering flash backs. Children’s birthdays bring on extreme sadness. Christmas time brings on times of depression, regret, and wondering what would my children have been like. Could they have made a difference in the world. Why couldn’t I have given them a chance at life like my mother gave me!” App. B at 12-13. S.T. (Tennessee) – “Depression and flashbacks after the abortion. I had no self-worth. I turned to drugs and alcohol and relationships with no meaning.” App. B at 25.

⁸⁴ For example, J.L.M. (Texas) – “11 years later I am obviously still affected. Initially, I suffered from depression, alcohol use increased, increased promiscuity, due to my lowered self esteem. My grades suffered in college. Relationships were difficult. I had nightmares, flashbacks, and grief.” App. B at 14. Kristen Pettibone (Georgia) – “My abortion devastated me. I lost respect for my boyfriend, respect for myself. I became an alcoholic, dabbled in drugs to forget what I had done!” App. B at 16. Dana Nicole Landers (Florida) – “For years my abortion decision led me down a self-destructive path even until the point of wanting to die. I went from an honor roll student in high school to a drug addict. I suffered from depression, anger, guilt, regret, and denial just to name a few.” App. B at 17. Deborah R. Paine (Georgia) – “I turned to 11 years of alcohol and drug addiction to cope with the regret. In my need to punish myself, I had a tubal ligation (sterilization). So I am childless. After killing my children, I did not deserve to be a mother.” App. B at 19.

⁸⁵ For example, Janice L. Bartlett (Florida) – “Devalued, dehumanized me. Took away my dignity and self-worth. Suffered from shame and guilt. Became depressed and even attempted suicide. Also led to use of alcohol, drugs, and sexual promiscuity.” App. B at 22. C.L.R. (Arizona) – “My abortion immediately led to hopelessness, promiscuity,

and drinking binges. I could not escape the pain and guilt. I've been through 19 years of intermittent counseling.” App. B at 24. E.A.W. (Tennessee) – “Drugs and promiscuity didn't help.” App. B at 27. (Continued on following page)

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guilt,⁸⁶ and secrecy.⁸⁷ Each of them made the “choice” to abort their baby, and they have regretted their “choices.”⁸⁸

Beverly A. Green (Minnesota) – “I went into a black tunnel for years. Started using drugs, drinking, more promiscuity, very insecure, hated myself – the list goes on . . .” App. B at 41.

⁸⁶ For example, Hemda Ben-Judah (Georgia) – “I have lived with guilt for many years.” App. B at 22. Connie Ambrecht (Georgia) – “Guilt felt for years . . .” App. B at 21. Mary Ellen York (Michigan) – “I was affected dramatically by my abortion. For years I couldn't even look at a baby and when I heard the word “abortion” I would just cringe. I suffered depression and I didn't like myself very much. Feelings of guilt. I found it very hard to forgive myself. It took my life from me.” App. B at 26. J.S.W. (California) – “Guilt, shame, feelings of being a really horrible person.” App. B at 28.

⁸⁷ For example, T.J.H. (California) – “. . . deep sense of loss and guilt/secrecy.” App. B at 18. Melody A. Athey (Kansas) – “I repressed any memory of the experience for 25 years. My whole lifestyle changed after my abortion. I started drinking heavily and married an alcoholic shortly after. I tried suicide once and considered it several times. I had repeated periods of depression especially around the anniversary date of my abortion. The guilt I felt was overwhelming.” App. B at 35.

⁸⁸ For example, Cathy L. Moffat (Utah) – “I have regretted my choices the rest of my life.” App. B at 13-14. Diane M. Hanson (Colorado) – “It changed my life, how I viewed myself, it took away my selfworth. It was devastating and caused several years of intense pain and sorrow. The hardest part was knowing ‘it was my choice’ that caused my baby's death and I couldn't do anything to change that or make it better!” App. B at 38. Lori Crossman (Michigan) – “It devastated me emotionally, mentally, and spiritually. I cannot go back and reverse my “choices” – I cannot get my children back. They are dead because abortion was legal and easy to access.” App. B at 45. Dana Renee Nickles (Arkansas) – “In the beginning I thought I was doing the right thing. Only afterwards did I realize the TRUTH! My conscience was seared, my heart was broken. I lived in a state of depression looking at drugs as the answer to my problem. And the problem – I had killed my child! See you don't realize what happens to yourself until it's too late, you've already done it and there's no turning back. I can't turn back time – if I could – I WOULDN'T HAVE AN ABORTION!! I was emotionally torn apart.” App. B at 15.