

Nos. 19-2882, 19-3134

**In the United States Court of Appeals
For the Eighth Circuit**

Reproductive Health Services
of Planned Parenthood of the St. Louis Region, Inc., et al.,

Plaintiffs-Appellees,

v.

Governor Michael L. Parson, et al.,

Defendants-Appellants.

Appeal from the United States District Court for the
Western District of Missouri, the Honorable Howard F. Sachs

**BRIEF OF SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU) ET AL. AS AMICI CURIAE SUPPORTING
PLAINTIFFS-APPELLEES AND AFFIRMANCE**

NICOLE G. BERNER
General Counsel

CLAIRE PRESTEL

JOHN M. D'ELIA

MONICA JIN JOO WILK

DOROTHY SINGLETARY

SERVICE EMPLOYEES

INTERNATIONAL UNION

1800 Massachusetts Ave., N.W.

Washington, D.C. 20036

Tel. (202) 730-7168

Additional counsel on inside cover

DAVID J. STROM

General Counsel

AMERICAN FEDERATION OF TEACHERS

555 New Jersey Ave., N.W.

Washington, D.C. 20001

Tel. (202) 393-7472

JUDITH E. RIVLIN

General Counsel

AMERICAN FEDERATION OF STATE,

COUNTY AND MUNICIPAL EMPLOYEES

1625 L St., N.W.

Washington, D.C. 20036

Tel. (202) 775-5900

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and 8th Cir. R. 26.1A, Amici Curiae state that they have no parent corporations and do not issue stock.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT i

TABLE OF AUTHORITIES iv

INTERESTS OF AMICI CURIAE.....1

INTRODUCTION3

ARGUMENT5

I. MISSOURI’S ABORTION BANS ARE UNCONSTITUTIONAL.5

II. REAL WOMEN’S EXPERIENCES WITH ABORTION.....7

 A. Missouri Could Never Have an Interest in Protecting Fetal Life
 Greater Than That of the Women Whose Stories Are Told
 Below..... 7

 B. Women Who Have Faced the Choice Whether To Terminate a
 Pregnancy in Difficult Circumstances Do Not Believe Missouri
 Is Supporting the Families It Purports To Protect by Its Reason
 Ban..... 12

 C. Missouri’s Abortion Bans Will Harm Women’s Mental and
 Physical Health, Contrary to the State’s Expressed Goals..... 14

 D. None of the Women Interviewed Experienced a Counseling
 Process “Tilted Toward Abortion.”..... 20

 E. Missouri’s Abortion Bans Will Cause Irreparable Harm..... 21

CONCLUSION.....24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Edwards v. Beck</i> , 786 F.3d 1113 (8th Cir. 2015)	6
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007).....	5
<i>June Medical Services, LLC v. Gee</i> , U.S. Supreme Court No. 18-1323.....	1
<i>Planned Parenthood of S.E. Pa. v. Casey</i> , 505 U.S. 833 (1992).....	3, 5, 6, 7
<i>Roe v. Wade</i> , 410 U.S. 113 (1973).....	5
Statutes	
Mo. Rev. Stat. §188.038	6
Mo. Rev. Stat. §188.056	5
Mo. Rev. Stat. §188.057	5
Mo. Rev. Stat. §188.058	5
Mo. Rev. Stat. §188.375	5
Other Authorities	
Alessandra Biaggi et al., <i>Identifying the Women at Risk of Antenatal Anxiety and Depression: A Systematic Review</i> , 191 <i>Journal of Affective Disorders</i> 62 (2016)	18
Christie Lancaster Palladino et al., <i>Homicide and Suicide During the Perinatal Period: Findings from the National Violent Death Reporting System</i> , 118 <i>Obstetrics & Gynecology</i> 1056 (2011)	19

Monica Isgut et al., *The Impact of Psychological Distress During Pregnancy on the Developing Fetus: Biological Mechanisms and the Potential Benefits of Mindfulness Interventions*, 45(9) J. Perinatal Med. 999 (2017)18

INTERESTS OF AMICI CURIAE

Amicus Curiae Service Employees International Union (SEIU) is a union of approximately two million working people employed in healthcare, property services, and public services.¹ More than half of SEIU's members are women and more than half of its members work in healthcare. SEIU is deeply committed to ensuring that all working people have access to comprehensive, affordable healthcare, including abortion care, and SEIU has often filed briefs as an amicus in cases involving access to abortion, most recently in *June Medical Services, LLC v. Gee*, U.S. Supreme Court No. 18-1323. SEIU and its members know that having access to safe, affordable reproductive healthcare, including abortion care, advances women's health, autonomy, and economic security.

Amicus Curiae American Federation of Teachers (AFT), an affiliate of the AFL-CIO, was founded in 1916 and today represents approximately 1.7 million members who are employed across the nation in K-12 and higher education, public employment, and healthcare. The AFT has long supported the right to safe, legal reproductive health services and the right to determine whether and when to have children—especially because restrictions on these rights disproportionately affect

¹ No counsel for a party authored any part of this brief, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. Only the amici and their attorneys have paid for the filing and submission of this brief. All parties have consented to the filing of this brief.

working class women and women of color. The AFT believes that reproductive freedom is a human right, and it includes the ability to have a healthy pregnancy; birth control that is safe, effective, and free; abortion services that are available on demand and without encumbrance; infertility care; and preventive healthcare services such as mammograms, Pap tests, and HPV screenings.

Amicus Curiae American Federation of State, County and Municipal Employees (AFSCME) is a labor organization with 1.4 million members in hundreds of occupations who provide vital public services in 46 states including Missouri, the District of Columbia, and Puerto Rico. AFSCME has advocated for accessibility to comprehensive affordable healthcare for all. And with well over half its members being women, AFSCME has a long history of advocating for reproductive rights.

Amicus Curiae Physician Women for Democratic Principles (PWDP) is a grassroots organization of 9,500 women physicians and medical students based in the United States who share progressive values. PWDP is committed to protecting women's access to safe and affordable healthcare, including access to abortion.

Amicus Curiae Shout Your Abortion (SYA) is a decentralized movement working to normalize abortion through art, media, and community events all over the country. Following the U.S. Congress's attempts to defund Planned Parenthood in 2015, the hashtag #ShoutYourAbortion became a viral conduit for

abortion storytelling, receiving extensive media coverage and positioning real human experiences at the center of the abortion debate for the very first time. SYA quickly evolved into a grassroots movement, which has inspired countless individuals to share their abortion stories through art, media, digital organizing, and community events. Shout Your Abortion’s eponymously titled book was released in 2018 and currently sits in the waiting and recovery rooms of nearly 300 abortion clinics all over the country.

INTRODUCTION

Missouri’s abortion bans are patently unconstitutional. As Appellees explain, the controlling law is clear and has been for decades: No state may ban abortion, as Missouri seeks to do, before fetal viability. *See, e.g., Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 846, 871 (1992) (reaffirming that “[b]efore viability, the State’s interests are not strong enough to support a prohibition of abortion”); *see also* Appellees’ Br. at 12–15. That controlling law is dispositive of the likely-success-on-the-merits aspect of the preliminary injunction test.

Nonetheless, Missouri claims it has a chance of succeeding and claims a series of interests that it says justify the state’s abortion bans. Missouri contends its new laws are necessary to defend interests in fetal life and dignity, *see, e.g.,* Appellants’ Br. at 44–48, and cites additional purported interests in anti-

discrimination, *see, e.g., id.* at 10, and the protection of women’s psychological health, *see id.* at 45. The state also contends that medical professionals are biased toward abortion and that, as a result, “the counseling process is heavily tilted toward abortion.” *Id.* at 18.

This brief tells the stories of women who have made the decision to have abortions and whose abortions would have been prohibited under Missouri’s new laws. Their real-life experiences undercut every one of the claims just described. There is no state official, for example, who could claim a greater interest in protecting fetal life and dignity than Kerri-Lynn Shea had in protecting her much-loved, expected daughter—and it was that very interest that led her to choose termination, as explained below. Several of the women whose stories are told here also experienced significant depression and other mental health problems *because* of their pregnancies, or very reasonably expected to experience such complications, and chose abortion as a way to protect their health. In addition, several of the women whose stories are told here decided to have abortions after finding out that their fetuses carried genetic anomalies, and none ever felt any pressure in counseling to choose termination. Finally, these women’s stories demonstrate the irreparable harm that women will experience under Missouri’s new laws.

ARGUMENT

I. MISSOURI'S ABORTION BANS ARE UNCONSTITUTIONAL.

The Constitution protects a woman's right to choose whether to terminate a pregnancy. *Roe v. Wade*, 410 U.S. 113, 153 (1973). The Due Process Clause of the Fourteenth Amendment secures "a realm of personal liberty which the government may not enter." *Casey*, 505 U.S. at 847. This protected realm encompasses "a person's most basic decisions about family and parenthood," specifically including decisions about whom to marry, whether to use contraception, and whether to terminate a pregnancy. *Id.* at 849.

The Supreme Court has made clear that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Id.* at 879; *see also Gonzales v. Carhart*, 550 U.S. 124, 146 (2007). This limitation on State power applies "[r]egardless of whether exceptions are made for particular circumstances." *Casey*, 505 U.S. at 879.

Missouri has done exactly what the Constitution prohibits. Missouri's Gestational Age Bans prohibit a woman from "making the ultimate decision to terminate her pregnancy" at specific times before viability. *See* Mo. Rev. Stat. §§188.056, 188.057, 188.058, 188.375 (prohibiting abortions after 8, 14, 18, and 20 weeks respectively, with an exception for medical emergencies but no exception for rape or incest). Missouri's Reason Ban also prohibits a woman from

“making the ultimate decision to terminate her pregnancy” by banning pre-viability abortions motivated by indications of Down syndrome. *See* Mo. Rev. Stat. §188.038. Because these bans prohibit abortion before viability, they violate women’s constitutional rights. *Casey*, 505 U.S. at 879.

Missouri contends that its bans are not in fact bans but are instead merely regulations. *See* Appellants’ Br. at 25–26, 39. This Court recently considered another state’s gestational age ban and rejected an essentially identical effort “to frame the law as a regulation, not a ban, on pre-viability abortions because [abortions remained] available during” some portion of the pre-viability period. *Edwards v. Beck*, 786 F.3d 1113, 1117 (8th Cir. 2015). Because the law there plainly banned abortions before viability, this Court held that it impermissibly “*prohibit[ed]* women from making the ultimate decision to terminate a pregnancy at a point before viability.” *Id.* (emphasis added). The same is true of Missouri’s new laws.

In any event, even if Missouri were correct that the provisions at issue can be considered regulations rather than prohibitions (which they cannot), the provisions are still unconstitutional. Abortion restrictions are permitted only when they do not “place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.” *Casey*, 505 U.S. at 878. For the women they affect, the challenged provisions of Missouri law present an

insurmountable obstacle: A woman whose fetus is post-eight-weeks gestational age, for example, simply cannot obtain an abortion. Missouri does not and cannot offer any evidence or advice regarding how that woman might surmount the obstacle her state government has put in front of her—because she cannot.

The stories of women chronicled in this brief illustrate why abortion bans like Missouri's are unconstitutional in the first place. The bans invade the liberty of women with respect to the most personal aspects of their existence: their very bodily autonomy and their decisions about whether to have and raise children. As the stories show, these are decisions best made by women themselves.

II. REAL WOMEN'S EXPERIENCES WITH ABORTION

Missouri portrays itself as a necessary protector of fetal life, as motivated in part by a desire to protect women's health, and as standing up against medical providers who pressure women to have abortions in cases of genetic anomaly. Real women's experiences tell a different story.

A. Missouri Could Never Have an Interest in Protecting Fetal Life Greater Than That of the Women Whose Stories Are Told Below.

Throughout its brief, Missouri portrays itself as a needed defender of an interest in fetal life. Of course, case law makes clear that no such interest is sufficient to ban pre-viability abortion, *see, e.g., Casey*, 505 U.S. at 846, 871, and that case law is dispositive. But Missouri's portrayal is also inaccurate.

Consider the experience of Kerri-Lynn Shea, who is now 40 years old and who works in the financial industry. Kerri-Lynn terminated a pregnancy at 21 weeks. Her termination would be prohibited under Missouri's new law.² Kerri-Lynn became pregnant for the first time at age 35 after struggling with infertility. Her fetus appeared healthy at 12 weeks, and Kerri-Lynn was very excited to learn that she would have a girl. But at 20 weeks an anatomy test revealed severe brain, heart, and chest cavity anomalies. The fetus was diagnosed with triploidy, a chromosomal diagnosis incompatible with life. Kerri-Lynn remembers feeling completely shocked. Most fetuses with triploidy do not survive until birth, and those that do usually die within days.

After receiving the diagnosis, Kerri-Lynn and her husband decided to terminate the pregnancy. "To us it was very cut and clear, but we had one more ultrasound," she said. "We just wanted one more chance to see her and confirm that we were doing the right thing, that terminating was the best option for her." At 21 weeks into the pregnancy, Kerri-Lynn opted to have an induction abortion. She and her husband were able to hold their daughter and have her baptized. They

² Kerri-Lynn and the other women whose stories are told here were interviewed by undersigned counsel. The women volunteered to tell their stories for purposes of this brief. Some of the interviewees were comfortable with both their first and last names appearing in the brief; others preferred to use first and middle name only.

named her Anneliese Marie, the full name of Anne Frank, because while her life was short, they wanted her to continue living after death.

Kerri-Lynn and her husband chose termination as the most compassionate thing they could do for Anneliese. “We didn’t want to, in our selfish hopes of becoming parents, make her suffer, or risk my life in continuing the pregnancy,” she explained. “I wanted to make sure that all she knew of her 21 weeks of life was the love that she knew when she was inside of me.”

No state official or government agency could have had a greater interest in protecting Anneliese Marie than Kerri-Lynn and her husband. Indeed, the choices they made were motivated *by* that interest—yet those same choices would be prohibited under Missouri’s unconstitutional law. As Kerri-Lynn explained: “If you’re terminating this late in the pregnancy, this isn’t a casual decision. . . . There’s no reason the government should prevent me from determining whether to terminate the life of a baby that was so wanted and so loved.”

Consider as well the experience of Anne-Marie Eklund, Ph.D., who is a middle school science and health teacher. Anne-Marie and her husband had been trying to get pregnant for some time, and she had suffered miscarriages before finally becoming pregnant and making it past the first trimester. During an ultrasound, however, Anne-Marie’s doctor discovered an anomaly in the fetus’s

brain. The fetus was diagnosed with Dandy-Walker Syndrome, a severe congenital brain malformation.

After long deliberations with their doctors, family, and priest, Anne-Marie and her husband decided to terminate the pregnancy. Making this decision was a very personal and spiritual experience for Anne-Marie. But once she understood the conditions the baby would face, she felt that terminating the pregnancy was the decision. “It was painful—I wanted that baby. But I did not want to bring that baby into the world,” she said. “I did not think it was fair[.]”

Anne-Marie terminated her pregnancy at 18 weeks, which would be illegal under Missouri’s Gestational Age Bans. When Anne-Marie thinks about laws restricting access to abortion, she feels sick. “It is frankly disturbing . . . that people think that they have the right to make those decisions for other people,” she said. “[It shows a] lack of understanding of what women go through when they are in that position. Especially when it was a genetic abnormality, there is absolutely no way to know what you will do unless you are in that situation.”

Or consider the experience of Lee Rozmus, who is now a 37-year-old administrative assistant. Lee became pregnant for the first time the year after she got married. Lee’s pregnancy progressed without issue until 20 weeks, when Lee went in for an ultrasound and the technician noticed something was wrong. Lee

learned that the fetus had Trisomy 18, a chromosomal anomaly that causes severe developmental disabilities if the affected fetus survives to birth.

The day after receiving the diagnosis, Lee's water broke and she ultimately lost the baby. But if she had not miscarried, Lee and her husband had decided they would terminate the pregnancy. Lee believes that having an abortion would have been the most compassionate choice, for both the fetus and herself. She did not want the baby to suffer, and she felt the loss would be easier to bear before the pregnancy reached full term. "It would be easier to handle emotionally before the baby was physically full size and in my arms," she said. "Easier to say goodbye [when we did] than have to wait and live through getting to know them, even as they grew in my belly."

Because Lee was 20 weeks pregnant before the fetus's condition was diagnosed, she would not have had the option to have an abortion if she were subject to Missouri's Gestational Age Bans. Lee believes women should determine for themselves whether to terminate their pregnancies, particularly when there is a fetal diagnosis. "Number one, if the baby's just going to suffer that's just cruel to them," she said. "And number two, the emotional toll on a parent would be life changing. A lot of [the parents in] those cases wouldn't be able to get back to work. The children need 24/7 care." Lee thinks the government and the courts

should listen to women with experiences like hers to understand the deeply personal implications of deciding whether to terminate a pregnancy.

Elisabeth Dubin expressed some similar thoughts and feelings during her interview. Elisabeth had a test done that indicated her fetus was more likely than is typical to have Down syndrome. A later test proved that not to be the case, but before receiving the second result, Elisabeth had decided in favor of termination in the event of a definitive Down syndrome diagnosis. Elisabeth identified several reasons for that decision, including her view that when a fetus does not ultimately become a delivered baby, “the sadness is solely at the adult level.” In other words, what the *adults* want or believe, or the feelings they want to avoid, can motivate the decision, rather than the interests or feelings of the fetus.

As these stories show, Missouri government officials do not have a monopoly on any interest in fetal protection and, to the contrary, the state’s unconstitutional law will prevent many women from making the decisions they very reasonably and understandably conclude are in the interest of protecting the fetuses they carry from pain or trauma.

B. Women Who Have Faced the Choice Whether To Terminate a Pregnancy in Difficult Circumstances Do Not Believe Missouri Is Supporting the Families It Purports To Protect by Its Reason Ban.

Again and again in its brief, Missouri describes its Reason Ban as motivated by a desire to protect people with Down syndrome. But as Appellees point out,

while the state’s ban forces women to carry pregnancies to term, it does so without providing those women or their children any assistance at all, without doing anything to address discrimination against people with disabilities, and without improving access to education, healthcare, or employment opportunities for people with disabilities. As Appellees correctly note, the ban “does nothing to improve the lives of children or adults with Down syndrome; it does not expand or strengthen . . . existing anti-discrimination laws; it does not provide much-needed funding for education, health care, or vocational training for people with Down syndrome[;]” and “does not even educate prospective parents about Down syndrome or otherwise support parents of children with Down syndrome.”

Appellees’ Br. at 7.

Several women interviewed made this same point. Mindy Schultheis, a working mom, had an abortion after amniocentesis showed that her fetus had Down syndrome and a heart abnormality. Mindy believes that a woman “needs to be able to make the choice whether they are equipped to bring” a child with disabilities “into the world” because “ultimately at the end of the day the woman is the one who has to raise this child.” Mindy explained that in her case, she and her husband did not believe it was the right thing to do for themselves or their family. She also pointed out that people with disabilities “don’t get nearly the help that

they need” and believes that work should be done there rather than in “legislat[ing] people’s bodies.”

Kathleen Yang-Clayton, who is now a professor of public policy, trained in sociology, and has never regretted the abortion she had while in college, articulated a concern as to this issue as well. She noted that a woman’s “life circumstances” are “radically change[d]” by having children. She believes it is “morally reprehensible” and “so hypocritical” for government officials to force that on women, particularly when they do not support “the very social programs that would assist them,” including “advocating for free child care, job training for single moms, etc.”

C. Missouri’s Abortion Bans Will Harm Women’s Mental and Physical Health, Contrary to the State’s Expressed Goals.

Appellants claim in their brief that they are motivated by a desire to protect women’s health. But several of the women interviewed for this brief either experienced serious health complications during pregnancy or likely would have if they had been forced to carry a fetus to term.

Elizabeth P. is one example. Elizabeth is a writer, actor, and tutor, including for children with learning differences caused by autism and for children with other conditions including cerebral palsy. Elizabeth and her husband decided when they got married that they would not have children. Later, when they began to discuss the issue again, Elizabeth went to see a fertility specialist as she had begun to

experience signs of early menopause. The specialist told Elizabeth that she would likely go into early menopause, as her mother had, and that it would be very difficult for her to get pregnant even if she wanted to. The specialist even drew a cliff and a mark representing Elizabeth's fertility off the cliff and in free fall.

Notwithstanding all this, Elizabeth soon became unexpectedly pregnant. She found out early and “immediately felt extremely anxious and depressed” and felt having a child would be a terrible mistake. Elizabeth and her husband moved as quickly as possible to discuss the issue but were delayed by opposite work schedules and pre-scheduled work travel. By the time they decided and were able to terminate the pregnancy, the fetus was at 9 weeks gestational age—meaning Elizabeth's abortion would have been prohibited under Missouri's new law.

Elizabeth had a history of depression and anxiety, which she had dealt with since college. She had tried for many years with her psychiatrist to find a medicine that would work for her and finally had before she found out she was pregnant. Elizabeth also knew that her sister had suffered from debilitating depression during her pregnancies, and Elizabeth then began to experience intense depression after becoming pregnant, even while taking the medicine that had worked for her.

Elizabeth was very worried “about what pregnancy would do to [her] mental health.” She worried about “what would happen if [she] stopped taking medicine” but also what effect the medicine would have on the fetus because there had not

been many studies done with respect to the drug she was taking. Elizabeth and her husband also were “financially not in a place to have a child” they could take care of, and Elizabeth was “extremely afraid of what” effect having a child would have on her marriage.

Other women interviewed for this brief also cited health concerns as one reason they decided to terminate their pregnancies. Joyelle Nicole had an abortion in college. She made that choice for several reasons, including that she was “at a point in my life where everyone seemed to be dying” and, as a result, she was “really depressed” at that time and “not in the mind state to have a child.” Kat Fossell lives in St. Louis, Missouri, and chose to terminate a pregnancy in 2017. She also had several reasons for her decision, including that she and her partner were still recovering from a miscarriage they had experienced the year before. Kat described that miscarriage as a “physically and emotionally traumatic event.” She was worried “her body would not be able to carry the fetus to term” and “didn’t think [she] could handle another miscarriage.”

Another interviewee, Shirley Caston, expressed concerns about the effect forced pregnancies will have on girls or women who have been victims of rape or incest. Shirley is a GI technician who lives in Kansas City, Missouri. She was molested by her stepfather from the ages of 6 to 10. Although Shirley did not get pregnant, she knows for certain that she “would not have wanted to keep that

baby.” She is very protective of all the children she knows, and given her own experience, she is worried about what Missouri’s law will do to rape or incest victims who are forced to carry pregnancies to term.

Shirley describes the trauma of molestation as something that you can “never get over.” Although you might “learn it’s not your fault,” the “trauma goes on for the rest of [your] life.” Shirley will still “see something that will give [her] flashbacks,” and she knows other survivors who cannot talk about their abuse at all because they become overwhelmed. The molestation Shirley experienced has affected her in many different ways, including with respect to forming relationships as an adult, and she describes the experience as impacting both her mind and body.

Shirley believes it would be very difficult if not impossible for someone to start the healing process after experiencing molestation if they were forced to carry a pregnancy to term and have their abuser’s child. She says that the molestation is trauma enough and that she “can’t imagine having to deal with the trauma of that happening to you and then someone telling you” you had to have the baby. It would be more “trauma . . . in your face every day . . . for the rest of [your] life.” Shirley says “if you haven’t lived it and haven’t experienced it you don’t know.”

The concerns these women had or have about the health effects of pregnancy and childbirth are well-grounded. “[P]regnancy and the post partum are times of

increased vulnerability for the onset or relapse of a mental illness,” and “[d]epression and anxiety are the most common psychiatric disorders during pregnancy and the post partum” Alessandra Biaggi et al., *Identifying the Women at Risk of Antenatal Anxiety and Depression: A Systematic Review*, 191 *Journal of Affective Disorders* 62, 63 (2016). It is also “now widely recognized that maternal depression, anxiety and stress during pregnancy have powerful long-term effects on both mother and baby.” *Id.* Specifically, perinatal anxiety has been linked to “stillbirth, premature birth, low birth weight, low Apgar scores, smaller head circumference, and major congenital anomalies as well as altered developmental trajectories” and, *inter alia*, “an increased risk of emotional problems” and “impaired cognitive development.” *Id.* at 64; *see also* Monica Isgut et al., *The Impact of Psychological Distress During Pregnancy on the Developing Fetus: Biological Mechanisms and the Potential Benefits of Mindfulness Interventions*, 45(9) *J. Perinatal Med.* 999, 999 (2017) (“Maternal psychological distress during pregnancy can adversely affect the development of the fetus, with accumulating evidence showing that it can have long-term negative effects on the health of the child.”).

Dr. Cynthia Rogers is an Associate Professor of Psychiatry in the Division of Child Psychiatry and Director of the Perinatal Behavioral Health Service at a Missouri teaching hospital who agreed to be interviewed for this brief. Dr. Rogers

explained that while post-partum depression is more often discussed, antenatal depression is common and stress “during pregnancy has physiological consequences” and is “detrimental to mom and baby.” Dr. Rogers noted that “one of the major risk factors for experiencing depression during or after pregnancy is having an unintended or unwanted pregnancy.” And depression and stress “increase the risk for pre-term birth and other complications.” There is also evidence of “co-morbidity” with respect to substance abuse, and “perinatal suicide is the second leading cause of death during pregnancy and the post-partum period,” see Christie Lancaster Palladino et al., *Homicide and Suicide During the Perinatal Period: Findings from the National Violent Death Reporting System*, 118 *Obstetrics & Gynecology* 1056 (2011). While people sometimes “act like pregnancy is nothing,” it is in and of itself an “extraordinarily difficult thing to go through,” and, according to Dr. Rogers, it is “not necessarily benign to ask a woman to carry a pregnancy to term that she does not want.”

As these data and interviews show, Missouri’s claim that its abortion bans further an interest in protecting women’s health is flatly inconsistent with many women’s experiences and expert medical views.

D. None of the Women Interviewed Experienced a Counseling Process “Tilted Toward Abortion.”

Not one of the women interviewed for this brief felt *any* pressure to choose abortion during pre-termination counseling they received. Instead, many of them emphasized how helpful and empowering counseling was.

Martha Plimpton, an actress who had an abortion that would have been prohibited under Missouri’s law, said that she discussed her decision to have an abortion with medical professionals and found those conversations very helpful. The medical professionals “were able to tell me what was happening with my body, what eventualities I might encounter, and give me an idea of the risks involved.” “They gave me an objective, rational perspective.” Asked whether she felt pressured to choose abortion, Martha said: “Not at all. They were never judgmental and never made me feel like I was making a mistake, and I still don’t feel like I’ve made a mistake to this day.”

Lee Rozmus similarly never felt “pushed to do anything.” Elisabeth Dubin also felt “no pressure.” Elizabeth P. “never felt any pressure to have an abortion” and, if anything, felt pressure only in the other direction from her husband and from her gynecologist who said unhelpfully that “no one regrets having children.” Kerri-Lynn Shea said that “all the doctors throughout and up to the process were really understanding of the situation” and “didn’t try to sway [her or her husband] one way or another.”

Amy B., who had an abortion in 2017 at 19 weeks, had to travel outside her home state to the Women’s Center in Atlanta to have the procedure. She said that she deeply appreciates the compassion, kindness, and professionalism she experienced at the clinic. Amy never felt pressured to have an abortion by clinic staff. On the contrary, she said “they made it very clear it was my decision, even up to the point of no return.” They asked “are you ok with this, is this what you want to do?” And they gave Amy “every opportunity to say yes or no.”

Anne-Marie Eklund also felt no pressure when she made her decision. She said the medical staff were “completely professional” and that while they “could not give . . . definitive information . . ., they gave the information that they had.” She “did not feel pressure either way.” “No one made me feel pressure to keep the baby and no one made me feel like I had to get rid of the baby.”

Contrary to the state’s assertion, not one of these women experienced a counseling process “tilted toward abortion.”

E. Missouri’s Abortion Bans Will Cause Irreparable Harm.

The stories already told in this brief show how Missouri’s abortion bans will cause women irreparable harm. Other women who were interviewed also discussed how difficult it would have been for them to have children against their will.

Several talked about how hard it would have been to take care of a child given their work schedules and financial situations. For example, Kat Fossell was working four jobs when she found out she was pregnant, and her partner had three. The pay was “not great and neither of us ha[d] benefits.” Kat said she “was working four jobs just to afford health care.” She and her partner were both “working so much,” it was impossible for her to “imagine taking care of a child.”

Other women talked about these same things and also about dreams for themselves and their lives that they feel they would have had to give up. Katie Wilson had an abortion when she was 23 years old. She wanted to go back to school and at that time had a waitressing job. Her husband worked a job with irregular hours. Katie and her husband were not in a financial position to raise children, and forcing Katie to carry a pregnancy to term against her will would have made their financial situation more difficult and made it more difficult to return to school. Joyelle Nicole spoke as well about the fact that she got pregnant while still a student and wanted to finish school, which she did not think she would be able to do if she had a child.

Amy B. had her abortion shortly after she lost her job. Her father had a kidney transplant at the same time, and her partner did not want to have a child. Amy believes her life would be very different now if she had been forced to continue her pregnancy: “I don’t know what my life would look like. The guy I

was with left, so I would be co-parenting. He moved so we would have to deal with that. I would need extra money for daycare; there would be a lot of expenses. I'd need to pick up another job or take care of the child by myself." Amy did not want to burden her parents and does not feel she would have achieved the stability that she has now. Because she had the choice to terminate her pregnancy, however, "my life, everything is a lot better now and a lot more stable." Amy has "a stable job" and is thankful that she had what she considers a "second chance." She said she is "thankful every day" for the choice she had and "100% does not regret [her] decision."

These women were in a better position than anyone else to assess the circumstances of their lives and think through the consequences of having unwanted children. They would have been harmed by Missouri's abortion bans in numerous ways, including in terms of their financial stability, their ability to recover from difficult situations, and their ability to achieve their dreams.

//

//

//

//

//

//

CONCLUSION

For the foregoing reasons, the district court should be affirmed.

Respectfully submitted,

/s/John M. D'Elia

John M. D'Elia

NICOLE G. BERNER
CLAIRE PRESTEL
JOHN M. D'ELIA
MONICA JIN JOO WILK
DOROTHY SINGLETARY
SERVICE EMPLOYEES
INTERNATIONAL UNION
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036
Tel. (202) 730-7168

Counsel for SEIU, PWDP, SYA

DAVID J. STROM
AMERICAN FEDERATION OF TEACHERS
555 New Jersey Ave., N.W.
Washington, D.C. 20001
Tel. (202) 393-7472

Counsel for AFT

JUDITH E. RIVLIN
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
1625 L St., N.W.
Washington, D.C. 20036
Tel. (202) 775-5900

Counsel for AFSCME

CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Fed. R. App. P. 32(a)(7)(B) and 29(a)(5) because this brief contains 5,423 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. Civ. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Word 2019 using a proportionally spaced typeface, 14-point Times New Roman font. The brief is in non-scanned, PDF format.

Pursuant to 8th Cir. R. 28A(h)(2), this brief was scanned for viruses with a virus scanning program and is free of viruses according to that program.

Dated: January 22, 2020

Respectfully submitted,

/s/John M. D'Elia
John M. D'Elia

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate 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.

Dated: January 22, 2020

Respectfully submitted,

/s/John M. D'Elia
John M. D'Elia