

Nos. 23-235 & 23-236

IN THE
Supreme Court of the United States

U.S. FOOD & DRUG ADMINISTRATION, ET AL.,
Petitioners,

v.

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,
Respondents.

DANCO LABORATORIES, L.L.C.,
Petitioner,

v.

ALLIANCE FOR HIPPOCRATIC MEDICINE, ET AL.,
Respondents.

**On Writs of Certiorari to the
United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF WOMEN WHO HAVE OBTAINED
MEDICATION ABORTION VIA
TELEMEDICINE AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT.....	3
I. Telemedicine Abortion Is Similar to Other Healthcare Provided Via Telemedicine ...	3
II. Telemedicine Abortion Reduces Health Disparities and Increases Autonomy for Women.....	5
A. Telemedicine is Often the Best or Only Option for Women Seeking an Abortion	6
B. Women Have Many Reasons for Seeking an Abortion.....	13
C. Women Are Grateful for Access to Telemedicine Abortion	22
CONCLUSION	32

TABLE OF AUTHORITIES

CASES	Page(s)
<i>Cruzan v. Dir. of Mo. Dep't of Health</i> , 497 U.S. 261 (1990).....	6
CONSTITUTION	
U.S. Const. amend. XIV	6
STATUTES	
21 U.S.C. § 802(54).....	3
42 U.S.C. §§ 254c-14(a)(6)–(7).....	3
OTHER AUTHORITIES	
Abigail R.A. Aiken et al., <i>Factors Associated With Use of an Online Telemedicine Service to Access Self-managed Medical Abortion in the US</i> , 4 JAMA Network Open 1 (2021), https://doi.org/10.1001/jamanetworkopen .2021.11852	7
Alice Mark et al., <i>The future of abortion is now: Mifepristone by mail and in-clinic abortion access in the United States</i> , 104 <i>Contraception</i> 38 (2021), https://doi.org/ 10.1016/j.contraception.2021.03.033	4
Anusha Ravi, <i>Limiting Abortion Access Contributes to Poor Maternal Health Outcomes</i> , Ctr. for Am. Progress (June 13, 2018), https://www.americanprogress. org/article/limiting-abortion-access-contri butes-poor-maternal-health-outcomes/...	8

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Asynchronous direct-to-consumer telehealth</i> , Dep’t of Health & Hum. Servs., https://telehealth.hhs.gov/providers/best-practice-guides/direct-to-consumer/asynchronous-direct-to-consumer-telehealth (last visited Jan. 25, 2024)	3
<i>Best practice guides</i> , Dep’t of Health & Hum. Res., https://telehealth.hhs.gov/providers/best-practice-guides (last visited Jan. 25, 2024)	4
<i>CDC/ATSDR Social Vulnerability Index</i> , Agency for Toxic Substances and Disease Registry, https://www.atsdr.cdc.gov/placeandhealth/svi/index.html (last visited Jan. 26, 2024)	7
Courtney Kerestes et al., <i>‘It was close enough, but it wasn’t close enough’; A qualitative exploration of the impact of direct-to-patient telemedicine abortion on access to abortion care</i> , 104 <i>Contraception</i> 67 (2021), https://doi.org/10.1016/j.contraception.2021.04.028	14, 23
Dana M. Johnson et al., <i>The economic context of pursuing online medication abortion in the United States</i> , 1 <i>Qualitative Rsch. in Health</i> 1 (2021), https://doi.org/10.1016/j.ssmqr.2021.100003	7

TABLE OF AUTHORITIES—Continued

	Page(s)
Daniel Grossman & Kate Grindlay, <i>Safety of Medical Abortion Provided Through Telemedicine Compared With In Person</i> , 130 <i>Obstetrics & Gynecology</i> 778 (2017), https://doi.org/10.1097/AOG.00000000000002212	5
Emily M. Godfrey et al., <i>Family medicine provision of online medication abortion in three US states during COVID-19</i> , 104 <i>Contraception</i> 54 (2021), https://doi.org/10.1016/j.contraception.2021.04.026	7
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	Page(s)
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Sajal Sanan et al., <i>Affording telemedicine medication abortion: Examining a sliding-scale payment option and patient’s ability to pay</i> , 20 <i>Annals of Fam. Med.</i> (2022), https://doi.org/10.1370/afm.20.s1.3208 ...	7
<i>Synchronous direct-to-consumer telehealth</i> , Dep’t of Health & Hum. Servs., https://telehealth.hhs.gov/providers/best-practice-guides/direct-to-consumer/synchronous-direct-to-consumer-telehealth (last visited Jan. 25, 2024).....	3
<i>What are Some Common Complications of Pregnancy?</i> , Nat’l Insts. of Health, https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/complications (last visited Jan. 25, 2024).....	12

TABLE OF AUTHORITIES—Continued

	Page(s)
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INTEREST OF *AMICI CURIAE*¹

Jane Liberty #1, Jane Liberty #2, Jane Liberty #3, Jane Liberty #4, Jane Liberty #5, Jane Liberty #6, Jane Liberty #7, Jane Liberty #8, Jane Liberty #9, and Jane Liberty #10 (collectively, “*Amici*”) are ten adult women living in the United States who received healthcare from licensed telemedicine providers for their own medication abortions after the U.S. Food and Drug Administration (“FDA”) removed in-person dispensing requirements for mifepristone in January 2023. Jane Libertys #1 through #10 each self-administered mifepristone, experienced no serious adverse events or complications as a result of their medication abortions, and required no in-person follow-ups, urgent care visits, or emergency department care.

Jane Libertys #1 through #10 have an interest in preserving access to telemedicine as an option for obtaining medication abortion and dispelling the notion that women who obtain medication abortion via telemedicine are incapable of self-administering an FDA-approved medication based on the instructions of their licensed telemedicine healthcare provider.

Jane Libertys #1 through #10 also have an interest in dispelling the notion that women regret their abortions or must be protected from the physical and emotional consequences of having abortions. Each Jane Liberty is grateful that she was able to take FDA-approved mifepristone on her own schedule and at a

¹ Pursuant to Rule 37.6 of the Supreme Court of the United States, counsel for *Amici* certify that no party’s counsel authored this brief in whole or in part; no party or party’s counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person or entity other than *Amici* or their counsel made such a monetary contribution.

location of her choice, whether on her own or with her spouse, partner, mother, or friend at her side.

SUMMARY OF ARGUMENT

Respondents ask the Court to overturn sound science on the safety of dispensing mifepristone based on unfounded fears over the alleged harms to women—harms that are disconnected from the realities of women’s lives and the safety profile of mifepristone. *Amici* present to the Court recent accounts from women who have successfully and safely self-administered FDA-approved mifepristone after receiving healthcare via telemedicine by a licensed provider in order to terminate their early pregnancies without regret and with great appreciation for the availability of mifepristone, especially via telemedicine.²

As the women’s accounts will illustrate, there is a need to de-mystify and de-stigmatize the use of telemedicine for reproductive healthcare from licensed providers. The FDA’s decision to no longer require in-person dispensing of mifepristone was based on the agency’s scientific and medical expertise that the medication is safe and that dispensing to patients without an in-person visit is well within current standards of care. The FDA’s 2023 modification to its mifepristone Risk Evaluation and Mitigation Strategies is vital for women who do not have the flexibility or resources to take time off work or school to visit a healthcare provider in-person, find childcare for their children, travel to the healthcare provider, or explain an

²The narratives come from interviews conducted by counsel for *Amici*. All women reviewed and approved their narratives. The opinions expressed are their own. The women have chosen to remain anonymous in order to protect themselves and others, including their families, from potential harassment, threats, and retaliation by those who do not share their views.

absence to family members, coworkers or others. *Amici's* stories highlight the positive impact of telemedicine as a means of obtaining licensed medical care and of using FDA-approved mifepristone for medication abortion.

ARGUMENT

I. Telemedicine Abortion Is Similar to Other Healthcare Provided Via Telemedicine

Telemedicine involves the use of telecommunications systems and technologies “to support and promote, at a distance, health care.”³ Telemedicine services include both synchronous and asynchronous medical consultations delivered to patients by qualified, licensed healthcare providers.⁴ The number of patients using telemedicine exploded as a result of the COVID-19 pandemic.⁵ Simultaneously, there was a dramatic increase in the number of healthcare providers offering services through telemedicine.⁶ The increased use of telemedicine

³ 42 U.S.C. §§ 254c-14(a)(6)–(7); *see also* 21 U.S.C. § 802(54).

⁴ *See, e.g., Synchronous direct-to-consumer telehealth*, Dep’t of Health & Hum. Servs., <https://telehealth.hhs.gov/providers/best-practice-guides/direct-to-consumer/synchronous-direct-to-consumer-telehealth> (last visited Jan. 25, 2024); *Asynchronous direct-to-consumer telehealth*, Dep’t of Health & Hum. Servs., <https://telehealth.hhs.gov/providers/best-practice-guides/direct-to-consumer/asynchronous-direct-to-consumer-telehealth> (last visited Jan. 25, 2024).

⁵ *See, e.g., Medicare Telehealth Trends Report*, Ctrs. for Medicare and Medicaid Servs. (2023), https://data.cms.gov/sites/default/files/2023-12/Medicare%20Telehealth%20Trends%20Snapshot%2020231122_508.pdf (stating that the percentage of Medicare users with a telehealth service increased from 7% to 47% from Q1 of 2020 to Q2 of 2020).

⁶ *See, e.g., Yuriy Pylypchuk & Wesley Barker, Use of Telemedicine among Office-Based Physicians, 2021*, Off. of the Nat’l Coordinator for Health Info. Tech. (2023), <https://www.healthit.gov/data/data-briefs/use-telemedicine-among-office-based-physicians-2021>

has transformed the delivery of healthcare as patients seek to access more affordable and convenient healthcare.

Telemedicine abortion is straightforward. Healthcare providers who offer reproductive healthcare, including medication abortion, first must determine whether mifepristone is medically appropriate for a patient. The telemedicine provider then provides detailed instructions on how and when to take the medication, and answers any questions the patient may have. The patient takes a series of medications, including mifepristone, and then, over approximately 48 hours, may experience symptoms associated with pregnancy termination that are frequently described as ranging from a heavy period to a mild flu.

Self-administered telemedicine-prescribed medication abortions, using FDA-approved medication provided by licensed clinicians, are just as safe as traditional medication abortions that include a clinic visit and ultrasound.⁷ For example, a study with a sample size of 52,142 women found that the risk of adverse events was equally low in both abortion experiences: appearing in-person for a prescription and ultrasound was irrelevant to the safety or efficacy of the medication abortion.⁸

(“While only 15 percent of office-based physicians used any form of telemedicine in 2018-2019, its usage increased six times to 87 percent in 2021”); see also *Best practice guides*, Dep’t of Health & Hum. Servs., <https://telehealth.hhs.gov/providers/best-practice-guides> (providing guidance for telemedicine) (last visited Jan. 25, 2024).

⁷ See Alice Mark et al., *The future of abortion is now: Mifepristone by mail and in-clinic abortion access in the United States*, 104 *Contraception* 38, 39 (2021), <https://doi.org/10.1016/j.contraception.2021.03.033>.

⁸ See, e.g., *id.*; see also Fekede Asefe Kumsa et al., *Medication abortion via digital health in the United States: a systematic scoping review*, 6 *NPJ Digit. Med.* 1 (2023), <https://doi.org/>

Another study compared 8,765 telemedicine abortions with 10,405 in-person medication abortions, and found that telemedicine abortion is not inferior to in-person medication abortion: the risk of significant adverse events was equivalent and miniscule.⁹ And according to malpractice insurance industry professionals who work with dozens of reproductive healthcare clinics, telemedicine prescribing for mifepristone has a similar risk profile to telemedicine prescribing for hair loss, erectile dysfunction, and birth control medications.¹⁰ These malpractice insurance industry professionals reviewed medication abortion claims and did not find any paid malpractice claims for medication abortion. Telemedicine is a safe and effective method for treating patients for whom the dispensing of mifepristone is medically appropriate.

II. Telemedicine Abortion Reduces Health Disparities and Increases Autonomy for Women

Autonomy over one's physical self and medical decision-making is essential to reproductive healthcare—to uphold the Fifth Circuit's holding would devastate that autonomy, as well as women's autonomy over their relationships, finances, careers, education, time, and family planning. Furthermore, it would result in

10.1038/s41746-023-00871-2 (finding that the effectiveness and safety of medication abortion via telemedicine was comparable to in-clinic abortion services).

⁹ See Daniel Grossman & Kate Grindlay, *Safety of Medical Abortion Provided Through Telemedicine Compared With In Person*, 130 *Obstetrics & Gynecology* 778 (2017), <https://doi.org/10.1097/AOG.0000000000002212>.

¹⁰ This information comes from an interview conducted by *Amici* counsel of malpractice insurance industry professionals.

higher costs for the women, their families, employers, and society.

A. Telemedicine is Often the Best or Only Option for Women Seeking an Abortion.

For many women, in-person access to abortion is not a realistic option. If the Fifth Circuit's decision is upheld, all women will be required to overcome additional hurdles to obtain mifepristone in a timely manner as a result of in-person dispensing requirements. The Fifth Circuit's decision would impose unnecessary costs on women who will need to travel (sometimes great distances) to a clinic to obtain access to a drug regimen that is currently available through a telemedicine visit. For women who may not be able to afford the childcare, time off work, or transportation costs required for going to a clinic, the in-person visit requirement will create unnecessary health disparities. Women seeking an abortion may be exposed to medically unnecessary harms and may require medically unnecessary surgeries as a result of delays in obtaining their abortions.¹¹ Indeed, some women may be unable to obtain abortion services altogether.

A study dedicated to determining the amount of travel time patients save by using telemedicine found that telehealth made abortion significantly more feasible for patients facing greater structural barriers when trying to access abortion care, such as 1) patients younger than twenty-nine; 2) patients who are food insecure; 3) patients from rural areas; and 4) Hispanic/

¹¹ See *Cruzan v. Dir. of Mo. Dep't of Health*, 497 U.S. 261, 278 (1990) (referencing the Fourteenth Amendment as a basis for arguing that forcing medical procedures on individuals is a substantial interference to their liberties).

Latinx/Black patients.¹² Several other studies showed that the most common reasons cited by individuals making requests for telemedicine services were the inability to afford in-clinic care, privacy, and clinic distance.¹³

Eliminating telemedicine abortion with FDA-approved mifepristone thus threatens progress towards reducing health disparities across the country. If health equity—and the ability to access the safest possible abortion

¹² See Leah R. Koenig et al., *The Role of Telehealth in Promoting Equitable Abortion Access in the United States: Spatial Analysis*, 9 *JMIR Pub. Health Surveillance* 1 (2023), <https://doi.org/10.2196/45671>.

¹³ See Dana M. Johnson et al., *The economic context of pursuing online medication abortion in the United States*, 1 *Qualitative Rsch. in Health* 1 (2021), <https://doi.org/10.1016/j.ssmqr.2021.100003>. A 47-mile increase in distance to the nearest clinic was associated with a 41% increase in requests for telemedicine abortion services; a 10% increase in the population living below the federal poverty level caused a 20% increase in requests for telemedicine abortion services. See Abigail R.A. Aiken et al., *Factors Associated With Use of an Online Telemedicine Service to Access Self-managed Medical Abortion in the US*, 4 *JAMA Network Open* 1 (2021), <https://doi.org/10.1001/jamanetworkopen.2021.11852>. In certain states, almost one-quarter of women using telemedicine abortion lived in counties the Centers for Disease Control and Prevention has placed on its Social Vulnerability Index. *CDC/ATSDR Social Vulnerability Index*, Agency for Toxic Substances and Disease Registry, <https://www.atsdr.cdc.gov/placeandhealth/svi/index.html> (last visited Jan. 26, 2024). Research also shows that many women cannot afford even low cost telemedicine abortion services without financial assistance. Emily M. Godfrey et al., *Family medicine provision of online medication abortion in three US states during COVID-19*, 104 *Contraception* 54 (2021), <https://doi.org/10.1016/j.contraception.2021.04.026>; see also Sajal Sanan et al., *Affording telemedicine medication abortion: Examining a sliding-scale payment option and patient's ability to pay*, 20 *Annals of Fam. Med.* (2022), <https://doi.org/10.1370/afm.20.s1.3208>.

method with mifepristone—diminishes, there also will be an increased risk to the health and well-being of women during pregnancy, childbirth, and the postpartum period.¹⁴

The Jane Libertys know firsthand the difficulty of seeking an abortion in-person, as they felt that telemedicine was their best option and, in some cases, their only option:

Jane Liberty #1

...I live in a suburban area, and after I suspected I was pregnant, I went to the women's health center in my town where the pregnancy was confirmed. My boyfriend and I decided to seek an abortion and considered different options. The women's center in my town does not provide abortions, and I had to look into the procedure on my own. I considered going to an in-person clinic in a city about a one-hour drive away for an abortion, but while I was in the process of making the in-person appointment, my boyfriend saw a social media video in his feed where a girl discussed telemedicine abortion providers. I looked into the provider, and submitted my information on their website.

The cost of the procedure at the in-person clinic would have been \$600, however the medication abortion cost significantly less. The in-person procedure would have not only required at least a one-hour drive each way, it

¹⁴ See Anusha Ravi, *Limiting Abortion Access Contributes to Poor Maternal Health Outcomes*, Ctr. for Am. Progress (June 13, 2018), <https://www.americanprogress.org/article/limiting-abortion-access-contributes-poor-maternal-health-outcomes/>.

would also have required that I miss more work, whereas I only took off one day from work for my medication abortion at home and I actually don't even think I needed that day off. The medication abortion was not only more convenient, it was also more discreet. I felt safer and so much more comfortable at home in my own environment. I had been warned about potential protests at the in-person clinic...

Jane Liberty #2

...I chose medication abortion via telemedicine for two main reasons. First, the privacy and anonymity of being able to self-manage my abortion made telemedicine the only option I considered. I was able to choose when to take the pills to start the abortion process and was able to do so over a weekend so as not to miss any work. Second, the cost of abortion via telemedicine was significantly less than an in-person clinical option. This was and is extremely important to me, as neither I or my then-partner were financially stable...

Jane Liberty #3

...I also sought an abortion because, at the time, I was working part-time and was not in a financial space to take care of a child. I knew there were options other than abortion, but abortion was the best decision. I live in a somewhat rural area, and visiting the closest clinic would have been expensive...

Jane Liberty #5

...I couldn't take off work with such short notice, find childcare, and going to a facility would be expensive. I found out about my telemedicine provider on the internet. It was the best choice for me, my partner, and my family. I think I found out about my telemedicine provider on Saturday, filled out their questionnaire and answered their questions on a Monday, and confirmed my identity with the telemedicine provider. It was very smooth. My telemedicine provider told me that if I needed additional support, there was a confidential number I could call. With the medication abortion, I was able to go through my daily life schedule the day of my abortion. I took the medication right after work and followed the directions. My telemedicine provider provided a paper with visual depictions of what to do and deep, thorough instructions on how to use the medication. I had no confusion about what to do next and what was to follow. I took some ibuprofen before, and while I had some cramping and a heavier period, I was able to go along with my daily life. It was Christmas weekend when I had my medication abortion, and I was still able to visit family and celebrate the holiday. After my abortion, I felt relief that that chapter was done.

This was my second abortion. I went to a facility for a medical abortion earlier, and it was about \$700. I was required to go to the facility multiple times, and it was inconvenient. It's intense going to a facility. There can be harassment and people trying to change

your mind. I stand by my decision, and my telemedicine provider supported the decision that I'd already decided was best for me. I had told my partner and friends about the medication abortion, but I can understand that someone might not be in my situation and might be encountering domestic violence, and the abortion might be in secret. Phones can track your location, and it might be hard to explain why you have to go to a facility. Abortion care provided through telemedicine is an amazing program for women. This is daily healthcare, and this is healthcare we have a right to...

Jane Liberty #6

...I sought care for my abortion using telemedicine because I wanted to be discreet. I was employed at the time of my medication abortion, and telemedicine meant that I did not have to take time off work for the appointment. I also have caregiving (and other) responsibilities that I did not have to be absent from during my medication abortion...

I considered other alternatives to telemedicine, but the nearest reproductive healthcare clinic offering medication abortions is two hours away...

Jane Liberty #8

...The closest clinic to me was about three and a half hours away, and so I would have to get a hotel and pay for travel expenses in order to get an abortion at the clinic office. Though I had an appointment at the clinic, I

ultimately chose a medication abortion because of the expense of traveling...

Jane Liberty #9

...After deciding to terminate the pregnancy, I researched different ways of gaining access to abortion.

In my state, the nearest clinic providing abortion care is hundreds of miles away. This made an in-person abortion almost impossible. Telemedicine became my only option, and as I researched the process I realized it would be the most private route as well...

Jane Liberty #10

...I considered other alternatives to the telemedicine provider I ended up choosing, but the other programs didn't seem to fit with my needs at the time. The provider I chose was heartwarming and connected with me and my story. The nearest reproductive healthcare clinic offering medication abortions is located 6 hours away...

Telemedicine is an important avenue for women seeking care. Decreasing or delaying a patient's access to mifepristone by reinstating an in-person dispensing requirement will mean that pregnant patients seeking medication abortion remain pregnant longer. Consequently, these women will continue to be exposed to the health risks and complications of pregnancy, such as high blood pressure, preeclampsia, depression, and anxiety.¹⁵ These forced delays would

¹⁵ See *What are Some Common Complications of Pregnancy?*, Nat'l Insts. of Health, <https://www.nichd.nih.gov/health/topics/pregnancy/conditioninfo/complications> (last visited Jan. 25, 2024).

cause unnecessary suffering and may necessitate additional medical care.

Upholding the Fifth Circuit's decision would mean that the Jane Libertys would not have received their medication abortions via telemedicine and, as a result, would have suffered the exact negative consequences they sought to avoid by using telemedicine.

B. Women Have Many Reasons for Seeking an Abortion.

There are many reasons why a woman might choose to have an abortion. Each reason is deeply personal. Telemedicine allows women to make that decision with a level of privacy and freedom from harassment that in-person dispensing of medication abortion does not allow. For some women, that privacy is necessary for their safety even within their own home and relationships. Jane Liberty #2 tells her story of how the privacy of a telemedicine abortion saved her life:

Jane Liberty #2

I am a well-educated woman with a background in healthcare and medicine. I had an abortion via telemedicine. My abortion saved my life.

I was in an emotionally and psychologically abusive relationship when I became pregnant. Realizing I needed an abortion gave clarity to the situation I was in and provided a way out of my abuse by facilitating other thought processes that allowed me to leave my abuser. When I found out I was pregnant, I wasn't excited, I was terrified and scared. I didn't want to put a child in the negative environment and abusive relationship that I was in at the time. That was the hardest part of this

whole process. I want kids, at the right time, with the right person. I think there is a misconception that women who have abortions don't want children; this couldn't be more wrong. But I want to be excited when I have kids and raise them in an environment that is safe...

Jane Liberty #2 is not alone in relying on a telemedicine abortion to escape a dangerous home life. In a qualitative study comparing the impact of the administration of medication and counseling when done by mail via telemedicine versus in-clinic care, patients found that direct-to-patient telemedicine abortion provided the opportunity for safe self-administered abortion care when they otherwise may not have been able to receive an abortion safely.¹⁶

Telemedicine can save lives, whether for women who fear an abusive partner and need to hide their pregnancy or abortion from that partner, or for women who medically cannot safely continue a pregnancy without risk to either their health or that of the fetus. Jane Libertys #3 and #4 tell the story of how their telemedicine abortions saved them from medically complex and high risk pregnancies:

¹⁶ See, e.g., Courtney Kerestes et al., *'It was close enough, but it wasn't close enough': A qualitative exploration of the impact of direct-to-patient telemedicine abortion on access to abortion care*, 104 *Contraception* 67 (2021), <https://doi.org/10.1016/j.contraception.2021.04.028> (sharing the story of a woman who described her abusive relationship and explained that had she been required to receive in-person abortion care, her husband would have tracked her location and hurt her).

Jane Liberty #3

I am a nursing student and full-time working woman with Multiple Sclerosis (“MS”). The main reason that I sought and had a medication abortion is because a drug that I use to manage MS can cause birth defects, and individuals who take the MS drug are supposed to wait five years after taking the drug to have a baby. The drug is a newer MS drug, and the birth defects that the drug can cause are unknown. I knew I did not want to have a baby when the birth defects that the MS drug could cause were unknown. I didn’t know what would happen to the baby if there were birth defects...

Jane Liberty #4

I am a mother of two. I have a daughter who is 16 months old and a son who is 9 years old. I live with my parents and two children. I have a significant other (“SO”) with whom I share both of my children...

...Last October, my birth control prescription ran out. I was not able to renew it without a wellness check, and I was told an appointment was not available until January 2024. My SO and I were not trying to get pregnant. At 4 AM one morning in 2023, I felt nausea and other pregnancy symptoms. I took an at home pregnancy test, which was positive...

...I immediately knew that emotionally, physically, and financially, I was not ready for another child, let alone twins. I could feel myself becoming withdrawn and agitated after I found out I was pregnant. I was still

experiencing postpartum depression from my pregnancy with my 16-month-old daughter. My daughter was 12 lbs 9 oz at birth, and I am 4'11 and 120 lbs. I developed preeclampsia during my pregnancy and, due to my daughter's size, I had to have a cesarean section to deliver her. Shortly after my daughter's birth I developed a hematoma and had to go back to the hospital. After my experience with my daughter's birth and the complications of my pregnancy, I was not sure that my body could even handle carrying twins, which was one of the key reasons I felt I needed to have an abortion...

Like Jane Libertys #3 and #4, many women seek medication abortion because being pregnant poses high risks to their health. Restrictions on abortion—like demanding in-person dispensing of mifepristone when the FDA has already deemed it safe to dispense via telemedicine—will only harm women by making it difficult, and in some cases nearly impossible, for women to obtain abortions.¹⁷ Moreover, women who are unable to obtain mifepristone through in-person visits may ultimately need to seek a surgical abortion instead if their pregnancy has progressed beyond the gestational age at which home use of mifepristone is safe and effective.

Another crucial element to the wellbeing of women's lives is their financial capacity to care for themselves and their families. A majority of women who choose to have an abortion already have children,¹⁸ and their

¹⁷ See Kumsa et al., *supra* note 8.

¹⁸ See Katherine Kortsmit et al., *Abortion Surveillance – United States, 2020*, 71 C.D.C. Morbidity and Mortality Wkly. Rep.

decision to terminate their pregnancy is based in what they think is best for the wellbeing of their existing family. Jane Libertys #4, #5, #6, #7, and #8 speak to these considerations firsthand:

Jane Liberty #4

...I am not currently employed because I cannot afford childcare. My parents are in their 70s and are unable to watch my children. I am on government support and use WIC, Medicaid, and food stamps to support my children. My SO uses my car to go to and from work.

Right away, I told my parents and my SO that I was pregnant and wished to have an abortion. My parents were supportive, but my SO initially wanted me to have the babies. After we discussed it, he also became supportive. I did not feel that adoption was an option as emotionally I would not be able to part with the babies if I delivered them, and I knew I could not afford or care for two more children...

Jane Liberty #5

I am a working mother with two kids, ages four and one. I love my children, but motherhood isn't a joke. Everyone should make the decision about becoming a mother for themselves.

Surveillance Summaries 1 (2022), <http://dx.doi.org/10.15585/mmwr.ss7110a1>. This statistic has remained constant: in 2008, the Guttmacher Institute found that about 61% of women having abortions each year had given birth to at least one child prior to their abortion. See Rachel K. Jones et al., *Characteristics of U.S. Abortion Patients, 2008*, Guttmacher Inst. (2010), <https://www.guttmacher.org/sites/default/files/pdfs/pubs/US-Abortion-Patients.pdf>.

Women should have the ability to do what is best for them and their family, and motherhood shouldn't be pushed onto someone if they don't want that. I was petrified when I found out I was expecting. But because of my abortion, I am in a position to enroll back in school and am planning for a career as a radiology tech. I wouldn't be able to do this with a third baby...

Jane Liberty #6

...I had an abortion because the pregnancy wasn't planned. I had just had my tubes removed to eliminate the possibility of getting pregnant again. My financial situation was tough at the time of the medication abortion. Whether or not my financial situation will get better is still unknown. My husband and I were married at the time of my abortion, and we are still married. At the time of my abortion, I had three other children, all under the age of five...

...There were plenty of things driving my decision to seek an abortion. We didn't plan for four kids. Our youngest was only six months old at the time of my abortion. My husband is going through a career change, which could result in an income loss. I had just started a new job. I did have questions about my abortion decision, as everyone does, but I felt, for the most part, that I was not in a position to consider alternatives to abortion. The abortion didn't take a mental toll on me as hard as I expected it to. It was a good peace of mind. The abortion was different than what I was expecting – I was expecting it to

be a horrible experience but it ended up being easy. I told my friend group of five people, one of whom is pregnant, about my abortion. I had people who were supportive and helpful of my decision...

Jane Liberty #7

I am a mother of a one year-old baby girl living in a metropolitan area with my significant other. I recently had a medication abortion, which was the right decision for myself and my family. I had previously had a surgical abortion when I was 19 years old, and had had a prior medication abortion as well that was dispensed in-person. My recent abortion was my first via telemedicine.

A few months ago, I became pregnant. Immediately I knew I did not have the elated, excited feeling that I had previously experienced. My partner and I discussed, and we both decided that we were not ready for a second child both emotionally and financially, and that it wouldn't be fair to this child. We would want to give a second child the same attention and opportunities we are able to afford my daughter, which didn't seem possible. We both knew it was just not the right time. We of course considered the "what ifs" of having the child, which further prompted our decision to seek an abortion...

Jane Liberty #8

I am 32 years old and I am a full time government employee and a part time real estate agent. I used to be strongly against abortion. At the time that I had my abortion, I already had one daughter. I was not in a place where I was financially comfortable with having another child, and the father was always gone...

Financial considerations play a role in many women's decisions about whether and when to become a parent. Indeed, many women make the decision for themselves that they do not have capacity for caretaking at all, or that they are not in a stage of life where having a child would be conducive to their wellbeing or the wellbeing of the potential child. Jane Libertys #1, #9, and #10 speak to the decision to terminate their pregnancies because it was the best decision for their place in life at the time:

Jane Liberty #1

I am a college-educated 23 year-old woman in a two-year relationship with my boyfriend and we found ourselves in a situation with an unplanned and unwanted pregnancy. While my boyfriend and I do intend to get married and have children together in the future, we are not ready for that right now. I live at home with my family and while I am somewhat financially independent, we are not yet ready to support a child...

Jane Liberty #9

I am a 35 year-old woman and I had an abortion via telemedicine. I am so grateful to

have had access to a medicine which allowed me to continue living my life.

When I became pregnant, my partner and I knew immediately that a pregnancy at this time wasn't part of our current life plan, and that abortion was our only option. My partner is just starting out in his career and financially it wasn't possible for us to have, let alone raise, a child...

Jane Liberty #10

I am a Hispanic woman who had a medical abortion. I had the abortion because I am not ready for a baby. I am a student in college and am not physically, financially or emotionally ready for a child...

...I wouldn't say my financial situation was the best, but it also was not the worst. I am trying to save as much money as I can, as a college student. When I had my medication abortion, I was dating my boyfriend, who I am still dating...

...My doctor had told me about seeking care for my abortion using telemedicine. I had also seen ads for the provider I used online. When I found out I was pregnant, my boyfriend and I realized that now is not a convenient time for either of us to have a baby. I did my own research on what my options were for the pregnancy. I was employed at the time of my medication abortion in financial business analysis. I did not have to take time off of work or classes for the telemedicine appointment...

...The driving factor in my decision to seek an abortion was that I was so young and didn't want to be another stereotype of a Mexican-American woman in her early 20s in college with a baby. I didn't really have questions about my decision to have an abortion, as it was really the only option. The abortion was not different than what I thought it would be. I told my boyfriend and my sister who were both helpful and supportive. My abortion allowed me to get a job promotion that I would not have been considered for had I not had the abortion. I work at a uranium plant where they are hesitant about letting women work on site because of the side effects and radioactive materials. Additionally, I am graduating college this semester, and I would not have been on top of my classes to even let myself get to graduation...

The Jane Libertys' stories represent just a small fraction of the many factors that go into a woman's decision to seek an abortion. Regardless of their reasons, their stories reflect a profound appreciation for telemedicine enabling their autonomy over their reproductive health.

C. Women Are Grateful for Access to Telemedicine Abortion.

The Jane Libertys who were interviewed and willing to share their stories all shared a common sentiment—they are grateful for their medication abortions.¹⁹ This

¹⁹ See Melissa Madera et al., *Experiences seeking, sourcing, and using abortion pills at home in the United States through an online telemedicine service*, 2 *Qualitative Rsch. in Health* (2022), <https://doi.org/10.1016/j.ssmqr.2022.100075> (finding that online

is not unique. Women across the United States affirm that they would recommend telemedicine to a friend seeking an abortion because they do not regret their own abortions.²⁰

The Jane Libertys feel strongly that all women should have the same access to medication abortions via telemedicine that they had:

Jane Liberty #1

...I feel very good about the medical care I received through the provider. The process was very in depth and thorough. There were multiple steps in the process, and the provider provided very comprehensive information about what to expect during each phase of the medication abortion. I was nervous before taking the medicine about the pain I expected and what the experience would be like, but my actual experience was as positive as possible. It was calm and not the negative, traumatic and painful experience I was expecting. Afterwards, I felt so relieved emotionally. I feel like I still have room to be myself and find myself as a 23 year-old instead of having to forego that.

I would absolutely recommend medication abortion in the privacy of your home or own environment to a friend or anyone. I was happy when I received the email to tell my

telemedicine met participants' needs and offered care that participants deemed legitimate and trustworthy).

²⁰ A study on the administration and counseling of medication abortion found that all participants affirmed they would recommend self-administered medication abortion via telemedicine to a friend. See Kerestes et al., *supra* note 16.

story [in this brief] because it was a positive experience. A medication abortion is 100% an amazing resource that should continue to be available to women everywhere. It was nothing but a positive experience—I have heard such negative and traumatic rhetoric, but my experience was a 180 from those traumatizing and horrific stories. I have always been pro-choice and feel passionately about it—I am glad to share my story as I think abortion rights should be a law and all women in all states should have access.

Jane Liberty #2

...I was raised in a Catholic family, but still made this decision. While telemedicine didn't completely wipe away the societal stigma of abortion, it was so much better to be able to handle my own abortion personally and privately. It gave me autonomy over myself and my healthcare decisions, as only I know what is best for me.

I am very grateful for the care I had access to, and for my ability to privately self-manage my own abortion. I was able to be as comfortable as possible during the process in the safety of my own home. The telemedicine provider provided me with prompt care and answered all of my questions. When I felt anxious during the process, I was able to message a provider directly who provided guidance on whether I should take additional mifepristone...

...I feel very grateful for the care I had access to during my medication abortion. I believe

the Supreme Court should be advocating for access to healthcare instead of taking it away. When *Roe* was overturned, I was with a friend who lived in a state where her rights were immediately taken away. To witness my friend go through the fear associated with possible imprisonment, along with the scarcity of abortion providers was terrifying. To know that her decision was no longer truly hers and see how that mentally impacted her was hard to comprehend. I was immediately grateful to live in a state that wasn't banning the procedure...

...My ability to have a medication abortion via telemedicine is something I am grateful for, and I hope that this access remains available to all women regardless of race or financial status.

Jane Liberty #3

...The telemedicine provider was incredibly helpful, provided information that was easy to follow, and responded quickly whenever I had questions. I felt very supported through the care I received, and did not feel like I was in this alone. While I had bad cramps, I had the normal symptoms of a medication abortion. I lived through it and my story could help others making the same decision or trying to make the same decision. I have recommended the telemedicine provider to my sister and would recommend the provider to other women seeking care.

Abortion is very necessary; medication abortion was very helpful and necessary. Women in a

lot of states do not have the ability to get abortion care. It's ridiculous not to be able to get that type of care. If state governments were not pro-life, then women would have more autonomy.

Jane Liberty #4

...I discovered a telemedicine provider who could prescribe medication abortion. They were extremely helpful and informative. Every time I called, even at 2 AM, there was someone to speak to. Their communications were very professional...

...Without the telemedicine provider, I know that I would not be able to care for or financially support twins, and I was afraid of the effect carrying twins would have on my body after my prior pregnancy. It would have been devastating for my family to add two more children, or devastating to have to give them up for adoption.

I believe that abortion should be a woman's choice, and the option should not be taken away completely. There should be options, for example, for minors, rape victims, and women whose health is compromised by their pregnancies, and also for women who become pregnant, but know they cannot emotionally or financially support a child, or give the child the life they deserve. Women need to be heard and to have the ability to make decisions for their own bodies. If we know in our heart of hearts that we cannot support a child, then we should be able to make that choice; we are the mom.

Jane Liberty #5

I want to let other women know that it is ok to talk about abortion. I will share my story with anyone who will hear it. This is a part of medical healthcare. It is important to stand in solidarity with women, regardless of the state they live in. Accessibility is more than just having access to the medicine, it should be affordable too.

Jane Liberty #6

...I would like to tell the Supreme Court that abortion care provided through telemedicine is reliable, and it is a safety net for people who might not consider getting an abortion if they were forced to see someone in-person. Every side needs to be heard because not all abortion stories are the same.

Jane Liberty #7

...The telemedicine provider provided accurate instructions and information, and I felt properly informed about the process. I liked the information they provided because, having gone through a prior medication abortion, I knew the reality of what to expect in terms of pain and the actual process itself. I took the medication at home on a Monday and took that day off work. Afterward, I experienced some pain and I reached out to the telemedicine provider regarding pain management, and they were responsive and timely in those communications. It was a positive experience, and I would recommend them to other women seeking abortion or miscarriage care.

While an abortion is not a fun thing to go through, ultimately I am happy with my decision and believe it was necessary for me, and absolutely gave me the ability to do things I wouldn't have otherwise been able to do. This abortion was different than I thought it would be in that I was surprised at how easy and convenient it was. I was dreading going through it given my prior experiences, but it was over before I even knew it. Particularly as compared with my surgical abortion, this abortion was so much easier, both practically and emotionally. Looking back I wish I had had the telemedicine option at that time. I much preferred this most recent experience as I was able to be at home with someone who loves and cares for me.

I want to share my story because this happens to a lot of people, and there is not enough information or direction given on what to do. It is important for people to be able to have a medication abortion at home, at their own pace, without having to feel judgment or shame from anyone in-person. For especially young women, I feel it is your body, your life, and I want to help them get this information if needed. I want to help inform other women and share my experiences. I do not think women should be afraid to seek abortions via telemedicine.

Jane Liberty #8

...I felt totally prepared for the process of having a medication abortion and had no unexpected issues or complications. The abortion did affect me, though. At first I did not really talk to anyone for about two weeks. It took about a month to feel “normal” again. I told my closest friends and my sister, who were all supportive of my decision and wanted me to do what was best. I now feel strongly that as a woman I should have a say over my body, and no one else. Abortion care provided through telemedicine is a great method. Banning abortion poses a huge health risk for mama and baby if women are not able to seek the medical care they need. I really feel that a woman should have a say over her own body, especially if there is no financial assistance available.

Jane Liberty #9

...I researched online and found referrals to telemedicine medication abortion providers. They responded quickly and were extremely informative. When I received the pills, an informational sheet came with them, which I found to be enormously helpful and alleviated any need I might have had for contacting the provider during the abortion process. I had no negative side effects or complications. After the abortion, I felt only relief that I was no longer pregnant and relief that I could access the necessary medication.

I had a great experience with my medication abortion. The providers were very responsive

and helpful. I was able to be in the privacy of my own home and self-manage my abortion. My partner was able to be with me during the entire process. These are things I felt made my abortion experience a positive one. My experience has shown me that abortion is healthcare, just like any other form of healthcare. I don't think my personal abortion story is different or unique; on the whole, I think that abortion is incredibly common and needs to be talked about more often. I'm sharing my story in the hope that anything I can say will make this experience easier for other women.

Jane Liberty #10

...After the appointment with the telemedicine provider, I took the medication at home. After I took the first medication, I felt a little queasy, but then I was fine. I started to feel cramping, as if I was on my period, so I laid down and relaxed for a little while. Overall, the medication abortion was not too hard on my body. The process for the medication abortion had been explained to me perfectly verbally, and the written instructions when I received the medication were also perfect...

...Abortion is a woman's choice. Our bodies do most of the work, and you have no right to tell me what to do, how to do it or when to do it when it comes to reproductive rights. If you cannot help me take care of the child physically or mentally, then you have no place telling me what to do. It is important for me to share my perspective so I can let other women of all races, and particularly Mexican-

American women, that we don't have to be part of the stereotype of being a young woman and just a wife or a mom. We are so much more than that, and we can do so much more if there are other ways to help women with abortions. It is okay to not fit into our parents' beliefs that we have to keep the baby. My state has a very good perspective on abortions, I just wish there were more care facilities so we don't have to drive so far.

That these women's positive telemedicine abortion experiences, as well as ample medical studies, support the safety of telemedicine abortion should not come as a surprise. Telemedicine uses licensed healthcare providers who have extensive experience prescribing medication abortion, who are able to screen patients for potential complications, and who are able to prescribe and dispense FDA-approved mifepristone safely and effectively. All signs point to the safety and efficacy of the provision of medication abortion via telemedicine, signs that this Court should not allow misinformation to disrupt.

CONCLUSION

The Court should not let the views of Respondents overturn sound science and lived experiences that support the safe dispensing of FDA-approved mifepristone by licensed professionals to women via telemedicine. Nor should Respondents be permitted to interfere with women's urgent need, wish, and freedom to access safe telemedicine abortion services. To uphold the Fifth Circuit's decision would do a disservice to the Jane Libertys' stories and the thousands of women with similar experiences. Accordingly, the Court should rule in favor of Petitioners.

Respectfully submitted,

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