IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Case No. 99-2986

James Tarsney, Joe Loeffler, Wayne Olhoft, Tad Jude, Dr. Steve Calvin, Dr. Karen Karn, Dr. Konald Prem, Dr. Stanley Johnson, Brian Gibson, Jack Weiland, Russ Rooney, Mary Rooney, David Racer, Eugene Keating, Joseph Kueppers, John C. Cerrito, David States, Mary Kay States, Keith Jensen, Elizabeth Jensen, Roberta Becker, Linda Pettman, Karen Messicci, Angela Heithaus, Renae LaVoi, Cheri Emde, Mary Jacobs, Judy Hadley, Beth Gerlach, Mitzi Speranzella, Joan Appleton, Becky Saad, Marlene Reid, Bernadine Scroggins, Dr. Paul Spencer, Judi Spencer, Virginia Benyon, Jenifer Latawiec, Maria Schmitz, Barbara (Basia)Zebro, Cletus Tauer, Ramona Tauer, Peg Cullen, Meghan Jones, Mary Prior, Ruth Powers, Jolene Schmitz,

Plaintiffs-Appellants,

v.

Commissioner Michael O'Keefe,
Department of Human Services,
State of Minnesota,

Defendants-Appellees.

APPELLANTS' BRIEF

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SUMMARY OF THE CASE

Appellants (Plaintiffs) are citizens and taxpayers of the State of Minnesota. Appellants are Christians. In February, Appellants filed an action in District Court seeking declaratory and injunctive relief and monetary damages against Appellees (Defendants). Appellants' action stems from the Minnesota Supreme Court decision in Doe v. Gomez, which recognized a constitutional entitlement to a state-subsidized abortion.

This is an appeal from the District Court's Order dismissing Appellants' complaint and granting Appellees' motion to dismiss under Rule 12(b)(1) and 12(b)(6). The decision was based on the District Court's holding that Plaintiffs did not have taxpayer standing to contest expenditures of the Appellees that Appellants claim violate the free exercise of religion. The basis for the holding was that taxpayers do not have standing under the Free Exercise Clause of the First Amendment to the United States Constitution. The District Court did not consider the question of whether the Appellants had standing under the Civil Rights Act, or whether Appellants had legislative standing based on Appellant legislators who authored the provision of the Minnesota statutes struck down by the Minnesota Supreme Court in Doe v. Gomez.

Oral argument is requested.

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JURISDICTIONAL STATEMENT

This appeal is filed as an appeal as of right under 28 U.S.C. § 1291 and Rule 4 of the Federal Rules of Civil Procedure. This lawsuit is a federal civil rights and declaratory judgment action seeking equitable and declaratory relief under 28 U.S.C. §§ 1331, 1343, 1367, 2201 and 2202, and 42 U.S.C. § 1983 and 1988.

STATEMENT OF ISSUES

1. Do Christians have standing under the Free Exercise Clause to challenge tax expenditures that violate their Christian principles? Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942 (1968); Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 102 S. Ct. 752, 70 L.Ed. 700 (1982); United States v. Lee, 455 U.S. 252, 102 S. Ct. 1051 (1982); Frothingham v. Mellon, 262 U.S. 447 (1923).

2. Do taxpayers objecting to appropriations for religious reasons have standing to maintain their claims for injunctive relief under the Civil Rights Act and the Fourteenth Amendment without reference to the decision of the United States Supreme Court in Frothingham v. Mellon? Adickes v. S. H. Kress, 398 U.S. 144, 90 S. Ct. 1598 (1970); Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L.Ed. 1213 (1940); Dennis v. Sparks, 449 U.S. 24, 101 S. Ct. 183 (1980); 42 U.S. C. § 1983.

3. Did the trial court err in not considering the Plaintiffs' standing to challenge expenditures for a federal entitlement program in which this Court has

previously granted standing to beneficiaries of that same statute? Dalton v. Little Rock Family Planning Services, 116 S. Ct. 1063, 34 L.Ed. 115 (1996); Little Rock Family Planning Services, P.A. v. Dalton, 860 F. Supp. 609, aff'd 60 F.3d 497 (8th Cir. 1996); Hilton v. Pine Bluff Schools, 796 F. 2d 230, 231 (8th Cir. Ct. App. 1986); Maine v. Thiboutot, 448 U.S. 1, 100 S. Ct. 2502, 65 L.Ed.2d 555 (1980).

4. Did the trial court err in failing to consider the standing of state legislators to challenge the authority of the Minnesota Supreme Court to order appropriations in violation of Minnesota's state constitution. Planned Parenthood v. Ehlmann, 137 F.3d 573 (8th Cir. 1998); Coleman v. Miller, 307 U.S. 433, 59 S. Ct. 972 (1939); Campbell v. Clinton, WL 376107 (D.D.C. 1999).

STATEMENT OF THE CASE

This is an appeal from a June 23, 1999 Order granting Defendants' motion to dismiss under Rules 12(b)(1) and 12(b)(6) dismissing Plaintiffs' Complaint. The decision was based on the District Court's holding that the Plaintiffs did not have taxpayer standing to contest expenditures of the Defendants that the Plaintiffs claim violate the free exercise of their religion. The District Court's analysis ruled that the decision in the United States Supreme Court of Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942 (1968), which granted standing to taxpayers contesting expenditures that violated the Establishment Clause, did not grant the same status to the Plaintiffs under the Free Exercise Clause. The Court's holding was based

upon the Defendants' argument that only Establishment Clause violations could be considered in a taxpayer suit.

STATEMENT OF FACTS

The District Court's Opinion in this case is a clear misapplication of the United States Supreme Court analysis and holding in Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 102 S. Ct. 752, 70 L.Ed.2d 700 (1982), which flatly rejected the theory relied upon by the Defendants in the District Court, that there exists under the Constitution a hierarchy of rights that would grant standing under the Establishment Clause but not under any other constitutional provision. The Appellants contend that the Defendants and the District Court misapplied the analysis in Flast v. Cohen, which when read in connection with the decision in Valley Forge, clearly authorized these Plaintiffs to bring this suit in federal court.

Neither the Defendants nor the District Court considered the question of whether the Plaintiffs had standing under the Civil Rights Act, authorized under the Fourteenth Amendment, and not merely the Plaintiffs' standing as taxpayers. Nor did the Defendants and District Court consider the issue of standing from the perspective of two of the Plaintiffs, Wayne Olhoft and Tad Jude, who were the former legislators who authored the provisions of the Minnesota statutes struck down by the Minnesota Supreme Court in Doe v. Gomez, 542 N.W.2d 17 (Minn.

1995), which is the state action complained about by the Plaintiffs in their civil rights claim. The issues of the Plaintiffs' status and standing to base their claims upon the Civil Rights Act and as legislators can easily be gleaned from the Complaint and was also clearly set forth in the Plaintiffs' Motion for Summary Judgment, which has been filed but not yet been considered by either the Defendants or the District Court. (App. 69).

The allegations in the Plaintiffs' Complaint clearly identify the Plaintiffs as taxpayers who pay both Minnesota state and local taxes and who object to the appropriations mandated by the Minnesota Supreme Court decision in Doe v. Gomez. The allegations in the paragraph identifying the Plaintiffs also set forth facts sufficient to identify the Plaintiffs as a separate class of Christian taxpayers who specifically oppose the appropriation in Doe v. Gomez upon their religious beliefs. The Complaint also clearly pleads violations of federal and state constitutions based upon the applicability of the Civil Rights Act and the appropriate relief requested under 42 U.S.C. § 1983. Specifically, the allegations and claims set forth in Counts III and IV must apply to a civil rights action, not a taxpayer action. The claims and allegations in Count V also apply to a claim of the violation of civil rights by all the individual Plaintiffs, but also applies to the issue of legislator standing with its references to the violation of the legislative authority by the collusion of the executive and the judiciary in Doe v. Gomez. Because

these allegations were factual allegations which appear in the Complaint that sets the foundation for the Plaintiffs' right to obtain standing under the Fourteenth Amendment, and as legislator standing for two of the Plaintiffs, the Complaint cannot be dismissed without considering these claims. Kahler Corp. v. John Hancock Mutual Life Ins. Co., W.L. 119176 (D. Minn. 1989). The failure of the Defendants to address these issues in its own motion to dismiss does not preclude the right of the Plaintiffs to have these issues considered in the first instance by the District Court. Burton v. Central Interstate Low-Level Radioactive Waste Compact Commission, 23 F.3d 208 (8th Cir. Ct. App. 1994).

The Complaint sets forth the history of abortion law in the state of Minnesota. Minnesota's abortion law does not arise separately or spontaneously but is entirely dependent upon and a result of federal action. Until 1973, abortion was a crime in Minnesota. The Minnesota Supreme Court never addressed the abortion issue, in its modern context, until required to do so by the decision of the United States Supreme Court in Roe v. Wade, 410 U.S. 113, 93 S. Ct. 705, 35 L.Ed.2d 147 (1973). In two decisions, State v. Hodgson, 295 Minn. 294, 204 N.W.2d 199 (1973), and, State v. Hultgren, 295 Minn. 299, 204 N.W.2d 197 (1973), criminal prosecutions under Minnesota's abortion law were overturned entirely upon the authority of Roe v. Wade. The Minnesota Supreme Court did not base its decisions upon the Minnesota Constitution nor was the state constitutional

issue addressed at that time. The Complaint further states that the statute ruled unconstitutional by the Minnesota Supreme Court in Doe v. Gomez, Minn. Stat. § 256B.0625(16) (1978), was enacted entirely upon the authority of the Hyde Amendment. (App. 11). It is the contention of the Plaintiffs that the Minnesota Supreme Court is bound by the federal abortion law cases, just as the Minnesota Legislature was bound by those same cases and the Hyde Amendment. It is the contention of the Plaintiffs that the Minnesota Supreme Court deviated from federal abortion law by basing its Doe v. Gomez decision on Roe v. Wade rather than the currently applicable standards articulated in Casey v. Planned Parenthood of Southeastern Pennsylvania, 505 U.S. 888, 112 S. Ct. 2791, 120 L.Ed.2d 674 (1992). The Complaint has commenced this action as a collateral attack upon Doe v. Gomez as the Plaintiffs were not parties to the original Doe v. Gomez case, but are significantly affected by that decision.

The Doe v. Gomez decision itself was a controversial, political decision that ignited storms of protest from religious and political leaders because of the procedural irregularities prevalent throughout the litigation as well as the misapplication of federal constitutional law by the Minnesota Supreme Court. The Plaintiffs, along with the religious and political leaders who have vehemently protested the way in which the Doe v. Gomez decision was rendered, have criticized the Doe v. Gomez decision as a collusive decision which was not only

argued ineffectively, but falls short of the case or controversy requirement under the state and federal constitutions. Independent investigation subsequent to the Doe v. Gomez decision appears to indicate that no actual plaintiffs existed in the case which, in and of itself, would render the decision void and subject to collateral attack. R. Roe et al. v. State of New York, 49 FRD 279 (1970).

SUMMARY OF ARGUMENT

The Plaintiffs have based their claims on the federal civil rights laws in order to obtain injunctive and declaratory relief under the provisions of the Civil Rights Act, 42 U.S.C. §§ 1983 and 1988, and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. The Plaintiffs' claims arise under the Federal Constitution, and therefore, are appropriate for consideration of the Civil Rights Acts claims, as the action of the participants in the Doe v. Gomez litigation, which caused the Plaintiffs' damages, violate the right to the free exercise of religion and the right to due process as guaranteed by the First and Fourteenth Amendments to the United States Constitution. Federal jurisdiction is also appropriate because of the Plaintiffs' entitlement to obtain the benefits guaranteed by the Hyde Amendment which have now been infringed by the inappropriate intervention of the Minnesota Supreme Court. As is clearly indicated in the Complaint, the injuries suffered by these Plaintiffs are personal in that a serious conflict has arisen

between the Plaintiffs' duty to pay state and local taxes and their religious objection to paying taxes to support abortion.

ARGUMENT

I. STANDARD OF REVIEW.

The United States District Court, District of Minnesota, Third Division decided that Plaintiffs lacked standing under the Free Exercise Clause. This Court reviews *de novo* whether a complaint should be dismissed for lack of standing, construing the allegations of the complaint, and the reasonable inferences drawn therefrom, most favorably to the plaintiff. Burton v. Central Interstate Low-Level Radioactive Waste Compact Commission, 23 F.3d 208 (8th Cir. Ct. App. 1994).

II. THERE IS NO BASIS TO DISTINGUISH BETWEEN STANDING IN ESTABLISHMENT CLAUSE CASES AND FREE EXERCISE CLAUSE CASES.

The Plaintiffs allege in their Complaint that they are Christians. (App. 12, 13). The Plaintiffs claim membership in denominations which oppose abortion (Id.) and taxpayer funded abortions. (Id.). The Plaintiffs allege in their Complaint that they pay state and local Minnesota taxes. (App. 12). The Plaintiffs have alleged that because of the Doe v. Gomez decision, Minnesota revenues are now used to pay for abortions. (App. 13). The Plaintiffs have alleged that the use of taxpayer funds to pay for abortions was the result of an Order which was rendered illegally. (App. 13-18). The Plaintiffs have also alleged that the Order resulting

from the Doe v. Gomez decision is contrary to Minnesota statute (App. 11) and that the Opinion misstates federal law. (Id.). Because the Defendants filed the motion to dismiss prior to answering the Complaint, none of the allegations in the Complaint have been denied, and therefore, are presumed true. Norton v. Beckman, 53 Minn. 456, 55 N.W. 603 (1893).

The factual allegations of the Complaint, as interpreted, claim that the Plaintiffs' free exercise of religion is violated in that the payment of taxes coerces Christians into subsidizing abortion which is both immoral and sinful. Because the Plaintiffs' tax revenues are used to assist in the commission of abortions, the Plaintiffs are personally involved in the practice and are, therefore, personally affected. The Plaintiffs have no other forum in which to contest the involuntary transfer of their money as is now occurring. The use of the political process has been foreclosed by the Doe v. Gomez case. There are no more appropriate Plaintiffs to bring this taxpayer action as these Plaintiffs are all individual taxpayers, rather than representative institutions, and these individuals all possess personal convictions against abortion that allow them to represent an identifiable class affected by the inappropriate taxing and spending use mandated by Doe v. Gomez.

A. No Hierarchy of Values.

The Defendants and the District Court both erroneously relied upon a theory that there exists a hierarchy of constitutional values in federal taxpayer suits that would allow taxpayers standing under the Establishment Clause of the First Amendment but not under the Free Exercise Clause of the same amendment. The hierarchy of values theory was expressly rejected by the United States Supreme Court in Valley Forge. The Supreme Court in Valley Forge disapproved of the hierarchy of values argument even though Valley Forge expressly based its analysis and holding on Flast v. Cohen. The Defendants and District Court attempted to rely on Flast v. Cohen for the proposition that the Flast case authorizes Establishment Clause standing but not Free Exercise Clause standing. The Appellants have argued that Flast v. Cohen does not distinguish between the two dependent clauses of the same sentence in the Bill of Rights but, in fact, treats the two clauses interdependently. 392 U.S. at 102, 88 S. Ct. at 1954. This interdependent treatment of the two religion clauses is deeply rooted in constitutional and political history. In the case of Everson v. Board of Education, 330 U.S. 1, 67 S. Ct. 504, 91 L.Ed. 711 (1947), which is the landmark case that first permitted a taxpayer suit under the Establishment Clause, the Supreme Court treated the two religion clauses equally and interdependently and expressly based

its analysis upon the writings of Thomas Jefferson and James Madison. The Everson court relied upon Jefferson's famous letter to the Danbury Baptists and expressly relied upon his definition of religion and analysis in the Virginia statute of religious freedom in attempting to discern the purpose of the First Amendment religion clauses and the interpretation of its terms. Jefferson expressly rejected the notion that the civil authority could compel a person to pay taxes in opposition to their personal religious conviction and to attempt to coerce individuals to do so was sinful and tyrannical. Jefferson, A Bill for Establishing Religious Freedom, reprinted in 5 The Founders Constitution 84 (P. Kurland and R. Lerner eds. 1987). Jefferson's position was based upon his express declaration that the duties of the individual to his Creator were superior and paramount to the duties owed to the civil authority. The duties of the Plaintiffs in this case to their Creator and to the civil authorities have been put into conflict by the Minnesota Supreme Court. Madison also did not discriminate between the two religion terms. Madison, who was even more absolutist than Jefferson in his interpretation of the meaning of the First Amendment, would also have found no conflict primarily because Madison's view of the role of civil government would not have conceived of the possibility that the civil authorities would attempt to impose taxes upon Christians to subsidize a practice that they not only considered immoral, but also barbaric and sinful. In addition, logic and simple hermeneutics render the attempt to favor one

religious clause and grant special privileges under one religion clause over the other dubious, if not simply illogical and untenable. The distinctions between the two religion clauses result from the application of the clauses, which can result when an individual's personal religious belief differs from a stated neutral government objective, but would have no relevance to the issue of standing. See Employment Division, Dept. of Human Res. v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L.Ed.2d 876 (1990). Even if the Plaintiffs' claims in this case are rejected on the basis that a legitimate government interest is found that outweighs the conflict faced by the individual Plaintiffs, the resolution of those issues are entirely inappropriate for a motion to dismiss but must be reserved for a later stage in the litigation.

B. The Flast v. Cohen Test.

The United States Supreme Court provided an exception to the rule against taxpayer lawsuits in federal court in the case of Flast v. Cohen. The Flast v. Cohen test merely requires that the plaintiffs be taxpayers and that they be members of the affected class. The right to bring a taxpayer suit when a tax or appropriation conflicts with a person's individual religious beliefs was reinforced in Valley Forge which distinguished the cases of Frothingham v. Mellon, 262 U.S. 447 (1923), and Doremus v. Board of Education, 342 U.S. 429, 72 S. Ct. 394 (1952), which were the cases relied upon by the Defendants and the District Court in

attempting to dismiss the Plaintiffs' suit. Flast and Valley Forge are distinguishable from Frothingham on the basis that some other constitutional right must be affected other than a disagreement over the misuse of the taxing and spending power by Congress. Flast and Valley Forge are distinguishable from Doremus on the basis that the taxpayers must be, at least, alleging that they are objecting to a tax or an appropriation and not simply a regulation or practice with which they disagree.

The requirement in Flast v. Cohen that the taxpayer be a member of an affected class is merely an attempt to limit the standing to someone other than any taxpayer with a generalized grievance that could apply to anyone. The United States Supreme Court has had no difficulty in discerning and identifying an affected class in free exercise cases. Standing has been granted under the Free Exercise Clause for members of a specific religious denomination objecting to the imposition of a tax for the right to distribute literature. Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 63 S. Ct. 870, 87 L.Ed. 1292 (1943). Standing has been granted for members of a specified religious denomination objecting to payroll deductions for social security taxes. United States v. Lee, 455 U.S. 252, 102 S. Ct. 1051 (1982). Standing under the Free Exercise Clause has been granted to members of a different religious denomination objecting to the requirements imposed by regulations as a condition precedent to

obtaining unemployment compensation benefits that conflicted with the plaintiffs' recognition of Saturday as the Sabbath. Sherbert v. Verner, 374 U.S. 298, 83 S. Ct. 1790, 10 L.Ed. 2d 965 (1963). Standing has been granted to members of a religious denomination objecting to otherwise valid safety regulations that conflict with the plaintiff's religion. Wisconsin v. Yoder, 406 U.S. 205, 92 S. Ct. 1526, 32 L.Ed.2d 15 (1972). Because taxation is coercive by definition, standing has been granted under the First Amendment to plaintiffs objecting to mandatory student fees, Rosenberger v. Rector of the University of Virginia, 515 U.S. 819, 115 S. Ct. 2510, 132 L.Ed.2d 700 (1995), and bar association dues, Keller v. State Bar of California, 496 U.S. 1, 110 S. Ct. 2228 (1990). The identification of plaintiffs as members of an affected class is routine and simple. The Plaintiffs should easily be categorized as members of the affected class in this case, if not as members of the Roman Catholic faith which expressly prohibits abortion and the participation of its members in the practice of abortion, then as Protestants who accept the teachings of the prohibition of abortion which have been present in their faith and the common law of this country and of England for over one thousand years.

The only other requirement to obtain taxpayer standing is that a specific tax or appropriation be in issue. This requirement was expressly discussed in Valley Forge in which generalized grievances about regulations and practices could not support standing. See, e.g., United States v. Richardson, 418 U.S. 166, 94 S. Ct.

2940, 41 L.Ed.2d 678 (1974); See also Schlesinger v. Reservists Committee to Stop the War, 418 U.S. 208, 94 S. Ct. 2925, 41 L.Ed.2d 706 (1974). The courts are not a vehicle for the vindication of the value interests of concerned bystanders. United States v. SCRAP, 412 U.S. 669, 687, 93 S. Ct. 2405, 2416, 37 L.Ed.2d 254 (1973). Rather, plaintiffs must have personally suffered an injury, Gladstone Realtors v. Village of Bellwood, 441 U.S. 91, 99, 99 S. Ct. 1601, 1608, 60 L.Ed.2d 66 (1979), an injury which is likely to be redressed by a favorable decision, Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26, 38, 41, 96 S. Ct. 1917, 1924, 1925, 48 L.Ed.2d 450 (1976), by a court assuming a role consistent with a system of separation of powers and traditionally thought to be capable of resolution through the judicial process. Flast v. Cohen at 97, 88 S. Ct. at 1951 (1952).

To obtain standing, the Plaintiffs need to first allege that a specific tax or appropriation is at issue. The Plaintiffs have done that in this case. (App. 12). Second, the plaintiffs must identify themselves as members of an affected class. The Plaintiffs have also done that in this case. (App. 12, 13). Third, they should personally pay taxes, as members of the taxing district from which the appropriation is made, rather than simply attempting to raise social issues in a judicial forum not pertinent to their own personal taxpayer status. cf. Valley Forge and Minnesota Federation of Teachers v. Randall, 891 F.2d 1354 (8th Cir. 1989).

C. The Plaintiffs are the Right Persons in the Right Forum to Bring This Litigation.

The United States Supreme Court and the Eighth Circuit Court of Appeals have both recently made clear that institutional plaintiffs or non-resident plaintiffs are disfavored in taxpayer related constitutional litigation. See Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 102 S. Ct. 752, 70 L.Ed.2d 700 (1982); Minnesota Federation of Teachers v. Randall, 891 F.2d 1354 (8th Cir. 1989). Valley Forge appears to establish a new limitation on standing which does not apply to the Plaintiffs in this case. All of the named Plaintiffs in this case are resident Plaintiffs who pay state and county taxes which are, assumedly, then applied directly into the general fund which would then be subsequently disbursed to the clinics performing the abortions for which government reimbursement was sought in Doe v. Gomez. One of the purposes of the standing limitation in Valley Forge is the practical benefit to be derived from making sure that lawsuits are brought by the persons most directly affected. The Opinion in Valley Forge clearly disapproved of litigation commenced by special interest groups seeking to shape policy through litigation in remote areas. The assumption follows that the court would prefer that the litigants be local individual residents more personally affected by the policy at issue. This additional limitation

is an attempt to locate the most appropriate Plaintiffs and limit standing to those persons.

The standing rules are also related to the court's deference to the legislative process. See Employment Division, Dept. of Human Res. v. Smith, 494 U.S. 872, 110 S. Ct. 1595, 108 L.Ed.2d 876 (1990). Standing may be denied where administrative remedies have yet to be pursued. Anderson v. Sullivan, 959 F.2d 690 (8th Cir. Ct. App. 1992). Standing may be denied when separation of powers issues may deter the court's willingness to intervene. See Planned Parenthood v. Ehlmann, 137 F.3d 573 (8th Cir. 1998). These standing considerations are discretionary and mandate an inquiry into whether any other person or forum is available to resolve the dispute in controversy. In that regard, the Plaintiffs in this case have no other forum and there are no more appropriate Plaintiffs. See, e.g., Friedman v. Sheldon Community School District, 995 F.2d 802, 804 (8th Cir. 1993) ("the doctrine of taxpayer standing is of greatest importance when there is no other party to sue."). No administrative or legislative forum is available any longer to resolve this issue. The Minnesota Supreme Court has ruled, and no state or federal law to the contrary can be passed to affect its decision in Doe v. Gomez. As a result, the Minnesota Legislature has been stripped of all of its constitutional authority in the appropriation and legislative process and the citizens have no alternative but to sue in federal court.

In support of the Plaintiffs' contention that they are the most appropriate persons, and, that this Court is the most appropriate court to litigate this controversy, the Plaintiffs also rely upon the longstanding authority to collaterally attack a judgment which affects them personally but results from litigation to which they were not a party. The right of the Plaintiffs to bring this suit has a long history under the law of civil procedure and also under constitutional law. Thompson v. Whitman, 85 U.S. (18 Wall.) 457, 460, 21 L.Ed. 897 (1874).

There is no hierarchy under constitutional law that would prefer Establishment Clause cases to Free Exercise cases. These Plaintiffs are taxpayers and they are in the affected class as Christians whose personal religious beliefs, based in the doctrines and practices of their respective denominations, place the Order of the Supreme Court in Doe v. Gomez in direct conflict with their religion. The Plaintiffs have no other alternative than to bring this lawsuit in this Court. The request and remedy are simple. The Plaintiffs request for an injunction to prevent the Minnesota Supreme Court's misapplication and/or disregard of federal law is a necessary and appropriate function of the federal court.

III. THE DISTRICT COURT FAILED TO CONSIDER, AS THE DEFENDANTS NEVER INCLUDED IN THEIR MOTION TO DISMISS, THE PLAINTIFFS' ARGUMENT THAT THE CIVIL RIGHTS ACT GRANTS SEPARATE STANDING STATUS ALLEGING A CONFLICT WITH FEDERAL LAW AND A VIOLATION OF THE PLAINTIFFS' FIRST AND FOURTEENTH AMENDMENT RIGHTS.

The contents of the Defendants' Motion to Dismiss are entirely based upon two arguments. First, the Defendants contended that the Establishment Clause could grant standing to Plaintiffs if they alleged an Establishment Clause violation but would not support standing when they alleged a violation of the Free Exercise Clause of the Constitution. The Defendants also argued that the Defendants were immune from suit in federal court under the Eleventh Amendment. The Plaintiffs opposed both arguments. The District Court based its decision entirely upon its agreement with the Defendants that there was a hierarchy of constitutional values that would not authorize the Plaintiffs to commence the suit under the Free Exercise Clause. The District Court did not address the Defendants' Eleventh Amendment claims.

As a consequence, the Court never addressed the possibility that the Plaintiffs would have standing under the Civil Rights Act by merely complying with the standing requirements in civil rights cases which markedly differ from the standing requirements in taxpayer suits. The District Court also never addressed

the separate issue of whether the Plaintiff-legislators had separate standing under Coleman v. Miller, 307 U.S. 433 (1939).

The Plaintiffs never argued in support of these separate standing issues in its Memorandum in Opposition to the Motion to Dismiss because they were not raised by the Defendants. Although the existence of separate standing arguments do not expressly appear in the Plaintiffs' Complaint, the facts that support the standing requirements do clearly appear in the Complaint. Accordingly, the Court should, under these facts in the Complaint, infer standing on behalf of the Plaintiffs and reverse the District Court's Order dismissing the Complaint and require that these issues be addressed by either the Defendants or the lower court. Hilton v. Pine Bluff Schools, 796 F.2d 230, 231 (8th Cir. Ct. App. 1986). In addition, although the Court can, and should, assist a non-moving party by interpreting the Complaint in a light most favorable to the non-moving party, the Court cannot assist the moving party with deficiencies in its motion. As a result, the Defendants should be directed to answer the Complaint and the lower court should then consider the Plaintiffs' Motion for Summary Judgment.

A. The Plaintiffs Are Entitled to Rely Upon the Hyde Amendment as an Immunity From Paying Taxes for Abortions Unless the State Legislature Specifically Enacts a State Exception in Compliance With the Express Terms of the Hyde Amendment.

The Hyde Amendment is the commonly known term for the appropriations section enacted pursuant to 42 U.S.C. §§ 1396-1396(a), which forbids the use of

federal funds in connection with the federal Medicaid provisions enacted in 1966 which operated as a cooperative venture between the federal government and the state government to provide medical assistance to the needy. The express provisions of the Hyde Amendment are as follows:

> Sec. 508.(a) None of the funds appropriated under this Act, and none of the funds in any trust fund to which funds are appropriated under this Act, shall be expended for any abortion.
> Omnibus Consol. & Emerg. Supp. Approp. Act, 1999, Tit. V, §§ 508-09, Pub. L. No. 105-277, 1998 U.S.C.A.N. (Pamph. 11) 440-43.

and

> Sec. 509.(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

This appropriations provision is one of the most vigorously debated political issues faced by Congress, but has been renewed annually since first debated in 1978.

The United States Supreme Court and the Eighth Circuit Court of Appeals have previously interpreted and ruled upon the ability of a state to deviate from the express terms of the Hyde Amendment. Dalton v. Little Rock Family Planning Services, 116 S. Ct. 1063, 34 L.Ed.2d 115 (1996); Little Rock Family Planning Services, P.A. v. Dalton, 860 F. Supp. 609, aff'd 60 F.3d 497 (8th Cir. 1996). In the Dalton v. Little Rock Family Planning Services and Little Rock Family

Planning Services, P.A. v. Dalton cases, the United States Supreme Court and the Eighth Circuit Court of Appeals approved the standing of plaintiffs to bring a civil rights suit charging a state with a violation of the Civil Rights Act for violating the letter of the Hyde Amendment. In those cases, the courts expressly stated that the Hyde Amendment must be strictly construed and that no deviation from the letter of the Hyde Amendment was acceptable.

Dalton incorporates the principle that citizens are entitled to assert federal rights to stop state activities that infringe upon those federal rights that have been enacted into federal statute. In that regard, Dalton is consistent with the prior United States Supreme Court precedent in Maine v. Thiboutot, 448 U.S. 1, 100 S. Ct. 2502, 65 L.Ed.2d 555 (1980), which first considered the issue of an individual's standing to assert the existence of a federal statute as a privilege and immunity sufficient to guarantee Fourteenth Amendment protection. Numerous cases now exist that support the Plaintiffs' right in this case to assert the protection offered by the Hyde Amendment as an immunity from having to use taxpayer funds for abortion as a privilege and immunity.

Two exceptions to Maine v. Thiboutot were set forth in the Middlesex County Sewage Auth. v. National Sea Clammers Asso., 453 U.S. 1, 101 S. Ct. 2615, 69 L.Ed.2d 435 (1981), case which prevent the use of Maine v. Thiboutot as a *per se* rule that a violation of federal law entitles a citizen to use the Civil Rights

Act as a means to enforce the law or prevent its misapplication. First, the federal statute itself cannot have expressly precluded private enforcement. Second, the statute must be of a type that contains mandatory provisions as opposed to a statute that merely encourages an activity. The statute cannot merely be of the kind that attempts to "nudge in a preferred direction." Wright v. Roanoke Redevelopment and Housing, 479 U.S. 418, 167 S. Ct. 766, 93 L.Ed.2d 781 (1983).

Assumedly, the Dalton case resolved the issue of the applicability of the exceptions to the standing rule in Maine v. Thiboutot. In Dalton, institutional beneficiaries of Medicaid benefits were granted standing to contest the attempts of the states of Arkansas and Nebraska, which used the constitutional amendment process to restrict funding for abortions in excess of that permitted by the Hyde Amendment. In contrast, the Plaintiffs in this case should properly be categorized as the intended beneficiaries of the Hyde Amendment restrictions. The purpose of the Hyde Amendment is to prohibit taxpayer funds for abortion because of the political and religious opposition to abortion by a large segment of the American population. The Hyde Amendment is intended to protect taxpayers rather than to confer benefits upon the recipients of Medicaid funds. Otherwise, and it is clear from the legislative history, the enactment of the Hyde Amendment would be superfluous. Accordingly, because these Plaintiffs are intended beneficiaries of the enactment of the Hyde Amendment and the provisions of the Hyde Amendment

are mandatory, the applicability of Dalton, which granted Fourteenth Amendment standing to litigate the applicability of the Hyde Amendment to the states, should certainly be granted to these Plaintiffs.

Further, the Plaintiffs' allegations concerning the application of the Hyde Amendment are not resolvable in a motion to dismiss. Although the District Court did not rule on the merits of the Defendants' allegations that the Plaintiffs' issues concerning the Hyde Amendment should be dismissed, numerous fact issues preclude the resolution of these issues in the motion to dismiss. The Defendants necessarily raise fact issues in support of their dismissal because the Defendants must identify a process under Minnesota law in compliance with the restrictions of the Hyde Amendment. The Plaintiffs contend that the Defendants' ability to prove any set of facts to establish that their own independent programs are entirely separate from the Medicaid program is unlikely. See, e.g., Rust v. Sullivan, 500 U.S. 173, 111 S. Ct. 1759, 114 L.Ed.2d 233 (1991).

B. Civil Rights Act Standing Is Separate From Taxpayer Standing And Includes The Plaintiffs' Free Exercise And Due Process Claims.

The Plaintiffs have alleged that the decision in Doe v. Gomez resulting from the flawed process employed by the parties and the Minnesota Supreme Court, deprived the Plaintiffs of the immunity guaranteed by the United States Constitution from having to be forced to pay taxes to support a practice which the

Plaintiffs consider barbaric and sinful. To prove a civil rights violation, the Plaintiffs must only show that (1) the Defendants have deprived the Plaintiffs of rights secured by the Constitution and laws in the United States; (2) that the deprivation of those rights result from the application of a statute, ordinance, regulation, custom, or usage of a state or territory; and (3) that the Defendants were acting under the color of state law when the Plaintiffs' rights were violated. Adickes v. S. H. Kress, 398 U.S. 144, 90 S. Ct. 1598 (1970). The Plaintiffs have filed a Motion for Summary Judgment, which has not been considered by the lower court or responded to by the Defendants, asserting that the facts relied upon in the Plaintiffs' Complaint are uncontestable and that the Plaintiffs will be entitled to summary judgment as a matter of law. The Plaintiffs have alleged that not only was the decision rendered in violation of the Hyde Amendment and the applicable United States Supreme Court authority, but that illegal proceeding involved numerous instances of fraud and negligence which established the Doe v. Gomez case as a sham proceeding participated in for the sole purpose of circumventing the Minnesota Legislature, the United States Congress, the United States Supreme Court and the express and stated will of the citizens of Minnesota. (App. 15, 16). Although the participants would not be liable in damages for their malfeasance, nor have the Plaintiffs sought damages from the actors in Doe v. Gomez, the decision was made under color of state law by state actors, subjecting the current

Defendants to liability under the Civil Rights Act. Dennis v. Sparks, 449 U.S. 24, 101 S. Ct. 183 (1980). In that the purported decision in Doe v. Gomez was rendered pursuant to the Minnesota Constitution, the second requirement of standing under the Civil Rights Act has also been met. The sole remaining issue is whether the rights of which the Plaintiffs claim to have been deprived are secured by the Constitution or laws of the United States.

The standing of the Plaintiffs to bring a civil rights action cannot be an issue in this case. The mere allegations that the state action allegedly based upon the Minnesota Constitution have deprived Plaintiffs of their civil rights is sufficient. There can be no question, at this time, that the rights guaranteed by the Free Exercise Clause are guaranteed by the United States Constitution and subjects the Defendants to the Civil Rights Act. Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900, 84 L.Ed. 1213 (1940). Nor can there be any argument that the allegations that the Plaintiffs have been subjected to the rule in Doe v. Gomez violates their due process rights because of the United States Supreme Court's express finding that the due process guarantees of the Fourteenth Amendment provide standing to Plaintiffs affected by the deprivation of due process. Shapiro v. Thompson, 394 U.S. 618, 89 S. Ct. 1322 (1969).

The Plaintiffs contend that the obligation to subsidize abortion substantially burdens their religion, and that the forced subsidy was accomplished in violation of

their right to procedural due process. Their Fourteenth Amendment right to First Amendment protection was recognized in Cantwell v. Connecticut. The Plaintiffs allege that their religious beliefs are compromised by an illegitimate government action that coerces their participation in the practice of abortion. The practice of abortion is based upon a philosophy repugnant to orthodox Christians. The free exercise of religion has been found to be substantially burdened by forcing religious adherents "to refrain from religiously motivated conduct," Brown-El v. Harris, 26 F.3d 68, 70 (8th Cir. 1994), which is no different that forcing religious adherents to engage in repugnant conduct. See Rodney A. Smolla, Federal Civil Rights Act, 3rd ed. § 5.04 [2][a] (1999).

The Plaintiffs' entitlement to procedural due process is not just an answer to the Defendants' necessary assertion of a government interest in subsidizing abortion, but a requirement to the legitimacy of the appropriation. Procedural due process is an entitlement derived from the right to one's life, liberty and property. Board of Regents v. Roth, 488 U.S. 564 (1972). The Minnesota Constitution establishes a procedure required to authorize any extraction of tax revenues from its citizens or benefits payable to the objects of state beneficence. The Plaintiffs have alleged that the process was not followed and they have suffered injury as a consequence. The Plaintiffs do not ask that the court engage in an exercise to decide how much procedural due process is due. See Matthews v. Eldridge, 424

U.S. 319, 96 S. Ct. 893 (1976). The amount of process due has been established. The Plaintiffs argue that the procedural due process requirements have been breached. In Daniels v. Williams, 474 U.S. 327, 332, 106 S. Ct. 662, 665 (1986), the United States Supreme Court distinguished due process cases from traditional tort law claims by limiting procedural due process cases to actions committed by state officials that "deal with the large concerns of the governors and the governed." Under that definition, this case presents the most important due process issue that constitutional law can consider.

IV. THE DISTRICT COURT ALSO FAILED TO CONSIDER THAT TWO OF THE PLAINTIFFS HAVE STANDING AS LEGISLATORS WHOSE ACTIONS AS AUTHORS OF THE LEGISLATION RULED UNCONSTITUTIONAL WERE NULLIFIED WHEN ACCOMPLISHED WITHOUT DUE PROCESS OF LAW IN VIOLATION OF THE SEPARATION OF POWERS DOCTRINE THAT EXISTS UNDER THE UNITED STATES AND MINNESOTA CONSTITUTIONS.

The Eighth Circuit Court of Appeals has previously addressed, on similar facts, the issue of legislator standing in the case of Planned Parenthood v. Ehlmann, 137 F.3d 573 (8th Cir. 1998). In that case, members of the Missouri Legislature attempted to intervene in a lawsuit in which the Missouri Attorney General and the Governor of the state of Missouri were attempting to clarify the meaning of a statute enacted by the Missouri Legislature. The legislators contended, as the Plaintiffs have in this case, that the Attorney General and potential beneficiaries of additional abortion funds colluded to have a law

interpreted in a way contrary to the intention of the Legislature. The Eighth Circuit Court of Appeals denied intervention by the legislators on the basis that disagreement over litigation tactics was insufficient to grant the legislators standing under the principles previously announced by the United States Supreme Court in Coleman v. Miller.

Planned Parenthood v. Ehlmann is distinguishable from the present case by the facts and by the basic constitutional principles at issue. In the instant case, the Plaintiff-legislators, Wayne Olhoft and Tad Jude, do not simply complain about the litigation tactics employed by the Defendants' counsel in the Doe v. Gomez litigation, but the allegations in Count IV of the Complaint clearly indicate that the factual deficiencies underlying the Doe v. Gomez litigation rendered the litigation void as being without an adequate controversy sufficient for the court to even entertain a decision before the Supreme Court. In addition, Planned Parenthood v. Ehlmann protected the principle of separation of powers by restricting access by the legislative branch into the affairs of the executive branch. In contrast, the executive and judiciary have usurped the legislative function in the Doe v. Gomez litigation. The Minnesota Supreme Court substituted its own Findings of Fact, based upon authority assailed by its opponents, in a legislative manner previously criticized by the United States Supreme Court where the substitution of the Minnesota Supreme Court's fact finding efforts were substituted for legislative

findings were overruled. Minnesota v. Cloverleaf Creamery Co., 449 U.S. 456, 101 S. Ct. 715, 66 L.Ed. 659 (1981). The Planned Parenthood v. Ehlmann case also did not address the issue of the contestability of the decision by collateral attack. U.S. v. City of Chicago, 870 F.2d 1256 (7th Cir. 1989) (suit attacking judgment by non-party is not collateral); Sonya C. By and Through Olivas v. Arizona School of the Blind, 743 F. Supp. 700 (D. Ariz. 1990) (judgments obtained without jurisdiction or by fraud may be collaterally attacked). Not only was the proceeding in the instant case irregular, but in the final judgment, the Minnesota Supreme Court substituted its own fact finding, as it did in Cloverleaf, for that of the Minnesota Legislature. The disagreements about United States Supreme Court constitutional law by the Minnesota Supreme Court did not end with Cloverleaf. The Minnesota Supreme Court flatly rejected the majority opinion in Harris v. McRae, 448 U.S. 297, 100 S. Ct. 2671, 62 L.Ed.2d 784 (1980) and substitute the dissenting opinion, but the Minnesota Supreme Court erroneously relied upon Roe v. Wade despite the undue burden standard by the United States Supreme Court in Casey v. Planned Parenthood.

In Coleman v. Miller, the court relied upon the fact that the Kansas Legislature was fulfilling its own constitutional function which was governed by the constitutional amendment ratification process which was specifically governed by federal constitutional law. The Coleman case was strongly reaffirmed in

Campbell v. Clinton, WL 376107 (D.D.C. 1999). Campbell reaffirmed the finding in Coleman that the Legislature had no political option by the unlawful executive action but was forced to sue because of the refusal to follow the legislative imperative. Similarly, the Minnesota Legislature, in enacting the provisions of Minnesota Statute § 256B.0625(16) (1978) which was struck down by the Minnesota Supreme Court, was performing the narrow function delegated to it by the United States Congress under the Hyde Amendment. The United States Congress did not delegate the authority to carve an exception to its prohibition against funding for abortions to the Minnesota Supreme Court. Rather, that jurisdiction was left entirely to the Minnesota Legislature and to no one else. The Minnesota Supreme Court had no authority to counter the process established by the United States Congress. The Minnesota Legislators are entirely within their rights, and should be participating in this litigation, to recover for itself the exclusive jurisdiction granted to it by the United States Congress and taken from it by the judiciary and executive branches in the state of Minnesota.

The separation of powers doctrine is entirely different in this case from Ehlmann. The separation of powers doctrine in Ehlmann served to protect the discretionary acts of the executive branch. In this case, the separation of powers doctrine should be invoked to prevent the intrusion into the legislative function by the executive and judicial branches. As authors of the statute which was

overturned by the Minnesota Supreme Court, the Plaintiffs Olhoft and Jude are the most appropriate legislators and Plaintiffs to argue this point and standing should be granted to them to do so.

The District Court, in the case of the assertion of Civil Rights Act standing by the Plaintiffs, did not consider the arguments of Olhoft and Jude because they were not addressed by the Defendants. While it is appropriate for the Appellants to raise the issue at this time on appeal because these issues arise from allegations in the Complaint, it is not appropriate for the Defendants to have this cause of action dismissed without first raising the issue in their own motion to dismiss. The case should be remanded on this point so that the Defendants can consider the issue in a motion for summary judgment.

CONCLUSION

The District Court, and the Defendants, only addressed the taxpayer standing free exercise issue, on which they are clearly erroneous. By misapplying the principles set forth in Flast v. Cohen and ignoring the analysis in Valley Forge, the Defendants and District Court have created a hierarchy of constitutional rights, which they cannot do. The Plaintiffs' Fourteenth Amendment claims and the legislators' claims also cannot be dismissed as they have not been incorporated into the Defendants' motion for dismissal. The Order of the District Court must be reversed and remanded with instructions for the Defendants to answer the

Complaint and for the lower court to consider the Plaintiffs' motion for summary judgment.

HOLSTAD AND KNAAK, P.L.C.

Dated _____

_____

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CERTIFICATE OF COMPLIANCE

This brief has been done using Microsoft Word 97 SR-1. This brief contains a total of 9,229 words.

Dated _____

_____
Carolyn J. Rametta
Legal Secretary
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(651) 490-9078

Subscribed and sworn to before me this
_____ day of __September__, 1999.

_____
Notary Public

CERTIFICATE OF VIRUS SCAN

This diskette has been scanned using the McAfee VirusScan program and to the best of my knowledge is totally virus free.

Dated _____

_____
Carolyn J. Rametta
Legal Secretary
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St. Paul, Minnesota 55110
(651) 490-9078

Subscribed and sworn to before me this
_____ day of __September__, 1999.

_____
Notary Public

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

COURT FILE NO. CV 99-332

James Tarsney, Joe Loeffler, Wayne Olhoft, Tad Jude, Dr. Steve Calvin, Dr. Karen Karn, Dr. Konald Prem, Dr. Stanley Johnson Brian Gibson, Jack Weiland, Russ Rooney, Mary Rooney, David Racer, Eugene Keating, Joseph Kueppers, John C. Cerrito, David States, Mary Kay States, Keith Jensen, Elizabeth Jensen, Roberta Becker, Linda Pettman, Karen Messicci, Angela Heithaus, Renae LaVoi, Cheri Emde, Mary Jacobs, Judy Hadley, Beth Gerlach, Mitzi Speranzella, Joan Appleton, Becky Saad, Marlene Reid, Bernadine Scroggins, Dr. Paul Spencer, Judi Spencer, Virginia Benyon, Jenifer Latawiec, Maria Schmitz, Barbara (Basia) Zebro, Cletus Tauer, Ramona Tauer, Peg Cullen, Meghan Jones, Mary Prior, Ruth Powers, Jolene Schmitz,

Plaintiffs,

vs.

Commissioner Michael O'Keefe, Department of Human Services, State of Minnesota,

Defendants.

AFFIDAVIT OF JAMES TARSNEY

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

James Tarsney, being first duly sworn on oath deposes and states as follows:

1. I am a plaintiff in the matter of Tarsney, et al. v. O'Keefe, et al., Court File No. 99 CV 332.

2. I am the President of Minnesota Lawyers for Life and the author of Doe v. Gomez and the Jurisprudence of Deceit.

3. I have reviewed the trial court file and related material in the case of Doe v. Gomez and it is apparent that the case was a sham created by the Center for Reproductive Law and Policy (hereinafter CRLP) in New York, carried on with the cooperation of the Attorney General's office and the courts to impose on the state the social policy that they share. There is no evidence that the lead plaintiff, "Jane Doe" is a real person and not an invention of the CRLP. The remaining plaintiffs failed to state a cause of action in the Complaint. The trial court's Findings of Fact on the alleged class members were based entirely on inadmissible affidavits signed in fictitious name. There is no evidence in the record that these class members are real and not fictitious people. The case was certified as a class action but no one was named a representative party as required by court rules. The person listed in the caption as representative party does not belong to the class she is supposed to represent. The Attorney General privately contacted one of the plaintiffs and informed her that he would take the position that the Minnesota Constitution contained a right to abortion and he would not contest their allegation when he has admitted there is no precedent to support that position. The trial court judge wrote that he based his decision on the equal protection clause of the Minnesota Constitution when the Minnesota Constitution does not have an equal protection clause. At least three of the Supreme Court Justices had made their positions known before the case was filed. The Chief Justice, who was the author of the Doe decision, met privately with Planned Parenthood to make his views clear before his appointment to the Court.

4. In 1978, the Minnesota legislature voted to restrict state medical assistance payments for abortion to situations in which the pregnancy was caused by rape or incest reported to the proper authorities and situations in which the pregnancy threatened the life of the mother.

5. On December 29, 1992, Mr. Humphrey, the Attorney General of Minnesota issued a press release in which he stated that he was now "pro-choice." (A copy of the press release is attached hereto and made a part hereof as Exhibit 1)

6. In March 1993, CRLP filed a complaint in Hennepin County District Court to have the court declare that abortion was a right under the Minnesota Constitution and to require the state to pay for abortion on demand through its medical assistance program. On April 13, 1993, they filed an Amended Complaint adding as a plaintiff a "Jane Doe" whom they alleged was a Minnesota resident who became pregnant as a result of rape not reported to the proper authorities and who had paid for an abortion. (A copy of the complaint is attached hereto and made a part hereof as Exhibit 2)

7. The CRLP is the successor to the A.C.L.U. Reproductive Freedom Project. The lead attorney, Janet Benshoof, and much of the staff of the ACLU project left the ACLU to form CRLP. The local attorney for plaintiffs, Linda Ogala, was a partner in the Minnesota firm of Kurzman, Grant and Ogala. The Amended Complaint is signed by Linda Ogala and by Janet Benshoof, Simon Heller and Catherine Albisa of the CRLP.

8. In answer to the allegations in the Amended Complaint concerning "Jane Doe" the Attorney General stated that he was without sufficient information to affirm or deny. Under Minnesota law, the burden therefore remains with the plaintiff to establish the truth of those allegations through introduction of evidence.

9. On June 16, 1994, Hennepin County District Judge William S. Posten issued a Findings of Fact, Conclusions of Law and Order of Judgment on cross motions for summary judgment in which he declared that abortion was a right under the Minnesota Constitution and in which he struck down all restrictions on funding in the Minnesota medical assistance programs as violative of "the equal protection clause in Article I, section 2 of Minnesota's Constitution" (Findings, p. 15; Memorandum, p. 7. A copy of the Findings of Fact, Conclusions of Law and Order of Judgment with Memorandum is attached hereto and made a part hereof as Exhibit 3). The Minnesota Constitution does not contain an equal protection clause. In his Findings of Fact he made specific findings concerning "Jane Doe" and ten other alleged class members.

The Rules of Civil Procedure of Minnesota require that affidavits in motions for summary judgment "shall be made on personal knowledge, shall set forth facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Minn. R. Civ. P. 56.05. Affidavits signed in fictitious names are not admissible because the court hadn't the slightest idea who signed them, whether the statements are true or whether the person described therein is real or fictitious.

10. In August 1995, the Attorney General of Minnesota, Hubert Humphrey III submitted a brief to the Supreme Court of Minnesota in the matter of The Women of the State of Minnesota as represented by Jane Doe, et al. v. Gomez No. CX-94-1442. In that brief, in a footnote on page 9, the Attorney General stated, "Jane Doe failed to answer discovery and her current whereabouts are unknown."

11. I contacted Patricia Sonnenberg, the Assistant Attorney General in charge of the case and asked her in light of the fact that "Jane Doe" had failed to answer discovery and had

vanished, whether she knew if there was a real person behind the pseudonym of "Jane Doe." She informed me that she did not.

12. I then reviewed the trial court file in the Doe case. The file contains no affidavit in a pseudonym or otherview from "Jane Doe" or any other evidence that such a person really existed.

13. The file contained a total of ten affidavits allegedly from medical assistance eligible women who had had abortions. All of the affidavits are signed in fictitious name. There is no supplemental sealed file that would contain affidavits in the real names of the alleged plaintiffs and no information to indicate whether the affiants were real or make believe.

14. I asked the Attorney General if he knew whether "Jane Doe" was real or make believe and he stated that he did not. (A copy of a transcript of the question and answer is attached hereto and made a part hereof as Exhibit 4.)

15. Two of the affidavits, those signed "Jane Coe" and "Dorothy Doe," allegedly poor women in Minnesota, are notarized by Catherine Albisa, apparently in New York. The "Dorothy Doe" affidavit states in paragraph 4, "I am currently scheduled to have an abortion at Ramsey Hospital on January 31, 1994." In paragraph 10 it states, "Ramsey could not schedule me for an abortion until January 31 because they are so busy. By then I will be in my second trimester and will have to undergo a two day procedure which is more expensive." The affidavit is notarized by Ms. Albisa on February 1, 1994, the date the affiant states she will be in the hospital in St. Paul. (A copy of the affidavit of "Dorothy Doe" is attached hereto and made a part hereof as Exhibit 5.)

16. I asked the Attorney General whether he knew who signed the affidavits or whether the statements in them were true and he stated that he did not (See Exhibit 4).

17. The trial court entered an order certifying the case of Doe v. Gomez as a class action. The certified class being "all women eligible for Minnesota's Medical Assistance, General Assistance Medical Care and County Poor Relief Programs, who seek abortions for health reasons during the pendency of this litigation or have obtained abortions for health reasons within the one year period prior to the filing of this action." No order was entered appointing any person as representative party as required by Minn. R. Civ. P. 23. "Jane Doe" was listed in the caption of the Complaint as the representative party. But "Jane Doe," by her allegations, does not belong to the class she is supposed to represent. In the Amended Complaint, "Jane Doe" alleged that she became pregnant as the result of a rape she did not report to the police. (It should be noted that this was the same allegation of "Jane Roe" in Roe v. Wade which she later admitted was false.) "Jane Doe's" allegations were directed against a restriction in Minnesota law which confined payments for abortions to pregnancies caused by rape to those reported to the proper authorities. It was not alleged that there was a health reason for her abortion. In addition, the trial court could not have certified as required by law that "Jane Doe" could have fairly and adequately represented the members of the class because there was no evidence before the court that "Jane Doe" was a real person and if she were a real person she had disappeared. In Beckman v. St. Louis County Board of Commissioners, 241 N.W.2d 302 (1976), the Minnesota Supreme Court held that failure to comply with the class action rules is a fatal defect. Beckman is still the law. In Doe the Minnesota Supreme Court did not interpret state law, it ignored state law.

18. The Attorney General stated in a letter to a state senator that he did not know that whether "Jane Doe," "Dorothy Doe" and the others were real people, but that the plaintiffs were represented by an attorney and ". . . all of the statements are there that these are real people, the

lawyers are under the ethical obligations to not lie about that." There is no provision in Minnesota law by which the presumed integrity of a lawyer is a substitute for evidence. In addition, attorneys for the abortion industry in Minnesota have a history of lying in abortion cases. Before the case of Doe v. Gomez, the abortion industry was represented by Dan Dobson, Esq. Mr. Dobson was suspended from the practice of law for lying in an abortion case. He used the fictitious names of "Al Beiselman," Dan Sieferman," and Tim Stein" for himself in an abortion related case in violation of Minnesota ethics rules. (A copy of the relevant portion of his suspension order is attached hereto and made a part hereof as Exhibit 6.)

19. After Mr. Dobson's suspension, the abortion industry was represented by Marc Kurzman, a partner in the firm of Kurzman, Grant and Ogala. Mr. Kurzman made a telephone call in an abortion related case in which he pretended to be someone else. He transcribed his deceit under the caption, "Transcript of Conversation in Support of Motion for Contempt and to Amend Injunctive Order" and filed it with the Court. (A copy of the transcript is attached hereto and made a part hereof as Exhibit 7.)

20. The threat of sanctions is not substituted for evidence. The local attorney for the plaintiffs in Doe v. Gomez was Linda Ogala, a partner with Mr. Kurzman in Kurzman, Grant and Ogala. I filed an ethics complaint against Ms. Ogala for filing the "Dorothy Doe" affidavit that states that "Dorothy Doe" had an abortion in St. Paul and signed an affidavit in New York on the same day, since the affidavit appears to be fraudulent on its face. The ethics board dismissed the complaint on the grounds that "Respondent's signature on that complaint is the only fact that connects respondent to complainant's allegation: there is no information, firsthand or otherwise, that indicates that respondent knew or should have known that the affidavits were circumspect." (A copy of the dismissal is attached hereto and made part hereof as Exhibit 8). I also filed an

ethics complaint in New York against the attorneys for the Center for Reproductive Law and Policy for filing the "Dorothy Doe" affidavit. The New York ethics board informed me they would not act on the complaint but did not give a reason. (Copies of the letters are attached as Exhibit 9.)

21. Following the Minnesota Supreme Court decision in Doe v. Gomez I contacted the clerks of the court in seventeen other jurisdictions where the Center for Reproductive Law and Policy or its predecessor, the ACLU Reproductive Freedom Project have brought abortion lawsuits. From their replies, it appears that neither the CRLP nor the ACLU have ever produced an actual plaintiff claiming she wanted or needed an abortion. In each case they proceeded with affidavits signed in fictitious names and failed to produce an actual client. In Utah, for example, the ACLU Reproductive Freedom Project, whose lead attorney was Janet Benshoof, later the lead attorney of the CLRP in the Doe case in Minnesota, submitted to the court a Declaration signed by a Utah abortionist, Madhuri Shah. In the Declaration she stated:

> 21. Had I practiced under the new ban's threat of criminal prosecution and professional censure, I would probably not have performed abortions on the following women:
> a. A 41 year-old married woman with two children and limited financial resources, whose fetus had Down's syndrome;
> b. A 26 year-old single woman who was taking acutane for severe acne, and who had been warned by her physician that, if she became pregnant while using the drug, she would need an abortion;
> c. A 36 year-old woman who had discovered during prenatal testing for her planned pregnancy that her fetus suffered from hydrocephalus spina bifida;
> d. A 17 seventeen-year-old single student with limited income whose fetus was diagnosed as hydrocephalic;
> e. A 20 year-old single woman whose fetus was diagnosed with spina bifida;
> f. A 20 twenty year-old single mother of one child who was a prisoner in state jail; fetal malformations were suspected because the woman had taken unspecified illegal drugs throughout her pregnancy, yet no malformation was specifically diagnosed;

g. A 32 year-old mother of one child whose fetus was diagnosed with Down's syndrome;
h. A 40 year-old married woman whose fetus was diagnosed with Down's syndrome.
Declaration of Madhuri Shah, pp. 8-9.

22. In Dr. Shah's deposition, she was asked to produce the files of those women.

Q Dr. Shah, on page 8, paragraph 21 of Exhibit 2, you go through some lists of patients that you say you probably would not have performed an abortion on if the new law had been in effect.

A Uh-huh (affirmative).

Q Do you have those patients' files? Have they been produced to us?

A Let's see.
I don't know if thee – These are the hypothetical – I don't know if these are real cases.

Q You don't know if they're real cases?

A No. I don't think they're real cases. These are just a hypothetical proposition, I think.

Deposition of Madhuri A. Shah, M.D., p. 172, lines 17-25 and p. 173, lines 1-4.

(Copies of Dr. Shah's declaration and relevant portions of her deposition are attached hereto and made a part hereof as Exhibit 10.)

23. There is no indication in the declaration that "A twenty-year-old single mother of one child who was a prisoner in state jail: fetal abnormalities were suspected because the woman had taken unspecified illegal drugs throughout her pregnancy, yet no malformation was specifically diagnosed" was a pure invention of Janet Benshoof and her staff in New York. There is no reason not to assume that "Jane Doe" and "Dorothy Doe" and the others are equally inventions of Janet Benshoof and her staff. Minnesota law does not permit virtual litigation with make believe plaintiffs.

24. The CRLP also listed five other plaintiffs in their complaint in Doe v. Gomez, a doctor who performs abortions, a foundation that funds abortions and three abortion clinics. In their complaint they set forth seven causes of action. Each and every clause alleges the rights of women seeking abortion. They do not allege rights of abortion doctors, foundations or clinics. They do not allege that those plaintiffs could not practice their business properly or that individual women seeking abortions would not come forth to ascertain their own rights. In fact, they claim there are ten women available to assert those rights, "Jane Doe" and others. In Singleton v. Wulff, 96 U.S. 2868 (1976), the Supreme Court of the United States permitted abortion doctors to assert the claims of women only who they allege an injury to themselves and assert that no women are available to assert their own claim. Minnesota has never adopted such a rule and has held that the irreducible constitutional minimum to establish standing is an allegation of injury in fact by the plaintiff. In Byrd v. Independent School District No. 194, 495 N.W.2d 226 (Minn. App. 1993), the court held that a plaintiff must allege an actual injury in fact to himself. Byrd is still the law. The court did not interpret state law, it ignored state law to reach a policy goal it shared with the lawyers for plaintiffs and defendants.

25. "Jane Doe" cannot serve as a plaintiff because there is no evidence that there is a "Jane Doe." The other plaintiffs do not assert the irreducible constitutional minimum of an injury in fact to themselves. If there is no plaintiff, there is no case and if there is no case, Minnesota courts lack jurisdiction to enter an order. In M'Nair v. Toler, 21 Minn. 175 (1875), the Minnesota Supreme Court held that a "case" under the Minnesota Constitution requires, *inter alia*, a real plaintiff. M'Nair is still the law. In Doe the state court did not interpret state law, it ignored state law.

26. In M'Nair the court cited as one element of a "real" case, a "real defense." In Doe v. Gomez, there was no real defense. On December 29, 1992, the then-Attorney General of Minnesota, Hubert Humphrey III issued a press release announcing that he was "Pro-choice . . ." A little over two months later, the CRLP filed its initial complaint. One of the goals of the complaint was to have the Minnesota Supreme Court declare that abortion was a right under the Minnesota Constitution. In part, the purpose of this goal was to establish abortion as a right for medical assistance purposes. Since medical assistance does not pay for many operations, including life saving operations, the plaintiffs' attorneys wanted to establish abortion as different from any other medical operations because it was a state constitutional right. Abortion has always been recognized as a crime in Minnesota from the time of the first Minnesota Constitution until the decision in Roe v. Wade. There is no precedential basis whatever for a finding that abortion was ever a "right" under Minnesota law. While the case of Doe v. Gomez was pending before the trial court, Attorney General Humphrey wrote directly to Paula Wendt, Executive Director of Meadowbrook Women's Clinic, one of the clinics listed as plaintiff in Doe v. Gomez. It is a violation of the Code of Ethics for the attorney on one side of litigation to communicate directly with a party on the other side. In his letter Attorney General Humphrey told Ms. Wendt that his office would take the position that abortion was a right under the constitution and "the State will not dispute this allegation in the Complaint." (A copy of the letter is attached hereto and made a part hereof as Exhibit 11.) The Minnesota Supreme Court in its opinion wrote, ". . . plaintiffs allege that the fundamental right implicated in this case is the right of a pregnant woman to decide whether to terminate her pregnancy. The State has conceded this point and has adopted the view that "the state constitution protects a woman's right to choose to have an abortion. We agree." 542 N.W.2d 17 (Minn. 1995) at 27.

27. As citizens of Minnesota and taxpayers we have a right to have cases directly concerning our interests heard before an impartial tribunal. On January 21, 1991, an article appeared the Star Tribune captioned, "Abortion Rights Gets Boost from Perpich's Pick for Court." The article discussed three new appointees to the Minnesota Supreme Court by DFL Governor Rudy Perpich. The article stated that the court was considered "pro-life" in part because it had upheld the state foeticide law, but the three new appointments had shifted the balance to "pro-choice." The article stated:

> In September 1989, Connie Perpich, director of public affairs for Planned Parenthood of Minnesota and Rudy Perpich's sister-in-law, publicly assessed the views of the judges then on the court.
>
> That Gardebring and Keith favor abortion rights is taken for granted by activists, and is discussed on the record without hesitation.
>
> Keith is said to have accompanied her to a Planned Parenthood board meeting before he became a judge and to have made his views clear.
>
> In the case of Tomljanovich's position, prominent feminists are cagier. Said Kim Mesun, president of Minnesota Women Lawyers: 'I know, but I'm not going to tell you.'
>
> (A copy of the Star Tribune article is attached hereto and made a part hereof as Exhibit 12.)

28. Attorney General Humphrey did not want ". . . delay and delay" by asking who the plaintiff was because both he and the plaintiffs' lawyers knew the Court was "pro-choice" not by analyzing the precedents but from private communications of the judge to pro-abortion advocates.

29. The Minnesota Supreme Court was fully aware that there was no evidence in the case that "Jane Doe" and the others existed. In their decision they do not state "Jane Doe"

became pregnant as a result of rape." They state, "The Complaint asserts she sought an abortion for a pregnancy resulting from rape . . ." Doe v. Gomez, 542 N.W.2d 17 (Minn. 1995) at 20.

Complaints assert all sorts of things, but under Minnesota law those assertions must be established by evidence and there is no evidence that "Jane Doe" is not a fiction of the CRLP.

In Polk County Social Services v. Clinton, 459 N.W.2d 362 (Minn. App. 1990), the Court held that "(a)n appellate court will determine jurisdictional questions on its own motion even if the parties did not raise the issue." 459 N.W.2d at 363. But rather than raise the issue, the Court ignored its lack of jurisdiction in order to set social policy which the parties had been unable to establish through the legislature.

30. In their decision the Supreme Court stated that they were not requiring the state to pay for all abortion, but only "therapeutic abortions." "Therapeutic abortions" is a term used by the abortion industry to mean all abortions. In her deposition, Madhuri Shah, the abortionist in Utah was asked:

> Q Do you have any criteria for therapeutic?
>
> A Therapeutic abortion?
>
> Q Yes.
>
> A Patient who wants abortion and emotionally she is ready for it, there is a good reason for it, she can have it.
>
> Q And that's your definition of "therapeutic"?
>
> A Yes.
>
> (Exhibit 12, Depo. of Dr. Shah, p. 189, lines 22-25 and p. 190, lines 1-4).

In his Findings of Fact, Judge Posten stated that he had reviewed 1,009 medical records of women who had abortions and 45 had health problems caused by their pregnancy –

approximately 5%. (Exhibit 3, p. 11) Since the Doe decision, the state is not paying for 5% of medical assistance abortions, but for thousands of abortions; 2,986 in 1995 alone.

31. It is important to remember what this dispute is ultimately about. When Madhuri Shah was asked why she did not perform second and third trimester abortions, she replied

> Q Why don't you do abortions after 21 weeks L.M.P.?
>
> A Why don't I do? I started doing first trimester and second trimester up to 18 week. I think the fetus gets bigger, emotionally it is hard. It is hard for a person to do it, it is very hard for the people who are having it. I mean, a fetus is a little baby no matter what you say. I mean, you can look at the patient and say she needs an abortion for this reason, it's justified. Whether normal or abnormal, fetus is a little baby, and for any human being it's not easy to see that.
>
> (Exhibit 12, Depo. of Dr. Shah, p. 71, lines 10-21).

As the result of a fraudulent and collusive case, Minnesota citizens are now forced to pay for the killing of "a little baby no matter what you say" directly contrary to the law passed by their elected representatives and their most deeply held religious beliefs.

Further Affiant sayeth naught.

Dated: _____

_____
James Tarsney

Subscribed and sworn to before me this
_____ day of _____, 19___.

_____
Notary Public

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

COURT FILE NO. CV 99-332

James Tarsney, Joe Loeffler, Wayne Olhoft, Tad Jude, Dr. Steve Calvin, Dr. Karen Karn, Dr. Konald Prem, Dr. Stanley Johnson Brian Gibson, Jack Weiland, Russ Rooney, Mary Rooney, David Racer, Eugene Keating, Joseph Kueppers, John C. Cerrito, David States, Mary Kay States, Keith Jensen, Elizabeth Jensen, Roberta Becker, Linda Pettman, Karen Messicci, Angela Heithaus, Renae LaVoi, Cheri Emde, Mary Jacobs, Judy Hadley, Beth Gerlach, Mitzi Speranzella, Joan Appleton, Becky Saad, Marlene Reid, Bernadine Scroggins, Dr. Paul Spencer, Judi Spencer, Virginia Benyon, Jenifer Latawiec, Maria Schmitz, Barbara (Basia) Zebro, Cletus Tauer, Ramona Tauer, Peg Cullen, Meghan Jones, Mary Prior, Ruth Powers, Jolene Schmitz,

Plaintiffs,

vs.

Commissioner Michael O'Keefe, Department of Human Services, State of Minnesota,

Defendants.

AFFIDAVIT OF MARY ROONEY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Mary Rooney, being first duly sworn on oath deposes and states as follows:

1. I was born on December 15, 1971 in Duluth, Minnesota and baptized on January 2, 1972 at St. Michael's Catholic Church in Duluth.

2. I attended St. Austin Catholic School in North Minneapolis and graduated from De LaSalle High School in 1990.

3. I attended college at the College of St. Scholastica in Duluth where I majored in nursing and graduated in 1994.

4. On April 12, 1996, I was married to Russ Rooney at St. Edward Catholic Church in Bloomington, Minnesota. We have two children, Charles Henry, who was born on September 26, 1997 and baptized on November 23, 1997, and Mary Rose, who was born on October 14, 1998 and baptized on November 22, 1998. We are members of St. Peter Catholic Church in Richfield, Minnesota.

5. I am now employed part time as a registered nurse with Friendship Venture in Annandale, Minnesota which operates a camp for mentally and physically disabled people. Among my duties are evaluations of prospective clients to determine whether the camp can accommodate their needs and preparation of the staff to care for their needs.

6. I am a board member of Southside Life Care Center which provides pregnancy testing, counseling, baby clothes and equipment, and financial help for women in crisis pregnancies. We also provide post-abortion counseling for women suffering the psychological effects of abortion. From 1996 to 1997 I was the administrator of Southside Life Care Center.

7. As a registered nurse who has studied embryology, I am fully aware that the life of each human being begins at conception and that abortion is the destruction of a human life.

8. In working with developmentally disabled people, I have come to know them as unique human beings who have a right to be here and are often happier than the rest of us. For

some, the ability to take on step is the greatest happiness for them. I am particularly disturbed that abortion is now being used as a social policy to eliminate the handicapped.

9. As a Roman Catholic, I am taught by my faith that life is a gift from God and that it is a sin to destroy innocent human life. While under Roe v. Wade I cannot prevent other women from having abortions, it is a violation of my conscience to force me to pay for other women's abortions.

10. The following incident, in particular, made this issue very clear to me. I was working with a client at Southside and she wanted to know who paid for abortions because she had one and never had to pay much, but had heard they were kind of expensive. I told her we all pay for them. She could not believe I would be paying for one while sitting across from her telling her not to have an abortion at the same time. I told her that I had no choice in the matter, but she had the choice to have her child which she had given life to already. We talked a long time about choice and who had the right to make decisions for each one of us. I told her in regards to me paying for abortions, my right had been taken away by the government and at that time I could do nothing about it. She asked if she had the right to decide about her baby and I told her yes, but that also her child had a right to live and make his/her own decisions. She wanted to know why I was so against abortion and I told her it was because it takes choice and rights away from another human being. It was like someone choosing when she could smoke and not smoke. She did not like the fact that someone would tell her when to and when not to smoke. I told her each one of us does not like it when someone tells us what we can and cannot do. That is the same with abortion. The human life we destroy never gets the choice to choose what they want to do or not to do. We talked more and I felt like I had made some kind of impact in her life. To this day I do not know what choice she make, but I do know she left with a

lot more than she came for. Knowing that people do not know choices are made without their knowledge bothers me. People should know they have the choice to say yes or no to something up front. The government takes that choice away from us especially when it comes to human life. Many people do not even know they are paying for abortions with their tax dollars unless you tell them and that is wrong. This goes against how I was raised and what I believe in. I was brought up to tell the truth and be honest. The government is doing no such thing.

Further Affiant sayeth naught.

Dated: _____

_____
Mary Rooney

Subscribed and sworn to before me this
_____ day of _____, 19___.

_____
Notary Public

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

COURT FILE NO. CV 99-332

James Tarsney, Joe Loeffler, Wayne Olhoft, Tad Jude, Dr. Steve Calvin, Dr. Karen Karn, Dr. Konald Prem, Dr. Stanley Johnson Brian Gibson, Jack Weiland, Russ Rooney, Mary Rooney, David Racer, Eugene Keating, Joseph Kueppers, John C. Cerrito, David States, Mary Kay States, Keith Jensen, Elizabeth Jensen, Roberta Becker, Linda Pettman, Karen Messicci, Angela Heithaus, Renae LaVoi, Cheri Emde, Mary Jacobs, Judy Hadley, Beth Gerlach, Mitzi Speranzella, Joan Appleton, Becky Saad, Marlene Reid, Bernadine Scroggins, Dr. Paul Spencer, Judi Spencer, Virginia Benyon, Jenifer Latawiec, Maria Schmitz, Barbara (Basia) Zebro, Cletus Tauer, Ramona Tauer, Peg Cullen, Meghan Jones, Mary Prior, Ruth Powers, Jolene Schmitz,

Plaintiffs,

vs.

Commissioner Michael O'Keefe, Department of Human Services, State of Minnesota,

Defendants.

AFFIDAVIT OF RUSSELL ROONEY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Russell Rooney, being first duly sworn on oath deposes and states as follows:

1. I was born on July 23, 1962 in St. Cloud, Minnesota and baptized on July 29, 1962 at Sacred Heart Roman Catholic Church in Sauk Rapids, Minnesota. I attended Sacred Heart School, John XXIII Jr. High School and Sauk Rapids, High School.

2. I graduated from St. John's University in Collegeville, Minnesota in 1984, with a degree in natural science and medical technology.

3. I was married to Mary Rooney at St. Edward Roman Catholic Church on April 12, 1996. We have two children and own a home in Richfield, Minnesota.

4. I am employed as an account manager with Viromed Laboratories.

5. I founded the Richfield branch of Minnesota Citizens Concerned for Life and was State Chair of Minnesota Republicans Concerned for Life. My wife and I are co-chairs of The Knights of Columbus Respect Life Committee.

6. I have been a lector at St. Peter Roman Catholic Church in Richfield, Minnesota for the past ten years.

7. What could be more egregious and disturbing, in America, than being forced to pay taxes to have innocent nascent children killed on demand? I cannot think of anything nor do I want to.

8. Doe v. Gomez goes directly against my religious belief, which I have been taught as a doctrine of my church, that "all" human life is sacred and each and every human should be treated with respect and dignity.

9. Until Doe v. Gomez is overturned, I believe that the citizens of Minnesota will continue to be denied the right to be represented by their legislators on the issue of abortion. My understanding is that courts are to interpret law rather than make law.

10. I also believe that the court can regain its credibility by only making decisions on cases with actual plaintiffs. Decisions by the court were not meant to be based on "vanishing" plaintiffs.

11. Finally, Doe v. Gomez allows for the lethal discrimination against nascent children because of their young age and place of residence. Where is our tolerance for other humans?

Further Affiant sayeth naught.

Dated: _____ _____
Russell Rooney

Subscribed and sworn to before me this
_____ day of _____, 19___.

_____
Notary Public