

SAMPLE LEGISLATOR LETTER

{Insert date}

The Honorable *{Insert name of Governor, Attorney General, or head of Department of Health or other responsible state agency}*

{Insert appropriate title}

{Insert address}

Dear *{Insert appropriate title and last name}*:

The reality of abortion practice in America and, specifically, in *{Insert name of State}* is indisputably at odds with abortion advocates' repeated assurances that legalized abortion and access to facilities performing abortions ensure and protect maternal health. In *{Insert name of State}*, we have witnessed *{Insert short description of recent or documented problems or issues with abortion providers in the State}*.

Moreover, in December 2016, Americans United for Life released *Unsafe: How the Public Health Crisis in America's Abortion Clinics Endangers Women*.¹ This important investigative report documents that 227 abortion providers in 32 states were cited for more than 1,400 health and safety deficiencies between 2008 and 2016. *Unsafe* reveals more than 750 significant violations of state laws regulating abortion clinics.

Abortion clinics operating in *{Insert name of State}* are among the dangerous and substandard abortion providers disclosed in *Unsafe*. Specifically, *{Insert names and/or a brief discussion of the problems associated with abortion providers in the State, as revealed in Unsafe}*.

Efforts to discern the true state of abortion practice in *{Insert name of State}* and in other states is often stymied by *{a lack of protective laws,}* a lack of comprehensive reporting by abortion providers and state agencies and limited public availability of information on abortion clinics and practices. We can easily deduce, therefore, that the epidemic of substandard abortion practice may be worse than the evidence currently available to legislators and policymakers in *{Insert name of State}* shows.

¹ *Unsafe* is available at <http://unsafereport.org/>.

On June 27, 2016, in *Whole Woman’s Health v. Hellerstedt*,² the U.S. Supreme Court invalidated a Texas law requiring that abortion clinics meet the same health and safety standards as facilities performing other invasive, outpatient surgeries and mandating that individual abortion providers maintain admitting privileges at a local hospital to facilitate the treatment of post-abortion complications and other medical emergencies. Sadly, the Court failed to strike a decisive blow for women’s health and safety and to ensure that abortion providers – who are often more interested in maintaining profitability than in safeguarding women’s health and safety – comply with medically endorsed and widely implemented standards of care. Instead, the Court adopted the abortion industry’s callous and self-serving position that “mere access” to abortion clinics is sufficient to protect maternal health and safety.

In evaluating the potential damage that this decision may inflict on American women, it is important to remember that convicted Philadelphia abortionist Kermit Gosnell provided “mere access” to abortion in a clinic where a woman died because a stretcher could not fit through the hallways, where unsterilized instruments spread infections, and where parts of unborn babies were stored in jars and cat food cans like macabre trophies.³ Moreover, as we have seen in {*Insert name of State*}, {*Insert short description of recent or documented problems or issues with abortion providers in the State*}.

In granting women a constitutional right to abortion, the *Roe* Court did not, despite abortion activists’ claims to the contrary, equate that right with the abortion industry’s right to be free from appropriate regulation and oversight. Instead, *Roe* specifically found that a state legislature’s legitimate interest in regulating abortion “obviously extends at least to [regulating] the performing physician and his staff, to the facilities involved, to the availability of after-care, and to adequate provision for any complication or emergency that may arise.”⁴ This view was affirmed by the Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey*⁵ (upholding informed consent and parental involvement requirements), *Gonzales v. Carhart*⁶ (upholding the federal ban on partial-birth abortion), and other cases.

The *Hellerstedt* decision and its application by federal and state courts may make it more difficult to enact laws addressing the epidemic of substandard abortion practices in America. However, it also provides some implicit guidance for legislative and other efforts to protect women and their unborn children from the dangers inherent in abortion.

² Opinion available at https://www.supremecourt.gov/opinions/15pdf/15-274_p8k0.pdf (last visited Dec. 12, 2016).

³ See Report of Grand Jury, MISC. NO. 0009901-2008 (Jan. 11, 2011), available at <http://www.phila.gov/districtattorney/pdfs/grandjurywomensmedical.pdf> (last visited Dec. 12, 2016).

⁴ *Roe v. Wade*, 410 U.S. at 150.

⁵ 505 U.S. 833 (1992).

⁶ 550 U.S. 124 (2007).

Specifically, the *Hellerstedt* majority suggests that states may still regulate abortion facilities to ensure some degree of patient safety and to address problems with substandard abortion providers. Importantly, the Court acknowledged that the "Kermit Gosnell scandal" was "terribly wrong" and involved "deplorable crimes." The Court also specifically recognized the importance of abortion facilities being "inspected at least annually" and the need to include appropriate enforcement mechanisms, such as civil and criminal penalties, in state abortion laws and regulations.

One of the most important lessons learned from the criminal case against Kermit Gosnell and from the substandard and dangerous practices at his West Philadelphia abortion "house of horrors"⁷ was the need to appropriately and consistently enforce state abortion laws. Protective laws do no good if they are simply on the books, but are not properly enforced.

During its exhaustive review of the evidence against Kermit Gosnell, a Philadelphia grand jury found fault with repeated failures "to enforce laws that should afford patients at abortion clinics the same safeguards and assurances of quality health care as patients of other medical service providers," specifically noting that even nail salons "are monitored more closely" than abortion clinics. As the Gosnell grand jury concluded, to prevent future abortion tragedies, we "must find the fortitude to enact and enforce the necessary regulations. Rules must be more than words on paper."

Pennsylvania is not alone in this failure, and the lack of state enforcement has specifically encompassed the failure to inspect abortion clinics to ensure compliance with state abortion laws, including minimum health and safety standards and the failure to certify that clinics are properly licensed.

In light of the foregoing, the undersigned specifically request that {*your office*}:

1. Provide the {*Legislature*} with a complete list of all {*licensed*} abortion facilities operating in the State.
2. Order immediate and comprehensive inspections of the state's abortion clinics pursuant to {*Insert citation(s) to legal authority for the inspections and/or the recipient's authority to order such inspections*}.

⁷ See, e.g., S. Kliff, "The Gosnell case: Here's What You Need to Know," THE WASHINGTON POST, Apr. 15, 2013, available at https://www.washingtonpost.com/news/wonk/wp/2013/04/15/the-gosnell-case-heres-what-you-need-to-know/?utm_term=.e73e87428445 (last visited Dec. 12, 2016).

3. Provide the {*Legislature*} with copies of the resultant inspection reports, along with reports of any and all inspections conducted of the state's abortion clinics over the last {*five*} years.

4. Provide the {*Legislature*} with a list of all abortion clinics or individual abortion providers who have been fined, had their licenses revoked or suspended, or received or faced any other punitive or administrative action related to the provision of abortions over the last {*five*} years.

The requested information and actions are critical to the {*Legislature*} fulfilling its duties to protect and defend the women of this State and to ensure that all {*licensed*} abortion clinics are complying with laws related to the provision of abortion.

Sincerely,

{*Insert names, titles, and addresses for all signatories*}