


IN THE
Supreme Court of the United States



THE ASSOCIATION FOR MOLECULAR PATHOLOGY, ET AL.,
Petitioners,

—v.—

MYRIAD GENETICS, INC., ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**BRIEF OF *AMICI CURIAE*,
INFORMATION SOCIETY PROJECT AT YALE LAW SCHOOL
SCHOLARS IN SUPPORT OF THE PETITION**

PRISCILLA J. SMITH, ESQ.
Counsel of Record
GENEVIEVE E. SCOTT, ESQ.
INFORMATION SOCIETY PROJECT
AT YALE LAW SCHOOL
319 Sterling Place
Brooklyn, New York 11238
(718) 399-9241
priscilla.smith@yale.edu
Attorneys for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

Amici are scholars with the Information Society Project at Yale Law School (ISP),² an intellectual center addressing the implications of new information technologies for law and society: **Wendy Seltzer**, a Senior Fellow at the ISP, writes on law and technology of free expression and user innovation, including digital copyright, software patent, and information privacy. She founded and leads the Chilling Effects Clearinghouse, exploring legal threats to online expression at <https://www.chillingeffects.org/>; **Margot Kaminski**, Research Scholar in Law and Executive Director of the ISP, writes on privacy, information politics and First Amendment issues; **Priscilla Smith**, Senior Fellow of the ISP, **Jennifer Keighley**, Resident Fellow of the ISP, and **Genevieve Scott**, Visiting Fellow of the ISP, research and write on reproductive rights, with a particular focus on information policy and new technologies.

SUMMARY OF ARGUMENT

As this Court has explained clearly, the grant of a patent is a narrowly tailored exception to our free market system, a “carefully crafted bargain”

¹ No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici* and their counsel made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, an email indicating the Respondent’s consent to the filing of this *amicus* brief has been submitted to the Clerk. The Petitioners filed a consent to the filing of *amicus curiae* briefs with the Court on December 15, 2011.

² The Fellows participate in this case in their personal capacity; titles are used only for purposes of identification.

designed to strike a balance between the avoidance of monopolies that stifle competition and the need to encourage innovation. *Bonito Boats, Inc. v. Thunder Craft Boats*, 489 U.S. 141, 146 (1989).

In this brief, *Amici* argue, first, that the Court should grant the Petition because Myriad's monopoly on the information contained in Breast Cancer Susceptibility Genes 1 and 2 (hereafter "BRCA 1/2")³ undermines the careful balance struck by the patent rules. The evidence establishes that by limiting research on the BRCA 1/2 genes, and in the field of genetics more broadly, Myriad's patents stifle innovation and prevent information about natural phenomenon from being used in research to improve diagnosis and treatment of deadly diseases.⁴

Second, *Amici* argue that this Court should grant the Petition to closely examine these patents, which harm public health and undermine the exercise of fundamental rights. Myriad's patents create significant health risks for women, limit access to life-saving information about naturally occurring aspects of their own genomes, thereby undermining

³ BRCA1 and BRCA2 "belong to a class of genes known as tumor suppressors. Mutation of these genes has been linked to hereditary breast and ovarian cancer." National Cancer Institute Fact Sheets, *BRCA1 and BRCA2: Cancer Risk and Genetic Testing*, (Mar. 29, 2009), <http://www.cancer.gov/cancertopics/factsheet/Risk/BRCA>.

⁴ Dep't of Health & Human Serv., Sec'y's Advisory Comm. on Genetics, Health, and Soc'y, *Gene Patents and Licensing Practices and Their Impact on Patient Access to Genetic Tests* (April 2010), available at http://oba.od.nih.gov/oba/sacghs/reports/SACGHS_patents_report_2010.pdf (hereinafter SACGHS report) (hereinafter SACGHS report).

their liberty rights to decisional autonomy, bodily integrity, and procreation.