

**IN THE SUPREME COURT
STATE OF FLORIDA**

CASE NO. SC2022-1050

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL
FLORIDA, on behalf of itself, its staff, and its patients, ET AL.,

Petitioners,

v.

STATE OF FLORIDA, ET AL.,

Respondents.

BRIEF OF *AMICI CURIAE* CURRENT AND FORMER ELECTED
REPRESENTATIVES FOR REPRODUCTIVE JUSTICE
IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST

Amici are a collection of current and former elected representatives deeply committed to reproductive justice.¹ We write in support of Petitioners’ case challenging House Bill 5 (“HB 5”)² because we fervently believe that the law is unconstitutional. HB 5 cannot be squared with the sovereign will of the people or this Court’s long-standing precedent protecting the right to privacy, including abortion access. *N. Fla. Women’s Health Servs., Inc. v. State*, 866 So. 2d 612, 619 n.6 (Fla. 2003) (citing at least 14 examples of privacy rights).

As elected and community leaders often closest to the people, we have a distinct obligation to support the health and welfare of our constituents. We have sponsored and supported federal, state, and local legislation to expand reproductive rights, including making abortion more accessible for Floridians.³ We understand the particular importance that abortion plays in decisions about one’s own health. HB 5 denies this fundamental right—and this personal dignity—to people across Florida, and especially people of color. As elected leaders, we know the lived experiences of our constituents. We write separately as *Amici* because those lives—

¹ A complete list of all *Amici* is provided at Appendix A.

² See Ch. 2022-69, §§ 3–4, Laws of Fla. (amending §§ 390.011, 390.0111, Fla. Stat.).

³ While most people who experience pregnancy were assigned female at birth or are of the female sex, some of these individuals may not identify as women. Transgender men, non-binary people, and intersex people may also become pregnant.

the ones most impacted by HB 5—must be at the forefront of this Court’s consideration.

SUMMARY OF ARGUMENT

The 15-week gestational limit on abortion precludes individuals from making important and considered choices about their lives, their health, and their families. In so doing, HB 5 is a clear abridgement of Florida’s well-established right to privacy, which has long included the right to access health care. *In re Guardianship of Browning*, 568 So. 2d 4, 11 (Fla. 1990). This violation is particularly pronounced for people of color, especially Black and Latino, who have been harmed by systemic racism in health care, resulting in higher rates of mortality and morbidity related to reproductive health and beyond. Entrenched disparities will get worse because of HB 5. *Amici* assert three arguments in support of Petitioners.

First, the Florida constitution explicitly enshrines a right to privacy. The people have twice voted to ensure that it is understood broadly, including an explicit rejection of a proposal to narrow abortion protections. All other states analyzing similar privacy protections have affirmed the right to abortion. Decisions by the U.S. Supreme Court about the federal constitution do not mandate a narrowing of rights under Florida law. In fact, the focus in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022), on a lack of enumerated privacy protections under the Fourteenth Amendment makes clear that the protection remains under state

law. To hold otherwise, this Court would need to reject long-established precedent and the clear will of the people.

Second, HB 5 is not the least restrictive means to advance a compelling governmental interest in maternal health. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1256 (Fla. 2017). In fact, it is not even rationally related to that interest, as the 15-week restriction undermines public health and results in worse outcomes, especially for people of color. People of color already experience worse reproductive health on almost all measures. They have less access to contraceptives and see higher rates of unplanned pregnancies. With lower rates of prenatal care and later involvement of health care practitioners, Black women see worse pregnancy outcomes. The disparities in health access also manifest in people of color seeking abortions later into pregnancy. These delays can make obtaining an abortion more expensive and more challenging—and now, because of HB 5, impossible in Florida.

Third, Petitioners have made a clear showing of irreparable harm warranting the issuance of an injunction. *Gainesville Woman Care*, 210 So. 3d at 1256. Experience in Florida has confirmed that people of color suffer significant impacts from restrictive abortion regimes. The 15-week ban, combined with a recently effectuated 24-hour waiting period, make it hard for many to access abortion in Florida and result in many people being forced either to travel out of state or to carry a pregnancy to term against their will. For countless pregnant people and their

families, the 15-week ban will continue to cause irreparable economic and health-related harms. These emotional, health, and economic burdens are long-lasting and difficult to overcome. Such a significant curtailment of a recognized right—with serious and lasting impacts—clearly meets the requirements of irreparable harm.

ARGUMENT

I. FLORIDA’S RIGHT TO PRIVACY CLEARLY INCLUDES THE RIGHT TO ABORTION

This Court has an extraordinary obligation to ensure that laws passed by the Legislature comport with the compact that the people of Florida entered. That constitution includes a clearly established right to privacy, which extends well beyond the federal constitution. *Winfield v. Div. of Pari-Mutuel Wagering, Dept. of Bus. Regulation*, 477 So. 2d 544 (Fla. 1985). Floridians have twice exercised their will to show that the right to abortion is enshrined in the constitution. In 1980, they adopted independent protections for privacy rights. *See* art. I, § 23, Fla. Const. In 2012, they defeated a proposal that would have weakened state abortion protections to be no greater than those under federal law. A 15-week abortion ban is plainly inconsistent with the expressed will of the people of Florida.

When state constitutions include an express privacy guarantee, the right to an abortion is protected. Earlier this year, the South Carolina Supreme Court invalidated that state’s recently enacted 6-week abortion ban under the state

constitution's express privacy guarantee. *Planned Parenthood of S. Atl. v. South Carolina*, 882 S.E.2d 770 (S.C. 2023) (“PPSA”). In so doing, the South Carolina Supreme Court surveyed state constitutional decisions from across the country, including in Florida. The court explained that of the states to consider the question of whether the express right to privacy implicates the right to an abortion, all of them answered in the affirmative. *Id.* at 782. In addition to Florida, courts in Alaska, Minnesota, Montana, and Tennessee⁴ reached the same conclusion. *Id.* Moreover, as explained in *PPSA*, the Washington Supreme Court has effectively ruled in the same way. *Wash. Pub. Emps. Ass'n v. Wash. State Ctr. for Childhood Deafness & Hearing Loss*, 450 P.3d 601, 611-12 (Wash. 2019).

Decisions not mentioned by the *PPSA* court also support the same outcome. Nearly 30 years ago, the California Supreme Court interpreted its privacy provision as protecting abortion access. *Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 812 (Cal. 1997). In Arizona, the state's Supreme Court held that the constitution's privacy guarantee protected the right to state funding for a medically necessary abortion as well as a medically indicated abortion. *Simat Corp. v. Arizona Health Care Cost Containment Sys.*, 56 P.3d 28, 32 (Ariz. 2002). In reaching that outcome, the court noted that privacy protections guaranteed the right to make choices about

⁴ Subsequently, the right to privacy in Tennessee was amended to no longer include the right to an abortion. *See* Tenn. Const. art I, § 36 (2014).

one's health care generally, like Florida law. *Id.* at 32 n.2. If this Court were to uphold HB 5, Florida would become an outlier among similarly situated states.⁵

The federal decision to overrule *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), does not require that Florida's constitution mean something different than it did before. To the contrary, *Dobbs* expressly recognized that states remain free to protect abortion under state law. 142 S. Ct. at 2257. Indeed, state constitutions “are a font of individual liberties, their protections often extending beyond those required by the Supreme Court’s interpretation of federal law.... [W]ithout [independent state law], the full realization of our liberties cannot be guaranteed.” *In re T.W.*, 551 So. 2d 1186, 1191 (Fla. 1989) (quoting William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489, 491 (1977)). Put another way, “in any given state, the federal Constitution thus represents the floor for basic freedoms; the state constitution, the ceiling.”⁶ *Traylor v. State*, 596 So.2d 957, 962

⁵ The Illinois Supreme Court has concluded that its constitution's limited privacy protection does not include the right to an abortion. *Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 756 (Ill. 2013). However, the relevant constitutional provision is narrower than Florida's and focused on searches and seizures. Ill. Const. 1970, art. I, § 6.

⁶ This Court has concluded that “the citizens of Florida, through their state constitution, may provide themselves with more protection from governmental intrusion than that afforded by the United States Constitution.” *State v. Sarmiento*, 397 So. 2d 643, 645 (Fla. 1981), *abrogated by amendment to art. I, § 12, Fla. Const.* In *Sarmiento*, this Court held that warrantless recordings of suspects outside of their homes violated the Florida constitution even though it was permissible under the

(Fla. 1992). *Dobbs* reset the floor, in part, because the federal constitution does not include an expressly guaranteed right to privacy. 142 S. Ct. at 2248. By contrast, Florida’s constitution specifically does.

II. HB 5 DOES NOT PROMOTE MATERNAL HEALTH

HB 5 injects burdensome and overbearing regulation into reproductive health—an area of public health beset by significant racial disparities. People of color have less access to contraception, worse birthing outcomes, and higher maternal mortality. When they seek abortions, they tend to seek them later into pregnancy, due to health, cost, and other access barriers. Whether they carry a pregnancy to term or obtain an abortion, people of color will bear the biggest burdens because of HB 5. Placed in this context, it becomes especially clear that HB 5 has the opposite effect of the outcome the state purports to seek—improving maternal health—by exacerbating disparities in reproductive health access.

federal constitution. 397 So. 2d at 644-45. Subsequently, in 1982, the people of Florida passed Amendment 2 so that Section 12 would be read consistently with the U.S. Constitution. Here, by contrast, this Court has held consistently that the state constitution protects the right to an abortion and the voters have *rejected* a narrowing amendment.

A. Mothers and Children of Color Experience Worse Health Outcomes

Race is among the strongest predictors of outcomes in reproductive health.⁷ Racial health disparities are “persistent and difficult to address.”⁸ People of color have less access to health care, experience worse outcomes, and experience discrimination in obtaining treatment. For example, Black women are about three times more likely than White women to die from childbirth or other pregnancy-related complications.⁹ In evaluating HB 5, this Court must recognize that forcing pregnant people to carry unwanted pregnancies to term will exacerbate existing disparities that already and profoundly affect their lives.

Access to contraception: There is a lengthy and unfortunate history of sterilization and other painful discrimination against people of color when it comes to reproductive health.¹⁰ In part because of that history, fewer Black and Latina

⁷ Cristina Novoa & Jamila Taylor, *Exploring African Americans’ High Maternal and Infant Death Rates*, Ctr. Am. Progress (Feb. 1, 2018), <https://www.americanprogress.org/article/exploring-african-americans-high-maternal-infant-death-rates/>.

⁸ A. Baciu et al. eds., *The Root Causes of Health Inequity*, Communities in Action: Pathways to Health Eq., ch. 3 (2017), <https://www.ncbi.nlm.nih.gov/books/NBK425845/>.

⁹ Kelsey Butler, *U.S. Maternal Mortality Rate Among Black Women Is Nearly Triple That Of White, Hispanic Peers*, Bloomberg Law (Feb. 23, 2023), <https://www.bloomberg.com/news/articles/2022-02-23/u-s-black-maternal-mortality-rate-triple-that-of-white-hispanic-women-in-2020>.

¹⁰ Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* 56 (2d ed. 2017).

women use contraceptives than White women.¹¹ Affordability is another driver of disparities: “[c]ost is a known barrier to contraceptive access and use for some women,” particularly with respect to long-acting and the most easily maintainable contraceptive devices.¹² As a result, people of color experience unplanned and unexpected pregnancies at a higher rate.¹³

Prenatal care: People who do not receive proper prenatal care are at higher risk for adverse pregnancy outcomes.¹⁴ Nationwide, Black and Latina women are less likely than White women to receive prenatal care during their first trimester.¹⁵ With less than three-quarters (below the national average) of pregnant women in Florida initiating early prenatal care, many encounter barriers to receiving timely

¹¹ Samantha Artiga et al., *What are the Implications of the Overturning of Roe v. Wade for Racial Disparities?*, KFF (Jul. 15, 2022), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities>.

¹² Madeline Y. Sutton et al., *Racial and Ethnic Disparities in Reproductive Health Services and Outcomes*, 137 J. Obstetrics & Gynecology, No. 2 (Feb. 2021), https://journals.lww.com/greenjournal/Fulltext/2021/02000/Racial_and_Ethnic_Disparities_in_Reproductive.5.aspx.

¹³ Susan A. Cohen, *Abortion and Women of Color: The Bigger Picture*, 11 Guttmacher Pol’y Rev. 2, 3-4 (2008), <https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture>.

¹⁴ Cristina Novoa, *Ensuring Healthy Births Through Prenatal Support*, Ctr. Am. Progress (Jan. 31, 2020), <https://www.americanprogress.org/article/ensuring-healthy-births-prenatal-support/>.

¹⁵ J.A. Martin et al., *Births: Final Data for 2019*, 70 Nat’l Vital Stat. Reps., No. 2, p. 6, 31 (Mar. 23, 2021), <https://www.cdc.gov/nchs/data/nvsr/nvsr70/nvsr70-02-508.pdf>.

initial prenatal care, including lack of insurance.¹⁶ Florida only allows Medicaid coverage to pregnant women with an income less than 196% of the federal poverty level. Structural gaps, including shortages of primary care and OB-GYN providers, particularly in the rural parts of the state, compound these disparities. The March of Dimes estimates that 23.3% of Floridians have inadequate prenatal care, including either too few visits or none before the fifth month of pregnancy.¹⁷

Preterm births: Births before 37 weeks of gestation are the leading cause of death in infants.¹⁸ Nationwide, Black women are twice as likely as White women to have preterm births.¹⁹ Similarly, from 2017-2019, Miami-Dade County recorded a preterm birth rate of 7.2% for White women and 14.1% for Black women.²⁰ Premature babies often spend weeks, if not months, fighting illness and can impose an immediate financial and emotional burden. Preterm births can result in long-term

¹⁶ *Prenatal Care*, March of Dimes, <https://www.marchofdimes.org/peristats/data?reg=99&top=5&stop=21&lev=1&slev=4&obj=18&sreg=12>.

¹⁷ *State Summary for Florida*, March of Dimes (2022), <https://www.marchofdimes.org/peristats/state-summaries/florida?reg=99&stop=60&sreg=12&top=3>.

¹⁸ Jasmine Johnson et al., *Racial Disparities in Prematurity Persist Among Women of High Socioeconomic Status (SES)*, 222 *Am. J. Obstetrics & Gynecology*, No. 1, Supp. (Jan. 1, 2020), [https://www.ajog.org/article/S0002-9378\(19\)31430-9/fulltext](https://www.ajog.org/article/S0002-9378(19)31430-9/fulltext).

¹⁹ Tracy A. Manuck, *Racial and Ethnic Differences in Preterm Birth: A Complex, Multifactorial Problem*, 41 *Seminars in Perinatology*, No. 8 (Sept. 2017), <https://doi.org/10.1053/j.semperi.2017.08.010>.

²⁰ *Preterm by Race/Ethnicity: Miami-Dade County, 2017-2019 Average*, March of Dimes (2021), <https://www.marchofdimes.org/peristats/data?reg=99&top=3&stop=63&lev=1&slev=6&obj=1&sreg=12&creg=12086&ftop=60>.

health impacts, including neurological disorders.²¹ More preterm than term-born children fail grades, and fewer complete a high school education.²²

Infant mortality: Infant mortality remains another significant concern in reproductive health. Nationwide, Black mothers experience twice the infant mortality rate (11.11 infant deaths per 1,000 live births)²³ as the national average (5.8).²⁴ In Florida, the infant mortality rate for Black infants is 2.6 times higher.²⁵ Recent research exploring maternal and infant health disparities identifies structural racism as a primary risk factor for Black mothers and their infants.²⁶

²¹ *What drives racial and ethnic disparities in prenatal care for expectant mothers?*, Scholars Strategy Network, (Feb. 1, 2019) <https://scholars.org/contribution/what-drives-racial-and-ethnic-disparities-prenatal-care-expectant-mothers>.

²² Donald Mattison, et al., *The Role of Environmental Hazards in Premature Birth: Workshop Summary*, Institute of Medicine (2003), <https://www.ncbi.nlm.nih.gov/books/NBK216221/>.

²³ A. Baciu et al., *The State of Health Disparities in the United States*, Communities in Action: Pathways to Health Eq., ch. 2 (2017), <https://www.ncbi.nlm.nih.gov/books/NBK425844/>.

²⁴ Sofia Carratala, et al., *Health Disparities by Race and Ethnicity*, Ctr. Am. Progress (May 7, 2020), <https://www.americanprogress.org/article/health-disparities-race-ethnicity/>.

²⁵ Esther Jean-Baptiste, *Racial Disparities in Infant Mortality Rates for Florida Compared to All Other States Combined 2007 through 2018*, Bureau of Family Health Services Division of Community Health Promotion (Jan. 2020), <https://www.floridahealth.gov/diseases-and-conditions/infant-mortality-and-adverse-birth-outcomes/data/documents/racial-disparities-infant-mortality-rates-2007-2018.pdf>.

²⁶ Maeve Wallace et al., *Separate and unequal: Structural racism and infant mortality in the US*, 45 Health Place, 140 (May 2017), <https://doi.org/10.1016/j.healthplace.2017.03.012>.

Maternal mortality: “Black women are dying at three to four times the rate of white women due to pregnancy-related issues,”²⁷ a disparity that has been directly linked to racism-based delays in care.²⁸ As recently as in 2020, Florida total pregnancy-related mortality ratios (PRMRs) exhibited consistent racial differences: Black women were almost four times as likely to have a pregnancy-related death compared to White women.²⁹ Variability in the risk of death by race may be due to several factors including access to care, quality of care, and prevalence of disease.³⁰

B. Women of Color Seek Abortions Further into Pregnancy

The disparities described above—with respect to every aspect of reproductive health care—also manifest in abortion access. Women of color experience more challenges in seeking and obtaining abortions.³¹ As a result, they more often obtain

²⁷ Jamila Taylor, *Women of Color Will Lose the Most if Roe v. Wade Is Overturned*, Ctr. Am. Progress (Aug. 23, 2018), <https://www.americanprogress.org/article/women-color-will-lose-roe-v-wade-overturned/>.

²⁸ Sutton, *supra*, n.12.

²⁹ *Florida’s Maternal Mortality Review Committee 2020*, Florida Department of Health (2022), <https://www.floridahealth.gov/statistics-and-data/PAMR/FLMMRC-2020-update.pdf>.

³⁰ *Pregnancy Mortality Surveillance System*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm>.

³¹ Jenny A. Higgins et al., *Real-Time Effects of Payer Restrictions on Reproductive Healthcare: A Qualitative Analysis of Cost-Related Barriers and Their Consequences among U.S. Abortion Seekers on Reddit*, 18 Int. J. Environ. Res. Public Health 9013, <https://doi.org/10.3390/ijerph18179013>.

an abortion further into pregnancy or not at all.³² HB 5 only will exaggerate these differences by cutting off access within Florida and forcing women to either secure time and expense to travel out of state for care or to take an unplanned pregnancy to term. Such restrictions will have a perverse effect by causing further delays in care and forcing people to carry riskier pregnancies.

On average, Black women have abortions significantly later than White women.³³ According to one analysis, among Black abortion patients, 13.4% terminated pregnancies at 13 weeks or later, and this was a higher proportion than among women in other racial and ethnic groups.³⁴ People may access abortion later into pregnancy because they discover pregnancies later in gestation, experience financial and logistical barriers to accessing care, are reluctant to seek care, or experience an intervening life event.³⁵ These reasons and the clear racial disparities were presented clearly to the trial court in this case. ROA 22-31; 63-64.

³² Sarah C. M. Roberts et al., *Implications of Georgia's 20-Week Abortion Ban*, 105 *American Journal of Public Health*, No. 8 (August 2015), <https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2015.302728?journalCode=ajph>.

³³ Alexa L. Solazzo, *Different and Not Equal: The Uneven Association of Race, Poverty, and Abortion Laws on Abortion Timing*, 66 *Soc. Probs.*, p. 523 (Aug. 28, 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780732/>.

³⁴ Rachel K. Jones & Lawrence B. Finer, *Who has Second-Trimester Abortions in the United States?*, 85 *Contraception*, No. 6, p. 544 (June 2012), <https://doi.org/10.1016/j.contraception.2011.10.012>.

³⁵ Roberts, *supra*, n.32.

Cost: The most common obstacle women note as delaying their ability to obtain an earlier abortion is the need to raise money to pay for it.³⁶ Because Black and Latina women experience poverty at more than double the rate of their White counterparts, a larger proportion of Black and Latina women experience economic barriers to earlier abortions than do White women.³⁷ The costs associated with an abortion can include not only the procedure but child care, lost wages, and transportation. Even relatively small amounts can be difficult to procure and either prevent women from obtaining a wanted abortion or delay abortions for weeks.³⁸

Distance: Distance, which also plays a key role in the timing of abortions, disproportionately affects women of color. Abortion clinics tend to be located farther away from Black and Latina communities.³⁹ Traveling as few as 25 miles for an abortion is associated with later abortions among Black and Latina women.⁴⁰ In

³⁶ Jessica W. Kiley et al., *Delays in Request for Pregnancy Termination: Comparison of Patients in the First and Second Trimesters*, 81 *Contraception*, No. 5 (May 2010).

³⁷ Solazzo, *supra*, n.33, at 523; Marshall H. Medoff, *Race, Restrictive State Abortion Laws and Abortion Demand*, 41 *Rev. Black Polit. Econ.* (Mar. 25, 2014).

³⁸ Rachel K. Jones et al., *At What Cost? Payment for Abortion Care by US Women*, 23 *Women's Health Issues*, No. 3, p. 173 (May-Jun. 2013), <https://doi.org/10.1016/j.whi.2013.03.001>.

³⁹ Guttmacher Advisory, *Claim That Most Abortion Clinics Are Located in Black or Hispanic Neighborhoods Is False*, Guttmacher Inst. (Jun. 2014), <https://www.guttmacher.org/claim-most-abortion-clinics-are-located-black-or-hispanic-neighborhoods-false>.

⁴⁰ Solazzo, *supra*, n.33, at 533, 535.

Florida, average distances to clinics range significantly, with many being required to travel 100-250 miles per trip to the provider.⁴¹ According to studies, people experience difficulty getting to the clinic setting because of lack of a personal car or public transportation.⁴²

Arrangements: Other logistical factors—such as childcare or time off from work—combine to make abortion access more challenging, even early in pregnancy. The requirement to make arrangements is the most common reason for needing more time to have an abortion, and women of color are more likely to have this problem.⁴³ Many work in jobs that are less likely to provide access to supports, such as paid sick days and flexible scheduling.⁴⁴

* * *

⁴¹ Oriana González et al., *Abortions could require 200-mile trips if Roe is overturned*, Axios (Dec. 1, 2021), <https://www.axios.com/2021/12/01/distance-abortion-roe-supreme-court-texas>.

⁴² Ben S. Gerber et al., *Traveling Towards Disease: Transportation Barriers to Health Care Access*, 38 J Community Health (2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4265215/>.

⁴³ Lawrence B. Finer et al., *Timing of steps and reasons for delays in obtaining abortions in the United States*, 74 Contraception, No. 4, p. 334 (Oct. 2006), <https://doi.org/10.1016/j.contraception.2006.04.010>.

⁴⁴ Katherine Gallagher Robbins et al., *State Abortion Bans Threaten 6.5 Million Latinas*, National Partnership for Women and Families (Nov. 2022), <https://www.nationalpartnership.org/our-work/health/reports/state-abortion-bans-threaten-latinas.html>.

In sum, HB 5 exacerbates underlying racial disparities in reproductive health. In so doing, the law undermines the state's purported interest in maternal health. Florida could advance that interest by making strategic investments to reduce racial disparities. The state could make contraceptives cheaper and more accessible. Or expand the Medicaid threshold for pregnancy eligibility. Or invest in more OB-GYN practitioners. Or guarantee access to sick time for workers. Or expend resources on public health information. Any of these policies would reduce the number of unplanned pregnancies and enhance access to care.

III. HB 5 HAS CAUSED IRREPARABLE HARM

When HB 5 was under consideration, the Legislature knew its likely impacts.⁴⁵ These concerns about the denial of care, health effects, and burdens on families have come to fruition. People of color bear significant burdens from HB 5, and the impact of the denial of abortion care is significant and long-lasting. Without doubt, HB 5 has caused irreparable harm.

A. HB 5 Has Resulted in the Denial of Care

As states enact more restrictions, people need to navigate multiple barriers at once and the hardship increases by orders of magnitude. In Florida, those restrictions

⁴⁵ See, e.g., *Open Letter to State Legislator from 570 Florida Providers*, (Feb. 27, 2022) <https://www.acog.org/-/media/project/acog/acogorg/files/advocacy/letters/2022/florida-clinicians-oppose-sb-146-hb5.pdf?la=en&hash=E951D8BF2A2A32EC3CABA763034DB5E6>.

have compounded recently with HB 5’s passage and the effective activation of a 24-hour waiting period for abortion—the Mandatory Delay Law⁴⁶—which had been subject to an injunction. The mandatory waiting period requires at least two visits to a clinic for abortion care, and the 15-week ban significantly reduces the period during pregnancy abortion is permitted.

Prior research has shown the impact of restrictions on delaying access. According to one analysis, restrictions in Medicaid funding—similar to Florida—results in a two- or three-week delay in accessing care. Mandatory counseling laws produce an increase in abortions after 13 weeks.⁴⁷ These restrictions mean that some people have been denied care in Florida and must access abortion services outside of the state, if they can. This significantly increases the cost associated with abortion, because of the travel itself and the need to take time off work and secure childcare.⁴⁸ For many, any requirement to travel long distances will mean the denial of care.

Many patients lack the necessary information at 15 weeks of pregnancy to make informed health and personal decisions, and the two narrow health exceptions

⁴⁶ See ch. 2015–118 § 1, Laws of Fla. (codified at § 390.0111(3), Fla. Stat.).

⁴⁷ Ted Joyce, et al., *The Impact of Mississippi’s Mandatory Delay Law on the Timing of Abortion*, 32 Persps. on Sexual & Reprod. Health, No. 1 (Jan./Feb. 2001), <https://doi.org/10.2307/2648143>.

⁴⁸ Taylor Johnson, et al., *Abortion Desert in US South Is Hurting Black Women the Most*, Bloomberg (Aug. 2022), <https://www.bloomberg.com/news/articles/2022-08-23/black-women-are-hardest-hit-by-abortion-restrictions-sweeping-the-deep-south#xj4y7vzkg?leadSource=verify%20wall?leadSource=verify%20wall>.

to Florida’s criminal abortion statutes are inadequate on their face and illusory in practice. Some tests that recognize serious problems with a fetus often cannot be confirmed until closer to 20 weeks, and additional health concerns for the pregnant person emerge during the pregnancy.⁴⁹ Yet the exceptions do not cover all circumstances in which health is a concern. Moreover, the exceptions do not work in practice. Fear of prosecution among providers is putting patients at risk of complications. Providers can be charged with a third-degree felony, punishable by up to five years’ imprisonment and \$5,000 in fines for a first offense, and can be subject to professional disciplinary proceedings. §§ 390.0111(10)(a), 775.082(3)(e), 775.083(1)(c), Fla. Stat. As a result, providers are growing hesitant to offer abortions under the statutory exceptions.⁵⁰

B. Denial of Abortion Care Causes Significant Hardship and Burden

Pregnant people who are denied access to abortion face serious health and economic consequences. Those consequences are more pronounced for people of color and for people of lower socioeconomic status—the very population of people

⁴⁹ NPR Public Editor, *Explaining the difference between 15 and 24 weeks*, NPR, (Oct. 7, 2022), <https://www.npr.org/sections/publiceditor/2022/10/07/1127431476/explaining-the-difference-between-15-and-24-weeks>.

⁵⁰ See, e.g., Rachel Rapkin, *Here’s the harrowing story of one of my patients after Florida’s 15-week abortion ban*, Tampa Bay Times (Jan. 21, 2023), <https://www.tampabay.com/opinion/2023/01/21/heres-harrowing-story-one-my-patients-after-floridas-15-week-abortion-ban-column/>.

most likely to be denied abortion because of a 15-week ban. The negative health and economic impacts of abortion denial creates a vicious cycle, intensifying disparities for pregnant people and their families.

1. Denial of Abortion Causes Worse Health Outcomes

There are many significant adverse health consequences stemming from denial of an abortion. The Turnaway Study unequivocally demonstrates that, years after seeking an abortion, those who were denied access had worse health outcomes than those who were able to access abortion care. Many of those adverse health outcomes were physical. Years later, those denied access had higher rates of hypertension, chronic migraines, and joint pain.⁵¹ Additionally, people who are denied access to an abortion experience higher rates of mental health issues, especially in the immediate aftermath. Conversely, there is no correlation between obtaining an abortion and poor physical health or mental health outcomes.⁵²

The adverse health outcomes associated with abortion bans are not limited to pregnant people. Children raised by a mother who was denied an abortion are more likely to grow up in a household without enough money to pay for basic living

⁵¹ L.J. Ralph et al., *Self-reported physical health of women who did and did not terminate pregnancy after seeking abortion services: A cohort study*, 171(4) *Annals of Internal Medicine* (Aug. 2019), 238-247.

⁵² J.R. Steinberg, et al., *Coleman, Coyle, Shuping, and Rue make false statements and draw erroneous conclusions in analyses of abortion and mental health using the National Comorbidity Survey*, *Journal of Psychiatric Research*, 407-08 (2012).

expenses.⁵³ Additionally, the stress of navigating restrictive abortion laws may itself worsen the health of the pregnant woman and in turn the later health of her child.⁵⁴ Relative to the children of women who obtain an abortion, the children of women who are denied abortions have lower child development scores and are more likely to live in poverty.⁵⁵ Like the harms abortion denial imposes on pregnant people of color, these harms disproportionately affect children of color.⁵⁶

2. Denial of Abortion Causes Economic Harm

Pregnant women who are denied access to abortion care are substantially more likely to face economic hardships. Families of those who were denied abortions were four times more likely to be living below the federal poverty line.⁵⁷ These people

⁵³ Diana Greene Foster et al., *Comparison of Health, Development, Maternal Bonding, and Poverty among Children Born after Denial of Abortion vs after Pregnancies Subsequent to an Abortion*, 172 J. Am. Med. Ass'n Pediatrics (2018), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2698454>.

⁵⁴ Anusha Ravi, *Limiting Abortion Access Contributes to Poor Maternal Health Outcomes*, Ctr. Am. Progress (June 13, 2018), <https://www.americanprogress.org/article/limiting-abortion-access-contributes-poor-maternal-health-outcomes/>.

⁵⁵ Diana Greene Foster et al., *Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children*, 205 J. Pediatrics (Feb. 1, 2019), <https://pubmed.ncbi.nlm.nih.gov/30389101/>.

⁵⁶ Maria Trent et al., *The Impact of Racism on Child and Adolescent Health*, 144 Pediatrics, No. 2 (Aug. 2019), <https://publications.aap.org/pediatrics/article/144/2/e20191765/38466/The-Impact-of-Racism-on-Child-and-Adolescent>.

⁵⁷ Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 Am. J. Pub. Health, No. 3, p. 410-13 (2018), <https://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.2017.304247>.

also had 78% more past due debt and 81% more negative public records, such as bankruptcies and evictions.⁵⁸ Pregnancy itself can have a destabilizing effect on one's earning potential. Pregnant workers are routinely denied workplace accommodations—denials that can cost them employment.⁵⁹ Alternatively, pregnancy can significantly hinder a new mother's career. Studies show that in addition to impacting births, abortion access has had a significant positive impact on women's wages and educational attainment, with impacts most strongly felt by Black women.⁶⁰ It is estimated that economic and educational gains will be erased for tens of thousands of Floridians denied access to abortions.⁶¹

* * *

The harm caused by HB 5 is extensive and ongoing. By severely restricting access to abortion in Florida, HB 5 forces people to travel further distances and at

⁵⁸ Sarah Miller et al., *The Economic Consequences of Being Denied an Abortion*, Nat'l Bureau of Econ. Rsch., p. 3 (Jan. 2020), <https://www.nber.org/papers/w26662>.

⁵⁹ Carly McCann, et al., *Pregnancy Discrimination at Work*, Ctr. for Emp. Eq., p. 8-9 (May 26, 2021), <https://www.umass.edu/employmentequity/sites/default/files/Pregnancy%20Discrimination%20at%20Work.pdf>.

⁶⁰ Brief of *Amici Curiae* Economists in Support of Respondents at 11, *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022) (No. 19-1392), https://www.supremecourt.gov/DocketPDF/19/19-1392/193084/20210920175559884_19-1392bsacEconomists.pdf.

⁶¹ Ian Hodgson et al., *How an abortion ban could change the lives of women in Florida*, Tampa Bay Times, (Jun. 24, 2022), <https://www.tampabay.com/news/health/2022/06/02/how-an-abortion-ban-could-change-the-lives-of-women-in-florida/>.

greater expense to obtain the care or forgo it altogether. HB 5 results in people carrying unplanned pregnancies to term, which has long-term health and economic consequences for them and their families.

CONCLUSION

For all these reasons, and for the reasons provided by Petitioners, HB 5 should be enjoined as violating Florida's constitution and the judgment of the District Court of Appeals should be reversed.

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CERTIFICATE OF COMPLIANCE

I certify, under Florida Rule of Appellate Procedure 9.045(e), that this *amici curiae* brief complies with the applicable font and word-count requirements. It was prepared in Times New Roman Style 14-point font, and it contains 4,998 words.

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CERTIFICATE OF SERVICE

I, Matthew A. Goldberger, HEREBY CERTIFY that a true and correct copy of the foregoing was filed Electronically with the court via the Florida E-Filing Portal, which provides notice to all parties.

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