No. 19-1392

IN THE

Supreme Court of the United States

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, ET AL.,

Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,

Respondents.

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

BRIEF OF SCHOLARS OF COURT PROCEDURE AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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BRIEF OF SCHOLARS OF COURT PROCEDURE AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

The undersigned respectfully submit this amici curiae brief in support of Respondents.[1]

INTERESTS OF AMICI CURIAE

Amici are law professors who research, write, and teach about court procedure, federal courts, judicial decision making, and civil procedure. This brief takes no position on the merits of this case, but addresses a procedural problem. As explained below, Mississippi's primary argument on the merits is that abortion is not a fundamental right, and *Roe* and *Casey* should be overruled. But Mississippi did not make that argument in its petition for certiorari.

This Court generally refuses to decide issues not presented in the petition for certiorari. While this is a prudential rule, not jurisdictional, it is a wise policy that promotes the efficiency and integrity of the Court's certiorari jurisdiction. The following undersigned amici[2] thus suggest the Court dismiss the petition as improvidently granted:

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[1] No counsel for any party authored this brief in whole or in part; no party or party's counsel made a monetary contribution intended to fund the preparation or submission of this brief; and no person or entity, other than the amici curiae or their counsel, made a monetary contribution to the preparation or submission of this brief. All parties have filed blanket consent letters with this Court.

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INTRODUCTION AND SUMMARY OF ARGUMENT

Scholars on both sides of this case have addressed whether the Fourteenth Amendment forbids restrictions on abortion and whether the stare decisis analysis justifies overturning *Roe* and *Casey*. This brief does not address the merits of those issues; indeed, the co-signers of this brief do not necessarily agree on how to resolve them. But amici are united in their conclusion that those issues were not properly presented in this case.

Stare decisis is not an inexorable command, and sometimes the Court should decide whether to overrule its own prior cases. But the decision to reconsider precedent is a significant one. It can have substantial consequences for both the country and the Court as an institution, so this Court has never undertaken the task lightly.

Given these stakes, the Court should not consider overturning nearly half a century of precedent when that issue was not properly raised in the petition for certiorari. Mississippi's petition argued that the Court need only "reconcile" existing law to "resolve the confusion" over the appropriate analysis for previability abortion restrictions. Pet. 5. Mississippi went out of its way to flag that it was *not* asking the Court to overrule *Roe* and *Casey*. *Id*.

Mississippi included an oblique footnote mentioning that, if the Court could not reconcile *Roe* and *Casey* with current facts or law about viability, it "should not retain erroneous precedent." Pet. 5-6 n.1. But it never argued that the Court should grant certiorari

for that purpose, and it did not include that issue as a question presented for review.

Nor did Mississippi ever suggest that the Court should reconsider *Roe*'s holding that abortion qualified as a fundamental right; the one-sentence footnote at most asked the Court to reconsider "dicta" from *Roe* about the importance of viability, but even that was not properly developed. *See* Pet. 16. Mississippi's reply brief doubled down on the claim that the Court would only need to apply existing precedent to resolve the case, suggesting the state law was "not a flat prohibition" on abortion but rather a regulation permissible under existing cases. Reply Br. 2, 4, 9. Neither the petition nor reply ever referenced stare decisis or discussed the criteria this Court uses to decide whether to overrule existing precedent.

But Mississippi changed course in its merits brief. At the petition stage the state had assumed the validity of *Casey*'s undue burden standard and focused on whether it applied here; the merits brief explicitly asked this Court to reject *Casey*. *Compare, e.g.*, Pet. Reply 9 ("*Casey*'s 'undue burden' standard should apply to all abortion regulations.") *with* Br. 1-2 ("*Roe* and *Casey* are egregiously wrong. . . . [T]he undue-burden standard . . . [is] 'a completely unworkable method of accommodating' the state interests 'in the abortion context.' ").

In prior cases this Court has dismissed petitions as improvidently granted when petitioners " 'chose to rely on a different argument' in their merits briefing" than they presented at certiorari. *Visa v. Osborn*, 137 S. Ct. 289, 289-90 (2016) (quoting *City and Cnty. of San Francisco, Cal. v. Sheehan*, 575 U.S. 600, 608

(2015)). Rightly so, for allowing parties who argue for the application of precedent at the certiorari stage to advocate the overruling of that precedent at the merits stage would damage this Court's institutional interests. The Court should dismiss this case as improvidently granted.

ARGUMENT

In its petition for certiorari, Mississippi argued that some pre-viability prohibitions on elective abortions were allowed under the undue burden test of *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833 (1992), and the courts below simply misapplied existing precedent in striking down the state's Gestational Age Act, Miss. Code Ann. § 41-41-191(4). *See infra* Section II. After considering Mississippi's petition this Court granted review of a single question: "Whether all pre-viability prohibitions on elective abortions are unconstitutional." Pet. i.

Now that the petition has been granted, Mississippi asks this Court to overrule both *Casey* and *Roe v. Wade*, 410 U.S. 113 (1973), and hold that there is no fundamental right to abortion. Because Mississippi did not give the Court or respondents fair notice of this request to overrule precedent, this Court should dismiss the case as improvidently granted.

I. This Court does not generally allow a party to challenge precedent for the first time in merits briefing.

This Court will generally only decide the questions presented by the petition or subsidiary questions that

are fairly included. S. Ct. R. 14.1.[3] Whether to overrule a precedent is not a "subsidiary question" to how that precedent should be applied to the facts of a specific case; it is a broader question. Even if overruling precedent might present an alternative path to resolution of the case, "[a] question which is merely 'complementary' or 'related' to the question presented in the petition for certiorari is not ' "fairly included therein." ' " *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 31-32 (1993) (quoting *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 537 (1992)).

Put differently, whether the rules of the game should be changed is not a subsidiary question to whether a party wins while playing by the rules. *See, e.g.*, *Timbs v. Indiana*, 139 S. Ct. 682, 690 (2019) (refusing to consider whether to overrule prior precedent because that question had not been explicitly presented in the petition for certiorari).

While Rule 14.1 is "prudential in nature," the Court disregards it " 'only in the most exceptional cases.' " *Yee*, 503 U.S. at 535. And for good reason.

1. Requiring questions to be presented in the petition promotes the efficiency and integrity of the Court's certiorari jurisdiction. "To use our resources

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[3] Supreme Court Rule 14.1 states: "A petition for a writ of certiorari shall contain, in the order indicated: (a) The questions presented for review, expressed concisely in relation to the circumstances of the case, without unnecessary detail. . . . The statement of any question presented is deemed to comprise every subsidiary question fairly included therein. Only the questions set out in the petition, or fairly included therein, will be considered by the Court." *See also* S. Ct. R. 24.1.

most efficiently, we must grant certiorari only in those cases that will enable us to resolve particularly important questions. . . . Rule 14.1(a) forces the parties to focus on the questions the Court has viewed as particularly important, thus enabling us to make efficient use of our resources." *Yee*, 503 U.S. at 536.

Allowing a party to raise a significant new issue for the first time in merits briefing deprives the Court of the "full, adversarial briefing" necessary to select cert-worthy cases. *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 988 (2017) (Thomas, J., dissenting). Contrary practice would effectively delegate to parties, rather than the Court, the job of selecting the issues for review. It should be this Court alone that "decides which questions to consider through well-established procedures; allowing the able counsel who argue before [this Court] to alter these questions or to devise additional questions at the last minute would thwart this system." *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992).

Similarly, allowing petitioners to raise a new issue at the merits stage interferes with the adversarial process and is unfair to respondents. *See Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 165 (2007). Rule 14.1(a) "provides the respondent with notice of the grounds upon which the petitioner is seeking certiorari, and enables the respondent to sharpen the arguments as to why certiorari should not be granted." *Yee*, 503 U.S. at 535-36; *McWilliams v. Dunn*, 137 S. Ct. 1790, 1807 (2017) (Alito, J., dissenting) ("These Rules exist for good reasons. Among other things, they give the parties notice of the question to be decided and ensure that we receive adversarial briefing

which in turns helps the Court reach sound decisions.") (citation omitted). Here, had respondents known the petition presented a direct attack on *Roe* and *Casey*, they could have devoted their Brief in Opposition to arguing why the Court should not grant review of *that* question and why this case would not be a good vehicle to resolve it.

Finally, allowing petitioners to raise broad constitutional issues that they explicitly disclaimed in their petitions could encourage future litigants to engage in sandbagging gamesmanship. *Cf. Czyzewski*, 137 S. Ct. at 988 (Thomas, J., dissenting) ("[D]eciding [a petitioner's reformulated] question may invite future petitioners to seek review of a circuit conflict only then to change the question to one that seems more favorable.").

2. When the case involves a request that the Court overrule precedent there is even more reason to require parties to raise that request in the petition for certiorari. The Court's rules requiring issues to be raised in the petition "help to maintain the integrity of the process of certiorari" and respect for the Court itself. *Taylor*, 503 U.S. at 645-46.

Overruling a long-standing precedent is not something that this Court undertakes lightly, for the doctrine of stare decisis "contributes to the actual and perceived integrity of the judicial process" and " 'permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.' " *Ramos v. Louisiana*, 140 S.

Ct. 1390, 1411 (2020) (Kavanaugh, J., concurring).[4] That is particularly true when the case deals with one of the most societally divisive issues of our time.

The Court customarily does not consider whether to overrule its own precedent in more than a few cases each Term. If parties could challenge prior precedent in any case where the petition had sought clarification of how that precedent should be applied, the number of cases raising stare decisis issues could increase. Perhaps not dramatically, perhaps only one or two or three more cases a year would require the Court to reconsider its prior rulings, but even that small shift could cause incremental harm to the public's perception of the stability and impartiality of the law.

3. For all of these reasons, when a petitioner wants the Court to reconsider old precedents the proper approach is to include that request as a question presented in the petition for certiorari. Litigants understand this procedure, and they routinely phrase

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[4] As Justice Kavanaugh explained, "[t]he Framers of our Constitution understood that the doctrine of stare decisis is part of the 'judicial Power' and rooted in Article III of the Constitution. Writing in Federalist 78, Alexander Hamilton emphasized the importance of stare decisis: To 'avoid an arbitrary discretion in the courts, it is indispensable' that federal judges 'should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them.' The Federalist No. 78, p. 529 (J. Cooke ed. 1961). In the words of THE CHIEF JUSTICE, stare decisis' 'greatest purpose is to serve a constitutional ideal—the rule of law.' " *Ramos*, 140 S. Ct. at 1411 (Kavanaugh, J., concurring) (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 378 (2010) (Roberts, C.J., concurring)).

their questions presented to include an explicit request to overrule precedent.

In *Franchise Tax Bd. of Cal. v. Hyatt*, for instance, the petition raised three questions; the third was "[w]hether *Nevada v. Hall*, 440 U.S. 410 (1979), which permits a sovereign State to be haled into the courts of another State without its consent, should be overruled." Pet. for Cert. at i, *Franchise Tax Bd. of Cal. v. Hyatt*, 578 U.S. 171 (2016) (No. 14-1175). The petition spent ten full pages analyzing the stare decisis factors and explaining why the Court should consider overruling *Hall*. *Id*. 26-35. This Court granted review on that and one other question, but was evenly divided on whether to overrule *Hall*. *Franchise Tax Bd. of Cal. v. Hyatt*, 578 U.S. 171, 136 S. Ct. 1277, 1279 (2016). A few years later this Court granted review again; this time the petition had raised only whether to overrule *Hall* (Pet. for Cert. at i, *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485 (2019) (No. 17-1299)) and the Court did indeed overrule it, *Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1490 (2019).

Similarly, in *Gamble v. United States*, 139 S. Ct. 1960 (2019), the sole question presented was "[w]hether the Court should overrule the 'separate sovereigns' exception to the Double Jeopardy Clause." Pet. for Cert. at i, *Gamble v. United States*, 139 S. Ct. 1960 (2019) (No. 17-646). This Court granted review, and after analysis of the stare decisis factors decided not to overrule the prior precedent. *Gamble*, 139 S. Ct. at 1964.

In each of these and many other cases, this Court could decide for itself whether the time was ripe to reconsider precedent based on an explicit request in

the petition. *See also, e.g.*, Pet. for Cert. at i, *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019) (No. 18-15) ("Whether the Court should overrule *Auer* and *Seminole Rock*"); Pet. for Cert. at i, *Fulton v. City of Philadelphia, Pa.*, 141 S. Ct. 1868 (2021) (No. 19-123) ("Whether *Employment Division v. Smith* should be revisited?"); Pet. for Cert. at i, *Knick v. Township of Scott, Pa.*, 139 S. Ct. 2162 (2019) (No. 17-647) ("Whether the Court should reconsider the portion of *Williamson County* . . . requiring property owners to exhaust state court remedies to ripen federal takings claims, as suggested by Justices of this Court?"); Pet. for Cert. at i, *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018) (No. 17-494) ("Should this Court abrogate *Quill*'s sales-tax-only, physical-presence requirement?").

II. Mississippi did not ask this Court to overturn *Roe* and *Casey* in its petition for certiorari.

Unlike other litigants who have sought to have this Court reconsider its own precedent, Mississippi did not ask for that relief in its petition. It did not tell this Court it would be seeking to overturn 48 years of precedent and declare abortion subject to only rational basis review. Instead, consistent with its litigation strategy in the lower courts, it simply asked the Court to clarify and reconcile existing precedent.

A. Mississippi's petition for certiorari asked this Court to uphold the state law under current precedent.

Mississippi did not ask this Court to overrule *Roe* and *Casey* in its petition for certiorari—indeed, it expressly disclaimed that request.

1. Mississippi presented three questions in its petition, but none mentioned the need to reconsider any precedent. Pet. i. This Court granted review of the first question, whether "all pre-viability prohibitions on elective abortions are unconstitutional." Pet. i; JA 60. Mississippi's framing of that question asked the Court merely to "clarify" that viability was not a bright line and to make clear, *under existing precedent*, that courts could and should consider a state's interests in regulating pre-viability abortions. Pet. iii, 15-27.

In line with that understanding, the petition focused on what it perceived as a latent tension between *Casey* and *Whole Women's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). In Mississippi's view, while *Casey* required only that a state law not erect " 'a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability,' " *Hellerstedt*'s analysis was "akin to strict scrutiny." Pet. 5.

Mississippi argued that this case thus presented "an opportunity to reconcile" existing law and "resolve the confusion" over the appropriate analysis for previability abortion restrictions. *Id*. The basic ask was a modest one: "the Court could simply clarify that the viability line is not categorical, and reverse and remand with instructions for the district court to accept

evidence and testimony regarding the important state interests Mississippi advances." Pet. 34.

Mississippi also went out of its way to flag that it was *not* asking the Court to overrule *Roe* and *Casey*. "To be clear, the questions presented in this petition do not require the Court to overturn *Roe* or *Casey*. They merely ask[] the Court to reconcile a conflict in its own precedents." Pet. 5. Although Mississippi tempered that statement with an oblique footnote acknowledging that, if the Court could not reconcile *Roe* and *Casey* with current facts or law about viability, it "should not retain erroneous precedent," it never argued that the Court should grant review for that purpose. Pet. 5-6 n.1.

2. Nor did Mississippi suggest, even in a footnote, that consideration of the viability line would somehow require the Court to reconsider *Roe*'s holding. The footnote addressed only the potential problems reconciling precedents on what burdens may be imposed before viability, *id.*; *see id*. at 16, not whether the constitution protected this issue in the first place. And of course Rule 14.1 does not allow a party to treat every sentence and every footnote of its petition as a "question[] presented for review"; the questions properly presented must be "expressed concisely" and listed on the first page of the petition.

3. In its reply in support of certiorari Mississippi doubled down on its claim that the Court need only apply *Casey*. Pet. Reply 7-8. The reply stressed that main question for the Court reduced to a choice between narrow alternatives: "The petition squarely presents a question regarding what test lower courts should apply to abortion regulations, *Casey*'s 'undue

burden' standard, or *Hellerstedt*'s balancing of benefits and burdens." *Id*. at 3. Mississippi thus asked this Court "to grant certiorari to clarify that *Casey*'s 'undue burden' standard applies to all abortion regulations, pre- and post-viability." *Id*. at 8; *see also id*. at 9 ("*Casey*'s 'undue burden' standard should apply to all abortion regulations."); *id*. at 11-12 ("The [district] court refused to grapple with *Casey*'s question: does the law unduly interfere with a right to an abortion because it is a substantial obstacle?").

Mississippi focused on what it saw as an emerging circuit split in between those two alternatives, highlighting that split as the critical reason for granting review. *See id*. at 7 ("Absent this Court's immediate intervention, there will be many dozens of cases splitting along the same lines. Only half of them will be correct."); *see also id*. at 1. The reply did not mention overruling *Roe* or *Casey* and, like the petition, never so much as mentioned stare decisis.

B. The framing of issues in the petition reflected Mississippi's litigation strategy in the courts below.

Mississippi's strategy in its petition for certiorari was the same strategy it had pursued in the courts below—the state argued in the district court and Fifth Circuit that *current* precedent supported the constitutionality of its regulation of abortions.

1. At the district court, Mississippi argued that its "legitimate state interests render H.B. 1510 constitutional under existing Supreme Court precedent." Opp. MSJ (Dkt. No. 85) at 2. It argued that the state's interests in preventing certain practices, as well as its

interests in protecting the life and health of the unborn and women, may be treated as "compelling" even before the moment of viability. *Id*. at 7, 11-12, 16. That issue, Mississippi argued, was "an unanswered question under *existing* Supreme Court precedent." *Id.* at 6 (emphasis added).

Relying mainly on this Court's decisions in *Casey* and *Gonzales v. Carhart*, 550 U.S. 124 (2007), Mississippi argued the law here was a regulation, not a complete ban. With that understanding, the state argued that its interests could justify the law's regulation of the timing of pre-viability abortions. MSJ Opp. 6-15. The district court ultimately granted summary judgment and, applying this Court's precedents, permanently enjoined the Mississippi law. Pet. App. 40a-55a.

2. On appeal to the Fifth Circuit, Mississippi continued to argue that its law was constitutional under existing precedent. It asserted that "the Supreme Court's decision in *Gonzales v. Carhart* preserves the possibility that a 'state's interest in protecting unborn life can justify a pre-viability restriction on abortion"; that "the Act imposes no undue burden, as it only shrinks by one week the window in which women can elect to have abortions;" and that "the district court failed to defer to the legislature's findings." Pet. App. 6a.

As the Fifth Circuit recognized, those arguments collapsed into a claim that "the summary-judgment order [did not] properly appl[y] the Supreme Court's abortion jurisprudence." *Id*. The "State's primary constitutional argument on appeal [was] that the dis-

trict court should have accounted for the State's interests and then determined whether the Act imposes an undue burden," *Id.* at 9a—the same primary constitutional argument Mississippi later pressed in its petition for certiorari.

The Fifth Circuit applied this Court's precedents, as Mississippi had asked it to do, but rejected Mississippi's interpretation of those precedents and affirmed. Pet. App. 17a-19a.

In sum, Mississippi chose to frame the issues in its petition for certiorari as merely requiring application of existing precedent, so respondents had no opportunity to explain why the Court should not grant review of the issues petitioners now raise. But then Mississippi chose to focus its merits brief on whether to overrule nearly half a century of precedent, trying to force the Court into considering a question that Mississippi had not presented in its petition.

III. The Court should dismiss the case as improvidently granted.

Mississippi now seeks to have this Court resolve broad constitutional questions about which society is deeply divided. While the petition obtained review by arguing that this case merely requires an application of this Court's precedent and there was no need for the Court to consider overruling *Roe* and *Casey*, the State has now shifted to "bluntly announcing in their principal brief," *Sheehan*, 575 U.S. at 618 (Scalia, J., concurring), that the Court "should overrule *Roe* and *Casey*," Br. 14.

That warrants dismissal of the case, because petitioners " 'chose to rely on a different argument' in their merits briefing" than they presented earlier. *Osborn*, 137 S. Ct. at 289-90 (quoting *Sheehan*, 575 U.S. at 608).

In *Osborn*, the petitioners sought review of whether "allegations that members of a business association agreed to adhere to the association's rules and possess governance rights in the association" were enough to plead an antitrust conspiracy, asserting that the circuits were split on the issue. Pet. for Cert. at i, *Visa v. Osborn*, 137 S. Ct. 289 (2016) (No. 15-961). But at the merits stage the petitioners no longer urged a circuit split and argued instead that the complaint at issue did not "plausibly suggest concerted action." Merits Br. at 22, 29, *Osborn*, 137 S. Ct. 289 (No. 15-961). The day after petitioners filed their reply brief, this Court dismissed the case as improvidently granted. Dkt., *Osborn*, 137 S. Ct. 289 (No. 15-961).

Similarly, in *Sheehan*, San Francisco sought review of whether Title II of the Americans with Disabilities Act requires law enforcement officers to " 'provide accommodations' " during arrest of an " 'armed, violent, and mentally ill suspect,' " and argued that Title II should not apply. 575 U.S. at 608. It disclaimed the need for " 'a fact-intensive "reasonable accommodation" inquiry.' " *Id.* But on the merits, San Francisco advanced a statutory interpretation that was "predicated on the proposition that the ADA governs the manner in which a qualified individual with a disability is arrested" and that *would* entail the fact-intensive inquiry San Francisco disclaimed at certiorari. *Id.* at 609. As a result of San Francisco's change

in position, the Court dismissed the question as improvidently granted. *Id.* at 610.

In this case, Mississippi could have explicitly raised the question of whether *Roe* and *Casey* should be reexamined in its petition. But it did not. Had it raised the issue at the proper time and the Court denied review of whether to reconsider precedent, the state would be barred from raising that broader issue on the merits, even if the Court had granted review of other questions. The state should not be in a better position now than another similarly placed litigant who did properly raise all issues in its petition.[5]

As explained in Section I of this brief, this Court should not reach an issue of stare decisis when that question is not properly presented in the petition for certiorari. *Taylor*, 503 U.S. at 646; *Timbs*, 139 S. Ct.

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[5] While Mississippi argues, as a fallback position, that the Court can uphold its statute even without overruling *Casey* and *Roe*, the Court should not reach that issue either. First, that argument seems almost an afterthought in the state's brief after nearly 30 pages devoted to Mississippi's new rational-basis review argument.

More broadly, the fact that a party continued to press portions of the original question presented has not previously stopped the Court from dismissing the entire case as improvidently granted. In *Osborn*, for instance, the merits brief discussed at length the rules and agreements that bound the members of the business association, and argued that those were not sufficient to state a claim for antitrust conspiracy. Merits Br. at 29-36, *Osborn*, 137 S. Ct. 289 (No. 15-961). Those rules and agreements had been the focus of the question presented by the petition, Pet. for Cert. at i, *Osborn* , 137 S. Ct. 289 (No. 15-961), but the Court still dismissed the entire case because petitioners had framed the merits brief to focus on a broader argument. *Osborn*, 137 S. Ct. at 289.

at 690; *McWilliams*, 137 S. Ct. at 1807 (Alito, J., dissenting) ("[W]e have not hesitated to enforce these Rules when petitioners who 'persuaded us to grant certiorari' on one question instead 'chose to rely on a different argument in their merits briefing.' ") (quoting *Osborn*, 137 S. Ct. at 289).

If Mississippi wants the Court to consider overruling *Roe* and *Casey*, it can file a petition asking for that. This Court has a well-established process under Rule 14.1 for making that decision, a process that allows the Court to weigh the costs and benefits of accepting review before granting the petition. Deciding when to decide is one of this Court's most important responsibilities, and it is a task that should be left to the Justices on this Court alone. Parties should not be allowed to raise new issues—particularly divisive issues that require this Court to reexamine its own precedent—after review has already been granted.

CONCLUSION

For the reasons stated above, amici respectfully ask this Court to dismiss the petition as improvidently granted.

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