

No. 18-1323

IN THE
Supreme Court of the United States

JUNE MEDICAL SERVICES L.L.C., on behalf of its
patients, physicians, and staff, d/b/a HOPE MEDICAL
GROUP FOR WOMEN; JOHN DOE 1; JOHN DOE 2,
Petitioners,

v.

DR. REBEKAH GEE, in her official capacity as Secretary
of the Louisiana Department of Health and Hospitals,
Respondent.

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

**BRIEF OF *AMICI CURIAE* IBIS
REPRODUCTIVE HEALTH AND OTHER
ORGANIZATIONS IN SUPPORT OF
PETITIONERS**

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for the Fifth Circuit**

**BRIEF OF *AMICI CURIAE* IBIS
REPRODUCTIVE HEALTH AND OTHER
ORGANIZATIONS IN SUPPORT OF
PETITIONERS**

STATEMENT OF INTEREST

Amici are organizations committed to improving
the health and well-being of women and children
nationally and in the state of Louisiana.¹ As set

¹ No party or counsel for a party authored this brief in whole or
in part. No party, counsel for party, or person other than *amici*
curiae or counsel made any monetary contribution intended to
fund the preparation or submission of this brief. All parties
have filed a notice of blanket consent with the Clerk.

forth in this brief, the questions presented by this case are highly relevant to achieving those goals. *Amici* encourage the Court to assess Louisiana's claim that it enacted Act 620 to advance the health of women and their families in the context of Louisiana's sustained failure to improve the health and welfare of women and children in the State.

Amicus curiae Ibis Reproductive Health (Ibis) is a global research organization working with partners around the world to design and conduct rigorous research to advance policy and service-delivery solutions that transform people's reproductive lives. Ibis staff are deeply knowledgeable about abortion, contraception, and comprehensive sexual and reproductive health care and Ibis researchers are trained in conducting rigorous social science and clinical research.

Amicus curiae Lift Louisiana is an advocacy organization that works to improve health outcomes for women and children in Louisiana. The organization advocates for policy changes that enable all citizens to have the resources, information, rights, and ability to make their own decisions about, and have access to, reproductive health care. Lift Louisiana supports pregnant and parenting Louisianans by hosting workshops, trainings, and events focused on promoting affordable and accessible health care and reproductive rights.

Amicus curiae The New Orleans Abortion Fund was founded by community leaders in 2012 in response to a spate of restrictions on Louisiana women's access to abortion care. The group affirms a person's right to control their body and works to ensure that all people have access to quality medical

care, regardless of their economic situation. The New Orleans Abortion Fund partners with local medical providers and provides social and financial support to Louisiana women seeking abortion care. The organization also runs a clinic escort program at New Orleans' only remaining abortion provider, mobilizing volunteers to defend access every day the clinic sees patients.

Amicus curiae The Institute for Women's Policy Research (IWPR) is a leading economic and public policy organization founded in 1987 that focuses on analyzing issues that affect women and their families. IWPR conducts and publishes research that highlights economic and social policy issues relevant to women and families. IWPR has released reports on each state and Washington, D.C., including a report on Louisiana. IWPR has also released national reports with data on the status of women in the states. These reports include a focus on general health care as well as reproductive health and rights.

Amicus curiae The Center for Inquiry (CFI) is a nonprofit educational organization dedicated to promoting and defending reason, science, and freedom of inquiry. Through education, research, publishing, social services, and other activities, including litigation, CFI encourages evidence-based inquiry into science, pseudoscience, medicine, health, religion, and ethics. CFI advocates for public policy rooted in science, evidence, and objective truth, and works to protect the freedom of inquiry that is vital to a free society.

Individually and collectively, *amici's* missions are to advance women's health and well-being. Louisiana fares poorly on the key metrics that measure

women's overall well-being and health care access. It has enacted abortion restrictions year in and year out while declining to enact laws aimed at other aspects of women's well-being and health care access. Unless this Court reverses the Fifth Circuit decision below, *amici* are concerned that state legislatures will believe that this Court's precedents permit them to impose any restriction on abortion that the state couches as motivated by improving women's health, regardless of what the facts show.

INTRODUCTION AND SUMMARY OF ARGUMENT

By nearly every measure, women and their families in Louisiana face poor health outcomes. Louisiana ranks last in the nation on several key metrics of health outcomes for women. Louisiana faces a particularly pressing maternal mortality crisis: Women in Louisiana are more likely to die during or shortly after childbirth than women in 48 other States and 81 other countries, including Armenia, Cuba, and Syria. The premature birth rate in Louisiana, an accepted indicator of poor maternal and children's health, is one of the highest in the country.

These poor health outcomes reflect, in part, policy choices that the Louisiana legislature has made. The Louisiana legislature has repeatedly rejected, or declined to take up, legislation that evidence shows would improve health outcomes. For example, despite facing an HIV rate more than double the national average, Louisiana has rejected HIV education, a proven method to reduce these rates. The legislature has similarly rejected, or failed to act on measures, shown to improve women's health, like paid family and medical leave or banning smoking in

enclosed public places, even as it put in place a three-month waiting period before a child may be enrolled in LaCHIP, the State’s health care program for its most vulnerable kids. And the Louisiana legislature has consistently advanced policies aimed at restricting access to abortion; despite no evidence these policies improve health outcomes for women and their families.

Women and children in Louisiana suffer markedly worse health and access to health care than women and children throughout the nation. As the Court carefully evaluates Louisiana’s stated purpose for passing Act 620—improving the health of women and their families—it should consider the poor health and well-being outcomes of women and children in Louisiana, as well as Louisiana’s failure to undertake basic health reforms that would improve those outcomes.

ARGUMENT

I. LOUISIANA WOMEN AND THEIR FAMILIES FACE POOR HEALTH OUTCOMES.

Women in Louisiana experience some of the worst health outcomes in the nation. Year after year, Louisiana fares poorly on critical measures of women’s and children’s health. This year, the United Health Foundation ranked Louisiana last among the 50 states in health outcomes for women.² As Respondent acknowledged last year, the state “re-

² United Health Found., *Health of Women and Children Report*, Am.’s Health Rankings 84 (Sept. 2019), <https://bit.ly/2DkKxF0>.

main[s] 50th or 49th in many of the most important indicators on health.”³

Here are just a few examples of the bleak future Louisiana women face. One in four Louisiana women report being in poor or fair health.⁴ Nearly one in five report not receiving health care at any point in the past year due to cost.⁵ The statistics are particularly stark for women of color. More than one in four Black women in Louisiana report that they experience poor or fair health, the second-highest rate in the country.⁶ And more than one in three Hispanic women in Louisiana reported in 2017 that they did not see a doctor in the last year at all due to cost, the highest rate in the country.⁷

Unsurprisingly, this lack of access to care has led to a high incidence of disease, fewer preventive

³ Rebekah Gee, La. Dep’t of Health, *Address at the American College of Obstetricians and Gynecologists Congressional Leadership Conference, State the Facts: Health Care in State Government*, (Mar. 12, 2018), <https://bit.ly/34nA9YW>.

⁴ Kaiser Family Found., *Percent of Adults Reporting Fair or Poor Health Status, by Gender*, <https://bit.ly/33myDoH> (last visited Nov. 26, 2019).

⁵ Nat’l Women’s Law Ctr., *NWLC: Louisiana*, <https://bit.ly/2KSB2AL> (last visited Nov. 26, 2019).

⁶ Kaiser Family Found., *Percent of Adult Women Reporting Fair or Poor Health Status, by Race/Ethnicity*, <https://bit.ly/2QSQYXz> (last visited Nov. 26, 2019).

⁷ Kaiser Family Found., *Percent of Adult Women Who Did Not See a Doctor in the Past 12 Months Due to Cost, by Race/Ethnicity*, <https://bit.ly/2qB4AMF> (last visited Nov. 26, 2019).

services, and delays in appropriate care.⁸ More women die from breast cancer in Louisiana than almost anywhere else in the nation. In 2017, Louisiana reported the third-highest breast cancer mortality rate in the country (trailing only Mississippi and the District of Columbia).⁹ Louisiana women face a risk of death from heart disease that surpasses that of all but four other states.¹⁰ And the diabetes diagnosis rate among Louisiana women is 36 percent higher than the national average.¹¹

For women in Louisiana, these poor health outcomes extend to reproductive health. Women in Louisiana contract sexually transmitted infections like chlamydia at rates above the national average.¹² The HIV rate among Louisiana women, 12.4 per 100,000 women, dwarfs the national average of 5.2.¹³ The diagnosis rate for cervical cancer in Louisiana is

⁸ U.S. Dep't of Health & Human Servs., Office of Disease Prevention & Health Promotion, *Access to Health Services*, <https://bit.ly/33h147i> (last visited Nov. 26, 2019).

⁹ Kaiser Family Found., *Breast Cancer Deaths per 100,000 Women*, <https://bit.ly/2pOg3rA> (last visited Nov. 26, 2019).

¹⁰ Kaiser Family Found., *Number of Heart Disease Deaths per 100,000 Population by Gender*, <https://bit.ly/2Dh9Wiy> (last visited Nov. 26, 2019).

¹¹ Kaiser Family Found., *Percent of Adult Women Who Have Ever Been Told by a Doctor That They Have Diabetes*, <https://bit.ly/37EMQ3o> (last visited Nov. 26, 2019).

¹² Ctrs. for Disease Control & Prevention, *Louisiana-State Health Profile*, <https://bit.ly/2KWvGVd> (last visited Nov. 26, 2019).

¹³ Kaiser Family Found., *HIV Diagnoses, Adults and Adolescents, by Sex*, <https://bit.ly/2QRRCoo> (last visited Nov. 26, 2019).

almost 30% higher than the national average.¹⁴ A woman in Louisiana is more likely to be diagnosed with cervical cancer than a woman in 48 other states; only Arkansas reports a higher cervical cancer incidence rate.¹⁵ Cervical cancer can jeopardize a woman's ability to conceive, as survivors who receive advanced-stage treatment may become infertile.¹⁶

The health care needs of pregnant women in Louisiana are not exempt from this pattern. Prenatal care is critical in ensuring positive health outcomes for pregnant women.¹⁷ Standard prenatal care includes: identifying fetal problems, providing preventive care, and monitoring indicators of premature birth, which leads to healthier pregnancies and improved outcomes for mothers and children alike.¹⁸ But the proportion of pregnant women who do not

¹⁴ Kaiser Family Found., *Cervical Cancer Incidence Rate per 100,000 Women*, <https://bit.ly/2OYQ8Gv> (last visited Nov. 26, 2019).

¹⁵ *Id.*

¹⁶ See generally Karla Willows et al., *Fertility-Sparing Management in Cervical Cancer: Balancing Oncologic Outcomes with Reproductive Success*, *Gynecologic Oncology Res. & Practice* (2016).

¹⁷ See U.S. Dep't of Health & Human Servs., Office of Women's Health, *Prenatal Care* (Apr. 1, 2019), <https://bit.ly/37Hga9p>.

¹⁸ See U.S. Dep't of Health & Human Servs., Nat'l Insts. of Health, *What is Prenatal Care and Why is it Important?*, (Jan. 31, 2017), <https://bit.ly/2QQ3dEi>.

receive any sort of prenatal care is higher in Louisiana than in 44 other states.¹⁹

Women and their children also face significant challenges during and following birth. Women are more likely to face complications in childbirth: The likelihood that a woman in Louisiana will die from complications resulting from childbirth—44.8 per 100,000 women—is more than double the national average.²⁰ Louisiana’s maternal mortality rate exceeds 48 other states and surpasses that of 81 non-U.S. countries, including Armenia, Cuba, and Syria.²¹ And Louisiana’s rate of unintended pregnancies is higher than any other state in the country.²² These unplanned pregnancies compound risk factors for women and infants, including low birth weight, postpartum depression, and delays in receiving prenatal care.²³

These poor health outcomes affect newborns’ health. Low birthweight babies are at higher risk of

¹⁹ U.S. Dep’t of Health & Human Servs., *Timing and Adequacy of Prenatal Care in the United States, 2016*, 67 Nat’l Vital Statistics Reports 1, 10 (2018).

²⁰ Emily Woodruff, *Louisiana’s Rate of Dying Mothers Should ‘Shock Us All,’ Official Says; Industry Seeks Answers*, The New Orleans Advocate (Aug. 21, 2019), <https://bit.ly/33i1HgN>.

²¹ See Casey Leins, *States with the Highest Maternal Mortality Rates*, U.S. News (June 12, 2019), <https://bit.ly/2KYZn8m>; World Bank, *Maternal Mortality Ratio (Modeled Estimate, Per 100,000 Live Births)*, (2019), <https://bit.ly/33fOCVq>.

²² See United Health Found., *supra* note 2, at 85.

²³ See U.S. Dep’t of Health & Human Servs., Office of Disease Prevention & Health Promotion, *Reproductive & Sexual Health*, (Nov. 27, 2019), <https://bit.ly/2OjLmnA>.

suffering brain damage, developmental disorders, and lung and liver disease, and Louisiana sees more low-birthweight cases than almost anywhere in the nation.²⁴ Louisiana was one of only six states that scored an “F” on the 2019 report card on preterm births released by March of Dimes, a national organization dedicated to improving health outcomes of mothers and babies.²⁵ The Louisiana Department of Health’s own health report card notes the state’s alarming rate of low birthweight infants: “In 2017, Louisiana ranked 49th in low birth weight births with 10.6 percent versus the US rate of 8.2 percent.”²⁶

And these negative effects persist well into childhood. Infants in Louisiana die at a rate that is “significantly higher than the U.S. infant mortality rate,” with 7.1 deaths per 100,000 infants (registering well above the national average of 5.79 deaths per 100,000 infants).²⁷ One organization ranks Louisiana 40th in overall health outcomes for infants.²⁸ The child mortality rate in Louisiana—24 deaths per 100,000 children—outpaces the national

²⁴ See La. Dep’t of Health, *2018 Louisiana Health Report Card*, 19 (May 2019), <https://bit.ly/2Dj4vzR>.

²⁵ See March of Dimes, *2019 March of Dimes Report Card*, 51 (2019), <https://bit.ly/2OObI02>.

²⁶ La. Dep’t of Health, *supra* note 24, at 19.

²⁷ U.S. Dep’t of Health & Human Servs., *Infant Mortality in the United States, 2017: Data From the Period Linked Birth/Infant Death File*, 68 Nat’l Vital Statistics Reports 1, 4, 14 (2019).

²⁸ See United Health Found., *supra* note 2, at 84.

average of 17 deaths per 100,000 children.²⁹ Unfortunately, evidence suggests that conditions for children in Louisiana have worsened in recent years. By 2017, the state saw higher child and teen death rates than it did in 2010—even as the national rate held steady.³⁰ Children growing up in Louisiana have a higher likelihood of encountering serious obstacles to leading healthy lives. *Amicus* Ibis Reproductive Health, which evaluates children’s health outcomes, places Louisiana in second-to-last place among all of the states.³¹ And in terms of overall child well-being, Louisiana sits at 49th among the 50 states.³²

As all of this makes clear, Louisiana women and their children face some of the most dire health conditions in the United States.

²⁹ Kaiser Family Found., *Rate of Child Deaths (1-14) per 100,000 Children*, <https://bit.ly/2XOAFMS> (last visited Nov. 26, 2019).

³⁰ See The Annie E. Casey Found., *2019 Kids Count Profile: Louisiana*, <https://bit.ly/2pRJVn0> (last visited Nov. 26, 2019).

³¹ Bridgit Burns et al., *Evaluating Priorities: Measuring Women’s and Children’s Health and Well-Being Against Abortion Restrictions in the States, State Brief: Louisiana*, Ibis Reproductive Health 6 (Nov. 2014).

³² The Annie E. Casey Found., *2019 Kids Count Data Book: State Trends in Child Well-Being*, 19 (2019), <https://bit.ly/33pwLeG>.

II. LOUISIANA'S POLICY CHOICES CONTRIBUTE TO THE POOR HEALTH OF WOMEN AND CHILDREN IN THE STATE.

Respondent claims that the Louisiana legislature passed Act 620 to protect women's health.³³ But the legislature has declined to enact, over and over, evidence-based policies proven to improve health outcomes for women and children, particularly pregnant women and low-income women and children. Instead, the legislature has repeatedly chosen to limit reproductive health services—services proven to protect women's health—making it more difficult for women across the state to access basic reproductive care.

This Court should take into account Louisiana's failure to implement various health promotion policies as it assesses whether the purpose behind Act 620 withstands constitutional scrutiny. If improved health *was* the motivation, one would expect to see legislation implementing a range of evidence-backed policies that improve health outcomes.

³³ Defs.' Mem. in Supp. of Mot. for Partial Summ. J. at 13, *June Med. Servs. v. Kliebert*, No. 14-cv-525-JWD-RLB (M.D. La. Feb. 16, 2015) ("Applying these principles to Act 620 reveals that it has the valid purpose under *Casey* of protecting the health of women seeking abortion by regulating the credentialing of physicians who provide abortions in outpatient facilities."); Reply Br. of Appellant at 26 n.7, *June Med. Servs. v. Gee*, No. 17-30397 (5th Cir. Nov. 17, 2017) ("That argument fails for the simple reason that the district court *also* found that '[a] purpose of [Act 620] is to improve the health and safety of women undergoing an abortion.'" (citation omitted) (emphasis in original)).

A. Louisiana’s Legislature Rejects or Ignores Policies That Would Improve Women’s and Children’s Health.

The legislature has had myriad opportunities to advance evidence-based policies to address the poor health outcomes women in Louisiana face. It has not taken those opportunities. Instead, Louisiana has either failed to act or, worse, has rejected policies shown to benefit women and their children.

The recent inaction on measures proven to reduce rates of sexually transmitted infections provides a stark example. Despite Louisiana’s high rates of sexually transmitted infections,³⁴ HIV,³⁵ and unintended pregnancies,³⁶ the legislature has rejected evidence-based legislation aimed to improve these outcomes. For example, despite evidence that comprehensive sex education is an effective public health strategy to reduce adolescent pregnancy, HIV, and sexually transmitted infections,³⁷ the Louisiana House of Representatives declined to pass legislation requiring age-appropriate, medically-accurate sex

³⁴ La. Dep’t of Health, *supra* note 24, at 23 (“Louisiana consistently ranks in the five states with the highest rates of sexually transmitted diseases.”).

³⁵ Kaiser Family Found., *supra* note 13.

³⁶ See United Health Found., *supra* note 2, at 85.

³⁷ See, e.g., Pamela K. Kohler et al., *Abstinence-Only and Comprehensive Sex Education and the Initiation of Sexual Activity and Teen Pregnancy*, 42 *J. of Adolescent Health* 344, 349–350 (2008); Kathrin F. Stanger-Hall & David W. Hall, *Abstinence-Only Education and Teen Pregnancy Rates: Why We Need Comprehensive Sex Education in the U.S.*, 6 *Plos One* 1, 9–10 (2011).

education in 2010.³⁸ In 2012,³⁹ 2014,⁴⁰ and 2018,⁴¹ it failed to enact similar legislation. In contrast, 29 other States and the District of Columbia mandate comprehensive sex education. Louisiana also does not require HIV education,⁴² making it an outlier against the 39 states that do.⁴³

Evidence also demonstrates that paid leave policies contribute to positive health outcomes for women, including increased duration of breastfeeding, and, in turn, increased health protections for infants.⁴⁴ Yet in 2015,⁴⁵ 2016,⁴⁶ and 2019,⁴⁷ legislation that would have created a statewide Family and Medical Leave Act program with increased access to paid leave for pregnant women and new mothers has stalled in legislative committee.

Louisiana's legislature has failed to advance other legislation that would contribute to improved health outcomes for women and their children. In 2018, legislation that would have prohibited smoking in

³⁸ See H.B. 529, 2010 Reg. Sess. (La. 2010).

³⁹ See H.B. 820, 2013 Reg. Sess. (La. 2013).

⁴⁰ See H.B. 369, 2014 Reg. Sess. (La. 2014).

⁴¹ See H.B. 499, 2018 Reg. Sess. (La. 2018).

⁴² See Guttmacher Inst., *Sex and HIV Education* (Nov. 1, 2019), <https://bit.ly/2KXKEdP>.

⁴³ See *id.*

⁴⁴ See Kelsey R. Mirkovic et al., *Paid Maternity Leave and Breastfeeding Outcomes*, 43 *Birth: Issues in Prenatal Care* 1, 6 (2016).

⁴⁵ See S.B. 84, 2015 Reg. Sess. (La. 2015).

⁴⁶ See S.B. 298, 2016 Reg. Sess. (La. 2016).

⁴⁷ See S.B. 186, 2019 Reg. Sess. (La. 2019).

enclosed public places—a restriction that has been shown to reduce the rate of hospitalizations for asthma in children⁴⁸ and improve health outcomes of the general population⁴⁹—was stalled in committee.⁵⁰ Louisiana is in the minority of states that have not prohibited smoking in workplaces, restaurants, and bars.⁵¹

The Legislature has also rejected equal-pay legislation year in and year out, even though gender discrimination has been linked to negative physical and mental health outcomes.⁵² From 2010 to 2019,⁵³ it

⁴⁸ Daniel Mackay et al., *Smoke-free Legislation and Hospitalizations for Childhood Asthma*, 363 *New Engl. J. Med.* 1139, 1143–44 (2010).

⁴⁹ See Ctrs. for Disease Control & Prevention, Office on Smoking & Health, *Smokefree Policies Improve Health*, (Jan. 17, 2018), <https://bit.ly/37Ff2Dg>.

⁵⁰ See H.B. 881, 2018 Reg. Sess. (La. 2018) (would have prohibited smoking in enclosed public places).

⁵¹ See Campaign for Tobacco-Free Kids, *Smoke-Free States in the United States*, (July 12, 2019), <https://bit.ly/34mSJR1>.

⁵² See, e.g., Elizabeth A. Pascoe & Laura Smart Richman, *Perceived Discrimination and Health: A Meta-Analytic Review*, 135 *Psychol. Bulletin* 531, 537–538 (2009); Jonathan Platt et al., *Unequal Depression for Equal Work? How the Wage Gap Explains Gendered Disparities in Mood Disorders*, 149 *J. of Soc. Sci. Med.* 1, 10–11 (Jan. 2016).

⁵³ See H.B. 63, 2019 Reg. Sess. (La. 2019); H.B. 289, 2019 Reg. Sess. (La. 2019); H.B. 251, 2018 Reg. Sess. (La. 2018); H.B. 605, 2018 Reg. Sess. (La. 2018); S.B. 117, 2018 Reg. Sess. (La. 2018); H.B. 112, 2017 Reg. Sess. (La. 2017); H.B. 282, 2017 Reg. Sess. (La. 2017); H.B. 384, 2017 Reg. Sess. (La. 2017); H.B. 397, 2016 Reg. Sess. (La. 2016); H.B. 450, 2016 Reg. Sess. (La. 2016); H.B. 878, 2016 Reg. Sess. (La. 2016); H.B. 928, 2016 Reg. Sess. (La. 2016); H.B. 87, 2015 Reg. Sess. (La. 2015); H.B. 658, 2014 Reg. Sess. (La. 2014); H.B. 453, 2013 Reg. Sess. (La. 2013); S.B. 189,

voted down legislation every year that would have guaranteed all working women equal pay for equal work.⁵⁴ It has also repeatedly rejected proposals to increase the minimum wage, which has shown to improve infant health through increased birth weights.⁵⁵

Not only has the Legislature rejected evidence-based policies to improve health outcomes of Louisiana's women and children, Respondent in this case has repeatedly used its authority to make choices contrary to the interests of women and children in Louisiana.

The Department of Health has advanced policies that fail to address the health needs of Louisiana's most vulnerable populations—in particular, a policy that compromises children's access to health care and flies in the face of a purported commitment to

2012 Reg. Sess. (La. 2012); H.B. 573, 2012 Reg. Sess. (La. 2012); H.B. 320, 2011 Reg. Sess. (La. 2011); S.B. 249, 2010 Reg. Sess. (La. 2010); H.B. 832, 2010 Reg. Sess. (La. 2010); H.B. 673, 2010 Reg. Sess. (La. 2010).

⁵⁴ Louisiana did enact legislation requiring the State to pay women employed by the state equally in 2013, *see* S.B. 153, 2013 Reg. Sess. (La. 2013), but has yet to extend this protection to all women in Louisiana.

⁵⁵ *See, e.g.*, H.B. 677, 2015 Reg. Sess. (La. 2015) (creating state minimum wage and increasing tipped minimum wage to \$7.25 an hour); H.B. 192, 2018 Reg. Sess. (La. 2018) (raising minimum wage to \$15.00 an hour); S.B. 155, 2019 Reg. Sess. (La. 2019) (amending Louisiana constitution to raise minimum wage to \$9.00 an hour); George Wehby et al, *Effects of the Minimum Wage on Infant Health* 15 (Nat'l Bureau of Econ. Research, Working Paper No. 22,373, 2018).

protecting children’s health.⁵⁶ Before children in Louisiana can enroll in the Louisiana Children’s Health Insurance Program (“LaCHIP”), the State requires them to first go without insurance for three months⁵⁷—the longest permitted waiting period under federal law⁵⁸—subject to narrow exceptions. Only 16 states have any sort of waiting period; Waiting periods can force children to be without health insurance at formative stages of development—again, with negative overall health outcomes.⁵⁹ Prior to January 2014, the State required children to be uninsured for 12 months before receiving coverage, only reducing the requirement when required to do so by new federal regulations.⁶⁰

Louisiana has also chosen to offer significantly less coverage to low-income pregnant women than other states. The federal government requires states to offer Medicaid coverage to pregnant women living at or below 133 percent of the Federal Poverty Level (“FPL”),⁶¹ but most states expand the coverage

⁵⁶ The bill’s lead sponsor prepared talking points for the then-Secretary of the Louisiana Department of Health, who testified that Act 620 would strengthen the State’s ability to protect “the most vulnerable among us, unborn children.” Pet. App. 196a (citation omitted).

⁵⁷ Ctrs. for Medicare & Medicaid Servs., *Waiting Periods in CHIP*, <https://bit.ly/2KSiGeA> (last visited Nov. 26, 2019).

⁵⁸ 42 C.F.R. § 457.805(b)(1) (2016).

⁵⁹ See Tricia Brooks, *Making Kids Wait for Coverage Makes No Sense in a Reformed Health System*, Georgetown Univ. Health Policy Inst. 3 (Apr. 2017), <https://bit.ly/2Op749T>.

⁶⁰ Ctrs. for Medicare & Medicaid Servs., *supra* note 57.

⁶¹ Kaiser Family Found., *Medicaid’s Role for Women* (Mar. 28, 2019), <https://bit.ly/2DmXJc8>.

beyond that minimum level. Forty-six states have done so:⁶² The median income eligibility nationwide is now 200 percent of the FPL.⁶³ But Louisiana provides only the bare of minimum coverage.⁶⁴ Research has shown that the 46 other states have made a sound investment in the health of pregnant women: Women with Medicaid coverage are more likely to receive timely, adequate prenatal care than uninsured women⁶⁵ and uninsured women are more likely to experience adverse maternal outcomes than insured women.⁶⁶

⁶² Ctrs. for Medicare & Medicaid Servs., *Medicaid, Children's Health Insurance Program, & Basic Health Program Eligibility Levels*, <https://bit.ly/33pUw6m> (last visited Nov. 26, 2019).

⁶³ See, e.g., Adam Searing & Donna Cohen Ross, *Medicaid Expansion Fills Gaps in Maternal Health Coverage Leading to Healthier Mothers and Babies*, Georgetown Univ. Health Policy Inst. 2 (May 2019), <https://bit.ly/37ztqx3>; Kaiser Family Found., *Where Are States Today? Medicaid and CHIP Eligibility Levels for Children, Pregnant Women, and Adults*, (Mar. 31, 2019), <https://bit.ly/33pVfo6>.

⁶⁴ See Kaiser Family Found., *supra* note 63. Louisiana does provide additional coverage up to 214 percent of the FPL, *id.*, but provides this coverage under CHIP as a benefit for the “unborn child.” Traditionally, these services are “limited and can only cover services related to the pregnancy or conditions that will impact the unborn child.” Nat’l Acad. for State Health Policy, *Children’s Health Insurance Program Frequently Asked Questions*, 1 (Apr. 2017), <https://bit.ly/2OOQH5W>.

⁶⁵ See, e.g., Medicaid & CHIP Payment & Access Comm’n, *Access in Brief: Pregnant Women and Medicaid*, 6 (Nov. 2018), <https://bit.ly/37HYXwA>.

⁶⁶ See, e.g., Am. College of Obstetricians & Gynecologists, *Benefits to Women of Medicaid Expansion Through the Affordable Care Act*, (Jan. 2013), <https://bit.ly/37HZfUc>.

Louisiana has not just declined to enact programs to address these issues, it has actively reduced access to critical health services. In fact, Louisiana *used* to provide more coverage through the LaMOMs program, but five years ago, it reduced coverage. To be clear: Despite its high rates of maternal and infant mortality, Louisiana *reduced* Medicaid coverage to the bare minimum (133 percent of the federal poverty level).⁶⁷

Access to Medicaid affects more than just prenatal care. Medicaid coverage is associated with reduced mortality, improved access to care, and improved self-reports of health.⁶⁸ Louisiana's Governor recognized this in 2016, when he expanded the state's Medicaid coverage by executive order.⁶⁹ The State's legislature opposed this expansion⁷⁰ and has been trying to undo it ever since.⁷¹ Members of the legis-

⁶⁷ La. Dep't of Health, *Changes to Medicaid Eligibility Criteria Effective January 1*, (Aug. 16, 2013), <https://bit.ly/2DlfdFU>.

⁶⁸ See, e.g., Benjamin D. Sommers et al., *Mortality and Access to Care Among Adults After State Medicaid Expansions*, 367 *New Eng. J. of Med.* 1025, 1028–29 (2012).

⁶⁹ Exec. Order, No. JBE 16-01 (Jan. 12, 2016), <https://bit.ly/34xVQWp>. Notably, the decision to expand Medicaid has no bearing on *the legislature's* commitment to evidenced-based policies that advance the health of women and children.

⁷⁰ In fact, until Medicaid was expanded by executive order, the Louisiana legislature repeatedly failed to expand Medicaid coverage to a higher percentage of the FPL as allowed by the Affordable Care Act. See H.B. 560, 2015 Reg. Sess. (La. 2015); H.C.R. 3, 2015 Reg. Sess. (La. 2015); H.B. 174, 2014 Reg. Sess. (La. 2014); H.B. 261, 2014 Reg. Sess. (La. 2014); S.B. 125, 2013 Reg. Sess. (La. 2013).

⁷¹ See Drew White & Tryfon Boukouvidis, *Seabaugh Speaks on His Refusal to Yield to Monday's Revenue Measure*, KALB (June

lature have repeatedly proposed legislation to imposing additional requirements and limits on Medicaid recipients.⁷² One such requirement is a work requirement, even though research shows that work requirements cause women to lose coverage due to both caregiving responsibilities for family members and employment in sectors of the economy with less job security and more unpredictable hours.⁷³ Respondent has likewise undermined the Medicaid program by rolling out a program of quarterly wage checks that resulted in the disenrollment of almost 51,000 individuals in the course of three months.⁷⁴ The system also automatically unenrolls individuals who do not complete their renewal within 30 days, though the State suspended this feature in August 2019 given 75,000 additional adults were at risk of losing coverage.⁷⁵ This “churn” where Medicaid beneficiaries are unenrolled from Medicaid and then

8, 2018), <https://bit.ly/34nx0Iz> (noting “a criticism common among” Louisiana legislators opposed to Medicaid expansion: that the Governor “is going to live or die on Medicaid expansion, which he did completely unilaterally without the Legislature” (internal citation omitted)).

⁷² See H.B. 46, 2018 Reg. Sess. (La. 2018); S.B. 77, 2018 Reg. Sess. (La. 2018); S.B. 188, 2017 Reg. Sess. (La. 2017); see also H.C.R. 43, 2019 Reg. Sess. (La. 2019).

⁷³ Ctr. on Budget & Policy Priorities, *Taking Away Medicaid for Not Meeting Work Requirements Harms Women*, (Mar. 14, 2019), <https://bit.ly/34o22QB>.

⁷⁴ Samantha Artinga & Olivia Pham, Kaiser Family Found., *Recent Medicaid/CHIP Enrollment Declines and Barriers to Maintaining Coverage*, Kaiser Family Foundation, (Sept. 24, 2019), <https://bit.ly/2rx26i9>.

⁷⁵ *Id.*

re-enroll disrupts continuity of medical care, which can result in poorer health outcomes.⁷⁶

B. Louisiana has Passed Laws to Restrict Women’s Access to Reproductive Health Care.

In contrast to the failure to enact any of the varied, evidence-based laws that would improve health outcomes for women, there is one type of legislation Louisiana repeatedly enacted: restrictions on abortions, abortion clinics, and abortion providers and clinic staff. Even as it has regularly rejected legislation aimed at increasing access to health care and improving health outcomes for women, the Louisiana legislature has simultaneously made it more difficult for women in Louisiana to access reproductive health services, including abortion. Between 2010 and 2019, Louisiana enacted at least 35 bills to this end.⁷⁷

⁷⁶ See, e.g., Dottie Rosenbaum, *Lessons Churned: Measuring the Impact of Churn in Health and Human Services Programs on Participants and State and Local Agencies*, Ctr. on Budget & Policy Priorities (Mar. 20, 2015), <https://bit.ly/33kdxqH>.

⁷⁷ See **2019**. S.B. 184, 2019 Reg. Sess. (La. 2019) (prohibiting abortion after fetal heartbeat detected); S.B. 221, 2019 Reg. Sess. (La. 2019) (changing what information women seeking abortion must receive); S.B. 238, 2019 Reg. Sess. (La. 2019) (making abortion clinic employees mandatory reporters of human trafficking and certain sex-based crimes); H.B. 133, 2019 Reg. Sess. (La. 2019) (revising statutory definition of abortion); H.B. 484, 2019 Reg. Sess. (La. 2019) (establishing record retention requirements for abortion providers and clinics); H.B. 425, 2019 Reg. Sess. (La. 2019) (state vote for amendment to Louisiana constitution to establish it provides no right to abortion). **2018**. H.B. 273, 2018 Reg. Sess. (La. 2018) (updating disposal requirements for fetal remains); H.B. 449, 2018 Reg. Sess. (La. 2018) (updating disclosures that must be

made to women seeking abortion regarding adoption); H.B. 891, 2018 Reg. Sess. (La. 2018) (prohibiting Department of Health from entering funding agreements with organizations that provide abortion); S.B. 181, 2018 Reg. Sess. (La. 2018) (prohibiting abortion after 15 weeks); S.B. 534, 2018 Reg. Sess. (La. 2018) (defining criminal abortion as crime of violence); S.B. 325, 2018 Reg. Sess. (La. 2018) (prohibiting destruction of record by outpatient abortion facilities); S.B. 73, 2018 Reg. Sess. (La. 2018) (creating award for reporting use of fetal organs resulting in conviction of another person). **2017.** S.B. 111, 2017 Reg. Sess. (La. 2017) (requiring physician to obtain proof of identification from parent providing consent for minor to obtain abortion); S.B. 128, 2017 Reg. Sess. (La. 2017) (prohibiting removal of fetal tissue for profit). **2016.** H.B. 386, 2016 Reg. Sess. (La. 2016) (extending mandatory waiting period to 72 hours); H.B. 488, 2016 Reg. Sess. (La. 2016) (adding requirements for physicians who perform abortions); S.B. 33, 2016 Reg. Sess. (La. 2016) (criminalizing purchase and sale of fetal tissue); H.B. 1081, 2016 Reg. Sess. (La. 2016) (criminalizing performance of a dismemberment abortion); H.B. 606, 2016 Reg. Sess. (La. 2016) (prohibiting State from contracting or awarding funds to entities that provide abortions); H.B. 1019, 2016 Reg. Sess. (La. 2016) (prohibiting abortion based on genetic abnormality); H.B. 815, 2016 Reg. Sess. (La. 2016) (requiring fetal tissue to be disposed of by interment or cremation). **2015.** No restrictions. **2014.** H.B. 305, 2014 Reg. Sess. (La. 2014) (prohibiting employees of organizations that provide abortion from presenting in schools on any health topic); H.B. 1105, 2014 Reg. Sess. (La. 2014) (mandating abortion outpatient facilities post the National Human Trafficking Resource Center hotline); H.B. 1262, 2014 Reg. Sess. (La. 2014) (requiring woman seeking abortion to receive information on counseling); H.B. 388, 2014 Reg. Sess. (La. 2014) (requiring physicians who perform abortion to have admitting privileges). **2013.** S.B. 90, 2013 Reg. Sess. (La. 2013) (requiring physicians who perform abortions to have completed or be enrolled in residency in obstetrics and gynecology or family medicine); H.B. 278, 2013 Reg. Sess. (La. 2013) (adding coerced abortion as a form of child abuse). **2012.** S.B. 330, 2012 Reg. Sess. (La. 2012)

That is more than three times as many bills as it passed seeking to improve any aspect of women's and children's health in Louisiana.⁷⁸

(criminalizing abortions performed by anyone other than licensed physicians); S.B. 708, 2012 Reg. Sess. (La. 2012) (requiring ultrasound 24 hours before abortion); S.B. 766, 2012 Reg. Sess. (La. 2012) (prohibiting abortion after 20 weeks). **2011.** H.B. 636, 2011 Reg. Sess. (La. 2011) (requiring disclosures to women before abortion). **2010.** H.B. 1370, 2010 Reg. Sess. (La. 2010) (providing for license suspension actions against outpatient abortion facilities); S.B. 528, 2010 Reg. Sess. (La. 2010) (requiring ultrasound before an abortion); H.B. 1247, 2010 Reg. Sess. (La. 2010) (prohibiting plans offered on health exchanges from covering abortions); H.B. 1453, 2010 Reg. Sess. (La. 2010) (excluding physicians who perform abortions from coverage under state Medical Malpractice Act).

⁷⁸ See **2019.** H.B. 345, 2019 Reg. Sess. (La. 2019) (providing coverage for breast and ovarian cancer screening); H.B. 347, 2019 Reg. Sess. (La. 2019) (requiring health insurance to cover certain coverage for breast cancer); S.B. 173, 2019 Reg. Sess. (La. 2019) (extending protections in the Affordable Care Act if it is declared unconstitutional); H.B. 199, 2019 Reg. Sess. (La. 2019) (extending Medicaid to children with disabilities). **2018.** H.B. 690, 2018 Reg. Sess. (La. 2018) (requiring coverage for future screening for individuals who were diagnosed with breast cancer); H.B. 818, 2018 Reg. Sess. (La. 2018) (creating the Healthy Moms, Healthy Babies Advisory Council); H.B. 625, 2018 Reg. Sess. (La. 2018) (providing maternity leave for teachers). **2017.** No supportive policies passed. **2016.** H.B. 694, 2016 Reg. Sess. (La. 2016) (providing insurers to provide medical and surgical benefits for breast reconstruction following mastectomies). **2015.** H.B. 186, 2015 Reg. Sess. (La. 2015) (providing additional notification requirements following mammograms). **2014.** S.B. 309, 2014 Reg. Sess. (La. 2014) (requiring physicians to take blood tests and screen for HIV and syphilis during third trimester of pregnancy). **2013.** No supportive policies passed. **2012.** S.B. 256, 2012 Reg. Sess. (La. 2012) (prohibiting shackling pregnant inmates during second

Louisiana appears to adopt measures relating to women’s health primarily when those policies have the effect of restricting access to abortion—without any evidence they will improve women’s health outcomes. These barriers make it difficult for women in Louisiana to access abortion services. Louisiana has prohibited health plans offered through the State’s Affordable Care Act health exchange from covering abortion care, even in cases of rape, incest, or when the life of the woman is at risk.⁷⁹ Louisiana also imposes a mandatory waiting period and in-person counseling, both of which increase the cost and burden on women seeking abortion services, particularly low-income women. Louisiana currently imposes a 24-hour waiting period before a woman can access an abortion; it tripled that length to 72 hours in recent legislation that has been temporarily enjoined.⁸⁰ Louisiana also imposes a requirement for in-person, biased counseling,⁸¹ which means that a

and third trimesters and labor). **2011.** No supportive policies passed. **2010.** No supportive policies passed.

⁷⁹ See Alina Salganicoff et al., *Coverage for Abortion Services in Medicaid, Marketplace Plans and Private Plans*, Kaiser Family Found. (June 24, 2019), <https://bit.ly/2QTfg3W>.

⁸⁰ Guttmacher Inst., *Counseling and Waiting Periods for Abortion*, (Nov. 1, 2019), <https://bit.ly/37BJq1n>.

⁸¹ The counseling required under Louisiana law is designed to discourage patients from having an abortion. Guttmacher Inst., *State Facts About Abortion: Louisiana*, (Sept. 2019), <https://bit.ly/2OkQd8b>. The counseling program includes state-drafted materials that include deceptive materials about risk of abortion complications, the potential impact on future fertility and the implication that abortion is linked to breast cancer, despite numerous studies finding that no such link exists. Nat’l P’ship for Women & Families, *Bad Medicine: How a Political*

woman must make at least two trips to a provider before she can receive an abortion. Requiring multiple visits imposes a significant barrier to accessing abortion care, given the time required away from work and home and the costs associated.⁸² One consequence of these policies is that women often lose the ability to maintain confidentiality about their medical choices, including with their employers, families, and partners.

Women who receive health care through Medicaid in Louisiana have no coverage for abortions even when the procedure is medically necessary.⁸³ This directly impacts access to abortion: Nearly thirty percent of the state's Medicaid-eligible pregnant women who would have had an abortion if Medicaid covered the costs instead gave birth when funding was unavailable.⁸⁴ An abortion at ten weeks typically costs a woman in Louisiana more than \$500,⁸⁵ which is a prohibitively high amount for many low-income women. This amounts to more than one-

Agenda is Undermining Abortion Care and Access in Louisiana, (May 2018), <https://bit.ly/37GNeyD>.

⁸² Lawrence B. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 *Contraception* 334, 341–342 (2006), <https://bit.ly/35I61rz>.

⁸³ Kaiser Family Found., *State Funding of Abortions Under Medicaid*, (June 21, 2019), <https://bit.ly/2R4hayT>.

⁸⁴ Sarah C.M. Roberts et al., *Estimating the Proportion of Medicaid-Eligible Pregnant Women in Louisiana Who Do Not Get Abortions When Medicaid Does Not Cover Abortion*, 19 *BMC Women's Health* 1, 4 (2019).

⁸⁵ Lift Louisiana, *Abortion Information and Resources*, <https://bit.ly/2QVhsrw> (last visited Nov. 26, 2019).

third of the monthly income for over half of women seeking abortion.⁸⁶

The Louisiana legislature has not limited its efforts to restrict access to services that improve women's reproductive health outcomes to abortion access. Louisiana allows health insurers to refuse to cover prescription contraceptives, such as birth control pills, long-acting reversible contraceptives, and emergency contraceptives.⁸⁷ Louisiana has also positioned itself to dictate the types of family planning services low-income women receive. The Department of Health is the sole recipient of Title X funds for family planning in Louisiana,⁸⁸ which means the State has the exclusive decision-making power of how to delegate funds and the aims of family planning services. It is also the sole decision-maker for where family planning services are provided in Louisiana—services that are currently difficult for women in rural areas to access. The State's wide-ranging control over family planning spending, content, and location where services are provided hurts women of Louisiana given the State's failure to offer services proven to benefit women.

⁸⁶ Roberts et al., *supra* note 84, at 1.

⁸⁷ See, e.g., Kaiser Family Found., *State Requirements for Insurance Coverage of Contraceptives*, (May 1, 2019), <https://bit.ly/2On3NrH>. Louisiana does not allow pharmacists to provide emergency contraception to women without a prescription. Kaiser Family Found., *Pharmacist Provision of Emergency Contraception to Women Without a Doctor's Prescription*, (May 1, 2019), <https://bit.ly/35IihZ7>.

⁸⁸ See La. Dept. of Health, *Reproductive Health Needs Assessment 2017*, 12, <https://bit.ly/2QSXbmz> (last visited Nov. 26, 2019).

III. THIS HISTORY BEARS ON THE CONSTITUTIONALITY OF ACT 620.

A. The Court Should Consider These Poor Health Outcomes When Examining Respondent's Explanation for Act 620.

Respondent has justified Act 620 as advancing the State's interest in protecting maternal health. Pet. App. 4a. Protecting maternal health is a valid state interest. But Act 620 was not intended to, and will not, advance that interest.

When evaluating whether a law has the "purpose or effect" of burdening a woman's access to abortion, the Court looks beyond the law's stated purpose. *Planned Parenthood of Se. Penn. v. Casey*, 505 U.S. 833, 877 (1992). A state may not save an illegitimate abortion restriction simply by incanting the magic words of maternal health. See *Weinberger v. Wiesenfeld*, 420 U.S. 636, 648 (1975) ("[T]he mere recitation of a benign * * * purpose is not an automatic shield which protects against any inquiry into the actual purposes underlying a statutory scheme."). As Judge Higginbotham noted below, when the state's health outcomes and policy choices indicate that the state consistently pays only lip service to that interest, a court can question whether that interest is credible. See Pet. App. 101a-102a ("As the misfit of means and ends grows so also does the permissible inference that the state's invocation of legitimate ends is disingenuous, that the statute is instead 'designed to strike at the right itself.'") (Higginbotham, J., dissenting).

This Court did just that in *Whole Woman's Health*. It examined whether Texas' stated purpose of its

surgical-center requirement matched how Texas regulated women's health outside of abortion:

Medical treatment after an incomplete miscarriage often involves a procedure identical to that involved in a nonmedical abortion, but it often takes place outside a hospital or surgical center. And Texas partly or wholly grandfathered (or waives in whole or in part the surgical-center requirement for) about two-thirds of the facilities to which the surgical-center standards apply. But it neither grandfathered nor provides waivers for any of the facilities that perform abortions.

Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2315 (2016) (citations omitted)). The import of these facts was clear: "These facts indicate that the surgical-center provision imposes 'a requirement that simply is not based on differences' between abortion and other surgical procedures 'that are reasonably related to' preserving women's health, the asserted 'purpos[e] of the Act in which it is found.'" *Id.* (quoting *Doe v. Bolton*, 410 U.S. 179, 194 (1973)). As a result, the admitting-privileges and surgical-center restrictions imposed an unconstitutional "undue burden" in part because they provided "few, if any, health benefits for women." *Id.* at 2318.

The Court applies this same approach in other constitutional contexts. When the government exercises its powers of eminent domain, for example, it may not take property "under the mere pretext of a public purpose, when its actual purpose [is] to bestow a private benefit." *Kelo v. City of New London*, 545 U.S. 469, 478 (2005). When the government demands the names of a private organization's rank-

and-file members, it still violates the right to freedom of association, even if it cloaks such intimidation within its alleged interest in enforcing a corporation statute. *NAACP v. Alabama*, 357 U.S. 449, 463–466 (1958). And when a state amends its constitution to withhold equal protection of the laws from a class of citizens, it cannot plausibly claim that such a provision was designed to protect landlords and conserve resources to fight discrimination against other groups. *Romer v. Evans*, 517 U.S. 620, 635 (1996).

Put simply, where a law “is so far removed from [a state’s] particular justifications,” this Court has consistently deemed “it impossible to credit them.” *Id.* at 635.

B. Act 620 Creates an Undue Burden Because Louisiana’s Alleged Interest in Women’s Health is Not Credible.

Louisiana’s Act 620 falls squarely within the category of cases that call for an examination of the government’s stated interest in enacting the law. The restrictions do not align with Louisiana’s professed concern for women’s health. Louisiana has failed, time and time again, to advance policies proven to improve the health of Louisiana women. Instead, Louisiana has focused on restricting access to reproductive health care, including abortion, contrary to the evidence that shows such policies are dangerous to women. Louisiana’s legislature has enacted at least 35 bills to restrict abortion and abortion clinics since 2010.⁸⁹ Yet during that same time period, not only has Louisiana failed to regulate

⁸⁹ *See, supra* note 77.

procedures that are more dangerous to women,⁹⁰ it has repeatedly failed to pass and implement policies that would improve health outcomes for women and children.⁹¹

Like Texas in *Whole Woman's Health*, Louisiana has made policy choices that fail to promote maternal and children's health.⁹² If Louisiana truly wished to advance women and children's health, it could do so in myriad ways. Yet the State repeatedly declines to adopt evidence-based policies that would do exactly that. Indeed, Louisiana actively regulates *against* the health interests of women and children.⁹³ These are not the policy choices of a state wishing to protect the health of mothers and their children.

When examined together, a different picture of Louisiana's commitment to women's health emerges. The State is aware of its troubling health outcomes.⁹⁴ Yet the State has passed on opportunity after oppor-

⁹⁰ For example, colonoscopies present a mortality rate more than 40 times higher than abortion. Am. Pub. Health Assoc., *Opposition to Requirements for Hospital Admitting Privileges and Transfer Agreements for Abortion Providers*, (Nov. 3, 2015), <https://bit.ly/2QTkAUR>. Yet physicians performing colonoscopies are exempt from admitting-privileges requirements under Louisiana law. See La. Admin. Code tit. 46, § 7305(A)(1)(a) (exempting surgical procedures, like colonoscopies, from all office-based surgery requirements, including admitting privileges, because they only require minimal anesthesia).

⁹¹ See, *supra* note 78.

⁹² See, *supra* note 78.

⁹³ See, *supra* note 78.

⁹⁴ See La. Dep't of Health, *supra* note 24, at 19.

tunity to improve the startlingly poor well-being of its women and children.

Louisiana's failure to act on its claimed interest in women's health thus undermines its defense of Act 620 as motivated by an interest in protecting women's health. This inconsistency in Louisiana's choices about what to regulate and how to do so render it "beyond rational belief" that the abortion restrictions "could genuinely protect the health of women." *Whole Woman's Health*, 136 S. Ct. at 2321 (Ginsburg, J., concurring). Because Louisiana's stated interest in protecting women's health is suspect, and because Act 620 does not further that interest, the law constitutes an undue burden. The method chosen by the State to allegedly further its interest "must be calculated to further that interest, not hinder it." Pet. App. 100a (Higginbotham, J., dissenting). Without a legitimate interest behind Act 620, the undue burden calculus is a simple one. The detrimental effects of the law outweigh the State's pre-textual interest in protecting women's health. Act 620 aims to hinder a woman's constitutional right to an abortion, not to promote women's health. The law constitutes an undue burden, and this Court should reverse the Fifth Circuit's decision upholding it.

CONCLUSION

For these reasons and the reasons in the Petitioners' brief, the judgment of the U.S. Court of Appeals for the Fifth Circuit should be affirmed.

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