

Nos. 18-1323 and 18-1460

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**In the Supreme Court of the United States**

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JUNE MEDICAL SERVICES L.L.C., ET AL., PETITIONERS

*v.*

REBEKAH GEE, SECRETARY, LOUISIANA DEPARTMENT  
OF HEALTH AND HOSPITALS.

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REBEKAH GEE, SECRETARY, LOUISIANA DEPARTMENT  
OF HEALTH AND HOSPITALS, PETITIONER

*v.*

JUNE MEDICAL SERVICES L.L.C., ET AL.

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*ON WRITS OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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**BRIEF FOR MICHELE COLEMAN MAYES,  
CLAUDIA HAMMERMAN, CHARANYA KRISHNASWAMI,  
AND 365 OTHER LEGAL PROFESSIONALS  
WHO HAVE EXERCISED THEIR  
CONSTITUTIONAL RIGHT TO AN ABORTION  
AS AMICI CURIAE SUPPORTING PETITIONERS**

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## TABLE OF CONTENTS

	Page
Interest of Amici Curiae .....	1
Summary of Argument .....	3
Argument.....	4
I. Multiple Generations of Women Have Relied on Abortion Access to Assert Control over Their Bodies and Lives .....	4
II. Safe and Legal Access to Abortion Has Been Critical to the Personal and Professional Lives of Legal Professionals Like Amici .....	5
A. Amici Obtained Their Abortions for Diverse Reasons.....	5
1. Breaking The Cycle of Teenage Parenthood .....	7
2. Continuing Their Education.....	8
3. Escaping Abuse.....	9
4. Fetal Health .....	11
5. Maternal Health .....	12
B. Amici’s Abortions Played a Profound Role in Their Personal and Professional Lives.....	15
III. Abortion Has Expanded Access to the Legal Profession .....	17
IV. Amici’s Experiences Speak to the Impact of Abortion Restrictions Across Time and Geography..	20
V. Amici’s Stories Illustrate the Necessity of Third-Party Standing for Abortion Providers .....	25
Conclusion .....	32
Appendix: List of Amici—368 People in the Legal Profession Who Have Exercised Their Constitutional Right to an Abortion.....	A1

II

TABLE OF AUTHORITIES

Cases:

*Carey v. Population Servs., Int'l*,  
431 U.S. 678 (1977) ..... 6  
*Lawrence v. Texas*, 539 U.S. 558 (2003) ..... 4  
*Michael M. v. Superior Court of Sonoma Cty.*,  
450 U.S. 464 (1981) ..... 7  
*Planned Parenthood of Se. Pa. v. Casey*,  
505 U.S. 833 (1992) ..... *passim*  
*Roe v. Wade*, 410 U.S. 113 (1973) ..... *passim*  
*Whole Woman’s Health v. Hellerstedt*,  
136 S. Ct. 2292 (2016) ..... *passim*

Statutes:

La. Rev. Stat. § 40:1061.10 ..... *passim*  
La. Rev. Stat. § 40:1061.17 B(3) ..... 12  
Tex. Health & Safety Code § 171.012(a)(4) ..... 21

Court Filings:

Amicus Br. of Am. Coll. Of Obstetricians &  
Gynecologists et al., *Whole Woman’s Health v.*  
*Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274) ..... 23  
Amicus Br. of Janice Macavoy et al.,  
*Whole Woman’s Health v. Hellerstedt*,  
136 S. Ct. 2292 (2016) (No. 15-274) ..... 25

Other Authorities:

*Ancient History Sourcebook: The Code of the*  
*Assura, c. 1075 B.C.E.*, Fordham University,  
[https://sourcebooks.fordham.edu/ancient/1075ass  
yriancode.asp](https://sourcebooks.fordham.edu/ancient/1075ass<br/>yriancode.asp) (last visited Nov. 30, 2019) ..... 20  
Amelia R. Miller, *The Effects of Motherhood*  
*Timing on Career Path*, 24 J. Population  
Econ. 1071 (2011) ..... 15

### III

#### Other Authorities—continued:

Am. Bar Ass’n, <i>A Current Glance at Women in the Law</i> (Apr. 2019).....	17
Stacy Caplow & Shira A. Scheindlin, “ <i>Portrait of a Lady</i> ”: <i>The Woman Lawyer in the 1980s</i> , 35 N.Y. L. Sch. L. Rev. 391 (1990).....	17
Danielle Keats Citron, <i>Cyber Civil Rights</i> , 89 B.U. L. Rev. 61 (2009).....	29
Linda Greenhouse & Reva B. Siegel, <i>The Unfinished Story of Roe v. Wade</i> , <i>in Reproductive Rights and Justice Stories</i> 53 (Melissa Murray, Katherine Shaw, Reva B. Siegel eds., 2019) .....	20, 25
Guttmacher Inst., <i>Fact Sheet: Induced Abortion in the United States</i> (2019) .....	2, 7

## INTEREST OF AMICI CURIAE

Amici curiae<sup>1</sup> are current, former, and future members of the legal community who had abortions and have contributed to the legal field in myriad capacities, including as equity partners of the largest firms in the country, counsel to Fortune 100 companies, appointed and career officials in state government, and employees of all three branches of the federal government.<sup>2</sup> Amici include retired judges and a current tribal court justice, prosecutors and public defenders, public interest advocates, professors teaching future generations of lawyers, and a senior attorney with the Department of Justice. Amici also include current law students, underscoring the continued importance of the constitutional right to safe and legal abortion to the rising generation of lawyers.

Amici have achieved considerable professional success; among them are former federal and state judicial clerks, published authors, former editors-in-chief of leading law journals, recipients of industry awards and honors, and two MacArthur “Genius” Fellows. Multiple Amici have argued cases before, or clerked on, this Court, and several more are members of this Court’s bar.

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<sup>1</sup> A full list of amici curiae is appended to this brief. Pursuant to Rule 37.6, Amici certify that no counsel for a party authored this brief, in whole or in part, and that no person other than amici or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief. The parties have granted blanket consent for the filing of amicus curiae briefs.

<sup>2</sup> Amici submit this brief only in their capacities as private citizens. To the extent an Amicus’s employer is named, it is solely for descriptive purposes and does not constitute the employer’s endorsement of the brief or any portion of its content.

Amici are united in their conviction, informed by their legal training and by their personal and professional experiences, that the reproductive rights this Court has recognized and protected in *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), and many other cases, must not be abrogated or regulated out of existence.

Amici obtained their abortions for a broad variety of reasons—both personal and medical—at different ages and life stages, and in locations and at times where abortion was accessible to varying degrees as a result of state regulations. Many Amici are mothers, and some are grandmothers, and thus intimately understand the demands that enforced pregnancy and childbirth would impose on women’s<sup>3</sup> bodies, psyches, and lives. Amici are certain that they would not have been able to realize their personal and/or professional goals were it not for their ability to control their reproductive lives.

Amici are 368 individuals but they speak for many more of the past, present, and future members of the legal profession who have, like one in four American women, terminated a pregnancy in their lifetimes.<sup>4</sup> As members of a profession that, in its shining moments, has allowed those with legal training to stand up for those who cannot

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<sup>3</sup> Although the term “women” is used here and elsewhere, people of all gender identities may also become pregnant and seek abortion services. Indeed, two Amici are transgender men, and one Amicus is gender non-binary.

<sup>4</sup> Guttmacher Inst., *Fact Sheet: Induced Abortion in the United States* 1 (2019), [https://www.guttmacher.org/sites/default/files/factsheet/fb\\_induced\\_abortion.pdf](https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf) (*Fact Sheet*).

advocate for themselves, Amici feel uniquely empowered, equipped, and, indeed, *compelled* to come forward with their names and stories on behalf of those who still cannot do so.

Amici submit this brief, some at immeasurable personal and professional cost, for the countless others who may not have the tools to navigate the legal system to secure all that the Constitution and the Court have rightfully promised them.

#### SUMMARY OF ARGUMENT

Amici write as attorneys—with both the professional duty and honor to advocate for the rule of law—and as people who have exercised a constitutional right that laws like Louisiana Revised Statute § 40:1061.10 (“Louisiana’s Act 620”) would effectively legislate out of existence.

Collectively and individually, Amici’s experiences illustrate that there is nothing less at stake here than women’s “ability to control their reproductive lives” and thus “to participate equally in the economic and social life of the Nation.” *Casey*, 505 U.S. at 856. As one Amicus explained:

[M]y abortion, simply and profoundly, allowed me to live my life according to my plans, to complete my law degree, and to end a relationship with someone who was not the person I wanted to marry or co-parent with. Had that choice not been available, I would not have the life I have now. I would not have my husband of almost 30 years, our 26-year old daughter, or my career as a lawyer and law professor.

Email received November 8, 2019.

**ARGUMENT****I. MULTIPLE GENERATIONS OF WOMEN HAVE RELIED ON ABORTION ACCESS TO ASSERT CONTROL OVER THEIR BODIES AND LIVES**

Respondent asks the Court to revisit the *Whole Woman's Health* decision from just three years ago, and thus, *necessarily*, to also reexamine the long line of precedent undergirding that decision's logic and result.

In cases that implicate previously recognized constitutional liberty interests, as this one does, "individual or societal reliance on the existence of that liberty cautions with particular strength against reversing course." *Lawrence v. Texas*, 539 U.S. 558, 577 (2003). In the almost half century since the Court decided *Roe v. Wade*, multiple "generation[s] ha[ve] come of age free to assume *Roe*'s concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions." *Casey*, 505 U.S. at 860.

Indeed, for nearly five "decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail." *Id.* at 856.

Amici are among those people. As one Amicus, a prominent law professor, put it:

I write because I want the Court to know how access to safe and legal abortion made my law career possible and changed my life.

Until recently, I thought access to safe and legal abortion in this country would never end. It seemed self-evident that women should be able to control what happens to their bodies and, as

a consequence, their lives. But I am persuaded that access is in jeopardy now and I am frightened.

I fear for my daughters (one lawyer and one journalist), my students (past, present and future), and countless women who I don't know personally but who I know for certain will face unwanted pregnancies in their lives—no matter how hard they try to avoid it.

Email received November 11, 2019. It is likewise inevitable that some people, like many Amici, will face maternal or fetal medical conditions that will lead them to terminate (deeply) wanted pregnancies.

## **II. SAFE AND LEGAL ACCESS TO ABORTION HAS BEEN CRITICAL TO THE PERSONAL AND PROFESSIONAL LIVES OF LEGAL PROFESSIONALS LIKE AMICI**

Amici offer their stories as illustrations of a constitutional promise fulfilled and as a cautionary tale about what that promise's erosion would cost. As one Amicus, who was accepted to Harvard Law School shortly after her abortion, reflected:

My life has taken twists and turns I could never have expected. But by checking into Planned Parenthood that day, I said yes to these twists and these turns. I said yes to my own story. A doctor's appointment years ago is not the most important part of who I am, but it has allowed my life to be everything that it is today.

Email received November 7, 2019.

### **A. Amici Obtained Their Abortions for Diverse Reasons**

As this Court has recognized, “[t]he decision whether or not to beget or bear a child lies at the very heart of this

cluster of constitutionally protected choices.” *Carey v. Population Servs., Int’l*, 431 U.S. 678, 685 (1977); *accord Casey*, 505 U.S. at 928 (Blackmun, J., concurring in part). Amici know this to be true from personal experience.

Take the story of one current law student who terminated a pregnancy at sixteen:

I am so grateful to live in a country that allowed me to decide that I was not ready to give my life to a child. I was not ready at sixteen, and I am still not ready at twenty-six, to be the responsible parent that I know I will someday be.

I am so grateful for my country. I am so proud to be an American. . . [After my abortion, I] woke up with my whole life in front of me. . . .

Today, I am in my second year of law school . . . living in the nation’s capital and studying the law just minutes from where [the Justices of this Court] sit. I am a good student, but getting here took every bit of my energy and focus. Energy and focus I would not have had if I had spent these years raising a child. . . .

And just as my life has been changed for the better, as well as the lives of my husband, my mother and father and brothers and sister, my future children will benefit enormously from having a mother who grew from a girl into a woman, followed her dreams and became the best person she could be, so that she could be the best mother possible.

Email received November 14, 2019.

Some Amici, like the above, plan to have children in the future. Many Amici—like 59% of American women

who have sought an abortion—already had at least one child when they terminated a pregnancy.<sup>5</sup> Some Amici chose to become a parent after their abortions, whether biologically or through adoption. And some have decided not to have children at all.

Amici’s personal stories are representative of the myriad reasons why a person may terminate a pregnancy. For some Amici, the decision to access abortion was empowering, and for others it felt like the only possible option; but for all Amici, doing so allowed them to exert “basic control” over their lives, personally and professionally. *Casey*, 505 U.S. at 928 (Blackmun, J., concurring in part).

### ***1. Breaking the Cycle of Teenage Parenthood***

Many Amici recounted how their abortions allowed them to break a generational pattern of teenage pregnancy and parenthood, conditions that “the State has a strong interest in preventing” due to the “significant social, medical, and economic consequences for both the mother and her child” that they can have. *Michael M. v. Superior Court of Sonoma Cty.*, 450 U.S. 464, 470 (1981).

As one Amicus, an equity partner at a prominent firm, explained:

[A]t age 18, I wasn’t ready to become a mother. I wasn’t ready to follow in the footsteps of my mother, my grandmother, and my great-grandmother—all of whom became pregnant before the age of 18, and none of whom graduated from high school.

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<sup>5</sup> *Fact Sheet 1.*

I knew I wanted more for myself, and more importantly, for the children I would eventually have. I was determined to break the cycle of poverty and teenage pregnancy that had shaped the lives of the three generations of women in my family, and thanks to the availability of safe and legal abortion, I did.

Email received October 31, 2019.

## *2. Continuing Their Education*

A large number of Amici received abortions while in school and credit their ability to control their reproductive lives with ultimately being able to attain higher education. As one such Amicus explained, without access to safe and legal abortion: “I would not have finished college and I would not have gone to law school.” Email received November 8, 2019.

For some Amici, reproductive choice opened doors to an educational and professional future that had previously been out of reach for their families:

I was half-way through my senior year of high school when I found out I was pregnant. I spent my childhood watching my mom try to make ends meet while she hopped from job to job. I saw college as a path to being able to provide a better life for my future children—one where I could support my family and demonstrate that a career could be enjoyable and rewarding.

The ability to make my own choice, to even have a choice, gave me control over my life when I felt like I was utterly powerless. . . . Becoming a first-generation professional

would have been impossible without access to safe and legal abortion services.

Email received October 31, 2019.

### 3. *Escaping Abuse*

Several Amici reported that their abortions allowed them to break free from a physically and/or emotionally abusive relationship, to which any child would also have been subjected. One Amicus, a healthcare lawyer, described her experience:

I was in my first semester of college, in the process of escaping an abusive and non-consensual relationship with my high school English teacher. He had been physically, emotionally, and sexually abusing me for three years. . . .

[T]he morning I woke up and was *not* pregnant, I had a feeling of having narrowly escaped the end of all hope for my life. I was eighteen.

Email received November 8, 2019.

Another Amicus, a former public defender, recounted:

I had a legal abortion after a contraceptive failure. At the time, I was a young, single woman living with an abusive boyfriend. Although I was having difficulty extricating myself from the relationship, I knew there was no way I could bring a child into the world and expose [him/her] to the abuse. And I did not want to be connected to that man forever, by having a child with him. . . .

After the abortion, I finally escaped the abuse, quit my job, and went to law school. I would never have been able to help the people I've

helped as a lawyer . . . had I not been allowed the freedom to determine my own future, by controlling my own body at a pivotal point in my life.

Email received November 7, 2019.

Another Amicus reflected that if “legal (and private) abortion was not available” to her, she may not have left “a very physically abusive relationship . . . and it’s highly likely that I wouldn’t be practicing law today, or even be here to talk about this. This is not an exaggeration.” Email received November 5, 2019.

Several Amici were forced to become pregnant against their will, whether by assault or deceit. One such Amicus explained that her then-partner did so specifically to prevent her from pursuing a career. Email received November 19, 2019.

Laws that result in the closure of clinics—like Louisiana’s Act 620, which would eliminate all but one provider—make it harder for women suffering abuse to access abortion without their abusive partners (or abusive parents) finding out and inflicting more abuse and/or preventing them from exercising their right to choose altogether. This is because when clinics close, patients seeking care at remaining clinics have to travel farther and confront numerous other burdens, including “fewer doctors, longer waiting times, and increased crowding.” *Whole Woman’s Health*, 136 S. Ct. at 2313. Prolonging pregnancy makes it more likely that the pregnant victim begins to show. Delay can also increase the expense of the

procedure and the expense and duration of the trip(s),<sup>6</sup> which in turn makes it more likely that the pregnant person's absence or efforts to raise the required funds could be noticed. Each of these factors makes it more probable that their pregnancy or termination could be discovered by their abuser.

#### **4. *Fetal Health***

A significant number of Amici terminated a deeply wanted pregnancy because of a fetal diagnosis that either rendered the pregnancy medically nonviable or would have fundamentally impaired the fetus's future quality of life. For some, the decision to abort was a decision to spare themselves and their families the additional futile trauma of carrying to term and giving birth to a baby that would not live long, or at all.

One Amicus, a litigator and former state supreme court clerk who terminated a wanted pregnancy at twenty-two weeks due to severe fetal abnormalities, explained:

My husband and I did not come to the decision to terminate easily. We were not afraid of having a child with debilitating disabilities. But the unknown was terrifying. We did not want to bring a child into this world just so he could die a slow and agonizing death, or live each and every day, possibly in a hospital or long-term care setting, endlessly suffering without the ability to offer him respite. And of course, in the back of our mind was our first born, whose

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<sup>6</sup> Louisiana law requires women to make two separate trips to the clinic, separated by at least 24 hours. La. Rev. Stat. § 40:1061.17(B)(3).

daily life and emotional well-being would never be the same. . . .

We still mourn his loss daily, but have no doubt we made the right decision. I often wonder about my child's fate—my family's fate—had I lived in a state that did not support my reproductive freedom or did not have easily accessible, reputable prenatal (and prenatal pediatric) services.

I am haunted that, in another life, I would have been forced to ascribe to my legislators' personal religious and moral beliefs and continue my pregnancy. Legislators who knew nothing of my pregnancy or fetal diagnoses. Legislators who would not have had to endure the physical trauma or emotional anguish of delivering my child to his death sentence, or sit by his side and feel the unrelenting pain of his diagnoses, day after day. Legislators who would not have to physically and financially ensure his best possible treatment while tending to the needs of our first born.

I can say with certainty that exercising my right to choose was the most important parenting decision I will ever make, and that the reputable, immediately accessible medical care I received was critical to my entire family's well-being.

Email received November 14, 2019.

### ***5. Maternal Health***

Several Amici terminated planned pregnancies because of heightened risks to their health. For example, one Amicus, a law professor, recounted how her water

broke much too soon, just eighteen weeks into a wanted pregnancy that had followed years of infertility:

In a matter of hours, we went from a perfectly healthy pregnancy to one that was doomed. . . . [T]here were increasing risks of ascending infection and sepsis, as well as hemorrhaging. . . .

We decided to terminate the pregnancy, and to give up the only chance I would ever have to hold my son, for the sake of my health—because I had a four year old daughter at home who needed her mother alive and healthy.

Was my life in danger? Not imminently. But it could be within a matter of hours, and no one could tell me with certainty what would happen. . . .

I know with absolute certainty that adding bureaucratic or institutional harms on top of the ones that biology and fate deliver is an unnecessary cruelty. . . . My living child could have been motherless; my husband a widower. I am here, and currently pregnant again, because I was able to receive compassionate and timely health care without state interference.

Email received November 8, 2019.

Some Amici explained that they chose to terminate pregnancies because their mental health or substance abuse at the time was incompatible with either carrying a pregnancy to term or safely parenting a child.

One Amicus described having an abortion fourteen years ago, at a time when she was “cycling through college semesters in manic and depressive phases” and “approaching rock bottom.” Email received October 29, 2019.

Reflecting on what would have happened had she not been able to obtain abortion care, she observed:

I would have self-destructed. I would not have snapped out of it. I needed the time after my abortion to focus on myself. Focus on getting help. Focus on finding the right treatment. And focus on getting better. That would not have been possible if I'd been caring for a child, or pining for a child I'd given up.

Today, as a mom by choice, I know for sure: parenting is something that you have to want to do. It would have been the one more thing on my plate that I couldn't have handled. It would have been the straw that broke me. Because of that choice, I'm able to be the best mother to my children now[;] because I was able to heal myself, . . . I was ready and capable of making them my priority.

*Ibid.*

Another Amicus revealed that she—like so many Americans currently in the grips of the opioid epidemic—got pregnant while addicted to heroin. At that time “[t]he closest program that accepted pregnant addicts was hours away” and had a “months long” waitlist. Email received November 7, 2019. She wrote: “Despite the clouded thinking of my addiction, I knew [an abortion] was the better choice. I was not capable of caring for another, especially for those critical nine months in the womb. I could not even keep myself safe.” *Ibid.* After terminating her pregnancy, she went on to get sober, graduate from college magna cum laude, and attend law school on a scholarship.

**B. Amici’s Abortions Played a Profound Role in Their Personal and Professional Lives**

Justice Blackmun observed in his *Casey* concurrence that “[b]ecause motherhood has a dramatic impact on a woman’s educational prospects, employment opportunities,<sup>7</sup> and self-determination, restrictive abortion laws deprive her of basic control over her life.” *Casey*, 505 U.S. at 928.

Amici’s own experiences bear this out. By declining to carry a pregnancy to term at various points in their lives, they were able to access opportunities that parenthood would have at best delayed, and at worst denied.

One Amicus, who obtained her abortion while in college, observed:

Having an abortion was perhaps the single most impactful decision I’ve ever made. . . . [M]y right to that choice—and my practical ability to exercise that right at a local clinic—were indivisible from moving forward toward economic independence, beginning my career, and laying the path toward my joining the legal profession.

Email received November 8, 2019.

Another Amicus, a founding partner at her firm, spoke about her decision to terminate a pregnancy after having two children:

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<sup>7</sup> Indeed, research shows that the ability to control reproductive decisions, engage in family planning, and delay childbirth facilitates increased earnings and career success; one study estimated that delaying motherhood can yield 9% higher earnings per year. See Amelia R. Miller, *The Effects of Motherhood Timing on Career Path*, 24 J. Population Econ. 1071, 1071 (2011).

[W]hen my oldest was in school and my younger one happily settled in preschool I turned outward, back into the public sphere, and started building a family law practice with my wonderful colleague (who is still one of my law partners). . . .

When I became accidentally pregnant during this time, it was completely clear to me that not only did I not want a third child—I was so happy with my two girls—but also that if I went ahead and had one the balance of my life would have been tipped back to the home front for a number of years, at a time when I was just emerging from domesticity into the work world and was so excited to have the time and energy to build a law firm.

I felt so clear about not wanting to make that sacrifice—I was actually surprised by how little conflict I had about the decision (which was very much supported by my husband as well, although he was clear that it was my call.) And it was the right decision; I have never once regretted it.

Email received October 28, 2019.

The Court has recognized that “the mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear;” thus, when it comes to abortion, “the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law.” *Casey*, 505 U.S. at 852. Indeed, so many of Amici’s experiences speak to the extreme physical imposition of an unwanted pregnancy. Take for example the

story of one government lawyer who became unexpectedly pregnant at thirty-eight, when she was already mother to two young children with whom she had suffered a debilitating, extreme form of morning sickness during pregnancy:

When I discovered I was pregnant at six weeks, I was already beginning to be nauseated. I immediately knew abortion was my only option. I didn't want to undergo another hellish eight months wherein I would miss work, be physically ill, feel depressed, and be unable to care for my two very young children, all to be met with a child neither my husband nor I wanted.

Email received November 6, 2019.

### III. ABORTION HAS EXPANDED ACCESS TO THE LEGAL PROFESSION

Since this Court decided *Roe v. Wade* in 1973, women's participation in the field of law has increased spectacularly, and both the legal profession and the nation are better for it. The percentage of female law students enrolled at ABA-approved law schools has grown from 8.5% in 1971<sup>8</sup> to nearly 50% today,<sup>9</sup> and the percentage of women equity partners has gone from essentially none to 19%.<sup>10</sup> Although these advances have multiple and intersecting

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<sup>8</sup> See Stacy Caplow & Shira A. Scheindlin, "Portrait of a Lady": *The Woman Lawyer in the 1980s*, 35 N.Y. L. Sch. L. Rev. 391, 396 n.13 (1990).

<sup>9</sup> Am. Bar Ass'n, *A Current Glance at Women in the Law* 4 (Apr. 2019), [https://www.americanbar.org/content/dam/aba/administrative/women/current\\_glance\\_2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/women/current_glance_2019.pdf).

<sup>10</sup> *Id.* at 2.

causes, the expansion of women’s legally recognized capacity to control their reproductive lives has no doubt played an absolutely critical role. Reproductive autonomy has likely also played a role in the relative increase in racial and socioeconomic diversity within the legal profession.

All children require significant parental resources: financial, emotional, and otherwise. Unwanted pregnancies and unwanted parenthood carry still greater burdens. These demands can fall with special force on low-income people, immigrants, students who are the first in their family to attain higher education, transgender people, and people of color.

As one Amicus, an environmental lawyer who obtained her abortion while attending law school on financial aid and with “severely limited” economic resources, explained:

Without access to abortion services, it is unlikely that I would have graduated on time—especially not with honors. . . .

Attorneys like me, women, people of color, first generation attorneys and first generation Americans, are severely underrepresented in the legal field. It pains me to imagine the legion of extraordinarily talented women who came before me and had their dreams of becoming an attorney snatched from them because of their lack of access to healthcare. The absence of these women is a detriment to the legal field because there is a crucial need for diverse voices and experiences. I am grateful that my career aspirations were not stifled before I even began to practice.

Email received November 15, 2019.

Or consider the experience of another Amicus, a law professor whose parents immigrated to the United States and who described herself as “the first person in [her] family to graduate from grade school, high school, and college”:

I could not afford the cost of law school and so I worked full-time and attended law school at night. It was a precarious time—I used to get up to go to work as a medical interpreter at 5 AM, work until 4 PM, then come to school and take classes until 10 PM most nights. . . .

[When I became pregnant,] I remember thinking that I had nowhere to go, that I had no one that I could tell. I had no health insurance; I was barely making ends meet. Having a child would have been impossible. Not only would I have had to drop out of law school—I would have had to leave work.

At the time, I was only a lawful permanent resident and I remember feeling that I would also risk my immigration status if I chose to carry my pregnancy to term because the only way I would have been able to do so would have been to rely on public assistance. And so, after much consideration, I turned to the only place I could think of that might offer me support: Planned Parenthood.

Email received November 8, 2019.

#### IV. AMICI'S EXPERIENCES SPEAK TO THE IMPACT OF ABORTION RESTRICTIONS ACROSS TIME AND GEOGRAPHY

For as long as humans have existed, and in every culture, people have sought to terminate pregnancies.<sup>11</sup> When people are denied meaningful access to safe and legal abortion, as they were before *Roe*, they still terminate pregnancies; they just do so at great risk, and under exceedingly harrowing circumstances.<sup>12</sup>

Amici describe starkly different experiences accessing care, with substantial variation between states and across time. Several Amici received abortion care from clinics that have since closed because of admitting-privilege requirements (like Louisiana's Act 620) and similar restrictions in other states, or from clinics that are now the sole remaining provider in a given state.

Other Amici had to overcome significant obstacles that were created by onerous restrictive laws like Louisiana's Act 620. One Amicus, a law student who was affected by the abortion regulations that the Court struck down in *Whole Woman's Health* (one of which is substantively *identical* to that at issue in this case), recounted:

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<sup>11</sup> See, e.g., *Ancient History Sourcebook: The Code of the Assura, c. 1075 B.C.E.*, Fordham University, at I.52, <https://sourcebooks.fordham.edu/ancient/1075assyriancode.asp>.

<sup>12</sup> For a description of the risks of illegal abortion and its disparate impact on communities of color and other vulnerable populations, see Linda Greenhouse & Reva B. Siegel, *The Unfinished Story of Roe v. Wade*, in *Reproductive Rights and Justice Stories* 53, 55 (Melissa Murray, Katherine Shaw, Reva B. Siegel eds., 2019) (Greenhouse & Siegel).

I worked 3 jobs while taking 18 credit hours, most of which were pre-law classes in the Spring of 2015. I picked up extra shifts to afford the \$150 [legally mandated] initial visit and then the \$800+ procedure. . . . At the 8-week mark, I attended the initial appointment at the only clinic in my area. . . . After that, I made my appointment for the procedure in the following 48 hours<sup>13</sup> . . . .

But before I could go back for the final appointment, the clinic suddenly shut down . . . . It closed due to Texas's unconstitutional laws within the 48-hour period between my initial appointment and the final appointment.

I was told I would need to repeat the process at another clinic . . . over an hour away. And I was lucky there was one open. Another \$150 for an initial appointment, more shifts to pick up to afford it, less money spent on food, more classes missed, and another violation of my autonomy at the hands of the state.

So I drove the hour to redo the ultrasound appointment, and since that clinic was backed up with the influx [from] now handling an area of over 6 million people, my appointments were delayed. When my final appointment finally arrived, weeks after it should have been over and [after] weeks of being bed ridden due to my

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<sup>13</sup> The law required *at least* 24 hours between appointments for patients living within 100 miles of an abortion facility. Tex. Health & Safety Code § 171.012(a)(4).

pre-existing health conditions being exacerbated, a friend who I could trust to this level drove me over an hour to the clinic.

Outside, I was screamed at and called many names, and the protestors tried to surround our car as we pulled into the parking lot. Inside I saw people of varying ages, races, and socioeconomic statuses. I was not alone. I finally got the procedure done.

Email received November 19, 2019. This Amicus went on to law school, where she thrived; she will join a state governmental entity upon graduation this spring. Despite her ordeal, she is certain: “I would not be where I am today if it was not for my decision.” *Ibid.*

Another Amicus, a first-generation American, explained that because of clinic closures, when she tried to obtain an abortion in “the Oklahoma-Texas-Louisiana area . . . the earliest slot available was 4+ weeks out.” Email received November 10, 2019.

Amici’s experiences illustrate how the accidents of financial resources and geography dictate how and whether people are able to access abortion care. Indeed, multiple Amici explained that they were only able to obtain abortion care because they or their families could afford to travel to states with less onerous restrictions.

Others were only able to exercise their constitutional right because they happened to live in states without such restrictions. One Amicus observed that in New Jersey, where she got her abortion, “there was no 24 hour waiting window, no protestors outside my clinic . . . nobody told me about adoption options, called the 8-week-old fetus a baby, or brought up its rights and how they could potentially trump mine.” Email received October 28, 2019.

Several Amici have stories that “highlight[] how barriers to abortion care disproportionately impact low-income women of color.” Email received October 31, 2019. For example, one Amicus, a senior lawyer at a children’s advocacy organization, explained that not only did she have to travel far outside her economically disadvantaged neighborhood to obtain her abortion—at significant cost and difficulty—but she was forced to wait five additional weeks for an appointment. *Ibid.* As she concluded: “Restricting abortion care does not stop abortions. Instead, it makes [them] more unsafe for women with limited means.” *Ibid.*

The irony of Louisiana’s Act 620, and other laws that restrict abortion access out of a purported interest in women’s health, is that the leading medical authorities (including the American College of Obstetricians and Gynecologists and the American Medical Association) have concluded that legal abortion is actually one of the safest medical procedures performed in the United States.<sup>14</sup> Indeed, legal abortion is *fourteen times* safer than carrying a child to term and giving birth.<sup>15</sup>

Moreover, as was the case for so many who sought abortion pre-*Roe*, those who are unable to overcome the labyrinthine restrictions imposed in Louisiana and other states may well find a way to terminate the pregnancy anyway, although at heightened personal risk. Consider the story of one Amicus, who ultimately went on to graduate in the top of her high school class, graduate summa cum laude from college, and enroll in a top-ten law school:

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<sup>14</sup> Amicus Br. of Am. Coll. Of Obstetricians & Gynecologists et al. at 6, *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274).

<sup>15</sup> *Id.* at 7 n.10.

When I was 15 years old living in Texas, I needed an abortion after I was taken advantage of by an older student. As I was not yet 17, I was unable to purchase emergency contraception after the event. Later, after taking a pregnancy test, I was unable to drive myself to an abortion clinic because I did not have a driver's license.

Because my family and community were vehemently pro-life, I could not seek aid in accessing an abortion without great risk to myself. At the time, I felt that I would rather end my life than go forward with an unplanned pregnancy at age fifteen, and possibly lose the support of my family and community.

As a result, I resorted to self-managed abortion remedies, hoping to abort the pregnancy in secret. Looking to the internet for ways to induce miscarriage, I tried a variety of homeopathic methods. These methods included overdosing on emmenagogues, and convincing someone to push me down a flight of stairs.

Email received October 30, 2019.

One Amicus explained that her mother was among those who have lost their lives attempting self-abortion:

My mother died in 1959, leaving four children, a successful husband and heartbroken parents. She was 31. I was 11 years old and abortion was not legal.

My mother used a knitting needle and was dead of sepsis within 24 hours. More than loss of career or marriage, or disability, she lost her life. And she was just one of thousands of girls

and women who died in that terrible, wasteful way.

I grew up without a mother and my family was emotionally splintered and set adrift in many ways by her death.

Email received November 23, 2019.

In the words of one Amicus: “Women will, as they always have, find ways to take control of their bodies. It’ll just be more dangerous and more will die.” Email received November 3, 2019.

#### **V. AMICI’S STORIES ILLUSTRATE THE NECESSITY OF THIRD-PARTY STANDING FOR ABORTION PROVIDERS**

By submitting this brief, Amici publicly share their names and stories—at great personal risk and cost—in an effort to assert, preserve, and secure the reproductive rights that have enabled them to live and thrive as lawyers and contributors to the economic and social life of this country. In doing so, they stand alongside the participants in public abortion “speak-outs” before abortion was decriminalized<sup>16</sup> and the signatories of an amicus brief similar to this one that was submitted in *Whole Woman’s Health*<sup>17</sup> (many of whom return as Amici here).

But it would be a mistake to misinterpret Amici’s willingness to identify themselves as having had an abortion as a sign that patients in the midst of seeking abortion care could feasibly sue on their own behalf. To the contrary, Amici’s own stories illustrate the weight of the decision and stress felt by so many seeking to terminate

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<sup>16</sup> See Greenhouse & Siegel 57, 64–65.

<sup>17</sup> Amicus Br. of Janice Macavoy et al., *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (No. 15-274).

pregnancies, whether those pregnancies were deeply unwanted or wanted. Amici's stories also illustrate some of the costs and risks to outing oneself as someone who had an abortion, *even* for those who have professional degrees, *even* for those intimately familiar with the legal system, and *even* for such relatively limited purpose as a single amicus brief.

One Amicus, who received an abortion at age 21 while living at home and studying for the LSAT, wrote:

I read a quote once that said "No woman wants an abortion like she wants an ice cream cone or a Porsche. She wants an abortion like an animal caught in a trap wants to gnaw off its own leg." That [was] how it was. I was boxed in, scared and lonely.

Email received November 25, 2019. Though this Amicus's feelings are not universal, like her, many Amici used the words "scared," "shocked," "ashamed," "panicked," and "desperate" to describe their feelings upon learning they were unexpectedly pregnant.

Likewise, many of the Amici who terminated advanced, wanted pregnancies as a result of fetal abnormalities also described feeling overwhelmed as they went from specialist to specialist seeking other medical opinions, knowing they had to make their decision and obtain an abortion within the vanishingly short window of time in which doing so would still be legal under state law.

But Respondent would add yet another burden for pregnant women seeking abortions by requiring that they become litigants in cases like this one. Respondent asks the Court to depart from long-standing precedent and practice that enables doctors, clinics, and other abortion providers to sue on their patients' behalf. In other words,

Respondent would require that a patient-plaintiff initiate legal proceedings—with all that entails, including finding and retaining a lawyer and potentially engaging in invasive civil discovery—nearly contemporaneously with making the decision to terminate, and simultaneously with trying to access medical care.

One Amicus, a litigator, reflected on the difficulty a patient-plaintiff might face through the lens of her own story:

The day I found out I was pregnant, I had statistics class and then I had a shift at the campus bar. I had 57 dollars in my bank account. And I needed, immediately, to not be pregnant anymore. My boyfriend borrowed money from his parents—he told them it was for textbooks.

Remembering those days of my life, I am almost offended by the suggestion that I could have been equipped at that time to act as a plaintiff in an abortion case. I really, truly, absolutely could not have. It took everything in me to wake up and go to statistics and scrape together enough money for the abortion and not cry into customers' drinks at work. Those days were impossible enough already. So make no mistake, a holding that third-party standing is unavailable in abortion cases is a holding that abortion cases will no longer be brought.

I was incapable of fighting for myself then. But I passed statistics; I graduated; I went to law school. I was able to do all of those things because other people were allowed to file lawsuits on my behalf, and on behalf of all the other

women who just could not do it themselves at that time.

As an attorney, I know firsthand what litigation entails—invasive document discovery, depositions and cross-examinations, a person’s entire private life laid out before a court. Women seeking abortions go through more than enough.

Email received November 22, 2019.

These barriers do not necessarily disappear when one graduates. As one former Circuit clerk who is now partner at a prominent firm put it:

[A]t the time I was a second year associate and dependent for advancement on what my seniors thought of me, I would never have risked “oversharing,” much less becoming a litigant in an abortion fight. As this Court considers the question of standing, it should realize how many women are in vulnerable positions at the time they need abortions—worried about and dependent upon others’ judgment or living in communities where there is open hostility to a woman’s right to choose—and would find themselves too intimidated to litigate.

Also, in this internet age, what woman would trust that she could proceed under a pseudonym and not be unmasked? The passion and vitriol of the anti-choice voices underscore the lengths some would go to identify her; once identified, it doesn’t take much effort to imagine the unrelenting torrent of abuse she could expect. It is simply too much to ask of any woman.

Email received November 16, 2019.

Even just by signing this single brief, Amici are exposing themselves to possible vitriol, rejection, and recrimination from families, employers, social communities, and strangers on the internet<sup>18</sup> who may vehemently disagree with their choices.

One Amicus, who received her first birth control prescription at the very same Planned Parenthood in front of which she and her family regularly protested, predicted:

Telling my story and signing this brief will likely cost me my relationship with my mother, but I feel the need to speak out to protect the rights of every other woman who deserves access to this care. I am a licensed attorney ONLY because I had access to a safe abortion.

. . . [M]y large family does not know I terminated a pregnancy because my mother has always said she will disown any of us that terminate a pregnancy or participate in a partner's pregnancy termination. If my mother sees my name on this brief, it is likely the end of our relationship . . . . It is also likely that a friend I've known for nearly 30 years will also end our friendship over my pregnancy termination. I wouldn't be surprised if there was more fallout within my large extended Catholic family as well. But, I cannot stay silent any more.

Email received October 28, 2019.

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<sup>18</sup> See Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. Rev. 61, 64–66 (2009) (describing the rise of internet hostility and harassment towards vulnerable groups, including women).

Another Amicus, a professor and practicing attorney, confided:

Identifying myself publicly brings me fear of reprisal from my colleagues and my broader community in South Carolina, many of whom are deeply religious and against abortion. I suspect that many would (and will) see me differently—as morally inferior—upon learning that I have had an abortion. Many of my students write passionately against abortion in their class papers, so exposing myself also brings a risk of backlash from them.

These fears contribute to a great anxiety about my name being published on this list. At the same time, I feel a sense of duty to identify myself and to clarify that abortions are something that *all* women benefit from having access to.

Email received October 29, 2019.

Dozens of people who wanted to appear alongside Amici were ultimately unable (many because they were prevented by their employer) or unwilling to reveal their names and professional affiliations as Amici have done.

Two anonymous Amici represent these and the countless other members of the legal profession who have had abortions. One, a senior attorney with the Department of Justice, joins the brief anonymously on behalf of herself and all the other lawyers working in the highest echelons of government who have had abortions. Another, a law student at the very outset of her legal career who could not be named because of uniquely acute safety concerns, represents all the other current, past, and future members of this profession for whom exposing themselves would be too dangerous.

For some Amici, coming forward has forced them to expose an intimate sphere of their lives that they rightfully expected would be shielded from the world's scrutiny. For example, one Amicus had never before shared her story, despite the fact that her father had been an abortion provider and she herself has devoted her career to reproductive rights advocacy. Email received October 29, 2019.

As another Amicus wrote, it is “awfully terrifying to identify publicly and to share such a personal and private story—one that can often be a great source of shame. Even more so as a young Latinx professional establishing herself in a field traced with conservative contours.” Email received November 10, 2019. Another attorney described her participation as “a price I do not want to pay,” but will because “my daughter and her peers deserve the same, if not better, bodily autonomy than I have enjoyed.” Email received October 28, 2019.

And yet Respondent would ask much more of patients seeking a termination. Indeed, there is hardly a better way to guarantee that unconstitutional laws will go unchallenged than to expect pregnant women to become litigants as they make this most personal and private decision, locate a provider, make an appointment or set of appointments as required by local law, raise the necessary funds to cover the procedure, and often race—perhaps out of state—to exercise their reproductive choice consistent with the labyrinthine applicable regulations.

\* \* \*

The statutory provision at issue here, like the identical provision struck down in *Whole Woman's Health*, would dramatically restrict women's ability to exercise their right to safe and legal abortions, and thus to participate

equally in the life of the nation. Striking it down would put Louisiana, and any state that might enact similar laws, on notice that the rights to terminate a pregnancy, to autonomy in decision-making, and to bodily integrity, must be rights in fact and not just in theory.

Amici respectfully submit this brief in support of the June Medical Petitioners because they know firsthand the value of the rights under threat, and because they feel a responsibility to raise their voices on behalf of those who cannot.

#### CONCLUSION

For all the foregoing reasons and those stated in the June Medical Petitioners' briefs, the decision of the Fifth Circuit should be reversed.

Respectfully submitted.

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DECEMBER 2019

## **APPENDIX**

**APPENDIX: LIST OF AMICI—368 PEOPLE IN THE  
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