

No. 19-1392

IN THE
Supreme Court of the United States

THOMAS E. DOBBS, M.D., M.P.H., IN HIS
OFFICIAL CAPACITY AS STATE HEALTH OFFICER OF
THE MISSISSIPPI DEPARTMENT OF HEALTH, *et al.*,

Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, ON
BEHALF OF ITSELF AND ITS PATIENTS, *et al.*,

Respondents.

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

**BRIEF OF AMICI CURIAE
NATIONAL WOMEN'S LAW CENTER
AND 72 ADDITIONAL ORGANIZATIONS
COMMITTED TO GENDER EQUALITY
IN SUPPORT OF RESPONDENTS**

Agnès Dunogué
Maria Nudelman
Daniel Sugar
SHERMAN & STERLING LLP
599 Lexington Avenue
New York, New York 10022
212-848-4000

Fatima Goss Graves
Gretchen Borchelt
Heather Shumaker
Counsel of Record
Michelle Banker
Sunu Chandy
Lauren Gorodetsky
Anna Rodriguez
NATIONAL WOMEN'S LAW CENTER
11 Dupont Circle NW, Suite 800
Washington, D.C. 20036
202-588-5180
hshumaker@nwlc.org

Counsel for Amici Curiae

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INTEREST OF THE AMICI CURIAE¹

The National Women’s Law Center is a nonprofit legal advocacy organization founded in 1972 dedicated to the advancement and protection of the legal rights and opportunities of women, girls, and all who face sex discrimination. The Center focuses on issues including economic security, workplace justice, education, health, and reproductive rights, with particular focus on the needs of those who face multiple and intersecting forms of discrimination. Because the ability to decide whether to bear children is of tremendous significance to gender equality and the lives of women and all who can become pregnant,² the Center seeks to ensure access and the legal right to abortion and has participated as *amicus* in this Court and before numerous other courts to help secure this right.

This brief is also submitted on behalf of 72 additional organizations, listed in the Appendix to this brief. Other *amici curiae* are organizations also committed to obtaining full legal, economic, and social

¹ No party or its counsel authored this brief in whole or in part, and no person or entity other than amici, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties have consented to the filing of this brief.

² While this brief sometimes refers to a woman’s right to abortion, *amici* recognize that individuals who do not identify as women, including transgender men and non-binary persons, also may become pregnant and are equally entitled to protection of their ability to obtain an abortion.

equality for women and others with capacity for pregnancy and their families.

SUMMARY OF THE ARGUMENT

For nearly 50 years, this Court has recognized that the U.S. Constitution protects the fundamental right to abortion, including the core principle that states cannot ban abortion prior to viability. *See Roe v. Wade*, 410 U.S. 113, 153-54, 163 (1973); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846, 851 (1992); *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2297-99 (2016). Petitioners brazenly ask the Court to overturn at least this core principle, if not to expressly overturn the right to abortion. But this Court may do neither. Any decision allowing H.B. 1510 to stand would run afoul of the Fourteenth Amendment’s guarantee of liberty and equality, which firmly protects the right to abortion.

As this Court has repeatedly affirmed, the right to abortion is firmly grounded in the rights of personal autonomy, bodily integrity, and freedom from government intrusion into “the most intimate and personal choices a person may make in a lifetime.” *Casey*, 505 U.S. at 851. The right to abortion is also fundamentally rooted in equal protection principles. These two rights—liberty and equality—“are connected in a profound way.” *Obergefell v. Hodges*, 576 U.S. 644, 672 (2015). This is especially true with respect to abortion, which is critical to the ability of people who can become pregnant to “participate equally in [] economic and social life,” *Casey*, 505 U.S. at 856, free from discriminatory sex-based stereotypes

about their capabilities or expected social roles. Accordingly, if this Court were to overturn decades of precedent safeguarding the right to abortion, it would deprive people who can become pregnant of the liberty and equality guaranteed by the Fourteenth Amendment.

This concern is not theoretical. Departing from this Court's longstanding precedent recognizing the right to abortion and prohibiting pre-viability abortion bans would have grave consequences for individuals in Mississippi and nationwide, even beyond the damage already wrought by Texas S.B. 8.³ Being forced to continue a pregnancy jeopardizes people's health and results in substantial economic, educational, and professional burdens. Such consequences would be particularly detrimental to those who work in low-paid jobs or live in poverty, who are disproportionately people of color. Eviscerating the right to abortion will also uniquely harm LGBTQ individuals, people in abusive relationships, people with disabilities, and young people who can or do become pregnant.

Contrary to Petitioners' unfounded contention, advances in contraception and existing laws promoting gender equality do not render the right to abortion superfluous nor do they obviate the huge burdens that would result from gutting or expressly overturning the right. The right to abortion remains critical for the equality and economic security of people who can become pregnant. As evidence of this connection, this Court need look no further than

³ 87th Leg., Reg. Sess. (Tex. 2021).

Mississippi's own hostility to reproductive rights and its deeply troubling record of gender disparities in economic and health outcomes. The facts on the ground for pregnant individuals and parents in Mississippi simply belie Petitioners' empty promise that people forced to carry a pregnancy to term will not face barriers to equal participation in social and economic life.

Upholding H.B. 1510—or overturning the right to abortion explicitly—would devastate the constitutionally guaranteed liberty and equality interests of women and all who can become pregnant, and so this Court must affirm the decision below.

ARGUMENT

I. The Right to Abortion Is Critical to the Liberty and Equality Guaranteed by the Fourteenth Amendment Because Abortion Is Essential to Securing the Autonomy, Health, and Economic Opportunity of People Who Can Become Pregnant.

A. The Right to Abortion is Firmly Grounded in the Due Process Clause.

Contrary to Petitioner's arguments, Pet'rs' Br. 12-13, 16, the right to abortion is tethered logically and seamlessly to the rights of personal autonomy and bodily integrity that have been encompassed within the right to liberty for over a century.

As early as 1891, this Court explained that “[n]o right is held more sacred, or is more carefully guarded

by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others.” *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891). This “right to be let alone” from governmental intrusion is “the most comprehensive of rights and the right most valued” in our society. *Stanley v. Georgia*, 394 U.S. 557, 564 (1969). Consistent with this precedent, for over seventy years, this Court has recognized that reproductive decisions are foundational liberties protected by the Due Process Clause because the right to be free from governmental intrusion extends both to freedom from bodily invasion and “the interest in independence in making certain kinds of important decisions,” *Carey v. Population Servs. Int’l*, 431 U.S. 678, 684 (1977) (citation omitted), and because “[t]he decision whether or not to beget or bear a child is at the very heart of this cluster of constitutionally protected choices . . . concern[ing] the most intimate of human activities,” *id.* at 685; *see also Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 484-86 (1965); *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

The right to abortion is exemplary of the right “of personal autonomy and bodily integrity, with doctrinal affinity to cases recognizing limits on governmental power” intruding on those rights. *Casey*, 505 U.S. at 857. “No evolution of legal principle has left *Roe*’s doctrinal footings weaker than they were in 1973,” including the Court’s conclusion, reaffirmed in *Casey*, that any purported state interest in fetal life “falls short of justifying any plenary

override of individual liberty claims.” *Id.* To deny the right to abortion, as Petitioners would have it, is to ignore over a century of precedent recognizing the freedom to control one’s body and one’s destiny, “claims implicit in the meaning of liberty.” *Id.*

As set forth at length herein, denying access to abortion infringes the right to liberty by denying the ability to determine one’s life path. So too is liberty denied by the violation of bodily autonomy. Denying this right is “particularly intrusive” to bodily integrity because forced pregnancy, like forced medical treatment, carries a “substantial risk.” *Washington v. Harper*, 494 U.S. 210, 237 (1990). As other *amici* explain, pregnancy and childbirth pose serious health risks, driving crisis-level pregnancy-related mortality rates for Black women.⁴ Even in pregnancies without complication, the person carrying a pregnancy “to full term is subject to anxieties, to physical constraints, to pain that only she must bear.” *Casey*, 505 U.S. at 852. At no point do Petitioners acknowledge “the [s]pecific and direct harm” involved in pregnancy and childbirth. *Roe*, 410 U.S. at 153. Instead, Petitioners detail the risks of an abortion, see Pet’rs’ Br. 8, 37, ignoring that abortion is much safer than carrying a pregnancy—especially a forced pregnancy—to term.⁵

⁴ See Br. of *Amici Curiae* Birth Equity Organizations, *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392 (Sept. 20, 2021).

⁵ See Caitlin Gerdts et al., *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth After an Unwanted Pregnancy*, 26 WOMEN’S HEALTH ISSUES 55 (2016).

Beyond these risks, certain individuals face other serious health consequences from being forced to carry a pregnancy. Denying reproductive autonomy compounds the generational trauma of people of color, individuals with disabilities, and LGBTQ people with histories of reproductive coercion and forced sterilization.⁶ This is especially true of Black women, who bear the legacy of slavery and forced sex and childbearing.⁷ Furthermore, women in abusive relationships who are denied an abortion are more likely to sustain contact with their abusers over time and be subjected to continued violence.⁸

While the Court in *Roe* recognized that the detriment of denying the decision to have an abortion “is apparent,” *Roe*, 410 U.S. at 153, Petitioners choose to ignore the harm they would impose. Otherwise, Petitioners would be forced to acknowledge that denying the right to an abortion is a violation of a person’s bodily integrity and personal autonomy, “a deprivation of liberty in the most literal and fundamental sense.” *Harper*, 494 U.S. at 238.

⁶ *E.g.*, Loretta J. Ross, *Trust Black Women: Reproductive Justice and Eugenics*, in *RADICAL REPRODUCTIVE JUSTICE* 58, 63-69 (Loretta J. Ross et al. eds., 2017). This legacy continues today. Olivia Capello, *Powerful Contraception, Complicated Programs: Preventing Coercive Promotion of Long-Acting Reversible Contraceptives*, 24 *GUTTMACHER POL’Y REV.* 36, 38-39 (2021).

⁷ DEBORAH GRAY WHITE, *AR’N’T I A WOMAN?: FEMALE SLAVES IN THE PLANTATION SOUTH* 68 (1999).

⁸ See Sarah C.M. Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, *BMC MED.*, Sept. 2014, at 5.

**B. The Right to Abortion Is Firmly
Grounded in Equal Protection
Principles.**

The right to abortion is also firmly grounded in equal protection principles, contrary to Petitioners' protestations otherwise, Pet'rs' Br. 17-18. Accordingly, this Court cannot overturn precedent prohibiting pre-viability bans on abortion—or explicitly overturn the right—without depriving women and all who can become pregnant of the equality under law guaranteed by the Fourteenth Amendment.

1. *Equal protection principles animate and reinforce this Court's due process jurisprudence.* “The Due Process Clause and the Equal Protection Clause are connected in a profound way,” and this Court has long relied on equal protection values to “vindicat[e] precepts of liberty and equality under the Constitution.” *Obergefell*, 576 U.S. at 674 (*citing Loving v. Virginia*, 388 U.S. 1, 12 (1967) (invoking both principles to strike down law banning interracial marriage); *Skinner*, 316 U.S. at 541 (same for law mandating sterilization of certain felons); *Eisenstadt*, 316 U.S. at 453-54 (same for law prohibiting contraceptives for unmarried persons). Indeed, liberty and equality so often work together because “the government rarely takes a fundamental right away from all persons.”⁹

⁹ Rebecca L. Brown, *Liberty, the New Equality*, 77 N.Y.U. L. REV. 1491, 1491 (2002).

The importance of considering equal protection principles when determining the scope of liberty interests is critical when sex-based classifications are involved given the heightened scrutiny they require. *See Nevada Dep't of Hum. Res. v. Hibbs*, 538 U.S. 721, 722 (2003). This Court has “carefully inspected official action that closes a door or denies opportunity” based on sex, recognizing that sex classifications can “perpetuate the legal, social, and economic inferiority of women.” *United States v. Virginia*, 518 U.S. 515, 532, 534 (1996). This reasoning illustrates how sex classifications can limit a person’s liberty and how the denial of liberty perpetuates sex stereotypes. In other words, where laws regulate a class of persons’ “existence or control [over] their destiny,” the law not only “burden[s] the liberty” of the regulated class but also “abridge[s] central precepts of equality.” *Obergefell*, 576 U.S. at 675.

2. *The right to abortion is necessary to allow equal participation in society.* Liberty and equality are the foundation of the right to abortion; they are both necessary to an “understanding of what freedom is and must become.” *Id.* at 672. As Justice Ginsburg explained prior to her time on this Court, a person’s agency over their own body impacts their “ability to stand in relation to man, society, and the state as an independent, self-sustaining, equal citizen.”¹⁰

¹⁰ Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375, 383 (1985) (citation omitted). The late Justice Ginsburg repeatedly upheld the right to abortion under both liberty and equality principles.

Equality principles are thus necessary to understanding the freedom that the right to abortion provides. The Court in *Casey* understood this principle: “The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” *Casey*, 505 U.S. at 856; *see also id.* at 912 (Stevens, J., concurring in part and dissenting in part) (“*Roe* is an integral part of . . . the basic equality of men and women.”); *id.* at 928 (Blackmun, J., concurring in part, concurring in the judgment in part, and dissenting in part) (abortion restrictions “implicate constitutional guarantees of gender equality”).

As the Court explained in *Casey*: “[P]eople 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[,]” and “[a]n entire generation has come of age free to assume *Roe*’s concept of liberty in defining the capacity of women to act in society.” *Id.* at 856, 860. Access to abortion has enabled people to invest more in their human capital and careers, enabling women to complete high school and higher levels of education, improve their labor force participation, and secure their economic independence.¹¹ After legalization of abortion permitted greater access to abortion in the 1970s, women—particularly Black women—

¹¹ ANNA BERNSTEIN & KELLY M. JONES, CTR. ON THE ECON. OF REPROD. HEALTH, THE ECONOMIC EFFECTS OF ABORTION ACCESS: A REVIEW OF THE EVIDENCE (2019), https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfina1.pdf.

experienced significant increases in school graduation and employment rates.¹²

Pregnant individuals who are able to obtain an abortion today are less likely to experience economic hardship and insecurity than those who are denied an abortion.¹³ Compared to women who obtained abortion care, those who were denied such care and subsequently gave birth were nearly four times more likely to live below the federal poverty line and less likely to have a full-time job several months later.¹⁴ Women living in states with greater access to reproductive health services such as Medicaid coverage of abortion have been found to have higher median wages, to be more likely to be managers, and to be less likely to work part-time jobs.¹⁵

Accordingly, the Court cannot overturn or gut the right to abortion without decimating the ability of women and all who can become pregnant to pursue their personal and professional goals, to safeguard their economic security, and to stand as equal members of society, which would violate long-

¹² *Id.*

¹³ Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 AM. J. PUB. HEALTH 407, 412 (2018).

¹⁴ *Id.* at 409-11.

¹⁵ KATE BAHN ET AL., CTR. FOR AM. PROGRESS, LINKING REPRODUCTIVE HEALTH CARE ACCESS TO LABOR MARKET OPPORTUNITIES FOR WOMEN 13-17, 18 (2017), https://cdn.americanprogress.org/content/uploads/2017/11/16060404/110817_ReproRightsEconOpportunity-report1.pdf?_ga=2.84593433.1649302871.1631567668-707221933.1627661740.

standing equal protection principles protected by the Fourteenth Amendment.

3. *The right to abortion is necessary for individuals to determine their life's course free from sex stereotypes regarding the capabilities and expected social roles of women.* Equal protection jurisprudence protects against sex-based stereotypes and classifications that limit the liberty, autonomy, and dignity of women as a class. *See Hibbs*, 538 U.S. at 729-31, 736-37; *Virginia*, 518 U.S. at 533-34. Abortion bans like H.B. 1510 both invoke and perpetuate harmful stereotypes that force women and others who can become pregnant to assume traditional gender roles, infringing their liberty and equality. The Court therefore cannot overturn or undermine the right to abortion without running afoul of both rights under the Fourteenth Amendment.

Although “now untenable,” for generations “the lawbooks of our Nation were rife with overbroad generalizations about the way” the sexes are. *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689-91 (2017). For instance, the law assumed that women are the “center of home and family life,” *Califano v. Westcott*, 443 U.S. 76, 89 (1979) (citation omitted); women are the “weaker sex’ or are more likely to be child-rearers,” *Califano v. Webster*, 430 U.S. 313, 317 (1977); and “woman has always been dependent upon man” and in need of “especial care that her rights may be preserved,” *Muller v. Oregon*, 208 U.S. 412, 421 (1908).

This Court no longer tolerates such views of gender, “however dominant that vision has been in the course of our history and our culture.” *Casey*, 505 U.S. at 852. Indeed, in *Casey*, this Court struck down under the Due Process Clause a spousal notification requirement harkening back to “the common-law understanding of a woman’s role within the family.” *See id.* at 897. Just as previous discriminatory state laws presumed that the “paramount destiny and mission of woman are to fulfil[] the noble and benign offices of wife and mother,” *Bradwell v. Illinois*, 83 U.S. 130, 141 (1872), so too do abortion bans rest on sexist assumptions that people can “simply be forced to accept the ‘natural’ status and incidents of motherhood,” regardless of their decisions. *Casey*, 505 U.S. at 928 (Blackmun, J.). H.B. 1510 is a textbook example: by consistently referring to patients at even the earliest stages of pregnancy as “maternal patient[s],”¹⁶ Mississippi “insist[s] . . . upon its own vision of the woman’s role.” *Casey*, 505 U.S. at 852. This stereotype relies on and perpetuates a worldview dictated by an outdated understanding of gender that harms all individuals.

Underlying these abortion laws that restrict people’s “right to make an autonomous choice,” *Gonzales v. Carhart*, 550 U.S. 124, 184 (Ginsburg, J., dissenting), is “an attitude of ‘romantic paternalism’” that puts women “not on a pedestal, but in a cage,” *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

¹⁶ *See, e.g.*, H.B. 1510, 2018 Leg., Reg. Sess. § (4)(a), (c), (d) (Miss. 2018).

Petitioners' own brief demonstrates such paternalism: Petitioners attempt to justify the law by discussing their interest in "protecting . . . women's health" from purported abortion-related risks.¹⁷ This rationale assumes that a woman is incapable of evaluating risks and making informed decisions about her health and instead needs "legislation designed for her protection." *Muller*, 208 U.S. at 422. It also ignores research showing that most people are certain about their decision to end a pregnancy.¹⁸

Abortion bans and restrictions rely on sex stereotyping to not only box women and others who can become pregnant into a caregiving role, but also to box them out of economic ones, as discussed *supra* and *infra* Part II.B. These laws thus perpetuate sex stereotypes by limiting future educational and employment opportunities and denying those affected the ability "to participate equally" in society. *Casey*, 505 U.S. at 856; *see also id.* at 928 (Blackmun, J.) ("Because motherhood has a dramatic impact on a woman's educational prospects, employment opportunities, and self-determination, restrictive

¹⁷ Pet'rs' Br. 5, 37; *see also* Pet. for Writ of Cert. 24 (noting Petitioners' interest in "protect[ing] women from the dangers inherent in abortion"); H.B. 1510, 2018 Leg., Reg. Sess. § 2(b)(ii)-(v) (Miss. 2018) (providing the legislature's women-protective rationale for the law).

¹⁸ *E.g.*, ADVANCING NEW STANDARDS IN REPROD. HEALTH, WOMEN'S EXPERIENCES WITH A 72-HOUR WAITING PERIOD FOR ABORTION (2016), https://www.ansirh.org/sites/default/files/publications/files/ansirh_issue_brief_utah_72-hour_waiting_period.pdf.

abortion laws deprive her of basic control over her life.”).

A vicious cycle has been created that will spiral further downward if H.B. 1510 is upheld: sex stereotypes motivate bans and restrictions on abortion, and these laws force pregnant people into caregiving roles and deepen sex stereotypes. *See Hibbs*, 538 at 736 (noting that stereotypes about gender roles “created a self-fulfilling cycle of discrimination that forced women to continue to assume the role of primary family caregiver”). Overturning or gutting the right to abortion by allowing states to enact bans like H.B. 1510 will undermine the ability of women and all people who can become pregnant to determine their life’s course free from sex stereotypes, thereby denying both their liberty and equality.

II. The Right to Abortion Remains Critical to the Liberty and Equality Guaranteed by the Fourteenth Amendment, Notwithstanding Advances in Gender Equality.

Petitioners point to the progress that women have made over the last 50 years to argue that *Roe* and *Casey* are no longer needed. Yet Petitioners ignore that that progress has come largely *because of* greater access to reproductive health care, including abortion, and that notwithstanding this progress, gender gaps remain. Petitioners are also mistaken that advances such as improved access to and effectiveness of contraception and laws “addressing pregnancy

discrimination, requiring leave time, and assisting with childcare” obviate the need for the right to abortion. Pet’rs’ Br. 29, 35. Even if access to and efficacy of contraception were perfect, which they are not, and even if existing laws were sufficient to support the economic security and equality of people who can become pregnant, which they are not, abortion is still essential for all the reasons discussed *supra* Part I.

Further, systemic barriers to contraception continue to cause unintended pregnancies, and pregnant and parenting students and workers continue to face discrimination, job insecurity, loss of earnings, and diminished professional and educational opportunities. The right to abortion thus remains vital, particularly in a state like Mississippi, which utterly fails to provide the support that pregnant and parenting people need to thrive.

**A. The Right to Abortion Remains Critical
Notwithstanding Advances in
Contraception.**

Petitioners are mistaken that improved contraceptive access and efficacy has rendered unintended pregnancy a concern of the past. Systemic barriers continue to preclude people from consistently accessing the contraceptive method they need.

Today more than 19 million women—including nearly 200,000 Mississippi women—are in need of reasonable access in their county to a publicly funded health center offering the full range of

contraceptives.¹⁹ Additionally, while Petitioners indirectly acknowledge the gains from the Affordable Care Act’s contraceptive coverage requirement, Pet’rs’ Br. 29, many women of reproductive age are still uninsured,²⁰ and Black, Latina, and Native women of reproductive age remain significantly more uninsured than their white counterparts.²¹ Lack of insurance creates financial hurdles. As of 2017, women without insurance could pay up to \$850 annually on oral contraception and clinic costs.²² Long-acting reversible contraceptives (“LARCs”), among the most effective contraceptives, carry the highest upfront costs—e.g., up to \$1,300 up front for IUDs.²³

Other non-financial barriers limit access to birth control. Women of color, LGBTQ people, and people with disabilities experience persistent discrimination

¹⁹ *Birth Control Access: Lack of Access = Lack of Power*, POWER TO DECIDE, <https://powertodecide.org/what-we-do/access/birth-control-access> (last visited Aug. 15, 2021).

²⁰ *Uninsured Women*, AM.’S HEALTH RANKINGS (2020), https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/Uninsured_women/state/ALL.

²¹ NAT’L P’SHP FOR WOMEN & FAMS., DESPITE SIGNIFICANT GAINS, WOMEN OF COLOR HAVE LOWER RATES OF HEALTH INSURANCE THAN WHITE WOMEN 1-2 (2019), <https://www.nationalpartnership.org/our-work/resources/health-care/women-of-color-have-lower-rates-of-health-insurance-than-white-women.pdf>.

²² Jamila Taylor & Nikita Mhatre, *Contraceptive Coverage Under the Affordable Care Act*, CTR. FOR AM. PROGRESS (Oct. 6, 2017), <https://www.americanprogress.org/issues/women/news/2017/10/06/440492/contraceptive-coverage-affordable-care-act/>.

²³ *IUD*, PLANNED PARENTHOOD, <https://www.plannedparenthood.org/learn/birth-control/iud> (last visited Aug. 31, 2021).

and cultural incompetence in reproductive health services.²⁴ Young people often face both confidentiality concerns and restrictions imposed by state laws,²⁵ including in Mississippi.²⁶ And people in abusive relationships may face reproductive coercion from partners, including birth control sabotage.²⁷

Logistical and administrative barriers also impede access. People who rely on public transportation, live in rural areas, have child care obligations, or work in jobs without paid sick leave and predictable hours (who are disproportionately Black and Latina) may have difficulty getting to a pharmacy or a provider to receive contraception or related services.²⁸ These

²⁴ Madeline Y. Sutton et al., *Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020*, 137 *OBSTETRICS & GYNECOLOGY* 225, 229 (2021); Erin Wingo et al., *Reproductive Health Care Priorities and Barriers to Effective Care for LGBTQ People Assigned Female at Birth: A Qualitative Study*, 28 *WOMEN'S HEALTH ISSUES* 350 (2018); Clair Kaplan, *Special Issues in Contraception: Caring for Women With Disabilities*, 51 *J. MIDWIFERY & WOMEN'S HEALTH* 450 (2006).

²⁵ *Minors' Access to Contraceptive Services*, GUTTMACHER INST. (Sept. 1, 2021), <https://www.guttmacher.org/state-policy/explore/minors-access-contraceptive-services>.

²⁶ *MISS. CODE ANN.* § 41-42-7.

²⁷ Karen Trister Grace & Jocelyn Anderson, *Reproductive Coercion: A Systematic Review*, 19 *TRAUMA, VIOLENCE, & ABUSE* 371, at 1-3, 7-8 (2018).

²⁸ Kate Grindlay & Daniel Grossman, *Prescription Birth Control Access Among U.S. Women at Risk of Unintended Pregnancy*, 25 *J. WOMEN'S HEALTH* 249 (2016); NAT'L WOMEN'S L. CTR. [hereinafter NWLC] *ACCESS TO CONTRACEPTIVES DURING THE COVID-19 PANDEMIC AND RECESSION (2020)*, https://nwlc.org/wp-content/uploads/2020/08/NWLCIssueBrief_BCandCOVID-19.pdf.

barriers are often compounded by arbitrary coverage restrictions, such as limits on how many packs of pills insurers will cover at one time, thereby requiring more frequent refills, despite research showing an extended supply of birth control pills reduces unintended pregnancy rates.²⁹ And while some states now require insurers to cover a full year at once to improve access, Mississippi has declined to do so.³⁰

Being unable to afford or access contraception of one's choice can cause people to use contraception incorrectly, inconsistently, or not at all,³¹ or to use medically inappropriate or less effective methods.³² Unintended pregnancy is more likely to occur in these circumstances: inconsistent/incorrect contraceptive use accounts for 41% of unintended pregnancies in the

²⁹ *Insurance Coverage of Contraception*, GUTTMACHER INST. (Jan. 2020), <https://www.guttmacher.org/evidence-you-can-use/insurance-coverage-contraception>; Diana Greene Foster et al., *Number of Oral Contraceptive Pill Packages Dispensed and Subsequent Unintended Pregnancies*, 117 *OBSTETRICS & GYNECOLOGY* 566, 570-71 (2011).

³⁰ *Insurance Coverage of Contraceptives*, GUTTMACHER INST. (Sept. 1, 2021), <https://www.guttmacher.org/state-policy/explore/insurance-coverage-contraceptives>.

³¹ Jennifer J. Frost & Jacqueline E. Darroch, *Factors Associated with Contraceptive Choice and Inconsistent Method Use, United States, 2004*, 40 *PERSPS. ON SEXUAL & REPROD. HEALTH* 94, 99, 101-03 (2008).

³² Debbie Postlethwaite et al., *A Comparison of Contraceptive Procurement Pre- and Post-Benefit Change*, 76 *CONTRACEPTION* 360, 363 (2007); *Insurance Coverage of Contraception*, *supra* note 29.

U.S.³³ Further, although Petitioners are correct that contraceptive failure rates have declined, no contraception is 100% effective. Typical use failure rates range from 0.1–0.8% to 14–27% depending on the contraception type.³⁴ It is simply incorrect to assume that advances in access to or the efficacy of contraception have eradicated unintended pregnancy or that it has any bearing on the need for access to abortion care.

**B. The Right to Abortion Remains Critical
Notwithstanding Existing Laws
Promoting Gender Equality.**

Contrary to Petitioners' assertions, Pet'rs' Br. 29, 35, existing laws promoting gender equality have not eradicated gender disparities, nor do they remove the substantial economic, educational, and professional burdens of being forced to continue a pregnancy.

1. Economic gender disparities persist. Petitioners' insistence that economic advances for women belie the need for abortion ignores the persistent gender gap in economic outcomes. In 2019, 18% of Black, 18% of Native, 15% of Latinx, and 8% of white women lived

³³ ADAM SONFIELD ET AL., GUTTMACHER INST., MOVING FORWARD: FAMILY PLANNING IN THE ERA OF HEALTH REFORM 8 (2014), https://www.guttmacher.org/sites/default/files/report_pdf/family-planning-and-health-reform.pdf.

³⁴ *Contraception*, CTR. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/reproductivehealth/contraception/index.htm> (last visited Sept. 14, 2020).

in poverty, versus 6% of white men.³⁵ This is due in part to the fact that women—and disproportionately women of color—comprise a larger share of the low-paid workforce than men: in 2018, women made up almost two-thirds of workers in the 40 lowest-paying jobs, which typically pay less than \$12 per hour, even though women comprise just under half of the workforce in the U.S.³⁶ Substandard wages have a particularly harsh impact on women of color, who are more likely than white women to be the sole or primary earner in their households.³⁷ Gender disparities in poverty rates are further driven by the wage gap: women working full-time, year-round are typically paid only \$0.82 for every dollar paid to men; that number is \$0.63 for Black, \$0.60 for Native, and \$0.55 for Latina women.³⁸ Women also continue to be underrepresented in top leadership positions. 19% of equity law partners, 16% of medical school deans, and 7% of top executives in Fortune 100 companies are

³⁵ AMANDA FINS, NWLC, NATIONAL SNAPSHOT: POVERTY AMONG WOMEN & FAMILIES, 2020, at 1-2 (2020), <https://nwlc.org/wp-content/uploads/2020/12/PovertySnapshot2020.pdf>.

³⁶ JASMINE TUCKER & JULIE VOGTMAN, NWLC, WHEN HARD WORK IS NOT ENOUGH: WOMEN IN LOW-PAID JOBS 1, 3 (2020) https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2020/04/Women-in-Low-Paid-Jobs-report_pp04-FINAL-4.2.pdf.

³⁷ *Id.* at 6.

³⁸ JASMINE TUCKER, NWLC, THE WAGE GAP HAS ROBBED WOMEN OF THEIR ABILITY TO WEATHER COVID-19, at 1-2 (2021), <https://nwlc.org/wp-content/uploads/2021/03/EPD-2021-v1.pdf>.

women.³⁹ In 2021, only 26.7% of Congresspeople and 27.9% of the federal judiciary are women.⁴⁰ These persistent economic disparities make absorbing the costs of pregnancy and parenthood all the more difficult, and access to abortion all the more critical.

2. *Childbirth and parenting costs.* Childbirth and parenting continue to impose significant costs. A 2013 study of nearly 1,000 women seeking abortions found that 40% of women cited financial concerns as a reason for an abortion, while nearly 30% cited the need to focus on parenting existing children.⁴¹ Childbirth expenses alone can reach tens of thousands of dollars,⁴² and the significant number of pregnant people without health insurance (disproportionately women of color)⁴³ may bear these costs in their entirety. The total costs of raising a child are

³⁹ JUDITH WARNER ET AL., CTR. FOR AM. PROGRESS, THE WOMEN'S LEADERSHIP GAP 6 (2018), https://cdn.americanprogress.org/content/uploads/2018/11/19121654/WomensLeadershipFactSheet.pdf?_ga=2.85786393.1892185579.1631138960-707221933.1627661740.

⁴⁰ *Women in the U.S. Congress 2021*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/women-us-congress-2021> (last visited Sept. 13, 2021); *Biographical Directory of Article III Federal Judges, 1789-Present*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/search/advanced-search> (last visited Sept. 13, 2021).

⁴¹ M. Antonia Biggs et al., *Understanding Why Women Seek Abortions in the US*, BMC WOMEN'S HEALTH, July 2013, at 5-6.

⁴² See TRUVEN HEALTH ANALYTICS, THE COST OF HAVING A BABY IN THE UNITED STATES 6 (2013), <https://www.Nationalpartnership.org/our-work/resources/health-care/maternity/archive/the-cost-of-having-a-baby-in-the-us.pdf>.

⁴³ See NAT'L P'SHIP FOR WOMEN & FAMS., *supra* note 21.

substantial, accounting for on average 27% of low-income families' gross income.⁴⁴ Furthermore, for a pregnant person who already has children, raising additional children will entail fewer resources for each child's education and other needs.⁴⁵

The lack of affordable, high-quality child care is also a key driver in parents' economic insecurity. Child care costs can comprise 35% of the income of working families paying for child care who earn below 200% of the federal poverty line.⁴⁶ While current laws and government programs may offset the costs of child care for working parents, Pet'rs' Br. 29, 35, such programs are often inaccessible.⁴⁷ In 2018, only 15% of children eligible for federal child care subsidies

⁴⁴ MARK LINO ET AL., U.S. DEP'T OF AGRIC., EXPENDITURES ON CHILDREN BY FAMILIES, 2015, at 15 (2017), https://fns-prod.azureedge.net/sites/default/files/crc2015_March2017_0.pdf.

⁴⁵ See, e.g., ADAM SONFIELD ET AL., GUTTMACHER INST., THE SOCIAL AND ECONOMIC BENEFITS OF WOMEN'S ABILITY TO DETERMINE WHETHER AND WHEN TO HAVE CHILDREN 24 (2013) [hereinafter SONFIELD ET AL., SOCIAL AND ECONOMIC BENEFITS], https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.

⁴⁶ See RASHEED MALIK, CTR. FOR AM. PROGRESS, WORKING FAMILIES ARE SPENDING BIG MONEY ON CHILD CARE 3 (2019), https://cdn.americanprogress.org/content/uploads/2019/06/19074131/Working-Families-SpendingBRIEF.pdf?_ga=2.43973797.1052962183.1630091659-640410794.1630091659.

⁴⁷ See *generally* KAREN SCHULMAN, NWLC, ON THE PRECIPICE: STATE CHILD CARE ASSISTANCE POLICIES 2020 (2021), <https://nwlc.org/wp-content/uploads/2021/05/NWLC-State-Child-Care-Assistance-Policies-2020.pdf>.

actually received them.⁴⁸ Although the expanded child care tax credit enacted in March 2021 provides a maximum credit of \$4,000 for one child or \$8,000 for two or more,⁴⁹ it is only available for tax year 2021.⁵⁰ If Congress does not extend the expansions, the credit will return to its pre-2021 levels, *e.g.*, an average credit of \$124 in 2018 for families with incomes under \$15,000.⁵¹ And because the previous version of the credit was not refundable, those with little or no income who need the assistance with their child care expenses the most will receive little or no benefit from it if the improvements to the credit are not extended.⁵²

3. *Pregnancy discrimination.* Pregnant workers still face persistent discrimination in the workplace despite laws specifically designed to address this problem.⁵³ For example, the Pregnancy Discrimination Act (PDA) prohibits discrimination based on pregnancy, yet many courts have interpreted it and state law equivalents narrowly under the fact-driven analysis set forth in *Young v. United Parcel*

⁴⁸ NINA CHIEN, U.S. DEPT OF HEALTH & HUM. SERVS., FACTSHEET: ESTIMATES OF CHILD CARE ELIGIBILITY & RECEIPT FOR FISCAL YEAR 2018, at 1-2 (2021), <https://aspe.hhs.gov/sites/default/files/2021-08/cy-2018-child-care-subsidy-eligibility.pdf>.

⁴⁹ See American Rescue Plan Act of 2021, Pub. L. 117-2, § 9631(a).

⁵⁰ *Id.*

⁵¹ CONG. RSCH. SERV., CHILD AND DEPENDENT CARE TAX BENEFITS: HOW THEY WORK AND WHO RECEIVES THEM 12 (2021), <https://crsreports.congress.gov/product/pdf/R/R44993>.

⁵² *Id.*

⁵³ Jennifer Bennett Shinall, *The Pregnancy Penalty*, 103 MINN. L. REV. 749, 751-52 (2018).

Serv., Inc., 575 U.S. 206 (2015), allowing employers to refuse to accommodate workers with medical needs arising out of pregnancy.⁵⁴ Moreover, courts have been reluctant to require accommodations for those with physical limitations and medical needs arising from a typically-progressing pregnancy under the Americans with Disabilities Act.⁵⁵ And while pregnant workers may access *unpaid* leave under the Family and Medical Leave Act (FMLA), many want or need to continue earning an income but can do so only with reasonable accommodations, which the FMLA does not address.⁵⁶

Thus, despite these laws, pregnancy discrimination in the workplace persists, often driven by stereotypes and assumptions about pregnant people’s job capabilities and commitment.⁵⁷ Over 26,000 pregnancy discrimination charges were filed

⁵⁴ See DINA BAKST ET AL., A BETTER BALANCE, LONG OVERDUE: IT IS TIME FOR THE FEDERAL PREGNANT WORKERS FAIRNESS ACT 13-16 (2019), <https://www.abetterbalance.org/wp-content/uploads/2019/05/LongOverdue.pdf>; APRIL J. ANDERSON, CONG. RSCH. SERV., R46821, PREGNANCY AND LABOR: AN OVERVIEW OF FEDERAL LAWS PROTECTING PREGNANT WORKERS 12-15 (2021) [hereinafter PREGNANCY AND LABOR], <https://crsreports.congress.gov/product/pdf/R/R46821>.

⁵⁵ See PREGNANCY AND LABOR, *supra* note 54, at 18.

⁵⁶ *Id.* at 17.

⁵⁷ See U.S. EQUAL EMP. OPPORTUNITY COMM’N, EEOC-CVG-2015-1, ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION AND RELATED ISSUES (2015) [hereinafter EEOC], <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues>; Stephen Benard et al., *Cognitive Bias and the Motherhood Penalty*, 59 HASTINGS L.J. 1359, 1369-72 (2008).

with the Equal Employment Opportunity Commission and state-level agencies between 2012 and 2016.⁵⁸ Pregnant workers often have requests for reasonable accommodation denied and are then fired, forced to quit, or pushed into unpaid leave.⁵⁹ Women of color and immigrant women, particularly Black and Latina women, are particularly at risk given their overrepresentation in jobs where pregnancy accommodations are often denied, such as retail, food services, stocking, packaging, and health care jobs.⁶⁰ Pregnant women have lower employment rates than nonpregnant women,⁶¹ and may also face disparate terms and conditions of employment, unequal access

⁵⁸ CARLY MCCANN & DONALD TOMASKOVIC-DEVEY, CTR. FOR EMP. EQUITY, UNIV. OF MASS. AMHERST, PREGNANCY DISCRIMINATION AT WORK: AN ANALYSIS OF PREGNANCY DISCRIMINATION CHARGES FILED WITH THE U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 2 (2021), <https://www.umass.edu/employment-equity/sites/default/files/Pregnancy%20Discrimination%20at%20Work.pdf>.

⁵⁹ See NWLC, THE PREGNANT WORKERS FAIRNESS ACT: MAKING ROOM FOR PREGNANCY ON THE JOB 1 (2021), <https://nwlc.org/wp-content/uploads/2021/02/PWFA-Making-Room-for-Pregnancy-v4.2-2021.pdf>.

⁶⁰ See NAT'L LATINA INST. FOR REPROD. HEALTH & NWLC, ACCOMMODATING PREGNANCY ON THE JOB: THE STAKES FOR WOMEN OF COLOR AND IMMIGRANT WOMEN 1 (2014), http://nwlc.org/sites/default/files/pdfs/the_stakes_for_woc_final.pdf.

⁶¹ Shinall, *supra* note 53, at 752, 787-89.

to benefits, interference with promotions, or harassment.⁶²

4. *Burdens on working and earning for parents.* Having a child can circumscribe an individual's ability to continue working and to advance professionally. To begin, mothers and pregnant people can face a "maternal wall" of bias and discrimination in the workplace.⁶³ They are less likely to be hired, can be viewed as less competent and committed to their work, and are less likely to be promoted or trained for management positions.⁶⁴ Moreover, unplanned births have been found to strongly reduce women's participation in the labor force,⁶⁵ and the inability to obtain an abortion has also been found to significantly undermine career aspirations and achievement.⁶⁶

Further, child care responsibilities disproportionately fall on women and lead to lower

⁶² See MCCANN & TOMASKOVIC-DEVEY, *supra* note 58, at 15-17; EEOC, *supra* note 57; PREGNANCY AND LABOR, *supra* note 54, at 4-7.

⁶³ See, e.g., Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J. 77, 77-78, 90-101 (2003).

⁶⁴ See, e.g., Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOCIO. 1297, 1316, 1330 (2007).

⁶⁵ Ana Nuevo-Chiquero, *The Labor Force Effects of Unplanned Childbearing*, LABOUR ECON., Aug. 2014, at 92.

⁶⁶ See Ushma D. Upadhyay et al., *The Effect of Abortion on Having and Achieving Aspirational One-Year Plans*, BMC WOMEN'S HEALTH, Nov. 2015, at 4-5, 9.

workforce participation.⁶⁷ For mothers who work, child care needs can cause them to decline new responsibilities, pursue fewer promotions, or move to part-time work, which reduces the likelihood of being promoted.⁶⁸ In particular, low-paid jobs are less likely to have paid parental leave or predictable and flexible work schedules, and thus parents are often forced out or need to resign from such jobs to provide child care.⁶⁹ Nearly one in four women working part time in low-paid jobs in 2018 reported that they do so due to child care problems or other family or personal obligations.⁷⁰ Women of color, who are already

⁶⁷ See LEILA SCHOCHET, CTR. FOR AM. PROGRESS, THE CHILD CARE CRISIS IS KEEPING WOMEN OUT OF THE WORKFORCE 1-2, 10-11 (2019), https://cdn.americanprogress.org/content/uploads/2019/03/19103744/ECPP-ChildCare-Crisis-report-2.pdf?_ga=2.256632331.1649302871.1631567668-707221933.1627661740.

⁶⁸ See *id.* at 1-2, 12-14; John T. Addison et al., *Job Promotion in Midcareer: Gender, Recession, and “Crowding,”* BLS: MONTHLY LAB. REV., Jan. 2014, at 7 tbl.3, 9.

⁶⁹ JULIE VOGTMAN & KAREN SCHULMAN, NWLC, SET UP TO FAIL: WHEN LOW-WAGE WORK JEOPARDIZES PARENTS’ AND CHILDREN’S SUCCESS 6-12 (2016), <https://nwlc.org/wp-content/uploads/2016/01/FINAL-Set-Up-To-Fail-When-Low-Wage-Work-Jeopardizes-Parents%E2%80%99-and-Children%E2%80%99s-Success.pdf>; NWLC, COLLATERAL DAMAGE: SCHEDULING CHALLENGES FOR WORKERS IN LOW-WAGE JOBS AND THEIR CONSEQUENCES 1-2 (2017), <https://nwlc.org/wp-content/uploads/2015/06/Collateral-Damage.pdf>.

⁷⁰ ROBERT PAUL HARTLEY ET AL., NWLC & CTR. ON POVERTY & SOC. POL’Y, A LIFETIME’S WORTH OF BENEFITS: THE EFFECTS OF AFFORDABLE, HIGH-QUALITY CHILD CARE ON FAMILY INCOME, THE GENDER EARNINGS GAP, AND WOMEN’S RETIREMENT SECURITY 9 (2021), https://nwlc.org/wp-content/uploads/2021/04/A-Lifetimes-Worth-of-Benefits-_FD.pdf.

overrepresented in these jobs, also have less predictable schedules than similarly situated coworkers.⁷¹ The COVID-19 pandemic has laid bare and exacerbated these disparities, as women—and particularly women of color—have borne the brunt of caregiving obligations and job losses.⁷²

Women with children accordingly face a “motherhood penalty” of lower earnings.⁷³ Overall, having a child leads to both an immediate decrease in women’s earnings and a long-term drop in women’s lifetime earning trajectory.⁷⁴ By contrast, a year of delayed childbearing increases wages by 3% and career earnings by 9%.⁷⁵ Unsurprisingly, the gender wage gap is even larger for mothers, who earn just

⁷¹ DANIEL SCHNEIDER & KRISTEN HARKNETT, SHIFT, IT’S ABOUT TIME: HOW WORK SCHEDULE INSTABILITY MATTERS FOR WORKERS, FAMILIES, AND RACIAL INEQUALITY 1, 2 fig.1 (2019), <https://shift.hks.harvard.edu/files/2019/10/Its-About-Time-How-Work-Schedule-Instability-Matters-for-Workers-Families-and-Racial-Inequality.pdf>.

⁷² See TUCKER, *supra* note 38, at 2; Usha Ranji et al., *Women, Work, and Family During COVID-19: Findings from the KFF Women’s Health Survey*, KFF (Mar. 22, 2021), <https://www.kff.org/womens-health-policy/issue-brief/women-work-and-family-during-covid-19-findings-from-the-kff-womens-health-survey/>.

⁷³ See Stephen Benard & Shelley J. Correll, *Normative Discrimination and the Motherhood Penalty*, 24 GENDER & SOC’Y 616, 617 (2010); see also Shinall, *supra* note 53, at 764-65, 765 n.82.

⁷⁴ See, e.g., SONFIELD ET AL., SOCIAL AND ECONOMIC BENEFITS, *supra* note 45, at 14-15, 33.

⁷⁵ Amalia R. Miller, *The Effects of Motherhood Timing on Career Path*, 24 J. POPULATION ECON. 1071, 1073 (2011).

\$0.75 for every dollar paid to fathers;⁷⁶ and for every dollar paid to white, non-Hispanic fathers, that number is \$0.46 for Latina, \$0.50 for Native, and \$0.52 for Black mothers.⁷⁷

5. *Limits on educational opportunities.* Pregnant and parenting students also continue to face discrimination that can limit their educational opportunities, including hostility, low expectations from teachers and administrators, and pressure to leave school.⁷⁸ In addition, punitive absence policies can push pregnant and parenting students out of school because they may have to miss class for medical appointments, childbirth, recovery, and child care.⁷⁹

Pregnant and parenting students disproportionately face a lack of economic resources. Nearly 70% of pregnant and parenting high school students surveyed reported that running out of money for necessities like food is a barrier that keeps them from being able to go to school; 52% said lack of access to child care was a barrier; and 66% said not having transportation was a barrier.⁸⁰ Parenting college

⁷⁶ NWLC, MOTHERHOOD WAGE GAP FOR MOTHERS OVERALL — MAY 2021 (2021), <https://nwlc.org/wp-content/uploads/2021/04/Motherhood-Wage-Gap-Overall-Table-2021.pdf>.

⁷⁷ See TUCKER, *supra* note 38, at 2-3.

⁷⁸ NWLC, LET HER LEARN: STOPPING SCHOOL PUSHOUT FOR GIRLS WHO ARE PREGNANT OR PARENTING 4 (2017), https://nwlc.org/wp-content/uploads/2017/04/Final_nwlc_Gates_PregParenting.pdf.

⁷⁹ *Id.* at 6-7.

⁸⁰ *Id.* at 8, 10.

students, who are disproportionately Black women,⁸¹ often must also juggle work, in addition to their parenting and academic responsibilities: 44% of student parents work full-time while enrolled in college.⁸²

Given these pressures, despite the motivation of many young parents, young adults who give birth as teens are much less likely to obtain a high school diploma than their counterparts: overall, only 53% of young women age 20–29 who gave birth as teens received a high school diploma, compared to 90% of young women that age who did not have a child.⁸³ Parenting college students are much less likely to finish college than their peers: 52% of parenting students leave college without a degree, compared to 32% of non-parenting students.⁸⁴

⁸¹ Lindsey Reichlin Cruse et al., *Parents in College by the Numbers*, INST. FOR WOMEN'S POL'Y & RSCH. (April 11, 2019), <https://iwpr.org/iwpr-issues/student-parent-success-initiative/parents-in-college-by-the-numbers/>.

⁸² U.S. GOV'T ACCOUNTABILITY OFF., GAO-19-522, HIGHER EDUCATION: MORE INFORMATION COULD HELP STUDENT PARENTS ACCESS ADDITIONAL FINANCIAL AID 9 (2019), <https://www.gao.gov/assets/gao-19-522.pdf>.

⁸³ Jennifer Manlove & Hannah Lantos, *Data Point: Half of 20- to 29-Year-Old Women Who Gave Birth in Their Teens Have a High School Diploma*, CHILD TRENDS (Jan. 11, 2018), <https://www.childtrends.org/half-20-29-year-old-women-gave-birth-teens-high-school-diploma>.

⁸⁴ See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 82.

C. Mississippi’s Own Record Demonstrates that Abortion Continues To Be Necessary for Gender Equality.

Mississippi’s abysmal gender disparities render hollow any argument that advances in gender equality obviate the need for the right to abortion.

Petitioners cannot justify their contention that abortion is no longer needed by invoking laws promoting gender equality. Mississippi is the only state with no equal pay laws, and lacks laws ensuring people receive paid family leave or reasonable workplace accommodations for pregnancy.⁸⁵ Likewise, Mississippi lacks anti-discrimination provisions and lactation accommodations for pregnant and parenting students.⁸⁶

Nor can Petitioners point to “decades of advances for women” to argue that the right to abortion is unnecessary, given that the state has both some of the most restrictive abortion laws in the country and striking gender disparities in both economic and

⁸⁵ NWLC ET AL., MISSISSIPPI IS SHORTCHANGING WOMEN 1, <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2018/01/MS-Is-Shortchanging-Women-Fact-Sheet.pdf> (last visited Aug. 26, 2021); Abbey Crain, *Alabama Joins 48 States with Equal Pay Act on Books*, AL.COM (June 12, 2019, 12:25 PM), <https://www.al.com/politics/2019/06/alabama-joins-48-states-with-equal-pay-act-on-books.html>.

⁸⁶ NWLC, A PREGNANCY TEST FOR SCHOOLS: THE IMPACT OF EDUCATION LAWS ON PREGNANT AND PARENTING STUDENTS 12-14 (2011), https://nwlc.org/sites/default/files/final_nwlc_pregnant_parenting_report.pdf.

health outcomes.⁸⁷ With respect to economic outcomes, Mississippi has one of the largest gender wage gaps in the country. A woman in Mississippi working full time, year-round, typically makes just \$0.77 for every dollar paid to men.⁸⁸ The wage gap is widest for Black (\$0.56),⁸⁹ Latina (\$0.55),⁹⁰ Native (\$0.53),⁹¹ and Asian (\$0.61)⁹² women. Mississippi also has one of the highest overrepresentations of women in the low-wage workforce, with women making up 71.3% of low-wage workers in the state, compared with only 48.5% of the overall workforce.⁹³ Over the course of a 40-year career, women overall in Mississippi stand to lose \$415,560 to the wage gap,⁹⁴

⁸⁷ NWLC ET AL., MISSISSIPPI IS SHORTCHANGING WOMEN, *supra* note 85, at 1.

⁸⁸ NWLC, WAGE GAP OVERALL STATE RANKINGS (2021), <https://nwlc.org/wp-content/uploads/2021/03/Overall-Wage-Gap-State-By-State-2021-v2.pdf>.

⁸⁹ NWLC, WAGE GAP FOR BLACK WOMEN STATE RANKINGS (2021), <https://nwlc.org/wp-content/uploads/2021/03/Black-Women-Wage-Gap-State-By-State-2021-v2.pdf>.

⁹⁰ NWLC, WAGE GAP FOR LATINA WOMEN STATE RANKINGS (2021), <https://nwlc.org/wp-content/uploads/2021/03/Latina-Women-Wage-Gap-State-By-State-2021-v2.pdf>.

⁹¹ NWLC, WAGE GAP FOR NATIVE AMERICAN WOMEN STATE RANKINGS (2021), <https://nwlc.org/wp-content/uploads/2021/03/Native-Women-Wage-Gap-State-By-State-2021-v2.pdf>.

⁹² NWLC, WAGE GAP FOR ASIAN WOMEN STATE RANKINGS (2021), <https://nwlc.org/wp-content/uploads/2021/03/Asian-Women-Wage-Gap-State-By-State-2021-v2.pdf>.

⁹³ NWLC, WOMEN IN THE LOW-WAGE WORKFORCE BY STATE (2018), <https://nwlc.org/wp-content/uploads/2018/06/women-in-low-wage-workforce-by-state-2018-1.pdf>.

⁹⁴ NWLC ET AL., MISSISSIPPI IS SHORTCHANGING WOMEN, *supra* note 85, at 1.

and Black and Latina women could lose well over \$800,000 over their careers.⁹⁵ Mississippi also has the highest poverty rate for women in the nation (19.8%), with a disproportionate number of Black women (29.6%) living in poverty, and Mississippi ranks worst in the nation in the percentage of female-headed families living in poverty (49.4%) and the percentage of children living in poverty (27.8%).⁹⁶

Regarding health outcomes, Mississippi is near the bottom in the percentage of women not covered by private or public insurance.⁹⁷ And 20.4% of women in Mississippi reported not receiving health care at some point in the last 12 months due to cost.⁹⁸ Mississippi has a maternal mortality rate of over 27 deaths for every 100,000 live births, and the rate for Black women is higher than that for white women.⁹⁹ Mississippi's infant mortality rate is the highest in the country at 8.7 deaths per 1,000 live births,¹⁰⁰ and much higher for Black infants, at 11.9 deaths per

⁹⁵ *Id.*

⁹⁶ NWLC, POVERTY RATES STATE BY STATE, 2018 <https://nwlc.org/wp-content/uploads/2019/10/Poverty-Rates-State-by-State-2018.pdf> (last visited Sept. 2, 2021).

⁹⁷ *Mississippi Summary 2020*, AM.'S HEALTH RANKINGS (2020), https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/Uninsured_women/state/MS.

⁹⁸ *Mississippi*, NWLC, <https://nwlc.org/state/mississippi/> (last visited Sept. 10, 2021).

⁹⁹ *Maternal Mortality in Mississippi*, AM.'S HEALTH RANKINGS (2019), https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/maternal_mortality_a/state/MS?edition-year=2019.

¹⁰⁰ See MISS. STATE DEP'T OF HEALTH, INFANT MORTALITY REPORT (2018), https://msdh.ms.gov/msdhsite/_static/resources/8015.pdf.

1,000 live births.¹⁰¹ Yet Mississippi refused to expand Medicaid under the Affordable Care Act, leaving tens of thousands of low-income women—including 20,000 Black women—who would otherwise be eligible for Medicaid without health coverage.¹⁰²

Finally, many Mississippi families cannot afford reliable and high-quality child care. Nearly one in three employed Mississippi mothers supporting children on their own work in low-paid jobs that do not pay enough to cover reliable child care.¹⁰³ Even a mother in Mississippi earning the median income (\$32,000) would have to pay 18% of her income to afford the average cost of center care for an infant or nearly 34.5% for an infant and a four-year-old.¹⁰⁴ This forces parents to make impossible choices between paying for child care or other necessities like rent and food. The lack of high-quality, affordable child care falls particularly heavily on Black women due to their

¹⁰¹ *Id.*

¹⁰² Rachel Garfield et al., *The Coverage Gap: Uninsured Poor Adults in States that Do Not Expand Medicaid*, KFF (Jan. 21, 2021), <https://www.kff.org/medicaid/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid/>; MISS. BLACK WOMEN'S ROUNDTABLE & NWLC, *WOMEN DRIVING CHANGE: A PATHWAY TO A BETTER MISSISSIPPI* 7 (2019), https://nwlc.org/wp-content/uploads/2019/09/final_nwlc_MS_Report.pdf.

¹⁰³ MISS. BLACK WOMEN'S ROUNDTABLE & NWLC, *supra* note 102, at 32.

¹⁰⁴ See NWLC, *MOTHERHOOD WAGE GAP FOR MOTHERS OVERALL — MAY 2021*, *supra* note 76; *The US and the High Price of Child Care: An Examination of a Broken System*, CHILD CARE AWARE OF AM., <https://www.childcareaware.org/our-issues/research/the-us-and-the-high-price-of-child-care-2019/> (last visited Sept. 13, 2021).

overrepresentation in the low-wage workforce and their increased likelihood of being the primary breadwinner in their family.¹⁰⁵

The state of the law and the reality for pregnant and parenting women in Mississippi demonstrate that Petitioners have no basis to contend that people forced to carry a pregnancy to term will not face barriers to equal participation in social and economic life. Instead, Petitioners would exacerbate the existing economic and health disparities in the state, inflicting the greatest impact on Black women, who comprise the vast majority (72%) of those who obtain abortion care in Mississippi.¹⁰⁶

¹⁰⁵ *Id.*

¹⁰⁶ Katherine Kortsmitt et al., *Abortion Surveillance—United States, 2018*, MMWR SURVEILLANCE SUMMARIES, Nov 27, 2020, at 19 tbl.5.

CONCLUSION

The Court cannot uphold H.B. 1510 without serious detriment to the constitutionally guaranteed liberty and equality interests of women and others who can become pregnant, and so this Court must affirm the decision below.

Respectfully submitted,

AGNÈS DUNOGUÉ
MARIA NUDELMAN
DANIEL SUGAR
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-4000

FATIMA GOSS GRAVES
GRETCHEN BORCHELT
HEATHER SHUMAKER*
**Counsel of Record*
MICHELLE BANKER
SUNU CHANDY
LAUREN GORODETSKY
ANNA RODRIGUEZ
NATIONAL WOMEN’S LAW
CENTER
11 Dupont Circle NW
Suite 800
Washington, DC 20036
(202) 588-5180
hshumaker@nwlc.org

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Counsel for Amici Curiae

APPENDIX

9to5

A Better Balance

American Association of University Women (AAUW)

American Federation of Teachers, AFL-CIO

American Society for Emergency Contraception

Anti-Defamation League (ADL)

Atlanta Women for Equality

Bay Area Lawyers for Individual Freedom (BALIF)

Birnbaum Women's Leadership Network at NYU
School of Law

Black Women's Health Imperative

California Women Lawyers

Center for American Progress

Central Conference of American Rabbis

Chicago Foundation for Women

Clearinghouse on Women's Issues

Coalition of Labor Union Women, AFL-CIO

Colorado Women's Bar Association

Community Catalyst

Desiree Alliance

Equal Rights Advocates

EverThrive Illinois

Girls for Gender Equity

Hadassah, The Women's Zionist Organization of America, Inc.

Ibis Reproductive Health

International Action Network for Gender Equity & Law (IANGEL)

Jane Doe Inc.

KWH Law Center for Social Justice and Change

Lambda Legal Defense and Education Fund, Inc.

LatinoJustice PRLDEF

Legal Aid at Work

Legal Momentum, the Women's Legal Defense and Education Fund

Lift Louisiana

Louisiana Coalition for Reproductive Freedom

Maine Women's Lobby

Men of Reform Judaism

NARAL Pro-Choice America

National CAPACD - National Coalition for Asian Pacific American Community Development

National Center for Law and Economic Justice

National Crittenton

National Education Association

National Employment Law Project

National Family Planning & Reproductive Health Association

National Institute for Reproductive Health
National LGBTQ Task Force
National Partnership for Women & Families
National Women's Political Caucus
National Women's Health Network
New Orleans Abortion Fund
Northwest Health Law Advocates
Nurses for Sexual and Reproductive Health
Oklahoma Call for Reproductive Justice
Our Bodies Ourselves Today
People For the American Way Foundation
Population Connection Action Fund
Power to Decide
Progress Florida
Reproaction
Reproductive Health Access Project
SisterReach
SPARK Reproductive Justice NOW!, Inc.
Tampa Bay Access Force, Inc.
The Afiya Center
The Womxn Project
UltraViolet
Union for Reform Judaism

4a

Washington Lawyers' Committee for Civil Rights and
Urban Affairs

Women Employed

Women Lawyers Association of Los Angeles

Women of Reform Judaism

Women's Institute for Freedom of the Press

Women's Law Project

Women's Media Center