

IN THE
Supreme Court of the United States

JUNE MEDICAL SERVICES L.L.C., *et al.*,
Petitioners,

v.

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

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

v.

JUNE MEDICAL SERVICES L.L.C., *et al.*,
Respondents.

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

BRIEF OF *AMICI CURIAE* LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW, THE LEADERSHIP
CONFERENCE ON CIVIL AND HUMAN RIGHTS, AND 12
CIVIL RIGHTS ORGANIZATIONS IN SUPPORT
OF JUNE MEDICAL SERVICES L.L.C.

KRISTEN CLARKE
JON GREENBAUM
DARIELY RODRIGUEZ*
** Counsel of Record*
PILAR WHITAKER
LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
1500 K Street NW,
Suite 900
Washington, DC 20005
(202) 662-8600
drodriguez@lawyerscommittee.org

VANITA GUPTA
MICHAEL ZUBRENSKY
GAYLYNN BURROUGHS
THE LEADERSHIP
CONFERENCE ON CIVIL
AND HUMAN RIGHTS
1620 L Street NW,
Suite 1100
Washington, DC 20036
(202) 466-3311

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	8
ARGUMENT	9
I. The Undue Burden Test Affords Substantial Weight to the Real-World Circumstances of Women	9
A. <i>Casey</i> Established That Women’s Daily Lived Realities Are Central to the Undue Burden Analysis	10
B. As Applied in <i>Casey</i> and <i>Whole Woman’s Health</i> , the Undue Burden Standard Takes a Holistic Approach to Considering a Law’s Impact On Women’s Lives	12
II. In Evaluating Whether Act 620 Imposes an Undue Burden on Women, the Court Must Consider the Real-World Circumstances of Black Women	15
III. Act 620 Erects Significant Barriers to Black Women’s Ability to Access Abortion Services	16
A. Black Women Are Among the Most Afflicted by Poverty and Systemic Economic Oppression in Louisiana	16
B. The Disproportionate Number of Black Women Working in Service Industry and Low-Wage Hourly Jobs Face Particularly High Burdens in Seeking Abortion Care.	22

IV. Act 620 Would Exacerbate Structural Economic Barriers Faced by Black, Low- Income Women in Louisiana	24
CONCLUSION	28

TABLE OF AUTHORITIES

	Page
CASES	
<i>Collins v. Virginia</i> , 138 S. Ct. 1663 (2018)	23
<i>Planned Parenthood of Arizona, Inc. v. Humble</i> , 753 F.3d 905 (9th Cir. 2014)	11
<i>Planned Parenthood of Indiana and Kentucky, Inc. v. Commissioner of Indiana State Department of Health</i> , 896 F.3d 809 (7th Cir. 2018)	23
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 505 U.S. 833 (1992).....	passim
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 947 F.2d 682 (3d Cir. 1991).....	10
<i>Planned Parenthood of the Heartland, Inc. v. Iowa Board of Medicine</i> , 865 N.W.2d 252 (Iowa 2015)	12
<i>Planned Parenthood of Wisconsin, Inc. v. Van Hollen</i> , 94 F. Supp. 3d 949 (W.D. Wis. 2015).....	11
<i>Planned Parenthood Southeastern, Inc. v. Strange</i> , 33 F. Supp. 3d 1330 (M.D. Ala. 2014).....	12
<i>Roe v. Wade</i> , 410 U.S. 113 (1973)	8

TABLE OF AUTHORITIES—Continued

	Page
<i>United States v. Ross</i> , 456 U.S. 798 (1982)	23
<i>Whole Woman’s Health v. Hellerstedt</i> , 136 S. Ct. 2292 (2016)	9, 12, 16
STATE STATUTE	
La. Rev. Stat. § 40:1061.10	8
OTHER AUTHORITIES	
Associated Press, <i>Census: Louisiana Remains 1 of Nation’s Poorest States</i> , U.S. NEWS (Sept. 27, 2019)	17
ANNA BERNSTEIN & KELLY M. JONES, INST. FOR WOMEN’S POL’Y RESEARCH, THE ECONOMIC EFFECTS OF ABORTION ACCESS: A REVIEW OF THE EVIDENCE (2019)	25
Karen Christopher, <i>Single Motherhood, Employment, Or Social Assistance: Why Are U.S. Women Poorer Than Women In Other Affluent Nations?</i> (Luxembourg Income Study, Working Paper No. 285, 2001).....	20
Cynthia G. Colen et al., <i>Racial Disparities in Health Among Nonpoor African Americans and Hispanics: The Role of Acute and Chronic Discrimination</i> , 199 SOC SCI MED. 167 (2018)	27, 28

TABLE OF AUTHORITIES—Continued

	Page
<i>Louisiana</i> , DATA USA (2019)	18
<i>Shreveport, LA</i> , DATA USA (2019)	25
<i>East Carroll Parish, LA</i> , DATA USA (2019).....	25
Christine Dehlendorf et al., <i>Disparities in Abortion Rates</i> , 103 AM. J. PUB. HEALTH 1772 (2013)	28
ASHA DUMONTHIER ET AL., INST. FOR WOMEN’S POL’Y RESEARCH, THE STATUS OF BLACK WOMEN IN THE UNITED STATES (2017).....	17, 19, 22
<i>The Unequal States of America: Income Inequality in Louisiana</i> , ECON. POL’Y INST. (July 2018).....	25
Lonnie Golden, <i>Irregular Work Scheduling And Its Consequences</i> (Econ. Pol’y Inst., Briefing Paper No. 394, Apr. 9, 2015)	23
Diana Greene Foster et al. <i>Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States</i> , 108 AM. J. PUB. HEALTH 407 (2018)	25
Liza Fuentes & Jenna Jerman, <i>Distance Traveled to Obtain Clinical Abortion Care in the United States and Reasons for Clinic Choice</i> , J. WOMEN’S HEALTH, July 2019.....	14
<i>Hearing on H.B. 388 Before the H. Comm. on Health & Welfare</i> (May 7, 2014).....	15

TABLE OF AUTHORITIES—Continued

	Page
INSTITUTE FOR WOMEN’S POLICY RESEARCH, THE ECONOMIC STATUS OF WOMEN IN LOUISIANA (Mar. 2018).....	19
LYN KIELTYKA ET AL., LOUISIANA DEPARTMENT OF HEALTH, LOUISIANA MATERNAL MORTALITY REVIEW REPORT, 2011-2016 (Aug. 2018)	28
<i>Living Wage Calculation for Louisiana</i> , LIVING WAGE (2019)	19
LOUISIANA BUREAU OF VITAL RECORDS & STATISTICS, INDUCED TERMINATION OF PREGNANCY BY WEEKS OF GESTATION, RACE, AGE, AND MARITAL STATUS REPORTED OCCURRING IN LOUISIANA, 2018 (2019)	14, 18, 26
LOUISIANA WOMEN’S POLICY & RESEARCH COMMISSION, 2018 ANNUAL REPORT (2019)	26
NATIONAL ACADEMIES OF SCIENCE, ENGINEERING & MATH, THE SAFETY AND QUALITY OF ABORTION CARE IN THE UNITED STATES (2018)	28
NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, A DOUBLE BIND: WHEN STATES DENY ABORTION COVERAGE AND FAIL TO SUPPORT EXPECTING AND NEW PARENTS (Sept. 2016).....	26
NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, BLACK WOMEN AND THE WAGE GAP (Apr. 2019).....	18

TABLE OF AUTHORITIES—Continued

	Page
NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, PAID LEAVE MEANS A STRONGER LOUISIANA (Jan. 2019)	27
NATIONAL WOMEN’S LAW CENTER, MOTHERHOOD WAGE GAP FOR MOTHERS OVERALL: 2019 STATE RANKINGS (MAY 2019)	27
NATIONAL WOMEN’S LAW CENTR, MOTHERHOOD WAGE GAP FOR BLACK MOTHERS: 2019 STATE RANKINGS (MAY 2019)	27
NICK NOEL & DUWAIN PINDER, MCKINSEY & CO., THE ECONOMIC IMPACT OF CLOSING THE RACIAL WEALTH GAP (Aug. 2019)	19
Rochaun Meadows-Fernandez, <i>Even as Black Americans Get Richer, Their Health Outcomes Remain Poor</i> , PACIFIC STANDARD (Jan. 23, 2018) .	28
Cynthia Prather et al., <i>Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity</i> , 2.1 HEALTH EQUITY 249 (2018)	27
Sarah C.M. Roberts, <i>Implications for Women of Louisiana’s Law Requiring Abortion Providers to Have Hospital Admitting Privileges</i> , 91 CONTRACEPTION 368 (2015).....	15

TABLE OF AUTHORITIES—Continued

	Page
Rule 26(a)(2)(b) Expert Report of Dr. Sheila Katz, 2014 WL 11199761 (Dec. 1, 2014).....	20, 21, 22
<i>Louisiana Report - 2018</i> , TALK POVERTY (2019).....	17
Jamila Taylor et al., <i>Eliminating Racial Disparities in Maternal and Infant Mortality: A Comprehensive Policy Blueprint</i> , CENTER FOR AMERICAN PROGRESS (May 2, 2019).....	28
<i>48.2% Poverty Rate in East Carroll Parish, Louisiana</i> , WELFAREINFO (2019)	18
<i>QuickFacts: Louisiana</i> , U.S. CENSUS BUREAU (July 1, 2018).....	17
<i>Quickfacts: East Carroll Parish, Louisiana</i> , U.S. CENSUS BUREAU (July 1, 2018).....	25
<i>Quickfacts: Shreveport City, Louisiana</i> , U.S. CENSUS BUREAU (July 1, 2018).....	25
<i>Louisiana - Educational Attainment</i> , U.S. CENSUS BUREAU (2019)	17

INTEREST OF *AMICI CURIAE*¹

Amici, the Lawyers' Committee for Civil Rights Under Law, The Leadership Conference on Civil and Human Rights, and 12 other civil rights organizations, are each committed to the promotion of civil rights and liberties throughout the country and the elimination of discrimination and inequality in any form.

The Lawyers' Committee for Civil Rights Under Law (the "Lawyers' Committee") is a nonpartisan, nonprofit organization that was formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and vindicating the civil rights of African Americans and other racial minorities. The Lawyers' Committee's principal mission is to secure equal justice for all through rule of law, and the organization frequently participates as counsel for a party or as *amicus curiae* to protect the interests of racial and ethnic minorities. *See, e.g., Comcast Corp. v. Nat'l Ass'n of African Am.-Owned Media*, 139 S. Ct. 2693 (2019); *Trump v. Hawaii*, 138 S. Ct. 2392 (2018); *Benisek v. Lamone*, 138 S. Ct. 1942 (2018); *Gill v. Whitford*, 138 S. Ct. 1916 (2018); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights*

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

Pursuant to Rule 37.3(a), counsel for *amici* also represent that all parties have consented to the filing of this brief; letters reflecting their blanket consent to the filing of *amicus* briefs are on file with the Clerk.

Comm'n, 138 S. Ct. 1719 (2018); *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788 (2017); *Buck v. Davis*, 137 S. Ct. 759 (2017); *Evenwel v. Abbott*, 136 S. Ct. 1120 (2016); *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1 (2013); *Shelby Cty. v. Holder*, 570 U.S. 529 (2013). The Lawyers' Committee has a strong interest in eliminating systemic and structural barriers to healthcare coverage, including barriers to access to reproductive health experienced by people of color, and to that end has served as amicus curiae in relevant cases. *See, e.g., Bryant v. Woodall*, 363 F. Supp. 3d 611 (M.D.N.C. 2019), *appeal filed*, No. 19-1685 (4th Cir. June 26, 2019); *Pennsylvania v. Trump*, 351 F. Supp. 3d 791 (E.D. Pa. 2019), *aff'd*, 930 F.3d 543 (3d Cir. 2019), *petition for cert. filed*, (U.S Oct. 1, 2019) (No. 19-431).

The Leadership Conference on Civil and Human Rights (“The Leadership Conference”) is a coalition of more than 200 national organizations charged with promoting and protecting the civil and human rights of all persons in the United States, including low-income women of color. It is the nation’s largest and most diverse civil and human rights coalition. The Leadership Conference was founded in 1950 by leaders of the civil rights and labor rights movements, grounded in the belief that civil rights would be won not by one group alone but through coalition. The Leadership Conference works to build an America that is inclusive and as good as its ideals.

The American-Arab Anti-Discrimination Committee (“ADC”), founded in 1980, is the largest Arab-American grassroots organization in the country. Committed to defending and promoting the universal human rights, and civil liberties of Arab-Americans and of other persons of color, ADC works to combat discrimination against and affecting

marginalized communities. Through its Legal Department, ADC offers advocacy, select pro bono direct legal advice and takes on impact litigation cases. The preserving of the fundamental rights of Arab-American women are issues of concern to ADC in this historic moment. Every woman, regardless of race or class is entitled to exercise her constitutional rights. We are gravely concerned that Act 620 will disproportionately infringe on the constitutional right to abortion care available to Arab women and other women of color. The *Casey* undue burden test affords weight to all women regardless of their class or creed, and we believe that the material circumstances of Arab and other women of color impacted by the Act must be brought to the Court's analysis.

The Black Sex Worker Collective (“BSWC”) fights for the rights of Black people to have access to health resources and reproductive justice. BSWC believes strongly that in order for our communities to heal and progress, Black women must have rights over their bodies. BSWC seeks to address the needs of current and former Black sex workers by providing education, legal assistance, healthcare resources, and affordable housing referrals in order to successfully leave and maintain a life outside of the industry.

The Black Women's Roundtable (“BWR”) is an intergenerational civic engagement network of the National Coalition on Black Civic Participation. BWR comprises a diverse group of Black women civic leaders of international, national, regional, and state-based organizations and institutions. Together, the BWR membership represents the issues and concerns of millions of Americans and families who live across the United States and around the world. At the forefront of championing just and equitable public policy on behalf of Black women, BWR promotes their

health and wellness, economic security, education and global empowerment as key elements for success. These issues are interconnected and BWR supports health policies that deliver quality health care for all, strengthen the safety net for our most vulnerable communities, and address disparities in access to care. It is crucial that Black women are afforded access to safe and affordable reproductive health care.

The Hispanic Federation (“HF”), founded in 1990, seeks to empower and advance the Hispanic community, support Hispanic families, and strengthen Latino institutions through policy advocacy and programs in the areas of education, health, immigration, civic engagement, economic empowerment, and the environment. Historically, Latinas and other women of color have lacked access to quality reproductive health and preventive services, resulting in major health inequities and poorer health outcomes. Latinas face a unique and complex array of reproductive health and rights issues that are exacerbated by poverty, gender, racial and ethnic discrimination, and xenophobia. These circumstances make it especially difficult for Latinas and other women of color to access reproductive health care services, including the full range of available reproductive health technologies and abortion services. We believe that reproductive health and access to reproductive health services is an issue of social justice and one that HF is committed to securing on behalf of all low-income women, women of color, and immigrant women.

Family Values @ Work is a national network of grassroots state coalitions organizing to win paid sick and safe days, family and medical leave insurance and other time-to-care policies at the local, state, and national level. Working at the intersection of

economic, racial, and gender justice, Family Values @ Work is building the world we need and deserve, where economic survival and the ability to care are in harmony. When, whether, and how one forms their family is a basic right and key to economic and reproductive justice. Family Values @ Work signs on to this amicus brief because this Act would exacerbate existing racial health and economic disparities and perpetuate a longstanding history of systemic burdens and infringement on the reproductive rights of Black women and women of color.

League of Women Voters of the United States (“LWVUS”) is a nonpartisan community-based organization, formed in 1920, immediately after the enactment of the Nineteenth Amendment granting women’s suffrage. The LWVUS is dedicated to encouraging its members within all 50 states and the District of Columbia to exercise their right to vote as protected by the Constitution and the Voting Rights Act of 1965. The mission of LWVUS is to promote political responsibility through informed and active participation in government and to act on selected governmental issues. The LWVUS impacts public policies, promotes citizen education, and makes democracy work by, among other things, removing unnecessary barriers to full participation in the electoral process. Currently, LWVUS has over local 750 leagues and over 400,000 members. With members in almost every county in the country, the LWVUS’s local leagues are engaged in numerous activities, including hosting public forums and open discussions on issues of importance to the community. LWVUS also devotes substantial time and effort to ensuring that government at every level works as effectively and fairly as possible. This work involves continual attention to and advocacy concerning issues of transparency, a strong and diverse judiciary, fair

and equal nonpartisan redistricting, and appropriate government oversight.

The Matthew Shepard Foundation has, over the past 20 years, concentrated its efforts to empower individuals to embrace human dignity and promote policies to provide equal opportunity to everyone regardless of race, religion, sexual orientation, disability, ethnicity, or socio-economic status.

Muslim Advocates is a national civil rights organization that advocates for freedom and equality for Americans of all faiths. Minority women—including, but not limited to, American Muslim women—continue to be harmed by abortion restrictions, which create serious healthcare discrepancies along race and class lines. Muslim Advocates is strongly committed to supporting the ability of all women, regardless of their race, color, religion, national origin, or economic status, to have full access to all aspects of healthcare, because such access is necessary to ensure full equality and meaningful participation in public life.

NAACP Legal Defense and Educational Fund, Inc. (“LDF”) is a nonprofit, nonpartisan law organization established under the laws of New York to assist Black people and other people of color in the full, fair, and free exercise of their constitutional rights. Founded in 1940 under the leadership of Thurgood Marshall, LDF focuses on eliminating racial discrimination in education, economic justice, criminal justice, and political participation. Consistent with its mission, LDF has a strong interest in ensuring that Black women are not subject to undue burdens in accessing reproductive health care.

The National Urban League, established in 1910, is the Nation's oldest and largest community based movement devoted to empowering African Americans to enter the economic and social mainstream. Today, the National Urban League, headquartered in New York City, spearheads the nonpartisan efforts of its local affiliates. There are 90 local affiliates of the National Urban League located in 36 states and the District of Columbia providing direct services to more than two million people nationwide through programs, advocacy, and research. The mission of the Urban League movement is to enable African Americans to secure economic self-reliance, parity, power and civil rights. The Urban League seeks to implement that mission by, among other things, promoting and ensuring our civil rights by actively working to eradicate all barriers to equal participation in all aspects of American society, whether political, economic, social, educational, or cultural.

The Opportunity Agenda is a social justice communication lab that works to advance social justice. Among the Opportunity Agenda's core objectives is the elimination of barriers to opportunity tied to race, gender, national origin, socioeconomic status, religion, familial status, or disability. The organization's recent activities have included developing and promoting policy solutions that are intersectional by addressing challenges that women of color experience due to overlapping and intersecting forms of discrimination, building public understanding of implicit and institutional racial and gender bias, and expanding economic opportunities to people who are living in poverty. The subject matter of this case is therefore of keen interest to the organization.

The Transformative Justice Coalition (“TJC”) was founded in June 2015 by civil rights leader and attorney, Barbara R. Arnwine, after 25 years of impactful leadership at the Lawyers’ Committee for Civil Rights Under Law. In its four years of operation, TJC has brought innovative leadership and programming to the racial, gender, and economic justice movements in the areas of voting rights, African American women and the law, policing restructuring, youth leadership, and civil rights law enforcement. Through its African American Women and the Law Project, TJC has actively worked in the public policy arena, the US Congress, the courts, the federal executive branch, and the states to advance law and public policy which specifically addresses the legal needs, the equal protection of the law, and the particular circumstances of Black women. TJC works in coalition with other organizations to promote public education and policy reform to improve the life conditions of Black women and girls.

SUMMARY OF ARGUMENT

Everyone, regardless of race or class is entitled to exercise their constitutional rights. Women should have equal access to reproductive healthcare despite their skin color or how much money they make. Yet, historically reproductive restrictions have disproportionately impacted Black women because of intersecting factors, including high poverty rates, and lack of access to educational opportunity and quality healthcare. Act 620² is no different and will mount significant, if not insurmountable, barriers to the constitutional right of Black women and other women of color in Louisiana to access abortion care. The

² La. Rev. Stat. § 40:1061.10.

gravity of Act 620's impact must be evaluated in this context.

Amici are gravely concerned that Act 620 will result in a two-tiered system in Louisiana, where wealthier, disproportionately white women will have greater access to their constitutional right to abortion care than Black women who are disproportionately low-income. Since the Court's undue burden test affords substantial weight to the real-world circumstances of impacted women, *amici* argue that the circumstances of Black women are germane to the Court's analysis. *Amici* are further concerned that if similar laws are upheld across the country, women of color, who are disproportionately low-income, will experience greater barriers to abortion care, further entrenching long-standing systemic and structural barriers to economic opportunity. For these reasons, we urge this Court to reverse the decision of the United States Court of Appeals for the Fifth Circuit and rule that Act 620 violates the Fourteenth Amendment to the U.S. Constitution.

ARGUMENT

I. The Undue Burden Test Affords Substantial Weight to the Real-World Circumstances of Women

For nearly 50 years, the law has recognized “a constitutional liberty of the woman to have some freedom to terminate her pregnancy.” *Planned Parenthood of Se., Penn. v. Casey*, 505 U.S. 833, 869 (1992) (affirming *Roe v. Wade*, 410 U.S. 113 (1973)); *see Roe*, 410 U.S. at 154 (concluding that “the right of personal privacy includes the abortion decision”). And, for almost 30 years, the Court has prohibited laws that erect an unconstitutional “undue burden”

upon a woman’s “ability to make this decision.” *Id.* at 874.

The real-world impacts of the law are especially critical to the undue burden analysis. In both *Casey* and *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), this Court recognized that courts must examine the law’s consequences on the women who would be most directly affected by its implementation. In this case, then, the Court must consider not only the fact that Act 620 will result in clinic closures but also the effect of those clinic closures on women seeking to exercise their constitutional right to access abortion care in the state. This analysis necessitates that the Court evaluate the real-world circumstances and daily lived realities of the women most impacted by an abortion restriction. As discussed below, Black women in Louisiana would be most impacted and should be at the center of this Court’s undue burden analysis.

A. *Casey* Established That Women’s Daily Lived Realities Are Central to the Undue Burden Analysis

As this Court observed in *Casey*, abortion “[l]egislation is measured for consistency with the Constitution by its impact on those whose conduct it affects.” 505 U.S. at 894. There, the Court noted that “[t]he analysis does not end with the one percent of women upon whom the [spousal notification] statute operates; it begins there The proper focus of constitutional inquiry is *the group for whom the law is a restriction, not the group for whom the law is irrelevant.*” *Id.* (emphasis added). This Court then placed the real-world circumstances of women most impacted by the law at the center of its undue burden analysis, basing its holding on the “detailed findings

of fact regarding the effect of th[e] statute.”³ Specifically, the Court gave substantial weight to evidence regarding how the statute would impact victims of domestic violence:

Many [women] may fear devastating forms of psychological abuse from their husbands, including verbal harassment, threats of future violence, the destruction of possessions, physical confinement to the home, the withdrawal of financial support, or the disclosure of the abortion to family and friends. These methods of psychological abuse may act as even more of a deterrent to notification than the possibility of physical violence, but women who are the victims of the abuse

³ *Id.* at 888. In striking down Pennsylvania’s spousal notice requirement, the Supreme Court affirmed in part the earlier holding of the Third Circuit, which had invalidated that provision because it failed strict scrutiny. *Id.* at 845; *Planned Parenthood of Se. Penn. v. Casey*, 947 F.2d 682, 689 (3d Cir. 1991). In its decision, the Third Circuit relied on Supreme Court abortion precedents that it noted were “attuned to the real-world consequences” of state restrictions. 947 F.2d at 711. The circuit court reasoned that women were in a particularly vulnerable position in the many “households where the husband alone holds the economic power” because “[t]he husband can simply decline to pay for the abortion and/or threaten to withhold future economic support unless the woman decides to forego the abortion.” *Id.* at 712. The court therefore “conclude[d] that the real-world consequences of forced notification in the context of wife/husband relationships impose . . . undue burdens on a woman’s right to an abortion,” *id.* at 711—a holding that the Supreme Court affirmed in *Casey* under its newly adopted undue burden test. 505 U.S. at 901.

are not exempt from [the statute's] notification requirement

The spousal notification requirement is thus likely to prevent a significant number of women from obtaining an abortion. It does not merely make abortions a little more difficult or expensive to obtain; for many women, it will impose a substantial obstacle. We must not blind ourselves to the fact that the significant number of women who fear for their safety and the safety of their children are likely to be deterred from procuring an abortion as surely as if the Commonwealth had outlawed abortion in all cases.

Id. at 893–94.

The *Casey* Court appropriately weighed broad evidence detailing the specific challenges women faced on a day-to-day basis.⁴ Moreover, the *Casey* Court weighed the law's purported benefits against its vast and numerous burdens, finding that any benefit conferred to the husband did not outweigh the burdens imposed upon women if the state were to “empower him with this troubling degree of authority

⁴ Although the *Casey* court found that “the waiting period has the effect of ‘increasing the cost and risk of delay of abortions,’” Justice Blackmun noted that the joint opinion’s specific holding that the waiting period does not constitute an undue burden was “based on the insufficiency of the record before it.” 505 U.S. at 886, 926 (Blackmun, J., concurring in part and dissenting in part). But, the record in this case makes clear that Act 620 not only makes abortion “more expensive and less convenient,” it also has the effect of rendering abortion care nearly inaccessible for Louisiana’s most vulnerable populations.

over his wife.” *Id.* at 898. Even before this Court’s decision in *Whole Woman’s Health*, district and appellate courts had heeded *Casey*’s directive. See *Planned Parenthood of Ariz., Inc. v. Humble*, 753 F.3d 905, 915 (9th Cir. 2014) (“We may also consider the ways in which an abortion regulation interacts with women’s lived experience, socioeconomic factors, and other abortion regulations.”); *Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 963 & n. 14 (W.D. Wis. 2015) (emphasizing that the Seventh Circuit, as well as the Ninth, favor a “balancing of benefits and burdens”), *aff’d*, 806 F.3d 908 (7th Cir. 2015). As explained by one court, this kind of “careful, fact-specific analysis” focuses on “how the restrictions would impede women’s ability to have an abortion, in light of the circumstances in their lives.” *Planned Parenthood Se., Inc. v. Strange*, 33 F. Supp. 3d 1330, 1338 (M.D. Ala. 2014) (quoting *Planned Parenthood Southeastern, Inc. v. Strange*, 9 F. Supp. 3d 1272, 1285 (M.D. Ala. 2014)); *Planned Parenthood of the Heartland, Inc. v. Iowa Bd. of Med.*, 865 N.W.2d 252, 268–69 (Iowa 2015) (holding undue burden test must be “context-specific”).

B. As Applied in *Casey* and *Whole Woman’s Health*, the Undue Burden Standard Takes a Holistic Approach to Considering a Law’s Impact On Women’s Lives

This Court observed in *Whole Woman’s Health* that “[t]he rule announced in *Casey* . . . requires that courts consider the burdens a law imposes on abortion access together with the benefits those laws confer.” 136 S. Ct. at 2309. In accordance with *Casey*, *Whole Woman’s Health* analyzed how Texas’s abortion restrictions interacted with the real-world

circumstances facing the women most affected by them. *Id.* at 2313.

Applying *Casey's* framework, this Court considered the logistical burdens imposed by Texas's admitting privileges law with heightened sensitivity. Specifically, the Court considered that closures resulting from the Texas law "meant fewer doctors, longer waiting times, and increased crowding." *Whole Woman's Health*, 136 S. Ct. at 2313. This Court took note of the district court's finding that the admission privileges law "erect[ed] a particularly high barrier for poor, rural, or disadvantaged women." *Id.* at 2302. This Court also considered that "[r]ecord evidence also support[ed] the finding that after the admitting-privileges provision went into effect, the 'number of women of reproductive age living in a county . . . more than 150 miles from a provider increased from approximately 86,000 to 400,000 . . . and the number of women living in a county more than 200 miles from a provider from approximately 10,000 to 290,000.'" *Id.* (ellipses in original). Based on these facts (and its conclusion that the Texas law did nothing to improve women's health or safety), this Court found that the admitting privileges law constituted an "undue burden" in part because

those increases [in driving distances] are but one additional burden, which, when taken together with others that the closings brought about, and when viewed in light of the virtual absence of any health benefit, lead us to conclude that the record adequately supports the District Court's "undue burden" conclusion.

Id. (quoting *Casey*, 505 U.S., at 895).

Whole Woman's Health made clear that logistical burdens such as increased travel times, viewed in the context of women's real-world circumstances, can impose an undue burden on abortion access. *Id.* As discussed further below, increased travel distance to a single open clinic in Louisiana will contribute to insurmountable barriers for women, including Black women who are disproportionately low-income and already suffer from a lack of access to reproductive healthcare services. *Whole Woman's Health* and *Casey* require this Court's careful and holistic evaluation of such logistical burdens.

II. In Evaluating Whether Act 620 Imposes an Undue Burden on Women, the Court Must Consider the Real-World Circumstances of Black Women

Black women will bear the brunt of abortion clinic closures caused by Act 620. Here, the proper focus of this Court's constitutional inquiry is the "group for whom [Act 620] is a restriction." *Casey*, 505 U.S. at 894. As a result of the persistence of structural discrimination in Louisiana, that group is disproportionately comprised of Black women.

As a preliminary matter, according to Louisiana, 61.2% of women who accessed abortions in Louisiana in 2018 were Black women.⁵ Therefore,

⁵ LA. BUREAU OF VITAL RECORDS & STATISTICS, INDUCED TERMINATION OF PREGNANCY BY WEEKS OF GESTATION, RACE, AGE, AND MARITAL STATUS REPORTED OCCURRING IN LOUISIANA, 2018, <http://ldh.la.gov/assets/oph/Center->

this group will be impacted most by Act 620 based upon numbers alone. In addition, Black women will be impacted by clinic closures to a greater degree than non-minority groups. Studies show that because Black women are disproportionately low-income, they are *half* as likely to be able to travel between 25 and 50 miles for abortion care.⁶ As the district court found, “[i]ntercity travel for low-income women presents a number of significant hurdles, including the logistics and costs of transportation, the costs associated with time off from work, and childcare costs. Low-income women are likely to live in households that have no vehicles.” Pet. App. 263a (citation omitted). In contrast, “[w]hite patients, college-educated, and U.S.-born patients were more likely to travel farther for an abortion, which may reflect that these groups have more material, informational, and social resources to be able to travel.”⁷ These figures are especially concerning where, according to one study on the effects of Act 620, 90% of women of reproductive age in Louisiana will live *more* than 50 miles away from a clinic, and 53% will live more than 150 miles away should Act 620 go into effect.⁸ Since women already cannot access abortion care when it is located 50 miles away, a journey hundreds of miles

RS/vitalrec/leers/ITOP/
ITOP_Reports/Ap18_T21.pdf.

⁶ Liza Fuentes & Jenna Jerman, *Distance Traveled to Obtain Clinical Abortion Care in the United States and Reasons for Clinic Choice*, J. WOMEN’S HEALTH, July 2019, at 5.

⁷ *Id.* at 7.

⁸ Sarah C.M. Roberts, *Implications for Women of Louisiana’s Law Requiring Abortion Providers to Have Hospital Admitting Privileges*, 91 CONTRACEPTION 368, 370 (2015).

away from home would be out of reach for many Black women.

Finally, Act 620’s author suggested that one goal of the law was to limit Black women’s access to abortion care. This Court should then give great weight to Black women’s experiences, since this group was specifically targeted. In response to abortion rights advocates’ criticism of the bill during a committee hearing, she stated that, “the number one genocide in the African-American community . . . the reason why we are becoming minority of minorities is because most of our babies are dying in the womb of abortion . . . more African-Americans die from abortion than any other illness.”⁹ This comment supports a reasonable inference that a purpose of the bill is to reduce Black women’s access to abortion, and that any purported health goals are merely pretextual. Act 620’s impact upon Black women is germane to the undue burden analysis for this additional reason.

III. Act 620 Erects Significant Barriers to Black Women’s Ability to Access Abortion Services

Whole Woman’s Health has already established that there is a “virtual absence of any health benefit” associated with admitting privileges laws. 136 S. Ct. at 2313. Thus, under *Whole Woman’s Health*, Louisiana’s admitting privileges requirement—identical to the Texas law struck down in that case—cannot justify imposing even the most

⁹ *Hearing on H.B. 388 Before the H. Comm. on Health & Welfare* (May 7, 2014) (statement of Rep. Katrina Jackson, Member, H. Comm. on Health & Welfare), http://house.louisiana.gov/H_Video/VideoArchive/Player.aspx?v=house/2014/Mar_2014/0319_14_HW.

minimal burdens on abortion access. Act 620, however, creates nearly insurmountable obstacles for Black women in Louisiana, given the economic position of this group. First, the overall status of Black women in Louisiana depicts a group hampered by extensive poverty and low-wage work. Second, Black women in Louisiana overwhelmingly work in service occupations and other low-wage jobs that are restrictive and inflexible. For Black women in particular, Act 620 will erect substantial obstacles to their constitutional right to access abortion care.

A. Black Women Are Among the Most Afflicted by Poverty and Systemic Economic Oppression in Louisiana

The undue burden analysis in this case must begin with the bleak financial picture of Black women in Louisiana. Though Black women participate in the labor market at higher rates than any other group of women in Louisiana,¹⁰ their contributions have been undervalued and undercompensated. Louisiana is the third poorest state in the nation, and one in five residents there lives in poverty. The poverty rate in Louisiana is 18.6%¹¹ in comparison to the national average in 2018 of 11.8%.¹² Thirty-three percent of

¹⁰ ASHA DUMONTHIER, ET AL., INST. FOR WOMEN'S POL'Y RESEARCH, THE STATUS OF BLACK WOMEN IN THE UNITED STATES 39 (2017), <https://iwpr.org/wp-content/uploads/2017/06/The-Status-of-Black-Women-6.26.17.pdf>.

¹¹ *QuickFacts: Louisiana*, U.S. CENSUS BUREAU (July 1, 2018), <https://www.census.gov/quickfacts/fact/table/LA/PST045218>.

¹² Associated Press, *Census: Louisiana Remains 1 of Nation's Poorest States*, U.S. NEWS (Sept. 27, 2019), <https://www.usnews.com/news/best-states/louisiana/articles/2019-09-27/census-louisiana-remains-1-of-nations-poorest-states>.

Black women in Louisiana live below the poverty line, and only 17.8% hold college degrees.¹³ Many parishes located furthest away from what will be the only remaining abortion clinic in the state have poverty levels up to 48%. East Carroll Parish¹⁴, for example, is extremely impoverished with 48.2% of its residents living in poverty. Eighty percent of those residents are Black.¹⁵

The largest demographic living in poverty in Louisiana are women ages 25 to 34, followed by women ages 18 to 24.¹⁶ Eighty-eight percent of Black women who receive abortions fall within these age groups.¹⁷ Moreover, for Black women living above the poverty line, the median wage for Black women working *full-time* jobs in Louisiana was just \$27,058.¹⁸ That compares with \$37,485 in median annual wages earned by white women¹⁹ and \$56,843

¹³ *Louisiana Report - 2018*, TALK POVERTY, <https://talkpoverty.org/state-year-report/louisiana-2018-report> (last visited Nov. 28, 2019); *Louisiana - Educational Attainment*, U.S. CENSUS BUREAU https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml?src=bkmk (last visited Nov. 28, 2019).

¹⁴ East Carroll Parish is approximately 260 miles from what would be the only remaining abortion clinic should Act 620 be upheld.

¹⁵ *48.2% Poverty Rate in East Carroll Parish, Louisiana*, WELFAREINFO, <https://www.welfareinfo.org/poverty-rate/louisiana/east-carroll-parish> (last visited Nov. 29, 2019).

¹⁶ *Louisiana*, DATA USA, <https://datausa.io/profile/geo/louisiana> (last visited Nov. 28, 2019).

¹⁷ LA. BUREAU OF VITAL RECORDS & STATISTICS, *supra* note 5.

¹⁸ NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, BLACK WOMEN AND THE WAGE GAP 2 (Apr. 2019), <https://www.nationalpartnership.org/our->

in median annual wages earned by white, non-Hispanic men in Louisiana.²⁰ That means African American women in Louisiana face the worst pay gap in the nation, earning just 47 cents for every dollar earned by white men in the state.²¹

Amici note that even the median wage of \$27,058 is not a living wage in Louisiana. This amount is the bare minimum required to meet basic necessities for single women with no children; childless, two-person households where both individuals work; and single-child, two-person households where both persons work.²² In all other cases, women earning this median wage do not earn enough to support themselves and/or their family.²³ The daily challenges of earning less than a living wage or living in poverty cannot be understated. Women who do not earn enough to pay for food, shelter, and transportation must often choose between these basic necessities. Compounding these choices is the relatively high cost of childcare in

work/resources/economic-justice/fair-pay/african-american-women-wage-gap.pdf.

¹⁹ INST. FOR WOMEN'S POL'Y RESEARCH, THE ECONOMIC STATUS OF WOMEN IN LOUISIANA 3 (Mar. 2018), <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-louisiana.pdf>.

²⁰ NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, *supra* note 18, at 2.

²¹ INST. FOR WOMEN'S POL'Y RESEARCH, *supra* note 19, at 1.

²² *Living Wage Calculation for Louisiana*, LIVING WAGE, <https://livingwage.mit.edu/states/22> (last visited Nov. 28, 2019).

²³ *Id.*

Louisiana, where childcare accounts for 23% of Black women's income.²⁴

For Black women, financial disadvantage is compounded by other forms of systemic inequality that operate to place abortion out of reach. The legacy of slavery, along with past and present policies that target and oppress African Americans—including mass incarceration, segregation, and exploitative financial practices, such as redlining—have led to concentrated and intergenerational poverty within the Black community. As a result, Black women have diminished access to networks and resources to assist them in overcoming financial hurdles, even relative to other poor women, and are less able to weather financial risk. For example, Black women are less likely to have anyone from whom they can borrow money in case of an emergency compared to others of similar income levels and are more likely to face debt.²⁵

As noted in the record below, a low-income woman in Louisiana would have to make “severe financial sacrifices and hard decisions” in order to afford an intra-state trip to an abortion clinic.²⁶ Low-income women gather funds for emergency expenses in three primary ways: (1) sacrifice in other areas,

²⁴ ASHA DUMONTHIER, ET AL., *supra* note 10, at 50.

²⁵ NICK NOEL & DUWAIN PINDER, MCKINSEY & CO., THE ECONOMIC IMPACT OF CLOSING THE RACIAL WEALTH GAP 11–12 (Aug. 2019), <https://www.mckinsey.com/~/media/McKinsey/Industries/Public%20Sector/Our%20Insights/The%20economic%20impact%20of%20closing%20the%20racial%20wealth%20gap/The-economic-impact-of-closing-the-racial-wealth-gap-final.ashx>.

²⁶ Rule 26(a)(2)(b) Expert Report of Dr. Sheila Katz, 2014 WL 11199761, ¶ 37 (Dec. 1, 2014).

usually by not paying rent or utilities or by reducing their food budget and going hungry; (2) using payday loans or other predatory lending practices; or (3) asking for money from a boyfriend or partner, even if they are no long together or if the partner is abusive.²⁷ The first strategy can jeopardize many women's housing situations, since low-income women already struggle to keep up with rent payments and one late payment can lead to eviction in Louisiana.²⁸ The second strategy results in high interest rates and fees that compound the expense of travel.²⁹ The third strategy is most dangerous, as many women can end up in cycles of abuse when they are financially dependent upon abusive partners.³⁰ But even when employing these strategies for gathering emergency funds, many women ultimately would not be able to afford the additional costs of accessing abortion care imposed by Act 620.

Poor women of color also face other intangible challenges that may prevent them from traveling great distances for abortion care. First, Black women in Louisiana often find that they are “time poor.” This results from caregiving demands, which are typically

²⁷ *Id.* ¶¶ 37–38. Moreover, the district court endorsed Dr. Katz's testimony on this point in its findings of fact. *See* Pet. App. 263a (“Women who cannot afford to pay the costs associated with travel, childcare, and time off from work may have to make sacrifices in other areas like food or rent expenses, rely on predatory lenders, or borrow money from family members or abusive partners or ex-partners, sacrificing their financial and personal security.”).

²⁸ Rule 26(a)(2)(b) Expert Report of Dr. Sheila Katz, 2014 WL 11199761, ¶ 37.

²⁹ *Id.*

³⁰ *Id.* ¶ 38.

more burdensome for single mothers, many of whom are sole earners and caregivers for their families.³¹ Women who are time poor may find that they have no time for activities other than working and providing child care. Thus, even if a woman can obtain funds for abortion services, she may not have time to travel. Second, as noted by Dr. Sheila Katz, a trial expert in this case, low-income women often face psychological barriers related to traveling.³² Because they lack discretionary funds for travel, many low-income women may have never traveled outside of their home metropolitan area and may live the vast majority of their day-to-day lives in a single neighborhood.³³ As Dr. Katz stated in her expert report:

Even if they are able to line up the money required to take the trip, the psychological hurdles of a trip to an unfamiliar city where they may not know anyone, may delay or ultimately prevent many low-income women from traveling to seek abortion services. If services are not available within their own town or within a reasonable

³¹ Karen Christopher, *Single Motherhood, Employment, Or Social Assistance: Why Are U.S. Women Poorer Than Women In Other Affluent Nations?*³ (Luxembourg Income Study, Working Paper No. 285, 2001).

³² Rule 26(a)(2)(b) Expert Report of Dr. Sheila Katz, 2014 WL 11199761, ¶ 35; *see also* Pet. App. 263a (“Travel to a different city to seek a medical procedure also imposes significant socio-psychological hurdles on low income women.”).

³³ Rule 26(a)(2)(b) Expert Report of Dr. Sheila Katz, 2014 WL 11199761, ¶ 35

distance, these services might as well not exist.³⁴

The impact of clinic closures will be greatly amplified for women who already lack financial and temporal capital to meet everyday requirements. It is simply unlikely that women who lack these resources can overcome the obstacles imposed by Louisiana's restriction. Act 620 will undoubtedly restrict access to abortion services for a large swath of poor women, who are disproportionately Black.

B. The Disproportionate Number of Black Women Working in Service Industry and Low-Wage Hourly Jobs Face Particularly High Burdens in Seeking Abortion Care

Aside from significant financial and psychological barriers, the nature of the jobs most often held by Black women leaves this group particularly vulnerable to the effects of Act 620. Thirty-five percent of Black women employed in Louisiana work in service occupations—one of the highest percentages in the country.³⁵ Just 18.1% of white women work in service occupations.³⁶ Workers in these jobs are beholden to rigid schedules and unpredictable shift allocations.

As a practical matter, service industry jobs are generally inflexible relative to professional jobs and offer less pay and fewer, if any, benefits. Whereas women in professional jobs can usually request time

³⁴ *Id.*

³⁵ ASHA DUMONTHIER, ET AL., *supra* note 10, at 42.

³⁶ *Id.*

off with short notice, this is often not possible for women who must work rigid shifts or request time off days or weeks in advance. As scholars have noted, “[w]ork hour schedules are not uncommonly posted no more than a week in advance for employees, sometimes even less, for work the following week. A common consequence is that such practices limit employees’ opportunity to balance work, social, and family responsibilities.”³⁷ Moreover, service industry jobs often do not offer paid time off, so missing work often means missed wages.³⁸ These missed wages compound upon the already high cost of travel, as well as the cost of abortion itself. Thus, Black women who are already financially stressed and time poor must somehow coordinate two-day trips amidst daunting uncertainty.

Ultimately, Act 620 will render abortion access nearly nonexistent for low-income women, who are disproportionately Black. However, this Court has made clear that people without financial means are entitled to the same constitutional guarantees as those with means. *See, e.g., Collins v. Virginia*, 138 S. Ct. 1663, 1675 (2018) (“Virginia’s proposed bright-line rule automatically would grant constitutional rights to those persons with the financial means to afford residences with garages in which to store their vehicles but deprive those persons without such

³⁷ Lonnie Golden, *Irregular Work Scheduling And Its Consequences* 8 (Econ. Pol’y Inst., Briefing Paper No. 394, Apr. 9, 2015), <https://www.epi.org/files/pdf/82524.pdf>.

³⁸ *See* Pet. App. 263a (“Women who must travel increased distances to access abortion will in many cases have to take at least two days off from work, which has financial costs if the time off is unpaid, as is often the case in low-wage jobs. Many women are even at risk of losing their jobs for taking time off.” (citation omitted)).

resources of any individualized consideration as to whether the areas in which they store their vehicles qualify as curtilage.”); *United States v. Ross*, 456 U.S. 798, 822 (1982) (“[T]he most frail cottage in the kingdom is absolutely entitled to the same guarantees of privacy as the most majestic mansion”); see also *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of Ind. State Dep’t of Health*, 896 F.3d 809, 824 (7th Cir. 2018) (“Like all women, poor women deserve a level of dignity and choice about the confidentiality of their healthcare.”).

As shown above, the real-world circumstances of this group (comprised of financial barriers, psychological hurdles, logistical conundrums, and other abortion restrictions) almost guarantee that Act 620 will render access to abortion services in Louisiana untenable for low-income women who are disproportionately Black. It simply cannot be that the Constitution permits states to prevent low-income Black women from accessing constitutional rights that their wealthy white counterparts can secure.

IV. Act 620 Would Exacerbate Structural Economic Barriers Faced by Black, Low-Income Women in Louisiana

This Court has recognized, “[t]he 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. Act 620 would not only disproportionately deprive Black women of the ability to exercise their constitutionally-protected right to reproductive autonomy, it would also reify broader forms of exclusion, inequality, and oppression along racial, economic, and gender lines.

Black women in Louisiana are disproportionately poor, attain lower levels of education, and are underpaid compared to their white counterparts. Louisiana also suffers from persistent income inequality. In July 2018, the Economic Policy Institute reported that in Louisiana, the top 1% of earners made 18.1 times more than all other earners.³⁹ Income inequality is even worse in Shreveport and East Carroll, where the top 1% of earners make 20.4% and 21.9%, respectively, more than all other earners.⁴⁰ The racial composition of Shreveport is 56.7% Black and 38.6% white,⁴¹ with Blacks more than 4 times more likely to live in poverty than whites.⁴² The racial composition of East Carroll is 68.7% Black and 29.2% white,⁴³ with Blacks approximately 13 times more likely to live in poverty.⁴⁴ Lack of access to abortion care widens this gap. Nationally, studies have found “large and statistically significant differences in the socioeconomic trajectories of women who were denied

³⁹ *The Unequal States of America: Income Inequality in Louisiana*, ECON. POLY INST. (July 2018), <https://epi.org/multimedia/unequal-states-of-america/#/Louisiana>.

⁴⁰ *Id.*

⁴¹ *Quickfacts: Shreveport City, Louisiana*, U.S. CENSUS BUREAU (July 1, 2018), <https://www.census.gov/quickfacts/shreveportcitylouisiana>.

⁴² *Shreveport, LA*, DATA USA, <https://datausa.io/profile/geo/shreveport-la> (last visited Nov. 28, 2019).

⁴³ *Quickfacts: East Carroll Parish, Louisiana*, U.S. CENSUS BUREAU (July 1, 2018), <https://www.census.gov/quickfacts/eastcarrollparishlouisiana>.

⁴⁴ *East Carroll Parish, LA*, DATA USA, <https://datausa.io/profile/geo/east-carroll-parish-la> (last visited Nov. 28, 2019).

wanted abortions compared with women who received abortions—with women denied abortions facing more economic hardships—even after . . . account[ing] for baseline differences.”⁴⁵ Being denied an abortion and forced to carry a pregnancy to term increases the odds of a woman’s household income falling below the poverty line fourfold and makes it six times more likely that she will rely on public assistance.⁴⁶

Studies show that Black women experienced large gains in terms of educational attainment and employment outcomes as a result of access to reproductive health services, including abortion care, and also suffered the most significant losses in those categories with policies restricting access.⁴⁷ Of the Black women in Louisiana who sought abortion care in 2018, 78% were under the age of 30.⁴⁸ Eliminating access to abortion would stymie efforts for low-income Black women to achieve financial security and hurt our nation’s economy in the process.

Many of the same structures that make abortion restrictions insurmountable for Black women (including a lack of sick days and paid leave) also operate to further marginalize those denied access to abortion care by punishing pregnant and

⁴⁵ 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).

⁴⁶ *Id.* at 409.

⁴⁷ ANNA BERNSTEIN & KELLY M. JONES, INST. FOR WOMEN’S POL’Y RESEARCH, THE ECONOMIC EFFECTS OF ABORTION ACCESS: A REVIEW OF THE EVIDENCE 7–9 (2019), <https://iwpr.org/publications/economic-effects-abortion-access-report>.

⁴⁸ LA. BUREAU OF VITAL RECORDS & STATISTICS, *supra* note 5.

parenting workers. As a result, many of these women struggle to remain employed during pregnancy and early motherhood, often plunging low-income women further into financial insecurity.⁴⁹

In Louisiana, Black women are hardest hit by these policies.⁵⁰ Louisiana has the highest motherhood “wage penalty” in the country, and the disadvantage for mothers is most pronounced for Black women.⁵¹ The inequality resulting from this pay gap is magnified by the fact that 82% of Black women in Louisiana are “key” household breadwinners, meaning they account for 40% or more of their household income.⁵² Hurting the upward

⁴⁹ NAT’L PARTNERSHIP FOR WOMEN & FAMILIES, A DOUBLE BIND: WHEN STATES DENY ABORTION COVERAGE AND FAIL TO SUPPORT EXPECTING AND NEW PARENTS (Sept. 2016), <https://www.nationalpartnership.org/our-work/resources/repro/abortion/a-double-bind.pdf>.

⁵⁰ LA. WOMEN’S POLICY & RESEARCH COMM’N, 2018 ANNUAL REPORT (2019), https://wwwcfprd.doa.louisiana.gov/boardsandcommissions/StatutoryCitations/400_LWPRC_2018AnnualReportONLINE.pdf (“A recent statewide survey found that African Americans experienced financial hardship at a greater rate than any other demographic due to the lack of paid family leave.”). A significantly lower proportion of Louisiana women are able to access paid leave after giving birth (35%) compared to the national average (55%). *Id.*; see also NAT’L PARTNERSHIP FOR WOMEN & FAMILIES, *supra* note 49.

⁵¹ NAT’L WOMEN’S LAW CTR., MOTHERHOOD WAGE GAP FOR MOTHERS OVERALL: 2019 STATE RANKINGS (May 2019), <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2019/05/Motherhood-Wage-Gap-Overall-Table.pdf>; NAT’L WOMEN’S LAW CTR., MOTHERHOOD WAGE GAP FOR BLACK MOTHERS: 2019 STATE RANKINGS (May 2019), <https://nwlc.org/wp->

mobility of Black women in turn hurts all Black households.

Pervasive racism in the healthcare system has created wide-ranging health disparities for Black women that impact their ability to access reproductive healthcare and can have grave consequences, especially for women denied abortion care.⁵³ Black women, for example, are more likely to lack adequate access to contraceptives and other reproductive services compared to women of other races with similar incomes.⁵⁴ Black women also suffer from dramatically worse outcomes in maternal health—a grim reality that holds true for Black women across the income and educational spectrum.⁵⁵ While abortion is very safe in America,⁵⁶

content/uploads/2019/05/Black-Motherhood-Wage-Gap-Table-2019.pdf.

⁵² NAT'L PARTNERSHIP FOR WOMEN & FAMILIES, PAID LEAVE MEANS A STRONGER LOUISIANA (Jan. 2019), <https://nwlc.org/wp-content/uploads/2019/05/Black-Motherhood-Wage-Gap-Table-2019.pdf>.

⁵³ Cynthia Prather et al., *Racism, African American Women, and Their Sexual and Reproductive Health: A Review of Historical and Contemporary Evidence and Implications for Health Equity*, 2.1 HEALTH EQUITY 249 (2018).

⁵⁴ See Christine Dehlendorf et al., *Disparities in Abortion Rates*, 103 AM. J. PUB. HEALTH 1772, 1774 (2013).

⁵⁵ Jamila Taylor et al., *Eliminating Racial Disparities in Maternal and Infant Mortality: A Comprehensive Policy Blueprint*, CTR. FOR AM. PROGRESS (May 2, 2019), <https://www.americanprogress.org/issues/women/reports/2019/05/02/469186/eliminating-racial-disparities-maternal-infant-mortality>; Cynthia G. Colen et al., *Racial Disparities in Health Among Nonpoor African Americans and Hispanics: The Role of Acute and Chronic Discrimination*, 199 SOC SCI MED. 167 (2018).

pregnancy and childbirth pose severe risks, particularly for Black women. Black women in Louisiana are over four times more likely to experience pregnancy-related death than white women and face a maternal death rate of 22.8 for every 100,000 live births.⁵⁷ Notably, this disparity holds true for Black women at higher incomes and education levels: a Black woman with a Ph.D. and a high-income remains more likely to die from birth-related complications than a white woman holding only a high school degree.⁵⁸

CONCLUSION

As the district court found, Act 620 will inflict an undue burden on women in Louisiana. The burdens imposed by Act 620 would present insurmountable barriers for Black women who are disproportionately low-income and already suffer from a lack of access to reproductive healthcare services. A decision from this Court upholding Act 620 would unjustifiably harm the most marginalized women in Louisiana by gutting their constitutional right to abortion. As such, amici respectfully urge this Court to reverse the decision of the United States

⁵⁶ NAT'L ACADS. OF SCIENCE, ENG'G & MATH, *THE SAFETY AND QUALITY OF ABORTION CARE IN THE UNITED STATES* (2018).

⁵⁷ LYN KIELTYKA ET AL., LA. DEP'T OF HEALTH, LOUISIANA MATERNAL MORTALITY REVIEW REPORT, 2011-2016, at 22 (Aug. 2018), http://ldh.la.gov/assets/oph/Center-PHCH/Center-PH/maternal/2011-2016_MMR_Report_FINAL.pdf.

⁵⁸ Colen et al., *supra* note 55; Rochaun Meadows-Fernandez, *Even as Black Americans Get Richer, Their Health Outcomes Remain Poor*, PACIFIC STANDARD (Jan. 23, 2018), <https://psmag.com/social-justice/even-as-black-americans-get-richer-their-health-outcomes-remain-poor>.

Court of Appeals for the Fifth Circuit and hold that Act 620 is unconstitutional.

Respectfully submitted,

KRISTEN CLARKE
JON GREENBAUM
DARIELY RODRIGUEZ*
* *Counsel of Record*
PILAR WHITAKER
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
1500 K Street NW,
Suite 900
Washington, DC 20005
(202) 662-8600
drodriguez@lawyerscommittee.org

VANITA GUPTA
MICHAEL ZUBRENSKY
GAYLYNN BURROUGHS
THE LEADERSHIP
CONFERENCE ON CIVIL
AND HUMAN RIGHTS
1620 L Street NW,
Suite 1100
Washington, DC 20036
(202) 466-3311

Counsel for Amici Curiae

December 2, 2019