

IN THE SUPREME COURT OF FLORIDA

**Case No. SC16-381
Lower Case No. 1D15-3048**

GAINESVILLE WOMAN CARE, LLC, ET AL.,

Petitioners,

v.

STATE OF FLORIDA, ET AL.,

Respondent.

Discretionary Proceeding to Review the Decision of the
First District Court of Appeal

**BRIEF OF EXPERTS AND ORGANIZATIONS SUPPORTING
SURVIVORS OF INTIMATE PARTNER VIOLENCE,
SEXUAL ASSAULT, AND TRAFFICKING
AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS**

By: s/Catherine Millas Kaiman
CATHERINE MILLAS KAIMAN
ckaiman@law.miami.edu
Florida Bar No. 117779

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iv
IDENTITY AND INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT.....	4
ARGUMENT	5
I. H.B. 633 HARMS FLORIDA WOMEN	5
II. DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND HUMAN TRAFFICKING ARE SEVERE PROBLEMS IN FLORIDA AND VICTIMS FACE HEIGHTENED RISKS OF UNINTENDED PREGNANCY, ALONG WITH RESTRICTED ACCESS TO REPRODUCTIVE HEALTH CARE.....	5
A. Domestic Violence is Prevalent in Florida and Creates Reproductive Health Harms for Women that the Act will Exacerbate.....	6
1. Women in Abusive Relationships are at a Heightened Risk of Unintended Pregnancy Through the Abuser’s Use of Coercive and Violent Control Tactics.....	7
2. Pregnancy is Associated with Increased and More Severe Physical Violence in Abusive Relationships.....	8
3. Domestic Violence Survivors and Women in Abusive Relationships Face Unique Barriers When Seeking Reproductive Health Care.....	9
4. Poor and Low-Income Women, Women Who Are Members of Some Racial Minority Groups, and Immigrant Women Face Increased Risks of Violent Victimization as Well as Inadequate Access to Reproductive Health Care.....	10
B. Sexual Assault, Rape, and Human Trafficking are Prevalent in Florida and the Act Will Increase the Harms Inflicted on Victims.....	12

III. THE ACT’S EXCEPTION FOR VICTIMS OF RAPE, INCEST, DOMESTIC VIOLENCE, AND HUMAN TRAFFICKING IS WHOLLY INADEQUATE BECAUSE IT REQUIRES VICTIMS TO PRODUCE DOCUMENTATION THAT MOST VICTIMS WILL NOT HAVE, AND THIS IS PARTICULARLY TRUE FOR WOMEN WHO ARE THE MOST VULNERABLE TO VIOLENCE	16
CONCLUSION	20
CERTIFICATE OF SERVICE.....	22
CERTIFICATE OF COMPLIANCE	24

TABLE OF AUTHORITIES

Cases

Weiland v. State,
732 So. 2d 1044, 1056 (Fla. 1999).....16

Statutes

Florida Law Chapter 2015-118, § 1, Laws of Florida, § 390.0111(3)(a)(1)(c),
Fla. Stat.....5,17

Other Authorities

Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980-2008, Annual Rates for 2009 and 2010*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep’t of Justice 18 (2011)6

Am. Bar Ass’n Comm’n on Domestic Violence,
10 Custody Myths and How to Counter Them, 4 ABA Commission on Domestic Violence Quarterly E-Newsletter 3 (July 2006),
http://www.americanbar.org/content/dam/aba/publishing/cdv_eneNewsletter/custodymythsandcounter.authcheckdam.pdf.....8

Amy Moore, Lori Frohwirth & Elizabeth Miller, *Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States*, 70 Soc. Sci. J. 11 1737, 1744 (June 2010).....7

Anne Stewart Helton & Frances Gobble Snodgrass,
Battering During Pregnancy: Intervention Strategies,
14 (3) BIRTH 142 (Sept. 1987).....8

Beth A. Bailey, *Partner Violence during Pregnancy: Prevalence, Effects, Screening, and Management*, Int’l J. Women’s Health 2,
183-97 (2010).....8

Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*,
5 U. Miami Race & Soc. Just. L. Rev. 585 (2015).....11

Donna Coker et al., *Responses from the Field: Sexual Assault, Domestic Violence, and Policing* (Oct. 2015), <https://www.aclu.org/report/sexual-assault-domestic-violence-and-policing>.....17, 18, 19

Fla. Comm’n on Access to Civ. Just. Interim Rep. 4 (Oct. 1, 2015), <http://www.flacesstojustice.org/wp-content/uploads/2016/01/Florida-Commission-ATJ-Interim-Report.pdf>.....14, 19

Fla. Dep’t of Law Enforcement, *Reported Domestic Violence by Florida Jurisdiction, 1996-2014, Offenses and Arrests by Year, Florida’s County and Jurisdictional Reported Domestic Violence Offenses, 2014*, http://www.fdle.state.fl.us/cms/FSAC/Documents/PDF/dvoff_jur14.aspx.....6

Fla. State Univ. Ctr. for the Advancement of Human Rights, *Florida Responds to Human Trafficking* (2003), http://www.cahr.fsu.edu/sub_category/thereport.pdf.....14

Heike Thiel de Bocanegra, Daria P. Rostovtseva, Satin Khera and Nita Godwani, *Birth Control Sabotage and Forced Sex: Experiences Reported by Women in Domestic Violence Shelters*, 16(5) *Violence Against Women* 601 (2010).....7

Intimate Partner Violence During Pregnancy, A Guide for Clinicians, Am. Coll. of Obstetricians and Gynecologists, Centers for Disease Control and Prevention (2013) www.cdc.gov/reproductivehealth/violence/intimatepartnerviolence.ipvdp_slide.htm.....9

Jeani Chang et al., *Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991-1999*, 95 *Am. J. Pub. Health* 471 (2005).....9

Jenna Jerman, Rachel K. Jones & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, Guttmacher Institute.....12

Judith McFarlane, *Pregnancy Following Partner Rape: What We Know and What We Need to Know*, 8 Trauma, Violence & Abuse 127 (2007).....7

Kaiser Family Found., *Analysis of 2015 Current Population Survey, U.S. Census Bureau* (2015) <http://kff.org/womens-health-policy/fact-sheet/womens-health-insurance-coverage-factsheet/>.....12

Melissa M. Holmes, Heidi S. Resnick, Dean G. Kilpatrick & Connie L. Best, *Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 Am. J. of Obstetrics & Gynecology 2 (Aug. 1996).....13

Michele C. Black et al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report (NISVS)*, Nat’l Ctr. for Injury Prevention and Control, Ctrs. for Disease Control and Prevention (2011), http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010a.pdf.....6, 10, 11, 13

Nat’l Coal. Against Domestic Violence, *Domestic Violence and Economic Abuse* (2015), <http://www.ncadv.org/files/Domestic%20Violence%20and%20Economic%20Abuse%20NCADV.pdf>.....10

Nat’l Domestic Workers Alliance, *Home Economics: The Invisible and Unregulated World of Domestic Work*, New York, <http://www.domesticworkers.org/sites/default/files/HomeEconomicsEnglish.pdf>.....14, 18

Nat’l Human Trafficking Res. Ctr., *Human Trafficking*, <https://traffickingresourcecenter.org/type-trafficking/human-trafficking> (last visited May 31, 2016).....14, 18

Latino Union and Mujeres Latinas en Acción, *Latina Portrait Domestic Workers* (2013) 10, http://www.mujereslatinasenaccion.org/userfiles/images/Publications/Latina%20Portrait_Domestic%20Workers.pdf.....15

Rape, Abuse & Incest Nat’l Network, *Incest*, July 31, 2013, <http://www.rainn.org/get-information/types-of-sexual-assault/incest>.....19

Status of Women in the States, Florida (last visited June 2, 2016)
<http://statusofwomendata.org/explore-the-data/state-data/florida/#poverty-opportunity>.....12

Tim Elfrink, *A Florida Farm County’s High Rape Rate Highlights Risks for Migrant Workers*, Miami New Times, Apr. 22, 2015, available at <http://www.miaminewtimes.com/news/a-florida-farm-countys-high-rape-rate-highlights-risks-for-migrant-workers-7575170>.....15

U.S. Census Bureau, *Poverty, 2013 Highlights*
www.census.gov/hhes/www/poverty/about/overview.....12

IDENTITY AND INTEREST OF *AMICI CURIAE*

Anti-Defamation League founded in 1913, is a national Jewish civil rights and human relations organization dedicated to principles of religious and individual liberty, including the right to privacy. The ability to make decisions about one's own reproductive health and family planning has played an essential role in advancing women's equality. We view reproductive choice as an issue of personal and religious freedom.

Community Justice Project is a non-profit law firm dedicated to supporting grassroots organizing groups working to build power and secure human rights in South Florida and beyond. Its clients include Power U Center for Social Change and Miami Workers Center, who each work to center the voices of low-income Black & Latina women in the struggles for gender, reproductive, and racial justice.

Fanm Ayisyen Nan Miyami, Inc. (FANM, Haitian Women of Miami) is located in the heart of Little Haiti, Miami. Since inception in 1991, FANM has used the program "Chanje" ("changed" in Haitian Creole) which is for adult female survivors of domestic violence that include legal rights outreach and education, mental health counseling/group support, and advocacy around immigration, VAWA, reproductive rights, and affordable housing.

Florida Coalition Against Sexual Violence is a statewide nonprofit

organization committed to victims and survivors of sexual violence and the sexual assault crisis programs who serve them. FCASV serves as a resource to the state on sexual violence issues and provide technical assistance to agencies seeking to improve their services for rape victims, and also provide up-to-date information to the public. FCASV works closely with sexual assault programs, as well as directly with victims, to ensure protection of their privacy rights, as well as their right to choose services appropriate to them, including the decision to report to law enforcement or not. The issue of the right to terminate a pregnancy resulting from victimization is directly related to the assistance we provide to victims and the programs that serve them.

Florida National Organization for Women (FL NOW) seeks to take action through intersectional grassroots activism to promote feminist ideals, lead societal change, eliminate discrimination, and achieve and protect the equal rights of all women and girls in all aspects of social, political, and economic life. FL NOW has 3,000 members throughout the state and opposes restrictions on a woman's ability to access reproductive health care, including abortion, in the manner that she knows is best for her and her family.

National Latina Institute for Reproductive Health (“NLIRH”) Florida Latina Activist Network (“FL LAN”) is the Florida-based activist network of the NLIRH, which is the only national reproductive justice organization dedicated to

advancing health, dignity, and justice for the 28 million Latinas, their families, and communities in the United States. We believe that access to comprehensive reproductive healthcare, including abortion, is essential to ensuring that all people can shape their lives and futures and do so with dignity, and opposes laws and policies that create barriers to this care.

Miami Workers Center is a community-based organization whose mission is to organize and develop conscious leadership within Miami's working class communities for gender, economic, and racial equality. We are centering the voices of low-income Black & Latina women in to achieve gender, reproductive, economic, and racial justice.

Women's Fund is Miami-Dade's only organization directing all its energy toward creating equal opportunity, access and influence for women and girls. Through research, collaboration, and grant making we expose the issues, give voice to the silent majority, and pool our collective giving power to provide grassroots solutions. We actively pursue and protect justice for women and girls in our county and our state, including our rights to reproductive freedom, healthcare, education, and financial security.

Women's Emergency Network is based in Miami and dedicated to providing low-income and marginalized women and girls facing a crisis pregnancy with education about options, financial assistance for reproductive services, and

follow-up counseling. Unplanned parenthood can keep young girls and women from completing their education, perpetuate poverty and/or economic dependence, and bind them to abusive relationships.

Vida Legal Assistance, Inc. is dedicated to advancing the rights of immigrant survivors and provides free legal representation to immigrant survivors of domestic and sexual violence and human trafficking.

Amici Include Academics and Experts Regarding Gender Violence, Poverty, Immigration, and Race: Merike Blofield; Cyra Choudury; Donna Coker; Ericka Curren; Louise K. Davidson-Schmich; Toni M. DiDona; Mary Anne Franks; Pamela L. Geller; C. Quince Hopkins; and Rebecca Sharpless.

SUMMARY OF ARGUMENT

Florida's mandatory delay for abortion procedures violates all women's constitutional right to privacy, and particularly harms victims of domestic violence, sexual assault, and trafficking. Uncertain immigration status, lack of resources, and other structural barriers make poor and low-income women, and immigrant women particularly vulnerable to sexual exploitation, trafficking, and domestic violence. Women of color are disproportionately represented in this "vulnerable" group. The same structural barriers decrease their accessibility to health care, including reproductive health care. The law's exception for survivors of domestic violence, rape, and human trafficking is wholly inadequate for these vulnerable women

because they are particularly unlikely to have the required documentation.

ARGUMENT

I. H.B. 633 HARMS FLORIDA WOMEN.

Florida Law Chapter 2015-118, § 1, Laws of Florida, codified at § 390.0111(3)(a)(1)(c), Fla. Stat. (“H.B. 633” or “The Act”) harms Florida women by interfering with their right to privacy under the Florida Constitution, which guarantees all Florida citizens the right “to be free from governmental intrusion” into their private lives. Art. I, § 23, Fla. Const. H.B. 633 hurts Florida women as it requires the physician who will perform an abortion procedure, or the referring physician, to provide information and counseling to a patient in-person at least twenty-four hours before the abortion procedure. *See id.* The Act places a significant restriction on the right of vulnerable Florida women to seek an abortion, with life-threatening consequences. These vulnerable women include women abused by current and former intimates, victims of rape and human trafficking, particularly poor, low-income, and immigrant women. The Act’s narrow exception for women who can provide documentation indicating they are a “victim of rape, incest, domestic violence, or human trafficking” will do little to address the additional obstacles this Act places on these vulnerable women who are particularly unlikely to have said documentation. § 390.0111(3)(a)(1)(c), Fla. Stat.

II. DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND HUMAN TRAFFICKING ARE SEVERE PROBLEMS IN FLORIDA, AND

VICTIMS FACE HEIGHTENED RISKS OF UNINTENDED PREGNANCY, ALONG WITH RESTRICTED ACCESS TO REPRODUCTIVE HEALTH CARE.

A. Domestic Violence is Prevalent in Florida and Creates Reproductive Health Harms for Women that the Act will Exacerbate.

Intimate partner violence¹ affects nearly one third of women in the United States.² Women are more likely to experience rape, sexual assault, stalking, and physical violence at the hands of an intimate partner.³ Women are more likely to be murdered by current or former intimate partners than to be killed by strangers or acquaintances.⁴ In Florida, there were over 106,000 reported incidents of domestic violence in 2014.⁵ Because of the chronic underreporting of domestic violence, this number is without question lower than the actual number of domestic violence incidents in Florida.⁶ Pregnancy is a particularly vulnerable time for victims of

¹ We use the term intimate partner violence and domestic violence interchangeably in this brief.

² Michele C. Black et al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report*, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (2014) [hereinafter *CDC NISVS 2014*] http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

³ *Id.*

⁴ Alexia Cooper & Erica L. Smith, *Homicide Trends in the United States, 1980-2008, Annual Rates for 2009 and 2010*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice 18 (2011), <http://bjs.gov/content/pub/pdf/htus8008.pdf>.

⁵ Fla. Dep't of Law Enforcement, *Reported Domestic Violence by Florida Jurisdiction, 1996-2014, Offenses and Arrests by Year, Florida's County and Jurisdictional Reported Domestic Violence Offenses, 2014*, http://www.fdle.state.fl.us/cms/FSAC/Documents/PDF/dvoff_jur14.aspx.

⁶ See *infra* Part III.

domestic violence. As discussed below, the Act further increases a woman's risk of abuse by requiring a mandatory delay and at least two separate trips to the clinic or provider, thereby increasing the likelihood that her abuser will discover her pregnancy or intended abortion with potentially life-threatening consequences.

1. Women in abusive relationships are at a heightened risk of unintended pregnancy through the abuser's use of coercive and violent control tactics.

Women in domestic violence situations experience unintended pregnancy. Reproductive coercion or control is a common form of intimate partner violence.⁷ Some batterers rape their partners, refuse to wear a condom, or sabotage a woman's contraception, with the intent to force an unwanted pregnancy and thus increase the woman's emotional and economic dependency on them.⁸ These efforts are often successful. One in four survivors of intimate partner violence who are raped by their abusers become pregnant—a rate five times the national average for rape-related pregnancy.⁹ Violent partners may force women to carry an unwanted pregnancy to term on the threat of severe abuse should the woman seek an

⁷ Amy Moore, Lori Frohwirth & Elizabeth Miller, *Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States*, 70 Soc. Sci. J. 11 1737, 1744 (June 2010).

⁸ Heike Thiel de Bocanegra, et al., *Birth Control Sabotage and Forced Sex: Experiences Reported by Women in Domestic Violence Shelters*, 16(5) Violence Against Women 601 (2010).

⁹ Judith McFarlane, *Pregnancy Following Partner Rape: What We Know and What We Need to Know*, 8 Trauma, Violence & Abuse 127, 128 (2007).

abortion.¹⁰

Forcing pregnancy and childbirth tethers the victim more strongly to the abuser, strengthening the victim's economic dependency and her emotional ties to the abuser. Escape from a batterer while pregnant or with children is particularly difficult. Furthermore, even if a woman does successfully separate from her abuser, the child (or children) will be a persistent link to the abuser. After separation, many batterers will increase their intimidation and control of the victims through the children.¹¹

2. Pregnancy is associated with increased and more severe physical violence in abusive relationships.

Abused women are at a heightened risk of abuse and death when pregnant.¹² Some abusers punish women for becoming pregnant, directing escalated abuse at a woman's stomach.¹³ The leading cause of death among pregnant women in the

¹⁰ *Id.*

¹¹ Am. Bar Ass'n Comm'n on Domestic Violence, *10 Custody Myths and How to Counter Them*, 4 ABA Commission on Domestic Violence Quarterly E-Newsletter 3 (July 2006), http://www.americanbar.org/content/dam/aba/publishing/cdv_eneewsletter/custodymythsandcounter.authcheckdam.pdf (Abusive partners are more likely than non-violent partners to seek sole custody and are successful about 70% of the time even when mothers allege domestic violence. Joint custody can mandate that a woman live in close proximity to the abuser, as well as engage in constant communications and visits with the abuser).

¹² Beth A. Bailey, *Partner Violence during Pregnancy: Prevalence, Effects, Screening, and Management*, Int'l J. Women's Health 2, 183-97.

¹³ Anne Stewart Helton & Frances Gobble Snodgrass, *Battering During Pregnancy: Intervention Strategies*, 14(3) Birth 142 (Sept. 1987).

United States is homicide.¹⁴ According to the CDC, between 4% and 8% of all pregnant women report that they have experienced physical abuse during pregnancy.¹⁵

3. Domestic violence survivors and women in abusive relationships face unique barriers when seeking reproductive health care.

The Act's required mandatory delay and additional in-person visit will exacerbate the risk of detection for domestic violence victims by doubling the logistical challenges and lengthening duration of the pregnancy.

First, women in abusive relationships are often monitored constantly by their abuser.¹⁶ Battered women often have to go through careful and meticulous planning to make even a single appointment with an abortion provider, let alone two consecutive appointments twenty-four hours apart. An abused woman who is able to extricate herself without detection from an abuser *once* in order to receive abortion treatment is fortunate. For her to have a second opportunity, within the time required, would be truly extraordinary.

¹⁴ Jeani Chang et al., *Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991-1999*, 95 Am. J. Pub. Health 471 (2005).

¹⁵ *Intimate Partner Violence During Pregnancy, A Guide for Clinicians*, Am. Coll. of Obstetricians and Gynecologists, Ctrs. for Disease Control and Prevention (2013) 12, www.cdc.gov/reproductivehealth/violence/intimatepartnerviolence.

¹⁶ Detection methods may include calling the women at her home and/or work multiple times during the day so that the abuser knows where she is at all times. They can also include checking the mileage of her car and using GPS to monitor the woman's whereabouts. Abusers will also show up unannounced at a woman's place of work to confirm her location.

Second, abused women will have difficulty coming up with the extra funds necessary to make a second trip to an abortion provider. Because of the Act's requirements, women must come up with additional money for double the travel, childcare, and other related costs associated with two appointments. Women in abusive relationships often do not have control over their own money (even if they are employed) and are subject to the abuser's economic control and dominance.¹⁷

4. Poor and low-income women, women who are members of some racial minority groups, and immigrant women face increased risks of violent victimization as well as inadequate access to reproductive health care.

African American women, Native American women, and multi-racial women are at a heightened risk of experiencing abuse.¹⁸ Approximately 43.7% Black non-Hispanic women, 46% of American Indian or Alaska Native women, and 53.8% of multiracial non-Hispanic women in the United States have been victims of rape, physical violence, or stalking by an intimate partner in their lifetime.¹⁹ These numbers compare to about 34.6% of White non-Hispanic women and 37.1% of Hispanic women.²⁰ These differences in risk are largely the result of economic differences. Race discrimination and segregation create wealth and

¹⁷ Batterers will monitor credit card charges, bank accounts, and may demand that their victims turn over their entire paychecks. *See* Nat'l Coal. Against Domestic Violence, *Domestic Violence and Economic Abuse* (2015), <http://www.ncadv.org/files/Domestic%20Violence%20and%20Economic%20Abuse%20NCADV.pdf>.

¹⁸ *Id.*

¹⁹ *Supra* note 2, *CDC NIPSVS 2014*, at 27.

²⁰ *Id.*

income disparities that, in turn create the social and economic circumstances that increase risks for violence.²¹ Women who live in low-income households are at particularly high risk of experiencing intimate partner violence. According to the CDC, the 12-month prevalence of rape, physical violence, or stalking by an intimate partner was significantly higher—by nearly 10%—among women with a combined household income of less than \$25,000.²² This compares to rates of 5.9% for women with combined household incomes between \$25,000—\$50,000 and 2.8% for women in high-income households over \$75,000.²³ Relatedly, research finds that women with less than a high school education have rates of domestic violence six times that of those with a college education.²⁴

Low-income and poor women are not only more likely to experience abuse, but they are also more likely to require abortion care. Nearly 76% of women seeking abortion services in the United States are poor—living below the federal poverty level—or low income—living at 100–199% of the federal poverty level.²⁵ Low-income women frequently face inadequate health care and are more

²¹ See Donna Coker & Ahjané D. Macquoid, *Why Opposing Hyper-Incarceration Should Be Central to the Work of the Anti-Domestic Violence Movement*, 5 U. Miami Race & Soc. Just. L. Rev. 585 (2015).

²² *Supra* note 2, CDC NIPSVS, 2014.

²³ *Supra* note 2, CDC NIPSVS 2014, at 33.

²⁴ See Coker & Macquoid, *supra* note 21.

²⁵ Jenna Jerman, Rachel K. Jones & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008* (May 2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014#full-article>.

vulnerable to economic downturns that make raising an additional child untenable.

In Florida, 18% of women live below the poverty line.²⁶ Minority women face even higher poverty rates, with 21.6% of Hispanic women, 26.3% of African American women, and 22% of Native American women living in poverty.²⁷ Poor Florida women also face a lack of health care access. In 2015, 25% of Florida women were in the Medicaid gap and in 2014, 15% of Florida women received Medicaid and 18% were uninsured.²⁸ Because poor and minority women face heightened prevalence of domestic violence and are more likely to seek abortion care, the Act's logistical and financial burdens will fall most heavily on them.

B. Sexual Assault, Rape, and Human Trafficking are Prevalent in Florida and the Act Will Increase the Harms Inflicted on Victims.

1. Sexual Assault and Rape: One in six Florida women have been raped at some point in their lives.²⁹ Young women are particularly at risk for sexual assault. Nearly 80% of female rape victims experienced one or more completed rapes before the age of 25, while 42% were under the age of 18 at the time of their *first*

²⁶ U.S. Census Bureau, *Easy Stats, Poverty Status in the Past 12 Months*, <http://www.census.gov/easystats> (last visited May 29, 2016).

²⁷ *Status of Women in the States, Florida* (last visited June 2, 2016) <http://statusofwomendata.org/explore-the-data/state-data/florida/#poverty-opportunity>.

²⁸ Kaiser Family Found., *Analysis of 2015 Current Population Survey, U.S. Census Bureau* (2015), <http://kff.org/womens-health-policy/fact-sheet/womens-health-insurance-coverage-fact-sheet/> (last visited May 31, 2016).

²⁹ Fla. Coal. Against Sexual Violence, *Sexual Assault Statistics, Sexual Violence in Florida*, <https://www.fcasv.org/information/sexual-assault-statistics> (last visited May 27, 2016).

rape.³⁰ Nearly 42% of women in Florida have been victimized by sexual violence other than rape.

Pregnancy as a result of rape occurs with significant frequency.³¹ The national rape-related pregnancy rate is 5% per rape among victims of reproductive age (aged 12-45).³² The physical and psychological burdens stemming from a rape and resulting unintended pregnancy are severely traumatizing. The Act's mandatory delay and additional visit to the clinic forces a rape victim who does not have the requisite documentation to endure prolonged trauma.

2. Human Trafficking: Women, particularly poor women, are vulnerable to human trafficking, including sex and labor trafficking. Human trafficking is the commercial exchange and exploitation of humans including forced prostitution, pornography, involuntary labor, servitude, and debt bondage.³³ Globally and nationally, human trafficking is a tremendous problem. Coerced sex occurs with alarming frequency not only in the context of sex trafficking, but among domestic workers and other women whose financial and immigration status make them particularly vulnerable to abuse and exploitation. Florida is a hub for human

³⁰ *Supra* note 2, *CDC NIPSVS 2014*, 2.

³¹ Melissa M. Holmes, Heidi S. Resnick, Dean G. Kilpatrick & Connie L. Best, *Rape-related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 *Am. J. of Obstetrics & Gynecology* 2, 320–25 (Aug. 1996).

³² *Id.*

³³ Nat'l Inst. of Justice, *Human Trafficking* (June 13, 2012), <http://www.nij.gov/topics/crime/human-trafficking/pages/welcome.aspx>.

trafficking and is home to some of the highest incidences of trafficking in the country.³⁴ “Florida’s economy, demographics, large number of immigrants, industrial sectors, and other factors make our state attractive to human traffickers.”³⁵ This crime affects both foreign and domestic individuals.³⁶ Some women are promised domestic work in the United States and are instead trafficked as sex workers. Women who begin jobs as domestic laborers are forced into sex work or sexually assaulted by their employers.³⁷ Similar to other victims of gender violence, sex and domestic labor trafficking victims are exploited through the use of physical abuse, threats, coercion, and other control tactics.

Undocumented immigrant women are particularly vulnerable to significant coercion and sexual violence in connection with trafficking, migrant work, and domestic labor. In Florida, tens of thousands of female migrant workers face sexual abuse at their place of employment.³⁸ These women contribute to the

³⁴ Fla. State Univ. Ctr. for the Advancement of Human Rights, *Florida Responds to Human Trafficking* (2003), http://www.cahr.fsu.edu/sub_category/thereport.pdf.

³⁵ Fla. Comm’n on Access to Civ. Just. Interim Rep. 4 (Oct. 1, 2015), <http://www.flaccessjustice.org/wp-content/uploads/2016/01/Florida-Commission-ATJ-Interim-Report.pdf>.

³⁶ Nat’l Human Trafficking Res. Ctr., *Human Trafficking*, <https://traffickingresourcecenter.org/type-trafficking/human-trafficking> (last visited May 31, 2016).

³⁷ Nat’l Domestic Workers Alliance, *Home Economics: The Invisible and Unregulated World of Domestic Work*, New York, <http://www.domesticworkers.org/sites/default/files/HomeEconomicsEnglish.pdf>.

³⁸ Tim Elfrink, *A Florida Farm County’s High Rape Rate Highlights Risks for Migrant Workers*, Miami New Times, Apr. 22, 2015, available at <http://www.miaminewtimes.com/news/a-florida-farm-countys-high-rape-rate->

backbone of Florida's \$100 billion agriculture industry.³⁹ For several reasons, including the women's immigration status, isolation from family and friends, and unawareness of local laws, these women are disproportionately victims of harassment, attacks, and rape.⁴⁰

Domestic workers face heightened risks of sexual abuse. These women are often working in private homes, secluded and invisible from the public eye.⁴¹ A woman who lives in the home of her employer may lose control of her possessions and savings and have no access to outside communications.⁴² Female domestic laborers who work for cleaning agencies are also at risk of sexual abuse as they are isolated and put into potentially dangerous situations when their work involves cleaning buildings after hours when only the workers and their managers are present. These dangers are especially pronounced when the worker is undocumented.⁴³

In summary, women without significant financial means and women with uncertain immigration status are made particularly vulnerable to exploitation and abuse and their control over their sexual lives is often compromised. The same

highlights-risks-for-migrant-workers-7575170.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Latino Union & Mujeres Latinas en Acción, *Latina Portrait Domestic Workers* (2013) 10, 11, http://www.mujereslatinasenaccion.org/userfiles/images/Publications/Latina%20Portrait_Domestic%20Workers.pdf.

⁴² *Id.*

⁴³ *Id.*

structural factors that make them vulnerable to abuse renders them unlikely to have adequate access to health care including contraception. A disproportionate number of women made vulnerable by these structural circumstances are women of color. The delay requirements of H.B. 633 place these women in increased danger by increasing the risks of detection by an abuser and by increasing the costs of abortion care. The Act is contrary to the public policy of the state of Florida. As this Court has recognized, “The public policy of this State is clearly directed at reducing domestic violence.” *Weiland v. State*, 732 So. 2d 1044, 1056 (Fla. 1999). A significant number of Florida women are particularly vulnerable to abuse at the hands of their partners, employers, or traffickers due to Florida’s high rates of poverty, immigration (documented and undocumented), and lack of health care access. HB 633 violates the privacy rights of Florida women and creates barriers to healthcare that are the result of the combination of gender, class, immigration status, and race.

III. THE ACT’S EXCEPTION FOR VICTIMS OF RAPE, INCEST, DOMESTIC VIOLENCE, AND HUMAN TRAFFICKING IS WHOLLY INADEQUATE BECAUSE IT REQUIRES VICTIMS TO PRODUCE DOCUMENTATION THAT MOST VICTIMS WILL NOT HAVE, AND THIS IS PARTICULARLY TRUE FOR WOMEN WHO ARE THE MOST VULNERABLE TO VIOLENCE.

The Act provides an exception to the twenty-four hour delay for a woman seeking an abortion who can present to the physician a copy of a restraining order, police report, medical record, or other court order or documentation evidencing

that she is obtaining the abortion because she is a victim of rape, incest, domestic violence, or human trafficking. § 390.0111(3)(a)(1)(c), Fla. Stat. *Amici's* research and work in the field shows with certainty that many women who should qualify for this exception will not have this documentation.

1. Police Reports: Domestic violence is chronically underreported.⁴⁴ About a quarter of all physical assaults, a fifth of all rapes and half of all stalking perpetuated against women by intimate partners are reported to the police.⁴⁵ Many victims do not report incidences of domestic violence,⁴⁶ sexual assault,⁴⁷ or trafficking⁴⁸ because of fear of retaliation and further abuse.⁴⁹

Many women understand that there are dangers inherent in calling the police to report their abuser or trafficker. Police intervention does not mean protection from future abuse and in fact, may exacerbates abuse and violence against the woman for retaliation and further control.⁵⁰ These fears are particularly acute for

⁴⁴ Donna Coker et al., *Responses from the Field: Sexual Assault, Domestic Violence, and Policing* (Oct. 2015), <https://www.aclu.org/report/sexual-assault-domestic-violence-and-policing>.

⁴⁵ *Id.*

⁴⁶ Donna Coker et al., *supra* note 44, at 16.

⁴⁷ Donna Coker et al., *supra* note 44, at 7 (65% of rape/sexual assaults are not reported to the police; 28% of survivors who chose not to report said they did so because of fear of reprisal or getting the offender in trouble.)

⁴⁸ *See* Nat'l Human Trafficking Res. Ctr., *supra* note 36.

⁴⁹ *See* Donna Coker et al., *supra* note 44.

⁵⁰ *Id.*

vulnerable groups of women.⁵¹ Undocumented women fear that they or their family members will face detention or deportation if they report.⁵² In a survey of domestic workers, 85% of undocumented immigrants who encountered problems with their working conditions did not complain because they feared their immigration status would be used against them.⁵³ Many women fear that their children will be removed by child welfare if they report, and this risk is particularly true for African American women.⁵⁴ Indeed it is the practice of many police departments to make a child welfare report in domestic violence calls when there are children in the home. Furthermore, research demonstrates that some police officers continue to be hostile to claims of abuse, and this is particularly true for claims made by women of color and immigrant women.⁵⁵ Many women fail to report their abuse or assault to law enforcement because they fear that they will be blamed and/or not taken seriously.⁵⁶ Victims of incest and sexual abuse by family members may not report because they care about the abuser and worry what will happen to the family member if they report the abuse.⁵⁷

2. Restraining Orders: Many victims of abuse do not file for restraining

⁵¹ See Donna Coker et al., *supra* note 44, at 17.

⁵² Donna Coker et al., *supra* note 44, 26.

⁵³ Nat'l Domestic Workers Alliance, *supra* note 37.

⁵⁴ Donna Coker et al., *supra* note 44, at 25.

⁵⁵ Donna Coker et al., *supra* note 44, at 12.

⁵⁶ *Id.*

⁵⁷ See Rape, Abuse & Incest Nat'l Network, *Incest*, July 31, 2013, <http://www.rainn.org/get-information/types-of-sexual-assault/incest>.

orders.⁵⁸ Many women wait to file a restraining order when they are financially secure enough to escape, which often takes significant planning and time. Immigrant women who fear that they or their family members will be deported or detained are unlikely to file for a restraining order. Further, filing for a restraining order is no guarantee that it will be granted. Most restraining order petitioners are pro se litigants⁵⁹ and the lack of counsel decreases the likelihood of an order being granted.⁶⁰

3. Medical Records: Many abused women do not have medical records of their injuries. Fewer than 20% of the victims of abuse reporting an injury seek medical treatment.⁶¹ Some victims are unable to seek medical care because of the abuser's surveillance or fear of his retaliation. Some victims may not have access to health care. Medical professionals often do not recognize the signs of domestic

⁵⁸ Only 16.4% of rape victims, 17.1% of assault victims, and 36.6% of stalking victims sought restraining orders. Nat'l Inst. of Justice, Office of Research and Evaluation, *Crime, Violence & Victimization Research Division's Compendium of Research on Violence Against Women 1993-2014* (updated December 2014) <http://www.ojp.usdoj.gov/nij/topics/crime/intimate-partner-violence/practical-implications-research/ch7/civil-protection-orders-when.htm>.

⁵⁹ *Fla. Comm'n on Access to Civ. Just. Interim Rep. supra* note 35, 1, 6, 7, n. 2 (Florida legal services serve only about 20% of the needs of indigent civil litigants; national statistics suggest that domestic violence restraining order litigants are pro se over 90% of the time.).

⁶⁰ See Liz Elwart, et al., *Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program* (2006), <http://www.wisbar.org/aboutus/reports/Documents/Bridging%20The%20Justice%20Gap%20Report%20and%20Appendices.pdf>.

⁶¹ Donna Coker et al., *Responses from the Field*.

violence and therefore do not adequately detail the nature of the injury in the medical records.⁶² The same factors that impede an abused or trafficked woman's access to abortion care affect whether there is police documentation or medical records. For these reasons, the Act's exception requiring documentary proof is unworkable, inadequate and unnecessarily burdensome on women.

CONCLUSION

The Act violates Florida women's constitutional right to privacy, and particularly harms victims of domestic violence, sexual assault, and human trafficking. Low-income and immigrant women are at substantially higher risk of victimization and their economic and immigration status also creates barriers to adequate reproductive health care. The same structural barriers that make these women vulnerable to abuse make it particularly unlikely that they will benefit from the Act's exception for those who have documentation of their abuse. The Act therefore is a significant intrusion on the privacy rights of these women, as well as all Florida women. *Amici* respectfully requests that this Court finds in favor of the Petitioners.

⁶² See e.g., Lori Maria Walton, et al., *Intimate Partner Violence Screening and Implications for Health Care Providers*, 11(1) Online J. of Health Ethics, <http://dx.doi.org/10.18785/ojhe.1101.05> (studies find that between 8%-12% of physicians routinely screen for domestic violence.).

Respectfully Submitted,

CATHERINE MILLAS KAIMAN
1311 Miller Drive, Room G259
Coral Gables, Florida 33146
Telephone: (305) 284-6847
Email: ckaiman@law.miami.edu

By: s/Catherine Millas Kaiman.
CATHERINE MILLAS KAIMAN
Florida Bar No. 117779

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court through the Florida Courts eFiling Portal to be served this 6th day of June, 2016, on counsel of record listed below and on the Attorney General via email as listed below:

<p>Denise M. Harle Office of the Attorney General The Capitol, PL-01 Tallahassee, Florida 32399-1050 Phone: (850) 414-3300 E-mail: denise.harle@myfloridalegal.com</p> <p>Pam Bondi, Florida Attorney General Office of the Attorney General State of Florida The Capitol PL-01 Tallahassee, Florida 32399-1050 E-mail: oag.civil.eserve@myfloridalegal.com</p> <p><i>Attorneys for Respondents</i></p>	<p>Julia Kaye Susan Talcott Camp American Civil Liberties Union Foundation 125 Broad St., 18th Floor New York, NY 10004 Phone: (212) 549-2633 E-mail:jkaye@aclu.org; tcamp@aclu.org</p> <p>Benjamin James Stevenson American Civil Liberties Union Foundation of Florida P.O. Box 12723 Pensacola, FL 32591 Phone: (786) 363-2738 Email: bstevenson@aclu.fl.org</p> <p>Nancy Abudu American Civil Liberties Union Foundation of Florida 4500 Biscayne Blvd., Suite 340 Miami, FL 33137 Phone: (786) 363-2700 Email: nabudu@aclufl.org</p> <p><i>Attorneys for Gainesville Woman Care, LLC d/b/a Bread and Roses Women's Health Center</i></p>
---	---

<p>Richard E. Johnson Law Office of Richard E. Johnson 314 W. Jefferson St. Tallahassee, FL 32301 Phone: (850) 425-1997 Email: Richard@nettally.com <i>Attorney for Petitioners</i></p>	<p>Autumn Katz Center for Reproductive Rights 199 Water St., 22nd Floor New York, NY 10038 Phone: (917) 637-3723 Email: akatz@reprorights.org <i>Attorney for Medical Students for Choice</i></p>
---	--

s/Catherine Millas Kaiman
CATHERINE MILLAS KAIMAN

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief is submitted in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

s/Catherine Millas Kaiman
CATHERINE MILLAS KAIMAN