

No. 18-1323, 18-1460

IN THE
Supreme Court of the United States

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

v.

DR. REBEKAH GEE, SEC., LA DEPT. OF HEALTH,
Respondent.

DR. REBEKAH GEE, SEC., LA DEPT. OF HEALTH,
Cross-Petitioner,

v.

JUNE MEDICAL SERVICES L.L.C., ET AL.,
Cross-Respondents.

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

**BRIEF OF FEMINIST MAJORITY
FOUNDATION, NATIONAL ORGANIZATION
FOR WOMEN FOUNDATION, SOUTHERN
POVERTY LAW CENTER, AND WOMEN'S LAW
PROJECT AS *AMICI CURIAE* IN SUPPORT OF
JUNE MEDICAL SERVICES L.L.C., ET AL.**

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STATEMENT OF INTEREST¹

Amici, the Feminist Majority Foundation, the National Organization for Women Foundation, the Southern Poverty Law Center, and the Women's Law Project, are organizations committed to the safety of abortion care providers and their patients. They have developed expertise in the impact of violence on abortion care providers.

SUMMARY OF ARGUMENT

Because Act 620 gives hospitals discretion to deny abortion providers admitting privileges, the very real threat of anti-abortion violence and harassment will result in denials and severely restrict abortion access. Violence and threats of violence against abortion providers are not an abstract concern: they are widespread in the United States including Louisiana, and hospitals are targets, too. Predictably, hospitals have denied and will deny admitting privileges out of fear, abortion providers will be unable to continue their practice, and access to abortion care will become severely restricted.

The Constitution protects a woman from unduly burdensome interference when exercising her right to abortion care. In determining whether a regulation is an undue burden, this Court's precedent requires considering the real world setting in which

¹ No counsel for any party has authored this brief in whole or in part, and no person has made any monetary contribution intended to fund the preparation or submission of this brief. As required, all parties were provided notice and consented to the filing of this brief; the consent letters have been filed with the clerk.

the restriction functions. The real world setting in which Act 620 would function is startling. While not all anti-abortion opponents turn to violence, since the 1970s, individual extremists and extremist groups have targeted abortion providers.² Providers were murdered, maimed, stalked, and subjected to death threats. Clinics were destroyed by bombs and arson attacks. The widespread violence that abortion providers face is pervasive and ongoing.

The violence and harassment abortion providers face in Louisiana is no different. Anti-abortion extremists threaten the safety and security of Louisiana abortion providers, their patients, the clinics where they work, and the hospitals where they may apply for admitting privileges. They stalk the providers at their homes and offices, requiring police intervention. It is not surprising that Louisiana hospitals choose to deny abortion providers admitting privileges for fear that they too will face violence and harassment.

Act 620 would leave a single abortion provider with admitting privileges, Dr. Doe 3, in northern Louisiana. Dr. Doe 3 testified that his fear of being the sole target of anti-abortion extremists in northern Louisiana would create an intolerable safety risk and force him to stop providing abortion care. After observing his demeanor and evaluating his credibility, the District Court ruled that Dr. Doe 3 was credible and that the evidence of harassment and targeting he described was corroborated and undisputed. As demonstrated below, overwhelming record evidence proved that the climate of fear has influenced: (i) hospitals making admitting privileges

² “Providers” denotes anyone who works at an abortion clinic.

decisions, (ii) covering physicians who abortion providers must secure to obtain admitting privileges, (iii) abortion providers who find themselves isolated when a law shutteres other clinics, and (iv) clinics seeking to employ local doctors with admitting privileges.

With Act 620 in effect, and given the status quo of harassment and violence, finding a new physician willing to provide abortion care who could satisfy the Act's requirements would be difficult—if not impossible. Thus, Act 620 easily constitutes an undue burden on Louisiana women's access to abortion care.

ARGUMENT

I. THE DISTRICT COURT PROPERLY CONSIDERED THE CLIMATE OF VIOLENCE AND FEAR IN FINDING THAT IT WOULD BE DIFFICULT TO HIRE AND RETAIN PHYSICIANS WITH ADMITTING PRIVILEGES

This Court routinely considers whether an abortion restriction is an undue burden based on the real world setting in which the restriction functions. It did so in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), when it assessed the reality of domestic violence in evaluating Pennsylvania's spousal notification law. *Id.* at 888-98. It also did so in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016), when it considered the realities on the ground in Texas in evaluating the impact of Texas' admitting privileges and ambulatory surgical center requirements. *Id.* at 2313, 2317-18.

Specifically, this Court considered how the admitting privileges requirement operated under real world conditions for “poor, rural, or disadvantaged women” because the “determination of whether a law imposes an undue burden . . . looks to the entire record and factual context in which the law operates.” *Id.* at 2302, 2313 (citing *Casey*, 505 U.S. at 887-95). The Fifth Circuit refused to consider these real world conditions, and this Court reversed in *Whole Woman’s Health. Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 748 F.3d 583, 599 (5th Cir. 2014) (“[D]ifficulties recruiting . . . and retaining” physicians with admitting privileges that arose from “fear [of] anti-abortion violence” are “unrelated to [the admitting privileges requirement]” and courts cannot consider them.).

Directly relevant here, this Court recognized in *Whole Woman’s Health* that clinics would close because they would be “unable to find local physicians in those communities with privileges who are willing to provide abortions due to the size of those communities *and the hostility that abortion providers face.*” 136 S. Ct at 2312 (emphasis added). This Court also held that it was relevant that eligible covering physicians would not associate with abortion providers because of fear of retaliation by hospitals. *Id.* at 2312-13 (citing declaration by veteran doctor denied admitting privileges because doctors asked to serve as covering physicians were concerned about retaliation from hospitals).

Long-established precedent therefore requires the Court to analyze the climate of fear surrounding abortion care in Louisiana in determining whether Act 620 creates an undue burden. In this case, the

Fifth Circuit clearly erred by rejecting this evidence as “independent” of the issues in this case. Pet. App. 78a-79a. That rejection was directly contrary to the clear mandates of *Casey* and *Whole Woman’s Health* that the undue burden standard looks to the “factual context in which the law operates.” *Whole Woman’s Health*, 136 S. Ct. at 2313.

The uncontradicted evidence established that the fear of violence deters hospitals from granting admitting privileges to abortion providers, and that reducing the number of providers (as Act 620 will do) intensifies extremists’ focus on the small number of remaining providers, making it likely they will stop providing abortion care. Act 620 therefore constitutes an undue burden on women’s access to abortion care.

II. ABORTION PROVIDERS FACE VIOLENCE, THREATS, HARASSMENT, AND INTIMIDATION, AS THE DISTRICT COURT PROPERLY RECOGNIZED

A. THE NATIONAL CLIMATE OF VIOLENCE AND FEAR

The severe violence and threats that anti-abortion extremists promulgate are a matter of record; it is a longstanding phenomenon that continues in the present. Extremist tactics create a climate of fear that magnifies the apprehension created by non-violent forms of harassment and protest. The climate of fear impacts committed doctors who provide abortion care as well as institutions and persons who are asked for the first time to involve themselves in abortion care.

The government has long recognized the severity of this violence and intimidation. In 1994, Congress passed the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (“FACE”), in response to severe intimidation and violence targeting abortion providers. For decades, the Department of Justice has maintained a National Task Force on Violence Against Health Care Providers focusing on the dangers facing abortion providers, and the U.S. Marshals Service has intervened to protect abortion providers and clinics in response to murder and threats from extremist groups. *National Task Force on Violence Against Health Care Providers*, DEP’T OF JUSTICE, CIVIL RIGHTS DIV. (Aug. 6, 2015), <https://bit.ly/2s2n0WK> [hereinafter *Task Force*]; see, e.g., Ernest Luning, *Attorney General Directs U.S. Marshals to Protect Women’s Health Clinics, Providers*, REWIRE.NEWS (June 2, 2009), <https://bit.ly/2QPc7D>.

Courts, too, have recognized this “violence against and harassment of abortion providers, beyond run-of-the-mill political protest,” including in cases holding that laws requiring clinics to secure doctors with admitting privileges in this climate of fear are an undue burden. *Planned Parenthood Se., Inc. v. Strange*, 33 F. Supp. 3d 1330, 1348 (M.D. Ala. 2014); see also *id.* at 1333-23, 1351-52; *Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 982-93 (W.D. Wis. 2014), *aff’d sub nom. Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908 (7th Cir. 2015); *W. Ala. Women’s Ctr. v. Williamson*, 120 F. Supp. 3d 1296, 1321-22 (M.D. Ala. 2015).

Statistics bear this out. Between 1977 and 2018, there were 11 murders, 26 attempted murders, 42 bombings, 188 arsons, 100 attempted bombings or arsons, and 4 acts of kidnapping. NATIONAL ABORTION FEDERATION (“NAF”), *2018 Violence and Disruption Statistics* 7 (2018), <https://bit.ly/2JwLEEY>. There were also 663 anthrax or bioterrorism threats, 654 bomb threats, 664 death threats or threats of harm, and 618 acts of stalking. *Id.* In a 2018 national clinic violence survey, 52% of respondents experienced targeted threats (which include death threats; stalking; and harassing emails, calls, and social media posts) and intimidation. FEMINIST MAJORITY FOUNDATION (“FMF”), *2018 National Clinic Violence Survey Report* 6-7 (2018), <http://bit.ly/33ojDq0>.

Harassment, stalking, threats, and other violence have been a regular part of anti-abortion extremist activity in the United States for over four decades. The first reported violent anti-abortion act was a 1976 arson. JENNIFER JEFFERIS, *ARMED FOR LIFE: THE ARMY OF GOD AND ANTI-ABORTION TERROR IN THE UNITED STATES* 22-23 (2011). There were thirteen other attacks in the 1970s, including arsons and fire bombings. Mireille Jacobson & Heather Royer, *Aftershocks: The Impact of Clinic Violence on Abortion Services*, 3(1) *AM. ECON. J: APPLIED ECON.* 189, 193 (2011); JAMES RISEN & JUDY L. THOMAS, *WRATH OF ANGELS: THE AMERICAN ABORTION WAR* 74 (1998); JEFFERIS, *ARMED FOR LIFE* at 22-23.

In the 1980s, new extremist groups like Army of God and Operation Rescue introduced new tactics, including kidnapping. JEFFERIS, *ARMED FOR LIFE* at 23-25. Army of God published a manual with

instructions on using violence and intimidation against abortion providers in which they declare that killing abortion providers is “morally acceptable and justified as doing ‘God’s work.” Daryl Johnson, *Hate in God’s Name*, SOUTHERN POVERTY L. CTR. (Sept. 25, 2017), <https://bit.ly/34b47z6>; see *Army of God Manual*, <https://bit.ly/37nZZhc>.

In the 1990s, extremists turned to gun violence, shooting several abortion providers who survived. JEFFERIS, *ARMED FOR LIFE* at 30. In 1993, Dr. David Gunn was the first doctor to be murdered when he was shot as he walked into a Florida clinic. Liam Stack, *A Brief History of Deadly Attacks on Abortion Providers*, N.Y. TIMES (Nov. 29, 2015), <https://nyti.ms/2On6LMH>. Since Dr. Gunn’s murder, there have been at least ten other anti-abortion murders in this country:

July 29, 1994: An extremist executed Dr. John Britton and Ret. Lt. Col. James Barrett in the parking lot of a Pensacola, Florida clinic and wounded a clinic volunteer. *Id.*

December 30, 1994: An extremist shot and killed two clinic receptionists and wounded five others at two different Massachusetts clinics. John Kifner, *Anti-Abortion Killings: the Overview; Gunman Kills 2 at Abortion Clinics in Boston Suburb*, N.Y. TIMES (Dec. 31, 1994), <https://nyti.ms/2qEEFG>.

January 30, 1998: An extremist detonated multiple bombs at a Birmingham, Alabama clinic, killing a police officer and disfiguring and partially blinding a nurse. Stack, *A Brief History of Deadly Attacks on Abortion Providers*.

October 23, 1998: A sniper murdered Dr. Barnett Slepian in front of his family in his kitchen in New York. *Id.*

May 31, 2009: An assassin shot Dr. George Tiller, the sole abortion provider in Wichita, Kansas, in his church. Joe Stumpe & Monica Davey, *Abortion Doctor Shot to Death in Kansas Church*, N.Y. TIMES (May 31, 2009), <https://nyti.ms/2KWu9P7>. Dr. Tiller had survived a prior shooting in 1993. *Id.*

November 27, 2015: An extremist murdered police officer Garret Swasey and patient companions Ke'Arre Stewart and Jennifer Markovsky at a clinic in Colorado Springs, Colorado. Five police officers and four civilians were also wounded. Trevor Hughes, *Planned Parenthood Shooter 'happy' with His Attack*, USA TODAY (Apr. 11, 2016), <http://bit.ly/37GkHZW>.

There have also been twenty-six attempted murders. See *Anti-choice Terrorism: Murders and Attempted Murders*, ABORTION RIGHTS COAL. OF CAN. (May 2016), <https://bit.ly/2qBxH28>. Chillingly, extremists have circulated at least three national petitions proclaiming that murders of physicians who provide abortion care are “justifiable homicide.” NAF, *Anti-Abortion Extremists*, <https://bit.ly/2D8X1iP>.

The Internet has amplified the climate of fear. As early as 1996, the Nuremberg Files website published photos, addresses, telephone numbers, and other personal information for over 200 abortion providers. The website ominously identified injured providers by shading their names gray; it crossed out murdered providers’ names. Extremists also published WANTED-style posters with the photos and names of abortion providers, offering monetary rewards to anyone who stopped those physicians from providing abortions.³ Similar posters appeared before the murders of Dr. Gunn and Dr. Britton and before the first attempt on Dr. Tiller’s life. *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 41 F. Supp. 2d 1130 (D. Or. 1999), *vacated & remanded*, 244 F.3d 1007 (9th Cir. 2001), *aff’d in part, vacated in part, remanded* 290 F.3d 1058 (9th Cir. 2002).

Abortion providers continue to experience unacceptably high levels of violence. See NAF, *2018 Violence and Disruption Statistics* (2018). Most recently, in 2019, extremists staged arson attacks at

³ The Ninth Circuit ruled that WANTED posters were “true threats,” violated FACE, and ordered them removed from the internet. *Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058 (9th Cir. 2002).

clinics in Texas, Missouri, and Pennsylvania. *Columbia Man Charged with Arson at Planned Parenthood Clinic*, DEP'T OF JUSTICE, U.S. ATT'Y OFFICE W.D. MO. (Mar. 4, 2019), <https://bit.ly/2ObCwIq>; Amanda Michelle Gomez, *Arson attempt, trespassing, and harassment: The consequences of extreme anti-abortion rhetoric*, THINKPROGRESS (May 6, 2019), <https://bit.ly/35vVdfJ>; Andy Palumbo & Chelsea Strub, *Planned Parenthood in Wilkes-Barre Vandalized, Security Camera Image Released*, WNEP NEWSWATCH 16 (Aug. 12, 2019), <https://bit.ly/34ctC3h>.

Thankfully, law enforcement personnel nationwide have thwarted other potentially deadly attacks, just this year arresting four extremists who threatened mass shootings at different clinics. See e.g., *Federal Charges Filed Against Chicago Man Who Allegedly Posted Online Threats of Violence at Women's Reproductive Clinic*, DEP'T OF JUSTICE, U.S. ATT'Y OFFICE N.D. ILL. (Aug. 19, 2019), <https://bit.ly/2QKuB6G>; *Tennessee Man Arrested for Making Threats to D.C. Planned Parenthood Facility*, DEP'T OF JUSTICE, U.S. ATT'Y OFFICE D.C. (Aug. 21, 2019), <https://bit.ly/2s9K1qY>. Another individual had built a homemade bomb. Erin Couch, et al., *Judge: NKY man threatened to blow up Planned Parenthood*, FOX19NOW.COM (Sept. 16, 2019), <https://bit.ly/2qu39zA>. And an extremist in Rhode Island stalked a clinic and professor, made 114 harassing calls, and sent 28 threatening emails. *Rhode Island Man Charged With Threatening Professor*, CBS LOCAL BOSTON (Apr. 24, 2019), <https://cbsloc.al/2OAwDnk>.

This climate amplifies the impact of non-violent harassment and protest. Abortion providers cannot know whether a protest at a clinic will remain calm or will end in property damage, trespass, harassment of patients, a firebomb, or the bullhorn message, “I have a bullet with your name on it.” NAF, *2018 Violence and Disruption Statistics*, at 2-3. Protests take place against the backdrop of ongoing online remarks praising the murder of abortion providers and a history and pattern of extremist violence. *Id.* at 4. Currently active websites, such as AbortionDocs.org, publish providers’ personal information, and some extremists have created webpages with clinic workers’ photos and personal information and/or harass and threaten providers on social media. DAVID S. COHEN & KRISTEN CONNOR, *LIVING IN THE CROSSHAIRS: THE UNTOLD STORIES OF ANTI-ABORTION TERRORISM* 72-74 (2015).

B. VIOLENCE AND HARASSMENT IN LOUISIANA

Louisiana providers have not been spared. The 1980s saw several bomb threats and arson attacks, destroying one clinic and severely damaging others. Caroline Hymel, *Louisiana’s Abortion Wars: Periodizing the Anti-Abortion Movement’s Assault on Women’s Reproductive Rights, 1973-2016*, 59(1) LA. HISTORY: J. OF LA. HIST. ASSN., 67, 78-79 (Winter 2018). In 1996, an extremist stabbed abortion provider Dr. Calvin Jackson in New Orleans. *Id.* at 90. Abortion providers have recently reported being targeted at private offices, hospitals, and disturbingly, their children’s daycare centers. *See, e.g.*, Casey Ferrand, *Operation Save America starts*

week-long protest at clinic, doctor's home, WDSU.COM (July 19, 2014), <http://bit.ly/2QVCZ3k>. Extremists have published WANTED-style flyers about Louisiana providers. Rusty Thomas, *OSA New Orleans Reports*, ELIJAH MINISTRIES (July 2014), <https://bit.ly/34jnJBq>.

In the trial below, Louisiana providers—all of whose testimony the District Court credited—testified at length about their fears for their safety because of violence toward providers. J.A. 112-13. The record reflects extremists making threatening calls to physicians' home phone numbers, following physicians engaging in everyday activities like eating in a restaurant, and shouting profanity at them as they go to work. Pet. App. 184a-187a; J.A. 371. Extremists also harass the providers' patients, even at different offices where patients are not seeking abortion care. Pet. App. 184a-187a. One provider tried to hide his identity, but “that didn't stop protesters from accosting him . . . or sending nasty mailers about him to his neighbors.” Jessica Mendoza, *The View From One of the Last Abortion Clinics in Louisiana*, THE CHRISTIAN SCIENCE MONITOR (June 13, 2019), <https://bit.ly/2Db1dhT>.

Even a tenuous association with abortion care in Louisiana has presaged harassment and violence. “Anti-abortion activists have targeted at least one physician who agreed to provide emergency care for abortion complications, even though he did not provide abortions himself.” Pet. App. 188a-189a. National and local groups have “recently mounted protests outside of an entirely unrelated business where the office manager [of an abortion clinic] also

works, and have disseminated her name . . . on [an] anti-abortion website.” J.A. 1122-23.

Based on the totality of the evidence, the District Court held that the “evidence is overwhelming that in Louisiana, abortion providers, the clinics where they work and the staff of these clinics, are subjected to violence, threats of violence, harassment and danger.” Pet. App. 183a. Moreover, Respondents “offered no evidence to counter [Petitioners’] evidence on this point.” *Id.* This justified the doctors proceeding by pseudonym, Pet. App. 184a (¶ 128), contributed to the low numbers of doctors performing abortions in Louisiana, Pet. App. 187a (¶ 139), Pet. App. 259a (¶ 383), and explains why Dr. Doe 3 would not perform abortions if he were the only physician in northern Louisiana. Pet. App. 241a-242a(¶ 318). As one physician explained, because of “the hostile environment in Louisiana towards abortion providers and the extreme harassment and intimidation by anti-abortion activists, most doctors are simply too afraid.” Pet. App. 259a.

C. ANTI-ABORTION VIOLENCE REDUCES THE NUMBER OF ABORTION PROVIDERS

Anti-abortion extremists try to frighten physicians into quitting; unsurprisingly, it works. One provider quit after anti-abortion extremists targeted his children’s school and another provider quit after extremists made harassing telephone calls to his private practice and demonstrated outside the hospital where he worked. Pet. App. 186a-187a. Since this action was filed, extremists have continued to attack clinics in Louisiana: An extremist set one

clinic under construction afire, and another clinic was vandalized. Teddy Wilson, *New Orleans Abortion Clinic Vandal Charged with Hate Crime*, REWIRE.NEWS (Aug. 14, 2015), <https://bit.ly/2QPp7Ye>.

In this climate, many abortion providers live in a constant state of fear and apprehension. COHEN & CONNON, *LIVING IN THE CROSSHAIRS*, at 123-46. Providers are stalked and receive hate mail, abusive phone calls and emails, and death threats. *Id.* Extremists harass abortion providers' partners, parents, children, neighbors, and colleagues. *Id.* Abortion providers must be highly vigilant about their safety and their privacy. Indeed, the U.S. government provides dozens of "security tips" for abortion providers at home, at work, and when on public transportation, including:

- Do not put your name on the outside of your residence or mailbox;
- Control vegetation to eliminate hiding places;
- Vary mode of commercial transportation;
- Keep gas tank at least half full at all times; and
- Keep bomb threat/personal threat checklists by each telephone.

See, e.g., Task Force. Circuit courts also recognize the serious impact living under threat has on providers' lives. *See, e.g., Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 422 F.3d 949, 958 (9th Cir. 2005) ("Physicians were terrified and took the threat

seriously. FBI and other law enforcement officials. . . warned physicians to purchase bullet proof vests, obtain protection, and take other protective measures.”); *Tompkins v. Cyr*, 202 F.3d 770, 776-77 (5th Cir. 2000) (recognizing that targeting forced one doctor and his family to seriously alter their lives).

Physicians providing abortions must consider how much harassment and violence they can endure. Many trained doctors never actually practice abortion care because of the harassment and violence. LORI FREEDMAN, WILLING AND UNABLE: DOCTORS’ CONSTRAINTS IN ABORTION CARE 48-49 (2010). For others, the constant threat of potential violence is too heavy a burden, and they leave the practice. COHEN & CONNON, LIVING IN THE CROSSHAIRS, at 270-71. One study concluded that clinic violence reduces the number of abortion providers near the violence and that violent anti-abortion attacks led to a decline in the number of non-hospital-based abortion providers per 100,000 women of reproductive age. Mireille Jacobson & Heather Royer, *Aftershocks*, at 209. As this Court recognized in *Whole Woman’s Health*, violence has an impact on the availability of abortion physicians with admitting privileges. 136 S. Ct. at 2312.

Abortion providers recognize that they face risks that other doctors never face. Yet, abortion providers are committed to their patients, and know that their work is crucial. COHEN & CONNON, LIVING IN THE CROSSHAIRS, at 272-83. Deciding whether to risk personal safety to provide desperately needed medical care is a heart-wrenching choice for any doctor. Some providers are able to persevere and continue to provide abortion care. Doe 1 testified that

he “love[s his] job at Hope” because “we’re helping women of all ages . . . helping them pursue their careers or whatever it may be.” J.A. 697. However, understandably, not all providers are in a position to withstand the inevitable harassment and potential danger. There is no doubt that anti-abortion harassment and violence reduces clinics’ ability to secure doctors with admitting privileges and impacts the willingness of people and institutions not currently associated with abortion care to become linked to abortion care.

III. LOUISIANA HOSPITALS CAN, AND DO, DENY ADMITTING PRIVILEGES TO ABORTION PROVIDERS BECAUSE OF FEAR OF THREATS AND VIOLENCE

No statute governs what Louisiana hospitals must consider in an application for admitting privileges. *See, e.g., Rdzanek v. Hosp. Serv. Dist. # 3*, No. 03-2585, 2004 U.S. Dist. LEXIS 503, at *62-63 (E.D. La. Jan. 15, 2004) (citing *Sosa v. Bd. of Mgrs. of the Val Verde Mem’l Hosp.*, 437 F.2d 173, 177 (5th Cir. 1971)). Hospitals are not required to consider a physician’s competency and may rely on myriad other reasons as the sole basis for a grant or denial. Pet. App. 171a-172a; *see also Whole Woman’s Health*, 136 S. Ct. at 2312 (noting that hospitals often have “prerequisites to obtaining admitting privileges that have nothing to do with ability to perform medical procedures”).

Hospitals are concerned with extremist violence. As this Court has recognized in the context of anti-abortion protest, “[h]ospitals, after all, are not

factories or mines or assembly plants. They are hospitals, where human ailments are treated, where patients and relatives alike often are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity, and where the patient and his family . . . need a restful, uncluttered, relaxing, and helpful atmosphere.” *Madsen v. Women’s Health Ctr.*, 512 U.S. 753, 772 (1994) (quoting *NLRB v. Baptist Hosp., Inc.*, 442 U.S. 773, 783-784 (1979)). Admitting privileges legislation like Act 620 attract protestors to hospitals who ruin this peaceful environment. Robin Marty, *Anti-Abortion Protesters Are Coming To A Hospital Near You*, THINKPROGRESS (May 30, 2014), <https://bit.ly/33gaH61> [hereinafter THINKPROGRESS].

Anti-abortion extremists understand that hospitals can be skittish and have long advocated picketing them as a means of eliminating abortion. One authoritative anti-abortion tactics manual explained that “[t]he hospital is in a sensitive position . . . The hospital depends on public support and approval. It is vulnerable to bad publicity.” JOSEPH M. SCHEIDLER, *CLOSED: 99 WAYS TO STOP ABORTION* 326 (1984). The manual recommends protestors “hold demonstrations . . . with press coverage [and make] *contacts with patients, visitors, and hospital personnel.*” *Id.* (emphasis added). This conduct threatens the “restful, uncluttered, relaxing, and helpful atmosphere” that this Court has recognized is necessary to good hospital care. *Madsen*, 512 U.S. at 772 (citations omitted).

In New York, California, and Washington, extremists in the late 1980s caused havoc when they tried to shut down hospital operations through

picketing, bomb threats, blocking hospital entrances, and staging occupations, according to the Journal of Hospital Security and Safety Management. *Coping with Pro- and Anti-Abortion Activists*, 9(11) HOSP. SEC. & SAFETY MGMT., 5, 5 (Mar. 1989). This report highlighted the serious concerns of hospital directors and their security staff, recommending that hospitals “take each threat seriously.” *Id.* at 6.

These hospitals were targeted for being associated with abortion care, including by way of granting or considering granting admitting privileges to abortion providers, accepting transfers of patients from abortion providers, or having a doctor on staff who also provides abortions at another location:

- **Alabama:** Crestwood Medical Center received a threatening letter demanding that the hospital revoke providers’ admitting privileges. Paul Gattis, *Huntsville anti-abortion group demands Crestwood Medical Center end ties with abortion doctors*, AL.COM (Sept. 16, 2013), <https://bit.ly/2sbV3w1>.
- **Kentucky:** A physician was targeted at University of Louisville Hospital with WANTED-style flyers because the physician was affiliated with the hospital and also provided abortions at a clinic. Rusty Thomas, *OSA Leadership Meeting*, ELIJAH MINISTRIES (Feb. 2017), <https://bit.ly/2Oc8kgj>.

- **North Carolina:** Extremists targeted two physicians who provided abortion care at local clinics with WANTED-style posters, disruptive protests, and trespass incidents at the Presbyterian Hospital in Charlotte, with which they were affiliated. Rusty Thomas, *Charlotte Turned Upside Down – No, Right Side Up*, OPERATION SAVE AMERICA (Feb. 12, 2010), <https://bit.ly/2rlXmvG>.
- **Illinois:** Protestors carried a dozen “baby caskets” in front of Illinois Masonic hospital because it provides abortion care. Marty, THINKPROGRESS, *supra* 18.
- **California:** Protestors trespassed into Cedars-Sinai Medical Center in Los Angeles to distribute flyers with the photos and personal information of abortion providers affiliated with the hospital because the hospital provided abortion care on site. Carter Sherman, *7 Days Inside An Anti-Abortion Summer Camp Training the Next Generation of Activists*, VICE NEWS (Aug. 7, 2019), <https://bit.ly/37p0s2R>.

These are only a few examples of extremists targeting hospitals. Their actions have a significant impact on hospital decision-making because they form the backdrop against which hospitals analyze other, less violent actions. *See, e.g.*, Mike Tighe, *Anti-Abortion Protesters Picket at Mayo-Franciscan*, LA CROSSE TRIBUNE (Mar. 13, 2014),

<https://bit.ly/2OdK9OP> (Wisconsin); Ryan Dunn, *Protesters demonstrate against ProMedica's patient-transfer agreement with Capital Care Network*, THE TOLEDO BLADE (Apr. 2, 2018), <http://bit.ly/2KYMn2p> (Ohio).

Simple, non-violent protest outside a hospital can certainly be constitutionally protected speech, but because of the history and climate of extremism, threats, and violence, hospitals often interpret such protest as the first step on a path toward more extreme behavior and respond accordingly. For instance, at Cabrini Hospital in Illinois, after extremists threatened to take action due to a physician who taught at the hospital and also provided abortion care at a clinic, the physician was told to stop performing abortions. Marty, THINKPROGRESS, *supra* 18. Likewise, Dallas General Hospital granted abortion care providers admitting privileges and was consequently targeted with protest by extremists. It then revoked two physicians' admitting privileges because they performed abortions. See Becca Aaronson & Alexa Ura, *Texas Abortion Doctors Settle Suit Over Revoked Privileges*, THE TEXAS TRIBUNE (June 10, 2014), <https://bit.ly/2D9mlFj>. Louisiana hospitals are no different:

- Individuals trespassed onto hospital property at Bossier and approached Dr. Doe 3's patients. Hospital police had to intervene. J.A. 197.
- “[P]rotests outside the hospital [where Dr. Doe 5 worked] caused the hospital

administration to give him an ultimatum: quit performing abortions or resign from the hospital staff.” Pet. App. 186a.

- Women’s Hospital and Hospital C both received threatening letters for granting admitting privileges to Dr. Doe 5, who was performing abortions at a private clinic at the time, and had to “remove anti-abortion activists from its . . . offices due to the activists’ disruptive conduct.” *Id.*

Hospital C, a non-party Louisiana hospital that previously granted admitting privileges to a physician who provides abortion care, requested to be named through a pseudonym due to concerns about protests and violence. Pet. App. 250a n.49 (granting Hospital C’s request). Hospitals are also concerned about reputational harm: officials at Tulane Hospital told Dr. Doe 2 that they needed to discuss his request for admitting privileges “with our lobbyists.” Pet. App. 73a.

Further, to obtain admitting privileges, an abortion provider must often identify a hospital physician who is willing to be their covering physician, potentially exposing the covering physician to targeting. Pet. App. 177a. The District Court ruled that “opposition to abortion can present a major, if not insurmountable hurdle, for an applicant getting the required covering physician.” *Id.* For example, Dr. Doe 2 was told of “faculty who were not comfortable with covering” because Dr. Doe 2 provided abortions. Pet. App. 230a. Dr. Doe 5 was told that physicians were “too afraid to be my covering physician at the hospital” because then abortion opponents could be

“threatening him or his family and protesting outside of his private practice.” J.A. 1135. Six physicians refused to provide coverage for Dr. Doe 3. J.A. 201-02. Multiple physicians testified that their status as abortion providers led to hospital concerns about granting admitting privileges. Pet. App. 186a, (Dr. Doe 5), 174a-175a (Dr. Doe 1), 175a, 225a-229a (Dr. Doe 2).

It is indisputable that threats and violence cause hospitals to think twice about granting admitting privileges to physicians who perform abortions. The District Court correctly determined on this record that Louisiana hospitals deny qualified physicians admitting privileges based on their status as physicians who provide abortion care. Pet. App. 173a-174a. It is likely that even more hospitals than those in the record have denied providers admitting privileges on these grounds, as hospitals are not required to provide any reason for a denial. Pet. App. 168a-169a. This Court should defer to the clear record here, which is consistent with the long history and current climate of anti-abortion violence and harassment.

IV. OVERWHELMING EVIDENCE SUPPORTS THE DISTRICT COURT’S FINDING THAT DR. DOE 3 WOULD NOT CONTINUE PROVIDING ABORTION CARE AS A SOLE PROVIDER DUE TO FEAR OF INCREASED HOSTILITY

The District Court explicitly found credible Dr. Doe 3’s testimony that he would stop providing abortion care because the risk of violence would

increase if he were the sole provider in northern Louisiana. Pet. App. 67a-68a (emphasizing that the District Court observed Dr. Doe 3’s demeanor and weighed credibility). This finding of fact is supported by undisputed, overwhelming record evidence and corroborated by the experience of other states.

A. LOUISIANA ABORTION PROVIDERS’ SAFETY IS THREATENED

Because Louisiana physicians who provide abortions now experience violence, threats of violence, and harassment, the District Court properly credited Dr. Doe 3’s concerns for his safety and security. Pet. App. 183a-184a, 252a.⁴ Indeed, he was permitted to testify under a pseudonym and behind a screen due to his credible fear of violence. J.A. 196. Dr. Doe 3 testified that he received death threats, and other physical and verbal threats, because he provides abortion care. J.A. 197, 1322. He was forced to seek protection from the FBI and police. J.A. 1322. “Local police have had to patrol his neighborhood and search his house before he entered.” Pet. App. 187a.

Anti-abortion extremists mounted a flyering campaign against Dr. Doe 3, encouraging others to target Dr. Doe 3 and his “neighbors, colleagues, family and friends, and patients at [his] private [non-abortion] practice.” J.A. 1322, 197-98. Extremists personally confronted Dr. Doe 3 at his private practice and publicized his home address. J.A. 197-98. At one point, police found fliers on Dr. Doe 3’s front door and

⁴ As the District Court acknowledged, “Defendant offered no evidence to counter Plaintiffs’ evidence on this point.” Pet. App. 183a.

his neighbors' mailboxes. J.A. 197, 1322-23. Extremists confronted patients outside Dr. Doe 3's private practice, exclaiming that Dr. Doe 3 "killed babies and that they shouldn't come to see [him]." J.A. 198. The extremists "accost[ed]" a patient with her newborn baby on her way to see Dr. Doe 3 for her postpartum visit, telling the patient she shouldn't see Dr. Doe 3 because he "killed babies." J.A. 198.

Hope Clinic, where Dr. Doe 3 provides abortion care, has also been subject to violent attacks. J.A. 112. On separate occasions, a man wielding a sledgehammer attacked the clinic, two extremists firebombed it with a Molotov cocktail, and others drilled a hole through the wall and poured butyric acid inside. Pet. App. 185a-186a; J.A. 112, 1142.

B. IF DR. DOE 3 WERE THE SOLE PROVIDER IN NORTHERN LOUISIANA, THE RISKS TO HIS SAFETY, AND THAT OF HIS FAMILY, PATIENTS, AND CO-WORKERS, WOULD ESCALATE

Given the disturbing violence that Dr. Doe 3 currently faces, he is particularly fearful that if he were the only physician left in northern Louisiana providing abortion care, that would "make [him] a target." J.A. 263. Because he would be the only physician in northern Louisiana for extremists to pursue, Dr. Doe 3 testified, "[t]he risk to my life, to my family, to my patients and co-workers, and to my reputation would be too great for me to continue providing abortions." J.A. 1323. Louisiana is about six times larger than New Jersey, and northern Louisiana covers a vast area. Perry H. Howard &

Robert J. Norrell, *Louisiana*, ENCYCLOPEDIA BRITANNICA, <http://bit.ly/33dsevS> (last updated Nov. 7, 2019).

It is no wonder that Dr. Doe 3 testified that, if he were the sole provider, “[a]ll they [would] have to do is eliminate me as they have Dr. Tiller and some of the other abortion providers around the country, just, you know, assassinate me.” J.A. 263.

Other states’ experiences make plain that a sole provider is a more vulnerable target for anti-abortion extremists. When clinics close and fewer providers remain in a state, it becomes increasingly easy for abortion opponents to “concentrate their efforts on a single clinic” or provider. Nikki Madsen et al., *Communities Need Clinics: The Role of Independent Abortion Care Providers in Ensuring Meaningful Access to Abortion Care in the United States*, ABORTION CARE NETWORK 7 (2017), <https://bit.ly/2XIEO5g>. “[A]nti-abortion extremists strategically target a vulnerable minority of clinics, aiming to force them to close their doors.” FMF, *2014 National Clinic Violence Survey Report 5* (Jan. 2015), <http://bit.ly/2KWjrrW>. Across the country, as the number of providers and clinics decreases, the pressure providers feel to stop providing abortion care due to the violence, harassment, and threats that they face increases.

The sole Mississippi clinic is a good example. Its director recounted how clinic closures led to her clinic becoming “the only target left,” leading to increased harassment and verbal threats as providers and employees entered and exited the clinic. Allison McCann, *The Last Clinics*, VICE NEWS (May 23, 2017), <https://bit.ly/2KGNy6z>. Burglaries followed, and

extremists damaged clinic property and equipment. *Id.* Today, sometimes more than one hundred anti-abortion activists show up to protest. Ashton Pittman, ‘*Almost Social Terrorism: Abortion Clinic Protests Hurt Their Business, Owners Say*, JACKSON FREE PRESS (Sept. 27, 2019), <https://bit.ly/2QKyDfk>. The clinic’s physicians and employees have endured “picketing, harassment and veiled threats Protesters are in front of our doors daily, and our physicians, staff members, and patients must deal with harassment and verbal threats upon entering and leaving.” Decl. of Shannon Brewer-Anderson in Support of Plaintiffs’ Mot. For TRO and/or Prelim. Inj. ¶ 10, *Jackson Women’s Health Org. v. Currier*, No. 3:12-cv-00436-DPJ-FKB, Dkt. No. 5-1 (S. D. Miss. June 27, 2012). Extremists have stalked and threatened one of the clinic’s physicians and his family members. *Id.* at ¶ 12. It is the extremists’ stated objective to “go after the weakest link”—the lone clinic. Tyler Cleveland, *Controversy Roils Around Abortion Clinic*, JACKSON FREE PRESS (Nov. 4, 2013), <https://bit.ly/2sbVwhL>.

In Kentucky, volunteers at the last remaining clinic reported increased violence and harassment—an attempt to “shut down this clinic.” Michelle Goldberg, “*They Believe the Government Is Now on Their Side*,” SLATE (July 21, 2017), <https://bit.ly/37u5z1v>. Extremist groups have distributed thousands of flyers with employees’ home addresses, labeling them as “killers.” Sarah Rogers, *The Volunteers Guarding Kentucky’s Last Abortion Clinic*, DAILY BEAST (Sept. 8, 2018), <https://bit.ly/37EKKue>. As a result, U.S. Marshals stepped in to provide protection. Jordan Smith,

Kentucky's Last Remaining Abortion Clinic Could be Forced to Shut Its Doors, THE INTERCEPT (Oct. 17, 2017), <https://bit.ly/2D5llll>.

In Alabama, as the number of clinics decreased, extremist activity increased. *Defending Human Rights, Abortion Providers Facing Threats, Restrictions, and Harassment*, CTR. FOR REPROD. RIGHTS, 72-73 (2009), <https://bit.ly/35odjR1>. After a 60% decline in the number of clinics providing abortion care, one court noted, “The effect that this climate of violence, harassment, and hostility has on abortion providers in Alabama was palpable In their testimony . . . the doctors described their daily fears for their professional livelihoods as well as their personal safety.” *Planned Parenthood Se., Inc. v. Strange*, 33 F. Supp. 3d 1330, 1334 (M.D. Ala. 2014).

Like Dr. Doe 3, the Alabama physicians were stalked and threatened at work. *Id.* One provider testified, “I’m always afraid that there will be somebody who is in the crowd who is passionate enough about the topic that they’re willing to shoot. I worry about my children. I worry about my husband, my extended family.” *Id.* at 1351. This physician had been followed to her home in another state, identified by name, and told as she went into work that “they were coming for [her] in Atlanta”—where she lives, not where she works in Alabama. *Id.* at 1351 (alteration in original).

Multiple Alabama clinic administrators testified to “doctors declining requests to affiliate with a clinic or expressing great apprehension out of fear for the physical safety of themselves and their families.” *Id.* at 1352. The fact that anti-abortion extremists have murdered physicians looms large and

drives physicians' fears. NAF, *Violence Statistics & History*, <https://bit.ly/33dGAwd> (last visited Nov. 8, 2019). As one anonymous practitioner interviewed for a study determined, "I just said it wasn't worth it," after hearing of another provider assassination. FREEDMAN, WILLING AND UNABLE, at 49. One anonymous physician in the same study would only reveal that he practiced in "a small, semi-rural western town." *Id.* at 50. He felt pressure to stop providing abortion care and ultimately stopped when he realized that he would "stand[] out" as the lone provider in his area. *Id.*

V. **BECAUSE OF THIS HISTORY OF THREATS AND VIOLENCE, ADMITTING PRIVILEGE REQUIREMENTS SEVERELY LIMIT THE ABILITY TO HIRE AND RETAIN NEW DOCTORS**

This environment of anti-abortion threats and violence severely limits abortion clinics' ability to secure doctors and satisfy laws like Act 620. For example:

- **Texas:** An expert witness in the Western District of Texas attested, "It is difficult to recruit local physicians . . . because of the hostility they can face from the community, such as protesters outside of their regular practice offices . . . and because of fears of violence directed against them and their families." Decl. of Andrea Ferrigno ¶ 16, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, No.

1:13cv862, Dkt. 9-5 (W.D. Tex. Oct. 1, 2013); *see also* Decl. of Darrel Jordan, MD ¶ 11, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, No. 1:13cv862, Dkt. 9-6 (W.D. Tex. Oct. 1, 2013) (“[A]ny resident who is known to perform abortions faces routine harassment, social and professional ostracism, and even a significant risk of violence (all of which extend to his or her family as well)”; Decl. of Angela Martinez ¶ 9, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, No. 1:13cv862-LY, Dkt. 9-7 (W.D. Tex. Oct. 1, 2013) (“Anti-abortion protesters harass health center employees every day the center is open. They shout insults at us every day, take pictures of us (and take down license plate information), refer to employees by name, and have protested outside employees’ homes and posted pictures of employees online with their names. Because physicians are the biggest target of antiabortion harassment and violence, I cannot imagine a local physician being willing to risk his or her safety in this way.”).

- **Wisconsin:** An expert witness attested, “[I]t is incredibly difficult for abortion clinics to find and retain abortion providers. Many doctors who might otherwise be willing to provide abortions are dissuaded by the history of harassment and violence against clinics and doctors

who provide abortions, including arson, bombings, and murder of providers.” Expert Report of Debra Stulberg ¶ 6, *Planned Parenthood of Wis., Inc. v. Van Hollen*, No. 13-cv-465, Dkt. 119-5 (W.D. Wis. Mar. 3, 2014). And they are even more worried about “their family’s reasonable concerns for their safety and well-being.” *Id.* ¶ 18. The Western District of Wisconsin recognized, “Obviously the risk of becoming a target of harassment and protest presents an additional barrier for recruiting physicians.” *Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 982-83 (W.D. Wis. 2015).

- **Kansas:** Following Dr. Tiller’s murder, no physicians were willing to risk death to provide abortion care in Wichita. A.G. Sulzberger, *Wichita Doctor Takes Up Fight for Abortions*, N.Y. TIMES (July 9, 2011), <https://nyti.ms/2L1dGcD>. Filling the post remains a struggle over a decade later. “One doctor even agreed but then backed out, spooked by the climate.” Jenny Deam, *Doctor struggles to fill role of slain Kansas abortion provider*, LOS ANGELES TIMES (Mar. 5, 2012), <https://lat.ms/34b9OwY>; see also Tara Haelle, *Death Threats and Abuse: Doctors Brave the ‘Abortion Desert,’* MEDSCAPE (Oct. 14, 2019), <https://wb.md/2ObCikx>.

As a last resort, some clinics that are unable to recruit local physicians to provide abortion care scrape together resources to fly providers in from out of town. See, e.g., Sarah McCammon, *For Many Women, the Nearest Abortion Provider is Hundreds of Miles Away*, NPR (Oct. 3, 2017), <https://n.pr/2QHdkLK>; *Defending Human Rights*, *supra* 28, at 91-92. This is not a solution in Louisiana because of hospital requirements that physicians seeking admitting privileges live within a certain distance of the hospital. Pet. App. 173a. It is also very challenging for traveling physicians to provide abortion care on a regular schedule.

Due to these same fears of “vilification, threats, and sometimes violence directed against abortion clinics and their personnel,” *Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908, 917 (7th Cir. 2015), it would be nearly impossible to recruit another local physician to provide abortion care in Louisiana. For example, the administrator of Hope Clinic testified that her ability to recruit physicians is compromised by “everything in the news about violence towards providers.” J.A. 112. Such targeting is a strong deterrent for any potential provider. As the District Court ruled:

The hostile environment in Louisiana and nationally is another factor making recruiting difficult. This includes harassment and violence towards abortion providers, including the murders of [then] eight abortion providers across the country. As one of the physicians noted, in light of the

‘hostile environment in Louisiana towards abortion providers and the extreme harassment and intimidation by anti-abortion activists, most doctors are simply too afraid.’

Pet. App. 259a. The administrator of Women’s Clinic and Delta similarly testified:

I think it is very unlikely that I will ever be able to find another physician with the credentials required by law in Louisiana, who has admitting privileges at a local hospital, and who is willing to perform abortion services at an abortion clinic. Due to the hostile environment towards abortion providers, I have had difficulties in the past recruiting physicians, as I know other abortion clinics have. . . . I am not aware of any other doctor in South Louisiana who is willing to provide abortion services on a regular basis.

J.A. 1123. The District Court credited this testimony finding that clinics in Louisiana would find it difficult to recruit new physicians with admitting privileges because of the hostility and climate of fear the physicians would face. Pet. App. 258a-59a.

The District Court’s findings also followed precedent. In *Whole Woman’s Health*, this Court cited positively to a brief that explained that local physicians are unable to obtain admitting privileges because of “the hostility that abortion providers face.”

136 S. Ct. at 2312 (citing Brief for Planned Parenthood Federation of America et al. as *Amici Curiae*). The Western District of Wisconsin made a similar finding in *Planned Parenthood of Wis., Inc. v. Van Hollen*, ruling that harassment and violence are among the “significant barriers to recruiting and retaining practitioners [that] present a real and growing threat to the availability of abortion services . . . [T]he precarious availability of these services in the State is a relevant consideration in determining whether [the state’s admitting privileges requirement] further threatens access, constituting an undue burden on women seeking abortion services.” *Planned Parenthood of Wis., Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 983 (W.D. Wis. 2015).

Any physician considering a position providing abortion care in Louisiana can expect harassment, threats, personal attacks, and worse. Thus, recruiting a new provider in Louisiana who could also satisfy the admitting privileges requirement would be an almost impossible task, further compounding the undue burden in this case.

CONCLUSION

The torrent of harassment, individualized targeting, and deadly violence directed against abortion providers is undeniable. Extremists within the anti-abortion movement have created a climate of fear that weighs heavily on abortion providers, who live in constant terror simply for providing medical care their patients need. As the District Court ruled, overwhelming evidence supports the findings that (i) hospitals are extremely reluctant to grant abortion

providers admitting privileges as they fear targeting by anti-abortion extremists; (ii) Dr. Doe 3's fears that he would become an even greater target as a sole provider are credible; and (iii) it would be difficult for Louisiana clinics to hire replacement physicians. Pet. App. 143a; 202a-03a; 241a-42a; 252a-53a.

Casey and *Whole Woman's Health* held that courts must consider how the law operates in the real world. That means this Court must take into account how difficult it is to secure a doctor with admitting privileges in a climate of fear. In Louisiana, most doctors are simply too afraid to provide abortion care, and hospitals are too afraid to associate with the remaining few who do. There is no doubt that Act 620 would unduly burden a woman's right to access abortion care and is unconstitutional. The Court should reverse.

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