

No. 19-1392

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

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THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE  
MISSISSIPPI DEPARTMENT OF HEALTH, et al.,

*Petitioners,*

v.

JACKSON WOMEN’S HEALTH ORGANIZATION, et al.,

*Respondents.*

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

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**BRIEF OF THE FEMINIST MAJORITY  
FOUNDATION, ABORTION ACCESS FRONT,  
C.A. GOLDBERG, PLLC, THE NATIONAL  
ORGANIZATION FOR WOMEN FOUNDATION,  
THE SOUTHERN POVERTY LAW CENTER,  
WE ENGAGE, PROFESSOR DAVID S. COHEN,  
AND KRYSTEN CONNON AS *AMICI CURIAE*  
IN SUPPORT OF RESPONDENTS**

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John E. Hall  
*Counsel of Record*  
David M. Zions  
Elizabeth A. Saxe  
Kate Thompson  
Molly Doggett  
Marisa Tashman  
Megan C. Keenan  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street NW  
Washington, DC 20001  
(202) 662-6000  
jhall@cov.com  
*Counsel for Amici Curiae*

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**INTEREST OF THE *AMICI CURIAE***<sup>1</sup>

*Amici Curiae* are organizations and individuals with longstanding personal experience and expertise concerning the pervasive pattern of violence and threats of violence directed at abortion providers.

The Feminist Majority Foundation (“FMF”) is a not-for-profit, national organization, based in Arlington, Virginia, dedicated to advancing women’s equality, non-violence, economic development, reproductive justice, and access to contraception, abortion, and reproductive healthcare. FMF’s National Clinic Access Project, which began in 1989, leads efforts nationwide to reduce anti-abortion violence, keep abortion care personnel and patients safe, keep clinics open, and bring violent anti-abortion extremists to justice. Since 1993, FMF has periodically conducted a National Clinic Violence Survey. The survey is one of the most comprehensive studies of anti-abortion violence and harassment directed at clinics, patients, health care workers, and volunteers in the United States, and includes abortion providers of various organizational affiliations as well as independent clinics.

Abortion Access Front (“AAF”) works to end abortion stigma, raise awareness about the erosion of access to comprehensive reproductive healthcare, and

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<sup>1</sup> Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* or their counsel have made any monetary contributions intended to fund the preparation or submission of this brief. Pursuant to Rule 37.3(a), all parties have given consent to the filing of this brief.

cultivate community support for abortion providers. Through its direct work with clinics, AAF has developed expertise in the devastating impact of anti-abortion harassment, threats, and violence on staff and patients. Research and real-time tracking of anti-abortion extremists have become a central component of AAF's clinic support efforts in recent years as harassment, threats, and violence have increased.

C.A. Goldberg, PLLC, is a victim's rights law firm in Brooklyn, New York that does groundbreaking work nationally fighting for targets of abuse and harassment. The firm represents abortion providers, reproductive justice organizations, clinics, advocates, and patients facing anti-abortion violence, harassment and intimidation. The firm strives to promote access to comprehensive reproductive healthcare by defending the privacy and dignity of providers, advocates, and the communities they serve.

The National Organization for Women (NOW) Foundation is a Section 501(c)(3) entity affiliated with NOW, the largest grassroots feminist activist organization in the United States. NOW has a long history of advocacy for the right to abortion, dating back to its founding in 1966. For nearly five decades, NOW members have volunteered as escorts for patients, giving them first-hand experience with the threats and violence directed at women's health clinics, as well as the closure of hundreds of clinics due to this intimidation.

The Southern Poverty Law Center ("SPLC") is a non-profit civil rights organization that monitors the

activities of domestic hate groups and other extremists—including violent anti-abortion extremists, the Ku Klux Klan, and the neo-Nazi movement, among others. SPLC publishes investigative reports, trains law enforcement officers and shares key intelligence, and offers expert analysis to the media and public.

We Engage is a Section 501(c)(3) organization that originated on the sidewalks outside Jackson Women’s Health Organization in Jackson, Mississippi. We Engage supports the work of a group of volunteer patient escorts and clinic defenders—known as the Pinkhouse Defenders—that have supported Jackson Women’s Health since 2013. While We Engage operates in support of the full spectrum of reproductive justice, it is focused on assisting patients on the ground seeking abortion care and defending abortion access.

David S. Cohen, a professor of law at Drexel University’s Kline School of Law, and Krysten Connon, an attorney in private practice who regularly volunteers her time and expertise on issues related to reproductive health and abortion access, are the co-authors of *Living in the Crosshairs: The Untold Stories of Anti-Abortion Terrorism*, a multi-year study looking at the ways that anti-abortion extremists target abortion providers. Professor Cohen is also the co-author of *Obstacle Course: The Everyday Struggle to Get an Abortion in America*, a different multi-year study about barriers to abortion access in this country, including anti-abortion harassment and violence.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The State's brief ignores a prominent and undeniable aspect of the history of post-*Roe v. Wade* abortion in the United States—the sustained pattern of violence and threats of violence directed against abortion providers. There is no question that this violence and intimidation is due solely to the fact that these providers have courageously chosen to perform services that this Court has adjudged to be constitutionally protected. To overrule *Roe* or curtail the right to an abortion as established in this Court's precedents would, in light of this history, not protect the Court, as the State suggests. It would, to the contrary, do great damage to the Nation's perceptions of the Court's legitimacy and the rule of law more generally. Taking this extraordinary step against this backdrop would be understood as sending a dangerous message: that the violence has worked.

Although the majority of those opposed to abortion express their views through peaceful means, a core of anti-abortion extremists have sought, in a direct affront to this Court's authority, to take the law into their own hands with one aim: to end abortion in America.

Mississippi provides a dramatic illustration of how extremists have employed violence and other lawlessness to reduce access to abortion. After a rapid expansion of abortion services in Mississippi in the years immediately following *Roe*, anti-abortion extremists waged a campaign that included stalking,

intimidation, and violence against doctors who provided abortion care. This campaign was not isolated or sporadic, but sustained and pervasive. The campaign of violence and threats was also effective, coinciding with a sharp decline in access to and the provision of abortion services in Mississippi. Indeed, Respondent Jackson Women’s Health Organization (“Jackson Women’s Health”) was founded as a consequence of this anti-abortion violence, which had contributed to the closure of all but one provider in the state, severely limiting access to abortion for Mississippi residents.<sup>2</sup>

The State ignores this dark stain on the post-*Roe* history of abortion in America, conveniently omitting any mention of the widespread violence and intimidation that have been such a prominent part of the experience of providers and, more broadly, the general public who have witnessed the many highly visible attacks on clinics and providers. Instead, the State seeks to reframe this history as a mere “controversy” over a “contested policy issue,” where anti-abortion activists have pursued policy change through the constitutional order and with respect for the Court’s authority and position.<sup>3</sup> Having whitewashed from its account the tactics employed by violent anti-abortion extremists in their assaults against both providers and the rule of law, the State then argues that this “controversy” over abortion is in fact a justification for

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<sup>2</sup> Susan Hill, *A Passion For The Possible* (Apr. 1996), <https://bit.ly/2WoOcPi>; see also Timothy R. Brown, *Abortion Backers, Foes Square Off in Miss.*, Wash. Post (July 15, 2006), <https://wapo.st/3EGJv4C>.

<sup>3</sup> State Br. at 3.

overturning *Roe* or *Planned Parenthood of Se. Pennsylvania v. Casey* in order to uphold a pre-viability abortion ban, arguing that to do otherwise hurts the Court’s legitimacy.

While the State would ignore the history of violence against providers and their patients, the Court should not. Any decision to overturn *Roe* or *Casey* or significantly limit the well-established constitutional right to abortion will unavoidably be understood against the stark reality of what the State’s sanitized depiction of the “controversy” has actually entailed—the targeting of abortion providers with systematic and pervasive violence as part of an effort to end abortion. Against such a backdrop, the rulings urged by the State would do great damage to the Court as an institution. It would send a message that violence can be employed by a vocal minority to sustain and deepen a “controversy” that may in turn justify a reversal of well-established precedent. It would also damage the rule of law more generally by legitimizing violence in our political discourse.

As the Court itself has said, it cannot “overrule under fire,”<sup>4</sup> and constitutional principles “cannot be allowed to yield simply because of disagreement with them.”<sup>5</sup> To overrule or dramatically refashion *Roe* or *Casey* against this backdrop of violence would be, quite literally, to overrule under fire.

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<sup>4</sup> See *Planned Parenthood of Se. Pennsylvania v. Casey*, 505 U.S. 833, 867 (1992).

<sup>5</sup> *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294, 300 (1955) (*Brown II*).

## ARGUMENT

### **I. The State’s Argument For Overruling This Court’s Longstanding Precedents Ignores a Prominent Part of the History of Post-*Roe* Abortion in America: Violent Anti-Abortion Extremism.**

While certainly not all who oppose abortion condone violence, a highly-engaged and vocal minority have not been satisfied with civil discourse and peaceful protest. Instead, this group has shown a willful disregard for the law, employing violence, threats, and intimidation in an effort to end abortion. To tell the story of post-*Roe* abortion in this country without acknowledging this prominent history of violence and threats against providers is to ignore a reality that will undoubtedly shape the public’s reaction to the Court’s decision in this case. Yet that is precisely what the State does, omitting any reference to the violence and threats of violence that have been a daily reality for those seeking to exercise this constitutional right recognized by the Supreme Court for nearly fifty years.

#### **A. Violence and Threats Against Providers Have Been and Continue to Be Pervasive.**

The accurate history of post-*Roe* abortion in the United States tells a dramatically different story than that presented in the State’s brief. Violent acts and threats against abortion providers have been pervasive and systematic, casting a dark shadow over the national debate about abortion. There have been

thousands of violent incidents including blockades, invasions, chemical attacks, arsons, bombings, death threats, stalking incidents, shootings, sniper attacks, and cold-blooded murder.

Acts of anti-abortion violence during the period from 1977 to 2019 include at least 11 murders, 26 attempted murders, and at least 756 threats of harm or death, 620 stalking incidents, and four kidnappings.<sup>6</sup> Crimes directed at clinic facilities have included at least 42 bombings, 189 arsons, 100 attempted bombings or arsons, and 662 bomb threats.<sup>7</sup> The actual numbers are likely much higher.<sup>8</sup> In the Clinic Access Project's 2018 national clinic violence survey, 52 percent of clinics responding to the survey experienced intimidation and targeted threats, such as death threats, stalking, and harassing emails, calls, and social media posts.<sup>9</sup>

This horrifying and widely-publicized history of violence and threats of violence against abortion care providers and their patients dates back more than

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<sup>6</sup> Nat'l Abortion Federation ("NAF"), *2019 Violence and Disruption Statistics* 11 (2019), <https://bit.ly/3gEwRbH> [hereinafter "2019 NAF Report"].

<sup>7</sup> *Id.*

<sup>8</sup> These figures are compiled based on voluntary reports submitted by NAF members and allied organizations and, therefore, likely undercount the number of actual incidents. *See id.* at 7.

<sup>9</sup> Feminist Majority Foundation ("FMF"), *2018 National Clinic Violence Survey* 6–7 (2018), <https://bit.ly/38odv64>.

four decades. One of the first known acts of anti-abortion violence was an arson of a clinic in 1976.<sup>10</sup> The violence continued with more than a dozen other anti-abortion attacks in the 1970s, including arsons and fire bombings of clinics.<sup>11</sup> Anti-abortion violence then expanded in the 1980s to include kidnapping,<sup>12</sup> and anti-abortion extremists began publishing guides on how to use violence and intimidation against providers, justifying their actions on the belief that killing abortion providers was “morally acceptable and justified as doing ‘God’s work.’”<sup>13</sup>

In the 1990s, anti-abortion extremists succeeded for the first time in taking the lives of providers.

On March 10, 1993, anti-abortion extremist Michael Frederick Griffin shot and killed Dr. David Gunn outside a Pensacola, Florida abortion clinic.<sup>14</sup> Dr. Gunn usually performed abortions at another clinic in Pensacola and was a frequent target of harassment and threats when he traveled between clinics

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<sup>10</sup> Jennifer Jefferis, *Armed for Life: The Army of God and Anti-Abortion Terror in the United States* 22–23 (2011).

<sup>11</sup> *Id.*; Mireille Jacobson & Heather Royer, *Aftershocks: The Impact of Clinic Violence on Abortion Services*, 3(1) *Am. Econ. J.: Applied Econ.* 189, 193 (2011).

<sup>12</sup> Jefferis, *supra* n. 10, at 23–25.

<sup>13</sup> Daryl Johnson, *Hate in God’s Name*, Southern Poverty L. Ctr. (Sept. 25, 2017), <https://bit.ly/3ymYRH8>; *see also* *Army of God Manual*, <https://bit.ly/3ykN5gd>.

<sup>14</sup> William Booth, *Doctor Killed During Abortion Protest*, *Wash. Post* (Mar. 11, 1993), <https://wapo.st/3l3mUpD>.

in Georgia, Alabama, and Florida.<sup>15</sup> Griffin waited for Dr. Gunn at the rear of the clinic where Dr. Gunn parked his car, as anti-abortion demonstrators were at the front of the clinic.<sup>16</sup> As Griffin shot Dr. Gunn, he shouted, “don’t kill any more babies.”<sup>17</sup>

The killing of Dr. Gunn marked an escalation in the already pervasive violence and threats against abortion providers that had marred the previous two decades. Anti-abortion violence continued at an unrelenting pace, with hundreds of acts of violence committed in the years that followed.<sup>18</sup>

Ten additional murders connected with violent acts targeting abortion providers or clinics were committed in the United States following the murder of Dr. Gunn:

- July 29, 1994: Paul Hill, an anti-abortion extremist who had circulated a “Defensive Action Petition,” which promoted the concept of justifiable homicide of abortion providers, murdered Dr. John Britton and Ret. Lt. Col. James Barrett, a volunteer escort, in parking lot of clinic

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<sup>15</sup> *Id.*; Associated Press, *Florida man who killed abortion doctor due at parole hearing* (Nov. 1, 2017), <https://bit.ly/38Pocz6>.

<sup>16</sup> Booth, *supra* n. 14; Larry Rohter, *Doctor Is Slain During Protest Over Abortions*, N.Y. Times (Mar. 11, 1993), <https://nyti.ms/3DUp9V4>.

<sup>17</sup> Booth, *supra* n. 14.

<sup>18</sup> 2019 NAF Report, *supra* n. 6, at 11; see Jefferis, *supra* n. 10, at 22–23; Jacobson & Royer, *supra* n. 11, at 194–95.

in Pensacola, Florida. A second clinic volunteer was also wounded in the attack.<sup>19</sup>

- December 30, 1994: An extremist shot and killed two clinic receptionists— Shannon Lowney and Leanne Nichols—and wounded five others at two clinics in Massachusetts.<sup>20</sup>
- January 29, 1998: Eric Rudolph detonated a bomb at a clinic in Birmingham, Alabama, killing an off-duty police officer, Robert Sanderson, who served as a security guard at the clinic, and critically injuring a nurse.<sup>21</sup>
- October 23, 1998: An anti-abortion extremist sniper murdered Dr. Barnett Slepian in front of his family as he was standing in his kitchen at his home in New York.<sup>22</sup>

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<sup>19</sup> See Jefferis, *supra* n. 10, at 33; Liz Atwood, *Retired Lt. Col. James H. Barrett, killed at Pensacola abortion clinic*, *The Baltimore Sun* (Aug. 3, 1994), <https://bit.ly/3tDccKJ>.

<sup>20</sup> 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/2WwIKct>.

<sup>21</sup> U.S. Dep't of Justice, *Eric Robert Rudolph to Plead Guilty to Serial Bombing Attacks in Atlanta and Birmingham; Will Receive Life Sentences* (Apr. 8, 2005), <https://bit.ly/3DOxeut>; Carol Robinson, *Birmingham Abortion Clinic Bombing Was 20 Years Ago Today*, *AL.com* (Jan. 29, 2018), <https://bit.ly/2XuENWe>.

<sup>22</sup> David Staba, *Doctor's Killer Tries to Make Abortion the Issue*, *N.Y. Times* (Jan. 13, 2007), <https://nyti.ms/3AnrGop>; Jim Yardley & David Rohde, *Abortion Doctor in Buffalo Slain; Sniper Attack Fits Violent Pattern*, *N.Y. Times* (Oct. 25, 1998), <https://nyti.ms/3lJkLjA>.

- May 31, 2009: An anti-abortion extremist murdered Dr. George Tiller, Wichita’s sole abortion provider, in his church as he attended a service. Dr. Tiller had survived being shot in both arms in 1993.<sup>23</sup>
- November 27, 2015: An extremist murdered a police officer, Garrett Swasey, and patient companions Ke’Arre Steward and Jennifer Markovsky, at a Colorado Springs, Colorado clinic. The attack also wounded five police officers and four civilians.<sup>24</sup>

Perhaps no single act of violence directed against abortion providers so clearly encapsulates the purpose and nature of these attacks than the shooting at the clinic in Colorado Springs in 2015. The gunman, Robert Lewis Dear, Jr., traveled to the clinic with four SKS rifles, five handguns, two additional rifles, a shotgun, more than 500 rounds of ammunition, and propane tanks, intending to wage “war” on the clinic because it offered abortion services.<sup>25</sup> Dear shot at six people outside the clinic, killing two and injuring

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<sup>23</sup> Joe Stumpe & Monica Davey, *Abortion Doctor Shot to Death in Kansas Church*, N.Y. Times (May 31, 2009), <https://nyti.ms/3sQH4a9>.

<sup>24</sup> Trevor Hughes, *Planned Parenthood Shooter ‘Happy’ with His Attack*, USA Today (Apr. 11, 2016, 9:30 PM), <https://bit.ly/2Y59uBR>; *Planned Parenthood: Three Die in Shooting at Colorado Clinic*, BBC (Nov. 28, 2015), <https://bbc.in/2XCIRW9>.

<sup>25</sup> Indictment ¶ 2, *United States v. Dear*, No. 1:19-cr-00506 (D. Colo. filed Dec. 5, 2019), ECF No. 1.

three more.<sup>26</sup> Dear then forced his way into the clinic by shooting into an entrance, while 27 healthcare providers, employees, patients, and companions attempted to hide, one of whom was shot during the course of the attack.<sup>27</sup> In the approximately five-hour standoff that ensued, Dear turned his weapons on law enforcement, shooting and killing one officer and injuring four more.<sup>28</sup> In total, Dear fired 198 bullets during the attack.<sup>29</sup> Dear reportedly said about the shooting that he was “happy with what he had done because his actions . . . ensured that no more abortions would be conducted at the Planned Parenthood facility in Colorado Springs.”<sup>30</sup>

The Colorado Springs shooting illustrates fundamental truths about anti-abortion violence. It has exacted a high price for victims of these crimes, tragically ending lives, critically injuring others, and leaving survivors with harrowing accounts. The violence is generally directed toward providers with the express purpose of ending or limiting abortion access.<sup>31</sup> And, as the shooter demonstrated when he

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<sup>26</sup> *Id.* ¶¶ 3–4.

<sup>27</sup> *Id.* ¶ 5.

<sup>28</sup> *Id.* ¶ 6.

<sup>29</sup> *Id.* ¶ 7.

<sup>30</sup> Hughes, *supra* n. 24; *see also* Schiffelbein Aff. at 2, *People v. Dear*, No. 15-CR-5795-10 (Colo. Dist. Ct. Nov. 30, 2015), <https://bit.ly/38mmQM1> (stating that Dear told police he was “upset with [Planned Parenthood] performing abortions and the selling of baby parts”).

<sup>31</sup> For example, when Scott Roeder admitted on the witness stand that he murdered Dr. Tiller, he said, “I did what I thought was

turned his weapons against both those seeking to exercise this constitutional right recognized by the Supreme Court for nearly fifty years and law enforcement officers seeking to uphold the constitutional order, the violence is nothing short of an assault on the rule of law.

Violence against providers has been so pervasive and well-documented that it was necessary for Congress and law enforcement to develop protections specifically for providers and patients. In 1994, Congress passed the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (the “FACE Act”), which enhanced protections for abortion providers and their patients. The law established new criminal penalties and civil remedies for violence, obstruction, and property damage affecting clinics, providers, and recipients of reproductive health care, and expanded the penalties available under existing federal criminal statutes like the Travel Act, the Hobbs Act, and federal arson and firearms statutes. The law was enacted in recognition of “the right of every American to live his or her life without fear of physical harm,”<sup>32</sup> and in direct response to the escalation in violent tactics used by anti-abortion extremists.<sup>33</sup> As its

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needed to be done to protect the children. I shot him. If I didn’t do it, the babies were going to die the next day.” Monica Davey, *Doctor’s Killer Puts Abortion on the Stand*, N.Y. Times (Jan. 28, 2010), <https://nyti.ms/2Xun9lu>.

<sup>32</sup> Cong. Rec., Vol. 140, No. 31 (Mar. 18, 1994), <https://bit.ly/3DydOdh>.

<sup>33</sup> *National Task Force on Violence Against Health Care Providers*, U.S. Dep’t of Justice, Civil Rights Div. (Sept. 17, 2021), <https://bit.ly/3kuj6NV>.

supporters explained at the time, “[n]o women should have to run a gauntlet of harassment and violence to receive basic health care” and “no doctor should have to wear a bullet-proof vest to treat patients.”<sup>34</sup>

The onslaught and escalation of violence has also prompted law enforcement to take special actions to try to protect doctors, patients, and the general public from these attacks. For example, U.S. Marshals were deployed in 1994, shortly after the second provider was gunned down, to provide enhanced security to approximately a dozen prominent doctors who regularly performed abortions.<sup>35</sup> Among those who received U.S. Marshal protection was Dr. Joseph Booker, who practiced in Mississippi.<sup>36</sup> Those seeking to provide abortion services also had to modify their approach in response to the violence. Jackson Women’s Health was founded just months after the U.S. Marshals were deployed, by which point the number of providers in Mississippi “had dwindled to one, and was precariously close to none, due to threats, violence and harassment.”<sup>37</sup>

The Justice Department has also found it necessary to take special actions in response to the unique and heightened risk to providers. In response to the

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<sup>34</sup> Cong. Rec., Vol. 140, No. 30 (Mar. 17, 1994), <https://bit.ly/2Wql6Pw>.

<sup>35</sup> Pierre Thomas, *U.S. Marshals Dispatched to Guard Abortion Clinics*, Wash. Post (Aug. 2, 1994), <https://wapo.st/3tRKjyE>.

<sup>36</sup> Michel Martin, *Murder of Abortion Doctor Frightens Colleagues*, NPR (June 2, 2009, 12:00 PM), <https://n.pr/2XDhSZt>.

<sup>37</sup> Hill, *supra* n. 2.

1998 murder of Dr. Slepian and ongoing attacks against reproductive healthcare providers, the Department of Justice established the National Task Force on Violence Against Health Care Providers.<sup>38</sup> The Task Force “coordinates the investigation and prosecution of those responsible for these attacks [against providers], maintains a database of information related to clinic violence, identifies ways to make at-risk clinics more secure, and enhances training of law enforcement officers on issues related to clinic violence.”<sup>39</sup> In recent years, the Task Force has prosecuted a number of cases involving violence directed at providers, including the prosecution of individuals who set or attempted to set fire to clinics in New Mexico, North Dakota, and South Dakota, as well as individuals who made bomb or other threats to clinics in Mississippi and Utah.<sup>40</sup>

Despite law enforcement’s efforts, assaults against providers and clinic invasions, where extremists physically enter clinics to intimidate and harass providers and patients, have continued.<sup>41</sup> Moreover, studies show that more than half of the extremists who conduct clinic invasions are repeat offenders who, in some instances, publicize their plans in order to recruit and

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<sup>38</sup> *National Task Force on Violence Against Health Care Providers*, *supra* n. 33.

<sup>39</sup> Report on Federal Efforts to Prevent and Prosecute Clinic Violence 1998-2000, U.S. Dep’t of Justice, Civil Rights Div. (Aug. 6, 2015), <https://bit.ly/3jlrL5T>.

<sup>40</sup> *National Task Force on Violence Against Health Care Providers*, *supra* n. 33.

<sup>41</sup> 2019 NAF Report, *supra* n. 6, at 3.

train other extremists to carry out this purposeful intimidation.<sup>42</sup> The internet has become a powerful tool for anti-abortion extremists, likely contributing to an increase since the 1990s in death and other violent threats directed against providers.<sup>43</sup>

The violence and threats have continued to the present day, including the deadly 2015 shooting in Colorado Springs and thwarted attacks, such as a 2019 arrest for “terroristic threatening” after a destructive device was recovered in the home of an individual who had threatened to “blow up” a clinic in Cincinnati, Ohio.<sup>44</sup> Anti-abortion extremists also committed recent arson attacks against providers, including in Missouri, Texas, Delaware and Florida in 2019 and 2020.<sup>45</sup> During the same period, clinics also received numerous bomb threats, including in Florida

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> Press Release, U.S. Dep’t of Justice, U.S. Attorney’s Office for Western District of Missouri, *Columbia Man Sentenced for Arson at Planned Parenthood Clinic* (Sept. 2, 2020), <https://bit.ly/3zYJeah>; Kate Smith, *Violence Against Abortion Clinics Hit a Record High Last Year. Doctors Say It’s Getting Worse.*, CBS News (Sept. 17, 2019), <https://cbsn.ws/3heV4WF>; Katie Shepherd, *“When Will We Start Shooting?”: Teen Accused of Firebombing Planned Parenthood Shared Far-Right Memes and Fantasized About Murder*, Wash. Post (Jan. 8, 2020), <https://wapo.st/3toIIjk>; Kaitlin Greenockle, *LCSO: Suspect in Custody for Arson, Uses Firebomb on Planned Parenthood Center*, Fort Myers News-Press (Oct. 14, 2020, 1:44 PM), <https://bit.ly/3jVBxfs>.

and Washington.<sup>46</sup> More recently, on January 22, 2021, the forty-eighth anniversary of *Roe v. Wade*, 410 U.S. 113 (1973), an unidentified individual fired a shotgun at the doors of a clinic in Knoxville, Tennessee.<sup>47</sup>

Disturbingly, studies show that violence and threats have not only continued in recent years but have risen. In 2019, the number of death threats and threats of harm to providers nearly doubled from the prior year, and the number of clinic invasions almost doubled, increasing from 57 in 2018 to 92 in 2019.<sup>48</sup>

A steady stream of examples illustrates the ever-present risk to providers, patients, staff, and the public. In 2019, a 17-year-old in Texas was arrested after threatening to “commit jihad on an abortion clinic.”<sup>49</sup> An Ohio man was charged with threatening to assault federal law enforcement officers after he made online

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<sup>46</sup> Press Release, U.S. Dep’t of Justice, U.S. Attorney’s Office for Middle District of Florida, *South Carolina Man Sentenced for Making a Bomb Threat to a Clinic and Lying to the FBI* (Sept. 23, 2020), <https://bit.ly/3niFJYK>; Terry Preuninger, *Arrest Made in Planned Parenthood Bomb Threat*, Spokane Police Dep’t (Dec. 3, 2020, 4:41 PM), <https://bit.ly/38Qif4L>.

<sup>47</sup> Melissa Greene, *Police Investigating After Shots Fired at Knoxville’s Planned Parenthood Clinic on Anniversary of Roe v. Wade*, WATE 6 (Jan. 22, 2021, 3:53 PM), <https://bit.ly/3qoeb3C>.

<sup>48</sup> *NAF Releases 2019 Violence & Disruption Statistics*, NAF (July 30, 2020), <https://bit.ly/3sQIRMp>.

<sup>49</sup> Jennifer Emily, *Threat to ‘Commit Jihad on an Abortion Clinic’ Lands North Texas Teen in Jail*, Dallas Morning News (Feb. 27, 2019, 4:21 PM), <https://bit.ly/3zkipw5>.

threats against Planned Parenthood and others.<sup>50</sup> Authorities recovered more than a dozen rifles and 10,000 rounds of ammunition from his home.<sup>51</sup> In 2020, a Rhode Island man was sentenced to federal prison for stalking and transmitting threats in interstate commerce after he threatened to torture and kill a university professor because of the victim's support of abortion rights, and left more than one hundred threatening voicemails for a clinic.<sup>52</sup> And earlier this year, a Delaware man pleaded guilty to federal charges after he threw a Molotov cocktail through a clinic's window and painted a slogan associated with white supremacist groups on the clinic's wall.<sup>53</sup>

### **B. Violence Has Been a Deliberate Strategy to Reduce and Eliminate Abortion Access.**

The violence against abortion providers has been employed as part of a deliberate strategy to reduce or

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<sup>50</sup> Mihir Zaveri, *Man With Weapons Cache Threatened Planned Parenthood and Agents, F.B.I. Says*, N.Y. TIMES (Aug. 13, 2019), <https://nyti.ms/3nLXqjD>.

<sup>51</sup> *Id.*

<sup>52</sup> Press Release, U.S. Dep't of Justice, U.S. Attorney's Office for District of Massachusetts, *Rhode Island Man Sentenced for Threatening Massachusetts Professor* (Aug. 5, 2020), <https://bit.ly/3nIjs6Z>; Andrew Martinez, *R.I. Man Pleads Guilty to Threatening Professor, Abortion Center*, Boston Herald (Sept. 17, 2019, 7:08 PM), <https://bit.ly/3nNYpQq>.

<sup>53</sup> Press Release, U.S. Dep't of Justice, U.S. Attorney's Office for District of Delaware, *Middletown Man Pleads Guilty In Federal Court to Use of Incendiary Device at Newark Planned Parenthood* (Feb. 15, 2021), <https://bit.ly/39jBV1a>.

eliminate abortion, with some anti-abortion advocates openly endorsing violence. For example, Eric Rudolph—a serial bomber whose targets included the Birmingham clinic discussed above<sup>54</sup>—described his bombings as part of a singular struggle against a “monstrosity of a government” that permitted abortion.<sup>55</sup> He wrote in an 11-page confession: “Because I believe that abortion is murder, I also believe that force is justified in an attempt to stop it.”<sup>56</sup> He was not alone. In 1993, after Michael Griffin murdered Dr. David Gunn outside of a Florida abortion clinic, anti-abortion extremists formed the American Coalition of Life Activists and signed a proclamation asserting that violence, including the murder of abortion providers, is “justifiable” in the fight to end abortion.<sup>57</sup> A years-long string of arsons, bombings, and chemical attacks on abortion clinics and murders of abortion providers followed the proclamation.<sup>58</sup>

Anti-abortion extremists have also expanded the targets of their violence beyond simply abortion providers. A number of prominent anti-abortion extremists were among those who participated in the

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<sup>54</sup> See *supra* n. 22 and accompanying text.

<sup>55</sup> Alissa Quart, *Before the Capitol Attack, There Were the Abortion Wars*, Slate (Feb. 4, 2021, 4:18 PM), <https://bit.ly/2URNGZ5>.

<sup>56</sup> *Id.*

<sup>57</sup> Frederick Clarkson, *Anti-Abortion Movement Marches on After Two Decades of Arson, Bombs and Murder*, Intelligence Report, Summer 1998, <https://bit.ly/3E9Av7Q>; Lisa Belkin, *Kill for Life?*, N.Y. Times (Oct. 30, 1994), <https://nyti.ms/3mFwUIo>.

<sup>58</sup> *Id.*

siege of the U.S. Capitol on January 6, 2021.<sup>59</sup> Individuals interviewed outside the Capitol that day cited their anti-abortion views as the reason they travelled to Washington, D.C., with one person explaining that her decision to come to the Capitol was, in part, “to fight for the unborn.”<sup>60</sup> Another such extremist, who filmed himself at the Capitol that day, was convicted of planning to bomb an abortion clinic in 1988 and later admitted to setting fire to that clinic and another.<sup>61</sup> Violence has also been directed toward the Supreme Court itself. A shot was fired through the window of Justice Blackmun’s home following years of death threats that began when he wrote the Court’s decision in *Roe*.<sup>62</sup>

Extremists have used violence and other illegal tactics to further their goal of stopping abortion by reducing or eliminating access to abortion services for women, especially low-income women, women of color,

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<sup>59</sup> Carol Mason, *How Trumpism Fostered Anti-Choice Violence*, Ms. (Feb. 9, 2021), <https://bit.ly/3Bh9NaR>; Becca Andrews, *Long Before the Capitol Riot, Anti-Abortion Extremists Showed Us the Dangers of Inflammatory Propaganda*, Mother Jones (Jan. 14, 2021), <https://bit.ly/3BN1FBH>; Carter Sherman, *This Convicted Planned Parenthood Bomber was at the Capitol ‘Fighting’ for Trump*, Vice (Jan. 14, 2021, 3:30 PM), <https://bit.ly/2Vp8qI4>.

<sup>60</sup> Bobby Ross Jr. & Hamil R. Harris, *Flags, Faith and Fury*, Christian Chronicle (Jan. 13, 2021), <https://bit.ly/3mDpXr7>.

<sup>61</sup> Sherman, *supra* n. 59; Marais Jacou-Duffy, *From the Vault: Hebron Man Nabbed in National Planned Parenthood Bombing Schemes*, WCPO (Apr. 27, 2017, 6:00 AM), <https://bit.ly/3kk9eHH>.

<sup>62</sup> Ben A. Franklin, *Shot Fired Through Window of Blackmun Home*, N.Y. Times (Mar. 5, 1985), <https://nyti.ms/3jQzw4e>.

minors, and other marginalized groups. The violence has contributed to a substantial reduction in the number of clinics, as well as the number of physicians and other staff able and willing to perform abortions.<sup>63</sup> Many doctors trained to provide abortion care opt not to do so to avoid subjecting themselves to harassment and violence,<sup>64</sup> and other trained providers are leaving the practice due to the stress and burdens of living with the constant threat of violence.<sup>65</sup> As one provider explained, she stopped providing abortions altogether because she was attacked on the internet and “hunted down by protestors” who broke into her home and left dead animals.<sup>66</sup>

These experiences are echoed by many providers.<sup>67</sup> These providers report being followed to their homes by anti-abortion activists, such as in the case of a Philadelphia-based provider who moved several times and

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<sup>63</sup> See *Whole Woman’s Health v. Hellerstedt*, 136 S.Ct. 2292, 2312 (2016) (referencing an amicus brief explaining that “abortion facilities in Waco, San Angelo, and Midland no longer operate because Planned Parenthood is ‘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’”). See also Jacobson & Royer, *supra* n. 11, at 209.

<sup>64</sup> Lori Freedman, *Willing and Unable: Doctors’ Constraints in Abortion Care* 48–49 (2010).

<sup>65</sup> David S. Cohen & Krysten Connon, *Living in the Crosshairs: The Untold Stories of Anti-Abortion Terrorism* 270–71 (2015).

<sup>66</sup> Center for Reproductive Rights, *Defending Human Rights: Abortion Providers Facing Threats, Restrictions, and Harassment* 44 (2009), <https://bit.ly/3jnpwPO>.

<sup>67</sup> Cohen & Connon, *supra* n. 65, at 147-71.

was nevertheless found by extremists each time.<sup>68</sup> The provider reported being repeatedly told that the police could not do anything until the activists trespassed or became violent.<sup>69</sup> Providers have had to adjust other aspects of their lives to mitigate the risk of violence. For example, an operating room assistant at a North Dakota clinic recalled that federal agents taught her and her colleagues not to put on scrubs before entering the office, and to keep an eye on her mirrors while driving.<sup>70</sup> Many providers also maintain unlisted phone numbers, purchase properties and pay for utilities in a spouse or partner's name, rent cars and remove license plates, vary their route home each day, check into hotels under pseudonyms, and keep loaded guns and bulletproof vests nearby.<sup>71</sup> For these providers, the threat of violence is constant and they are mindful that they carry targets on their backs.

### **C. Violence Has Been Especially Successful in Reducing Access to Abortion Care in Mississippi.**

The use of violence and intimidation by anti-abortion activists in their quest to end abortion has been particularly effective in Mississippi, where the rise of anti-abortion violence has been accompanied by a significant decline in the availability of and access to

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<sup>68</sup> Center for Reproductive Rights, *supra* n. 66, at 44.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 94.

<sup>71</sup> *Id.* at 44.

abortion care. Today, Mississippi has only one abortion clinic in the entire state, Respondent Jackson Women’s Health, which continues to operate despite the ever-present threat of violence. Indeed, the history of Jackson Women’s Health shows the deep impact of violence on the provision of abortion services in America.

Following the Court’s decision in *Roe*, Mississippi experienced a rapid expansion of abortion services. The first clinic opened in 1975, and within only six years, the number of abortion providers operating in the state had risen to 14.<sup>72</sup>

The increase in the frequency and severity of anti-abortion violence and intimidation in the 1980s and 1990s, however, had an immediate impact.<sup>73</sup> The 1993 and 1994 murders of providers in nearby Pensacola, Florida were particularly impactful. Aside from the close physical proximity to Mississippi, grave safety concerns were raised due to connections between Paul Hill, the individual who committed the 1994 murder, and his “longtime friend” Roy McMillan, whose violent and threatening anti-abortion tactics were well known in Mississippi.<sup>74</sup> McMillan employed aggressive tactics targeting Mississippi abortion providers, which led him to be arrested more than sixty

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<sup>72</sup> Alicia Bacon, *This Clinic Stays Open: A Comprehensive History of Reproductive Rights in Mississippi, 1966-2015*, at 35 (May 2016) (Honors Thesis, University of Mississippi Sally McDonnell Barksdale Honors College), <https://bit.ly/3ArY9dl>.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 40, 47, 50; Belkin, *supra* n. 57.

times.<sup>75</sup> He openly espoused violence against providers, stating in a 1994 interview that it is “not a sin to go out and shoot an abortionist.”<sup>76</sup> He explained: “Whatever is biblically justifiable to protect the born child is biblically justifiable to protect the unborn child. I would warn people who are abortionists that there may very well be people out there willing to take the risks and make the sacrifices to do what is right.”<sup>77</sup> McMillan’s statements about the role of violence in ending abortion ultimately became the subject of an investigation by the U.S. Secret Service after he stated in an interview that the President of the United States was probably “in harm’s way” due to his position on abortion and that “[i]t would probably be to me more justifiable to assassinate the Supreme Court judges.”<sup>78</sup>

As anti-abortion violence and threats increased, Mississippi saw a sharp decline in access to and the provision of abortion services.<sup>79</sup> In 1981 there were 14 clinics providing abortion and reproductive health care in Mississippi.<sup>80</sup> By 1994, only one clinic remained open, with only a single physician, Dr. Joseph

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<sup>75</sup> Bacon, *supra* n. 72, at 49-50.

<sup>76</sup> Belkin, *supra* n. 57.

<sup>77</sup> *Id.*

<sup>78</sup> *Abortion Foe’s Assassination Quote Studied*, L.A. Times (Jan. 17, 1995, 12:00 AM), <https://lat.ms/3zoTzvY>.

<sup>79</sup> Bacon, *supra* n. 72, at 47-48.

<sup>80</sup> Kate Sheppard, *Inside Mississippi’s Last Abortion Clinic*, Mother Jones (Jan. 22, 2013), <https://bit.ly/38OWWRh>.

Booker, providing abortion care.<sup>81</sup> Because of this, the number of abortions performed in the state dropped significantly from 5,288 in 1985 to 3,440 in 1995.<sup>82</sup>

It was against this backdrop of increasing violence and reduced access to abortion care that Jackson Women's Health opened in 1995.<sup>83</sup> From the beginning, Jackson Women's Health struggled to find physicians willing to provide abortions largely due to their concern about the growing threat to their personal safety.<sup>84</sup> As Susan Hill, the founder of Jackson Women's Health explained, "there is such a level of harassment and discrimination around doctors providing abortion care that it makes it really difficult to find physicians that are brave enough and willing to provide care."<sup>85</sup> As a result, Jackson Women's Health found it necessary to begin flying physicians into Mississippi from out of state, at great expense.<sup>86</sup>

For Hill and others working to open the clinic, the threat of violence was ever-present. She explained:

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<sup>81</sup> Bacon, *supra* n. 72, at 48.

<sup>82</sup> *Id.* at 12, 20 (citing Shawn McIntosh, *State's Abortions Soared in Decade, Board Reports*, Jackson Daily News (Apr. 18, 1987); William Robert Johnson, *Historical Abortion Statistics, Mississippi (USA)*).

<sup>83</sup> *Id.* at 36-37.

<sup>84</sup> *Id.* at 42.

<sup>85</sup> Raney Aronson-Rath, *The Last Abortion Clinic*, PBS Frontline (Nov. 10, 2005), <https://to.pbs.org/3mFxTs4>.

<sup>86</sup> Bacon, *supra* n. 72, at 42, 44; Casey Parks, *No Apologies: Inside Mississippi's Pro-Life Movement*, Jackson Free Press (Sept. 28, 2005, 5:46 PM), <https://bit.ly/2XSsX8D>.

“We’re more careful than we used to be. We’ve had threats for years, violence against buildings, stalking of doctors. Now we take it more seriously.”<sup>87</sup> To address the threat of violence, Jackson Women’s Health received protection from federal marshals who were stationed in vans on each corner of the street upon the clinic’s opening.<sup>88</sup> The marshals eventually left, but the threat of violence remained.

For instance, the U.S. Department of Justice prosecuted Roy McMillan for threatening clinic staff and patients at Jackson Women’s Health, eventually leading to a consent decree that required McMillan to stay more than 25 feet away from the clinic and not use force or threaten to use force against clinic staff.<sup>89</sup> However, McMillan repeatedly violated this order, including by screaming death threats against clinic staff.<sup>90</sup> As a result, McMillan was held in contempt twice and ultimately ordered to stay 50 feet away from the clinic’s property line.<sup>91</sup>

McMillan and other extremists remained a constant presence outside the clinic, which experienced ongoing harassment and vandalism. The constant

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<sup>87</sup> Bacon, *supra* n. 72 at 41.

<sup>88</sup> *Id.*; Hill, *supra* n. 2.

<sup>89</sup> See *United States v. McMillan*, 53 F. Supp. 2d 895, 896 (S.D. Miss. 1999).

<sup>90</sup> See, e.g., *id.*; Order, *United States v. McMillan*, 95-cv-633 (S.D. Miss. Apr. 29, 2008); Rebecca Helmes, *Abortion Foe Must Stay at Least 50 Feet from Clinic*, *The Clarion Ledger*, Apr. 5, 2008, at 1, 13.

<sup>91</sup> *Id.*

harassment and specter of violence as a tool to end access to abortion continued even as Mississippi voters soundly rejected by a vote of 58 percent to 41 percent a proposed constitutional amendment that would have defined human life as beginning at the moment of fertilization.<sup>92</sup> In 2015, anti-abortion extremists severely vandalized the clinic and in July 2018, a state court entered an order instructing several anti-abortion extremists to stop following the clinic's medical director, Dr. Sacheen Carr-Ellis.<sup>93</sup> The clinic maintains a security presence and monitors on site due to the continued harassment experienced by its staff and patients.<sup>94</sup> The clinic regularly meets with the FBI to curb threats.<sup>95</sup> Because of the frequency of threats and intimidation, the clinic to this day has no doctors who reside in the state.<sup>96</sup>

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<sup>92</sup> Frank James, *Mississippi Voters Reject Personhood Amendment by Wide Margin*, NPR (Nov. 8, 2011, 11:28 PM), <https://n.pr/2WYQK6q>.

<sup>93</sup> Order, *City of Jackson, v. Coleman Boyd*, Case Nos. 2018-180318, 2018-183450, 2018-180318C, 18-183450B, 18180318B, 18180318A (Hinds Cty. Mun. Ct. July 29, 2019).

<sup>94</sup> Gabriella Borter, *Mississippi's 'Pink House' Becomes Ground Zero in U.S. Abortion Battle*, Reuters (May 24, 2021, 5:24 AM), <https://reut.rs/3lCuFTR>.

<sup>95</sup> Zoë Beery, *What Abortion Access Looks Like in Mississippi: One Person at a Time*, N.Y. Times (June 13, 2019), <https://nyti.ms/3zofS3U>.

<sup>96</sup> Emily Wagster Pettus, *Mississippi's Last Abortion Clinic at Center of US Debate*, The Associated Press (May 24, 2021), <https://bit.ly/3zlUZGK>.

**II. Overturning *Roe* and *Casey* or Otherwise Curtailing the Court’s Precedents on the Constitutional Right to Abortion in the Face of This Notorious History of Violence Would Undermine the Rule of Law and Damage the Court.**

The State ignores this long record of violence and threats directed against abortion providers and their patients. Portraying disagreements about abortion as a mere civil “controversy,” the State maintains that this “controversy” justifies overturning *Roe* and *Casey* or restricting the constitutional right to abortion as it has been recognized by this Court, even arguing that the Court’s failure to do so would damage its legitimacy.<sup>97</sup>

The opposite is true. The real damage to the Court would arise from overturning *Roe* and *Casey* or curtailing precedent to restrict the well-established constitutional right to abortion in the face of this violent history. The State’s appeal to the Court to disregard well-established precedent because of claims about public opinion conflicts with the Court’s role as an impartial arbiter.<sup>98</sup> The risk is particularly acute here, where the State has far from satisfied its burden to demonstrate a “compelling reason to reexamine a watershed decision.”<sup>99</sup>

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<sup>97</sup> State Br. at 23–27.

<sup>98</sup> See State Br. at 26.

<sup>99</sup> *Casey*, 505 U.S. at 867; see Ariel Edwards, *Most Americans Want to See the Supreme Court Uphold Roe v. Wade, Polling*

Overturning the right to pre-viability abortion created under *Roe* and confirmed under *Casey* and subsequent precedents must be analyzed through the lens of the importance of respecting the rule of law. As the Court has stated, “[t]he obligation to follow precedent begins with necessity, and . . . no judicial system could do society’s work if it eyed each issue afresh in every case that raised it.”<sup>100</sup> Indeed, the Court’s legitimacy would fade in light of “the frequency of [the Court’s] vacillation.”<sup>101</sup>

Such a dramatic departure from precedent that has stood for nearly fifty years and on which millions of people have relied would necessarily cause people to consider the circumstances that led to it.<sup>102</sup> Particularly here, where the State itself acknowledges that abortion “is one of the most contentious and controversial [issues] in contemporary American society,”<sup>103</sup> a departure from well-established precedent will prompt a searching inquiry into the reasons for the Court’s action, however explained.

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*Shows*, CNN (May 17, 2021, 7:45 PM), <https://cnn.it/3zmKzGT> (citing polling that, in fact, fewer than 30% of registered voters want the Court to overturn *Roe*).

<sup>100</sup> *Id.* at 854.

<sup>101</sup> *Id.* at 866.

<sup>102</sup> While recipients of abortion care services are predominantly women, people of all gender identities may become pregnant and seek abortion care. See *Reprod. Health Servs. v. Strange*, 3 F.4th 1240, 1246 n.2 (11th Cir. 2021).

<sup>103</sup> State Br. at 23–24 (citing *Stenberg v. Carhart*, 530 U.S. 914, 947 (2000) (O’Connor, J., concurring)).

Were this Court to overrule *Roe* or otherwise revise its abortion precedents, many Americans would undoubtedly focus on the long and prominent history of violence against providers, as they searched for answers to these questions. Despite the State's attempt to disregard this history, members of the public—especially those directly impacted by the Court's decision—will view the Court's decision through this lens. The violence that comprises such a prominent part of the post-*Roe* history of abortion will not be disregarded, nor will it be ignored by the violent minority who will reach the conclusion that political violence works.

Indeed, there is a real risk that overturning *Roe* and *Casey* would further embolden extremists to engage in violence to end abortion in the United States. While some states would ban all or nearly all abortions if *Roe* and *Casey* were overturned, abortions would continue to be performed in many other states, and there is little question that providers in those states would remain targets of violence.<sup>104</sup> After all, extremist violence has not been confined to those jurisdictions that would be expected to curtail abortion rights if *Roe* and *Casey* were overturned: six of the murders committed by anti-abortion extremists occurred in jurisdictions—Colorado, Massachusetts, and New York—that would likely preserve access to abortion.

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<sup>104</sup> Quoc Trung Bui, Claire Cain Miller & Margot Sanger-Katz, *What Happens if Roe v. Wade is Overturned?*, N.Y. Times (Oct. 15, 2020), <https://nyti.ms/3i5lsTl>.

In light of the violent history of abortion in America, the State’s proposed justification for overturning *Roe* and *Casey* or limiting abortion rights by reference to a sanitized version of the “controversy” over abortion would create the appearance that violence can be employed by a vocal minority to feed a “controversy” to justify a change in well-established Supreme Court precedent. Such an appearance would undermine “the country’s belief in the Court’s good faith” and inflict great damage on the Court’s legitimacy.<sup>105</sup> The damage, however, would extend beyond the Supreme Court to the rule of law more generally, as it would be interpreted by some as legitimizing violence as a means to accomplish political goals. Especially following the violent siege on the U.S. Capitol on January 6, 2021, it is critical that this Court not do anything that might be interpreted as undermining the bedrock principle that violence has no place in our political discourse.

The State’s argument that the “controversy” over abortion justifies overturning *Roe* and *Casey* is particularly misplaced, as the Court’s prior decisions make clear that it did not expect its jurisprudence to lead to consensus on the issue of abortion. In *Casey*, the Court acknowledged that “[s]ome cost will be paid by anyone who approves or implements a constitutional decision where it is unpopular, or who refuses to work to undermine the decision or to force its reversal.”<sup>106</sup> While “[t]he price may be criticism or ostracism,” the

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<sup>105</sup> *Casey*, 505 U.S. at 866.

<sup>106</sup> *Id.* at 867.

Court also pointed out that “it may be violence.”<sup>107</sup> There, the Court expressly rejected calls to “overrule under fire,”<sup>108</sup> and cited its own precedent to emphasize that constitutional principles “cannot be allowed to yield simply because of disagreement with them.”<sup>109</sup> To overrule *Roe* or limit this Court’s precedent in the face of the violence documented by this brief would do just that.

### CONCLUSION

Overturning *Roe* and *Casey* or curtailing the constitutional right to abortion as it has long been established in this Court’s precedents because of the “controversy” surrounding abortion rights would, whatever the Court intends or says, be perceived as rewarding anti-abortion extremists’ violent acts and would undermine the rule of law. In *Casey*, the Court refused to overrule a landmark precedent under threat of violence. It should not do so a generation later, with even more anti-abortion violence an undeniable part of our Nation’s history. The Court should reject the State’s call to curtail or overturn *Roe* and uphold its well-established precedent safeguarding women’s constitutional rights.

Respectfully submitted,

John E. Hall  
*Counsel of Record*

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<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* (citing *Brown v. Bd. of Educ.*, 349 U.S. 294, 300 (1955)).

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David M. Zions  
Elizabeth A. Saxe  
Kate Thompson  
Molly Doggett  
Marisa Tashman  
Megan C. Keenan  
COVINGTON & BURLING LLP  
One CityCenter  
850 Tenth Street NW  
Washington, DC 20001  
(202) 662-6000  
jhall@cov.com  
*Counsel for Amici Curiae*

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