

Nos. 21-16645, 21-16711

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ISAACSON, ET AL.,

*Plaintiffs-Appellees/Cross-
Appellants,*

V.

BRNOVICH, ET AL.,

*Defendants-Appellants/Cross-
Appellees.*

**On Appeal from the United States District Court
for the District of Arizona**

No. 2:21-cv-1417

Hon. Douglas L. Rayes, Judge

**BRIEF OF THE STATES OF CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS, MAINE,
MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA,
NEW JERSEY, NEW MEXICO, NEW YORK, OREGON,
PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA,
WASHINGTON, WISCONSIN, AND THE DISTRICT OF COLUMBIA AS
AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES AND
AFFIRMANCE**

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INTERESTS OF AMICI CURIAE

Amici States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, Wisconsin, and the District of Columbia submit this brief, pursuant to Federal Rule of Appellate Procedure 29(a)(2), in support of plaintiffs-appellees. Arizona Senate Bill (S.B.) 1457 authorizes a Reason Ban that threatens the health and welfare of Amici States' residents who may need access to reproductive healthcare while visiting, studying, or working in Arizona.¹ Amici States thus have a significant interest in this appeal. Amici States also have an interest in ensuring that all physicians, including those licensed in Amici States who practice medicine in Arizona, are permitted to provide services consistent

¹ In 2018, more than 3,000 first-time freshmen from California enrolled in Arizona State University, the University of Arizona, and the Northern Arizona University. *California Students Flocking to Universities in Arizona*, Associated Press (July 28, 2018), <https://apnews.com/article/dacb65dd76dc44db87d353f838e43295>. In 2020, Californians accounted for 17 percent of overnight trips to Arizona. Ariz. Off. of Tourism, *Travel USA Visitor Profile* (2020), <https://tinyurl.com/AZtourism>. And a 2011 American Community Survey, the latest report available, found that 21,652 workers in Arizona live in different or neighboring states. U.S. Census Bureau, *Out-of-State and Long Commutes: 2011, American Community Survey Reports*, at 10 & tbl. 6 (Feb. 2013), <https://tinyurl.com/censustravel>.

with professional standards of care.² Further, Amici States can predictably expect that Arizona’s Reason Ban will force Arizonians to seek abortion care elsewhere, including in many of our States, and that influx could potentially strain the healthcare systems of the Amici States.³ *See Norton v. Ashcroft*, 298 F.3d 547, 558 (6th Cir. 2002) (citing Congressional findings that “patients must often travel interstate to obtain reproductive health services”).

² *See* ER 2-274, Decl. of Paul Isaacson ¶ 2 (reflecting that physicians licensed in Nevada practice in Arizona).

³ A recent Guttmacher Report on the impact of abortion bans estimates there could be almost a 3,000% increase in people who “may drive to California for abortion care” each year, including up to 1.3 million women who will come from Arizona. Guttmacher Inst., *If Roe v. Wade Falls: Travel Distance for People Seeking Abortion*, <https://states.guttmacher.org/#california> (last visited Dec. 27, 2021). Indeed, clinics in nearby Amici States have already experienced a significant spike in the percentage of patients travelling from Texas for abortion care, as a result of similarly restrictive abortion laws, such as Texas’ Senate Bill 8. *United States v. Texas*, No. 1:21-CV-796-RP, 2021 WL 4593319, at *43-46 (W.D. Tex. Oct. 6, 2021) (Texas patients have accounted for close to a third of the total abortion patients in New Mexico), *cert. granted before judgment*, 142 S. Ct. 14 (2021), *cert. dismissed*, 2021 U.S. LEXIS 6143 (Dec. 10, 2021); *see also* Shefali Luthra, *After the Texas Abortion Ban, Clinics in Nearby States Brace for Demand*, *The Guardian* (Sept. 2, 2021), <https://tinyurl.com/guardianSB8>. As states like Arizona continue to ban abortion, providers in Amici States anticipate even greater demand for their services. *See also* Becky Sullivan, *21 States Poised to Ban or Severely Restrict Abortion if ‘Roe v. Wade’ is Overturned*, *Nat’l Public Radio* (Dec. 02, 2021), <https://www.npr.org/2021/12/02/1061015753/abortion-roe-v-wade-trigger-laws-mississippi-jacksons-womens-health-organization> (“In states across the South and Midwest, [abortion restrictions] would force people who have the means to travel to a place where abortion remains legal.”).

INTRODUCTION

Nearly half a century of experience with the Supreme Court’s precedents protecting access to basic abortion services has confirmed that reproductive healthcare gives women⁴ the “ability to control their reproductive lives,” allowing them “to participate equally in the economic and social life of the Nation.”

Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 856 (1992) (plurality op.); *see also Roe v. Wade*, 410 U.S. 113, 153 (1973). Nonetheless, Arizona enacted S.B. 1457 in April 2021 seeking to ban all abortions sought after a diagnosis of a genetic abnormality (a ban commonly known as the “Reason Ban”). Specifically, the Reason Ban makes it a felony to perform an abortion “knowing that the abortion is sought solely because of a genetic abnormality” and to “solicit[] or accept[] monies to finance . . . an abortion because of a genetic abnormality.” Ariz. Rev. Stat. Ann. § 13-3603.02(A)(2), (B)(2). Because Arizona’s Reason Ban prohibits women from exercising their right to obtain an abortion before viability, it is plainly unconstitutional. *Roe*, 410 U.S. at 163; *Casey*, 505 U.S. at 860.

To be sure, States play an essential role in promoting the health of pregnant individuals, protecting fetal health, and maintaining the integrity of the medical profession that ultimately improves the health of women and their children. But

⁴ Amici States acknowledge that menstruating persons who do not identify as women may also become pregnant and require access to critical abortion care. Amici States support all pregnant persons’ right to pre-viability abortion care.

restrictive laws like Arizona’s Reason Ban do not advance those interests; the laws instead increase a woman’s risk of poorer health outcomes, including maternal mortality, and exacerbate disparities in access to care, especially for low-income women and women of color in the State. Such laws not only ignore the myriad ways that States may promote interests in fetal life and children born with “genetic abnormalities” but also run counter to standards of care established by medical professionals. In Amici States’ experience, the dignity of all persons is also equally maintained—without the need for a Reason Ban—through a State’s commitment to protecting against discrimination on the basis of disability. Further, Amici States are able to protect the integrity of the medical profession by ensuring that women facing reproductive choices are not provided outdated information, or harmful stereotypes, about fetal abnormalities and that the information is provided in a manner consistent with the States’ constitutional obligation to protect women’s reproductive rights. Amici States’ experience demonstrates that States can dispel discriminatory views about persons with disabilities without undermining women’s constitutional right to access pre-viability abortion. Amici States thus support plaintiffs-appellees in challenging Arizona’s Reason Ban.

ARGUMENT

I. ARIZONA’S REASON BAN, PROHIBITING PRE-VIABILITY ABORTION IN CASES OF FETAL ABNORMALITIES, IS UNCONSTITUTIONAL

The Supreme Court recognized in *Roe* that women have a constitutional right to choose an abortion before viability. *Roe v. Wade*, 410 U.S. 113, 163 (1973). In 1992, the Court reaffirmed this “essential holding,” establishing that before viability, “the State’s interests are not strong enough to support a prohibition of abortion.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846 (1992) (plurality op.). Since then, the Supreme Court and this Court have repeatedly made clear that, “[b]efore viability, a State may not prohibit any woman from making the ultimate decision to terminate [their] pregnancy.” *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007); *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292, 2320 (2016); *June Med. Servs. L. L. C. v. Russo*, 140 S. Ct. 2103, 2135 (2020) (Roberts, J., concurring) (“*Casey* reaffirmed ‘the most central principle of *Roe v. Wade*,’ a woman’s right to terminate her pregnancy before viability”); *Isaacson v. Horne*, 716 F.3d 1213, 1222 (9th Cir. 2013) (20-week ban unconstitutional) (the right recognized by *Roe* and reaffirmed by *Casey* is “the woman’s right to make the ultimate decision”), *cert. denied*, 571 U.S. 1127 (2014); *McCormack v. Hiedeman*, 694 F.3d 1004, 1015 (9th Cir. 2012); *Planned Parenthood of Idaho*,

Inc. v. Wasden, 376 F.3d 908, 921 (9th Cir. 2004); *Guam Soc. of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1373 (9th Cir. 1992).⁵

Arizona’s Reason Ban violates this controlling precedent. The Ban prohibits women in Arizona from obtaining a pre-viability abortion if the abortion is sought because of a diagnosis of a fetal condition or abnormality. Arizona maintains that its Reason Ban is merely an “*anti-discrimination* law with respect to pre-viability abortions,” intended to protect the disability community. Appellants Opening Br. (“AOB”) at 28 (emphasis in original). Arizona also asserts that the Ban “protects Arizona citizens from coercive medical practices ‘that encourage selective abortions of persons with genetic abnormalities’” and “the integrity and ethics of the medical profession.” *Id.* at 18 (quoting S.B. 1457 § 15). Regardless of Arizona’s justifications, Supreme Court precedent recognizes that prior to viability the State’s interests are not strong enough to support a prohibition on abortion. *Casey*, 505 U.S. at 846. Indeed, controlling precedent in this Court recognizes that a pre-viability abortion ban that includes an emergency health exception, but does not allow for abortions “in cases of fetal anomaly,” is unconstitutional because it “operate[s] as a complete bar to the rights of some women to choose to terminate

⁵ See also *Jackson Women’s Health Org. v. Dobbs*, 945 F.3d 265, 271-274 (5th Cir. 2019) (15-week abortion ban unconstitutional); *Jane L. v. Bangerter*, 102 F.3d 1112, 1114, 1117-18 (10th Cir. 1996) (22-week (equivalent) ban unconstitutional).

their pregnancies before the fetus is viable.” *Isaacson v. Horne*, 716 F.3d 1213, 1228 (9th Cir. 2013). Arizona may disagree with that precedent, but it offers no basis for this Court to overrule another panel’s holding. Indeed, Missouri and sixteen other States writing in support of Arizona appear to concede that the Reason Ban is effectively a “prohibition” on the reason “one might seek an abortion.” Br. of Missouri et al. as Amicus Curiae at 28-29, Nov. 22, 2021, ECF No. 24. Given this binding authority, this Court should affirm the district court’s order preliminarily enjoining the Reason Ban.⁶ *See also Little Rock Family Planning Servs. v. Rutledge*, 397 F. Supp. 3d 1213, 1271-72 (E.D. Ark. 2019), *aff’d in part, appeal dismissed in part and remanded*, 984 F.3d 682 (8th Cir. 2021) (holding that a Reason Ban, including on the basis of disability, is an unconstitutional ban on pre-viability abortion), *petition for cert. filed*, No. 20-1434 (Apr. 13, 2021); *Planned Parenthood of Ind. and Ky., Inc. v. Comm’r of Ind. State Dep’t of Health*, 888 F.3d 300, 306-07 (7th Cir. 2018), *cert. granted in part*,

⁶ The district court concluded that the Reason Ban was a regulatory restriction on pre-viability abortion and, under the undue burden framework, held that the Ban was unconstitutional. ER 1-19. But, as Plaintiffs discussed, the Reason Ban is an out-right ban on all pre-viability abortions where a diagnosis of fetal abnormality exists, and as such, Amici States disagree with the district court’s reasoning but agree with its conclusion that the Reason Ban is unconstitutional. Even if the Reason Ban did not constitute a ban on pre-viability ban on abortions, the Amici States agree that the law imposes an undue burden for the reasons the district court described.

judgment rev'd on other grounds sub. nom. Box v. Planned Parenthood of Ind. & Ky., Inc., 139 S. Ct. 1780 (2019).

II. DISPELLING DISCRIMINATORY VIEWS ABOUT PERSONS WITH DISABILITIES NEED NOT COME AT THE EXPENSE OF WOMEN'S REPRODUCTIVE RIGHTS

Amici States agree with Arizona that States have a strong interest in combatting discrimination against persons living with disabilities, AOB at 14, and that it is important for States to work to dispel outdated and harmful views about disabilities and to facilitate the achievements of people like “Mr. Stephens, who was born with Down syndrome.” AOB at 1. But these important interests are not incompatible with protecting reproductive autonomy. States may promote such interests while guarding the constitutional right to pre-viability abortions.

Indeed, Amici States have identified a range of options to further an interest in dispelling discriminatory views about fetal abnormalities without infringing on women's constitutional rights. Those opportunities include providing accurate and non-biased information about fetal abnormalities, enforcing anti-discrimination laws, and providing supportive services for individuals living with disabilities and their families. Protecting individuals with disabilities while simultaneously guarding access to reproductive healthcare advances fundamental principles of autonomy and self-determination.

A. States Have a Range of Tools to Provide Accurate, Non-Discriminatory Information About Genetic Abnormalities and Developmental Disabilities

Arizona contends that the district court’s preliminary injunction leaves the State powerless to remedy alleged discrimination and misinformation about disabilities. AOB at 4, 65. That is incorrect. States can, and do, promote the provision of medically accurate, unbiased information to allow women to make informed reproductive choices. States can also support those living with developmental disabilities and their families by providing (and publicizing) civil rights protections and delivering social and medical services. These efforts combat discrimination, reduce bias among doctors and patients, and protect individuals with disabilities and their families without infringing on women’s reproductive autonomy.

Pro-Information Laws

The federal government and several States have enacted “pro-information” legislation to ensure that women receive accurate, evidence-based information about a disability when receiving a prenatal or postnatal diagnosis. These pro-information laws circulate non-biased information to dispel discriminatory stereotypes and prejudices regarding individuals with disabilities, such as Down syndrome, within both the medical profession and society at large. At the same

time, such legislation leaves women with the ultimate decision about whether to terminate a pre-viability pregnancy.

For example, in 2008, Congress passed the Prenatally and Postnatally Diagnosed Conditions Awareness Act, which seeks to “coordinate the provision of, and access to, new or existing supportive services for patients receiving a positive diagnosis for Down syndrome.” 42 U.S.C. § 280g-8(b)(1)(B). The law supports the expansion of the national information and referral center, called the National Dissemination Center for Children with Disabilities, that provides peer-support programs, adoption registries, awareness and education programs for healthcare providers, and the dissemination of information relating to Down syndrome and other prenatally or postnatally diagnosed conditions. 42 U.S.C. § 280g-8(b)(1)(B)(i)-(v).

Many States have passed their own pro-information laws. *See* 16 Del. Code § 801B; 410 Ill. Comp. Stat. 511; Mass. Gen. Laws Ann. ch. 111, § 70H(b); Md. Code, Health-Gen. § 20-1501-1502; Minn. Stat. § 145.471; N.J. Stat. Ann. §§ 26:2-194, 26:2-195; 35 Pa. Stat. §§ 6241-6244; Va. Code § 54.1-2403.01(B). These laws impose an obligation on medical facilities or attending health providers to maintain up-to-date, evidence-based information about developmental disabilities, including unbiased material on the outcomes, life expectancy, development, and treatment options for those living with disabilities. The laws

make this information available to those who receive a prenatal indication of conditions such as Down syndrome. And the laws help healthcare providers transmit accurate, non-stigmatizing information, while leaving the ultimate decision of whether to terminate a pregnancy to the pregnant woman. Arizona has enacted no such pro-information legislation, however.⁷

The leading human rights organization for individuals with Down syndrome, the National Down Syndrome Society (NDSS), supports pro-information laws.⁸ NDSS explains that as a threshold matter, the decision “[w]hether to undergo prenatal testing must be solely that of the pregnant woman.”⁹ Once a woman decides to undergo prenatal testing, that testing “should be made available to any pregnant woman” because “[k]nowing in advance either the risk or diagnosis of Down syndrome can help parents educate, inform and prepare themselves for all issues regarding this genetic condition.”¹⁰ Furthermore, “[i]t is important that

⁷ See Nat’l Down Syndrome Soc’y, *Pro-Information Laws & Toolkit* (as of January 2021), <https://www.ndss.org/programs/ndss-legislative-agenda/healthcare-research/pro-information-laws-toolkit/> (last visited Dec. 27, 2021).

⁸ *Id.*

⁹ Nat’l Down Syndrome Soc’y, *NDSS Position Statement on Prenatal Testing*, <https://www.ndss.org/wp-content/uploads/2018/06/NDSS-Position-Statement-on-Prenatal-Testing.pdf>; see also Nat’l Down Syndrome Soc’y, *A Promising Future Together: A Guide for New and Expectant Parents* at 7 (2015), <https://ardownsyndrome.org/wp-content/uploads/2018/02/NDSS-NPP-English.pdf>.

¹⁰ *NDSS Position Statement*, *supra*, note 9.

[families] receive accurate information and understand all [] options.”¹¹ Upon learning about a diagnosis, some families begin “mak[ing] preparations (like informing other family members and doing research on Down syndrome) prior to the birth,” while other parents “make arrangements for adoption,” or plan to “discontinue their pregnancy.”¹²

Anti-Discrimination and Other Civil Rights Laws

Anti-discrimination laws and other civil rights laws enable States to provide legal protection to individuals living with disabilities and to fulfill the expressive function of law with a message of inclusion and respect. As Arizona observes, *see* AOB at 8, federal laws have been enacted to provide protections against discrimination for individuals with disabilities, including the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* Legislation like the landmark Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. § 15001 *et seq.*, has helped society have “greater faith in the competencies of citizens with [disabilities]” and now “these citizens and their

¹¹ *A Promising Future Together*, *supra*, note 9.

¹² *Id.*; *see also NDSS Position Statement*, *supra*, note 9 (after diagnostic testing, “[a]ll women, regardless of age, reproductive history or disability statutes, must be given the absolute right to continue a pregnancy”).

families have higher expectations about the types of lives they will lead.”¹³ States can—and many do—choose to enact similar protections under State law.¹⁴

State Supportive Services

¹³ Nat’l Council on Disabilities, *Exploring New Paradigms for the Developmental Disabilities Assistance and Bill of Rights Act: Supplement to the 2011 NCD Publication Rising Expectations: The Developmental Disabilities Act Revisited* at 10 (2012), available at https://permanent.fdlp.gov/gpo36631/NCD_Paradigms_Mar26FIN%5b1%5d.pdf.

¹⁴ See, e.g., Cal. Gov’t Code §§ 12940, 12955 (prohibiting discrimination against individuals with disabilities in employment and housing); Cal. Civ. Code §§ 51, 54.1 (mandating persons with disabilities have “full and equal access” to public accommodations); Conn. Gen. Stat. §§ 46a-60, 46a-64, 46a-64c, 46a-70, 46a-76 (prohibiting discrimination based on intellectual disability in employment, public accommodations, housing, and state agency activities); 775 Ill. Comp. Stat. 5/1-102 (prohibiting discrimination against individuals living with disabilities in “employment, real estate transactions, access to financial credit, and the availability of public accommodations”); N.Y. Exec. Law §§ 291 (defining as a civil right the opportunity to obtain employment, education, housing, access to public accommodations without discrimination on the basis of disability), 296 (prohibiting discrimination on basis of disability in employment and public accommodations); Mass. Gen. Laws ch. 93, § 103 (protecting the right to equal participation in any program or activity within the commonwealth); Mass. Gen. Laws ch. 151B, § 4 (prohibiting discrimination in employment and housing); N.J. S.A. § 10:5-5 *et seq.* (providing protections against discrimination in public accommodations, employment, housing, etc.); Or. Rev. Stat. § 659A.1112 (protecting persons with developmental disabilities from employment discrimination); 43 Pa. Stat. §§ 951-963; Va. Code § 51.5-1 (establishing state policy and rights of individuals with disabilities).

States can reduce bias and support individuals with developmental disabilities and their families by offering supportive medical and social services.¹⁵ For example, California contracts with twenty-one nonprofit regional centers to provide services for those living with developmental disabilities, ranging from diagnosis and counseling, to advocacy, family support, and planning care.¹⁶ These regional centers provide in-home respite care, as well as non-medical services that relieve families from providing constant care to a loved one with a developmental disability.¹⁷ Connecticut's Department of Social Services helps individuals with developmental disabilities live in the community through a variety of community-based residential facilities and has established a Community Residential Facility Revolving Loan Fund to construct and renovate community residences, provide supportive employment programs, and fund day care programs, recreational programs, and other services.¹⁸ Additionally, many States' Medicaid programs

¹⁵ Sujatha Jesudason & Julia Epstein, *The Paradox of Disability in Abortion Debates: Bringing the Pro-Choice and Disability Rights Communities Together*, 84 *Contraception* 541, 541-43 (2011), <https://tinyurl.com/Paradox-of-Disability>.

¹⁶ Cal. Dep't of Developmental Servs., *Regional Centers, Services Provided by Regional Centers*, <https://www.dds.ca.gov/rc/> (last visited Dec. 27, 2021).

¹⁷ Cal. Dep't of Developmental Servs., *Support Services*, <https://www.dds.ca.gov/general/eligibility/support-services/> (last visited Dec. 27, 2021).

¹⁸ Conn. Gen. Stat. §§ 17a-217, 218, 219b, 221, 226.

offer home- and community-based services for persons with developmental disabilities.¹⁹ These services, which include access to skilled nurses, chore services, vehicle adaptations, and therapy, allow those living with developmental disabilities to lead independent, productive lives.²⁰ *See e.g., Ball v. Rodgers*, 492 F.3d 1094, 1099 (9th Cir. 2007) (recognizing that Arizona’s Medicaid programs “make relatively independent lives possible for individuals who, medically speaking, are well enough that they do not require hospitalization or other forms of twenty-four-hour care”); *see also Ball v. Kasich*, 307 F. Supp. 3d 701, 707-08 (S.D. Ohio 2018) (observing that States’ shift in focus and funding toward

¹⁹ *See, e.g., Cal. Dep’t of Health Care Servs., Home and Community-Based Services Waiver for the Developmentally Disabled (HCBS-DD)*, <https://tinyurl.com/yy74h6u7> (last updated Mar. 3, 2021); *Ill. Dep’t of Hum. Servs., Home-Based Support Services Overview*, <http://bit.ly/3nzsKzm> (last visited Dec. 27, 2021); *Mass. Dep’t of Developmental Servs.*, <https://tinyurl.com/y8e4lvaf> (last visited Dec. 27, 2021); *see also N.M. Stat. Ann. § 28-16A-1 et seq.* (charging the Department of Health to establish a Developmental Disabilities Planning Counsel to oversee provision of community-based services for people with developmental disabilities); *N.Y. Dep’t of Health, Home and Community-Based Services (HCBS) Waiver for Persons, Including Children, with Mental Retardation and/or Developmental Disabilities*, <https://tinyurl.com/y23hflvf> (last visited Dec. 27, 2021); *Pa. Dep’t Hum. Servs., Pennsylvania’s Medicaid Waivers for Intellectual Disabilities Supports and Services*, <https://tinyurl.com/y6dzwonk> (last visited Dec. 27, 2021); *Wash. State Dep’t of Soc. & Health Servs., Developmental Disabilities Admin.*, <https://www.dshs.wa.gov/dda> (last visited Dec. 27, 2021).

²⁰ *Id.*; *see also N.J. S.A. § 30:6D-12.1 et seq.* (providing self-directed support services for persons with developmental disabilities).

community-based services have led to increased satisfaction among individuals with intellectual and developmental disabilities and their families).

Many States provide additional services specifically tailored to support new or expectant parents of a child living with a disability. For example, Massachusetts' Down Syndrome Congress is a statewide resource for Down syndrome information, advocacy, and networking.²¹ In addition to free resources, information, and training for future parents, health professionals, educators, and the community at large, it also offers the "Parents' First Call Program," which connects new or expectant parents with a diagnosis of Down syndrome with others who have had similar life experiences.²²

Additional State Tools

In addition to enacting pro-information laws and offering direct service programs, States have other tools to support families with children diagnosed with a disability, to dispel outdated stereotypes and discrimination and to protect and improve the lives of persons living with developmental disabilities. Since 1945, the nation has recognized October as National Disability Employment Awareness

²¹ Mass.gov, *Understand Your Pediatric Patient's Down Syndrome Diagnosis*, <https://tinyurl.com/y6l5tyrf> (last visited Dec. 27, 2021); *see also* Wash. State Dep't of Health, *Down Syndrome: Information for Parents Who Have Received a Pre- or Postnatal Diagnosis of Down Syndrome*, <https://tinyurl.com/y6zkt48j> (last visited Dec. 27, 2021).

²² *Id.*

Month, and several Amici States host events throughout the month to recognize and celebrate the many contributions of people with disabilities in the workforce. In California, the Department of Rehabilitation hosts an online panel discussion that focuses on “Increasing Opportunities and Access” to employment within state service.²³ These panels provide employers with strategies to increase the diversity within department applicant pools and to meet varied recruitment needs. These workshops also offer discussions on equity and inclusion of individuals living with disabilities, address the benefits of hiring individuals with disabilities, focus on myth-busting, and provide access to programs to support managers seeking to gain greater diversity and inclusion in their teams.

The States of Illinois, New York, Oregon, and Washington offer similar campaigns to promote Disability Awareness Month.²⁴ States like Illinois have also

²³ Cal. Dep’t of Rehab., *National Disability Employment Awareness Month 2021*, <https://www.dor.ca.gov/Home/NDEAM2021> (last visited Dec. 27, 2021).

²⁴ Ill. Dep’t of Hum. Servs., *October is National Disability Employment Awareness Month* (2020), [https://www.dhs.state.il.us/page.aspx?item=80676#:~:text=IDHS%3A%20October%20is%20National%20Disability%20Employment%20Awareness%20Month](https://www.dhs.state.il.us/page.aspx?item=80676#:~:text=IDHS%3A%20October%20is%20National%20Disability%20Employment%20Awareness%20Month;); Governor of N.Y. State, *Governor Hochul Issues Proclamation Declaring October Disability Employment Awareness Month*, <https://tinyurl.com/NYGovDisabilityawareness> (last visited Dec. 27, 2021); Angela Yeager, *Governor Kate Brown has proclaimed October National Disability Employment Awareness Month*, My Oregon News (Oct. 1, 2021), <https://tinyurl.com/ORdisabilityawareness>; Wash. State Leg., *Disability History*

adopted resolutions to raise additional disability awareness statewide.²⁵ Oregon’s Office on Disability and Health “collaborate[s] with disability communities, public health entities, healthcare systems, and community-based organizations to prioritize access and equity throughout [the State].”²⁶ And New York’s Center for Independence of the Disabled “offers a series of disability awareness trainings tailored for corporations, service providers, government agencies, and other organizations that work with or provide services to people with disabilities.”²⁷ None of these efforts infringe on women’s constitutionally-protected reproductive rights.

B. Eliminating Disability Discrimination and Stereotypes and Protecting Women’s Access to Reproductive Healthcare Are Complementary Objectives

The disability justice and women’s reproductive rights movements share important values. Both rest on the universal human rights principles of “bodily autonomy,” self-determination, and “the right of each person to make their own

Month, <https://app.leg.wa.gov/rcw/default.aspx?cite=28A.230.158> (celebrating disability history and awareness).

²⁵ H.R. 205, 102nd Gen. Assemb., Reg. Sess. (Ill. 2021), available at <https://tinyurl.com/ILLeg>.

²⁶ Or. Off. on Disability & Health, *About Us*, <https://tinyurl.com/ORdisability> (last visited Dec. 27, 2021).

²⁷ NY Connects, *Program Disability Awareness Training*, <https://tinyurl.com/NYdisability-training> (last updated Aug. 03, 2020).

health care decisions,” including a “share[d] an understanding that these are deeply connected to dignity and equality.”²⁸ Both seek to remove barriers to full participation in society and to challenge structural inequalities.²⁹ There is no conflict between these objectives.

Amici States share Arizona’s goal of protecting the autonomy and dignity of individuals living with developmental disabilities, eliminating outdated information about what it means to live with a developmental disability, providing support to families raising children with such disabilities, and ensuring that adults living with such disabilities are valued and included in society. But “forc[ing] women to bear children with disabilities (when they do not want to do so) will fail to solve . . . broader stigma, and may even be counterproductive.”³⁰ These concerns were echoed by disability rights leaders who joined an amicus brief in *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of Ind. State Dep’t of Health*,

²⁸ Nat’l P’ship for Women & Families, *Access, Autonomy, and Dignity: Abortion Care for People with Disabilities* at 2 (Sept. 2021), <https://www.nationalpartnership.org/our-work/resources/repro/repro-disability-abortion.pdf>.

²⁹ *Id.*

³⁰ Samuel R. Bagenstos, *Disability, Life, Death, and Choice*, 29 Harv. J. of L & Gender 425, 441, 457-58 (2006), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=814364.

opposing an Indiana law similar to Arizona’s ban.³¹ These leaders rejected the argument that State abortion bans are ethically necessary, arguing instead that ensuring the right to choose “empowers women and families who make the affirmative choice to see a pregnancy through to term” and “provides the greatest assurance that the mother and her family will be able to create and maintain an environment in which a disabled child is likely to thrive.”³² And most recently, in *Dobbs v. Jackson Women’s Health Organization*, disability rights advocates reminded the Supreme Court about the “strong relationship . . . between state action against people with disabilities and the abortion restriction[s]” imposed on pregnant people.³³ The advocates explained that abortion restrictions and government action against people with disabilities “deny them the fundamental right to control their own bodies for allegedly greater social goals.”³⁴

Valuing the contribution of individuals with disabilities and respecting a woman’s right to choose to terminate pre-viability pregnancies are complementary

³¹ Amicus Br. for Disability Advocates Supporting Plaintiffs-Appellees, *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of Ind. State Dep’t of Health*, 917 F.3d 532 (7th Cir. 2018), 2018 WL 378975 (7th Cir. Jan. 3, 2018).

³² *Id.* at *4.

³³ Amicus Br. for Autistic Self Advocacy Network and the Disability Rights Education and Defense Fund Supporting Respondents, *Dobbs v. Jackson Women’s Health Organization*, No. 19-1392, 141 S. Ct. 2619 (2021), 2021 WL 4311855 (Sept. 20, 2021).

³⁴ *Id.*

rather than conflicting goals. This Court should reject Arizona's attempt to undermine women's health and inhibit reproductive choice in the name of dignity and inclusion of persons with disabilities, particularly where the State can exercise a range of policies that actually advance those goals.

CONCLUSION

The district court's order granting a preliminary injunction should be affirmed.

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Respectfully submitted,

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FOR THE NINTH CIRCUIT**

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