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SUPREME COURT OF TEXAS
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No. 23-0629

In the Supreme Court of Texas

STATE OF TEXAS; KEN PAXTON, in his official capacity as Attorney General of Texas; TEXAS MEDICAL BOARD; and STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board,
Appellants,

v.

AMANDA ZURAWSKI; LAUREN MILLER; LAUREN HALL; ANNA ZARGARIAN; ASHLEY BRANDT; KYLIE BEATON; JESSICA BERNARDO; SAMANTHA CASIANO; AUSTIN DENNARD, D.O.; TAYLOR EDWARDS; KIERSTEN HOGAN; LAUREN VAN VLEET; ELIZABETH WELLER; DAMLA KARSAN, M.D., on behalf of herself and her patients; and JUDY LEVISON, M.D., M.P.H., on behalf of herself and her patients,
Appellees.

On Direct Appeal from the
353rd Judicial District Court, Travis County

BRIEF FOR THE NAACP LEGAL DEFENSE & EDUCATIONAL FUND AS AMICUS CURIAE IN SUPPORT OF APPELLEES

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TO THE HONORABLE SUPREME COURT OF TEXAS:

INTEREST OF AMICUS CURIAE[1]

The NAACP Legal Defense & Educational Fund, Inc. (LDF) is the nation's first and foremost civil rights law organization. Through litigation, advocacy, public education, and outreach, LDF strives to secure equal justice under the law for all Americans and to break down barriers that prevent Black people from realizing their basic civil and human rights.

For decades, LDF has pursued litigation to secure the economic rights of Black families and individuals. Litigation to ensure the adequacy of health care and hospital services available to Black communities has been a long-standing LDF concern. *See, e.g., Bryan v. Koch*, 627 F.2d 612 (2d Cir. 1980) (challenging the closing of a public hospital in Harlem under Title VI of the Civil Rights Act of 1964).

Black and low-income people face profound inequities in accessing essential health care as a result of a long, and persisting, history of systemic racism and discrimination. LDF has supported efforts to promote equal rights and access to reproductive health care, emphasizing the impact of restrictions on abortion access on Black women[2] and other pregnant people living in poverty.

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[1] Counsel for *amicus curiae* state that no counsel for a party authored this brief in whole or in part and that no person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. *See* Tex. R. App. P. 11.

[2] *Amicus curiae*'s use of "woman" or "women" is not meant to exclude people of other gender identities that may be able to become pregnant and need to seek abortion services.

LDF has an interest in this case, which will decide whether exceptions to abortion bans in Texas adequately protect the right to life and health for pregnant people across the state. Consistent with its efforts to secure equal access to health care, LDF has a strong interest in ensuring continued access to medically necessary abortion care.

SUMMARY OF ARGUMENT

The district court properly found that the emergency exceptions ("the Exceptions") contained in Texas's abortion bans ("the Bans") fail to protect the rights of pregnant people living in the state. As shown below, the right to life cannot be disentangled from the ability to avert a risk to one's health. This is particularly clear in the context of complications and health conditions experienced during pregnancy. Indeed, the State of Texas recently released a comprehensive report (updated October 2023), which details the myriad of ways certain health issues, including pre-existing chronic conditions, contribute to mortality in pregnant Texans, and disproportionately harms Black pregnant women.[3] The State cannot ignore these realities, nor disavow itself from earlier promises to protect the health of pregnant people when regulating abortion care in Texas.

[3] Tex. Dep't State Health Servs., *Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022* (Oct. 2023), https://www.dshs.texas.gov/sites/default/files/legislative/2022-Reports/2022-MMMRC-DSHS-Joint-Biennial-Report.pdf.

Without relief, the implementation of the Bans will continue to cause pregnant people to endure conditions that threaten their fertility and exacerbate the already dire condition of maternal health care in the state. Texas already has the highest incidents of maternal mortality in the country, which are linked to several systemic barriers to health care in the state. Without relief, there will be an increase in mortality and morbidity among pregnant people, which will disproportionately harm Black people. Furthermore, Texas cannot claim an interest in "life" while also forcing pregnant people to endure fertility-compromising and life-threatening conditions.

Therefore, the district court was correct to find that when "[e]mergent medical conditions that a physician has determined, in their good faith judgment and in consultation with the patient, pose a risk to a patient's life and/or health (including their fertility)" that physician is "permit[ted] to provide abortion care to pregnant persons in Texas under the medical exception to Texas's abortion bans and Article I, §§ 3, 3a, and 19 of the Texas Constitution."

ARGUMENT

I. The District Court Correctly Determined that the Bans Infringe Upon Constitutional Guarantees by Denying Health and Life-Preserving Abortion Care.

Article I, § 19 of the Texas Constitution unambiguously protects the right to life, and no party disputes this right extends to pregnant people in Texas. However,

under the State's enforcement of the Abortion Bans, the Exceptions contained in the Bans do not actually protect the lives of pregnant people experiencing serious complications.

The language of the Exceptions permits abortions when a pregnant person faces a "serious risk of substantial impairment of a major bodily function" and/or a "life-threatening" complication.[4] The State argues that the Exceptions are inapplicable to a person whose pregnancy presents a "risk to [their] health," because this is "material[ly]" different than the circumstances contemplated by the text of the Exceptions.[5] As the district court recognized, however, that interpretation violates the Texas Constitution: "enforcement of Texas's abortion bans as applied to a pregnant person with an emergent medical condition for whom an abortion would prevent or alleviate a risk of death or risk to their health (including their fertility) would be inconsistent with the rights afforded to pregnant people under Article I, §§ 3, 3a, and/or 19 of the Texas Constitution."[6]

In challenging the district court's decision, the State seeks to draw a sharp distinction between "life" and "health," claiming that "[t]he medical-emergency exceptions do not require a woman to give her life for her unborn child, so there can

[4] Tex. Health & Safety Code § 170A.002(b)(2); Tex. Health & Safety Code § 171.002(3); Tex. Rev. Civ. Stat. art. 4512.6.
[5] Appellants' Br. at 29.
[6] Order Granting Inj. Relief at 5.

be no violation of the due-course clause's protection of "life."[7] However, the ability to preserve health is so inexorably intertwined with sustaining life that the latter cannot exist without the former.

The maternal mortality crisis in Texas, especially among Black women, underscores this relationship between health and life-preserving care. *See infra* Section II. A Joint Report issued by the Texas Maternal Mortality and Morbidity Review Committee (MMMRC) and Department of State Health Services (DSHS) confirms the innumerable health complications and conditions that may require medically necessary abortion care to preserve pregnant people's lives. For example, that Report explains that infection is the fifth most frequent underlying cause of death of pregnant people in Texas.[8] The Joint Report also lists chronic disease and cardiovascular conditions, both of which can be exacerbated by pregnancy,[9] as leading underlying causes of pregnancy-related deaths.[10]

The district court therefore correctly determined that, enforcement of the Bans would violate the Texas Constitution's right to life. Indeed, as Justice Rehnquist recognized in his dissent in *Roe*, abortion bans must allow exceptions when there is

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[7] Appellants' Br. at 34.
[8] Tex. Dep't State Health Servs., *supra* note 2, at 8.
[9] Laxmi S. Mehta et al., *Cardiovascular Considerations in Caring for Pregnant Patients: A Scientific Statement From the American Heart Association*, 141 Circulation e884 (May 2023), doi: 10.1161/CIR.0000000000000772 (noting that "CVD is the leading cause of indirect maternal mortality.").
[10] Tex. Dep't State Health Servs., *supra* note 2, at D-1.

a meaningful *risk* to a pregnant person's life. *See Roe v. Wade*, 410 U.S. 113, 173, (1973) (Rehnquist, J., dissenting) ("If the Texas statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective."); *see also Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2305 (2022) (Kavanaugh, J., concurring) (quoting this portion of Justice Rehnquist's *Roe* dissent).

The State's arguments discounting its own overriding interest in protecting the health of its citizens is especially troubling given that it has, historically, asserted a strong interest in the protection of maternal health, and has offered the protection of women's health as justification for the regulation of abortion. For example, when seeking to regulate medication abortion, the State noted that it was doing so "with an aim toward protecting the pregnant woman's health" and promised that "[i]f a situation were ever to arise in which a woman's *life or health* is endangered by a pregnancy . . . then State officials assuredly will not punish or discipline a physician who prescribes mifepristone beyond the 49-day gestational age limit prescribed in HB 2." State Defs.' Trial Brief at 3, 43, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 951 F. Supp. 2d 891 (W.D. Tex. 2013); *see also Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 734 F.3d 406, 413 (5th Cir. 2013) ("[t]here can be no doubt the government 'has an interest in protecting the integrity and ethics of the medical profession,' there can be no doubt

that the State of Texas has this same interest, as well as an interest in *protecting the health* of women who undergo abortion procedures.") (emphasis added).

In this case, the State seems to ignore the connection between preserving health and saving the lives of pregnant people. Although the State maintains that the Legislature chose not to include a specific "health" exception out of fear that "doing so would allow the medical-emergency exception to swallow the prohibition rule, as any pregnancy presents some 'risk' to a woman's 'health,'"[11] the State for years assured courts that it was seeking to regulate abortion for the purpose of promoting women's health. Indeed, these prior assurances aligned with the State's duty to ensure "protection of the lives, health, and property of her citizens . . ." pursuant to its police powers. *See Mugler v. Kansas*, 123 U.S. 623, 8 S. Ct. 273, 280, 31 L. Ed. 205 (1887).

II. Reversing the District Court's Ruling Will Place Black Texans at Grave Risk of Life and Health-Threatening Consequences from Pregnancy.

The consequences of enforcing the Bans in a manner that does not protect the health of pregnant people would be especially devastating for Black people, who are the most likely to face severe risks to their health—and life—as a result of Texas's maternal health crisis. Due to widespread and persisting discrimination, Black

[11] Appellants' Br. at 30.

women in Texas have less access to quality maternity care and are far more likely to face significant barriers traveling out of state, if necessary to protect their health.

A. The Painful History of Black Women Being Denied the Right to Protect Their Health and Life While Pregnant.

Texas, like many States, has an egregious history of depriving women, and particularly Black women, the right to protect their health and life during pregnancy. This history dates back to American chattel slavery. Recognized as commodities with monetary value attached to their flesh,[12] Black women's reproductive capabilities were meticulously monitored and recorded for slavers to maximize their workforce.[13] This often led to efforts on the part of slavers to protect the fetus to the detriment of the enslaved person and child bearer—i.e., the Black woman. For example, in instances of violence exacted upon enslaved pregnant women, slavers would create a depression in the ground that would allow for them to proceed with

[12] In an 1823 case, *Banks' Administrator v. Marksberry*, "a master's property interest in the reproductive capacity" of an enslaved woman was cemented through the following clause in a deed executed by the enslaver: "to Samuel Marksberry, my younger son, I do likewise give … Pen; and her increase from this time, I do give to my daughter, Rachel Marksberry." Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* 33 (1997); see also Diana Ramey Berry, *The Price for Their Pound of Flesh: The Value of the Enslaved, from Womb to Grave, in the Building of a Nation* 11 (2017) ("The law sanctioned valuing enslaved people before conception and adjusted women's market values accordingly.").

[13] Michele Goodwin, *Involuntary Reproductive Servitude: Forced Pregnancy, Abortion, and the Thirteenth Amendment*, 2022 U. Chi. Legal F. 191, 204 (2022) ("[S]lavers commented on forced reproduction in letters and manuscripts, analyzing their profits, explaining the personal benefits of slavery for themselves and their families, and boasting about the profits that could be extracted from the exploitation of Black girls and women.").

whipping women without causing harm to the fetus.[14] This practice reflects ongoing state-sanctioned efforts to prioritize the fetus, while demonstrating no concern for the harm imposed upon the bodies of Black women.

State-sanctioned compulsory sterilization, with roots in Texas, deprived thousands of people of the opportunity to exercise bodily autonomy by stripping them of the right to safeguard their health during pregnancy. In 1849, Gordon Lincecum—a Texas biologist, physician, and modern-day eugenicist—proposed a bill mandating the sterilization of disabled and other people whose genes he found "undesirable."[15] After the Supreme Court's decision upholding an involuntary sterilization statute as constitutional in the 1927 case, *Buck v. Bell*,[16] 274 U.S. 200, 207 (1927), the number of states with laws requiring compulsory sterilization increased from six to twenty-seven by 1935.[17]

The practice of forced sterilization was disproportionately borne out on Black and Brown people who were often subjected to these cruel medical interventions involuntarily and unknowingly. For example, the North Carolina Eugenic

[14] Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* 40 (1997).
[15] Although Lincecum's bill failed to become law, from the late 1800s well into the 1900s, both the federal government and states authorized and funded the forced sterilization of those they deemed "genetically inferior" and "mentally unfit". Lutz Kaelber, *Eugenics: Compulsory Sterilization in 50 American States*: *Texas*, https://www.uvm.edu/%7Elkaelber/eugenics/TX/TX.html.
[16] Notably, *Buck v. Bell* has not been overruled.
[17] Harriet A. Washington, *Medical Apartheid* 202 (2016).

Commission, a program created by the legislature in 1933, forcibly sterilized 7,600 mentally disabled people throughout the 1930s. [18] Of the 7,600 people forcibly sterilized, 5,000 were Black people.[19] In Mississippi, federal funds were utilized for the involuntary sterilization of close to 150,000 women and nearly half of them were Black women.[20] In 1937, Puerto Rico enacted Law 116, which legalized sterilization and created a eugenics board charged with monitoring the population on the island and federally subsidizing sterilizations.[21] By 1953, nearly one-fifth of the women in Puerto Rico had been unknowingly sterilized, permanently.[22] Although the Supreme Court never formally overruled *Buck*, the Court did discredit its holding.[23] It is now well recognized and accepted that these forced sterilization laws were a fundamental assault on the constitutional rights of the people the laws targeted.

Rather than further a right to life, the Bans, if enforced in a manner that disregards the health of pregnant people will expose them to risks of death, injury, and illness, including loss of fertility. As evidenced in the record, one plaintiff "nearly lost her own life and spent days in the ICU for septic infections whose lasting

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[18] *Id.*; *see also* North Caroline Dept. of Administration, Special Programs, Office of Justice for Sterilization Victims, *About the Office (Foundation)*, https://www.doa.nc.gov/about-doa/special-programs/office-justice-sterilization-victims/about-office-foundation.
[19] Washington, *supra* note 19.
[20] *Id*. at 203-204.
[21] Raquel Reichard, *In Puerto Rico, A History Of Colonization Led To An Atrocious Lack of Reproductive Freedom*, Refinery29 (Oct. 20, 2020), https://www.refinery29.com/en-us/2020/10/10029088/puerto-rico-sterilization-abortion-reproductive-rights-history.
[22] *Id.*
[23] *See generally, Skinner v. State of Okl. ex rel. Williamson*, 316 U.S. 535 (1942).

impacts threaten her fertility and, at a minimum, make it more difficult, if not impossible, to get pregnant again in the future."[24] The State's willingness to expose pregnant people to conditions that cause infertility is reminiscent of sterilization laws in the United States. History should therefore give the Court further pause in adopting the State's position.

B. Black Pregnant People Have Less Access to Comprehensive Maternity Care Because of Systemic Discrimination Within the Health Care System.

Black Texans are likely to be disproportionately harmed by enforcement of the Abortion Bans because they have less access to comprehensive maternity care services and are more likely to experience serious pregnancy complications, as a result.

Comprehensive maternity care includes preconception, prenatal, and postpartum care. Yet, nearly half (46.5%) of Texas counties are maternity care deserts, meaning a county without a hospital or birthing center that offers obstetric care and without any obstetric providers, compared to one third of counties nationwide.[25] Maternity care deserts have increased risk for poor maternal health

[24] Pls.' Original Pet. for Decl. J. & Application for Permanent Inj. ¶ 29.
[25] Cory Neas, *Report: Almost 47% of Texas counties are 'maternity care deserts'*, KXAN (Aug. 1, 2023), https://www.kxan.com/news/texas/march-of-dimes-releases-report-on-maternity-care-in-texas/; March of Dimes, *Nowhere To Go: Maternity Care Deserts Across the U.S.* (2022) at 8, https://www.marchofdimes.org/peristats/reports/united-states/maternity-care-deserts ("*Nowhere To Go*").

outcomes because people in those areas have low access to appropriate preventive care.[26] Black pregnant people have a high likelihood of experiencing labor in a maternity care desert: in 2020, one in six Black babies was born in a maternity care desert.[27]

Prenatal care, such as maternal health screening and appropriate monitoring of fetal development, is important for reducing the risk of pregnancy complications and adverse birth outcomes. In 2020, one in five Black women (20%) nationwide did not receive adequate prenatal care, compared to 10 percent of white women.[28] Black pregnant Texans do not fare any better: about 22 percent of pregnant people in the state receive inadequate or no prenatal care, and the rate is closer to 29 percent for Black pregnant people living in high socioeconomic vulnerability.[29] Among Black, Indigenous and other people of color in the state, those living in areas of high socioeconomic vulnerability have a 44 percent increased likelihood of inadequate prenatal care compared to those living in areas of low socioeconomic vulnerability.[30]

In addition to access to providers and facilities, access to health insurance is critical to comprehensive health care services. Texas has the highest proportion of

[26] *Nowhere To Go* at 2, 6.
[27] *Id.* at 6.
[28] *Nowhere To Go* at 7.
[29] March of Dimes, *Where You Live Matters: Maternity Care Access in Texas,* https://www.marchofdimes.org/peristats/reports/texas/maternity-care-deserts.
[30] *Id.*

uninsured women, with an average of 23.3 percent uninsured.[31] And, due to barriers to accessing to prenatal and maternity health care services, Black pregnant people experience higher rates of pregnancy complications. Severe maternal morbidity, meaning unexpected outcomes of labor and delivery that result in significant short or long-term health consequences, occur twice as often for Black women as compared to white women, even after taking into consideration social, economic factors and co-existing medical conditions.[32] Severe maternal morbidity "is closely related to maternal mortality because it involves conditions that, *if left untreated*, could result in death." [33]

The State's position—that protecting the health of pregnant people is somehow divorced from protecting their lives—is especially likely to be lethal for Black women in Texas. Black women in the state suffer the highest rates of severe maternal morbidity.[34] In 2020, pregnant Black women were twice as likely to experience critical health issues like hemorrhage, preeclampsia and sepsis.[35] While complications from obstetric hemorrhage declined overall in Texas in recent years, Black women saw an increase of nearly 10 percent.[36] Black Texans are also more

[31] *Nowhere To Go* at 21.
[32] *Nowhere To Go* at 9.
[33] *Id*. at 10.
[34] *Id*. at 10.
[35] Tex. Dep't State Health Servs., *supra* note 2, at 11-12.
[36] *Id.*

likely to experience an ectopic pregnancy than white Texans.[37] Overall, maternal mortality for non-Hispanic Black women, is over twice that for non-Hispanic white women and over four times higher than Hispanic women in Texas.[38]

These racial disparities in pregnancy-related complications are tied to structural racism and systemic discrimination.[39] For example, "[t]here is a direct legacy of redlining [meaning government-facilitated residential racial segregation] in health and well-being," and as a result, many health issues like pre-term birth and maternal depression occur at higher rates among residents of once-redlined areas.[40] Poor health outcomes for Black pregnant people are also associated with living in counties with higher levels of food insecurity.[41] Additionally, data shows that hospital quality differs between facilities serving mainly Black versus predominantly white patient populations. Specifically, Black women who delivered at high Black-serving hospitals had the highest risk of poor outcomes.[42]

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[37] Debra Stulberg, et al., *Ectopic Pregnancy Rates and Racial Disparities in the Medicaid Population, 2004-08*, 102 Fertil Steril 1671 (Oct. 2014), doi: 10.1016/j.fertnstert.2014.08.031.
[38] Tex. Dep't State Health Servs., *supra* note 2, at 9.
[39] Chloe M. Barrera et al., *County-Level Associations Between Pregnancy-Related Mortality Ratios and Contextual Sociospatial Indicators*, 139 Obstet Gynecol. 855 (Apr. 5, 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9015027/.
[40] Zinzi D. Bailey, Justin M. Feldman, & Mary T. Bassett, *How structural racism works–racist policies as a root cause of U.S. racial health inequities*, 384 New England J. Med. 768 (Feb. 25, 2021), doi: 10.1056/NEJMms2025396.
[41] Barrera et al., *supra* note 46.
[42] Elizabeth A. Howell et al., *Black-white differences in severe maternal morbidity and site of care*, 214 Am. J. Obstetics & Gynecology 122.e1 (Aug. 15, 2015), doi: 10.1016/j.ajog.2015.08.019.

In addition to the legacy of historical medical abuse against Black pregnant people described above, *see supra* Section II.A, enduring racial stereotypes and bias contribute to widespread differences in health care by race and ethnicity today.[43] For example, a 2016 study to assess racial attitudes, found that half of white medical students and residents held unfounded beliefs about intrinsic biologic differences between Black people and white people.[44] These false beliefs were associated with assessing Black patients' pain as less severe than that of white patients, and with less appropriate treatment decisions for Black patients.[45] According to the 2022, Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Service Joint Biennial Report, such discrimination contributed to 12 percent of pregnancy-related deaths in the state.[46]

C. The Inability to Access Care Under the Exceptions in the Bans Will Only Exacerbate the Poor Maternal Health Outcomes for Black Pregnant Texans.

As described above, Black pregnant people already experience disproportionately high levels of severe maternal morbidity and mortality due to

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[43] Bailey et al., *supra* note 47.
[44] Kelly M. Hoffman, Sophie Trawalter, Jordan R. Axt, M. & Norman Oliver, *Racial bias in pain assessment and treatment recommendations, and false beliefs about biological differences between blacks and whites*. 113 Proc. Nat'l Acad. Sci. USA 4296, doi: 10.1073/pnas.1516047113.
[45] *Id.*
[46] Tex. Dep't State Health Servs., *supra* note 2, at 9; *see also id.* at C-4 (defining discrimination as "Treating someone less or more favorably based on the group, class or category they belong to resulting from biases, prejudices, and stereotyping. It can manifest as differences in care, clinical communication and shared decision-making.").

discrimination in health care. Other socio-economic factors, like wage disparities and travel barriers, further contribute to making necessary abortion care less accessible for Black pregnant Texans.

Abortion bans, like Texas's, are particularly harmful to pregnant people, including Black pregnant people, who have less resources to seek medical care within Texas, let alone to travel outside the State if they are denied or otherwise unable to access life-preserving abortion care.

Black women in Texas are paid 55 cents for every dollar earned by a non-Hispanic white man,[47] and are typically paid $26,870 less than white non-Hispanic men.[48] The wage gap in Texas has not moved in over a decade.[49] Texas has kept the minimum wage at the federal floor of $7.25 an hour,[50] and because Black women are disproportionately represented in lower wage jobs, they are less likely to have basic benefits like paid family leave, paid medical leave, and paid sick days.[51] The

[47] Nat'l Partnership for Women & Families, *Factsheet: Black Women and the Wage Gap* (Oct. 2022), https://nationalpartnership.org/wp-content/uploads/2023/02/african-american-women-wage-gap.pdf.

[48] Infogram, *The Wage Gap in Texas*, https://infogram.com/the-wage-gap-in-texas-1hdw2j73kv9x2l0.

[49] Tex. Women's Foundation, *Economic Issues for Women in Texas 2020* (June 2020), https://txwfecoissues.org/wp-content/uploads/2020/06/TXWF-report.pdf ("... 38 percent of women in Texas lack paid sick days.").

[50] Emily Badger, Margot Sanger-Katz & Claire Cain Miller, *States With Abortion Bans Are Among Least Supportive for Mothers and Children*, The New York Times (July 28, 2022), https://www.nytimes.com/2022/07/28/upshot/abortion-bans-states-social-services.html.

[51] Center for Am. Progress, *Including All Women Workers in Wage Gap Calculations* (May 24, 2022), https://www.americanprogress.org/article/including-all-women-workers-in-wage-gap-calculations/; Christopher Connelly, *A costly gender gap: Texas women working full time earn*

availability of affordable child care is also a persistent problem in Texas, as the supply is especially low for 62 percent of low-income families living in areas without enough licensed child care providers or home-based care.[52]

For Black pregnant people who face pregnancy complications, particularly those living on low incomes, this means they are saddled with the choice of forgoing lost wages and navigating childcare to seek the abortion care they need. It is critical that, when faced with a serious threat to their health and life, they be able to access necessary abortion care in their home state in these situations without delay and further risk to their health, fertility, and lives.

$12,000 less than men annually, KERA News (Mar. 14, 2023), https://www.keranews.org/news/2023-03-14/a-costly-gender-gap-texas-women-working-full-time-earn-12-000-less-than-men-annually.

[52] Tex. Women's Foundation, *supra* note 56, at 24.

CONCLUSION

Amici respectfully requests that this court affirm the temporary injunction and deny the plea to the jurisdiction.

Dated: November 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to the Texas Rules of Appellate Procedure, I hereby certify that a true and correct copy of the foregoing instrument was forwarded to all counsel of record by electronic filing, on this day the 22nd of November 2023.

/s/ Avatara Smith-Carrington
AVATARA SMITH-CARRINGTON

CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 5,055 words, excluding exempted text.

/s/ Avatara Smith-Carrington
AVATARA SMITH-CARRINGTON