

Nos. 18-1323, 18-1460

IN THE
Supreme Court of the United States

JUNE MEDICAL SERVICES L.L.C., *et al.*,
Petitioners,

v.

DR. REBEKAH GEE, Secretary, Louisiana
Department of Health and Hospitals,
Respondent.

DR. REBEKAH GEE, Secretary, Louisiana
Department of Health and Hospitals,
Cross-Petitioner,

v.

JUNE MEDICAL SERVICES L.L.C., *et al.*,
Cross-Respondents.

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

**AMICI CURIAE BRIEF OF CATHOLICS FOR CHOICE,
NATIONAL COUNCIL OF JEWISH WOMEN, METHODIST
FEDERATION FOR SOCIAL ACTION, MUSLIMS FOR
PROGRESSIVE VALUES, PRESBYTERIANS AFFIRMING
REPRODUCTIVE CHOICE, RELIGIOUS COALITION FOR
REPRODUCTIVE CHOICE, RELIGIOUS INSTITUTE, UNION
FOR REFORM JUDAISM, UNITED CHURCH OF CHRIST, AND
19 OTHER ORGANIZATIONS, SUPPORTING PETITIONERS**

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STATEMENT OF INTEREST

Amici curiae are religious organizations from a broad range of faiths that are dedicated to protecting a woman's moral authority to terminate a pregnancy in consultation with her faith, values, and conscience.¹

***Amicus Curiae* Catholics for Choice** ("CFC") represents the majority of Catholics on issues of sexual and reproductive rights and health, and is the leading voice in debates at the intersection of faith, women's health, reproductive choice and religious liberty. Founded in 1973, CFC seeks to shape and advance sexual and reproductive ethics that are based on justice, reflect a commitment to women's well-being, and respect and affirm the capacity of women and men to make moral decisions about their lives. CFC's work promotes respect for the moral autonomy of every person, based on the foundational Catholic teaching that every individual must follow his or her own conscience and respect others' right to do the same.

***Amicus Curiae* National Council of Jewish Women** (NCJW) is a grassroots organization of 90,000

¹ Pursuant to Supreme Court Rules 37.3 and 37.6, all parties have provided written consent to the filing of this *amicus curiae* brief. No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no persons or entities other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

volunteers and advocates who strive for social justice by improving the quality of life for women, children, and by safeguarding individual rights and freedoms. For over 125 years, NCJW has engaged in communities nationwide—for instance, **the National Council of Jewish Women, Greater New Orleans Section** (NCJW GNO) is based in Louisiana—to protect access to safe and legal abortion, medically accurate information, access to contraception, and the elimination of obstacles that limit reproductive freedom. Consistent with our mission, our Jewish values, and our Resolution to work for comprehensive, equitable, and accessible family planning and reproductive health services, NCJW and NCJW GNO join this brief.

***Amicus Curiae* Methodist Federation for Social Action (“MFSA”)** was founded in 1907 and is a multi-issue intersectional Christian organization that equips people of faith to work toward progressive social change in the church and the world through education, organizing, and advocacy. For MFSA, reproductive justice is a human right. Every person no matter their age, sex, or sexual orientation should have access to comprehensive reproductive care and have the right to make decisions concerning their own personal and family care. Denial to such access and care, including abortion services, creates undue harm on individuals and families.

***Amicus Curiae* Muslims for Progressive Values (“MPV”)** nurtures progressive Muslim communities and promotes theologically-sound frameworks for Islamic liberalism. MPV believes that the right for a woman to receive medical treatment promptly is a

basic human right. Thus, requiring doctors to have admitting privileges at hospitals is a disingenuous attempt to curtail a woman's basic right to self-determination and is contrary to faith-based values.

***Amicus Curiae* Presbyterians Affirming Reproductive Options** is one of ten networks in the Presbyterian Health, Education and Welfare Association of the **Presbyterian Church (U.S.A.)** ("PC (USA)"). Our mission is to articulate to Presbyterians and the larger community the pro-choice social witness policies of the PC(USA). The PC(USA) has trusted women with all decisions regarding their reproductive health since before the Supreme Court handed down the *Roe v. Wade* decision.

***Amicus Curiae* Rabbinical Assembly** is the international association of Conservative Jewish rabbis. We have a long history of standing firmly for reproductive freedom for all women. We believe that this is part of the Biblical and Rabbinic mandate to maintain our health, physical and spiritual. We want to make sure that this freedom, which is increasingly under attack today, is protected for all.

***Amicus Curiae* Religious Coalition for Reproductive Choice** is a national, multi-faith organization mobilizing moral voices to end structural barriers to reproductive and sexual health, and bringing the perspective and needs of women and other marginalized communities to the center of the conversation. Inspired by our faiths, we are religious and spiritual people who advocate for reproductive freedom and dignity, including access to compassionate abortion services.

Amicus Curiae Religious Institute is a multi-faith organization advocating for sexuality education, reproductive justice, and the full inclusion of women and LGBT people in faith communities and society. The Religious Institute calls for a faith-based commitment to sexual and reproductive rights, including widespread access to safe, legal abortion services.

Amicus Curiae the **Union for Reform Judaism**, whose nearly 850 congregations across North America include 1.5 million Reform Jews; the **Central Conference of American Rabbis**, whose membership includes more than 2,000 Reform rabbis and is the Reform Rabbinic leadership organization; **Women of Reform Judaism**, which represents more than 65,000 women in nearly 500 women's groups in North America and around the world; **Men of Reform Judaism**; and the **American Conference of Cantors** come to this issue out of our deep commitment to every individual's right to access the full range of reproductive health services. We are guided by Judaism's fundamental belief in the sanctity of life and the core Jewish value kavod ha'briyot, respect for individual dignity.

Amicus Curiae **Unitarian Universalist Association** is the central organization for the Unitarian Universalist religious movement in the United States. It is our belief that decisions about children and families are some of life's most profound. We advocate for the freedom of those choices in each person's life journey and for the ability of all families and communities to realize a sense of wholeness with

regard to their sexual and reproductive lives. We are advocates for just and compassionate laws for family planning and reproductive health.

***Amicus Curiae* General Synod of the United Church of Christ** is the representative body of the National Setting of the **United Church of Christ (UCC)**. The UCC has over 4800 churches in the United States, with a membership of approximately 825,000.

The General Synod of the UCC, various settings of the UCC, and its predecessor denominations, have a rich heritage of promoting religious freedom and tolerance. The General Synod has affirmed its support for the freedom for women to choose abortion and the necessity of safe and affordable access to abortion multiple times since 1971.

***Amicus Curiae* Bend the Arc: A Jewish Partnership for Justice** is the nation's leading progressive Jewish voice empowering Jewish Americans to be advocates for the nation's most vulnerable. Bend the Arc mobilizes Jewish Americans beyond religious and institutional boundaries to create justice and opportunity for all, through bold leadership development, innovative civic engagement, and robust progressive advocacy.

***Amicus Curiae* Habonim Dror North America** the progressive Zionist youth movement, has been educating and organizing for the Jewish values of freedom and equality since its formation in 1935. At our democratic gathering in 2015, our members ratified a proposal declaring it among our aims to "participate in intersectional feminist activities and

activism that consciously struggle to overcome the systemic problems of gender and sexual inequality"; it is in that spirit that we support full access to reproductive rights for all people.

Amicus Curiae Interfaith Alliance Foundation is a national non-profit organization committed to promoting true religious freedom and strengthening the separation between religion and government. With members from over 75 faith traditions and of no faith, Interfaith Alliance promotes policies that protect freedom of belief, prevent the misuse of religion to discriminate, and ensure that all Americans are treated equally under law.

Amicus Curiae Jewish Women International ("JWI") is the leading Jewish organization working to empower women and girls and is an unwavering Jewish voice for comprehensive reproductive health services.

Amicus Curiae Judson Memorial Church ("Judson") is aligned with the American Baptist Churches, the Alliance of Baptists, and the United Church of Christ. Throughout its 125 years of existence, Judson has provided distinctive social justice ministries, as well as worship and religious instruction. Judson operates as a faith-based institution that responds to the societal issues of its time and place by working and advocating for progressive change, with special attention to the needs of marginalized or vulnerable people. During the 1960s and early 1970s, its senior minister and program associate played leading roles in the Clergy Consultation Service on Abortion, whose many clergy

members both provided counseling and referrals that enabled women to obtain medically safe abortions and spoke out about the injustices women experienced under laws forbidding abortion. Its strong commitment to reproductive justice continues today.

Amicus Curiae Keshet is a national grassroots organization that works for the full equality and inclusion of lesbian, gay, bisexual and transgender Jews in Jewish life.

Amicus Curiae the Metropolitan Community Churches represents the largest faith-based organization dedicated to the inclusion of LGBTQIA peoples. The Global Justice Institute is the social justice arm of Metropolitan Community Churches, and has been at the forefront of pursuing social justice for LGBTQIA peoples and our allies around the globe.

Amicus Curiae Reconstructing Judaism works to bring about a more just and compassionate world where creative Jewish living and learning guide us toward lives of holiness, meaning, and purpose. We believe that the reproductive rights of all people must be preserved and protected.

Amicus Curiae Reconstructionist Rabbinical Association (“RRA”) serves as the rabbinic voice of the Reconstructionist movement in Jewish life, representing close to 400 member rabbis throughout the United States and part of Canada. Consistent with our many resolutions on equality, equity, human dignity and the value of every human being as created in the divine image, in addition to our belief that the reproductive rights of all people must be preserved

and protected to attain a more just and compassionate world, the RRA joins this brief.

***Amicus Curiae* Society for Humanistic Judaism** is an organization advocating for sexuality education, reproductive justice, and the full inclusion of women and LGBT people in faith communities and society.

***Amicus Curiae* T'ruah: The Rabbinic Call for Human Rights** is an organization representing more than 2000 rabbis and cantors, including six rabbis in Louisiana. T'ruah supports the religious freedom and human rights of all people—including the freedom for women to make choices about reproduction in accordance with Jewish law, which allows for abortion in many cases. As a human rights organization, we support the right of women to access necessary medical care, per United Nations standards guaranteeing women and others the right to the enjoyment of the highest attainable standard of physical and mental health.

SUMMARY OF ARGUMENT

Many religious traditions recognize and support the moral right of each woman to make her own decisions about her pregnancy in accordance with her faith and conscience. All women—including those lacking monetary and other resources—should be able to exercise that right without unnecessary constraints or impediments.

Before *Roe v. Wade*, 410 U.S. 113 (1973), and since that decision, religious leaders and faith-based

organizations, including *amici*, have counseled women who are deciding whether to terminate a pregnancy. They have worked to ensure that women who make the decision to have an abortion can do so with dignity through accessible and high-quality medical care. During the course of that work—and particularly relevant to this case—these organizations have seen clinics provide safe and compassionate care. Based on our experience, *amici* believe that any genuine efforts to protect the health and well-being of pregnant women must allow for those seeking abortions to have access to safe and affordable abortion care.

Louisiana Revised Statute § 40:1061.10 (“Act 620”) runs counter to that objective. Act 620 includes an unnecessary requirement that unduly burdens and would frustrate a woman’s constitutional right to determine whether or not to carry a pregnancy to term. In particular, it requires doctors to have admitting privileges at a hospital within 30 miles of the location where the abortion care is offered. La. Rev. Stat. § 40:1061.10(A)(2)(a). The practical effect of this requirement is to severely limit access to safe abortion care for the women of Louisiana. Indeed, Louisiana would be left with just one physician at one clinic to care for every person seeking an abortion in the state, with the greatest access consequences falling on the poorest Louisianans.

Act 620 is of significant concern to *amici* due to the effect it has on people of faith to make decisions based on their religious values. Act 620 will seriously compromise the availability of abortion care to women who have made a decision, of the utmost importance in their lives, based on their values and religious

principles and circumstances. Act 620 will lead to abortions taking place later in pregnancy and outside of clinics. It will result in especially heavy burdens for the poor and marginalized.

For these and the reasons set forth below, *amici* urge the Court to preserve a woman's right to terminate her pregnancy in accordance with her own personal or religious conscience by rejecting Louisiana's unduly burdensome restrictions on that right.

ARGUMENT

I. **Religious Traditions Recognize Women's Moral Right To Decide Whether To Terminate a Pregnancy**

Amici are faith-based organizations that recognize every woman's moral authority to make her own, often very complex, decisions about her pregnancy. Although various religious groups in this country hold differing views on abortion, there is substantial agreement with *amicis*' view that women have a moral right to make their own decisions on the issue.

Throughout the Catholic tradition, from its earliest times to today, scholars, theologians, and ordinary Catholics have had differing beliefs about when personhood begins. Though the institutional Catholic Church currently opposes abortion from the moment of conception, the Church experienced a long

period of disagreement regarding the status of a fetus.² Medieval texts embraced the Aristotelian view that human “ensoulment” takes place 40 days after conception for males and 80 days after conception for females.³ In the sixteenth century, the Catholic Church’s formal position changed at various points, oscillating between recognizing life as beginning upon conception or at the time of quickening, when the fetus first moved in a woman’s womb.⁴ This lack of consensus surrounding ensoulment continues today.

The experience of Catholics in the United States illustrates that a range of views exists within the faith.

² Vatican Congregation for the Doctrine of the Faith, *Instruction on Respect For Human Life in its Origin and on the Dignity of Procreation—Replies to Certain Questions of the Day*, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html (last visited Nov. 20, 2019); Vatican Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* at n.19 (“This declaration expressly leaves aside the question of the moment when the spiritual soul is infused. There is not a unanimous tradition on this point and authors are as yet in disagreement.”), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html (last visited Nov. 20, 2019).

³ ANNE STENSVOLD, A HISTORY OF PREGNANCY IN CHRISTIANITY: FROM ORIGINAL SIN TO CONTEMPORARY ABORTION DEBATES 45-46 (2015).

⁴ *Id.* at 70 (noting that Catholic law recommended a quickening test to establish whether or not ensoulment had taken place); FRANK K. FLINN, ENCYCLOPEDIA OF CATHOLICISM 4 (2007).

Notwithstanding the current institutional position of the Catholic Church opposing contraception, 98% of sexually active Catholic women have used a form of contraception, which is prohibited by Catholic teaching.⁵ Moreover, a majority of Catholics view abortion as a moral choice,⁶ and Catholic women today have abortions at approximately the same rate as non-Catholic women.⁷

Protestant denominations generally recognize that women are moral agents who have the capacity and right to determine whether an abortion is justified in their specific circumstances, and that the decision

⁵ Rachel K. Jones & Joerg Dreweke, *Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use*, at 4 (Guttmacher Institute April 2011), https://www.guttmacher.org/sites/default/files/report_pdf/religion-and-contraceptive-use.pdf; See “Humanae Vitae, the 1968 encyclical issued by Pope Paul VI, forbade the use of any form of artificial birth control under Catholic teaching. http://www.vatican.va/content/paul-vi/en/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae.html.

⁶ Belden Russonello Strategists, *2016 Survey of Catholic Likely Voters* 5 (2016), <http://www.catholicsforchoice.org/wp-content/uploads/2016/10/2016-Catholic-Voter-Poll.pdf> (“Sixty percent of Catholic likely voters overall say that “deciding to have an abortion can be a morally acceptable position.”).

⁷ Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes since 2008*, at 7 (Guttmacher Institute May 2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf.

should involve deep reflection of faith under the guidance of spiritual counselors.

Since at least 1967, the Episcopal Church of America has recognized a woman's right to access abortion care. In 1967, the Church stated its "unequivocal opposition to any legislative, executive, or judicial action on the part of local, state or national governments that abridges . . . or that would limit the access of a woman to safe means of [receiving abortion care.]"⁸ In 2018, the Episcopal Church called for abortion care to be treated as all other medical procedures as a means of a woman preserving her "dignity and worth as a human being."⁹

According to the Presbyterian Church (U.S.A.), "[h]umans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a pregnancy. Human choices should not be made in a moral vacuum, but must be based on scripture, faith, and Christian ethics."¹⁰ Such decisions

⁸ The Archives of the Episcopal Church Resolution No. 1994-A054, *Reaffirm General Convention Statement on Childbirth and Abortion* (1994), https://www.episcopalarchives.org/cgi-bin/acts/acts_generate_pdf.pl?resolution=1994-A054

⁹ Episcopal Church Virtual Binder Resolutions, *D032 – Equal Access to Health Care Regardless of Gender*, <https://www.vbinder.net/resolutions/D032?house=hd&lang=en> (last visited Nov. 25, 2019)

¹⁰ Presbyterian Church (U.S.A.) Minutes of the 217th General Assembly at 905 (2006), https://www.pcusa.org/site_media/media/uploads/oga/publications/journal2006.pdf. *See also, e.g.*, General Synod of the United Church of Christ, *Statement on Reproductive Health and*

are deeply personal “and therefore should not be restricted by law.”¹¹

The General Synod of the United Church of Christ likewise recognized in 1971 that “[t]he theological and scientific views on when human life begins are so numerous and varied that one particular view should not be forced on society through its legal

Justice,

http://d3n8a8spro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf?1418423872 (“[A]ccess to safe and legal abortion is consistent with a woman’s right to follow the dictates of her faith.”) (last visited Nov. 20, 2019); American Baptist Resolution Concerning Abortion and Ministry in the Local Church (1987) (“Recognizing that each person is ultimately responsible to God, we encourage men and women [facing the decision to have an abortion] to seek spiritual counsel as they prayerfully and conscientiously consider their decision.”), <http://www.abc-usa.org/wp-content/uploads/2012/06/Abortion-and-Ministry-in-the-Local-Church.pdf>.

¹¹ Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/> (last visited Nov. 20, 2019). In 1992, the General Assembly of the Presbyterian Church (U.S.A.) asserted, “there are no biblical texts that speak expressly to the topic of abortion” and “affirm[ed] the ability and responsibility of women, guided by the Scriptures and the Holy Spirit, in the context of their communities of faith, to make good moral choices in regard to problem pregnancies.” Presbyterian Church (U.S.A.) *Report of the Special Committee on Problem Pregnancies and Abortion* at 10-11 (1992), <https://www.pcusa.org/resource/problem-pregnancies-and-abortion/>.

system.”¹² Further, the United Church of Christ also affirmed that “there are many religious and theological perspectives on when life and personhood begin” and that “public policy must honor this rich religious diversity.”¹³

The Protestant Universal Fellowship of the Metropolitan Community Churches stresses the importance of preserving women’s autonomy and respecting the rights of women to “consult with the God of their understanding and the medical professionals of their choosing when making decisions about their own reproductive health care.”¹⁴ Rather than “revert[ing] to systems of back alley care that preceded the Supreme Court decision of *Roe v. Wade*,” the Church urges us all “to exercise love, grace, compassion, and understanding for women with respect to their human rights and dignity.”¹⁵ Moreover,

¹² General Synod of the United Church of Christ, *Freedom of Choice Concerning Abortion*, 17-GS-58, at 2 (1971), https://d3n8a8pro7vnmx.cloudfront.net/unitedchurchofchrist/legacy_url/2038/GS-Resolutions-Freedom-of-Choice.pdf?1418425637.

¹³ United Church of Christ, *Reproductive Health and Justice*, https://d3n8a8pro7vnmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf?1418423872 (last visited Nov. 20, 2019).

¹⁴ Metropolitan Community Churches, *Statement of Faith on Women’s Reproductive Health, rights and Justice*, (March 20, 2013), <https://www.mccchurch.org/statement-of-faith-on-womens-reproductive-health-rights-and-justice/>.

¹⁵ *Id.*

it “opposes all efforts by federal, state, and local governments to create barriers to or roll back advances in reproductive health care options and access to them.”¹⁶

The Evangelical Lutheran Church asserts that abortion “is one of the issues about which members of the Evangelical Lutheran Church in America have serious differences.”¹⁷ And though the Church believes that the state may play some role in regulating abortion care, it “opposes . . . laws that deny access to safe and affordable services for morally justifiable abortions.”¹⁸

The Alliance of Baptists fellowship calls for a “commitment to sexual and reproductive rights, including access to voluntary contraception, abortion, and HIV/STI prevention and treatment” as a means of achieving spiritual wholeness.¹⁹

¹⁶ *Id.*

¹⁷ Evangelical Lutheran Church in America, Social Statement on Abortion (1991) at 1, 9-10, http://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf?_ga=2.66435753.687484328.1573098757-1742948756.1573098757

¹⁸ *Id.*

¹⁹ Alliance of Baptists, *A Statement on Lifelong Sexual Education, Sexual & Reproductive Rights, and Opposing Sexual Injustice and Violence* (2012),

The Disciples of Christ has a “historic commitment to reproductive freedom for women.”²⁰ It is with this commitment that the Church resolved that it is “the place of decision making on abortion [is] not with public legislators, but with the individuals involved with the pregnancy . . . on the basis ethical and moral grounds.”²¹

The Unitarian Universalist Association believes that “the right of individual conscience, and respect for human life are inalienable rights due every person; and that the personal right to choose in regard to contraception and abortion is an important aspect of these rights.”²²

<https://allianceofbaptists.org/assets/uploads/congregations/LifeLongSexualEducation2012.pdf>.

²⁰ *Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. on Labor and Human Resources*, 101st Cong. 237 (1990) (testimony of John O. Humbert, General Minister and President, Christian Church (Disciples of Christ) in the USA and Canada).

²¹ *Id.* (citing General Assembly of the Christian Church (Disciples of Christ) Resolutions 8954 (1989) and 7524 (1975); *see also* General Assembly of the Christian Church (Disciples of Christ) Resolution 1930 (2019) (“the Christian Church (Disciples of Christ) has repeatedly proclaimed the equality of all people – emphasizing women’s rights to . . . reproductive freedom”), <https://disciples.org/our-identity/our-structure/the-general-assembly-and-general-board/past-general-assemblies/2019-general-assembly/>).

²² Unitarian Universalist Association General Resolution on the Right to Choose (1987), <https://www.uua.org/action/statements/right-choose>.

The American Friends Service Committee has stated, “a woman’s right to follow her own conscience concerning child-bearing, abortion and sterilization, free of coercion including government coercion and the coercion of poverty, racial discrimination and unavailability of services to those who cannot pay.”²³

Some Christian denominations that generally disapprove of abortion recognize it is still the woman who retains the choice of whether to carry a pregnancy to term. For instance, the United Methodist Church has stated its reluctance to “affirm absolute perspectives either supporting or opposing abortion which do not account for the individual woman’s sacred worth and agency.”²⁴ “Members will hold differing views on abortion. There is no requirement for members to agree with the Church’s view. . . . Maybe you will agree with the denomination’s position. On the other hand, you may disagree. Either is all right.”²⁵

Other major religions share a similar internal diversity with respect to their views on abortion. Traditional Jewish teachings view abortion as a

²³ Brief of Amici Curiae Religious Coalition for Reproductive Choice, et al. in Support of Respondent, *Stenberg v. Carhart*, No. 99-380, App. (Mar. 29 2000).

²⁴ The United Methodist Church and the Complex Topic of Abortion (2015), <http://www.umc.org/what-we-believe/the-united-methodist-church-and-the-complex-topic-of-abortion>.

²⁵ What is the United Methodist Position on Abortion, <http://www.umc.org/what-we-believe/what-is-the-united-methodist-position-on-abortion> (last visited Nov. 25, 2019).

permissible means to safeguard a woman's well-being.²⁶ Some Orthodox Jewish rabbis approve of non-therapeutic abortions, expansively construe the emotional health reasons that may support abortion, and understand Jewish law to permit abortion for any reason before forty days.²⁷ There is also strong consensus among Reform, Reconstructionist, and Conservative rabbis that “[w]omen are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion.”²⁸

²⁶ *See, e.g.*, DAVID M. FELDMAN, MARITAL RELATIONS, BIRTH CONTROL AND ABORTION IN JEWISH LAW 271-84 (1986).

²⁷ *Id.* at 289–94. *See* Abdulaziz Sachedina, *Islamic Bioethics*, in RELIGIOUS PERSPECTIVES ON BIOETHICS 153, 166-67 (John F. Peppin et al. eds. 2004).

²⁸ 144 Cong. Rec. 20683 (1998) (quoting Letter of 729 Rabbis in Support of President Clinton's Veto of H.R. 1122 (Sep. 10, 1998); *See* Resolution on Reproductive Freedom, Rabbinical Assembly (2007), <https://www.rabbinicalassembly.org/pregnancy> (“Judaism does not believe that personhood and human rights begin with conception, but with birth” and “over the past 30 years the Rabbinical Assembly has come out in favor of Reproductive Freedom and Choice in a number of areas, such as abortion (1975 and subsequently)” and “urges its members to support full access for all women to the entire spectrum of reproductive healthcare, and to oppose all efforts by federal, state, local or private entities or individuals to limit such access.”); Central Conference of American Rabbis, Statement on Reproductive Justice Throughout the United States, <https://www.ccarnet.org/statement-reproductive-justice-united-states/> (last visited Nov. 25, 2019) (“reaffirm[ing] that Judaism has never accorded personhood status to the fetus” and opposing laws that “limit or effectively end access to abortion”); Reconstructionist Rabbinical Association, Resolution on Right to

Additionally, many schools of Islamic thought place only minor restrictions on a woman's choice to obtain an abortion within 120 days of conception.²⁹ Though the predominant belief in Islam is that a fetus acquires personhood 120 days from conception, there are also minority views within Islam that state that ensoulment occurs 40 days, 42 nights, or 45 nights after conception.³⁰

Regardless of her religious affiliation, when a woman determines, consistent with her faith and conscience, that abortion is an appropriate option in her specific circumstances, she must have ready access to medically safe procedures. Act 620 interferes with a woman's moral agency by imposing requirements that would delay care, increase the cost of, and reduce access to, safe and legal abortions.

Reproductive Choice (1981, reaffirmed in 1989), <https://therra.org/resolutions/reproductive-choice.pdf> (affirming "the definition of 'human' life is associated with birth not conception" and the right to abortion, and "[o]pposing anti-choice legislation").

²⁹ See Mohammed A. Albar, *Induced Abortion From An Islamic Perspective: Is It Criminal Or Just Elective*, 8 J. FAM. CMTY. MED. 25, 29–32 (2001).

³⁰ Abdulaziz Sachedina, *Islamic Bioethics*, in RELIGIOUS PERSPECTIVES ON BIOETHICS 153, 166-67 (John F. Peppin et al. eds. 2004); ABDULAZIZ SACHEDINA, ISLAMIC BIOMEDICAL ETHICS: PRINCIPLES AND APPLICATIONS 134-35, 140-41(2009); DARIUSCH ATIGHETCHI, ISLAMIC BIOETHICS: PROBLEMS AND PERSPECTIVES 94 (2006).

II. Women's Moral Right to Terminate a Pregnancy Should Not be Vitiating By Unnecessary Impediments on Access to Safe and Affordable Abortion

A woman's right to access safe and legal abortion care without undue government interference reflects the view, shared by many religious groups, that a woman has ultimate moral agency over the decision to end her pregnancy. The Constitution protects the right of individuals to make personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. *See Obergefell v. Hodges*, 135 S. Ct. 2584, 2599 (2015); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992); *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479, 485 (1965). These rights are doctrinally grounded in the right to liberty under the Due Process Clause of the Fourteenth Amendment. The Court has recognized that religious interests are intimately intertwined with this protection:

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Belief about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Casey, 505 U.S. at 851; *see also Casey*, 505 U.S. at 852 (“The destiny of the woman must be shaped to a large extent by her own conception of her spiritual imperative and her place in society.”).

The Court’s analysis of the scope of a woman’s right to an abortion are founded in these considerations, and they have shaped the Court’s precedent prohibiting a State from imposing an undue burden on that right. *Id.* at 852, 876. To this end, this Court has already recognized that a law requiring a medical professional performing abortions to have local hospital admitting privileges is unconstitutional. Such regulations have no health or safety benefits to patients seeking abortions and result in “fewer doctors, longer wait times, and increased crowding.” *Whole Woman’s Health v. Hellerstedt* (“WWH”), 136 S. Ct. 2292, 2313 (2016). When these burdens are forced on women in the “absence of any health benefit” they pose an undue burden on women seeking abortions. *Id.*

By imposing burdens without health benefits, Act 620 unduly (and unconstitutionally) delays and restricts access to safe and legal health care for the women of Louisiana. Moreover, it does so in a way that disproportionately impacts women without monetary and other resources. History has shown that a lack of resources can prevent low income and minority women from accessing safe and legal abortion services.

Lacking a safe option, many women have turned to illegal and unsafe procedures.³¹

Clergy have long been concerned about denials of abortion access, including the impact on marginalized people. More than 50 years ago, in response to alarming rates of abortion-related maternal mortality, New York City pastors and rabbis formed the Clergy Consultation Service on Abortion (CCS) to connect women seeking abortions with trained physicians who performed medically sound procedures. Other CCS chapters and partner organizations soon spread across the country and involved thousands of religious leaders who connected nearly a half million women with qualified physicians.³²

In 1969, CCS established the nation's first freestanding abortion clinic as a model for delivering low-cost abortion care to a wider population for a fraction of the cost.³³ Some of these clinics performed

³¹ Rachel Benson Gold, *Lessons from Before Roe: Will Past be Prologue*, 6 GUTTMACHER REPORT ON PUBLIC POLICY 8, 10 (2003) (“In New York City in the early 1960s, one in four childbirth-related deaths among white women was due to abortion; in comparison, abortion accounted for one in two childbirth-related deaths among nonwhite and Puerto Rican women.”).

³² See JOSHUA WOLFF, *MINISTERS OF A HIGHER LAW* 94-106, 166 (1998).

³³ ARLENE CARMEN AND HOWARD MOODY, *ABORTION COUNSELING AND SOCIAL CHANGE* 62, 75-78. (1973). Whereas hospitals and doctor's offices charged \$300 to \$500 (approximately \$2,100 to \$3,500 in 2019 dollars), Women's Services offered abortions for

as many abortions each day as all the hospitals in the cities in which they were located.³⁴ Clinics then sprouted up across the country and provided safe and quality abortion care for people of all incomes. And they did so without a requirement that treating physicians have admitting privileges at nearby hospitals.

The lesson learned from this experience is simple; to be effective, efforts to protect the safety, health, and well-being of women seeking abortions must “confer[] medical benefits sufficient to justify the burdens upon access.” *WWH*, 136 S. Ct. at 2300.

Rather than improving women’s health, Act 620 would have the opposite effect by making safe, legal abortion care less available and less affordable. As the district court found, Act 620’s burdens would be devastating. It would drastically reduce the number of abortion providers in the state, which would prevent many women from accessing abortion altogether. *June Med. Servs. v. Kliebert*, 250 F. Supp. 3d 27, 79-80 (M.D. La. 2017). There would be one provider in one clinic in a state with nearly one million women of reproductive age. *Id.* at 80

The prevalence of Catholic hospitals can reduce the likelihood that abortion providers will obtain admitting privileges. Catholic hospitals may deny

\$125 (approximately \$880 in 2019 dollars) and charged a nominal fee of only \$25 (approximately \$175 in 2019 dollars) to low-income patients.

³⁴ *Id.* at 74-75.

admitting privileges to reproductive healthcare professionals working in private practice who provide abortion. The 21 Catholic facilities in the state treat 1.3 million patients annually, both Catholics and non-Catholics alike. Catholic hospitals in the United States are governed by the institutional Catholic church and required to follow the *Ethical and Religious Directives for Catholic Health Care Services*—a set of religion-based rules written and enforced by the Catholic bishops, not medical professionals.³⁵

The district court found “an abundance of evidence introduced at the hearing demonstrating that hospitals can and do deny privileges for reasons directly related to a physician’s status as an abortion provider.” *June Med. Servs.*, 250 F. Supp. 3d at 47. This could be reflected at the corporate level – for example at a hospital bound by the *Ethical and Religious Directives for Catholic Health Care Services* – or, as the district court found, at the individual staff level. *Id.* at 47-48, 51, 68-70. This Court has recognized the diversity of religious views on abortion, and the importance of each woman “resolv[ing] these philosophic questions” for herself. *Casey*, 505 U.S. at 851; *see also id.* at 900 (plurality opinion) (each abortion decision is made in the context of varying “moral or religious principles”). Act 620 frustrates pregnant persons’ ability to exercise this religious and

³⁵ United States Conference of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Care Services* (6th ed. 2018), <http://www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf>.

moral prerogative, and unduly delays and restricts access to safe and legal health care.

III. Act 620 Injures Women’s Health and Dignity by Increasing Costs and Decreasing Access to Safe Abortion Care

Act 620 undermines its purported goal of promoting women’s health. As the district court found, Act 620 would “cripple women’s ability to have an abortion in Louisiana.” *June Med. Servs.*, 250 F. Supp. at 88. The record in this case is “devoid of any credible evidence that the Act will have a measurable benefit to women’s health,” but the law will “drastically burden women’s right to choose abortion.” *Id.*

Upholding the law would put abortion out of reach for many women in Louisiana. The district court examined three clinics serving the 10,000 women in Louisiana who seek abortions annually. *Id.* at 39. It found that two of the six physicians providing abortion obtained admitting privileges at a hospital within 30 miles of a clinic where they performed abortions. One of the doctors with admitting privileges will cease providing abortion services if the law goes forward, given credible threats he has faced. Even absent that fear, the district court found his clinic would be unable to sustain itself financially given the loss of services by its other doctor with admitting privileges. *Id.* at 80-81. This would leave one remaining doctor to provide abortion care to the approximately 10,000 women seeking abortion in Louisiana each year. *Id.*

If Act 620 went into effect, the majority of women would have no access to abortion, with the

greatest consequences of this law falling on the poorest in Louisiana. Too often, many of the women seeking abortion in Louisiana lack medical insurance. In addition to bearing the costs of the procedure, many women would have to shoulder the costs of traveling long distances to reach clinics, in some cases upwards of 300 miles for women in Northern Louisiana. Act 620 imposes significant and unnecessary obstacles to a woman's right to abortion services, not only by restricting access, but also by exposing thousands of women to unreasonable delays, increased health risks, later procedures, and other hardships that accompany later abortions.

The effects of admitting privileges laws are common across states and well known. For example, the author of Mississippi's law requiring admitting privileges said "[t]he intent of the legislation is to cause fewer abortions" and its effect in shutting down the state's last clinic would be "a positive day for the unborn"; Mississippi's governor similarly said "the goal, of course" of the admitting privileges restriction is to shut down clinic access and "try to end abortion in Mississippi."³⁶ The sponsor of Texas's admitting-

³⁶ Irin Carmon, *Mississippi's last abortion clinic fights to stay open – and out of SCOTUS*, MSNBC.com (Apr. 22, 2015), <http://www.msnbc.com/msnbc/mississippi-last-abortion-clinic-fights-stay-open-and-out-scotus>; MJ Lee, *Bill dooms only Miss. abortion clinic*, Politico (Apr. 5, 2012), <http://www.politico.com/story/2012/04/bill-dooms-only-miss-abortion-clinic-074871>; Associated Press, *Legal woes for Mississippi's only abortion clinic*, USA Today (Jan. 11, 2013), <https://www.usatoday.com/story/news/nation/2013/01/11/abortion-mississippi-women-clinic/1828289/>.

privileges restriction opened the debate on the bill with a pair of baby shoes to “represent the aborted babies” who would benefit, and Texas’s Lieutenant Governor posted a map of clinic closures saying admitting privileges “would essentially ban abortion statewide” and “this is why” Texas required admitting privileges.³⁷ A crafter of Louisiana’s admitting privileges law sent the primary sponsor in the legislature an email regarding Texas’s law that had “tremendous success in closing abortion clinics and restricting abortion access in Texas” and said Act 620 “follows this model.”³⁸

While the birth of a child is an occasion for genuine celebration, forcing an unwilling woman to carry to term a pregnancy is not.³⁹ Being forced to carry an unwanted pregnancy to term not only exposes a woman to greater health risks,⁴⁰ but is also an affront

³⁷ @DavidHDewhurst, Twitter.com, June 19, 2013, <https://twitter.com/DavidHDewhurst/status/347363442497302528?s=20> (last visited Nov. 20, 2019).

³⁸ 250 F. Supp. 3d at 55-56; Bioethics Defense Fund, *Louisiana: Number 1, Six Years Running with BDF Model Bills* (Jan. 14, 2015), <http://bdfund.org/louisiana-number-1-six-years-running/>.

³⁹ See, e.g., Jessica D. Gipson, et al., *The Effects of Unintended Pregnancy on Infant, Child, and Paternal Health: A Review of the Literature*, 39 *STUD. FAM. PLAN.* 18, 24–28 (2008) (finding that women who carry to term unwanted pregnancies experience greater risk for maternal depression, and children born from unwanted births suffer increased health risks).

⁴⁰ See Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119(2) *OBSTETRICS & GYNECOLOGY* 215, 217-18 (2012),

to her right to decide whether to terminate a pregnancy, in accordance with her faith and values.⁴¹ A law that takes the choice away from the woman by inflating the cost of safe abortion services beyond her means imposes an undue and unconstitutional burden on that right. *See Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2317 (2016); *Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908, 910 (7th Cir. 2015). A just and moral society should not restrict access to safe abortions to women of means.

Religious commitments to the marginalized in our society, including poor women, women of color, rural women, young women, women in abusive relationships, and women unable to travel to obtain abortion care, add to these concerns. A reduction of health care options for some, based on means, race, geographic location, or other such criteria is profoundly unjust, and it is the most vulnerable pregnant people who will be the most heavily burdened by Act 620.

<http://unmfamilyplanning.pbworks.com/w/file/119312553/Raymond%20et%20al-Comparative%20Safety.pdf>.

⁴¹ REV. DEBRA W. HAFFNER, A TIME TO EMBRACE 28–29 (RELIGIOUS INSTITUTE 2015) (“In a just world, all people would have equal access to contraception and abortion services. The denial of these services effectively translates into coercive childbearing and is an insult to human dignity. Current measures that limit access to contraception and abortion services are punitive and do nothing to promote moral decision making.”).

Restricting access to legal abortion reduces neither pregnancy rates nor the demand for abortion services.⁴² “When safe abortion procedures cease to be an option, many women seek other means to end unwanted or coerced pregnancies.” *Gonzales v. Carhart*, 550 U.S. 124, 184 n.9 (2007) (Ginsberg J., dissenting) (compiling evidence demonstrating that “[r]estrictive legislation is associated with a high incidence of unsafe abortion”) (citations omitted). Indeed, in other places like Texas, inadequate access to legal abortion services has caused an upward trend in self-induced abortion.⁴³ Religious leaders and faith-based organizations worked to direct women away from medically unsound abortions precisely because they witnessed the aftermath of such practices. Any law that purports to lead to better patient outcomes but instead directs women towards less safe and unlawful abortions must be struck down.

Act 620 unduly burdens a woman’s right to access safe and legal pre-viability abortion. Louisiana

⁴² See also Gilda Sedgh et al., *Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008*, THE LANCET 379 (9816) 625, 625–26 (2012) (concluding that restrictive abortion laws are not associated with lower abortion rates).

⁴³ See Erica Hellerstein, “The Rise of the DIY Abortion in Texas,” THE ATLANTIC, June 27, 2014, available at <https://www.theatlantic.com/health/archive/2014/06/the-rise-of-the-diy-abortion-in-texas/373240/>; see also Daniel Grossman et al., *Texas Women’s Experience Attempting Self-Induced Abortion In the Face of Dwindling Options*, Texas Policy Evaluation Project 1 (2015), <https://liberalarts.utexas.edu/txpep/files/pdf/TxPEP-Research-Brief-WomensExperiences.pdf>.

has a legitimate interest “from the outset of pregnancy in protecting the health of the woman,” *Casey*, 550 U.S. at 846, but Act 620 fails to serve that interest because it utterly lacks medical justification. We urge the Court to strike down this law—as it did with the identical requirement in *Whole Woman’s Health*—as unconstitutional.

CONCLUSION

This Court should reverse the Fifth Circuit’s decision.

Respectfully submitted,

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