

No. 19-1392

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IN THE  
**Supreme Court of the United States**

THOMAS E. DOBBS, M.D., M.P.H., STATE  
HEALTH OFFICER OF THE MISSISSIPPI  
DEPARTMENT OF HEALTH, ET AL.,  
*Petitioner,*

*v.*

JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.,  
*Respondents.*

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

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BRIEF OF *AMICI CURIAE*  
YWCA USA, GIRLS INC., SUPERMAJORITY EDUCATION  
FUND, AND UNITED STATE OF WOMEN  
IN SUPPORT OF RESPONDENTS

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## Interest of Amici<sup>1</sup>

### YWCA USA

As one of the oldest and largest women’s organizations in the nation, YWCA USA is a national non-profit organization dedicated to eliminating racism, empowering women, and promoting peace, justice, freedom and dignity for all. Guided by this mission, YWCA USA has remained at the forefront of the most pressing social movements for more than 160 years—from voting rights to civil rights, from affordable housing to pay equity and from violence prevention to health care reform. Each year, the YWCA network of nearly 200 local associations (collectively referred to as “YWCA”) serves as many as 2,300,000 women, girls, and family members of all ages and backgrounds in more than 1,200 communities across the United States. In a typical year, approximately 63% of those served by YWCA are people of color, 77% are women, and at least 62% have incomes at or below the federal poverty line. Over 400,000 of those served by YWCA are young women between 18 to 30 years of age. YWCA intentionally lifts up the voices and concerns of young women in its programs, services, and advocacy, and

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amici, or their counsel, made a monetary contribution intended to fund its preparation or submission. The parties have filed blanket waivers with the Court consenting to the submission of all amicus briefs.

specifically centers young women of color in all that it undertakes.

YWCA USA submits this amicus brief on behalf of young women aged 18 to 30, who are beneficiaries of both YWCA's intersectional mission to eliminate racism and empower women and YWCA's programmatic initiatives across the United States. YWCA USA stands as a national leader in efforts to secure rights deemed essential to the pursuit of gender, racial, economic, and reproductive justice. YWCA USA adopted the first of three resolutions supporting women's freedom of choice with respect to abortion at its YWCA Convention in 1967, and has supported reproductive rights for more than 50 years. In recent years, YWCA has advocated to ensure women access to the full range of reproductive healthcare, including abortion care, through legislative and administrative advocacy at the federal level.

#### Girls Inc.

Girls Inc. is a nonprofit, nonpartisan organization that inspires all girls to be strong, smart, and bold through direct service and advocacy. Throughout the United States and Canada, Girls Inc. works with schools and in communities to provide the mentoring relationships, safe spaces, and evidence-based programming that are proven to help girls succeed. Girls Inc. targets underserved communities; 62% of the girls served by Girls Inc. come from households with incomes of \$30,000 per year or less, and 78% of the girls served by Girls Inc. identify as girls of color. Girls build the knowledge, skills, and confidence to

lead change in their lives and effect change in the world. Girls Inc. also works with and for girls to advance legislation and policies that increase opportunities for girls and young women. Girls Inc. supports protecting and expanding access to reproductive health care, so all women can decide what is best for their own health, education, and careers.

Supermajority Education Fund, a project of New Venture Fund

Supermajority Education Fund, a project of New Venture Fund, focuses on research about the role and standing of women, educates the public about issues of importance to women, supports policies that advance women, and provides resources, training and education to help women, especially young women and women of color, tap into their power so they can make this country work for them. Supermajority Education Fund is making the case and building the demand for the Majority Rules, a set of values that if true, women would have equality in this country. Supermajority Education Fund is shifting the way people think about women's political power, imagining a different future and using that vision to ignite women's civic participation. Supermajority Education Fund signs on to this amicus brief on behalf of the women across age, race and background who make up the majority in this country. Majority Rule #2 states, "Our Bodies Are Respected." Which means that women should make their own decisions about their bodies, including healthcare decisions and if and when to start a family.

## United State of Women

United State of Women (USOW), an initiative of Civic Nation, is a non-profit and nonpartisan organization which aims to create a world in which women and all people of marginalized genders can thrive. A national convener within the gender equity space, USOW works with coalitions at all levels and represents supporters in all U.S. states and territories. Through education, community, and action, USOW amplifies issues at the intersection of gender and racial justice and galvanizes organizations, public figures, elected officials, and everyday feminists of all genders to drive policy and culture change. Since its inception, USOW has supported the protection and expansion of reproductive care as a healthcare, economic, educational, and human rights issue. USOW continues to advocate for safe and equitable access to reproductive healthcare for anyone who needs it, especially young women and women of color, as an essential part of its mission.

## Summary of Argument

Since 1973, young women have been guaranteed the constitutional right to abortion prior to viability during the pivotal years when they are embarking on educational, career, and personal journeys that shape their lives. Reproductive decisions made during these years of young adulthood produce life-long consequences for their educational attainment, workforce participation, long-term economic security, and health. The stakes are particularly high for young women of color, who, due to systemic disparities in education, health, employment, and other economic and quality of life factors, have to overcome significant disadvantages to achieve their aspirations.

Upholding Mississippi House Bill 1510 (the “Ban”) would have significant negative ramifications for all women, and would be particularly devastating to the constitutional rights, economic and educational futures, and health of young women, and particularly, young women of color, young women from economically-disadvantaged backgrounds, and other historically marginalized individuals who could become pregnant. This generation would be the nation’s first in almost 50 years to come of age without this fundamental liberty right, thus turning back the clock for young women to a time of limited rights and opportunities that no young woman in America today has ever known nor should ever know.

To ensure the experiences and voices of young women across the nation are heard and considered by this Court, Amici offer data and analysis in this brief to

demonstrate how a decision upholding the Ban and overturning the core holding of *Roe v. Wade*, 410 U.S. 113 (1973), would irrevocably harm young women, who recognize the importance of and rely on the right to abortion—even if they never exercise it. Amici will show how this Ban, and any others like it, would result in significant harm to young women as the first generation in almost half of a century to be denied this fundamental right. Such harms would negatively impact young women in various distinct aspects of their lives, with even greater impacts on young women of color. The harms of abortion bans include limiting educational opportunity for young women, impeding the career and economic success of young women, and subjecting young women, particularly young women of color, to a healthcare system with a poor record with respect to maternal safety.

Amici seek to ensure the voices of young women are heard because they will suffer disproportionately from this Ban and so many others that might follow across the country. Currently, if this Court upholds the Ban, 24 states would be poised to prohibit abortion.<sup>2</sup> This would mean young women across half of this country could lose access to previability abortion care. This would harm young women, who are most likely to experience an unplanned pregnancy yet least likely to have the financial resources to be able to seek out alternative abortion care from outside the state.

The constitutional right to make personal decisions regarding pregnancy has been established for nearly

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<sup>2</sup> Center for Reproductive Rights, *What If Roe Fell?*, (2019), <https://maps.reproductiverights.org/what-if-roe-fell>.

50 years and *Roe v. Wade*'s core holding has been reaffirmed consistently by this Court. For individuals born after 1973, a woman's right to receive abortion care prior to viability is a fundamental principle of constitutional law that has existed for the entirety of their lives. Mississippi's Ban undermines decades-old precedent on which generations of young women have relied in making decisions for their lives and their futures. But even more importantly to Amici, abortion bans set back the progress women have made in "participat[ing] equally in the economic and social life of the Nation," *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 856 (1992), by endangering the education, health, employment, economic success, and quality of life of young women and young women of color.

## Argument

- I. **Young women,<sup>3</sup> especially young women of color, are more likely to face barriers to abortion care under Mississippi's Ban, in violation of a right they value and have relied on in making personal decisions regarding pregnancy for their lives and their futures.**

At the critical turning point of entering adulthood, accessing higher education, and beginning their

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<sup>3</sup> The term "women" used throughout this brief is intended to be fully inclusive of all female-identifying individuals and transgender, gender non-binary, and cisgender individuals, age 18 - 30, who have sexual and reproductive health needs and experiences that may be impacted by legislation, policies, and court decisions related to abortion care.

careers, young women have known for almost 50 years that they have had the freedom to make decisions about when to have children and whether to continue a pregnancy. This Court’s decision in *Roe v. Wade*, 410 U.S. 113 (1973), reaffirmed in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), established that a state cannot prohibit any woman from deciding to end a previability pregnancy. *Casey*, 505 U.S. at 879. This precedent provides a foundation for which a young woman’s decisional autonomy and bodily autonomy are both respected and legally protected.

Mississippi now tries to justify its Ban by claiming that “[i]nnumerable women and mothers have reached the highest echelons of economic and social life independent of the right [to receive an abortion].”<sup>4</sup> Opportunities afforded to young women have increased significantly since 1973, but the State overlooks that *Roe*’s promise has been in place throughout this progress. The State also notably overlooks the young women, particularly women of color, who have relied on the right to access abortion care in making personal decisions regarding pregnancy for their lives and futures since 1973. *See*, e.g., *Casey*, 505 U.S. at 856 (“[F]or two decades of economic and social developments, people have organized intimate relationships and made choices that define their view of themselves and their places in society, in reliance on the availability of abortion.”).

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<sup>4</sup> Pet’rs’ Br. at 5, *available at* [https://www.supremecourt.gov/DocketPDF/19/19-1392/184703/20210722161332385\\_19-1392\\_BriefForPetitioners.pdf](https://www.supremecourt.gov/DocketPDF/19/19-1392/184703/20210722161332385_19-1392_BriefForPetitioners.pdf).

Indeed, young women today recognize and care deeply about protecting *Roe*'s promise. In *YWomensVote 2020*,<sup>5</sup> YWCA USA's most recent report exploring the opinions of diverse groups of women across the country, young women overwhelmingly expressed that protecting *Roe v. Wade* is "very important." In fact, 72% of the women aged 18 to 22 (part of *Generation Z*) and 68% of women aged 23 to 38 (part of the *Millennial* generation) viewed protecting *Roe v. Wade* as being "very important."<sup>6</sup> This data is even more compelling when juxtaposing the concern that young women have in protecting *Roe v. Wade* with the proportion of young women who actually receive abortion care. Relevant data indicates that young women age 20 to 24 account for 34% of all abortions.<sup>7</sup> Among all women, one in four will have an abortion during their reproductive years.<sup>8</sup>

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<sup>5</sup> YWCA, *YWomensVote 2020 Report*, (2020), <https://ywomensvote.org/download-ywomensvote-2020/> (YWomensVote 2020 presents findings from the third national survey conducted by YWCA USA to assess women's concerns, priorities, and experiences with discrimination (2012, 2018 and 2019). Administered by bipartisan researchers from Lake Research Partners and American Viewpoint, the survey reached 1,000 adult women with oversamples of Black women, Latinas, Asian/Pacific Islander women, American Indian/Alaska Native women, Gen Z women (aged 18 to 22), Millennial women (aged 23 to 38), and white non-college rural women.

<sup>6</sup> *Id.* at 20.

<sup>7</sup> Rachel K. Jones PhD & Jenna Jerman, MPH, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304042>.

<sup>8</sup> *Id.*

While the Ban will harm all women, young women of color will likely lose the most if their access to reproductive health and abortion care is curtailed or eliminated. When examining the importance of abortion among various racial demographics, women of all races, especially women of color, expressed a keen interest in preserving their rights under *Roe v. Wade*. More than 69% of Black, Latina, Asian and Pacific Islander, and American Indian and Alaska Native women consistently expressed that it is "very important" to protect their rights to abortion care.<sup>9</sup> These concerns are likely rooted in the understanding that losing the right to abortion care would further entrench the economic realities, systemic barriers, and discrimination that young women of color and other oppressed communities must navigate. Young women—particularly women of color—overwhelmingly recognize that protecting their right to abortion care is a top priority.

Not only do young women value and rely on the right to abortion care, but they will be disproportionately harmed if the right is contravened by this Court. Three distinct factors contribute to this disproportionate impact on young women.

First, the Ban's prohibition on accessing abortion care after 15 weeks disproportionately affects young women because they are less likely to be aware of their pregnancy. When this Court decided *Roe v. Wade*, and held that it is for the individual woman to decide whether to continue a pregnancy prior to viability, one animating concern centered on young

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<sup>9</sup> YWCA, *supra*, note 5.

women. Specifically, in maintaining the viability line, Justice Blackmun noted that pregnancy may not be as easily discernible to some women, especially young women.<sup>10</sup> Indeed, Justice Blackmun was right: young women (aged 20 to 24) are more likely to learn of their pregnancies later.<sup>11</sup> Pregnancy unawareness could be the result of a woman's unfamiliarity with pregnancy symptoms, lack of bodily pregnancy symptoms (e.g., nausea, abdominal swelling and amenorrhea),<sup>12</sup> irregular periods, or lack of adequate sex education.<sup>13</sup> Amplifying this is the fact that women of color have less access to reproductive and maternal health services, including contraception and maternity care generally,<sup>14</sup> which would further prevent them from learning of their pregnancy at an early stage.

Second, young women, and particularly young women of color, are more likely to experience unplanned pregnancy. According to the report “Declines in

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<sup>10</sup> The Harry A. Blackmun Papers, Box 151, Manuscript Division, Library of Congress, Washington, D.C.

<sup>11</sup> Amy M. Branum, Katherine A. Ahrens, *Trends in Timing of Pregnancy Awareness Among US Women*, MATERNAL CHILD HEALTH JOURNAL, (Jul. 23, 2016), [https://www.researchgate.net/publication/305633699\\_Trends\\_in\\_Timing\\_of\\_Pregnancy\\_Awareness\\_Among\\_US\\_Women](https://www.researchgate.net/publication/305633699_Trends_in_Timing_of_Pregnancy_Awareness_Among_US_Women).

<sup>12</sup> *Id.*

<sup>13</sup> Nina Bai, *As More States Restrict Abortions, Research Points to Negative Health Outcomes for Women, Families*, University of California San Francisco, (May 22, 2019), <https://www.ucsf.edu/news/2019/05/414551/more-states-restrict-abortions-research-points-negative-health-outcomes-women>.

<sup>14</sup> Madeline Sutton, Ngozi Anachebe, Regina Lee, Heather Skanes, *Racial and Ethnic Disparities in Reproductive Health Services and Outcomes, 2020*, OBSTETRICS AND GYNAECOLOGY, (Feb. 13, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7813444/>.

Unintended Pregnancy in the United States, 2008–2011” published in the *New England Journal of Medicine*, young women (aged 20 to 24) have the highest rate of unintended pregnancies and account for more than 31% of all unintended pregnancies in the United States.<sup>15</sup> The rates of unintended pregnancy among Black (79%) and Hispanic (58%) women are almost double the rate among white women (33%) in the United States.<sup>16</sup>

Third, young women face additional hurdles that prevent them from accessing abortion within the first 15 weeks. For example, they generally have lower incomes than older women,<sup>17</sup> making it more difficult for young women to save the necessary funds to pay for an abortion at any point in pregnancy. This obstacle is compounded when women are required to travel long distances because there is no clinic available nearby. In 2017, 89% of counties in the United States had no abortion provider within their borders, up from 77% in 1978.<sup>18</sup> As of 2018, individuals in 27 cities had to travel over 100 miles to

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<sup>15</sup> Lawrence B. Finer, Mia R. Zolna, *Declines in Unintended Pregnancy in the United States, 2008–2011*, *NEW ENGLAND JOURNAL OF MEDICINE*, Table 1 (Mar. 3, 2016), <https://www.nejm.org/doi/10.1056/NEJMsa1506575>.

<sup>16</sup> *Id.*

<sup>17</sup> Bureau of Labor Statistics, *Usual Weekly Earnings of Wage and Salary Workers Second Quarter 2021*, United States Department of Labor, (2021), <https://www.bls.gov/news.release/pdf/wkyeng.pdf>.

<sup>18</sup> Taida Wolfe, Yana van der Meulen Rodgers, *Abortion During the COVID-19 Pandemic: Racial Disparities and Barriers to Care in the USA*, *SEXUALITY RESEARCH AND SOCIAL POLICY*, (2021), <https://link.springer.com/article/10.1007/s13178-021-00569-8>.

reach a clinic providing abortion services.<sup>19</sup> A handful of states, including Mississippi, have only one remaining clinic.<sup>20</sup> For young women who are economically disadvantaged and lack financial or transportation resources, these additional barriers to abortion care are significant and may preclude them from accessing care altogether.<sup>21</sup>

**II. Young women would lose educational, workforce, and economic gains and face significant health harms if they are the first generation in half a century to enter adulthood without the right to an abortion, with particularly stark consequences for young women of color.**

Since *Roe*, young women have, overall, made monumental progress with respect to educational attainment, workforce participation, and economic status. Armed with the knowledge that the right to determine their reproductive future was protected by *Roe*, young women have been able to invest in their education, training, vocations, and careers. *Roe* has

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<sup>19</sup> *Id.*

<sup>20</sup> Seven states—Kentucky, Mississippi, West Virginia, Missouri, North Dakota, South Dakota, and Wyoming—have only one remaining abortion clinic. See *ANSIRH What Happens To Women in States With Only One Abortion Clinic*, (May 11, 2017), <https://www.ansirh.org/news/what-happens-women-states-only-one-abortion-clinic>.

<sup>21</sup> Jenna Jerman, Lori Frohwirth, Megan Kavanaugh, Nakeisha Blades, *Barriers to Abortion Care and Their Consequences For Patients Traveling for Services: Qualitative Findings from Two States*, PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH, (Apr. 11, 2017), <https://onlinelibrary.wiley.com/doi/full/10.1363/psrh.12024>.

permitted young women to choose the timing of when to have a family, allowing them “to invest more heavily in their human capital, including increased schooling and job training, which can lead to higher-paying jobs and greater economic security.”<sup>22</sup> Significantly, abortion access may also affect women’s expectations about their ability to control their fertility. With the understanding that their rights to abortion care are protected, women may make different decisions about their education, the timing of marriage and family formation, and their careers.<sup>23</sup>

Rolling back the rights guaranteed by *Roe*, as Mississippi and many other states are poised to do, would have an inevitable impact on the progress women have made over the past 50 years and, looking forward, hinder the aspirations and opportunities of young women to “participate equally in the economic and social life of the Nation.” *Casey*, 505 U.S. at 856. The State’s incredulous reliance on its claim that “innumerable women” have reached the “highest echelons” of society overlooks the day-to-day realities and lived experiences of young women today, particularly the large population of young women of color and economically disadvantaged young women who have lower incomes or live in poverty,<sup>24</sup> for whom

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<sup>22</sup> Anna Bernstein, *The Economic Effects of Abortion Access: A Review of the Evidence*, CENTER ON ECONOMICS OF REPRODUCTIVE HEALTH, 3-4 (2019), [https://iwpr.org/wp-content/uploads/2020/07/B379\\_Abortion-Access\\_rfina.pdf](https://iwpr.org/wp-content/uploads/2020/07/B379_Abortion-Access_rfina.pdf).

<sup>23</sup> *Id.*

<sup>24</sup> Nearly a quarter of women were living in poverty in 2019. See generally, Statista, *Poverty Rate in the United States in 2019 by Age and Gender*, (Sept. 2020), <https://www.statista.com/zstatistics/233154/us-poverty-rate-by-gender/>.

the consequences of abortion prohibitions, like the Ban, are even more stark.

Young women’s ability to “realize their full potential, [...] is intimately connected to their ability to control their reproductive lives.” *Gonzales v. Carhart*, 550 U.S. 124, 171 (2007) (Ginsburg, J., dissenting). The numerous gains made since the 1970s could be reversed should women, particularly young women, be hurled back to a pre-*Roe* era. Lack of access to abortion care may lead to a number of harmful scenarios for young women. In the educational arena, it may force young women to leave school or training programs and derail their academic and career paths. In the workforce, it can force young women to switch to limited or part-time work to accommodate pregnancy or child care; cause them to lose a job altogether; or force them to take a leave of absence, only to return to a job that has been assigned to someone else, or puts them behind the progress of other colleagues. And in the arena of maternal health, banning previability abortions may subject young women, particularly young Black women, to an inadequate maternal healthcare system that endangers rather than protects them. Overall, a forced path due to lack of abortion care can undermine the financial independence and economic stability of young women and their families.

#### **A. Abortion bans endanger advances made in young women’s educational attainment**

The Ban threatens the advances young women have made in education in the last 50 years. Professor

Constance Shehan, a sociologist at the University of Florida who studies women, work, and families, found that in 1970—just three years before *Roe*—only 25% of women high school graduates aged 18 to 24 were enrolled in college and approximately 8% of adult women had completed four years of college.<sup>25</sup> Since *Roe*, young women have increasingly and steadily attended college and pursued careers.<sup>26</sup> The 1981-82 academic school year set a record as the first time women received more bachelor's degrees than men and since 2000, the college enrollment rate for female students consistently outnumbered males.<sup>27</sup> In 2019, approximately 1,579,000 Black women were enrolled in a degree granting post-secondary institution.<sup>28</sup> From 2016 to 2017, women earned 57% of the bachelor's degrees awarded in the United States.<sup>29</sup>

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<sup>25</sup> Constance Shehan, *How Roe v. Wade Changed the Lives of American Women*, THE CONVERSATION, (Jul. 6, 2018 6:36 AM), <https://theconversation.com/howisis-roe-v-wade-changed-the-lives-of-american-women-99130>.

<sup>26</sup> Pew Research Center, *U.S. Women Near Milestone in the College-Educated Labor Force*, (Jun. 20, 2019), <https://www.pewresearch.org/fact-tank/2019/06/20/u-s-women-near-milestone-in-the-college-educated-labor-force/>.

<sup>27</sup> Dani Matias, *New Report Says Women Will Soon Be Majority of College-Educated U.S. Workers*, (Jun. 20, 2019 10:09 PM), <https://www.npr.org/2019/06/20/734408574/new-report-says-college-educated-women-will-soon-make-up-majority-of-u-s-labor-f>.

<sup>28</sup> National Center for Education Statistics, *Digest of Education Statistics*, [https://nces.ed.gov/programs/digest/d20/tables/dt20\\_306.10.asp](https://nces.ed.gov/programs/digest/d20/tables/dt20_306.10.asp).

<sup>29</sup> Dani Matias, *New Report Says Women Will Soon Be Majority of College-Educated U.S. Workers*, (Jun. 20, 2019 10:09 PM), <https://www.npr.org/2019/06/20/734408574/new-report-says-college-educated-women-will-soon-make-up-majority-of-u-s-labor-f>.

And, whereas from 1976 to 1977, a total of 33,489 bachelor degrees were conferred upon Black women, a total of 125,845 bachelor degrees were conferred from 2018 to 2019.<sup>30</sup> While educational progress has not been even across racial lines, women’s strides, particularly Black women’s strides, in educational attainment are no small achievement.

Research makes clear that there is a connection between abortion access and educational attainment. A 2019 report published by the Center on the Economics of Reproductive Health found that abortion access led to significant increases in high school graduation, college entrance, and labor force participation, particularly among Black women.<sup>31</sup> With higher rates of “unmet need for contraception” and “unintended pregnancy,” the impact on Black women is significant as “less access to contraception is more likely to increase the potential impact of access to abortion.”<sup>32</sup> In addition, the study found that Black women are “more likely to be living in poverty than white women and so generally face greater barriers to accessing reproductive health care, and are less able to overcome restrictions on abortion access.”<sup>33</sup> Abortion bans, by their very design, are meant to alter all women’s access to abortion care by prohibiting care in most cases, but, they would also adversely impact young Black women’s continued progress in particular.

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<sup>30</sup> National Center for Education Statistics, *Digest of Education Statistics*, (Jan. 2021), [https://nces.ed.gov/programs/digest/d20/tables/dt20\\_322.20.asp](https://nces.ed.gov/programs/digest/d20/tables/dt20_322.20.asp).

<sup>31</sup> Bernstein, *supra* note 22, at 8.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

Just as the right to abortion has played a pivotal role in women's educational attainment over the last 50 years,<sup>34</sup> it will be critical in the years ahead, particularly as young women face increased challenges in attaining the educational credentials that are most needed in the workforce. Abortion bans could directly hinder young women's ability to maintain the significant strides made in educational attainment and undermine their ability to enter the workforce.

**B. Abortion bans threaten workforce participation and career attainment for young women.**

In the last 50 years, the role of women in the economic survival of our families and our nation has evolved considerably. As of 2019, the labor force participation rate of women stood at 57%, a significant increase since 1970 when the majority of women did not work outside the home.<sup>35</sup> Women have become a primary source of financial support in many families, with half of all households in the United States that have children under age 18 headed by either a single mother or a married mother who provides at least

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<sup>34</sup> *Id.* at 7-8.

<sup>35</sup> Bureau of Labor Statistics, *Usual Weekly Earnings of Wage and Salary Workers Second Quarter 2021*, United States Department of Labor, (2021), <https://www.bls.gov/news.release/pdf/wkyeng.pdf>.

40% of a family's earnings.<sup>36</sup> High percentages of Black (79%), Native American (64%), and Latina (48%) mothers are the primary or sole source of income for their families.<sup>37</sup> Women of color who are mothers of young children participate in the workforce at high rates, with more than 50% of Asian and Hispanic, 60% of white, and nearly 70% of Black mothers working outside the home while their youngest children are under the age of three.<sup>38</sup>

Abortion bans, if allowed to stand, would undermine 50 years of women's progress in our national workforce and interfere with the advancement potential of young women within the workforce today. Two critical developments in the nation's economy heighten the negative consequences for young women who may become pregnant if abortion access is restricted or banned. These considerations raise the stakes for young women during a crucial, transitional period of their lives that will shape their workforce participation, career earnings, and professional achievements in the decades that follow.

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<sup>36</sup> Institute for Women's Policy Research, *Breadwinner Mothers by Race / Ethnicity and State*, (Sept. 2016), <https://iwpr.org/wp-content/uploads/2020/08/Q054.pdf>.

<sup>37</sup> Elyse Shaw, C. Nicole Mason, Valerie Lacarte, Erika Jauregui,  *Holding Up Half the Sky: Women as Workers, Primary Caregivers, & Breadwinners During COVID-19*, INSTITUTE FOR WOMEN'S POLICY RESEARCH (June 23, 2020), <https://iwpr.org/wp-content/uploads/2020/07/Holding-Up-Half-the-Sky-Mothers-as-Breadwinners.pdf>.

<sup>38</sup> United States Department of Labor, *Labor Force Participation Rates*, (2020), <https://www.dol.gov/agencies/wb/data/latest-annual-data/labor-force-participation-rates>.

The first development relates to what has been coined the “Fourth Industrial Revolution”. The United States is on the cusp of a workforce revolution in which easily automated tasks will become obsolete, while jobs that are harder to automate or that support the digital age, will expand.<sup>39</sup> Knowledge and familiarity with STEM, a general term for Science, Technology, Engineering, and Mathematics, is intrinsic to the Fourth Industrial Revolution. It is projected that in less than two decades, jobs requiring computer programming could increase by 60%.<sup>40</sup> While more women than ever are enrolled in college and entering STEM fields, women only hold roughly one-third of STEM bachelor’s degrees; women of color hold far fewer and remain vastly outnumbered in these fields.<sup>41</sup> With the future of work relying on STEM, women likely need a strong base of postsecondary STEM education to succeed in the new realities of the workplace.<sup>42</sup>

As explored more fully in YWCA USA’s seminal report, *America’s Recovery from the 2020 ‘Shecession’: Building a Female Future of Childcare and Work*,

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<sup>39</sup> YWCA, *America’s Recovery from the 2020 “Shecession,”* 23, (Oct. 2020), [https://www.ywca.org/wp-content/uploads/COVID\\_WOMEN-CHILDCARE\\_R4.pdf](https://www.ywca.org/wp-content/uploads/COVID_WOMEN-CHILDCARE_R4.pdf)

<sup>40</sup> *Id.* at 25. See also Anu Madgavkar et al., *The Future of Women at Work*, MCKINSEY GLOBAL INSTITUTE (Jun. 2019), <https://www.mckinsey.com/~media/mckinsey/featured%20insights/gender%20equality/the%20future%20of%20women%20at%20work%20transitions%20in%20the%20age%20of%20automation/mgi-the-future-of-women-at-work-full-report-june%202019.pdf>.

<sup>41</sup> YWCA, *supra* note 39, at S 25. See also Catalyst, *Women in Science, Technology, Engineering, and Mathematics (STEM)*, (Apr. 4, 2020), <https://www.catalyst.org/research/women-in-science-technology-engineering-and-mathematics-stem>.

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

young women are at risk of suffering significant job losses as a result of the projected automation and workforce changes tied to technological innovation.<sup>43</sup> The impact of technological advances is not gender neutral, as women outnumber men in occupations with the highest risk of elimination.<sup>44</sup> While women currently account for 47% of the workforce, 58% are employed in job categories that are at significant risk due to automation, such as cashiers, receptionists, and clerks.<sup>45</sup> As a result of these inevitable changes, young women must transition to new occupations or skill sets in order to be employed in the new, technologically driven workforce. Prior to the pandemic, less urgency existed for young women to engage in this transition, but the economic consequences of the pandemic caused many employers to accelerate layoffs, automate work, and shift their workforce such that up to 42% of jobs lost during the COVID-19 pandemic will never return.<sup>46</sup>

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<sup>43</sup> YWCA, *supra* note 39. See also Kate Bahn et al., *Linking Reproductive Health Care Access to Labor Market Opportunities for Women*, CENTER FOR AMERICAN PROGRESS (Nov. 21, 2017 9:01 AM), <https://www.americanprogress.org/issues/women/reports/2017/11/21/442653/linking-reproductive-health-care-access-labor-market-opportunities-women/>.

<sup>44</sup> YWCA, *supra* note 39, at 23. See also Institute of Women's Policy Research, *Women, Automation, and the Future of Work*, (2019), [https://iwpr.org/wp-content/uploads/2020/08/C477\\_Women-and-Automation\\_Executive-Summary\\_ADA-Compliant.pdf](https://iwpr.org/wp-content/uploads/2020/08/C477_Women-and-Automation_Executive-Summary_ADA-Compliant.pdf).

<sup>45</sup> Institute of Women's Policy Research, *Women, Automation, and the Future of Work*, (2019), [https://iwpr.org/wp-content/uploads/2020/08/C477\\_Women-and-Automation\\_Executive-Summary\\_ADA-Compliant.pdf](https://iwpr.org/wp-content/uploads/2020/08/C477_Women-and-Automation_Executive-Summary_ADA-Compliant.pdf).

<sup>46</sup> YWCA, *supra* note 39, at 14. See also Jose Maria Barrero et al., *COVID-19 is also a Reallocation Shock*, BECKER FRIEDMAN

Against this shift in workforce opportunities, the economic consequences of an abortion ban would be particularly high for young women who become pregnant, as they will face significant challenges securing employment and advancing their careers.<sup>47</sup> According to one report from the Center for American Progress, access to reproductive health care, including abortion, can help reduce 'job lock' (lack of labor mobility between jobs), allowing women to transition to other jobs with different skill sets.<sup>48</sup> In fact, recent research found that the likelihood of women transitioning to new occupations increased in states with public insurance funding for abortion, and decreased in states with laws reducing access through targeted regulations of abortion providers.<sup>49</sup>

The second development that heightens the negative consequences of abortion bans for young women

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INSTITUTE (June 2020), [https://bfi.uchicago.edu/wp-content/uploads/BFI\\_WP\\_202059.pdf](https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_202059.pdf).

<sup>47</sup> See generally, Bryan McIntosh, *Motherhood and Its Impact on Career Progression*, 27 GENDER IN MANAGEMENT 346 (2012), [https://www.researchgate.net/publication/242336382\\_Motherhood\\_and\\_its\\_impact\\_on\\_career\\_progression](https://www.researchgate.net/publication/242336382_Motherhood_and_its_impact_on_career_progression) (concluding that “motherhood has a regressively detrimental effect on women’s career progression.”); Shelly J. Correll, *Is There a Motherhood Penalty*, 112 AMERICAN JOURNAL OF SOCIOLOGY 1297 (2007), [https://sociology.stanford.edu/sites/g/files/sbiybj9501/f/publications/getting\\_a\\_job\\_is\\_there\\_a\\_motherhood\\_penalty.pdf](https://sociology.stanford.edu/sites/g/files/sbiybj9501/f/publications/getting_a_job_is_there_a_motherhood_penalty.pdf). See also Whitney Botsford Morgan, *A Field Experiment: Reducing Interpersonal Discrimination Toward Pregnant Job Applicants*, 98, JOURNAL OF APPLIED PSYCHOLOGY, 799 (Aug. 19, 2013), <https://pubmed.ncbi.nlm.nih.gov/23957687/>.

<sup>48</sup> Bahn, *supra* note 43.

<sup>49</sup> *Id.*

relates to the plummeting availability of quality, affordable childcare, which is essential to many women's participation in the workforce.<sup>50</sup> Today's landscape of childcare in the United States has been described as a patchwork system with gaps and deserts in which women often struggle to find childcare at all. This failing is compounded by the fact that, even if childcare is available, young women often lack the financial resources and socio-economic stability to pay for childcare.<sup>51</sup>

Childcare in the United States presents an affordability crisis, with infant care in particular as almost cost-prohibitive. One year of infant care, for example, costs more than one year of in-state college tuition in 33 states.<sup>52</sup> YWCA's *YWomenVote 2020* report found that more than a third (36%) of Gen Z women and 30% of millennial women were "very worried" about having affordable and dependent childcare.<sup>53</sup> The childcare affordability crisis is exacerbated by race, ethnicity, gender, and education level; women of color, who are more likely to be

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<sup>50</sup> YWCA, *Removing Childcare Barriers to Women's Workplace Participation*, 1 (Apr. 2017), [https://www.ywca.org/wp-content/uploads/BRIEFING\\_PAPER\\_CHILD\\_CARE\\_FINAL.pdf](https://www.ywca.org/wp-content/uploads/BRIEFING_PAPER_CHILD_CARE_FINAL.pdf).

<sup>51</sup> Rasheed Malik, *America's Childcare Deserts in 2018*, CENTER FOR AMERICAN PROGRESS (Dec. 6, 2018), <https://www.americanprogress.org/issues/early-childhood/reports/2018/12/06/461643/americas-child-care-deserts-2018/>.

<sup>52</sup> YWCA, *supra* note 39, at 15. *See also* Simon Workman, Steven Jessen-Howard, *Understanding the True Cost of Child Care for Infants and Toddlers*, CENTER FOR AMERICAN PROGRESS (Nov. 15, 2018 9:02 AM), <https://www.americanprogress.org/issues/early-childhood/reports/2018/11/15/460970/understanding-true-cost-child-care-infants-toddlers/>.

<sup>53</sup> YWCA, *supra*, note 5.

primary breadwinners and in lower wage jobs, are thus most impacted by the juxtaposition of high costs of childcare and insufficient wages.<sup>54</sup> The average annual cost of center-based childcare is approximately \$18,000, which represents 49% of the median income for a typical Black family, 40% of the median income for a typical Latinx family, and 23% of the median income for a typical Asian family.<sup>55</sup> It is therefore unsurprising that 34% of Black women and 33% of Latinx women report being "very worried" about having affordable and dependable childcare.<sup>56</sup> Coupled with findings by the National Bureau of Economic Research that "[t]here is also a well-documented large and persistent decline in earnings that women experience on average following the birth of a child,"<sup>57</sup> the financial impacts of having a child are substantial for women.

In addition to high childcare costs, chronic unavailability of childcare is another significant obstacle to workforce participation for young women. When surveyed in 2019, fully half of working families

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<sup>54</sup>YWCA, *supra* note 39, at 15.

<sup>55</sup> YWCA, *Removing Childcare Barriers to Women's Workplace Participation*, (2017), [https://www.ywca.org/wp-content/uploads/BRIEFING\\_PAPER\\_CHILD\\_CARE\\_FINAL.pdf](https://www.ywca.org/wp-content/uploads/BRIEFING_PAPER_CHILD_CARE_FINAL.pdf). See also Child Care Aware, *Parents and the High Cost of Childcare*, (2017), [https://www.childcarewestchester.org/pdf/CCA\\_High\\_Cost\\_Report\\_2017.pdf](https://www.childcarewestchester.org/pdf/CCA_High_Cost_Report_2017.pdf).

<sup>56</sup> YWCA, *supra*, note 5.

<sup>57</sup> Sarah Miller, *The Economic Consequences of Being Denied an Abortion*, NATIONAL BUREAU OF ECONOMIC RESEARCH, 7, (Jan. 2020), [https://www.nber.org/system/files/working\\_papers/w26662/w26662.pdf](https://www.nber.org/system/files/working_papers/w26662/w26662.pdf).

reported difficulty finding suitable childcare.<sup>58</sup> Low-income families are far less likely to work traditional 9-to-5 hours and frequently require either overnight, sporadic, or short-notice childcare because of employer scheduling practices that cause inconsistent work schedules.<sup>59</sup> A 2016 report found that “[c]hild care deserts are also especially prevalent in low-income communities, and among families with irregular or non-traditional work schedules, which have high concentrations of women and families of color.”<sup>60</sup>

If young women are forced to continue an unwanted pregnancy, they will face exorbitant childcare costs, if they are able to find childcare at all. Without accessible and affordable childcare, women who were once full-time employees are relegated to part-time positions that offer less economic stability or, increasingly, are pushed out of the workforce altogether.<sup>61</sup> Even a temporary absence from the workforce bears lasting consequences, as women

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<sup>58</sup> YWCA, *supra* note 39, at 15. See also Rasheed Malik, *Working Families Are Spending Big Money on Child Care*, CENTER FOR AMERICAN PROGRESS (Jun. 2019), <https://www.americanprogress.org/issues/early-childhood/reports/2019/06/20/471141/working-families-spending-big-money-child-care/>.

<sup>59</sup> YWCA, *supra* note 39, at 15.

<sup>60</sup> YWCA, *Removing Childcare Barriers to Women’s Workplace Participation*, 2, (Apr. 2017), [https://www.ywca.org/wp-content/uploads/BRIEFING\\_PAPER\\_CHILD\\_CARE\\_FINAL.pdf](https://www.ywca.org/wp-content/uploads/BRIEFING_PAPER_CHILD_CARE_FINAL.pdf). See also Dionne Dobbins et al., *Child Care Deserts: Developing Solutions to Child Care Supply and Demand*, CHILD CARE AWARE (Sept. 2016), <https://www.childcareaware.org/wp-content/uploads/2016/09/Child-Care-Deserts-report-FINAL2.pdf>.

<sup>61</sup> YWCA, *supra* note 39, at 13.

taking time off from work after birth earn less than women who do not. The Institute for Women’s Policy Research found that women who took only a single year off from work between 2001 and 2015 had 39% lower annual earnings than women who took no time off during the same timeframe.<sup>62</sup> Beyond lost salary, the cost of leaving the workforce for even a limited time extends to lost retirement savings, lost benefits, and the lower likelihood of re-entering the workforce.<sup>63</sup>

The cascading impact of an abortion ban on a young woman’s workforce participation, career advancement, and future earnings extends far beyond finding a job. Forcing young women to proceed with a pregnancy necessarily entails chronically expensive and unavailable childcare with potentially devastating and lasting effects for young women today and in future generations.

### **C. Abortion bans could reverse positive strides in young women’s economic security.**

Since the decade that *Roe* was decided, women have made significant progress with respect to earnings, educational attainment, workforce participation, and other key indicators of economic security. Median earnings for women in the United States increased between 1970 and 2019 from \$30,000 annually to

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<sup>62</sup> Stephen J. Rose, *The Slowly Narrowing Gender Wage Gap*, HEIDI I. HARTMANN, INSTITUTE FOR WOMEN’S POLICY RESEARCH (2018), [https://iwpr.org/wp-content/uploads/2020/08/C474\\_IWPR-Still-a-Mans-Labor-Market-update-2018-2.pdf](https://iwpr.org/wp-content/uploads/2020/08/C474_IWPR-Still-a-Mans-Labor-Market-update-2018-2.pdf).

<sup>63</sup> YWCA, *supra* note 39, at 13.

about \$47,000 annually.<sup>64</sup> Since 1970, women have gained better access to high paying jobs with the number of women working as civil engineers increasing by 977%, as pharmacists by 434%, as physicians and surgeons by 334%, and as lawyers and judges by 681%.<sup>65</sup> These measures are not surprising in light of a recent report documenting the economic effects of abortion access, which found that “delayed childbearing and reduced fertility allow women to invest more heavily in their human capital, including increased schooling and job training, which can lead to higher-paying jobs and greater economic security . . . .”<sup>66</sup> With more economic stability and security, women are better positioned to afford and financially support children.<sup>67</sup>

This progress is tempered, though, by occupational segregation of women into the lowest wage jobs,<sup>68</sup> and persistent gender and racial disparities that leave women in full-time positions earning 82 cents for every dollar their male counterparts make, and most

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<sup>64</sup> United States Department of Labor, *Median Annual Earnings by Sex, Race and Hispanic Ethnicity*, <https://www.dol.gov/agencies/wb/data/earnings/median-annual-sex-race-hispanic-ethnicity>.

<sup>65</sup> Women in the Housing & Real Estate Ecosystem, *2019 Statistics on Women and Women’s Homeownership* (2019), <https://www.nawrb.com/community/statistics-on-women-and-home-ownership/>.

<sup>66</sup> Bernstein, *supra* note 22, at 3.

<sup>67</sup> *Id.*

<sup>68</sup> See generally, Washington Center for Equitable Growth, *Fact sheet: Occupational Segregation in the United States*, <https://equitablegrowth.org/fact-sheet-occupational-segregation-in-the-united-states/>.

women of color even further behind.<sup>69</sup> Notably, the Institute for Women’s Policy Research provides a sobering assessment of the persistent racial barriers Black women face with respect to economic security and opportunity.<sup>70</sup>

Against this backdrop of progress for many women but persistent gender and racial disparities for others, the potential impact of abortion bans on women’s economic security is particularly troubling. A study published in the *Journal of the American Medical Association* found that women, including individuals aged 18 to 26, who were denied the right to abortion care “were more likely to report that they had insufficient money to pay for basic living needs such as food, housing, and transportation . . . .”<sup>71</sup> Without access to abortion care, young women who are already struggling financially or living in poverty, would be even more likely to lack money for basic living needs and driven into a deeper state of poverty. Hence, the study’s “findings suggest that access to abortion enables women to choose to have children at a time

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<sup>69</sup> United States Department of Labor, *5 Facts About the State of the Gender Pay Gap*, <https://blog.dol.gov/2021/03/19/5-facts-about-the-state-of-the-gender-pay-gap>.

<sup>70</sup> See generally, Institute for Women’s Policy Research, *The Status of Black Women in the United States*, <https://iwpr.org/wp-content/uploads/2020/08/The-Status-of-Black-Women-6.26.17.pdf>.

<sup>71</sup> Diana Greene Foster et al., *Comparison of Health, Development, Maternal Bonding, and Poverty Among Children Born After Denial of Abortion vs After Pregnancies Subsequent to an Abortion*, 172 *JAMA* 1053, 1057 (Sept. 4, 2018), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2698454>.

when they have more financial and emotional resources to devote to their children.”<sup>72</sup>

The economic consequences of being denied an abortion are immediate and long-lasting. Another study published in the *American Journal of Public Health*, stated that “[w]omen seeking abortions reported economic hardships at the time of seeking abortion care—half (51%) were living below 100% of the federal poverty level; three quarters (76%) reported not having enough money to cover housing, transportation, and food. Most (63%) already had children.”<sup>73</sup> The study went on to identify economic impacts that could extend over a woman’s lifetime and that of her child: “[r]estrictions on abortion that prevent women from obtaining wanted abortions may result in reductions in full-time employment, increased incidence of poverty, more women raising children alone, and greater reliance on public assistance. The net result may have serious adverse economic consequences for women and children.”<sup>74</sup> In other words, a state’s decision to prevent young women from receiving abortion care deepens the likelihood of them living in poverty and negatively impacts their life-long economic prospects.

Worse still, as the COVID-19 pandemic has endured, women have well-founded concerns about the

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<sup>72</sup> *Id.*

<sup>73</sup> Diana Greene Foster et al., *Socioeconomic Consequences of Abortion Compared to Unwanted Birth*, 108 AM. J. PUB. HEALTH, 407, 409 (Mar. 2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5803812/> (abstract presented at the annual meeting of the American Public Health).

<sup>74</sup> *Id.* at 407, 412-13.

economic impact of having children, as the incidence of job loss due to COVID-19 for women is projected to be chronic rather than temporary. Economists at the University of Chicago’s Becker Friedman Institute estimate that anywhere from 32% to 42% of COVID-induced layoffs “will be permanent.”<sup>75</sup> Today’s most vulnerable workers—low-skilled and low-wage workers who are disproportionately women—will suffer the greatest as the economy transitions from one industrial era to the next.<sup>76</sup> Indeed, the economists concluded that “[p]rojections shortly before the outbreak of COVID-19 indicated that the jobs of women in low-skill and low-wage jobs were already the most likely to be on the chopping block.”<sup>77</sup>

The economic consequences and uncertainty of the pandemic have caused many women to re-evaluate whether and when to have children. In one study, more than one-third of women (34%) indicated a desire to get pregnant later or have fewer children because of the COVID-19 pandemic.<sup>78</sup> Women in

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<sup>75</sup> YWCA, *supra* note 39, at 23. See also Jose Maria Barrero et al., *COVID-19 is also a Reallocation Shock*, BECKER FRIEDMAN INSTITUTE (June 2020), [https://bfi.uchicago.edu/wp-content/uploads/BFI\\_WP\\_202059.pdf](https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_202059.pdf).

<sup>76</sup> In 2014, the National Women’s Law Center found that young women represented 18.3 percent of the low wage workforce, which was three times their share of the overall workforce at that time. National Women’s Law Center, *Underpaid and Overloaded: Women in Low-Wage Jobs*, 9, (2014), [https://nwlc.org/wp-content/uploads/2015/08/final\\_nwlc\\_lowwagereport2014.pdf](https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_lowwagereport2014.pdf).

<sup>77</sup> YWCA, *supra* note 39, at 24.

<sup>78</sup> Laura D. Lindberg et al., *Early Impacts of the COVID-19 Pandemic*, GUTTMACHER INSTITUTE (June 2020), <https://www.guttmacher.org/report/early-impacts-covid-19->

groups that already experience systemic health and social inequalities indicated the greatest change to their plans for having children: 44% of Black women, 48% of Hispanic women, and 37% of lower-income women indicated they want to have children later or fewer children due to the pandemic.<sup>79</sup> In this time of crisis when so much is out of control for so many, confirming young women’s right to start and grow their families when they are ready is more critical than ever.

**D. Abortion bans would subject young women to a healthcare system that has a poor record with respect to maternal safety.**

The negative impacts of abortion bans on young women include significant consequences for maternal health. The United States ranks around 55th in the world for maternal deaths<sup>80</sup> and women in the United States experience nearly the highest rate of maternal mortality among high-income nations.<sup>81</sup> The United States Center for Disease Control, National Center

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pandemic-findings-2020-guttmacher-survey-reproductive-health.

<sup>79</sup> *Id.*

<sup>80</sup> Julia Belluz, *We finally have a new US maternal mortality estimate. It’s still terrible*, VOX (Jan. 30, 2020 10:40 AM), available at: <https://www.vox.com/2020/1/30/21113782/pregnancy-deaths-us-maternal-mortality-rate>.

<sup>81</sup> Munira Z. Gunja et al., *What Is the Status of Women’s Health and Health Care in U.S. Compared to Ten Other Countries*, THE COMMONWEALTH FUND (Dec. 19, 2018), <https://www.commonwealthfund.org/publications/issue-briefs/2018/dec/womens-health-us-compared-ten-other-countries>.

for Health Statistics even acknowledged the shortcomings of maternal healthcare in the United States when it noted: In 2019, 754 women were identified as having died of maternal causes in the United States, compared with 658 in 2018. The maternal mortality rate for 2019 (20.1 deaths per 100,000 live births) was significantly higher than the rate for 2018 (17.4).<sup>82</sup>

This maternal health crisis worsens for young women of color. Nationally, compared to white women, Black women are up to four times as likely to die from a pregnancy-related death.<sup>83</sup> Whereas in 2019, the overall maternal mortality rate for United States women was 20.1 deaths per 100,000 live births, the maternal mortality rate for non-Hispanic Black women was 44.0.<sup>84</sup> This number is significantly higher than the rate for other demographic groups, including non-Hispanic white women (17.9) and Hispanic women (12.6).<sup>85</sup> In short, the maternal healthcare system in the United States is in a state of

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<sup>82</sup> Donna L. Hoyert, *Maternal Mortality Rates in the United States*, NATIONAL CENTER FOR HEALTH STATISTICS, <https://www.cdc.gov/nchs/data/hestat/maternal-mortality-2021/maternal-mortality-2021.htm>.

<sup>83</sup> Rachel Mayer et al., *The United States Maternal Mortality Rate Will Continue to Increase Without Access to Data*, HEALTH AFFAIRS, Feb. 4, 2019, <https://www.healthaffairs.org/doi/10.1377/hblog20190130.92512/full/>.

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

<sup>85</sup> United States Department of Health and Human Services, *Healthy Women, Healthy Pregnancies, Healthy Futures: Action Plan to Improve Maternal Health In America*, (Dec. 17, 2018), [https://aspe.hhs.gov/sites/default/files/private/aspe-files/264076/healthy-women-healthy-pregnancies-healthy-future-action-plan\\_0.pdf](https://aspe.hhs.gov/sites/default/files/private/aspe-files/264076/healthy-women-healthy-pregnancies-healthy-future-action-plan_0.pdf).

disrepair and is even more broken for pregnant women of color.

The quality of women's health care in the state of Mississippi similarly fails. In 2016, Mississippi ranked last among the 50 states in women's, infants', and children's health.<sup>86</sup> Mississippi also ranked 50th in infant mortality, child mortality, low birthweight, neonatal mortality, and preterm birth, and ranked 40th in maternal mortality.<sup>87</sup> Between 2013 and 2016, "the Mississippi pregnancy-related mortality ratio was 33.2 deaths per 100,000 live births; this was 1.9 times higher than the average US ratio of 17.3 deaths per 100,000 live births."<sup>88</sup> By 2019, Mississippi still remained in the bottom half of all states with respect to maternal mortality.<sup>89</sup>

Mississippi's record with respect to maternal health is especially concerning for young women of color who have a higher likelihood of experiencing pregnancy-related mortality, and lack adequate access to reproductive and postpartum care compared to other

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<sup>86</sup> United Health Foundation, *America's Health Rankings*, <https://www.americashealthrankings.org/learn/reports/2016-health-of-women-and-children-report/state-summaries-mississippi>.

<sup>87</sup> *Id.*

<sup>88</sup> Mississippi State Department of Health, *Mississippi Maternal Mortality Report*, [https://msdh.ms.gov/msdhsite/index.cfm/31,8127,299,pdf/MS\\_Maternal\\_Mortality\\_Report\\_2019\\_Final.pdf](https://msdh.ms.gov/msdhsite/index.cfm/31,8127,299,pdf/MS_Maternal_Mortality_Report_2019_Final.pdf).

<sup>89</sup> United Health Foundation, *America's Health Rankings*, [https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/overall\\_mch/state/MS?edition-year=2019](https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/overall_mch/state/MS?edition-year=2019).

groups.<sup>90</sup> At nearly three times the pregnancy-related mortality ratio for white women (18.9), the ratio for Black women in Mississippi was 51.9 deaths per 100,000 live births.<sup>91</sup> Tragically, young women of color in particular have more limited access to quality or affordable maternal and prenatal care, and are more likely than white women to be uninsured.<sup>92</sup> A report by YWCA found that women who do not receive prenatal care are three to four times more likely to die from pregnancy-related causes.<sup>93</sup> At the time of this report, 32% of Black women did not receive adequate

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<sup>90</sup> Women of color also face disparate treatment in healthcare more broadly. See generally Mallori D. Thompson, *The Scales of Reproductive Justice: Casey's Failure to Rebalance Liberty Interests in the Racially Disparate State of Maternal Medicine*, 26 MICH. J. RACE & L. 241 (2020) (explaining that Black women are victims of disparate treatment, not only with regard to reproductive and maternal healthcare, but within healthcare industry more broadly. “A Black woman is 22 percent more likely to die from heart disease than a white woman, 71 percent more likely to perish from cervical cancer, but 243 percent more likely to die from pregnancy- or childbirth-related causes”).

<sup>91</sup> Mississippi State Department of Health, *Mississippi Maternal Mortality Report*, 5, (Apr. 2019), [https://msdh.ms.gov/msdhsite/index.cfm/31,8127,299,pdf/MS\\_Maternal\\_Mortality\\_Report\\_2019\\_Final.pdf](https://msdh.ms.gov/msdhsite/index.cfm/31,8127,299,pdf/MS_Maternal_Mortality_Report_2019_Final.pdf).

<sup>92</sup> YWCA, *Maternal Health and Women of Color*, 2, (Jan. 2017), [https://www.ywca.org/wp-content/uploads/BRIEFING\\_PAPER\\_MATERNAL\\_HEALTH\\_AND\\_WOMEN\\_OF\\_COLOR\\_FINAL.pdf](https://www.ywca.org/wp-content/uploads/BRIEFING_PAPER_MATERNAL_HEALTH_AND_WOMEN_OF_COLOR_FINAL.pdf).

<sup>93</sup> YWCA, *Maternal Health and Women of Color*, 2, (Jan. 2017), [https://www.ywca.org/wp-content/uploads/BRIEFING\\_PAPER\\_MATERNAL\\_HEALTH\\_AND\\_WOMEN\\_OF\\_COLOR\\_FINAL.pdf](https://www.ywca.org/wp-content/uploads/BRIEFING_PAPER_MATERNAL_HEALTH_AND_WOMEN_OF_COLOR_FINAL.pdf). See also Center for Disease Control, *Pregnancy Mortality Surveillance System*, (Dec. 2016), <https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html>.

prenatal care.<sup>94</sup> This is also significant because data specific to Mississippi shows that more limited access to prenatal care can make carrying a pregnancy more difficult and risky.<sup>95</sup> Mississippi also maintains the country's lowest physician-to-resident ratios: 191.3 doctors for every 100,000 people.<sup>96</sup>

In short, banning previability abortions as Mississippi attempts to do would put many young women, particularly young Black women, at unacceptable risk of physical harm in a flawed maternal healthcare system with a proven poor record of maternal safety.

### Conclusion

For all these reasons, Amici respectfully urge the Court to continue to protect the Constitutional rights of young women, continue to protect young women's

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<sup>94</sup> YWCA, *Maternal Health and Women of Color*, 2, (Jan. 2017), [https://www.ywca.org/wp-content/uploads/BRIEFING\\_PAPER\\_MATERNAL\\_HEALTH\\_AND\\_WOMEN\\_OF\\_COLOR\\_FINAL.pdf](https://www.ywca.org/wp-content/uploads/BRIEFING_PAPER_MATERNAL_HEALTH_AND_WOMEN_OF_COLOR_FINAL.pdf). See also Deborah Bingham et al., *Maternal Mortality in the United States*, 83 *CONTRACEPTION* 189 (Mar. 1, 2011), [https://www.researchgate.net/publication/49825848\\_Maternal\\_mortality\\_in\\_the\\_United\\_States\\_A\\_human\\_rights\\_failure](https://www.researchgate.net/publication/49825848_Maternal_mortality_in_the_United_States_A_human_rights_failure).

<sup>95</sup> Danielle Paquette, *Why Pregnant Women in Mississippi Keep Dying*, *THE WASHINGTON POST* (Apr. 24, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/04/24/why-pregnant-women-in-mississippi-keep-dying/>.

<sup>96</sup> Debra Bingham et al., *Maternal Mortality in the United States*, 83 *Contraception* 189 (Mar. 1, 2011), [https://www.contraceptionjournal.org/article/S0010-7824\(10\)00685-2/fulltext](https://www.contraceptionjournal.org/article/S0010-7824(10)00685-2/fulltext).

access to economic and educational opportunities, and affirm the decision of the court of appeals.

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September 20, 2021