No. 20220696-SC

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, et al.,
Petitioners.
v.
PLANNED PARENTHOOD ASSOCIATION OF UTAH,
on behalf of itself and its patients, physicians, and staff,
Respondent,

On appeal from the Third Judicial District Court, Salt Lake County,
Honorable Andrew Stone, District Court No. 220903886

BRIEF OF AMICI CURIAE UTAH ABORTION FUND AND THE NATIONAL NETWORK OF ABORTION FUNDS IN SUPPORT OF RESPONDENT AND AFFIRMANCE

Alanna Peterson*
Jamie Lisagor*
Meha Goyal*
PACIFICA LAW GROUP LLP
1191 Second Avenue, Suite 2000
Seattle, WA 98101-3404
Alanna.peterson@pacificalawgroup.com
Jamie.lisagor@pacificalawgroup.com
Meha.goyal@pacificalawgroup.com

Alison Satterlee
LAW OFFICE OF VIRGINIA SUDBURY
P.O. Box 9070
Salt Lake City, UT 84109
alison@lovs.biz

Attorneys for Amici Curiae the Utah Abortion Fund and the National Network of Abortion Funds

(Additional Counsel on Following Page)

David C. Reymann
Cheylynn Hayman
PARR BROWN GEE & LOVELESS
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
dreymann@parrbrown.com
chayman@parrbrown.com

Kimberly A. Parker**
Nathaniel W. Reisinger*
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Avenue NW
Washington, D.C. 20037
kimberly.parker@wilmerhale.com
nathaniel.reisinger@wilmerhale.com

Jessica E. Notebaert**
Lucas L. Fortier**
WILMER CUTLER PICKERING HALE AND DORR LLP
60 State Street
Boston, Massachusetts, 02109
jessica.notebaert@wilmerhale.com
lucas.fortier@wilmerhale.com
Molly A. Meegan*†
AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS
409 12th Street SW
Washington, D.C. 20024

Attorneys for Amici Curiae American College of Obstetricians and Gynecologists, American Medical Association, and Society for Maternal-Fetal Medicine

**Pro hac vice motion forthcoming*
*** Appearing pro hac vice*
† Attorney only for Amicus Curiae American College of Obstetricians and Gynecologists

Melissa A. Holyoak
Stanford E. Purser
Lance F. Sorenson
UTAH ATTORNEY GENERAL'S OFFICE
160 East 300 South, 5th Floor
P.O. Box 140856
Salt Lake City, Utah 84114

Tyler R. Green
CONSOVOY MCCARTHY
222 South Main Street, 5th Floor
Salt Lake City, Utah 84101

Attorneys for Petitioners

Troy L. Booher
J. Frederic Voros, Jr.
Dick J. Baldwin
ZIMMERMAN BOOHER
341 South Main Street, 4th Floor
Salt Lake City, Utah 84111

John Mejia
Valentina De Fex
ACLU OF UTAH FOUNDATION, INC.
311 South State Street, Suite 310

Julie Murray
Hannah Swanson
PLANNED PARENTHOOD FEDERATION OF AMERICA
1110 Vermont Avenue, NW, Suite 300
Washington, DC 2005

Camila Vega
PLANNED PARENTHOOD FEDERATION OF AMERICA
123 William Street, 9th Floor
New York, New York 10038

Attorneys for Respondent

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I. IDENTITY AND INTEREST OF AMICI CURIAE[1]

Amicus the National Network of Abortion Funds ("NNAF") is a national membership organization for abortion funds in the United States. Abortion funds are nonprofit organizations that remove financial and logistical barriers to abortion access by centering and providing support directly to people who have abortions. Some funds work with clinics to pay for all or part of abortion procedures. Some funds also offer additional logistical, emotional, and monetary support, such as assistance with transportation, lodging, food costs, childcare, and translation. Funds also play a key role in helping people navigate the increasingly complex abortion landscape in the United States. NNAF has over 90 member funds, which together supported over 60,000 people seeking abortion care in fiscal year 2021 (the most recent comprehensive data).[2] The volume of people contacting NNAF's member funds for assistance has grown exponentially since the U.S. Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022). NNAF is committed to organizing at the intersections of racial, economic, and reproductive justice to ensure that every person can exercise their right to determine whether, when, and how to create a family.

Amicus the Utah Abortion Fund (the "Fund") is the first and only abortion fund in Utah, and is a member of NNAF. The Fund helps arrange and pay for abortion procedures

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[1] As required by Utah Rule of Appellate Procedure 25, Amici timely notified the parties' counsel of amici's intent to file this brief, and all parties consented to its filing. No party or party's counsel authored this brief in whole or in part and no one, aside from Amici and their counsel, funded the preparation or submission of this brief. *See* Utah R. App. P. 25(e).

[2] NNAF's fiscal year ends on June 30.

for people traveling to, from, or within Utah to obtain abortion care. The Fund contributes pledges toward the out-of-pocket costs of abortion care, ranging from $25 to pledges as large as $10,000. More than half of the Fund's callers pay for part of the cost of their procedure. The Fund also provides holistic support to callers facing additional barriers to care, including arranging and paying for all or part of travel and lodging costs. In 2022, the Fund received over 400 calls from people seeking support with an abortion and funded over 350 procedures. 40% of those callers lived outside of Salt Lake County, and callers traveled an average of 110 miles to obtain care. Many callers had to travel even longer distances to get abortions if their pregnancy exceeded Utah's 18-week gestational age limit or if underlying health conditions or other circumstances required more complex care.

As organizations providing and facilitating direct support to marginalized people seeking abortions, Amici have an interest in ensuring that all people have access to the abortion care they need when they need it, without stigma or barriers. Amici submit this brief to contextualize the trial court's decision in this case by compiling peer-reviewed research and offering the Fund's firsthand knowledge of the devastating impact that barriers to abortion access have on people in Utah seeking abortions, particularly people who are poor, young, or from communities of color.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

Utah's abortion ban, codified at Utah Code §§ 76-7a-101 to -301 (the "Ban"), will have devastating impacts on people in Utah who need abortions, and poor people and communities of color will be hit hardest. Many people already face significant financial and structural barriers to obtaining abortion care. That includes staggering out-of-pocket

costs, navigating an increasingly complex abortion landscape with rising demand and a dwindling number of providers, and arranging and paying for lodging, transportation, and childcare, among other challenges. Even without the Ban, these barriers effectively preclude access to abortion for many people without, and sometimes even with, the support of abortion funds.

Lifting the preliminary injunction will amplify these barriers, precluding even more people from obtaining this essential and life-changing healthcare and forcing them to carry unwanted pregnancies, altering their lives and families forever. Research shows that barriers experienced simultaneously, particularly in the context of travel, have a compounding effect and can together become insurmountable. For those who manage to obtain care out of state, travelling even longer distances will further upend their lives, cause physical and psychological harm, and increase the delay, complexity, and expense of obtaining an abortion. These harms are particularly acute for marginalized communities that are more likely to need abortions and less likely to be able to access or pay for them.

The structural barriers to abortion care underscore why it is unrealistic and unjust to expect pregnant people to file their own lawsuits against the Ban. Litigating would either significantly delay or, more likely, preclude altogether the abortions people want and need. Planned Parenthood is the foremost abortion provider in this state and is in the best position to advocate effectively and forcefully for the rights of the people it serves. Amici respectfully request that the Court affirm the district court's order preliminarily enjoining enforcement of the Ban.

III. ARGUMENT

A. Many people in Utah face structural barriers to obtaining the abortion care they want and need.

The ability to obtain an abortion is "an essential component" of primary healthcare for people who are or may become pregnant.[3] Even with the preliminary injunction in place, many people in Utah face significant barriers to obtaining abortion care, particularly people who are poor or low-income, young, or from communities of color.[4]

Financial Barriers. Abortion is expensive. In 2020, first trimester abortions in this region cost approximately $515.[5] Second trimester abortions are exponentially more expensive, with a median cost of $1,500 in this region in 2020.[6] In the Fund's experience, the actual costs of callers' procedures are now significantly higher, ranging up to $600 for

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[3] Am. College of Obstetricians & Gynecologists, *Facts Are Important: Abortion is Healthcare*, https://www.acog.org/advocacy/facts-are-important/abortion-is-healthcare (last visited Jan. 26, 2023); Ushma D. Upadhyay et al., *Trends in Self-Pay Charges and Insurance Acceptance for Abortion in the United States, 2017-20*, 41 Health Affairs 507, 507 (Apr. 2022), https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01528.

[4] *See, e.g.*, Guttmacher Inst., *Barriers to Abortion Care May Have Cumulative Negative Effects* (Apr. 11, 2017), https://www.guttmacher.org/news-release/2017/barriers-abortion-care-may-have-cumulative-negative-effects. People who are poor or from communities of color, particularly Black women, have higher rates of abortion than people of higher socioeconomic status or White people. Christine Dehlendorf et al., *Disparities in Abortion Rates: A Public Health Approach*, 103 Am. J. Public Health 1772, 1772 (Oct. 2013), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780732/. This is not due to racial targeting or improper motives on the part of abortion providers, as some commentators (including amicus curiae Utah Eagle Forum) suggest, but instead to "structural social inequalities," particularly racism and poverty, which impact people's ability to control their reproductive lives. *Id.* These same structural inequalities make it even more difficult for people who are poor or from communities of color to obtain abortion care.

[5] Upadhyay et al., *Trends in Self-Pay Charges*, *supra* note 3, at 512.

[6] *Id.*

first trimester abortions and an average of $2,500 and up to $15,000 for second trimester abortions.

Most people who need abortions cannot afford them. People in Utah generally have to pay the cost of their procedure out-of-pocket because Medicaid does not cover abortion, the State of Utah does not fill that gap, and Utah law prohibits insurance companies from covering abortion except in very limited circumstances.[7] These costs are staggering for most: 69% of people seeking abortions are poor or low-income, and 49% live below the federal poverty level.[8] A 2017 study concluded that any abortion-related costs over $600 would be "financially catastrophic" for Utah households making the state's median monthly income.[9] Adjusting for inflation, the current out-of-pocket costs of an abortion are now out of reach for more than half of Utahns. These financial challenges are worsened by

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[7] Utah Code § 31A-22-726 (prohibiting health benefit plans from covering abortions, with limited exceptions); Ophra Leyser-Whalen, et al., *Revealing Economic and Racial Injustices: Demographics of Abortion Fund Callers on the U.S.-Mexico Border*, 8 Women's Reprod. Health 188, 188 (2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8741197/ (last visited Jan. 27, 2023).

[8] J. Kotting & G.E. Ely, *The Undue Burden of Paying for Abortion: An Exploration of Abortion Fund Cases* at 3 (2017), https://media.abortionfunds.org/cms/assets/uploads/2017/08/29150952/Tiller-Fund-Report-2017-National-Network-of-Abortion-Funds.pdf; Guttmacher Inst., *United States: Abortion Demographics*, https://www.guttmacher.org/united-states/abortion/demographics (last visited Jan. 26, 2023); Rachel K. Jones et al., *At what cost? Payment for abortion care by U.S. women*, 23(3) Women's Health Issues e173, e176 (May 2013), https://pubmed.ncbi.nlm.nih.gov/23660430/; Gretchen Ely et al., *The undue burden of paying for an abortion: An exploration of abortion fund cases*, 56 Soc. Work Health Care 99, 100 (Dec. 2016), https://www.tandfonline.com/doi/full/10.1080/00981389.2016.126270; Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, Guttmacher Institute (May 2016), https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014.

[9] Carmela Zuniga et al., *Abortion as a Catastrophic Health Expenditure in the United States* (figure 1) (Aug. 2020), https://doi.org/10.1016/j.whi.2020.07.001.

the economic fallout from the COVID-19 pandemic and rising inflation, which is squeezing budgets and exacerbating inequities across the country.[10]

Although the cost of the procedure alone would preclude many people from obtaining an abortion without assistance, that is not the only barrier people face. They must also arrange and pay for travel and lodging.[11] The 59% of people seeking abortions who have children must also arrange and pay for childcare.[12] Most people need and want their abortions as soon as possible and many clinics book out far in advance, so people do not have the luxury of scheduling their abortion when travel and lodging are most affordable. Some clinics also require patients to bring an escort, which adds to travel and lodging costs.

Taking time away from work, school, or other responsibilities frequently raises even more challenges.[13] Poor or low-income people often have low-wage jobs that do not offer

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[10] "The COVID-19 pandemic has only worsened … significant gaps in wealth, employment, housing, and access to health care between White persons and people from some racial and ethnic groups." Don Bambino Geno Tai et al., *Disproportionate Impact of COVID-19 on Racial and Ethnic Minority Groups in the United States: a 2021 Update*, 9 J. Racial Ethnic Health Disparities, 2334, 2335 (Oct. 13, 2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8513546/. A 2022 poll showed that while "households across the U.S. widely report experiencing serious problems from inflation, Black Americans are substantially more likely than whites to report they are currently having serious financial problems in this period (55% to 38%)," including 58% of Black Americans reporting that they did not have enough emergency savings to cover at least one month of expenses. Harvard T.H. Chan School of Public Health, *Poll: High U.S. inflation rates are having a more serious impact on Black Americans than white Americans*, https://www.hsph.harvard.edu/news/press-releases/poll-high-u-s-inflation-rates-are-having-a-more-serious-impact-on-black-americans-than-white-americans/ (last visited Jan. 26, 2023).

[11] *See* Guttmacher Inst., *United States: Abortion Demographics*, *supra* note 8.

[12] *Id.*

[13] *See, e.g.*, Ushma D. Updhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits in the United States*, 104 Am. J. Pub. Health 1687, 1689 (Sept. 2014),

paid sick days. As a result, they will lose wages and may endanger their employment if they take time off to obtain abortion care.[14] In addition, many people experience symptoms during the early stages of pregnancy (such as severe nausea and vomiting) that make it impossible for them to work, at the same time that they are trying to raise funds for abortion care.

For people living paycheck to paycheck, the staggering out-of-pocket costs for abortion care, often coupled with lost wages, can force them to make impossible choices between getting an abortion and paying for basic necessities. One study found that many people had to delay or forego paying bills (such as rent or utilities payments) or for food to cover the costs of their abortions.[15] The Fund's callers regularly share their experiences with the real-life consequences: recently homeless people at risk of losing their newly secured housing if they use their rent money to pay for abortion care; students who normally pay for their day-to-day expenses by donating blood but are unable to do so during pregnancy; and people who just lost their job and will not start getting unemployment benefits until after it would be too late to get an abortion. They explain their fear about not being able to afford abortion care or, if forced to carry the pregnancy, a child. They talk about how they are

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https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4151926/pdf/AJPH.2013.301378.pdf (listing "difficulties getting time off work" among the reasons people delay their abortions).

[14] Utah does not offer or require private sector employees to provide paid family and medical leave. *See* National Conference of State Legislatures, *State Family and Medical Leave Laws* (Sept. 2022), https://www.ncsl.org/labor-and-employment/state-family-and-medical-leave-laws.

[15] *See, e.g.*, Rachel Jones et al., *supra* note 8 (finding that some people "delayed or did not pay bills such as rent (14%), food (16%), or utilities and other bills (30%) to pay for the abortion").

"really struggling" and feeling "hopeless" and "terrified." While the Fund works tirelessly to help as many callers as possible, the current need in Utah for financial and other supports far exceeds the Fund's capacity.

These impossible financial choices can have lasting and far-reaching impacts on people's lives. Delaying or foregoing paying bills can result in bills being sent to collections, impact credit scores, and make it more challenging to buy a car or rent or own a home.[16] It can also "contribute to bankruptcy, home foreclosures, or evictions."[17] These are not isolated events. If someone is evicted, it can cause "cascading disruptive effects" throughout other parts of their life, including "job loss, adverse health effects," and other "negative consequences."[18] Studies demonstrate that housing loss and job loss are interrelated, and experiencing one makes someone significantly more likely to experience the other.[19] Particularly for people who are already experiencing financial or housing insecurity, like so many of the Fund's callers, the unexpected and staggering cost of abortion care could be the tipping point.

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[16] Lunna Lopes et al., *Health Care Debt in the U.S.: The Broad Consequences of Medical and Dental Bills* (June 16, 2022), https://www.kff.org/report-section/kff-health-care-debt-survey-main-findings/.

[17] *Id.*

[18] Robert Collinson & Davin Reed, *The Effects of Evictions on Low-Income Households* (Dec. 2018), https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf.

[19] *See generally* Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, 63 Soc. Problems 46 (Jan. 2016), https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824.

Logistical barriers. Even with the preliminary injunction in place, people in Utah often struggle to find available and accessible abortion providers. Utah currently has two abortion clinics, both of which are in Salt Lake County.[20] Over 50% of the Fund's callers reside outside of Salt Lake County and travel 110 miles on average to obtain abortion care, regardless of gestational age. The scarcity and concentration of clinics in Utah is consistent with a 2017 study characterizing St. George, Utah as one of 27 major cities in the United States that are "abortion deserts."[21] Since then, the Fund has seen demand at those clinics continue to rise.

Finding a provider and scheduling an appointment becomes even more challenging the further a person's pregnancy progresses.[22] The higher the gestational age, usually the more expensive the procedure, the fewer clinics that can serve them, the more significant the delay for an appointment, and the longer the distance they must travel to get there. There are few clinics offering second and third trimester care in this region of the United States (and none in Utah). Those that do schedule appointments two to three weeks in advance due to rising demand. That means when people arrive for their appointment, they are at

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[20] Alice F. Cartwright et al., *Identifying National Availability of Abortion Care and Distance from Major US Cities: Systemic Online Search*, 20 J. of Med. Internet Research e186 (Table 1) (May 2018), https://www.jmir.org/2018/5/e186/ (identifying only two clinics in Utah).

[21] *Id*. (Table 3).

[22] Most people who get abortions later in pregnancy wish they could have obtained care earlier, but could not for a variety of reasons (including lack of funding, late detection of pregnancy, and health issues or complications). *See, e.g.*, Rachel Jones & Jenna Jerman, *Characteristics and Circumstances of U.S. Women Who Obtain Very Early and Second-Trimester Abortions*, 12 PLOS ONE e0169969, 12 (Jan. 25, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5266268/pdf/pone.0169969.pdf.

least two to three weeks further along in their pregnancy than when they first sought care, and the procedure will likely be more complex and expensive.[23] Traveling to these clinics almost always requires the Fund's callers to stay at least two and sometimes four or more nights and increases costs for lodging, plane tickets, transportation, and other necessary expenses like food and childcare. Fund callers getting second or third trimester abortions often incur approximately $1,000 to $2,000 in associated costs, and sometimes much higher. For example, callers travelling to Boulder, Colorado for procedures usually must stay for at least four days, and an escort is required. Lodging, flights, food, and ground transportation for two people generally exceeds $1,900, not including the cost of the procedure.

Barriers to reliable information. Misinformation or lack of information about abortion is also a significant barrier.[24] As one study found, "the pursuit of information about abortion following discovery of an unintended pregnancy can present a stymying barrier, as many people are not familiar with abortion information and options until they need one."[25] People commonly mention "not knowing where to find abortion care" and "not

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[23] *See* Leyser-Whalen et al., *supra* note 7, at 188 ("These barriers can delay abortion care beyond the first trimester, which further elevates the cost and the procedure's risk, although abortions are generally low-risk procedures.").

[24] Megan L. Kavanaugh et al., *"It's Not Something You Talk About Really": Information Barriers Encountered by Women who Travel Long Distances for Abortion Care*, 100 Contraception 79, 80 (April 10, 2019), https://doi.org/10.1016/j.contraception.2019.03.048.

[25] *Id*. at 82.

knowing how to get a provider" as reasons why their abortion was delayed.[26] There is often inaccurate or unreliable information about abortion on the internet, particularly for people who live in geographic areas with few or no abortion clinics and where crisis pregnancy centers (fake clinics that do not actually offer or support abortion) operate.[27] In many communities, the stigma around abortion prevents people from asking questions of or getting reliable answers from friends, family, or their healthcare providers.[28]

Barriers due to intimate partner violence. These barriers are intensified for people experiencing intimate partner violence, which includes one in three women in the United States and even higher rates among historically marginalized communities.[29] Between one-third and one-half of all people decide to have an abortion due to "partner-related reasons," including "having a partner who is unable or unwilling to raise a child" or "being in an abusive relationship."[30] There is a body of research confirming the link between violence and pregnancy. Intimate partner violence is associated with a higher risk of unintended

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[26] Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits*, *supra* note 13, at 1689.

[27] Kavanaugh et al., *supra* note 24, at 82.

[28] *See id*. at 79 ("fear of being stigmatized personally may lead those who have had abortions to remain silent about their experience, which may contribute to the promulgation of misinformation about abortion.").

[29] Elizabeth Tobin-Tyler, *A Grim New Reality – Intimate Partner Violence After Dobbs And Bruen*, 387 New Eng. J. Med. 1247, 1247 (2022), https://www.nejm.org/doi/pdf/10.1056/NEJMp2209696. Intimate partner violence includes "physical and sexual violence and intimidation" and "psychological abuse." *Id*.

[30] Ushma D. Upadhyay et al., *Intimate Relationships after Receiving Versus Being Denied an Abortion: A 5-Year Prospective Study in the United States*, 54 Perspectives on Sexual and Reprod. Health 156 (Dec. 2022), https://onlinelibrary.wiley.com/doi/epdf/10.1363/psrh.12216.

pregnancy, and the likelihood and severity of intimate partner violence escalates when someone is pregnant.[31] People in an abusive relationship may have an unintended pregnancy due to coercion, sexual violence, or sabotage of contraception, among other reasons.[32]

Research shows that many pregnant people do not tell their partners about their pregnancy or their decision to obtain an abortion because they fear their partners will harm them, which makes it even more daunting and potentially dangerous for them to navigate the structural barriers to obtain care.[33] Economic coercion and control—a hallmark of intimate partner violence—makes it more challenging and dangerous for people in abusive relationships to find money for the out-of-pocket costs of their procedure.

B. Forcing people to leave Utah to obtain abortion care will compound the structural barriers they are already facing, and cause irreparable harm.

The structural barriers people in Utah are already facing will be compounded if the preliminary injunction is lifted and the Ban goes into effect. It will be impractical or impossible for even more people—particularly people who are poor, young, or from communities of color—to obtain this essential and life-changing healthcare. Amici agree

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[31] *See* Jeanne L. Alhusen et al., *Intimate Partner Violence, Reproductive Coercion, and Unintended Pregnancy in Women with Disabilities*, 13 Disability and Health J. 100849 (Apr. 2020), https://www.sciencedirect.com/science/article/abs/pii/S193665741930161X; Rebekah E. Gee et al., *Power Over Parity: Intimate Partner Violence and Issues of Fertility Control*, 201 Am. J. of Obstetrics & Gynecology 148.e1, 148.el (2009), https://pubmed.ncbi.nlm.nih.gov/19564020/.

[32] Tobin-Tyler, *supra* note 29, at 1248.

[33] Junda Woo et al., *Abortion Disclosure and the Association with Domestic Violence*, 105 Obstetrics & Gynecology 1329 (2005), https://pubmed.ncbi.nlm.nih.gov/15932825/.

with the trial court, Respondent Planned Parenthood, and other amici curiae that the Ban will not only harm people who are forced to carry unwanted pregnancies or self-manage their abortion at home, but will also cause significant and lasting harm to those who ultimately are able to obtain abortion care by travelling to other states.[34] The intersection of the multiple structural barriers to abortion access discussed above amplifies their effect, particularly when people need to travel long distances to obtain care.[35] This compounding effect creates negative consequences that "may be greater than those of individual barriers" alone.[36]

If the Ban goes into effect, people in Utah will need to travel hundreds of miles to access care, likely to Colorado, Nevada, or New Mexico. The clinics in those states are already seeing huge surges in demand because of abortion bans throughout the South and Southwest, which may require people to wait longer or travel further to obtain care, including to Washington, Oregon, or California. And the options are even more limited the further into pregnancy someone needs an abortion.

As the Fund's experience helping callers obtain out-of-state abortions beyond Utah's gestational limit foreshadows and the reality of NNAF's members operating in states with

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[34] *See* R. at 847; Resp. Br. at 14-15.

[35] Jenna Jerman et al., *Barriers to Abortion Care and Their Consequences for Patients Traveling for Services: Qualitative Findings from Two States*, 49 Perspective on Sexual Reprod. Health 95 (Apr. 10, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5953191/ (concluding "the experience of multiple barriers" to abortion care "appeared to have a compounding effect, resulting in negative consequences for women traveling for abortion."); Guttmacher Inst., *Barriers to Abortion Care*, *supra* note 4.

[36] Jerman et al., *Barriers to Abortion Care*, *supra* note 35.

abortion bans confirms, coordinating and finding funding for travel delays an abortion. Even with the support of the Fund and other sources, people sometimes must delay their procedure to fundraise for their abortion and associated costs, like travel and lodging. This is particularly true now, when funds are facing unprecedented demand and costs are skyrocketing. Studies demonstrate that the primary reason people delay abortion care is the need to fundraise for and arrange travel, which "prolong[s]" their efforts to obtain an abortion.[37]

Delaying an abortion procedure increases the cost and complexity of both the procedure itself and the logistics and burdens someone must overcome to make it to their appointment, which without the Ban people could obtain earlier in pregnancy and with much lower risk in Utah. The cost of out-of-state travel often exceeds the budget of a single abortion fund. As a result, people frequently need financial support from more than one abortion fund and additional time to fundraise on their own. People can get stuck in a vicious circle where the time needed to raise funds for the procedure pushes out their appointment date to a later gestational age. This, in turn, often increases costs beyond what they were initially quoted and had fundraised and may also further limit the availability and accessibility of providers.[38] Delaying an abortion to arrange for travel will also increase

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[37] Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits*, *supra* note 13, at 1687–94; *see also* Ushma D. Upadhyay et al., *State Abortion Policies and Medicaid Coverage of Abortion are Associated with Pregnancy Outcomes Among Individuals Seeking Abortion Recruited Using Google Ads: A National Cohort Study*, 247 Soc. Sci. & Med. 113747, at 1 (Apr. 2021), https://www.sciencedirect.com/science/article/pii/S0277953621000794?via%3Dihub; Jones & Jerman, *supra* note 22, at 12.

[38] Studies demonstrate that the primary reason people delay abortion care is the need to fundraise for and arrange travel. Upadhyay et al., *Denial of Abortion Because of Provider*

the risk associated with abortion procedures.[39] The added hurdle to leave the state to obtain care will have a cascading effect, exacerbating the financial and logistical challenges that people are already experiencing.

The Fund regularly witnesses how the compounding of structural barriers related to out-of-state travel can needlessly increase costs and risks. As one example, the time it took to arrange and find sufficient funding for a caller's travel to Las Vegas to obtain care—including because hotels were either fully booked or over $1,000 per night due to a sporting event—delayed the caller's appointment by several days and resulted in her needing a different, more complicated, and lengthy procedure than initially anticipated.

Delaying an abortion procedure also means that a person will have to spend more time carrying an unwanted pregnancy, which can cause physical and psychological impacts that significantly impact the pregnant person's quality of life and ability to work, parent, or attend school.[40] "Research shows that people who face logistical barriers to accessing

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Gestational Age Limits, *supra* note 13, at 1687-94; Jones & Jerman, *supra* note 22, at 12; Upadhyay et al., *State Abortion Policies*, *supra* note 37, at 10.

[39] *See, e.g.*, Caitlin Gerdts et al., *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth after an Unwanted Pregnancy*, 26 Women's Health Issues 55 (Jan. 2016), https://www.sciencedirect.com/science/article/pii/S10493867150 01589 ("The risk of mortality from childbirth in the United States is estimated to be 14 times higher than the risk from induced abortion" at any stage).

[40] *See, e.g.*, Guttmacher Inst., *Barriers to Abortion Care*, *supra* note 4; Advancing New Solutions in Reproductive Health, *The Harms of Denying a Woman a Wanted Abortion Findings from the Turnaway Study*, https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf (last visited Jan. 26, 2023); Corinne H. Rocca et al., *Emotions and Decision Rightness over Five Years Following an Abortion: An Examination of Decision Difficulty and Abortion Stigma*, 248 Soc. Sci. & Med 112704, at 1 (Mar. 2020), https://www.sciencedirect.com/science/article/pii/S0277953619306999?via%3Dihub.

abortion care, including increased travel time …, have more symptoms of stress, anxiety, and depression."[41] Many of the Fund's callers cite these harmful physical and psychological impacts as a primary reason they want to get an abortion as soon as possible.

The additional cost and time away from work, school, or family also increases the risk that more people will find out about the unwanted pregnancy or the abortion, which may increase stigma and risk. This is particularly dangerous and potentially life-threatening for people experiencing intimate partner violence. As explained above, people in abusive relationships face additional risks and challenges. Unwanted pregnancies and abortion increase the "severity" of abuse and the likelihood that someone will be murdered by an abusive partner.[42] The increased chance that an abusive partner will discover the unwanted pregnancy or abortion will make it even more challenging for people to navigate these complexities and safely obtain care.[43] And those forced to carry an unwanted pregnancy may end up trapped in abusive relationships.

These structural barriers and the harm they impose will preclude some people from getting an abortion altogether. Poor and marginalized people in particular will be forced to carry unwanted pregnancies. As other amici explain, this has negative physical,

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[41] Zara Abrams, *The Facts About Abortion and Mental Health*, 53 Monitor on Psychology 40 (Sept. 1, 2022), https://www.apa.org/monitor/2022/09/news-facts-abortion-mentalhealth.

[42] Tobin-Tyler, *supra* note 29, at 1247 ("Homicide is the leading cause of pregnancy-associated death in the United States").

[43] Obtaining an abortion is a critical pathway to escape abuse, and people who are unable to obtain an abortion are more likely to stay in contact with and experience increased violence from a violent partner. *See* ANSIRH, *supra* note 40.

psychological, and socioeconomic impacts on the pregnant person, impacting the trajectories of their lives and those of the children they are forced to bear.[44] Given this bleak outlook for many people who would be forced to look outside of the state for care if the Ban is enforced, the trial court properly found that the threat of harm to Planned Parenthood's current or prospective patients in Utah supports the entry of a preliminary injunction.[45]

C. These structural barriers underscore why it is unworkable and unjust to require pregnant people to bring their own lawsuits challenging the Ban.

As the primary provider of abortion care in Utah—including the operator of one of only two abortion clinics in Utah, where over 66 percent of the Fund's callers receive abortions—Planned Parenthood is well-positioned to zealously and effectively defend the rights of the people it serves. As Planned Parenthood notes in its brief, the trial court appropriately concluded that Planned Parenthood has multiple independent bases for standing to bring this lawsuit.[46] The trial court did not reach the issue of third party-standing and the State of Utah did not preserve that issue for appeal.[47] Nevertheless, Amici submit this portion of the brief to assist the Court if it decides to reach the issue of third-party standing.

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[44] *See* Amicus Curiae Br. of Am. Coll. Of Obstetricians and Gynecologists, Am. Med. Ass'n, and Soc. For Maternal-Fetal Medicine at 14-16.

[45] *See* R. at 847.

[46] Respondent's Br. at 6-7, 10-11.

[47] *See id.*; R. at 849.

Under Utah law, Planned Parenthood has third-party standing to bring this lawsuit on behalf of its current and prospective patients in Utah.[48] The State of Utah insists that third-party standing is unwarranted because pregnant people can simply "bring a constitutional challenge in their own name" or join this lawsuit.[49] But that argument distorts reality. The same financial and structural barriers hindering access to abortion care prevent pregnant people from effectively defending their rights and challenging the Ban in court.

The length of time this litigation has proceeded (without yet reaching the merits) illustrates why people seeking abortions cannot obtain them by bringing their own lawsuits. A person who knew they were pregnant and joined this lawsuit at its outset six months ago would now have either given birth or be in their third trimester of pregnancy, and would be no closer to obtaining an abortion in Utah.[50] Even if a pregnant person were somehow able to obtain relief on a shorter timeline, delaying an abortion procedure would compound other structural barriers they are experiencing and increase the cost, complexity, and potential risks associated with their abortion.

The State of Utah and amicus curiae Utah Eagle Forum point to the plaintiffs in *Roe v. Wade* and its companion case, *Doe v. Bolton*, as examples of pregnant people bringing their own lawsuits, but both plaintiffs gave birth more than **two years** before their cases were

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[48] *See* Respondent's Br. at 10-11.

[49] Petitioner's Br. at 13.

[50] Most people do not know they are pregnant until they are approximately six weeks into pregnancy. Amy M. Branum & Katherine A. Ahrens, *Trends in Timing of Pregnancy Awareness Among Women*, 21 Maternal & Child Health J. 715 (Apr. 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5269518/.

decided.[51] Those examples disprove their point. The outcomes in those lawsuits were largely irrelevant to those plaintiffs. Amicus curiae Utah Eagle Forum also emphasizes that a pregnant person's legal claims would "survive the end of her pregnancy" under exceptions to mootness, but that point is similarly disconnected from reality.[52] That their legal claims may remain ripe is little consolation for someone who is forced to carry an unwanted pregnancy, endure childbirth, and bear a child against their will simply because the State of Utah quibbles with Planned Parenthood's standing to bring suit on their behalf.

Further, finding and paying for a competent and available attorney with no notice would be impossible for many people. People who are poor or low-income are among the most likely to face financial and structural barriers to abortion access, and are also the most likely to be denied access to justice through our legal system. The Utah Bar Foundation's survey of the access-to-justice gap concluded that two-thirds of low-income Utah residents cannot afford a lawyer, and either did not know about or felt they could not access pro bono or

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[51] Petitioner's Br. at 13; Amicus Curiae Br. of Utah Eagle Forum at 14-15; Joshua Prager, *The Roe Baby*, The Atlantic (Sept. 9, 2021), https://www.theatlantic.com/politics/archive/2021/09/jane-roe-v-wade-baby-norma-mccorvey/620009/; *see also Doe v. Bolton*, 410 U.S. 179, 185 (1973) (pseudonymous plaintiff was denied an abortion and filed suit when she was nine weeks pregnant, which was two years and nine months before the case was decided). The bulk of the other cases the State cites involved barriers to abortion access, such as funding restrictions and a parental notification requirement, not laws precluding altogether the abortions that the plaintiffs needed. *See, e.g., H.L. v. Matheson*, 604 P.2d 907, 907-08 (Utah 1979) (challenge to parental notification statute); *D.R. v. Mitchell*, 645 F.2d 852, 852-53 (10th Cir. 1981) (challenge to statute prohibiting public funding assistance for abortion); *Doe v. Gomez*, 542 N.W.2d 17, 20-21 nn.2-3 (Minn. 1995) (same).

[52] *See* Amicus Curiae Br. of Utah Eagle Forum at 15.

low-cost assistance.[53] The shortage of attorneys in certain parts of the state, particularly rural areas, would make it even more challenging for someone to promptly find available, qualified, and affordable representation.[54] This hurdle is particularly daunting for someone who is already struggling to find money to pay for their abortion and associated costs.

The State's suggestion that pregnant people form an association to sue together is similarly unworkable. Finding other pregnant people seeking abortions on exactly the same timeline and under the same circumstances will make it even harder, not easier, for pregnant people to file suit. Utah's Rule of Civil Procedure 17 allows unincorporated associations to sue in their own name, but it is unclear whether that would apply in this scenario.[55] That Rule is specifically limited to people who are "associated in business," which would not appear to apply to pregnant people whose shared purpose is not business-related.[56] They would also be required to register as an association with the state and designate and maintain a registered agent, among other potential administrative burdens.[57] Forming an association would thus only increase the logistical challenges and expense of

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[53] The Utah Bar Foundation, *The Justice Gap: Addressing the Unmet Legal Needs of Lower-Income Utahns*, at 3-4 (Apr. 2020), http://www.utahbarfoundation.org/static/media/UBFJusticeGapFullReport.e99dbe0b776f9580a13f.pdf. The Utah Bar Foundation concluded than an "analysis of Utah's civil legal system shows a large unmet need," and as a result low-income households "may find their legal needs insurmountable." *Id*. at 23.

[54] *Id*. at 5.

[55] *See* Utah R. Civ. P. 17(e).

[56] *See id.*; *see, e.g.*, *Hebertson v. Willowcreek Plaza*, 923 P.2d 1389, 1392 (Utah 1996) (Rule 17(e) "[c]learly … contemplates … parties transacting business" outside the context of the lawsuit).

[57] *See id*. (citing Utah Code § 42-2-5(2)).

bringing a lawsuit, and would get pregnant people no closer to the abortions they want and need.

IV. CONCLUSION

The preliminary injunction is essential to prevent significant and lasting harm to people in Utah who are or may become pregnant and their families, particularly people from marginalized communities who are already facing daunting barriers to abortion care. Lifting the preliminary injunction will compound these barriers and increase cost, complexity, and delay, pushing abortion care out of reach for many and deepening growing inequities in our communities. The structural barriers to abortion access underscore why it is also unjust and unworkable to expect pregnant people to bring their own lawsuits. Navigating both the increasingly impenetrable abortion landscape in the United States and a legal system with documented access-to-justice gaps at the same time would be daunting for anyone, and impossible for many. The State's counterarguments reflect a fundamental misunderstanding of abortions and why people want and need them. Amici respectfully request this Court affirm the trial court's order preliminarily enjoining the Ban to prevent irreparable harm to the Utah residents, including the people Amici and Planned Parenthood serve.

RESPECTFULLY SUBMITTED this 27th day of January, 2023.

PACIFICA LAW GROUP LLP

By: */s/Alanna Peterson*
Alanna Peterson *
Jamie Lisagor *
Meha Goyal *

LAW OFFICE OF VIRGINIA SUDBURY

By: */s/Alison Satterlee*
Alison Satterlee

Attorneys for Amici Curiae Utah Abortion Fund and the National Network of Abortion Funds

**Pro hac vice application pending*

CERTIFICATE OF COMPLIANCE

1. This brief complies with Utah Rule of Appellate Procedure 25(f) because it contains 6,074 words, excluding any tables or addenda.

2. This brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Times New Roman font, in compliance with the typeface and type-size requirements of Utah Rule of Appellate Procedure 27(a).

3. This brief contains no non-public information and complies with Utah Rule of Appellate Procedure 21(h).

/s/Alison Satterlee
Alison Satterlee

CERTIFICATE OF SERVICE

I certify that on January 27, 2023, I served the Brief of Amici Curiae Utah Abortion Fund and the National Network of Abortion Funds in Support of Respondent Planned Parenthood Federation of Utah and Affirmance via email on the following:

Melissa A. Holyoak melissaholyoak@agutah.gov
Stanford E. Purser spurser@agutah.gov
Lance F. Sorenson lancesorenson@agutah.gov
OFFICE OF THE UTAH ATTORNEY GENERAL
Attorneys for Petitioners

Tyler R. Green tyler@consovoymccarthy.com
CONSOVOY MCCARTHY PLLC
Attorneys for Petitioners

Troy L. Booher tbooher@zbappeals.com
J. Frederic Voros, Jr. fvoros@zbappeals.com
Dick J. Baldwin dbaldwin@zbappeals.com
ZIMMERMAN BOOHER
Attorneys for Respondent

John Mejia jmejia@acluutah.org
Valentina De Fex vdefex@acluutah.org
Jason M. Groth jgroth@acluutah.org
ACLU OF UTAH FOUNDATION, INC.
Attorneys for Respondent

Julie A. Murray julie.murray@ppfa.org
Hannah Swanson hannah.swanson@ppfa.org
Camila Vega camila.vega@ppfa.org
PLANNED PARENTHOOD FEDERATION OF AMERICA
Attorneys for Respondent

Frank D. Mylar office@mylarlaw.com
MYLAR LAW
Attorneys for American Association of Pro-Life Obstetricians and Gynecologists

Thaddeus W. Wendt thaddeuswendt@fellerwendt.com
FELLER & WENDT
Attorneys for American College of Pediatricians

Christopher E. Mills cmills@spero.law
SPERO LAW
Attorneys for American College of Pediatricians

Thomas R. Lee tom@leenielsen.com
John J. Nielsen john@leenielsen.com
James C. Phillips jcphillips@chapman.edu
LEE NIELSEN
Attorneys for Pro-Life Utah

William C. Duncan billduncan56@gmail.com
Attorney for Sutherland Institute

William C. Duncan billduncan56@gmail.com
Paul Benjamin Linton c/o billduncan56@gmail.com
Attorneys for Thomas More Society and Family Watch International

Julia Payne jpayne@adflegal.org
ALLIANCE DEFENDING FREEDOM
Attorneys for Utah Eagle Forum

Brady Brammer bbrammer@brfirm.com
BRAMMER RANCK
Attorneys for Utah Eagle Forum

John L. Fellows jfellows@le.utah.gov
Robert H. Rees rrees@le.utah.gov
OFFICE OF LEGISLATIVE RESEARCH AND GENERAL COUNSEL
Attorneys for Utah Legislature

David C. Reymann dreymann@parrbrown.com
Cheylynn Hayman chayman@parrbrown.com
PARR BROWN GEE & LOVELESS

Attorneys for Amici Curiae American College of Obstetricians and Gynecologists, American Medical Association, and Society for Maternal-Fetal Medicine

Kimberly A. Parker kimberly.parker@wilmerhale.com
Nathaniel W. Reisinger nathaniel.reisinger@wilmerhale.com
Jessica E. Notebaert jessica.notebaert@wilmerhale.com
Lucas L. Fortier lucas.fortier@wilmerhale.com
WILMER CUTLER PICKERING HALE AND DORR LLP

Attorneys for Amici Curiae American College of Obstetricians and Gynecologists, American Medical Association, and Society for Maternal-Fetal Medicine

Molly A. Meegan mmeegan@acog.org
AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS

/s/Alison Satterlee

Alison Satterlee
Law Office of Virginia Sudbury