No. 23-0629

IN THE SUPREME COURT OF TEXAS

STATE OF TEXAS, et al.,
Appellants,
v.
AMANDA ZURAWSKI, et al.,
Appellees.

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

BRIEF OF AMICUS CURIAE NATIONAL NETWORK OF ABORTION FUNDS IN SUPPORT OF APPELLEES AND AFFIRMANCE

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I. INTEREST OF AMICUS CURIAE

Amicus the National Network of Abortion Funds* ("NNAF") is a national membership organization for abortion funds in the United States. Abortion funds are community-based organizations that work with people in overcoming the financial and logistical obstacles that prevent people from getting the abortions they need and want. Some funds work with clinics to pay for all or part of the cost of abortion procedures. Many funds also offer logistical, emotional, and monetary support, such as assistance with and money for transportation, lodging, food costs, childcare, and interpretation. Funds also play a key role in helping people navigate the increasingly complex and constantly shifting abortion landscape in the United States. NNAF has 100 member funds, which together supported over 81,690 people seeking abortions in fiscal year 2022 (the most recent comprehensive data).[1] 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.

NNAF is dedicated to ensuring that all people have access to the abortions they want and need, when they want and need them, without stigma or barriers. NNAF

* Attorney's fees for the preparation of this brief were paid by NNAF.

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

submits this brief to contextualize the trial court's decision in this case by compiling peer-reviewed research and offering its knowledge about the devastating impact on pregnant people and their families when they cannot get medically necessary abortions in Texas, particularly in light of the significant, and often insurmountable, barriers to getting this care in another state. NNAF's brief also centers the voices and experiences of people from structurally oppressed communities, who are the least likely to be able to get the care they need unless this Court reinstates the district court's temporary injunction order.

II. INTRODUCTION AND BACKGROUND

The medical exceptions to Texas's abortion bans are confusing and unusable by design, and put the health and lives of pregnant Texans at risk. The state of Texas and other Defendants-Appellants claim that Texas law is "clear,"[2] but the near-death experiences of the patients in this case underscore that, for most people, the medical exceptions to Texas's abortion bans are rhetoric, not reality. Instead, people in horrific circumstances are being denied or delayed in receiving health- and life-preserving abortion access.[3]

This reality is devastating for many pregnant Texans, who must overcome staggering and often insurmountable financial, logistical, and structural barriers to

[2] Defs.-Appellants' Br. at 9 (quoting Pls.-Appellees' expert at 3.RR.404).

[3] Supplemental Clerk's Record ("SCR") SCR.10-17, ¶¶ 35-64; Pls.-Appellees' Br. at 11-15 (summarizing testimony with cites to appellate record).

obtain the abortions they want and need in another state. For some, travel to another state may not be possible or safe. Even if travel is possible, abortion seekers from Texas have to cover substantial out-of-pocket health care costs, navigate an increasingly complex abortion landscape with increasingly concentrated need for care and a dwindling number of providers, and arrange and pay for complex and expensive travel arrangements to leave the state, among other challenges. These barriers are compounded for people in structurally oppressed and under-resourced communities, who already face existing and expanding inequities in our healthcare and economic systems. When these barriers are coupled with medical conditions, many do not have sufficient time and resources to leave the state to get an abortion. People forced to carry dangerous pregnancies could die. For those who survive, the delay or denial of medically necessary care could cause permanent harm.

Abortion bans cause devastating and lasting harm to pregnant people and their families, and Texas law is no exception. All people should have the power and resources to decide whether, when, and how to create a family. At the very least, Texas doctors should be able to perform abortions to save peoples' lives—essential medical care that Defendants-Appellants claim Texas law "clearly" allows. But the medical exceptions are only meaningful if doctors can reasonably understand when they apply. This Court should affirm the district court's temporary injunction order prohibiting enforcement of Texas's abortion bans against physicians who provide life- and health-preserving

abortions, as well as the families, abortion funds, and others who support pregnant people in accessing this care.

III. ARGUMENT

A. Structural Barriers Prevent Texans from Accessing Abortion Care in States Where Abortion Is Lawful.

With clinical access to abortion care unavailable in Texas even when medically necessary, pregnant people sometimes attempt to get care in other states where abortion is lawful. But pregnant Texans face significant financial, logistical, and informational barriers to getting out-of-state care, particularly when care is necessary due to other medical conditions.

1. Shortage of abortion providers in states where abortion is lawful.

Pregnant people in Texas often struggle to find available and accessible providers in states where abortion is legal (often referred to as receiving states). In the year since *Dobbs*, many providers across the country stopped providing abortions or closed altogether, due to new state bans and other pressures.[4] More than 60 providers stopped offering abortions in the past year.[5] In Texas, thirteen providers closed entirely, and nine stopped offering abortions but continue to provide other services.[6] These closures in Texas and elsewhere have outpaced the modest increase in the number of clinics and

[4] Allison McCann et al., *One Year, 61 Clinics: How Dobbs Changed the Abortion Landscape*, N.Y. Times, June 22, 2023, https://www.nytimes.com/interactive/2023/06/22/us/abortion-clinics-dobbs-roe-wade.html.
[5] *Id.*
[6] *Id.*

capacity in receiving states during the same time period.[7] This situation is expected to worsen as more states restrict abortion access.[8]

The providers closest to Texas who are still offering abortions have seen huge surges in callers. More people are traveling to the few receiving states near Texas because of abortion bans throughout the South and Southwest. New Mexico (the only state that borders Texas where abortions remain legal) saw a 60 percent rise in the number of abortions performed in the state the year since *Dobbs* (now more than 52,000 each year).[9] While before *Dobbs*, 21 percent of abortions in New Mexico involved patients from out of state, new research estimates this could rise to 95 percent (over 61,000 annually) if pregnant Texans travel to their nearest open clinic.[10] Other nearby receiving states like Colorado and Kansas also experienced significant increases in calls.[11] Overall interstate travel by abortion seekers increased during this period as well. Before *Dobbs,* less than one in 10 abortion seekers left their state of residence to get abortions. Now, researchers estimate that almost one in four leave their state to get care.[12]

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[7] *See id.*

[8] *See* Mikaela Smith et al., *How large should patient surges be? Modeling number of abortions needed in destination states post-Dobbs* 5-7 (Nov. 20, 2023) (unpublished manuscript) (on file with author).

[9] *See* Society of Family Planning, *#WeCount Report: April 2022 to June 2023*, tbl. 2 (Oct. 24, 2023), https://societyfp.org/wp-content/uploads/2023/10/WeCountReport_10.16.23.pdf (reporting 8,640 rise in the number of abortions in New Mexico during this period).

[10] Smith et al., *How large should patient surges be?*, *supra* note 8, at 8, tbl. 1.

[11] *See* Society of Family Planning, *supra* note 9, tbl. 2.

[12] Smith et al., *How large should patient surges be?*, *supra* note 8, at 1, 6 (this figure is based on patients in restricted states traveling to the closest available clinic in another state). Researchers estimate that this percentage could rise to 32 percent as additional abortion bans and restrictions are adopted. *Id.*

In this landscape, people have to travel even longer distances for abortions. In Texas, the average drive time to the closest abortion facility has increased from 42 minutes (about 43 miles) to more than seven hours (about 500 miles).[13] Many people have to travel even further due to lack of providers, long wait times, or if they are later along in their pregnancy or if the pregnancy is high risk. Clinics report appointment-wait times have increased from a few days to two weeks or longer.[14]

The dramatic increase in travel distance for Texans creates one of the most significant barriers to abortion access.[15] One study looked at the impact of about half of Texas clinics immediately closing in 2013 due to a new law requiring physicians at clinics to have admitting privileges at a hospital within 30 miles. The study found that compared to having a clinic within 50 miles, "abortion rates fall by 13 percent if the nearest clinic is 50-100 miles away, by 24 percent if the nearest clinic is 100-150 miles away, and by 40 percent if the nearest clinic is 150-200 miles away."[16] A national study

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[13] *See* Caitlin Myers et al., *Abortion Access Dashboard*, https://abortionaccessdashboard.org (select "Mar. 2022 to Sept. 2023" tab at bottom of page; click on Texas on map) (last updated Sept. 1, 2023). Texas's dramatic increase in travel distance far exceeds the national trend, with the average distance increasing from 25 miles to 86 miles. *See id.*

[14] *See* Laura Kusisto, *Women Encounter Abortion Delays as Clinics Draw Patients From Out of State*, Wall St. J., Feb. 12, 2023, https://www.wsj.com/articles/women-encounter-abortion-delays-as-clinics-draw-patients-from-out-of-state-f40e318b.

[15] Caitlin Myers, *Measuring the Burden: The Effect of Travel Distance on Abortions and Births*, Inst. Lab. Econ. 12 (July 2021), https://docs.iza.org/dp14556.pdf.

[16] Scott Cunningham et al., *How far is too far? New evidence on abortion clinic closures, access, and abortions* 2 (Nat'l Bureau of Econ. Research, Working Paper No. 23366, 2017), http://www.nber.org/papers/w23366.

similarly found that an increase in travel distance of up to 100 miles prevents about one in five pregnant people seeking abortions from reaching a provider.[17]

People in structurally oppressed communities experience even more significant barriers due to the scarcity of abortion providers.[18] A recent study found that since *Dobbs*, Black, Hispanic,[19] and Indigenous populations experienced larger absolute increases in travel time to abortion facilities, as compared to non-Hispanic, white populations.[20] The study also showed that people with lower incomes and uninsured people "continued to have low access to abortion facilities."[21] Compounding the impact, Black and Indigenous people and people of color are even less likely to be able to travel longer distances to access abortions. One study found that the estimated effect of distance on Hispanic people is "more than twice as large" as non-Hispanic people.[22] Another study found that the effects are "particularly pronounced" for Black people.[23] And, as discussed in more detail below, poor and working-class people are less likely to be able to overcome the logistical and financial barriers raised by longer travel times.

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[17] Myers, *Measuring the Burden*, *supra* note 15, at 12.
[18] Society of Family Planning, *supra* note 9, at 9.
[19] NNAF uses the term "Hispanic" because that is the terminology used in the research being described, and in the underlying U.S. Census data on which it relies.
[20] Benjamin Rader et al., *Estimated Travel Time and Spatial Access to Abortion Facilities in the US Before and After the Dobbs v Jackson Women's Health Decision*, 328 J. Am. Med. Ass'n 2041, 2046 (Nov. 2023), https://jamanetwork.com/journals/jama/fullarticle/2798215.
[21] *Id.*
[22] Cunningham et al., *supra* note 16, at 22.
[23] Myers, *Measuring the Burden*, *supra* note 15, at 3.

People further along in their pregnancy face additional challenges finding a provider and scheduling an appointment.[24] The higher the gestational age, usually the fewer clinics that can provide care, the more significant the delay for an appointment, the longer the distance abortion seekers must travel to get there, and the more expensive the procedure.[25] Only a limited number of clinics offer second and third trimester care.[26] Those that do, schedule appointments weeks in advance due to rising demand.[27] That means when people arrive for their appointment, they are several weeks further along in their pregnancy than when they first sought care, and the procedure will likely be more complex and expensive.[28]

2. Staggering costs and complex logistics.

Many people who need abortions cannot afford them. Pregnant people in Texas generally have to bear the costs of getting an abortion out of pocket.[29] First trimester

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[24] Many people who get abortions later in pregnancy report that they were unable to get an abortion earlier due to factors such as lack of funding, late detection of pregnancy, and health issues or complications. *See* Rachel Jones & Jenna Jerman, *Characteristics and Circumstances of U.S. Women Who Obtain Very Early and Second-Trimester Abortions*, PLOS One 12-13 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5266268/pdf/pone.0169969.pdf.

[25] *See* 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/.

[26] Kusisto*, supra* note 14; Sofia Resnick, *After Dobbs, abortion access is harder, comes later and with a higher risk*, Mo. Indep., June 21, 2023, https://missouriindependent.com/2023/06/21/after-dobbs-abortion-access-is-harder-comes-later-and-with-a-higher-risk/.

[27] *Id.*

[28] *See* Leyser-Whalen et al., *supra* note 25, 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.").

[29] *See* Tex. Health & Safety Code, Ch. 1218 (prohibiting private insurers from covering abortion care in almost all circumstances).

abortions (medication or procedural) typically cost about $500, but can be as high as $1,000 or more. Abortions later in pregnancy are exponentially more expensive, ranging from $2,000 to $30,000 or more.[30]

In addition to paying for abortions, people in Texas also have to arrange and pay for travel to and lodging in another state, as well as costs for food and other necessities.[31] The majority of abortion seekers (59 percent) have children and so also need to arrange and pay for childcare.[32] With Texans living on average 500 miles from the closest abortion clinic, travel costs are significant (for example, gas for people who have access to a car, taxi/rideshare, bus/plane tickets). Most people have to stay in the vicinity of the clinic at least two nights and sometimes four or more nights. Some clinics also require patients to bring an escort, which adds to travel and lodging costs.[33] And most people need and want their abortions as soon as possible and do not have the

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[30] *See* Allison McCann, *What It Costs to Get an Abortion Now*, N.Y. Times, Sept. 28, 2022, https://www.nytimes.com/interactive/2022/09/28/us/abortion-costs-funds.html; Laura McCamy, *Over a year after the Supreme Court overturned Roe v. Wade, the cost of an abortion in the US can be as much as $30,000 – or as little as $150*, Bus. Insider, Oct. 21, 2023, https://www.businessinsider.com/personal-finance/high-risk-low-income-patients-abortion-more-expensive-2023-10; Pregnancy Decision Line, *How Much Does an Abortion Cost?*, pregnancydecisionline.org/learn/abortion/abortion-costs (last updated Oct. 10, 2023).

[31] Jenna Jerman et al., *Barriers to Abortion Care and Their Consequences for Patients Traveling for Services: Qualitative Findings from Two States*, 49 Perspectives on Sexual & Reprod. Health 95, 98 (2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5953191/; Press Release, 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.

[32] Guttmacher Inst., *United States: Abortion Demographics*, https://www.guttmacher.org/united-states/abortion/demographics (last visited Nov. 20, 2023).

[33] Nat'l Abortion Fed'n, *Abortion*, https://prochoice.org/patients/pregnancy-options/abortion/ (last visited Nov. 20, 2023).

luxury of scheduling their abortion when travel and lodging are most affordable, particularly when seeking care at clinics booked out far in advance.

In the experience of NNAF's member funds, it is not unusual for the total costs for a caller from a restricted state to exceed $2,000, and costs escalate from there if they are further along in their pregnancy or have other health or logistical needs.[34] These costs are unmanageable for most abortion seekers: three-quarters of abortion patients live on low incomes, and nearly half live below the federal poverty level (defined as $30,00 income for a family of four in 2023).[35] One study concluded that the cost of an abortion itself would be "financially catastrophic" (constituting 40 percent or more of a household's monthly income after basic needs have been met) for Texas households at or below the state's median monthly income, meaning that many households considered middle-income also struggle to afford an abortion.[36] Adding travel and other costs, the total out-of-pocket costs for a clinical abortion are now out of reach for the majority of abortion seekers in Texas. These financial challenges are worsened by the

[34] *See, e.g.*, McCann, *What It Costs to Get an Abortion Now*, *supra* note 30 (detailing costs for different situations ranging from $1,321 to $4,884). Sometimes two or more abortion funds will contribute to cover a person's costs. *See id.*

[35] Society of Family Planning, *supra* note 9, at 9.

[36] Carmela Zuniga et al., *Abortion as a Catastrophic Health Expenditure in the United States*, 30 Women's Health Issues 416, fig. 1 (Aug. 2020), https://pubmed.ncbi.nlm.nih.gov/32798085/(finding that both first and second trimester abortion costs far exceed the "[a]mount that is catastrophic" for Texas households).

economic fallout from the COVID-19 pandemic and rising inflation, which is squeezing budgets and depleting emergency savings.[37]

Taking time away from work, school, or other responsibilities frequently raises even more challenges.[38] People from poor and working-class backgrounds, Black and Indigenous people, people of color, and immigrants often have jobs that do not offer sick days, whether paid or unpaid.[39] As a result, they will lose wages and may endanger their employment if they take time off to obtain abortions. 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 an abortion.

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[37] "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. Press Release, Harvard Sch. Pub. Health, *Poll: High U.S. inflation rates are having a more serious impact on Black Americans than white Americans* (Aug. 8, 2022), 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/.

[38] *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), 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).

[39] Texas law does not require private sector employers to provide paid or unpaid family and medical leave. *See* Nat'l Conf. of State Legislatures, *State Family and Medical Leave Laws*, https://www.ncsl.org/labor-and-employment/state-family-and-medical-leave-laws (last updated Sept. 9, 2022). As of September 2023, the Texas Regulatory Consistency Act prohibits local governments from providing these protections at the local level. *See* Tex. H.B. 2127, 88th Leg., R.S. (2023).

For people living paycheck to paycheck, the staggering out-of-pocket costs, often coupled with lost wages, can force them to make impossible choices between getting an abortion and paying for basic necessities. Many people have reported delaying or forgoing paying bills (such as rent or utilities payments) or delaying buying food to cover the costs of their abortions.[40] These impossible financial choices 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.[41] It can also "contribute to bankruptcy, home foreclosures, or evictions."[42] 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."[43] Studies demonstrate that housing loss and job loss are interrelated, and experiencing one makes someone significantly more likely to experience the other.[44] Particularly for people who are

[40] *See, e.g.*, Rachel Jones et al., *At What Cost?: Payment for Abortion Care by U.S. Women*, 23 Women's Health Issues 173, 176 (2013), https://www.guttmacher.org/sites/default/files/pdfs/pubs/journals/j.whi.2013.03.001.pdf (finding that people "delayed or did not pay bills such as rent (14%), food (16%), or utilities and other bills (30%) to pay for the abortion").

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

[42] *Id.*

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

[44] *See* Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, 63 Social Problems 46, 58-61 (2016), https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824.

already experiencing financial or housing insecurity, the unexpected and substantial cost of abortion care can be the tipping point.

Black and Indigenous people and people of color pay a disproportionate amount of out-of-pocket costs due to persistent, systemic economic injustice. On average, Black and Latinx households earn about half as much as white households and own only about 15 to 20 percent as much net wealth.[45] According to a Federal Reserve report, Black and Hispanic[46] adults are much more likely than white adults to face difficulty paying their monthly bills if faced with an unexpected $400 expense.[47] These racial disparities exist at all income levels. Even among adults with a household income of $100,000 or more, Black and Hispanic adults were still more than twice as likely as white adults to face challenges paying that unexpected expense. The report points to several interrelated contributing factors, including discrimination and differences in credit access.[48]

While NNAF's member funds work tirelessly to support as many people in their community as possible, the current need for financial and other support far exceeds

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[45] Aditya Aladangady & Akila Forde, U.S. Fed. Reserve Sys., *Wealth Inequality and the Racial Wealth Gap* (Oct. 22, 2021), https://www.federalreserve.gov/econres/notes/feds-notes/wealth-inequality-and-the-racial-wealth-gap-20211022.html.

[46] NNAF uses the term "Hispanic" because that is the terminology used in the research being described, which relies on an anonymized study in which participants had the option to self-identify as "Hispanic."

[47] U.S. Fed. Reserve Sys., *Economic Well-Being of U.S. Households in 2021*, at 36 (May 2022), https://www.federalreserve.gov/publications/files/2021-report-economic-well-being-us-households-202205.pdf.

[48] *Id.* at 37.

their capacity. Funds report sharp increases in the number of callers per month and the typical amount of financial support per caller.[49] But following a short-term spike in contributions in the wake of *Dobbs*, institutional and individual donors have not continued giving funds at the level needed to meet the growing demand. Some funds are forced to stop taking new calls when they exceed their monthly budget.[50] We also know that some people never call an abortion fund for help, whether due to lack of reliable information about resources like abortion funds, lack of a safe means of communication to ask for help, or other reasons. In the current climate, many abortion seekers will not get the support they need.

3. Lack of reliable information about abortion.

Misinformation or lack of information about abortion is also a significant barrier.[51] 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."[52] People commonly mention "not knowing where to find abortion care" and "not knowing how

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[49] Eden Stiffman, *Abortion Funds Face Slowdown in Giving a Year After Supreme Court Ruling*, Chron. Philanthropy (June 12, 2023), https://www.philanthropy.com/article/abortion-funds-face-slowdown-in-giving-a-year-after-supreme-court-ruling; McCann, *What It Costs to Get an Abortion Now*, *supra* note 30.

[50] Carter Sherman, *'Feels horrible to say no': abortion funds run out of money as US demand surges*, Guardian, Sept. 22, 2023, https://www.theguardian.com/world/2023/sep/22/us-abortion-funds-run-out-of-money-demand-surges.

[51] 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.

[52] *Id.* at 82.

to get a provider" as reasons why their abortion was delayed.[53] There is often inaccurate or unreliable information about abortion on the internet, particularly for people who live in geographic areas like Texas where abortion is outlawed.[54] In many communities, the stigma around abortions prevents people from asking questions of or getting reliable answers from friends, family, or their healthcare providers.[55]

The rapidly changing and confusing legal landscape around abortion laws and access has only increased confusion and fear in recent years.[56] Abortion seekers report spending weeks trying to figure out where they can go, the cost, and what restrictions, if any, apply (e.g., gestational age restrictions, waiting periods, notice or consent requirements).[57] Court rulings can further upend access at a moment's notice, leaving abortion seekers in limbo.[58] Even abortion providers and funds who work in this space report difficulty tracking legal changes in the states and localities they serve—let alone understanding the risks of criminalization and civil liability for themselves and abortion seekers.[59]

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[53] Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits*, *supra* note 38, at 1689.
[54] Kavanaugh et al., *supra* note 51, at 82.
[55] *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.").
[56] Anthony Izaguirre et al., *Shifting abortion laws cause confusion for patients, clinics*, CBS 19 News, July 1, 2022, https://www.cbs19news.com/story/46802647/shifting-abortion-laws-cause-confusion-for-patients-clinics.
[57] Katia Riddle, *Patients struggle to navigate abortion with changing laws and provider confusion*, Nat'l Pub. Radio, Oct. 25, 2023, https://www.npr.org/2023/10/25/1208577441/patients-struggle-to-navigate-abortion-with-changing-laws-and-provider-confusion.
[58] *See* Izaguirre et al., *supra* note 56.
[59] *See id.*

4. Barriers due to intimate partner violence.

These structural barriers are intensified for people experiencing intimate partner violence. Overall, one in three women in the United States experiences sexual violence, physical violence, or stalking by an intimate partner (or a combination of these) at some point, with even higher rates among structurally oppressed communities.[60] 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."[61] There is a body of research confirming the link between violence and pregnancy. Intimate partner violence is associated with a higher risk of unintended pregnancy, and the likelihood and severity of intimate partner violence escalates when someone is pregnant.[62] People in an abusive relationship may have an unintended pregnancy due to coercion, sexual violence, or sabotage of contraception, among other reasons.[63]

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[60] 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.*

[61] 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 & Reprod. Health 156, 156 (2022), https://onlinelibrary.wiley.com/doi/epdf/10.1363/psrh.12216.

[62] *See* Jeanne L. Alhusen et al., *Intimate Partner Violence, Reproductive Coercion, and Unintended Pregnancy in Women with Disabilities*, Disability & Health J., April 2020, at 1-2, 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. Obstetrics & Gynecology 148, 148 (2009), https://pubmed.ncbi.nlm.nih.gov/19564020/.

[63] Tobin-Tyler, *supra* note 60, at 1248.

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.[64] One man in Texas, who allegedly had a history of emotionally abusive behavior, sued his ex-wife's friends for a million dollars each for allegedly helping her access abortion pills—a test case that both Reproductive Justice and anti-abortion groups describe as an effort to discourage people from helping abortion seekers in states with bans.[65] 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.

5. Compounding impact of structural barriers.

The intersection of the multiple structural barriers to abortion access discussed above amplifies their effect, particularly in places like Texas where people need to travel long distances to obtain care.[66] This compounding effect creates negative consequences that "may be greater than those of individual barriers" alone.[67]

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[64] Junda Woo et al., *Abortion Disclosure and the Association with Domestic Violence*, 105 Obstetrics & Gynecology 1329 (2005), https://pubmed.ncbi.nlm.nih.gov/15932825/.
[65] Emily Bazelon, *Husband Sued Over His Ex-Wife's Abortion; Now Her Friends Are Suing Him*, N.Y. Times, May 4, 2023, https://www.nytimes.com/2023/05/04/us/texas-man-suing-ex-wife-abortion.html.
[66] Jerman et al., *Barriers to Abortion Care*, *supra* note 31, at 95 (concluding "the experience of multiple barriers" to abortion care "appeared to have a compounding effect, resulting in negative consequences for women traveling for abortion").
[67] *Id.* at 100.

Coordinating and finding funding for travel delays an abortion. Even with the support of abortion funds 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 their abortion is the need to fundraise for and arrange travel, which "prolong[s]" their efforts to obtain an abortion.[68]

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.[69] 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.[70] Delaying an abortion to arrange for travel

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[68] Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits*, *supra* note 38, 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*, Soc. Sci. & Med., April 2021, at 9, https://www.sciencedirect.com/science/article/pii/S0277953621000794?via%3Dihub; Jones & Jerman, *supra* note 24, at 12.

[69] McCann, *What It Costs to Get an Abortion Now*, *supra* note 30.

[70] 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 Gestational Age Limits*, *supra* note

also increases the risk associated with abortion procedures.[71] The added hurdle to leave the state to obtain care has a cascading effect, exacerbating the financial and logistical challenges that people are already experiencing.

Delaying an abortion procedure also means that a person will have to spend more time carrying the 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.[72] "Research shows that people who face logistical barriers to accessing abortion care, including increased travel time …, have more symptoms of stress, anxiety, and depression."[73] 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.

38, at 1687-94; Jones & Jerman, *supra* note 24, at 12; Upadhyay et al., *State Abortion Policies*, *supra* note 68, at 10.

[71] *See* Leyser-Whalen et al., *supra* note 25, at 188. While delay increases risk, abortions are generally low-risk procedures. *See id.*; 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/S1049386715001589 ("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).

[72] *See, e.g.*, Advancing New Standards in Reprod. Health, *Fact Sheet: The Harms of Denying a Woman a Wanted Abortion* (April 2020), https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf; Corinne H. Rocca et al., *Emotions and Decision Rightness over Five Years Following an Abortion: An Examination of Decision Difficulty and Abortion Stigma*, Soc. Sci. & Med., Mar. 2020, at 1, https://www.sciencedirect.com/science/article/pii/S0277953619306999?via%3Dihub.

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

B. People who need an abortion to preserve their life or health face even more barriers, leaving them with few (if any) options and long-term harm.

People in Texas who need an abortion to preserve their life or health have few, if any, safe options. Texas physicians report that the credible threat of enforcement prevents them from providing medically necessary abortion care. Even when the person can travel safely with their medical conditions (which is not always the case),[74] medical conditions typically make getting an abortion even more complicated and expensive. For example:

- There often are fewer providers able to provide abortions to a pregnant person with more complex medical needs. Identifying those providers can be challenging. The patient's treating physician in Texas may not be willing or able to provide a referral: the majority of physicians willing to refer patients to abortion providers do not know how or to whom to make those referrals.[75] Further, hospitals in states where abortion is lawful, which might be in the best position to meet the patient's specific needs, generally do not explain on their websites whether they even offer abortions.[76]

- People who manage to get an appointment with an abortion provider despite limited options and availability (whether on their own or with the support of caretakers, abortion funds, or others), often need to travel further and pay more to get the care they need. Abortion care in more complex situations usually costs more, with patients reporting hospital

[74] *See, e.g.*, SCR.46, ¶ 124 ("Ms. Zurawski and her husband considered leaving Texas to receive an abortion, but abandoned that idea given the lengthy travel and safety concerns." (citing RR.44:11-19)).
[75] Elizabeth M. Anderson et al., *Willing but unable: physicians' referral knowledge as barriers to abortion care*, Soc. Sci. & Med. – Population Health, Mar. 2022, at 4, https://www.sciencedirect.com/science/article/pii/S2352827321002779 ("Even though they were willing to refer a patient for an abortion, half (53%) of the physicians did not know how and whom to make those referrals, though they care for patients who may need them.").
[76] Ari B. Friedman et al., *Information About Provision of Abortion on U.S. Hospital Websites: A Cross-Sectional Analysis*, 176 Annals Internal Med. 1, 1-2 (Oct. 2023) ("[H]ospitals rarely advertise abortion provision on their websites, even among institutions with abortion training programs.").

bills for medically necessary abortion of $30,000 and more, not including additional logistical costs.[77]

- Specialized travel needs due to the person's medical conditions can increase the complexity and cost of travel arrangements.[78]

- The person might already be experiencing a financial crisis due to medical bills and other costs associated with their medical conditions. The astronomical cost of health care and its impacts, particularly for Black and Indigenous people, people of color, and poor and working-class people, is well documented. One in five households in Texas have medical debt in collections, with a median debt of $835, and the numbers are even worse in communities of color.[79] Medical debt is likely even more common among abortion seekers: 30 percent of abortion seekers living in restrictive states like Texas lack any health insurance, well above the figure for Texas as a whole (18 percent uninsured).[80] Before learning they needed an abortion, some people may have spent all of their savings (if any) and money available from family and community, missed paying monthly bills, and maxed out credit cards and other quick sources of cash. They also might have significantly less income if they and/or their caretakers are unable to work.

- The pregnant person, as well as their caretakers and family, also have to figure out logistics and support around other medical conditions, including medical costs and structural barriers around disabilities.

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[77] *See, e.g.*, McCamy, *supra* note 30; Kate Wells, *Nearly 97% of abortions in Michigan aren't covered by insurance. That could change.*, Mich. Radio, Sept. 15, 2023, https://www.michiganradio.org/health/2023-09-15/nearly-97-of-abortions-in-michigan-arent-covered-by-insurance-that-could-change.

[78] *See, e.g.*, Univ. of Wash., *UW Department of Obstetrics & Gynecology issues travel warning* (Dec. 13, 2022), https://obgyn.uw.edu/news/traveladvisory (noting that medevac flights "may be the only option" because airlines "may not permit a passenger to board a plane if they are aware of a potential serious medical problem that might arise during a flight").

[79] Urban Instit., *Debt in America: An Interactive Map*, https://apps.urban.org/features/debt-interactive-map (select "Medical" tab; click on Texas on map) (last updated Oct. 10, 2023).

[80] *See id.*; Rachel K. Jones & Doris W. Chiu, *Characteristics of abortion patients in protected and restricted states accessing clinic-based care 12 months prior to the elimination of the federal constitutional right to abortion in the United States*, 55 Perspectives on Sexual & Reprod. Health 80, 83 (2023), https://onlinelibrary.wiley.com/doi/epdf/10.1363/psrh.12224.

A recent study, discussed by one of Plaintiffs-Appellees' experts, documents the significant and lasting harm to people who need to get an abortion in the midst of complex medical situations, including underlying medical conditions and early miscarriage.[81] Long-term effects include "loss of fertility and chronic pelvic pain due to infection or surgery, or heart attack and stroke related to uncontrolled hypertension, as well as effects on mental health."[82]

Notably, Black and Indigenous people and people of color comprise about half of the patients physicians reported as receiving "poor-quality care due to new restrictions on abortion care."[83] These reports are consistent with the countless studies showing that reproductive harms disproportionately affect Black and Indigenous people and people of color.[84] Absent court intervention, the lack of access to medically necessary abortion access in Texas will hit structurally oppressed communities hardest, deepening existing divides in the state.

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[81] SCR.36, ¶ 86; RR.242:21-244:5; Daniel Grossman et al., *Preliminary Findings: Care Post-Roe: Documenting cases of poor-quality care since the Dobbs decision*, Advancing New Standards in Reprod. Health (May 2023), https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf.

[82] Daniel Grossman et al., *supra* note 81, at 1, 17.

[83] *Id.* at 4, 17.

[84] *See id.* at 17; Liza Fuentes, *Inequity in US Abortion Rights and Access: The End of Roe Is Deepening Existing Divides*, Guttmacher Inst. (Jan. 17, 2023), https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides.

C. Systemic Inequities Increase Barriers for Oppressed Communities and Result in Greater Harm.

Layered on top of the structural barriers described above, systemic inequities in our health care and economic systems exacerbate barriers to abortion care for oppressed communities, deepening the divide in our country. Studies confirm that Black and Indigenous people, people of color, poor and working-class people, transgender and nonbinary people, disabled people, immigrants, and young people "are all particularly likely to encounter compounding obstacles to abortion access and be harmed as a result."[85]

The United States healthcare system fails to provide high-quality, affordable health care to pregnant people from structurally oppressed communities. The United States has the highest rate among developed countries of people dying of pregnancy-related complications, with about 700 to 900 deaths each year, most of which were preventable.[86] Black pregnant people are about three times more likely to die than white people, and Indigenous people are twice as likely.[87] Black and Hispanic people also are more likely to experience serious pregnancy complications.[88] "[T]here is now consensus among researchers and health care providers that disproportionately high maternal mortality and morbidity among Black women, regardless of income and education, are

[85] Fuentes, *supra* note 84.
[86] Judith Solomon, *Closing the Coverage Gap Would Improve Black Maternal Health*, Ctr. for Budget & Pol'y Priorities 1, 4 (July 26, 2021), https://www.cbpp.org/research/health/closing-the-coverage-gap-would-improve-black-maternal-health.
[87] *Id.* at 4.
[88] *Id.*

due to structural racism in the delivery of health care services along with their lived experiences of anti-Black racism, which leads to toxic stress and elevated risk of conditions such as hypertension."[89] Black and Indigenous people and people of color also get worse health care overall and less access to contraception.[90]

Despite studies showing Medicaid is an effective strategy for lowering maternal morbidity and decreasing racial inequities, Texas is among the few states that have chosen not to expand Medicaid coverage to low-income people.[91] Not only does Texas lose out on about $5.4 billion in federal funding, but also over 1.2 million Texans in the coverage gap remain uninsured.[92] The 300,000 Texans of reproductive age in the gap, almost two-thirds of whom are people of color, have no way to get coverage until they know they are pregnant and apply for and enroll in Medicaid. This leaves them "without access to care that could identify and address their health risks before pregnancy and potentially delays the start of prenatal care."[93] Texas's recent expansion of postnatal Medicaid coverage is a step in the right direction. But this step does not provide an

[89] *Id.*
[90] Fuentes, *supra* note 84.
[91] Laura Dague & Constance Hughes, *Medicaid Expansion's Impact in Texas*, Takeaway, Sept. 2020, at 2, https://bush.tamu.edu/wp-content/uploads/2020/09/V11-12_Texas_Medicaid_Expansion_Takeaway-new.pdf.
[92] *Id.* 5 million Texans (representing about 18 percent of the state population) are uninsured, more than twice the national average rate. *Id.*
[93] Solomon, *supra* note 86, at 8.

avenue for coverage before and during the early stages of pregnancy—which is critical to improving pregnancy outcomes.[94]

These gross inequities in health care access and outcomes for pregnant people provide essential context as this Court considers whether to make life- and health-preserving abortion access available in Texas. Plaintiffs-Appellees' experiences are telling of the devastating, permanent impact that continuing the status quo would have on all people who are or may become pregnant and their families. Even worse, lack of judicial intervention would disproportionately harm people in oppressed communities who already bear the brunt of systemic racism and economic injustice.

IV. CONCLUSION

The temporary injunction is essential for Texas physicians to provide medically necessary abortions to their patients. In its absence, this essential health care will be delayed or denied. Many patients—and disproportionately people from structurally oppressed and under-resourced communities—will not be able to get abortions in states where abortions are lawful, whether due to their medical conditions or the overwhelming barriers they face. Instead, they will be forced to risk their lives and health, with lasting physical, mental, emotional, and financial harm to them and their families. This destructive, unreasonable, and irrational state of affairs violates Texans' basic human rights to life- and health-preserving care, which are enshrined in the Texas

[94] *See id.* ("Women who are uninsured before pregnancy are more likely to have … risk factors that are associated with worse outcomes."); Tex. H.B. 12, 88th Leg., R.S. (2023).

Constitution.[95] The district court's temporary injunction and denial of the plea to jurisdiction should be affirmed.

RESPECTFULLY SUBMITTED this 21st day of November, 2023.

By: */s/ Jamie Lisagor*

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[95] Pls.-Appellees' Br. at 37-54.

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CERTIFICATE OF COMPLIANCE

This brief complies with Texas Rules of Appellate Procedure 9.4(e) and 9.4(i)(2)(D) because it contains 7,086 words and was prepared by Microsoft Word in 14-point Garamond font for text and 12-point Garamond font for footnotes.

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I hereby certify that a true and correct copy of the foregoing was forwarded to all counsel of record by electronic filing in accordance with the Texas Rule of Appellate Procedure on November 21, 2023.

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