

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC22-1050

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL
FLORIDA, *et al.*,

Petitioners,

v.

STATE OF FLORIDA, *et al.*,

Respondents.

SANCTUARY FOR FAMILIES, *et al.*'s
AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONERS

ON REVIEW FROM A DECISION OF THE
FIRST DISTRICT COURT OF APPEAL

CONSOLIDATED WITH CASE No. SC2022-1127
LOWER TRIBUNAL NOS. 1D22-2034; 2022-CA-912

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Cases

Gainesville Woman Care, LLC v. State, 210 So. 3d 1243 (Fla. 2017) 3

Statutes

§§ 61.13(1)-(2), Fla. Stat. (2022). 18

Other Authorities

Proclamation (Oct. 1, 2020), <https://www.flgov.com/wp-content/uploads/childadvocacy/Domestic%20Violence%20Awareness%20Month%202020.pdf>..... 1

State Bans on Abortion Throughout Pregnancy, GUTTMACHER INST. (Feb. 1, 2023), <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions> 2

Paul Best, Brian Laundrie found: Gov. DeSantis ‘committed to doing whatever he can to help prevent domestic violence’, FOX NEWS (Oct. 21, 2021), <https://www.foxnews.com/us/brian-laundrie-found-desantis-committed-prevent-domestic-violence> 6

CTRS. FOR DISEASE CONTROL AND PREVENTION, *Maternal Deaths and Mortality Rates: Each State, the District of Columbia, United States, 2018-2020*, <https://www.cdc.gov/nchs/maternal-mortality/mmr-2018-2020-state-data.pdf>..... 6

Sharon G. Smith et al., *The National Intimate Partner And Sexual Violence Survey (NISVS): 2010-2012 State Report*, NAT’L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION (2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> 7

AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *Committee Opinion No. 518: Intimate Partner Violence* (Feb. 2012, reaffirmed 2022), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/02/intimate-partner-violence> 8

FLA. DEP'T L. ENF'T, *Statewide Reported Domestic Violence Offenses in Florida, 1992 – 2020*, (updated Sept. 2022), https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV_Offenses_by_Type.aspx 8

Rachel E. Morgan & Jennifer L. Truman, *Criminal Victimization, 2019*, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS. (Sept. 2020), <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf>..... 8

FLA. P'SHIP TO END DOMESTIC VIOLENCE, *Annual Report 2022 (2022)*, <https://www.flipsnack.com/theshelternaples/fpedv-annual-report-2022/full-view.html>..... 9

CTRS. FOR DISEASE CONTROL & PREVENTION, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence*, 57(5) MORBIDITY MORTALITY WKLY. REP. 113 (Feb. 8, 2008), <http://www.cdc.gov/mmwr/PDF/wk/mm5705.pdf>. 9

CTRS. FOR DISEASE CONTROL & PREVENTION, *Preventing Intimate Partner Violence, (2022)*, https://www.cdc.gov/violenceprevention/pdf/ipv/IPV-factsheet_2022.pdf. 9

Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66(28) MORBIDITY MORTALITY WKLY. REP. 741 (2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6628a1.pdf>..... 9

When Men Murder Women: An Analysis of 2020 Homicide Data,
VIOLENCE POL'Y CTR., <https://vpc.org/when-men-murder-women-section-one/> (last visited Mar. 8, 2023) 10

AGENCY FOR HEALTHCARE RSCH. & QUALITY, *Intimate Partner
Violence Screening: Fact Sheet and Resources*,
<https://www.ahrq.gov/ncepcr/tools/healthier-pregnancy/fact-sheets/partner-violence.html> (last visited
Mar. 8, 2023). 10

Rebekah E. Gee et al., *Power over Parity: Intimate Partner
Violence and Issues of Fertility Control*, 201 AM. J.
OBSTETRICS & GYNECOLOGY 148 (June 29, 2009)..... 10

Mary M. Goodwin et al., *Pregnancy Intendedness and Physical
Abuse Around the Time of Pregnancy: Findings From the
Pregnancy Risk Assessment Monitoring System, 1996-1997*,
4(2) MATERNAL CHILD HEALTH J. 85 (June 2000) 10

Heidi D. Nelson et al., *Associations of Unintended Pregnancy
With Maternal and Infant Health Outcomes: A Systematic
Review and Meta-analysis*, 328(17) JAMA 1714 (Nov. 22,
2022) 11-12

Julie A. Gazmararian, et al., *The Relationship Between
Pregnancy Intendedness and Physical Violence in Mothers of
Newborns*, 85(6) OBSTETRICS GYNECOLOGY 1034 (June 1995)..... 11

Denise V. D'Angelo, et al., *Differences Between Mistimed and
Unwanted Pregnancies Among Women Who Have Live Births*,
36(5) PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH
(2004)..... 11

Maeve Wallace et al., *Homicide During Pregnancy and the
Postpartum Period in the United States, 2018-2019*, 138(5)
OBSTETRICS GYNECOLOGY 762 (Nov. 2021)..... 11

Maeve Wallace, *Trends in Pregnancy-Associated Homicide,
United States, 2020*, 112(9) AM. J. PUB. HEALTH 1334 (2022)
..... 12

Brittany Jamieson, *Exposure to Interpersonal Violence During Pregnancy and Its Association with Women’s Prenatal Care Utilization: A Meta-Analytic Review*, 21(5) TRAUMA, VIOLENCE ABUSE 904 (2020)..... 12

Mayumi Okuda Benavides et al., *Intimate Partner Violence: A Guide for Psychiatrists Treating IPV Survivors*, AM. PSYCHIATRIC ASS’N., (last visited Mar. 8, 2023), <https://www.psychiatry.org/psychiatrists/diversity/education/intimate-partner-violence> 12

SANCTUARY FOR FAMILIES, *What is Domestic Violence?*, (last visited Mar. 8, 2023), <https://sanctuaryforfamilies.org/gender-violence/domestic-violence/> 14

Elizabeth Miller & Jay G. Silverman, *Reproductive coercion and partner violence: implications for clinical assessment of unintended pregnancy*, MEDSCAPE (Sept. 2010)..... 14, 15

SANCTUARY FOR FAMILIES, *Trafficking-Power-and-Control-Wheel*, (Mar. 31, 2021), <https://sanctuaryforfamilies.org/resources/final-papers-19/trafficking-power-and-control-wheel-2/> 14, 15

Kathleen Basile et al., *Rape-Related Pregnancy and Association With Reproductive Coercion in the U.S.*, 55(6) AM. J. PREVENTIVE MED. 1 (2018) 14-16

Ann Moore et al., *Male reproductive control of women who have experienced intimate partner violence in the United States*, 70(11) SOCIAL SCIENCE MEDICINE 1 (2010) 15, 21, 23-24

SANCTUARY FOR FAMILIES, *Access to Abortion – A Lifeline for Survivors of Domestic Violence* (June 24, 2022), <https://sanctuaryforfamilies.org/abortion-domestic-violence/> 16

Megan Hall et al., *Associations between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11(1) PLOS MED. 1 (Jan. 2014) 16

Sarah CM Roberts et al., *Risk of Violence From the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, BMC MED. (Sept. 19, 2014), <https://bmcmedicine.biomedcentral.com/articles/10.1186/s12916-014-0144-z> 17-19

FL. AGENCY HEALTH CARE ADMIN., *Abortion Data – Induced Terminations of Pregnancy [ITOP] Report*, (last visited Mar. 8, 2023), https://ahca.myflorida.com/mchq/central_services/training_support/reports.shtml 17

Gigi Evins & Nancy Chescheir, *Prevalence of Domestic Violence Among Women Seeking Abortion Services*, 6(4) WOMEN’S HEALTH ISSUES 204 (1996) 18

Karuna Chibber et al., *The Role of Intimate Partners in Women’s Reasons for Seeking Abortion*, 24(1) WOMEN’S HEALTH ISSUES E131 (2014)..... 18

Aida Torres & Jacqueline Darroch Forrest, *Why Do Women Have Abortions*, 20(4) FAM. PLAN. PERSP., 169 (1988) 19, 22, 24

Katherine Lewin, *Adolescent Incest Survivor Had to Leave Florida for Abortion, Says Jacksonville Planned Parenthood Doctor*, FLA. TIMES UNION, (Oct. 14, 2022), <https://www.jacksonville.com/story/news/local/2022/10/14/incest-survivor-jacksonville-not-able-access-abortion-florida/10496143002/> 20

Jay G. Silverman et al., *Male Perpetration of Intimate Partner Violence and Involvement in Abortions and Abortion-Related Conflict*, 100(8) AM. J. PUBLIC HEALTH 1415 (Aug. 2010) 20

NAT’L NETWORK TO END DOMESTIC VIOLENCE, *A Glimpse From the Field: How Abusers are Misusing Technology* (2014), https://static1.squarespace.com/static/51dc541ce4b03eba b8c5c88c/t/54e3d1b6e4b08500fcb455a0/1424216502058/NNEDV_Glimpse+From+the+Field+-+2014.pdf 21

Katherine Kortzmit et al., *Abortion Surveillance – United States*
2019, 70(9) MORBIDITY MORTALITY WKLY. REP. 1 (Nov. 2021)22

Rachel K. Jones & Jenna Jerman, *Population Group Abortion
Rates and Lifetime Incidence of Abortion: United States,
2008-2014*, 107 AM. J. PUBLIC HEALTH 1904 (2017) 23

Amy E. Bonomi et al., *Intimate Partner Violence and
Neighboring Income: A Longitudinal Analysis*, 20(1) VIOLENCE
AGAINST WOMEN 42 (Jan. 2014)..... 23

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>..... 23, 25

Ivana Pino, *57% of Americans Can't Afford a \$1,000 Emergency
Expense, Says New Report*, FORTUNE (Jan. 25, 2023),
<https://fortune.com/recommends/banking/57-percent-of-americans-cant-afford-a-1000-emergency-expense/> 23

U.S. DEP'T OF LAB., *State Minimum Wage Laws-Florida* (2023),
<https://www.dol.gov/agencies/whd/minimum-wage/state#fl> 24

N.Y. Times, *Tracking the States Where Abortion Is Now
Banned*, N.Y. TIMES (Feb. 10, 2023),
<https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html> 25

Margot Sanger-Katz et al., *Interstate Abortion Travel is Already
Straining Parts of the System*, N.Y. TIMES (July 23, 2022),
<https://www.nytimes.com/2022/07/23/upshot/abortion-interstate-travel-appointments.html>..... 25

Jason M. Lindo et al., *How Far is Too Far? New Evidence on
Abortion Clinic Closures, Access, and Abortions*, 55(4) J.
HUM. RES. 1137 (2020)..... 25

INTRODUCTION AND INTEREST OF AMICI CURIAE

Amici are non-profit organizations and advocacy groups, leaders of such organizations, and legal experts who are deeply concerned that Florida’s House Bill 5 (“HB5”), which bans abortion after 15 weeks (the “15-week ban”), will lead to significantly increased domestic violence and related forms of gender-based violence in Florida, which Governor DeSantis is committed to preventing.¹ Amici include: Sanctuary for Families, Legal Momentum,² The National Organization for Women Foundation,³ The Rapid Benefits Group Fund, Women for Abortion and Reproductive Rights, Margaret A. Baldwin, JD, Professor Cyra Choudhury, Professor Donna K. Coker, Professor Zanita E. Fenton, Doctor Kathryn M. Nowotny, PhD, and Jodi Russell.

Amici believe their understanding of gender-based violence and the law can assist this Court in considering the issues presented on appeal. Each organization and individual has a strong interest in

¹ See Ron DeSantis, Domestic Violence Awareness Month in Florida (Oct. 1, 2020), <https://www.flgov.com/wp-content/uploads/childadvocacy/Domestic%20Violence%20Awareness%20Month%202020.pdf>.

² Motion for permission to join pending.

³ Motion for permission to join pending.

ensuring that victims of sexual and domestic violence receive the full protection of the Florida Constitution and have full access to reproductive healthcare, including abortion. These experts are united in their opposition to HB5, which bans abortion after 15 weeks at grave risk to the lives and health of pregnant people. The 15-week ban will disproportionately, materially, and detrimentally impact victims of gender-based violence in Florida.

SUMMARY OF ARGUMENT

HB5, which bans abortion after 15 weeks⁴ with only two extremely limited exceptions, will prevent victims of intimate partner violence (“IPV”) and related forms of gender-based violence from safely accessing abortion and exercising their rights under Florida’s constitution. Later terminations are significantly more common for IPV victims, who are less likely to receive prenatal care and receive it

⁴ This is defined in HB5 as 15 weeks starting from the first day of the pregnant person’s last menstrual period (LMP). Conception or fertilization typically occurs two weeks after LMP, meaning that 15 weeks postfertilization would equal 17 weeks LMP. Viability (when the fetus can survive outside the uterus) typically occurs between 24 and 28 weeks LMP. See *State Bans on Abortion Throughout Pregnancy*, GUTTMACHER INST. (Feb. 1, 2023), <https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions>.

later when they do, thus increasing the likelihood that IPV victims may not know they are pregnant or how far along the pregnancy is, or be able to access an abortion before 15 weeks. Victims of gender-based violence already experience compromised bodily and reproductive autonomy—HB5 will further infringe on that autonomy, which this Court has repeatedly held is protected under Florida’s Constitution. *See, e.g., Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1253-54 (Fla. 2017). It will also empower abusers.

Most people do not know that they are pregnant until six or seven weeks into the pregnancy, meaning that under HB5 they have only eight or nine weeks to consider fully their medical options, find and make an appointment with an abortion provider, obtain funds to pay for the abortion, secure transportation and lodging, coordinate childcare for existing children, and arrange time off from work for their appointments. These universal barriers to obtaining abortion services are exacerbated for victims of IPV and other forms of gender-based violence, who may have to do all of these things while being subjected to intimidation, coercion, surveillance, and interference by an abusive partner. For these same reasons, traveling out-of-state

to access abortion care after 15 weeks is not a viable or accessible alternative for most—if not all—IPV victims.⁵

Nearly one in six pregnant women in the United States is a victim of IPV.⁶ Due to sexual violence or reproductive coercion, IPV increases the risk of unplanned and unwanted pregnancies, which in turn increase the risk and severity of IPV. For women in abusive relationships, pregnancy can be a death sentence. The leading cause of death for pregnant women in the United States, which has the highest maternal mortality rate among high-income countries, is homicide. Pregnant and postpartum women in the United States are more than twice as likely to die by homicide than by any other cause. It should be no surprise that gender-based violence, including IPV,

⁵ To the extent that this Court has concerns about third-party standing, these barriers also make it extremely difficult for pregnant victims of IPV to participate in litigation. Interference from abusers, difficulty obtaining financial resources, injury, and isolation caused by the abuser can all impede pregnant IPV victims' ability to litigate matters individually. The compressed timeline in this case heightens those impediments, increasing the likelihood that a pregnant IPV victim would be unable to participate directly in litigation.

⁶ People with a range of gender identities become pregnant and experience IPV. This brief uses gender-neutral terms unless referencing a research population or using a specific statistic or quotation.

rape, and trafficking, are common reasons that women seek abortions.

Abuse in the context of an intimate partner or domestic relationship can take many forms and is not exclusively physical. IPV is highly correlated with rape, as well as coercive behaviors aimed at controlling the victim's reproductive health, such as tampering with contraception and blocking access to reproductive healthcare. These and other tactics, such as isolation, financial abuse, and monitoring or restricting victims' movements and communications, make it difficult for victims to leave abusive relationships and access healthcare during them. Being forced to carry a pregnancy to term and potentially co-parent with an abuser makes separation significantly harder, if not virtually impossible.

In sum, as a result of Florida's 15-week ban, a significant number of pregnant people who are victims of IPV and other forms of gender-based violence will be forced to carry their pregnancies to term against their will, and at great risk to their health and lives. Governor DeSantis "is committed to doing whatever he can to help prevent domestic violence, support survivors, and ensure justice for

victims.”⁷ That requires ensuring access to abortion beyond 15 weeks. Pre-*Dobbs*, Florida’s maternal death rate was already 21.7 per 100,000 live births—slightly above the national average.⁸ This is inseparable from the leading cause of death for pregnant women—homicide—as well as its underlying cause, domestic violence. Though the 15-week ban may appear incremental, its consequences will be quantifiable—it will cost victims of IPV and gender-based violence their liberty and lives.

We therefore urge this Court to consider the disproportionate harm and devastating consequences the 15-week ban will have for victims of gender-based violence, enjoin HB5 while this case proceeds on the merits, and ultimately strike down the 15-week ban.

⁷ Paul Best, *Brian Laundrie found: Gov. DeSantis ‘committed to doing whatever he can to help prevent domestic violence’*, FOX NEWS (Oct. 21, 2021), <https://www.foxnews.com/us/brian-laundrie-found-desantis-committed-prevent-domestic-violence>.

⁸ CTRS. FOR DISEASE CONTROL AND PREVENTION, *Maternal Deaths and Mortality Rates: Each State, the District of Columbia, United States, 2018-2020*, <https://www.cdc.gov/nchs/maternal-mortality/mmr-2018-2020-state-data.pdf>.

ARGUMENT

I. The 15-Week Ban Increases the Risk of Violence, Harm, and Death from IPV for Pregnant Floridians

It is vital that the Court preserve abortion access past 15 weeks because IPV victims are more likely than other pregnant people to be unable to seek abortions before that point. Domestic violence,⁹ including IPV, is a public health crisis in Florida. Nearly 40 percent of Florida women experience intimate partner dating violence, intimate partner sexual violence, and/or intimate partner stalking violence in their lifetimes.¹⁰ Victims of IPV are most commonly

⁹ As used in this brief, “domestic violence” is a pattern of abusive behavior in dating, intimate partner, or family relationships that is used by one individual to exert power and control over another. Domestic violence includes violence between intimate partners as well as violence between family members or within a household. It can include physical, sexual, emotional, psychological, reproductive, and/or economic abuse.

¹⁰ Sharon G. Smith et al., *The National Intimate Partner And Sexual Violence Survey (NISVS): 2010-2012 State Report*, NAT’L CTR. FOR INJ. PREVENTION & CONTROL, CTRS. FOR DISEASE CONTROL & PREVENTION, at 128, 144 (Apr. 2017), <https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf> (finding that 37.9% of Florida women and 29.3% of Florida men experience some kind of intimate partner violence in their lifetimes).

women of reproductive age,¹¹ and pregnancy is a further risk factor for IPV.

a. Because Domestic Violence is Pervasive in Florida, Many Victims Will Be Harmed by HB5

To understand how many victims will be harmed by the 15-week ban, it is essential to recognize how pervasive gender-based violence is. In Florida, 106,615 domestic violence offenses were reported to police in 2020 alone,¹² and that is an undercount as domestic violence is highly underreported.¹³ In that same year, 217 Floridians were killed in domestic violence incidents.¹⁴ In 2022, Florida's 41 certified domestic violence centers fielded 74,338 hotline calls, provided outreach services to 80,949 individuals, and made 294,861

¹¹ Am. Coll. of Obstetricians & Gynecologists, *Committee Opinion No. 518: Intimate Partner Violence*, 119(2) OBSTETRICS & GYNECOLOGY 1, 1 (Feb. 2012, reaffirmed 2022), <https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2012/02/intimate-partner-violence>. Anyone can be a victim of domestic violence or IPV, regardless of gender, race, sexual orientation or age.

¹² FLA. DEP'T L. ENF'T, *Statewide Reported Domestic Violence Offenses in Florida, 1992 – 2020*, (updated Sept. 2022), https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/02/DV_Offenses_by_Type.aspx.

¹³ Rachel E. Morgan & Jennifer L. Truman, *Criminal Victimization, 2019*, U.S. DEP'T OF JUST., BUREAU OF JUST. STATS., at 1 (Sept. 2020), <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf>.

¹⁴ FLA. DEP'T L. ENF'T, *supra* note 12.

referrals statewide.¹⁵ Nationwide, one in four women will be subject to domestic violence in her lifetime.¹⁶ According to the CDC, approximately 1 in 5 homicide victims (of any gender) are killed by an intimate partner.¹⁷ Analyzing more than 10,000 homicides from 2003-2014, the CDC found that where circumstances were known, more than half of female homicides were IPV-related and that “[a]mong IPV-related homicides, 79.2% and 14.3% were perpetrated by a current or former intimate partner, respectively.”¹⁸ In 2020, more than 2,000 women were murdered by men—of victims who

¹⁵ FLA. P’SHP TO END DOMESTIC VIOLENCE, *Annual Report 2022*, at 7 (2022), <https://www.flipsnack.com/theshelternaples/fpedv-annual-report-2022/full-view.html>.

¹⁶ CTRS. FOR DISEASE CONTROL & PREVENTION, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence—United States, 2005*, 57(5) MORBIDITY MORTALITY WKLY. REP. 113, 115 (Feb. 8, 2008), <http://www.cdc.gov/mmwr/PDF/wk/mm5705.pdf>.

¹⁷ CTRS. FOR DISEASE CONTROL & PREVENTION, *Preventing Intimate Partner Violence*, (2022), https://www.cdc.gov/violenceprevention/pdf/ipv/IPV-factsheet_2022.pdf.

¹⁸ Emiko Petrosky et al., *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66(28) MORBIDITY MORTALITY WKLY. REP. 741, 743 (July 21, 2017), <https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6628a1.pdf>.

knew the perpetrator, *at least* 60 percent were killed by their current or former intimate partner.¹⁹

b. The 15-Week Ban Will Force More Floridians to Carry Unintended Pregnancies to Term, Putting Them at Increased Risk of Violence, Harm, and Death

Pregnant women are at increased risk of domestic violence. More than 300,000 pregnant women are abused each year in the United States.²⁰ Nearly one in six pregnant women in the United States has been abused by a partner.²¹ A woman's odds of experiencing IPV increase by 10 percent with each pregnancy.²² Women who have unintended pregnancies are 2.5 times as likely to experience abuse than women who have intended pregnancies.²³

¹⁹ *When Men Murder Women: An Analysis of 2020 Homicide Data*, VIOLENCE POL'Y CTR., <https://vpc.org/when-men-murder-women-section-one/> (last visited Mar. 8, 2023). This figure is likely an undercount, as the FBI Supplemental Homicide Report does not include "ex-boyfriend" or "ex-girlfriend" among relationship categories.

²⁰ AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *supra* note 11, at 2.

²¹ AGENCY FOR HEALTHCARE RSCH. & QUALITY, *Intimate Partner Violence Screening: Fact Sheet and Resources*, <https://www.ahrq.gov/ncepcr/tools/healthier-pregnancy/fact-sheets/partner-violence.html> (last visited Mar. 8, 2023).

²² Rebekah E. Gee et al., *Power over Parity: Intimate Partner Violence and Issues of Fertility Control*, 201 AM. J. OBSTETRICS & GYNECOLOGY 148, 148 (2009).

²³ Mary M. Goodwin et al., *Pregnancy Intendedness and Physical Abuse Around the Time of Pregnancy: Findings From the Pregnancy*

The risk of physical violence increases further still for women who have unwanted—as opposed to simply mistimed—pregnancies.²⁴

Pregnancy often intensifies domestic violence, including increasing the risk of death for the pregnant woman. In the United States, homicide is the leading cause of death for pregnant women.²⁵ Pregnant and postpartum women in the United States are more than twice as likely to die by homicide than by any other cause of maternal mortality.²⁶ During 2018 and 2019, the homicide rate for pregnant and postpartum women was 16 percent higher than the homicide

Risk Assessment Monitoring System, 1996-1997, 4(2) MATERNAL AND CHILD HEALTH J. 85, 89 (June 2000); Heidi D. Nelson et al., *Associations of Unintended Pregnancy With Maternal and Infant Health Outcomes: A Systematic Review and Meta-analysis*, 328(17) JAMA 1714, 1721 (Nov. 1, 2022) (finding that unintended pregnancy was significantly associated with higher odds of interpersonal violence (14.6% vs. 5.5%)).

²⁴ Julie A. Gazmararian, et al., *The Relationship Between Pregnancy Intendedness and Physical Violence in Mothers of Newborns*, 85(6) OBSTETRICS & GYNECOLOGY 1031, 1034 (June 1995); see also Denise V. D'Angelo, et al., *Differences Between Mistimed and Unwanted Pregnancies Among Women Who Have Live Births*, 36(5) PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH 192 (2004).

²⁵ See Maeve Wallace et al., *Homicide During Pregnancy and the Postpartum Period in the United States, 2018-2019*, 138(5) OBSTETRICS & GYNECOLOGY 762, 762 (Nov. 2021).

²⁶ *Id.* at 764.

rate for women of reproductive age who were not pregnant or postpartum.²⁷ In 2020, that rate rose to 35 percent.²⁸

Pregnant women who are abused are also at higher risk for complications with their pregnancies. Pregnant women who experience IPV during pregnancy are less likely to receive prenatal care and are more likely to delay care.²⁹ This can cause further harm in two ways—first, it may lead to worse health outcomes, and second, it eliminates opportunities for pregnant people to be screened for IPV and offered resources to help them escape violence.

In addition to physical harm, IPV is correlated with higher risk for anxiety, post-traumatic stress disorder, depression, and substance abuse.³⁰ Unintended pregnancies—more likely to occur alongside IPV—are also associated with higher rates of depression.³¹

²⁷ *Id.* at 764.

²⁸ Maeve E. Wallace, *Trends in Pregnancy-Associated Homicide, United States, 2020*, 112(9) AM. J. PUB. HEALTH 1333, 1334 (2022).

²⁹ Brittany Jamieson, *Exposure to Interpersonal Violence During Pregnancy and Its Association with Women’s Prenatal Care Utilization: A Meta-Analytic Review*, 21(5) TRAUMA, VIOLENCE & ABUSE 904, 909-16 (2020).

³⁰ See Mayumi Okuda Benavides et al., *Intimate Partner Violence: A Guide for Psychiatrists Treating IPV Survivors*, AM. PSYCHIATRIC ASS’N., <https://www.psychiatry.org/psychiatrists/diversity/education/intimate-partner-violence> (last visited Mar. 8, 2023).

³¹ See Nelson, *supra* note 23, at 1715.

HB5, which contains an exception for when an abortion is “necessary to save the pregnant woman’s life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function of the woman” specifically carves out from this exception any “psychological condition.” IPV victims facing the psychological impacts of abuse would therefore be unable to avail themselves of this exception.

Cutting off access to abortion services after 15 weeks will have devastating consequences for IPV victims, who are statistically more likely to seek care later in their pregnancies and therefore need access to abortion services post-15 weeks. As a result, Floridians who experience gender-based violence will be forced to carry pregnancies to term against their will—increasing their risks for physical and psychological harm, including death.

II. Since Pregnancy is Often a Tool of Control for Abusers, Restrictions on Abortion Like HB5 Increase Abusers’ Power and Further Imperil Their Victims

The 15-week ban gives abusers another means to control their victims. IPV and related abusive tactics trap victims in unsafe relationships and make it difficult for them to exercise bodily autonomy at every reproductive stage: to prevent pregnancy in the

first place, to access abortion services and/or prenatal care, and to protect themselves from harm throughout the pregnancy. Abusers may also seek to control the outcome of a pregnancy (e.g., forcing the woman to continue the pregnancy, to have an abortion, or injuring her in such a way as to cause a miscarriage).³² Victims may acquiesce to reproductive coercion in order to avoid additional physical violence.³³ In addition, abusers may use legal, technological, economic, and psychological means of coercion.³⁴ Different abusive tactics often work together to influence victims' behavior in a relationship.³⁵

³² See Am. Coll. of Obstetricians & Gynecologists, *supra* note 11; Elizabeth Miller & Jay G. Silverman, *Reproductive coercion and partner violence: implications for clinical assessment of unintended pregnancy*, 5(5) MEDSCAPE 1, 1 (Sept. 2010). While abortion opponents argue that abusers may force their victims to abort, necessitating abortion restrictions, the solution is not to disempower victims by stripping them of reproductive autonomy. Florida should target the abusive behavior, not the rights of victims.

³³ Kathleen Basile et al., *Rape-Related Pregnancy and Association With Reproductive Coercion in the U.S.*, 55(6) AM. J. PREVENTIVE MED. 770, 774 (2018).

³⁴ See, e.g., SANCTUARY FOR FAMILIES, *What is Domestic Violence?*, <https://sanctuaryforfamilies.org/gender-violence/domestic-violence/> (last visited Mar. 8, 2023).

³⁵ The “Power and Control Wheel,” used by many organizations including Sanctuary for Families, is a helpful tool to understand the interrelated patterns of abusive and violent behaviors. See, e.g., Amal, *Trafficking-Power-and-Control-Wheel*, SANCTUARY FOR FAMILIES

Unintended pregnancies are highly correlated with IPV (both as cause and result), underscoring the need for abortion access for IPV victims.³⁶ This correlation is partly explained by the connection between physical violence and other abusive behaviors, including reproductive coercion such as birth control sabotage, proscription of sterilization, interference with access to healthcare, and forced sex.³⁷ Women who have experienced IPV are nearly three times more likely to report that their partner made it difficult to use birth control.³⁸ One 24 year-old woman described her partner “act[ing] out” when she was taking birth control pills; when she switched to using a NuvaRing (a hormone-releasing ring placed in the vagina to prevent pregnancy), he pulled it out of her body and demanded to know what it was and who had advised her to use it.³⁹

(Mar. 31, 2021), <https://sanctuaryforfamilies.org/resources/final-papers-19/trafficking-power-and-control-wheel-2/>.

³⁶ Basile, *supra* note 33, at 774.

³⁷ Miller & Silverman, *supra* note 32, at 2-3; AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *supra* note 11.

³⁸ Miller & Silverman, *supra* note 32 at 2-3.

³⁹ Ann Moore et al., *Male reproductive control of women who have experienced intimate partner violence in the United States*, 70(11) SOCIAL SCIENCE MEDICINE 1737, 1740-41 (2010).

Where IPV is involved, a pregnancy may be both unintended and non-consensual. According to a nationally representative study conducted by the CDC, nearly one in six rape victims—nearly three million American women—have experienced rape-related pregnancy.⁴⁰ Of this group, 77.3 percent reported that the perpetrator was a current or former intimate partner.⁴¹ As a result of rape and reproductive coercion, millions of American women will become pregnant against their will in their lifetime, including in the context of a marriage or other intimate partnership.⁴² For victims who have been deprived of bodily autonomy and the ability to determine their reproductive health, further limitations on their right to privacy in accessing abortion care are devastating.

There is a strong correlation between experiencing domestic violence and choosing to terminate a pregnancy.⁴³ Between 6 and 22

⁴⁰ Basile, *supra* note 33, at 772.

⁴¹ *Id.*

⁴² Approximately 10.3 million American women report having had a partner who tried to get them pregnant against their will or who refused to wear a condom. SANCTUARY FOR FAMILIES, *Access to Abortion – A Lifeline for Survivors of Domestic Violence* (June 24, 2022), <https://sanctuaryforfamilies.org/abortion-domestic-violence/>.

⁴³ See Megan Hall et al., *Associations between Intimate Partner Violence and Termination of Pregnancy: A Systematic Review and Meta-Analysis*, 11(1) PLOS MED. 1 (Jan. 2014).

percent of women terminate their pregnancies because they are in an abusive relationship.⁴⁴ While Florida's Agency for Health Care Administration's publicly available Intentional Termination of Pregnancy Report provides some insight into the reasons Floridians choose to terminate their pregnancies, it does not provide an option for IPV or domestic violence, and likely undercounts abortions due to rape and trafficking.⁴⁵ Victims of gender-based violence have varied and deeply personal rationales for seeking abortions. They seek abortions because they did not consent to the pregnancy in the first place; out of fear that violence will escalate; in order to eliminate another source of their partner's power and control; because they do not want to raise a child with their abusive partner (or, in the alternative, to battle over parental rights with them); because they do not want to raise a child in an abusive environment; and out of fear

⁴⁴ Sarah CM Roberts et al., *Risk of Violence From the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC MED. 1, 1 (Sept. 19, 2014), <https://bmcmmedicine.biomedcentral.com/articles/10.1186/s12916-014-0144-z>.

⁴⁵ FL. AGENCY HEALTH CARE ADMIN., *Abortion Data – Induced Terminations of Pregnancy [ITOP] Report*, https://ahca.myflorida.com/mchq/central_services/training_support/reports.shtml (last visited Mar. 8, 2023).

that the partner's abuse will extend to the child.⁴⁶ A 38 year-old woman explained her reason for seeking an abortion: "I was trying to leave an abusive relationship and I didn't want him to have any ties."⁴⁷

For these victims, abortion is an essential, potentially life-saving recourse. Sharing a child with an abuser makes it harder to leave an abusive relationship and compounds the many barriers victims already face, including fear for safety, concern for children, isolation, cultural or family pressure to stay, financial dependence, lack of alternative housing, fear of deportation, fear of the criminal justice system, shame and guilt, hope that the abuser will change, and love. Co-parenting binds victims in a legal relationship with their abusers for the duration of the child's life, whether or not the parents stay together, because Florida law presumes that parents will share responsibility for a child.⁴⁸ Further, women denied abortions are

⁴⁶ See Gigi Evins & Nancy Chescheir, *Prevalence of Domestic Violence Among Women Seeking Abortion Services*, 6(4) WOMEN'S HEALTH ISSUES 204, 207-8 (1996); Roberts, *supra* note 44.

⁴⁷ Karuna S. Chibber et al., *The Role of Intimate Partners in Women's Reasons for Seeking Abortion*, 24(1) WOMEN'S HEALTH ISSUES e131, e134 (2014).

⁴⁸ §§ 61.13(1)-(2), Fla. Stat. (2022).

slower to end romantic relationships with abusers than women who had abortions, and are more likely to maintain contact with their abusers.⁴⁹ Conversely, women who obtain abortions are more likely to report a reduction in physical violence than women who carry their pregnancies to term.⁵⁰

III. The 15-Week Ban Will Disproportionately Harm Victims of Gender-Based Violence, as They Face Steeper Barriers to Accessing Abortion Care

Because access to abortion is potentially life-altering and life-saving for pregnant victims of IPV, it is crucial that the law preserve such access. Victims of gender-based violence tend to seek abortions later than other pregnant women; in particular, women who become pregnant as a result of rape or incest disproportionately obtain abortions after 16 weeks.⁵¹ While we do not yet have data that details the impact of 15-week abortions bans like HB5, existing information indicates that HB5 will force more Floridians—and victims of gender-based violence in particular—to carry unwanted pregnancies to term. Anecdotal evidence in Florida since the ban went into effect already

⁴⁹ Roberts, *supra* note 44, at 5.

⁵⁰ *Id.*

⁵¹ See Aida Torres & Jacqueline Darroch Forrest, *Why Do Women Have Abortions*, 20(4) FAM. PLAN. PERSP. 169, 174 (1988).

makes this impact clear. One middle-school aged girl from Jacksonville who became pregnant as a result of incest was forced to leave Florida in search of an abortion provider because she came to the clinic past 15 weeks pregnant.⁵² While this victim was fortunately able to leave Florida to get an abortion due to help from outside sources, most victims of gender-based violence will not have the means or the ability to do so.

Abusers often block their victims from accessing abortion services, preventing victims from obtaining abortions within the first 15 weeks of pregnancy. Fourteen percent of men who acknowledged perpetrating IPV also reported that they sought to prevent their partners from getting abortions.⁵³ Abusers employ various tools of coercion, including physical violence, to prevent their victims from obtaining abortions. A 26 year-old woman who became pregnant

⁵² Katherine Lewin, *Adolescent Incest Survivor Had to Leave Florida for Abortion, Says Jacksonville Planned Parenthood Doctor*, FLA. TIMES UNION, (Oct. 14, 2022), <https://www.jacksonville.com/story/news/local/2022/10/14/incest-survivor-jacksonville-not-able-access-abortion-florida/10496143002/>.

⁵³ Jay G. Silverman et al., *Male Perpetration of Intimate Partner Violence and Involvement in Abortions and Abortion-Related Conflict*, 100(8) AM. J. PUB. HEALTH 1415, 1416 (Aug. 2010).

after being raped by her intimate partner and who sought an abortion reported that her partner “kept stopping [the abortion] . . . he kept track [of when the appointments were], taking the car, [saying the car] wouldn’t work, saying ‘I can’t come because of this and this but I have to be there [for the abortion], but I have to work this day,’ so he kept dragging it out, ‘cause he wanted me to not be able to have it.”⁵⁴ IPV victims may need to take additional steps and precautions to avoid surveillance or interference by their abusive partners in order to obtain abortion services.

Abusers—who have a heightened interest in controlling access to healthcare so that their abuse remains hidden—often track, control, and restrict their victims’ access to medical care, as well as monitor the phone and Internet usage of their victims.⁵⁵ Such behavior impedes victims’ abilities to confirm they are pregnant in the first instance and then to access abortion services. Without ready

⁵⁴ Moore, *supra* note 39, at 1741.

⁵⁵ NAT’L NETWORK TO END DOMESTIC VIOLENCE, *A Glimpse From the Field: How Abusers are Misusing Technology*, at 2 (2014), [https://static1.squarespace.com/static/51dc541ce4b03ebab8c5c88c/t/54e3d1b6e4b08500fcb455a0/1424216502058/NNEDV Glimpse+From+the+Field+-+2014.pdf](https://static1.squarespace.com/static/51dc541ce4b03ebab8c5c88c/t/54e3d1b6e4b08500fcb455a0/1424216502058/NNEDV+Glimpse+From+the+Field+-+2014.pdf). Approximately 71% of domestic abusers monitor victims’ computer activities and 54% of abusers track victims’ cellphones with stalking apps.

access to reproductive health services, IPV victims may not realize they are pregnant until after 15 weeks have passed. Even women not experiencing IPV often do not realize they are pregnant before 15 weeks, whether because of an inaccurate pregnancy test, because they do not feel any physical changes, or because their period is irregular and so they do not realize they have missed a period.⁵⁶ Women—and their doctors—may also initially misjudge the duration of pregnancies, such that they do not know the actual gestation of the pregnancies soon enough to obtain abortions before 15 weeks.⁵⁷

Financial barriers are a key reason women seek later abortions—and like other barriers to access, these are heightened for IPV victims. Obtaining abortion services requires finding a provider (which can be difficult in and of itself), securing transportation to the provider and potentially lodging, gathering financial resources for the abortion, securing childcare for existing children,⁵⁸ and taking time off from work (which can mean forgoing income). Overcoming these

⁵⁶ Torres & Forrest, *supra* note 51, at 174.

⁵⁷ *Id.*

⁵⁸ Most women who seek abortion already have children. Katherine Kortsmit et al., *Abortion Surveillance – United States 2019*, 70(9) MORBIDITY AND MORTALITY WKLY. REP. 1, 6 (Nov. 26, 2021).

barriers requires substantial resources, which abortion patients and IPV victims often lack, since they disproportionately work in jobs with low wages and little flexibility.⁵⁹ In addition, abusers may control the finances within a relationship and deny funds for abortions.⁶⁰ Abusers sometimes insist that their victims quit their jobs in order to further isolate their victims and ensure their financial dependence. Victims in this situation may not have any savings and be unable to leave their abusers, let alone gather the funds to afford an abortion in 15 weeks. On average, abortions cost approximately \$500 in the first trimester and \$2,000 or more in the second trimester.⁶¹ Yet 57 percent of U.S. adults are currently unable to afford an emergency expense of \$1,000,⁶² and the current minimum wage in Florida is

⁵⁹ Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 AM. J. PUB. HEALTH 1904, 1907 (Dec. 2017); see also Amy E. Bonomi et al., *Intimate Partner Violence and Neighboring Income: A Longitudinal Analysis*, 20(1) VIOLENCE AGAINST WOMEN 42 (Jan. 2014).

⁶⁰ Moore, *supra* note 39, at 1741.

⁶¹ 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>.

⁶² Ivana Pino, *57% of Americans can't afford a \$1,000 emergency expense, says new report. A look at why Americans are saving less and how you can boost your emergency fund*, FORTUNE (Jan. 25,

\$11/hour,⁶³ meaning that a person would need to contribute over one full week's salary (before taxes) just to afford a \$500 abortion.

Emotional factors also cause IPV victims to seek later abortions. Women who reported that relationship problems or pressure from their partner contributed to their decision concerning abortion are significantly more likely to delay the procedure out of a wish their relationship would change.⁶⁴ Abusers may use emotional manipulation, such as denying paternity or accusing the woman of infidelity if she opts for termination, to keep their victims from getting abortions.⁶⁵

The same barriers that victims of gender-based violence face in obtaining abortions prior to HB5's 15-week cutoff make it just as, if not more, difficult for them to travel out-of-state for abortion care. Out-of-state abortions require more planning, more time, more expense—and more risk. Since many of Florida's neighboring states,

2023), <https://fortune.com/recommends/banking/57-percent-of-americans-cant-afford-a-1000-emergency-expense/>.

⁶³ U.S. DEP'T OF LAB., *State Minimum Wage Laws-Florida* (2023), <https://www.dol.gov/agencies/whd/minimum-wage/state#fl>. (last visited Mar. 9, 2023).

⁶⁴ Torres & Forrest, *supra* note 51, at 175.

⁶⁵ Moore, *supra* note 39, at 1738.

including Georgia and Alabama, have enacted new restrictions on abortions—some even more restrictive than HB5⁶⁶—Floridians will have to travel long distances to reach clinics and may encounter long wait times and other obstacles once they arrive.⁶⁷ Many will be unable or unwilling to make long journeys,⁶⁸ particularly if doing so requires leaving existing children at home with an abuser.

Victims of gender-based violence face physical, psychological, financial, and other barriers to obtaining abortions, necessitating access to abortion care following 15 weeks of pregnancy.

CONCLUSION

For the foregoing reasons, this Court should enjoin and ultimately strike down HB5.

⁶⁶ Allison McCann et al., *Tracking the States Where Abortion Is Now Banned*, N.Y. TIMES (Feb. 10, 2023), <https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html>.

⁶⁷ Margot Sanger-Katz et al., *Interstate Abortion Travel is Already Straining Parts of the System*, N.Y. TIMES (July 23, 2022), <https://www.nytimes.com/2022/07/23/upshot/abortion-interstate-travel-appointments.html>.

⁶⁸ Jason M. Lindo et al., *How Far is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55(4) J. HUM. RES. 1137, 1152 (2020).

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CERTIFICATE OF SERVICE

I, Robert Harris, certify that a true and correct copy of the foregoing was filed Electronically with the court via the Florida E-Filing Portal, which provides notice to all parties.

Dated: March 9, 2023

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Bookman Old Style 14-point font and complies with the applicable font and word count limit requirements of the Florida Rules of Appellate Procedure.

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