

No. 19-1392

In the Supreme Court of the United States

THOMAS E. DOBBS, M.D., IN HIS OFFICIAL CAPACITY AS
STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT
OF HEALTH, *ET AL.*, PETITIONERS,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION,
ON BEHALF OF ITSELF AND ITS PATIENTS, *ET AL.*,
RESPONDENTS.

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

**BRIEF OF AMICI NATIONAL ASIAN PACIFIC
AMERICAN WOMEN'S FORUM, ASIAN
AMERICANS ADVANCING JUSTICE | AAJC, AND
ORGANIZATIONS REPRESENTING THE
INTERESTS OF ASIAN AMERICAN
AND PACIFIC ISLANDER WOMEN
IN SUPPORT OF RESPONDENTS**

Da Hae Kim
National Asian Pacific
American Women's Forum
1220 L Street NW
Suite 100-222
Washington DC, 20005-4018

John C. Yang
Niyati Shah
Asian Americans Advancing
Justice-AAJC
1620 L Street, NW, Suite 1050
Washington, DC 20036

ROBERT M. PALUMBOS
Counsel of Record
CYNDIE M. CHANG
PHIL CHA
KATHARYN I. CHRISTIAN MCGEE
THERESA A. LANGSCHULTZ
NICOLETTE J. ZULLI
KEVIN MICHAEL MORAN
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103
(215) 979-1000
rmpalumbos@duanemorris.com

COUNSEL FOR AMICI CURIAE

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICI CURIAE	1
SUMMARY OF ARGUMENT	2
ARGUMENT.....	3
I. AAPI WOMEN ALREADY FACE SIGNIFICANT BARRIERS TO OBTAINING ABORTIONS.....	3
A. AAPI Women Face Substantial Language Barriers in Accessing Abortions.	4
B. AAPI Women Face Economic Barriers to Obtaining Abortions.	6
C. Immigration Related Challenges Impose Significant Barriers to AAPI Women’s Access to Abortion Care.	12
D. Sex Selective Abortion Bans Unfairly Target and Harm AAPI Women.....	16

II.	OVERTURNING <i>ROE</i> WOULD EXACERBATE THE MYRIAD BARRIERS AAPI WOMEN ALREADY FACE IN ACCESSING ABORTION.	25
A.	AAPI Women Will More Likely Face Criminal Penalties for Abortion.....	25
B.	If <i>Roe</i> Is Overturned, At Least Twenty-Two States Would Move to Ban Abortion, Which Would Harm AAPI Women.....	30
	CONCLUSION	35
	APPENDIX	
	Additional Interested Parties (<i>Amici</i>)	App. 1

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>June Medical Services L.L.C. v. Russo</i> , 140 S. Ct. 2103, 2130 (2020)	6-7
<i>Memphis Ctr. for Reprod. Health v. Slatery</i> No. 20-5969, 2021 WL 4127691 (6th Cir. Sept. 10, 2021)	24
<i>Whole Woman’s Health et al. v. Jackson</i> Civ. A. No. 21-cv-616 (W.D. Tex. July 13, 2021)	34
STATUTES	
Ind. Code § 35-42-1-1.....	26
Ind. Code § 35-42-1-6.....	26
Mo. Stat. § 188.038.....	23
O.C.G.A. § 1-3-4.....	14
Tenn. Code § 39-15-217.....	24
Tenn. Code § 40-35-111	24
LEGISLATIVE AUTHORITIES	
86 Fed Reg. 14,221 (Mar. 15, 2021)	15
84 Fed. Reg. 41,292 (Aug. 14, 2019)	15
84 Fed. Reg. 52,357 (Oct. 2, 2019)	15

158 Cong. Rec. H3180-08 (May 30, 2012))..... 20

H.R. 496, 112th Cong., 2d Sess. 2012..... 20

S.B. 8, 87 Leg. (Tx. 2021) 33

S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz.
2010) 14

Susan B. Anthony Prenatal
Nondiscrimination Act of 2008, H.R.
7016, 110th Cong. (2008) 22

Susan B. Anthony Prenatal
Nondiscrimination Act of 2009, H.R.
1822, 111th Cong. (2009) 22

Prenatal Nondiscrimination Act of 2012,
S. 3290, 112th Cong. (2012)..... 22

Prenatal Nondiscrimination Act of 2013,
H.R. 447, 113th Cong. (2013)..... 22

Prenatal Nondiscrimination Act of 2013,
S. 138, 113th Cong. (2013)..... 22

Prenatal Nondiscrimination Act of 2015,
S. 48, 114th Cong. (2015)..... 22

Prenatal Nondiscrimination Act of 2017,
H.R. 147, 115th Cong. (2017)..... 22-23

Prenatal Nondiscrimination Act of 2019,
H.R. 2373, 116th Cong. (2019)..... 23

Prenatal Nondiscrimination Act of 2019,
S. 182, 116th Cong. (2019)..... 23

COURT RULES

SUP. CT. R. 37.3.....	1
SUP. CT. R. 37.6.....	1

OTHER AUTHORITIES

2020 State Fact Sheet: Arizona, AAPI Data	32
2020 State Fact Sheet: Arkansas, AAPI Data	32
2020 State Fact Sheet: Louisiana, AAPI Data	33
2020 State Fact Sheet: Utah, AAPI Data.....	33
2020 State Fact Sheet: Wisconsin, AAPI Data	32
<i>Abortion Bans in Cases of Sex or Race Selection or Genetic Anomaly, GUTTMACHER INSTITUTE (Aug. 1, 2021)</i>	21
Safia Samee Ali, <i>Sex-selective abortions: Reproductive rights are being pitted against gender equality</i> , NBC NEWS (Oct. 27, 2019)	23-24

Alexandra Ashbrook, *New Data Reveal Stark Decreases in SNAP Participation Among U.S. Citizen Children Living With a Non-Citizen*, Food Research and Action Center 15

Alexandra Ashbrook & Jackie Vimo, *Food Over Fear: Overcoming Barriers to Connect Latinx Immigrant Families to Federal Nutrition and Food Programs*, Food Research and Action Center, National Immigration Law Center (Dec. 2020) 15

Asian-American Women Treated Unfairly For Ending Pregnancies, INDY STAR (June 5, 2016).....28

Asian Americans, 21 Journal of Immigrant and Minority Health 2, 264-270 (2019).....4-5

Asian Americans Advancing Justice & Empowering Pacific Islander Communities, *A Community of Contrasts: Native Hawaiians and Pacific Islanders in the United States, 2014* (2014).....7

Asian Pacific American Legal Center & Asian American Justice Center, *A Community of Contrasts: Asian Americans in the United States: 2011* (2011).....7

Chloe Atkins, <i>Texas abortion clinics turning away patients as strict new law takes effect</i> , NBC News (Aug. 31, 2021)	34
Jeremy Barofsky, et al., <i>Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs</i> , 39 Health Affairs 10 (Oct. 2020)	15
Emily Bazelon, <i>Purvi Patel Could Be Just The Beginning</i> , NY TIMES (Apr. 1, 2015)	27
Robin Bleiweis, <i>The Economic Status of American and Pacific Islander Women</i> , Center for American Progress (Mar. 4, 2021)	3
Neelam Bohra, <i>Fearful of being sued under new law, three of four San Antonio abortion facilities stop offering the procedure</i> , THE TEXAS TRIBUNE (Sept. 7, 2021)	34
Abby Budiman and Neil G. Ruiz, <i>Asian Americans are the fastest-growing racial or ethnic group in the U.S.</i> , Pew Research Center (Apr. 9, 2021)	22
Abby Budiman and Neil G. Ruiz, <i>Key facts about Asian Americans, a diverse and growing population</i> , Pew Research Center (Apr. 29, 2021)	12-13

Quoctrung Bui, et al., <i>Where Abortion Access Would Decline if Roe v. Wade Were Overturned</i> , N.Y. TIMES (May 19, 2021)	30
Sharon H. Chang, <i>Raising Mixed Race: Multiracial Asian Children in a Post-Racial World</i> (2015)	30
Jennifer Chou and Shivana Jorawar, <i>Silently Under Attack: AAPI Women and Sex-Selective Abortion Bans</i>	22
Kat Chow, ‘ <i>Model Minority</i> ’ Myth Again Used As A Racial Wedge Between Asians And Blacks, NPR (Apr. 19, 2017)	7
Nimra Chowdhry, et al., <i>Asian-American Women Treated Unfairly For Ending Pregnancies</i> , INDY STAR (June 5, 2016)	28
Bob Christie, <i>Arizona abortion foes mulling steps after high court ruling</i> , AP NEWS (Sept. 2, 2021)	34-35
Brian Citro, et al., <i>Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States</i> , CORNELL LAW FAC. PUBL’NS, PAPER 1399, 24-28 (2014)	17
<i>Combatting the AAPI Perpetual Foreigner Stereotype</i> , New American Economy Research Fund (May 20, 2021)	34

Suchitra Dalvie, *A Wolf in Sheep’s Clothing*, CATHOLICS FOR CHOICE, *Conscience Magazine* (Aug. 31, 2018). 17

Richard Elliot, *With TX abortion law allowed to go forward, GA could see new legislation in next session*, WSB-TV (Sept. 2, 2021)..... 34

Carolyn Y. Fang, et al. *Overcoming Barriers to Cervical Cancer Screening Among Asian American Women*, 4 N. Am. J. Med. Sci. 77 (2011). 6

Kinsey Hasstedt, et al., *Immigrant Women’s Access to Sexual and Reproductive Health Coverage and Care in the United States*, The Commonwealth Fund (Nov. 20, 2018) 13

Induced Abortion in the United States, Guttmacher Institute (Sept. 2019) 10

Tara C. Jatlaoui, et al., *Abortion surveillance—United States, 2013*, Center for Disease Control and Prevention: Morbidity and Mortality Weekly Report, 2016 Vol. 65, No SS-12 (Nov. 26, 2016) 21

Jemma Jerman, et al., <i>Barriers to Abortion Care and Their Consequences for Patients Traveling for Services: Qualitative Findings from Two States</i> , Perspectives on Sexual and Reproductive Health (June 2017).....	10-11
Shivana Jorawar, <i>Miscarriage of Justice: Asian-American Women Targeted – And All Women Threatened – by Feticide Laws Like Indiana’s</i> , THE AMERICAN PROSPECT (Apr. 3, 2016)	3
Shivana Jorawar, National Asian Pacific American Women’s Forum, <i>In South Dakota, The Wolf Has Lost Its Clothes</i> , ACLU S.D. (Feb. 28, 2014)	17
Sarah Kaplan, <i>Indiana Woman Jailed for “Feticide.” It’s Never Happened Before.</i> , THE WASHINGTON POST (Apr. 1, 2015)	26-27
Leighton Ku, et al., <i>How Race/Ethnicity, Immigration Status and Language Affect Health Insurance Coverage, Access to Care and Quality of Care Among the Low-Income Population</i> , Kaiser Comm’n on Medicaid and the Uninsured 4 (Aug. 2003).....	6

Shefali Luthra, *Texas’ Planned
Parenthoods are already turning
away some patients ahead of new
abortion law*, THE 19TH NEWS (Aug.
30, 2021) 34

Seema Mohapatra, *False Framings: The
Co-opting of Sex-selection by the Anti-
Abortion Movement*, JOURNAL OF
LAW, MEDICINE & ETHICS 270,
271 (2015) 19

Shannon Najmabadi, *Gov. Greg Abbott
signs into law one of nation’s strictest
abortion measures, banning procedure
as early as six weeks into a pregnancy*,
THE TEXAS TRIBUNE (May 19,
2021) 33

Nat’l Asian Pacific American Women’s
Forum, *AAPW Women’s Economic
Security, The Wage Gap: A Closer
Look* (Mar. 9, 2021) 7-9

National Conference of State
Legislatures, *States Offering Driver’s
Licenses to Immigrants* (Aug. 9, 2021) 13

Quyen Ngo-Metzger, et al., *Linguistic
and cultural barriers to care*, 18
Journal of General Internal
Medicine 1, 44-52 (2003) 6

Anna North, *Immigrants are skipping
reproductive health care because
they’re afraid of being deported*, VOX
(July 22, 2019) 16

- Lynn M. Paltrow, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health*, 38 *Journal of Health Politics, Policy & Law* 299 (Apr. 2013).....28
- Grace Panetta, et al., *7 Maps and Charts That Show What Could Happen if Roe v. Wade Fell*, BUSINESS INSIDER (May 20, 2021).....31-32
- Diana Penner, *Woman Freed After Plea Agreement in Baby's Death, USA TODAY* (Aug. 2, 2013)27
- J. Pieklo, *Report Debunks Conservative Case for Sex-Selection Abortion Bans*, RH REALITY CHECK (June 4, 2014) 18
- Ed Pilkington, *Indiana Prosecuting Chinese Woman for Suicide Attempt that Killed Her Foetus [sic]*, THE GUARDIAN (May 30, 2012)26-27
- S. Puri, et al., *There Is Such a Thing as Too Many Daughters, but Not Too Many Sons: a Qualitative Study of Son Preference and Fetal Sex Selection Among Indian Immigrants in the United States*, SOCIAL SCIENCE AND MEDICINE 71, no. 7, 1170-1172 (2011).....20-21

M. Redden, *A New Study Demolishes the Racist Myths Behind Sex-Selective Abortion Bans Surprise! The ‘Pro-Women’ Bans Are Just Another Way to Block Abortion Rights*, MOTHER JONES (June 4, 2014) 18

M. Redden, *GOP Lawmaker: We Need to Ban Sex-Selective Abortions Because of Asian Immigrants*, MOTHER JONES (Feb. 25, 2014) 19

Percentage of Population and Percent Change by Race: 2010 and 2020, Census.gov (2020) 12

Race and Ethnicity in the United States: 2010 Census and 2020 Census, Census.Gov (Aug. 12, 2021)..... 20, 23

Selective Abortion, BBC – ETHICS (2014)..... 17

Terese Auch Schultz, *De Motte Woman Avoids Jail in Newborn’s Cruiseship Death*, CHICAGO TRIBUNE (Oct. 22, 2015) 30

Athena Tapales, et al., *The sexual and reproductive health of foreignborn women in the United States*, 98 *Contraception* 47 14
 Jasmine Tucker, *Asian American and Pacific Islander Women Lose \$10,000 Annually to the Wage Gap*, National Women’s Law Center (Mar. 2021).....9-10

<i>Why the Census Matters For Asian American, Native Hawaiian, and Pacific Islander Communities: Mississippi, Asian Americans Advancing Justice</i>	32
Reid Wilson, <i>Red states eye Texas abortion law as new model</i> , THE HILL (Sept. 9, 2021)	35
<i>Women Spared Incarceration For Newborn Daughter Aboard Caribbean Cruise</i> , CBS NEWS (Oct. 23, 2015)	29
Miriam Yeung, <i>How Asian American Women Became the Target of Anti-Abortion Activism</i> , THE WASHINGTON POST (Nov. 4, 2015)	28
Miriam Yeung, <i>Overcoming the “Model Minority” Myth: AAPI Women Are Not Paid Equally</i> , American Association of University Women (Mar. 15, 2016)	9

The National Asian Pacific American Women’s Forum, Asian Americans Advancing Justice | AAJC, and the interested parties listed in the Appendix attached hereto (“*Amici*”), submit this brief in support of Respondents Jackson Women’s Health Organization, on behalf of itself and its patients, and Sacheen Carr-Ellis, M.D., M.P.H., on behalf of herself and her patients.

INTEREST OF AMICI CURIAE¹

Amici curiae are community-based, advocacy, and social services organizations that work with and on behalf of the Asian American and Pacific Islander community as well as bar associations that represent the interests of Asian American and Pacific Islander women.

The National Asian Pacific American Women’s Forum (“NAPAWF”) is the only national, multi-issue Asian American and Pacific Islander (“AAPI”) women’s organization in the country. NAPAWF’s mission is to advance social justice and human rights for AAPI women and girls. NAPAWF approaches all of its work through a reproductive justice framework that seeks for all members of the AAPI community to have the economic, social, and political power to make their own decisions regarding their bodies, families,

¹ Pursuant to SUP. CT. R. 37.3(a), *Amici* certify that the parties have filed blanket consents to amicus briefs in this case. Pursuant to SUP. CT. R. 37.6, *Amici* certify that no counsel for any party authored this brief in whole or in part, no party or party’s counsel made a monetary contribution to fund its preparation or submission, and no person other than *Amici* or their counsel made such a monetary contribution.

and communities. Their work includes advocating for the reproductive health care needs of AAPI women and ensuring AAPI women’s access to reproductive health care services, including abortion.

Asian Americans Advancing Justice | AAJC (“Advancing Justice | AAJC”) is a national nonprofit organization that works to advance and protect civil and human rights for Asian Americans and to promote an equitable society for all. Advancing Justice | AAJC is a leading expert on issues of importance to the Asian American community. Advancing Justice | AAJC works to promote justice and bring national and local constituencies together through community outreach, advocacy, and litigation.

SUMMARY OF ARGUMENT

Amici submit this brief in support of Respondents on behalf of Asian American and Pacific Islander (“AAPI”) women.²

Access to abortion care is critical to protecting both the emotional well-being and financial independence of AAPI women and families. However, AAPI women face significant language, economic, and immigration-related barriers to obtaining abortions. Further, AAPI women also face undue scrutiny into the reasons for obtaining abortions due to racial and cultural stereotypes and discrimination. These barriers would

² When referring to AAPI women, *Amici* acknowledge that AAPI transgender and non-binary child-bearing individuals rely on abortion care, and such individuals also may be harmed or prejudiced to the same extent as AAPI women.

become even more profound if Mississippi’s pre-viability abortion ban is upheld due to laws that unfairly target pregnant AAPI women for criminal prosecution.³ Overturning *Casey* and *Roe* would allow states across the nation to enforce pre-viability abortion bans, including sex-selective abortion bans that are based on racial stereotypes and harm AAPI women by encouraging racial profiling. Given the grave and disparate effect a pre-viability ban on abortion would have on AAPI women, the judgment of the Fifth Circuit should be affirmed.

ARGUMENT

I. AAPI WOMEN ALREADY FACE SIGNIFICANT BARRIERS TO OBTAINING ABORTIONS.

In 2019, there were an estimated 12.7 million AAPI women—about 11.9 million Asian American women and almost 803,000 Native Hawaiian and Other Pacific Islander (“NHPI”) women—living in the United States.⁴ These women represent nearly 3.9

³ Shivana Jorawar, *Miscarriage of Justice: Asian-American Women Targeted – And All Women Threatened – by Feticide Laws Like Indiana’s*, THE AMERICAN PROSPECT (Apr. 3, 2016), <https://prospect.org/culture/miscarriage-justice-asian-american-women-targeted-women-threatened-feticide-laws-like-indiana-s/>

⁴ Robin Bleiweis, *The Economic Status of American and Pacific Islander Women*, Center for American Progress (Mar. 4, 2021) <https://www.americanprogress.org/issues/women/reports/2021/03/04/496703/economic-status-asian-american-pacific-islander-women/> (citing U.S. Census Bureau, *Annual Estimates of the*

percent of the U.S. population. *Id.* In addition to being the fastest-growing racial group in the country, AAPIs also are projected to embody 14 percent of the U.S. population by 2065.⁵

As with many underserved communities of color, access to abortion care is critical to protecting both the emotional and physical well-being and financial independence of AAPI women and families. Yet persons of color seeking abortions throughout the United States confront an increasing number of structural and state-imposed obstacles unique to their communities. These impediments fall hard on AAPI women, who often confront additional language, economic, and immigration obstacles that substantially impede their access to abortions.

A. AAPI Women Face Substantial Language Barriers in Accessing Abortions.

AAPI women face substantial language barriers to accessing quality healthcare in general, and reproductive healthcare in particular. Over one-third of Asian Americans report limited English proficiency (“LEP”).⁶ Additionally, 52 percent of Asian

Resident Population by Sex, Race, and Hispanic Origin for the United States: April 1, 2010 to July 1, 2019 (2019)),

⁵ *Id.*

⁶ Jang, Yuri, et al., *Limited English Proficiency and Health Service Use in Asian Americans*, 21 *Journal of Immigrant and Minority Health* 2, 264-270 (2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6252148/>.

American immigrants and approximately 45 percent of foreign-born Pacific Islanders are LEP.⁷ LEP individuals generally are more likely “to encounter problems in obtaining [preventative and medical] health services” and “bear added burdens” for communication with health care providers.⁸ Recent studies also suggest that LEP increases the odds of negative health service use outcomes.⁹

Language access is even more complicated for AAPIs than other communities because AAPI individuals speak *over 100 distinct languages or dialects*.¹⁰ This great language diversity “poses a significant challenge to accommodating [AAPI’s] linguistic needs.”¹¹

The inability to clearly and comfortably communicate in English prevents many AAPI women from both “discuss[ing] medical problems with a physician or nurse and . . . complet[ing] an insurance

⁷ *Inside the Numbers: How Immigration Shapes Asian American and Pacific Islander Communities*, ASIAN AMERICANS ADVANCING JUSTICE, 14 (June 12, 2019).

⁸ Jang, *supra* note 6.

⁹ *Id.* (indicators for negative health service use outcomes include, for example, no usual place for care, no regular check-up, unmet needs for medical care, and communication problems in healthcare settings).

¹⁰ *Id.* (also noting for comparison that, while AAPI with LEP speak more than 100 languages or dialects, 99 percent of Hispanics with LEP speak Spanish).

¹¹ *Id.*

application.”¹² Language challenges lead to much lower reproductive health usage by AAPI women than other women.¹³ For instance, Asian American women have one of the lowest rates of cervical cancer screening due to language barriers, the cost of pap smears, and lack of insurance.¹⁴

B. AAPI Women Face Economic Barriers to Obtaining Abortions.

AAPI women also face manifold economic barriers to accessing abortion care.¹⁵ The Asian

¹² Leighton Ku, et al., *How Race/Ethnicity, Immigration Status and Language Affect Health Insurance Coverage, Access to Care and Quality of Care Among the Low-Income Population*, Kaiser Comm’n on Medicaid and the Uninsured 4 (Aug. 2003), <https://www.kff.org/wp-content/uploads/2013/01/how-race-ethnicity-immigration-status-and-language-affect-health-insurance-coverage-access-to-and-quality-of-care-among-the-low-income-population.pdf>; see also Quyen Ngo-Metzger, et al., *Linguistic and cultural barriers to care*, 18 *Journal of General Internal Medicine* 1, 44-52 (2003) (“Cultural and linguistically appropriate health care services may lead to improved health care quality for Asian-American patients who have limited English language skills.”).

¹³ Carolyn Y. Fang, et al. *Overcoming Barriers to Cervical Cancer Screening Among Asian American Women*, 4 *N. Am. J. Med. Sci.* 77 (2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3115728/>.

¹⁴ *Id.*

¹⁵ Economic factors pose barriers to abortion access for a variety of reasons. The Court in *June Medical Services L.L.C. v. Russo* identified travel as one such barrier: “[B]oth experts and laypersons testified that the burdens of this increased travel

American “model minority myth” obscures vast economic disparities within the AAPI community and it perpetuates a harmful stereotype that “Asian-Americans are among the most prosperous, well-educated, and successful ethnic groups in America.”¹⁶ The myth belies the reality of vast, varying economic, educational, and employment realities among AAPI individuals, which comprise over fifty ethnic subgroups that speak more than 100 languages and dialects.¹⁷

In fact, AAPIs collectively have the greatest socio-economic disparities within a racial group in the United States. For example, among Asian Americans, six percent of Filipino Americans live below the poverty line, compared to 26 percent of Hmong Americans.¹⁸ While, among NHPIs, about 49 percent

would fall disproportionately on poor women, who are least able to absorb them.” 140 S. Ct. 2103, 2130 (2020).

¹⁶ Kat Chow, ‘*Model Minority*’ Myth Again Used As A Racial Wedge Between Asians And Blacks, NPR (Apr. 19, 2017) <https://www.npr.org/sections/codeswitch/2017/04/19/524571669/model-minority-myth-again-used-as-a-racial-wedge-between-asians-and-blacks> ((quoting Andrew Sullivan, *Why Do Democrats Feel Sorry for Hillary Clinton?*, NYMag.com (Apr. 14, 2017)).

¹⁷ Nat’l Asian Pacific American Women’s Forum, *AAPI Women’s Economic Security, The Wage Gap: A Closer Look* (Mar. 9, 2021) (hereinafter “NAPAWF”), <https://www.napawf.org/equalpay#data-and-resources>.

¹⁸ Asian Pacific American Legal Center & Asian American Justice Center, *A Community of Contrasts: Asian Americans in the United States: 2011*, 36 (2011) (hereinafter “Asian American Report”),

of Marshallese Americans live below the poverty line, contrasted with five percent of Fijian Americans.¹⁹ Regarding education outcomes, roughly 73 percent of Taiwanese Americans hold a bachelor's degree, compared to only 12 percent of Laotian Americans.²⁰ Similarly, while almost 18 percent of NHPI adults hold a bachelor's degree, only three percent of Marshallese Americans do.²¹

Such disparity is particularly significant in pay equity rates among AAPI women. On average, AAPI women working full-time are paid 85 cents for every dollar paid to their white male counterparts.²² Disaggregated data from 2015 and 2019 reveals that many AAPI women experience far greater wage gaps than the general population. AAPI wage gaps are particularly pronounced for Southeast Asian and Pacific Islander women. For example, Burmese women earn only 53 cents for every dollar earned by their white male counterparts, and Vietnamese, Laotian, and Samoan American women earn only 61

http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf.

¹⁹ Asian Americans Advancing Justice & Empowering Pacific Islander Communities, *A Community of Contrasts: Native Hawaiians and Pacific Islanders in the United States, 2014*, 18 (2014) (hereinafter "NHPI Report"), http://empoweredpi.org/wp-content/uploads/2014/06/A_Community_of_Contrasts_NHPI_US_2014-1.pdf.

²⁰ Asian American Report at 31.

²¹ NHPI Report at 11.

²² NAPAWF at 1.

cents.²³ Because of the wage gap, *AAPI women typically lose \$400,000 over a 40-year career.*²⁴

Coupled with the financial challenges AAPI women face, the employment realities of AAPI women further complicate access to abortion care. An estimated 27 percent of working AAPI women are essential workers, and nearly half a million AAPI women work in service industries that offer low wages.²⁵ In many of these industries, paid time off is atypical, and therefore, time off means lost wages.²⁶ Without paid family and medical leave, AAPI women, like many women, must tend to caregiving and other unpaid healthcare obligations, such as reproductive

²³ *Id.* (citation omitted); see also Miriam Yeung, *Overcoming the “Model Minority” Myth: AAPI Women Are Not Paid Equally*, American Association of University Women (Mar. 15, 2016), <https://ww3.aauw.org/article/overcoming-the-model-minority-myth-aapi-women-are-not-paid-equally/> (additionally finding that Native Hawaiian women are paid only 66 cents for every dollar a white man is paid, and for Bhutanese American women, only 38 cents).

²⁴ Jasmine Tucker, *Asian American and Pacific Islander Women Lose \$10,000 Annually to the Wage Gap*, National Women’s Law Center (Mar. 2021), <https://nwlc.org/wp-content/uploads/2020/01/AAPI-EPD-2021-v1.pdf>.

²⁵ Bleiweis, *supra* note 4.

²⁶ *Id.* (“In 2019, more than 1.4 million AAPI women in the labor force worked in jobs that had median hourly earnings below \$15 an hour.”), See also, Jasmine Tucker, *Asian American and Pacific Islander Women Lose \$10,000 Annually to the Wage Gap*, National Women’s Law Center (March 2021), <https://nwlc.org/wp-content/uploads/2020/01/AAPI-EPD-2021-v1.pdf> (finding that AAPI women are overrepresented in both the frontline and low-wage workforces).

health care, by decreasing work hours, leading to decreased earnings or lost employment.²⁷ Indeed, the majority of people who decide to end a pregnancy in the United States are patients who already have children and must therefore provide childcare while seeking an abortion.²⁸ But, even more crucially, the inability to take time off work inherently restricts access to health care. Yet, seeking timely care is especially crucial for abortion care.

Considering the substantial number of AAPI women working in service industries, the COVID-19 pandemic dealt a serious blow to AAPI women's employment. Indeed, AAPI women endured the highest long-term unemployment rate among minority women since the onset of the COVID-19 pandemic.²⁹ Additionally, "Asian women experienced a larger drop in their employment [17 percent] during this time than did both women and men overall, who experienced a 15.2 percent drop and a 12.3 percent

²⁷ Bleiweis, *supra* note 4.

²⁸ *Induced Abortion in the United States*, Guttmacher Institute (Sept. 2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states> (noting that in 2014, 59% of abortions were obtained by patients who had at least one birth); Jemma Jerman, et al., *Barriers to Abortion Care and Their Consequences for Patients Traveling for Services: Qualitative Findings from Two States*, Perspectives on Sexual and Reproductive Health (June 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5953191/>.

²⁹ *Id.* ("44 percent of Asian women over the age of 16 who lost their jobs during the pandemic were out of work for at least six months as of December 2020—the highest rate among women of any racial group.").

drop, respectively.”³⁰ NHPI women’s employment numbers likewise dropped by over 35,000 (from an estimated total of 302,000 in 2019 to 265,000 in 2020).³¹

Ability and cost barriers to seeking and obtaining quality healthcare, including an abortion, are substantial for AAPI women. If states ban abortion, people with financial means may be able to travel across (likely multiple) state lines to obtain an abortion, while those without means would be forced to either attempt to terminate their own pregnancies outside of the formal medical system or to carry their pregnancies to term. Those AAPI women that face the economic disparities described above are less likely to be able to access the resources for travel, childcare, lodging, and related costs necessary for an out-of-state trip. Their economic disparities, combined with language-related and immigration-related challenges (*see* Section I.C, *infra*) limit many AAPI women’s ability to access and pay for reproductive healthcare, including abortion care.³² Reproductive justice is critical to protecting and supporting the financial independence and agency of AAPI women.

³⁰ *Id.*

³¹ *Id.*

³² *See, e.g.*, Carolyn Y. Fang, et al., *supra* note 13 (finding that Asian American women have one of the lowest rates of cervical cancer screening due to the cost of pap smears, lack of insurance, and limited English proficiency).

**C. Immigration Related Challenges
Impose Significant Barriers to
AAPI Women’s Access to Abortion
Care.**

Immigration related challenges impose additional burdens on AAPI immigrant women seeking access to abortions. Immigration accounts for the significant growth in the AAPI population; nearly two-thirds of AAPIs are foreign-born compared to 14 percent of all Americans and 17 percent of U.S. adults.³³ AAPIs also represent the fastest-growing racial or ethnic group in the U.S.³⁴ In 2020, 24 million Americans identified as Asian American as opposed to 17.3 million in 2010, representing a 38.6 percent increase.³⁵ The NHPI population grew to almost 1.6 million in 2020 compared to over 1.2 million in 2010, representing a 29.5 percent increase during the last decade.³⁶ More than 20 million people of Asian descent live in the U.S., and almost all trace their

³³ Abby Budiman and Neil G. Ruiz, *Key facts about Asian Americans, a diverse and growing population*, Pew Research Center (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/>.

³⁴ *Id.* (noting that over the past twenty years, the single-race, non-Hispanic segment of the U.S. Asian population grew by 81 percent).

³⁵ *Percentage of Population and Percent Change by Race: 2010 and 2020*, Census.gov (2020), <https://www2.census.gov/programs-surveys/decennial/2020/data/redistricting-supplementary-tables/redistricting-supplementary-table-02.pdf>.

³⁶ *Id.*

roots to at least 19 countries in East and Southeast Asia and the Indian Subcontinent.³⁷

AAPI immigrant women face systemic barriers to obtaining health coverage and care based on their immigration status. For example, immigrants are ineligible for Medicaid during the first five years of legal residency.³⁸ Moreover, only 16 states and the District of Columbia have enacted laws permitting undocumented immigrants to obtain driver's licenses,³⁹ which can limit immigrant women's ability to travel and access abortion care. These barriers can result in serious consequences for the reproductive healthcare of AAPI women, as illustrated by the fact that "foreign-born . . . women are less likely to receive

³⁷ See Abby Budiman, et al, *supra* note 33. While disaggregating data about these origin groups is difficult, it is important, as "the 19 largest Asian origin groups in the U.S. differ significantly by income, education and other characteristics. These differences highlight the wide diversity of the nation's Asian population and provide a counterpoint to the "model minority" myth and the description of the group as monolithic." *Id.*

³⁸ Kinsey Hasstedt, et al., *Immigrant Women's Access to Sexual and Reproductive Health Coverage and Care in the United States*, The Commonwealth Fund (Nov. 20, 2018), <https://www.commonwealthfund.org/publications/issue-briefs/2018/nov/immigrant-womens-access-sexual-reproductive-health-coverage>.

³⁹ National Conference of State Legislatures, *States Offering Driver's Licenses to Immigrants* (Aug. 9, 2021), <https://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx>.

[sexual and reproductive health]-related cancer screenings than their U.S.-born counterparts.”⁴⁰

In addition, many AAPI immigrant women fear that seeking healthcare (and signing up for healthcare benefits including Medicaid) may lead to significant immigration consequences and harsh penalties. Such a fear is understandable considering that certain states afford law enforcement considerable discretion in targeting foreign-born individuals for anti-immigration purposes.⁴¹ The pervasive fear of immigration consequences and distrust of government authorities leads to reluctance in seeking out needed health care services.

The reduction in social service usage following the Trump administration’s expansion of the “public charge” rule bears out this reality. In September 2018, the Trump administration announced regulations redefining a “public charge” as *inter alia* a non-citizen

⁴⁰ Athena Tapales, et al., *The sexual and reproductive health of foreignborn women in the United States*, 98 *Contraception* 47 (Feb. 9, 2018), <https://www.contraceptionjournal.org/action/showPdf?pii=S0010-7824%2818%2930065-9>.

⁴¹ See, e.g., S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010) (requiring immigration status checks during law enforcement stops or where reasonable suspicion exists that the person is an “alien who is unlawfully present”); S.B. No. 4, 85th Leg., Reg. Sess. (Tex. 2017) (effectively banning sanctuary cities in Texas); H.B. 452 (Ga. 2017) and O.C.G.A. § 1-3-4 (empowers the Georgia Bureau of Investigation to create a system compliant with federal law that would post certain information about undocumented individuals released from federal custody within Georgia on the internet).

who receives one or more specified public benefits for more than an aggregate twelve months in any thirty-six month period.⁴² Receipt of public benefits became a heavily weighted negative factor in immigration officials' assessment of whether an immigrant would become a public charge and should be denied permanent residency. Recent data suggests confusion and fear concerning the public charge rule changes "led to thousands of eligible, low-income children failing to receive safety-net support" during the COVID-19 crisis.⁴³

⁴² 84 Fed. Reg. 41,292 (2019); 84 Fed. Reg. 52,357 (2019). The public charge rule was vacated and removed by the U.S. Citizenship and Immigration Services on March 9, 2021. See 86 Fed. Reg. 14,221 (Mar. 15, 2021).

⁴³ Jeremy Barofsky, et al., *Spreading Fear: The Announcement Of The Public Charge Rule Reduced Enrollment In Child Safety-Net Programs*, 39 Health Affairs 10 (Oct. 2020), [https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763#:~:text=Press%20reports%20indicated%20that%20the,public%20benefits%20among%20legal%20immigrants.&text=Of%20these%20children%2C%2090%20percent,the%20public%20charge%20rule's%20expansion_\(estimating_a_decline_in_Medicaid,_SNAP,_and_WIC_coverage_of_260,000_children_resulting_from_public_charge_rule_change\)](https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00763#:~:text=Press%20reports%20indicated%20that%20the,public%20benefits%20among%20legal%20immigrants.&text=Of%20these%20children%2C%2090%20percent,the%20public%20charge%20rule's%20expansion_(estimating_a_decline_in_Medicaid,_SNAP,_and_WIC_coverage_of_260,000_children_resulting_from_public_charge_rule_change).). See also Alexandra Ashbrook & Jackie Vimo, *Food Over Fear: Overcoming Barriers to Connect Latinx Immigrant Families to Federal Nutrition and Food Programs*, Food Research and Action Center, National Immigration Law Center (Dec. 2020), https://frac.org/wp-content/uploads/NILC_Latinx-Immigrant-Families.pdf (more than one-quarter of immigrant parents surveyed in study reported that they stopped using SNAP or other food programs in the last two years due to immigration-related concerns); Alexandra Ashbrook, *New Data Reveal Stark Decreases in SNAP Participation Among U.S. Citizen Children Living With a Non-Citizen*, Food Research and Action Center (May 2021), <https://frac.org/wp->

The same pattern exists in the context of reproductive health. Many immigrants do not seek out needed healthcare services, including abortions, due to fear of immigration consequences tied to the public charge rule, among other state and federal laws.⁴⁴ Allowing states to ban pre-viability abortions would likely exacerbate this fear.

D. Sex Selective Abortion Bans Unfairly Target and Harm AAPI Women

Sex-selective or gender-selective abortion is the practice of terminating a pregnancy based upon the predicted sex of the infant.⁴⁵ Over the last decade, a wave of states have enacted legislation targeting sex-selective abortions. These bans often are referred to

content/uploads/SNAP-Participation-Among-U.S.-Citizen-Children.pdf (national participation in SNAP among children in mixed-status households dropped by 22.5 percent (more than 718,000 children) between fiscal years 2018-2019, representing a decrease that is five times that of the decrease among U.S. children in citizen-only households).

⁴⁴ Anna North, *Immigrants are skipping reproductive health care because they're afraid of being deported*, VOX (July 22, 2019), <https://www.vox.com/2019/7/22/20698285/immigration-ice-raids-cities-pregnancy-abortion-health> (representative of Physicians for Reproductive Health attributing some of the decline of undocumented immigrant birthrates to concerns of deportation).

⁴⁵ *Selective Abortion*, BBC – ETHICS (2014), https://www.bbc.co.uk/ethics/abortion/medical/selective_1.shtml (last visited Sep. 17, 2021).

as “a wolf in sheep’s clothing,”⁴⁶ because they derive in large part from racist stereotypes about AAPI women and have a disparate impact on AAPI women. Such bans are yet another barrier AAPI women face when accessing abortions.

1. Sex-selective abortion bans are rooted in racist and xenophobic stereotypes about AAPI women.

Sex-selective abortion bans (“SSABs”) have historical roots in the stereotype that AAPI women prefer sons to daughters, and therefore, are more likely to abort female fetuses.⁴⁷ Yet, in reality, Asian Americans give birth to more girls on average than white Americans.⁴⁸

⁴⁶ Suchitra Dalvie, *A Wolf in Sheep’s Clothing*, CATHOLICS FOR CHOICE, *Conscience Magazine* (Aug. 31, 2018), <https://www.catholicsforchoice.org/resource-library/a-wolf-in-sheeps-clothing/>. See also Shivana Jorawar, National Asian Pacific American Women’s Forum, *In South Dakota, The Wolf Has Lost Its Clothes*, ACLU S.D. (Feb. 28, 2014), <https://www.aclusd.org/en/news/south-dakota-wolf-has-lost-its-clothes>.

⁴⁷ Brian Citro, et al., *Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States*, CORNELL LAW FAC. PUBL’NS, PAPER 1399, 24-28 (2014).

⁴⁸ International Human Rights Clinic at the University of Chicago Law School, National Asian Pacific American Women’s Forum, and Advancing New Standards in Reproductive Health, *Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States* (June 2014), <http://napawf.org/wp-content/uploads/2014/06/Replacing-Myths-with-Facts-final.pdf> (study finding that “foreign born Chinese, Korean, and Indian

Still, proponents of SSABs perpetuate false stereotypes and make misguided arguments that Asian women moving to the United States bring “cultural biases against having girl children” and choose to abort female fetuses.⁴⁹ Further, legislators proposing SSABs use racially-charged language that is harmful and offensive. For example, when arguing for South Dakota’s ban, State Representative Don Hagggar stated,

There are cultures that look at a sex-selection abortion as being culturally okay. And I will suggest to you that we are embracing individuals from some of those cultures in this country, or in this state. And I think that’s a good thing that we invite them to come, but I think it’s also important that we send a message that this is a state that values life, regardless of its sex.⁵⁰

parents actually have more daughters than white Americans do”); *See also* J. Pieklo, *Report Debunks Conservative Case for Sex-Selection Abortion Bans*, RH REALITY CHECK (June 4, 2014), rhrealitycheck.org/article/2014/06/04/report-debunks-conservative-case-sex-selection-abortion-bans.

⁴⁹ M. Redden, *A New Study Demolishes the Racist Myths Behind Sex-Selective Abortion Bans Surprise! The ‘Pro-Women’ Bans Are Just Another Way to Block Abortion Rights*, MOTHER JONES (June 4, 2014), m.motherjones.com/politics/2014/06/study-sex-selective-abortion-bans-racist-asian-americans.

⁵⁰ Seema Mohapatra, *False Framings: The Co-opting of Sex-selection by the Anti-Abortion Movement*, JOURNAL OF LAW, MEDICINE & ETHICS 270, 271 (2015),

Likewise, South Dakota State Representative Stace Nelson, speaking in favor of the bill said, “Many of you know I spent 18 years in Asia, and sadly I can tell you that the rest of the world does not value the lives of women as much as I value the lives of my daughters.”⁵¹ This rhetoric imputes a perceived cultural preference for sons in Asian countries to AAPIs living in the United States today. It is no coincidence that South Dakota is among the states experiencing the fastest growth of the AAPI community in the United States (it is among the top three states with the largest Asian American population and among the top ten states for NHPI populations).⁵²

Lawmakers enacting SSABs often claim that “abortions based on son preference are widespread in the United States.”⁵³ In an attempt to support this

<https://lawpublications.barry.edu/cgi/viewcontent.cgi?article=1054&context=facultyscholarship>.

⁵¹ Sharon H. Chang, *Raising Mixed Race: Multiracial Asian Children in a Post-Racial World* (2015). See also M. Redden, GOP Lawmaker: We Need to Ban Sex-Selective Abortions Because of Asian Immigrants, MOTHER JONES (Feb. 25, 2014), <https://www.motherjones.com/politics/2014/02/south-dakota-stace-nelson-ban-sex-based-abortions-because-asian-immigrants/>.

⁵² See Race and Ethnicity in the United States: 2010 Census and 2020 Census, Census.Gov (2021), <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>.

⁵³ See International Human Rights Clinic at the University of Chicago Law School, National Asian Pacific American Women’s Forum, and Advancing New Standards in Reproductive Health,

false premise, legislators cite to one small, problematic study that interviewed a selective group of 65 South Asian women to purportedly show the prevalence of sex selective abortion bans.⁵⁴ In reality, this study was not a random sample of South Asian women, as these 65 women were interviewed because they sought sex selection technologies in order to have a son.⁵⁵

Nevertheless, the legislative histories of several SSABs reveal that lawmakers rely on this flawed study to claim that widespread sex selection occurs in the United States.⁵⁶ For example, the legislative history in the Florida House of Representatives misrepresents this study as

Replacing Myths with Facts: Sex-Selective Abortion Laws in the United States (June 2014) (hereinafter cited as “International Human Rights Clinic”).

⁵⁴ S. Puri, et al., *There Is Such a Thing as Too Many Daughters, but Not Too Many Sons: a Qualitative Study of Son Preference and Fetal Sex Selection Among Indian Immigrants in the United States*, SOCIAL SCIENCE AND MEDICINE 71, no. 7, 1170-1172 (2011).

⁵⁵ S. Puri, et al., *supra* note 54. International Human Rights Clinic, *supra* note 48.

⁵⁶ *Id.* See also Florida Staff Analysis, H.B. 1327 (Jan. 25, 2012), Legislative History (House Bill 1327 created Florida’s proposed sex-selective abortion ban, the “Susan B. Anthony and Frederick Douglass Prenatal Non-discrimination and Equal Opportunity for Life Act”). See also 158 Cong. Rec. H3180-08 (May 30, 2012) (statement of Rep. Franks); H.R. 496, 112th Cong., 2d Sess. 2012, 2012 WL 1939420 (Leg. Hist.) (PRENDA OF 2012). See also Mohapatra, *False Framings: The Co-opting of Sex-selection by the Anti-Abortion Movement*, *supra* note 50 at 272.

representative of *most* South Asian women in the United States.⁵⁷ In reality, most abortions in the United States, approximately 92 percent, take place in the first trimester of pregnancy *before fetal sex is usually determined*.⁵⁸ The continued use of misleading studies perpetuates the false narrative that SSABs are necessary to control a widespread problem of sex-selective abortions among the AAPI community in the United States—a problem that simply is nonexistent.

Since 2011, at least 11 states⁵⁹ have enacted SSABs to prohibit abortions (including pre-viability abortions) where the provider knows, *or suspects*, the patient is seeking the abortion because of the fetus' sex.⁶⁰ SSABs are the second-most proposed abortion ban in the country, and they specifically target AAPI

⁵⁷ *Id.*

⁵⁸ Tara C. Jatlaoui, et al., *Abortion surveillance—United States, 2013*, Center for Disease Control and Prevention: Morbidity and Mortality Weekly Report, 2016 Vol. 65, No SS-12 (Nov. 25, 2016) <https://www.cdc.gov/mmwr/volumes/65/ss/ss6512a1.htm>.

⁵⁹ *Abortion Bans in Cases of Sex or Race Selection or Genetic Anomaly*, GUTTMACHER INSTITUTE (Aug. 1, 2021), <https://www.guttmacher.org/state-policy/explore/abortion-bans-cases-sex-or-race-selection-or-genetic-anomaly> (As of August 1, 2021, Arizona, Arkansas, Kansas, Mississippi, Missouri, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, and Tennessee have banned abortions for reason of sex selection at some point in pregnancy. Other states, including Illinois, Indiana, and Kentucky, have attempted to enact SSAB legislation, but the laws have been either temporarily or permanently enjoined by court order.).

⁶⁰ *Id.*

women.⁶¹ The bans primarily have been passed in states with fast-growing AAPI populations;⁶² for example, among states that have implemented or sought to implement SSABs, North Dakota, South Dakota, North Carolina, Indiana, and Kentucky also are among the top ten states with the fastest growing Asian American populations. Similarly, North Dakota, Arkansas, Indiana, Oklahoma, South Dakota, and Kentucky are among the top ten states with the fast growing NHPI populations.⁶³ SSABs have also been proposed at the federal level by at least seven Congresses during the past decade.⁶⁴

⁶¹ Jennifer Chou and Shivana Jorawar, *Silently Under Attack: AAPI Women and Sex-Selective Abortion Bans*, UNIV. CAL. BERKLEY (Nov. 22, 2015).

⁶² Abby Budiman and Neil G. Ruiz, *Asian Americans are the fastest-growing racial or ethnic group in the U.S.*, Pew Research Center (Apr. 9, 2021), <https://www.pewresearch.org/fact-tank/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/> (showing that all states that have passed SSABs as of August 1, 2021 experienced a 50 percent to 200 percent+ increase in the population of Asian Americans from 2000-2019).

⁶³ See, *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, Census.gov (Aug. 12, 2021), <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>.

⁶⁴ Susan B. Anthony Prenatal Nondiscrimination Act (“PRENDA”) of 2008, H.R. 7016, 110th Cong. (2008); PRENDA of 2009, H.R. 1822, 111th Cong. (2009); PRENDA of 2012, S. 3290, 112th Cong. (2012); PRENDA of 2013, H.R. 447, 113th Cong. (2013); PRENDA of 2013, S. 138, 113th Cong. (2013); PRENDA of 2015, S. 48, 114th Cong. (2015); PRENDA of 2017, H.R. 147,

2. SSABs encourage racial profiling of AAPIs by providers.

By stigmatizing certain reasons to have an abortion, SSABs force health care providers to police and racially profile the motivations of their own patients. They require providers to actively inquire into the reason a pregnant person is seeking abortion care. Pregnant persons choose to end their pregnancies for a multitude of complex reasons. Forcing doctors to deduce one “true” reason or the “real” intent of an individual’s decision to access abortion care encourages racial profiling of AAPI patients. SSABs interfere with the trust between doctors and AAPI patients, which is critical for open and honest doctor-patient relationships.⁶⁵

For example, Missouri bans abortion if it is sought for reasons related to the race or sex of the fetus, and a physician who provides such an abortion is subject to civil penalties.⁶⁶ Thus, when a doctor treats a patient seeking abortion care in Missouri, the doctor must, under penalty of law, ask a series of questions probing why the patient wants the abortion, including if it is because of the fetus’ gender.⁶⁷

115th Cong. (2017); PRENDA of 2019, H.R. 2373, 116th Cong. (2019); PRENDA of 2019, S. 182, 116th Cong. (2019).

⁶⁵ Jennifer Chou and Shivana Jorawar, *supra* note 61.

⁶⁶ Mo. Stat. § 188.038.

⁶⁷ Safia Samee Ali, *Sex-selective abortions: Reproductive rights are being pitted against gender equality*, NBC NEWS (Oct. 27

In Tennessee, the SSAB prohibits doctors from providing abortion care where the provider “knows” their patient is seeking to end their pregnancy “because of” the sex of the fetus.⁶⁸ Yet, the law offers no explanation, definition, or guidance regarding the meaning of the terms “knows” or “because of” in this context. The vagueness in some SSAB laws, as in Tennessee, requires providers to employ their own subjective, and likely inconsistent, interpretations of the law.

SSABs thus force a doctor to scrutinize a patient’s intent behind their decision to end a pregnancy. Confronted with threats of severe punishment by some SSABs,⁶⁹ a doctor is incentivized to adopt an aggressive reading of the statutes. In doing so, doctors also may take into account the State-sanctioned racist stereotype behind SSABs: that AAPI women are more inclined to engage in sex-selective

2019), <https://www.nbcnews.com/news/us-news/sex-selective-abortions-reproductive-rights-are-being-pitted-against-gender-n1067886>.

⁶⁸ See Tenn. Code § 39-15-217(b). While this law is currently in effect, it will soon be preliminarily enjoined once the Sixth Circuit’s mandate, affirming a district court’s preliminary injunction, issues on September 24, 2021. See *Memphis Ctr. for Reprod. Health v. Slatery*, No. 20-5969, 2021 WL 4127691 (6th Cir. Sept. 10, 2021).

⁶⁹ *Id.* § 40-35-111(b)(3) (For example, in Tennessee, any provider who violates the Act faces harsh criminal sanctions, including being charged with a Class C felony punishable by up to 15 years’ imprisonment and/or a fine of up to \$10,000.).

abortions. This tendency imposes one more barrier on AAPI women accessing abortion care.

II. OVERTURNING *ROE* WOULD EXACERBATE THE MYRIAD BARRIERS AAPI WOMEN ALREADY FACE IN ACCESSING ABORTION.

If Mississippi's pre-viability abortion ban is upheld, the outcome would effectively overturn *Roe*. This disastrous consequence would exacerbate the discrimination AAPI women already face on a daily basis. As set forth above, AAPI women encounter language, economic, immigration, and racially motivated barriers that hinder their access to reproductive and abortion care. Confronted with the risks of carrying unwanted pregnancies to term and inability to access abortion providers, some pregnant persons may seek to end their own pregnancies without medical supervision. Those who are suspected of doing so may find their actions criminalized more generally. Ultimately, if *Roe* is overturned, the impact would fall hard on AAPI women, particularly in the at least twenty-two states that likely will completely ban legal abortion.

A. AAPI Women Will More Likely Face Criminal Penalties for Abortion.

If *Roe* is overturned, pregnant AAPI women are more likely to become targets of criminal prosecution as a result of racial profiling. For example, in the last decade, two AAPI women in Indiana were prosecuted for murder due to pregnancy losses. Both Bei Bei Shuai and Purvi Patel were prosecuted under a 1979

fetal homicide law that was intended to protect pregnant people from third-party violence.

In December 2010 Ms. Shuai, a pregnant Chinese immigrant, consumed rat poison in an attempt to end her life while suffering from major depressive disorder.⁷⁰ Subsequently, she was rushed to a hospital where doctors delivered her baby via caesarian section. Unfortunately, Ms. Shuai's baby died four days later. Ms. Shuai held her baby for five hours prior to the baby's death, "begging for her own life to be taken so that her child's might be spared."⁷¹ Indiana charged Ms. Shuai with murder for the death of her baby and with attempted feticide because she could have miscarried, even though she did not.⁷² Ms. Shuai served over a year in jail before pleading to lesser charges.⁷³

Ms. Patel, an Indian American woman, is widely reported to be the first woman in the country convicted of charges that she allegedly ended her own

⁷⁰ Ed Pilkington, *Indiana Prosecuting Chinese Woman for Suicide Attempt that Killed Her Foetus [sic]*, THE GUARDIAN (May 30, 2012), <https://www.theguardian.com/world/2012/may/30/indiana-prosecuting-chinese-woman-suicide-foetus>.

⁷¹ *Id.*

⁷² *See* Ind. Code. Ann. § 35-42-1-1, § 35-42-1-6.

⁷³ *Id.*; *see also* Diana Penner, *Woman Freed After Plea Agreement in Baby's Death*, USA TODAY (Aug. 2, 2013), <https://www.usatoday.com/story/news/nation/2013/08/02/woman-freed-after-plea-agreement-in-babys-death/2614301/>.

pregnancy.⁷⁴ In July 2013, Ms. Patel went to an Indiana hospital seeking emergency care for uninterrupted vaginal bleeding after she experienced a pregnancy loss.⁷⁵ Ms. Patel informed the hospital that her fetus was born stillborn, and not knowing what else to do, she put the body in a bag and left it in a dumpster. Police officers discovered text messages in which Ms. Patel told a friend she ordered abortion inducing pills from a pharmacy in Hong Kong and took the medication. While there were no abortion-related medications in her system, the police assumed she lost her fetus through a self-managed abortion.⁷⁶ Beginning with the initial investigation, the police focused on Ms. Patel's race and the race of her fetus' father. In the hospital, an officer interrogated Ms. Patel about the father's race repeatedly asking "[w]as he Indian, too?" As one journalist noted, "[t]he officer's implication that Patel's race and the race of the fetus' father had some effect on the outcome of her pregnancy reflects the anti-Asian rhetoric that is increasingly prevalent in the debate about abortion

⁷⁴ See, e.g., Sarah Kaplan, *Indiana Woman Jailed for "Feticide." It's Never Happened Before.*, THE WASHINGTON POST (Apr. 1, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/04/01/indiana-woman-jailed-for-feticide-its-never-happened-before/>.

⁷⁵ Emily Bazelon, *Purvi Patel Could Be Just The Beginning*, NY TIMES (Apr. 1, 2015), <https://www.nytimes.com/2015/04/01/magazine/purvi-patel-could-be-just-the-beginning.html>.

⁷⁶ *Id.*

rights.”⁷⁷ Ms. Patel was sentenced to 20 years in prison under Indiana’s feticide statute. While her sentence, ultimately, was overturned on appeal, the charges offer a startling window into how easily the justice system may racially profile and criminalize the actions of a woman.

As several news outlets noted, “it is no coincidence” that both women prosecuted under Indiana’s feticide law are of Asian descent.⁷⁸ Low-income women and women of color, including AAPI women, are more likely to be punished for the outcome of their pregnancies than their white counterparts.⁷⁹ Further, when such women are punished, they are

⁷⁷ Miriam Yeung, *How Asian American Women Became the Target of Anti-Abortion Activism*, THE WASHINGTON POST (Nov. 4, 2015) <https://www.washingtonpost.com/posteverything/wp/2015/11/04/how-asian-american-women-became-the-target-of-anti-abortion-activism/>.

⁷⁸ *Id.*; see also Nimra Chowdhry, et al., *Asian-American Women Treated Unfairly For Ending Pregnancies*, INDY STAR (June 5, 2016), <https://www.indystar.com/story/opinion/readers/2016/06/05/asian-american-women-treated-unfairly-ending-pregnancies/85454898/>.

⁷⁹ Lynn M. Paltrow, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women’s Legal Status and Public Health*, 38 *Journal of Health Politics, Policy & Law* 299 (Apr. 2013) https://www.law.berkeley.edu/php-programs/centers/crrj/zotero/loadfile.php?entity_key=7W4WBD6L.

more likely to be charged with felonies.⁸⁰ Journalists posited that the use of feticide laws to criminalize Asian Americans was due, in part, to lawmakers' second-hand stories of alleged infanticide in India and sex-selective abortions in China.⁸¹

Ms. Shuai's and Ms. Patel's stories stand in stark contrast with Alicia Keir, a white Indiana woman who – in a courtroom less than 70 miles from where Ms. Patel was unjustly convicted – was sentenced to one day in prison, but avoided any actual jail time, after pleading guilty to involuntary manslaughter in the death of her newborn daughter.⁸²

Ms. Shuai's and Ms. Patel's cases highlight some of the myriad ways AAPI women's reproductive autonomy is restricted and their family planning decisions policed. Prosecutorial overreach in misapplying feticide laws to people suspected of terminating their own pregnancies is just one more effort to limit reproductive autonomy, and these efforts result in disproportionately harsher treatment of women of color, including AAPI women, than white

⁸⁰ *Id.*

⁸¹ Yeung, *supra* note 77.

⁸² *Women Spared Incarceration For Newborn Daughter Aboard Caribbean Cruise*, CBS NEWS (Oct. 23, 2015), <https://chicago.cbslocal.com/2015/10/23/woman-spared-incarceration-for-newborn-daughters-death-on-caribbean-cruise/>; Terese Auch Schultz, *De Motte Woman Avoids Jail in Newborn's Cruiseship Death*, CHICAGO TRIBUNE (Oct. 22, 2015), <https://www.chicagotribune.com/suburbs/post-tribune/ct-ptb-demotte-infant-death-sentence-st-1023-20151022-story.html>.

women.⁸³ AAPI women who miscarry or experience a stillbirth, even due to non-abortion related causes, may find themselves facing murder charges as a result of racial profiling.

B. If *Roe* Is Overturned, At Least Twenty-Two States Would Move to Ban Abortion, Which Would Harm AAPI Women.

Upholding Mississippi's pre-viability ban, thus essentially overturning *Roe* and its progeny, would have far-reaching negative consequences for AAPI women. If *Roe* is overturned, access to legal abortion would quickly cease to exist in at least 22 states.⁸⁴ Each of these states has existing laws that severely restrict the right to abortion and either would impose an outright ban on abortion or would effectively ban access to legal abortion care.⁸⁵ In seven states, the legislatures explicitly have expressed their intent to limit abortion to the greatest possible extent.⁸⁶ Nine states enacted abortion bans, prior to *Roe*, which could

⁸³ Paltrow, *supra* note 79.

⁸⁴ Quoc Trung Bui, et al., *Where Abortion Access Would Decline if Roe v. Wade Were Overturned*, N.Y. TIMES (May 19, 2021), <https://www.nytimes.com/interactive/2021/05/18/upshot/abortion-laws-roe-wade-states.html>.

⁸⁵ Grace Panetta, et al., *7 Maps and Charts That Show What Could Happen if Roe v. Wade Fell*, BUSINESS INSIDER (May 20, 2021), <https://www.businessinsider.com/abortion-access-in-america-maps-charts-if-roe-falls-2018-8>.

⁸⁶ *Id.* (Arkansas, Kansas, Kentucky, Louisiana, Montana, North Dakota, and Ohio).

be revived in the absence of *Roe*.⁸⁷ Nine states have enacted unconstitutional post-*Roe* restrictions, which, while currently blocked by the courts, could be enforced if pre-viability abortion bans are upheld by this Court.⁸⁸ Ten states also have enacted so-called “trigger” laws that are intended to ban abortion if *Roe* is overturned.⁸⁹

This erosion of reproductive justice and access to legal abortion would harm millions of AAPI women. As discussed above, Asian Americans, Native Hawaiians, and Pacific Islanders are among the fastest-growing populations nationwide.⁹⁰ Of the at least 22 states that would move to ban legal abortion if Mississippi’s 15 week pre-viability ban is upheld, many have large or significantly growing AAPI populations. In fact, in 2020, approximately 44,931 Asian Americans and 3,235 NHPIs lived in Mississippi, the state directly at issue in this litigation.⁹¹

⁸⁷ *Id.* (Alabama, Arizona, Arkansas, Michigan, Mississippi, New Mexico, Oklahoma, West Virginia, Wisconsin).

⁸⁸ *Id.* (Alabama, Arkansas, Georgia, Iowa, Kentucky, Louisiana, Mississippi, North Dakota, Utah).

⁸⁹ *Id.* (Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Montana, North Dakota, South Dakota, Tennessee, Utah).

⁹⁰ See *Percentage of Population and Percent Change by Race*, *supra* note 35.

⁹¹ See *Race and Ethnicity in the United States*, *supra* note 52. See also *Why the Census Matters For Asian American, Native Hawaiian, and Pacific Islander Communities: Mississippi*, Asian

Several of the states seeking to ban legal abortion have experienced the largest growth in AAPI population. In Arkansas and Georgia, the AAPI population grew 138 percent since 2000.⁹² In Arizona, it grew 157 percent in that same time period.⁹³ In addition, since 2000, the AAPI population in Louisiana grew 50 percent, 91 percent in Minnesota, and 154 percent in North Carolina.⁹⁴ In Wisconsin, the AAPI population grew 82 percent since 2000.⁹⁵ The AAPI population has more than doubled since

Americans Advancing Justice, https://advancingjustice-aajc.org/sites/default/files/California%20Factsheet_0.pdf (last visited Sept. 17, 2021).

⁹² 2020 State Fact Sheet: Arkansas, AAPI Data, <https://aapidata.com/wp-content/uploads/2020/02/Arkansas-2020.pdf> (last visited Sept. 17, 2021); 2020 State Fact Sheet: Georgia, AAPI Data, <https://aapidata.com/wp-content/uploads/2020/02/Georgia-2020.pdf> (last visited Sept. 17, 2021).

⁹³ 2020 State Fact Sheet: Arizona, AAPI Data, <https://aapidata.com/wp-content/uploads/2020/02/Arizona-2020.pdf> (last visited Sept. 17, 2021).

⁹⁴ 2020 State Fact Sheet: Louisiana, AAPI Data, <https://aapidata.com/wp-content/uploads/2020/02/Louisiana-2020.pdf> (last visited Sept. 17, 2021); 2020 State Fact Sheet: Minnesota, AAPI Data, <https://aapidata.com/wp-content/uploads/2020/02/Minnesota-2020.pdf> (last visited Sept. 17, 2021); 2020 State Fact Sheet: North Carolina, AAPI Data, https://aapidata.com/wp-content/uploads/2020/02/North_Carolina-2020-1.pdf (last visited Sept. 17, 2021).

⁹⁵ 2020 State Fact Sheet: Wisconsin, AAPI Data, <https://aapidata.com/wp-content/uploads/2020/02/Wisconsin-2020.pdf> (last visited Sept. 17, 2021).

2000 in Utah, with a growth rate of 128 percent.⁹⁶ Given the rapid growth of the AAPI population in these states and their concomitant pre-existing abortion barriers, upholding a pre-viability abortion ban would foreclose millions of AAPI women's ability to exercise their constitutional right to abortion care.

Circumstances in Texas since Senate Bill 8 (S.B. 8) went into effect demonstrate the harms that result from bans on pre-viability abortion. S.B. 8 breaks with all underpinnings of our judicial system by deputizing private individuals to control and police abortion access in Texas and by outlawing abortion once embryonic or fetal cardiac activity can be detected,⁹⁷ which can be as early as six weeks,⁹⁸ months before viability.

Texas has the third-highest number of AAPIs in the country.⁹⁹ In the case challenging S.B. 8, Plaintiffs found that at the time their complaint was

⁹⁶ 2020 State Fact Sheet: Utah, AAPI Data, https://aapidata.com/wp-content/uploads/2020/02/Utah-2020_0.pdf (last visited Sept. 17, 2021).

⁹⁷S.B. 8, 87 Leg. (Tx. 2021), <https://legiscan.com/TX/text/SB8/id/2395961>.

⁹⁸ See Shannon Najmabadi, *Gov. Greg Abbott signs into law one of nation's strictest abortion measures, banning procedure as early as six weeks into a pregnancy*, THE TEXAS TRIBUNE (May 19, 2021), <https://www.texastribune.org/2021/05/18/texas-heartbeat-bill-abortion-law/>.

⁹⁹ *Combatting the AAPI Perpetual Foreigner Stereotype*, New American Economy Research Fund (May 20, 2021), <https://research.newamericaneconomy.org/report/aapi-perpetual-foreigner-stereotype/>.

filed, “approximately 85 to 90% of people who obtain abortions in Texas are at least six weeks into pregnancy.”¹⁰⁰ Immediately after the law went into effect, the number of abortions in Texas plummeted.¹⁰¹ The drastic erosion of abortion access for all Texans also means drastic erosion of abortion access for AAPIs in Texas.

S.B. 8 is also significant because in some states where the state legislature has proven to be hostile to abortion, lawmakers already have signaled interest in passing their own version of S.B. 8,¹⁰² many of them

¹⁰⁰ Complaint (ECF No. 1), *Whole Woman’s Health et al. v. Jackson*, Civ. A. No. 21-cv-616 (W.D. Tex. July 13, 2021).

¹⁰¹ See Neelam Bohra, *Fearful of being sued under new law, three of four San Antonio abortion facilities stop offering the procedure*, THE TEXAS TRIBUNE (Sept. 7, 2021), <https://www.texastribune.org/2021/09/07/texas-abortion-law-san-antonio/>; Chloe Atkins, *Texas abortion clinics turning away patients as strict new law takes effect*, NBC News (Aug. 31, 2021), <https://www.nbcnews.com/politics/politics-news/texas-abortion-clinics-turning-away-patients-ahead-draconian-new-law-n1278184>; Shefali Luthra, *Texas’ Planned Parenthoods are already turning away some patients ahead of new abortion law*, THE 19TH NEWS (Aug. 30, 2021), <https://19thnews.org/2021/08/texas-planned-parenthoods-abortion-law-turning-away-patients/>.

¹⁰² See Reid Wilson, *Red states eye Texas abortion law as new model*, THE HILL (Sept. 9, 2021), <https://thehill.com/homenews/state-watch/571392-red-states-eye-texas-abortion-law-as-new-model?rl=1>; Richard Elliot, *With TX abortion law allowed to go forward, GA could see new legislation in next session*, WSB-TV (Sept. 2, 2021), <https://www.wsbtv.com/news/local/atlanta/with-tx-abortion-law-allowed-go-forward-ga-could-see-new-legislation-next-session/MJSRSLZ5L5EL7AJV7POUHTDB24/>; Bob Christie,

with a high and/or growing AAPI population, mentioned above. This overlap would further create a hostile environment where AAPI women find themselves faced with multiple barriers.

CONCLUSION

For the foregoing reasons, the judgment of the Fifth Circuit should be affirmed.

Respectfully submitted,

ROBERT M. PALUMBOS

Counsel of Record

CYNDIE M. CHANG

PHIL CHA

KATHARYN I. CHRISTIAN MCGEE

THERESA A. LANGSCHULTZ

NICOLETTE J. ZULLI

KEVIN MICHAEL MORAN

DUANE MORRIS LLP

30 South 17th Street

Philadelphia, PA 19103

(215) 979-1000

rmpalumbos@duanemorris.com

Arizona abortion foes mulling steps after high court ruling, AP NEWS (Sept. 2, 2021), <https://apnews.com/article/courts-arizona-us-supreme-court-954079bf586d07438201d81a249cd0bf>.

Da Hae Kim
National Asian Pacific American
Women's Forum
1220 L Street NW
Suite 100-222
Washington DC, 20005-4018

John C. Yang
Niyati Shah
Asian Americans Advancing
Justice-AAJC
1620 L Street, NW, Suite 1050
Washington, DC 20036

September 20, 2021

APPENDIX

APPENDIX

TABLE OF CONTENTS

Additional Interested Parties (*Amici*) App. 1

APPENDIX

Additional Interested Parties (Amici):

American Citizens for Justice, Inc

Apna Ghar, Inc.

Asian & Pacific Islander American Health Forum
(APIAHF)

Asian American Bar Association of New York

Asian American Bar Association of the Greater Bay
Area

Asian American Organizing Project

Asian Americans Advancing Justice - Asian Law
Caucus

Asian Americans Advancing Justice - Los Angeles

Asian Americans Advancing Justice | Chicago

Asian Pacific American Bar Association of Los Angeles
County

Asian Pacific American Bar Association of
Pennsylvania

Asian Pacific American Bar Association of Silicon
Valley (APABA Silicon Valley)

Asian Pacific American Bar Association of South
Florida

Asian Pacific Community in Action

App. 2

Asian/Pacific Islander Domestic Violence Resource Project

AZ AANHPI for Equity

Empowering Pacific Islander Communities (EPIC)

KAN-WIN

Korean American Lawyers Association of Greater New York

National Council of Asian Pacific Americans

National Queer Asian Pacific Islander Alliance (NQAPIA)

New Mexico Asian Family Center

OPAWL - Building AAPI Feminist Leadership in Ohio

Rising Voices, a project of Tides Advocacy

South Asian Bar Association of North America (SABANA)

South Asian Bar Association of San Diego

South Asian Public Health Association (SAPHA)

Thai American Bar Association