

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

26 MAP 2021

ALLEGHENY REPRODUCTIVE HEALTH CENTER, *et al.*,
Appellants,

v.

PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES, *et al.*,
Appellees.

Appeal from the Orders of the Commonwealth Court at 26 MD 2019 entered on
January 28, 2020 and March 26, 2021

**Brief of Amici Curiae Nationally Recognized Organizations and Leaders in
the Black Community in Support of Appellees**

JANICE MARTINO-GOTTSHALL
RANDALL L. WENGER
JEREMY L. SAMEK
CHERYL LYNN ALLEN
Independence Law Center
23 N. Front Street, First Floor
Harrisburg, PA 17101
(717) 657-4990
jmgottshall@indlawcenter.org

Counsel for Amici Curiae

TABLE OF CONTENTS

| | |
|---|----|
| TABLE OF AUTHORITIES..... | ii |
| INTEREST OF AMICI..... | 1 |
| SUMMARY OF ARGUMENT..... | 3 |
| ARGUMENT..... | 4 |
| I. Far From Lacking Abortion Access, Black Women and Their Offspring are Targeted by the Abortion Industry..... | 7 |
| II. Many in the Black Community have Long Decried This Targeting..... | 9 |
| III. The Targeting of Black Women and Their Offspring has its History in American Eugenics..... | 13 |
| IV. Even Now, Abortion Providers are Disproportionately Located within Black Communities..... | 22 |
| V. Abortion Providers within the Black Community have Failed to Stop Healthcare Atrocities Targeting the Black Community..... | 24 |
| VI. Appellants and Their Amici Seem to Suggest that Abortion is a Better Alternative than Addressing the Health Issues Experienced by the Black Community..... | 28 |
| VII. What This Case is About is Enriching the Abortion Industry at the Expense of Black Women..... | 29 |
| CONCLUSION..... | 30 |
| CERTIFICATE OF WORD COUNT..... | 32 |
| CERTIFICATE OF COMPLIANCE WITH RULE 127..... | 32 |
| CERTIFICATE OF SERVICE..... | 32 |

TABLE OF AUTHORITIES

Cases

| | |
|---|----------|
| <i>Box v. Planned Parenthood of Ind. & Ky., Inc.</i> , 139 S. Ct. 1780 (2019) | 8, 9, 21 |
| <i>Fischer v. Department of Public Welfare</i> , 502 A.2d 114 (Pa. 1985) | 7, 30 |

Other Authorities

| | |
|--|----|
| Alexis McGill Johnson, <i>I'm the Head of Planned Parenthood. We're Done Making Excuses for Our Founder</i> , New York Times, April 17, 2021 | 21 |
| Allison Gordon, <i>New York's Planned Parenthood will remove founder's name over her views on eugenics</i> , CNN, July 22, 2020 | 6 |
| Byron Calhoun, <i>The Maternal Mortality Myth in the Context of Legalized Abortion</i> , 80 The Linacre Quarterly, No. 3, November 15, 2013 | 29 |
| Center for Disease Control, <i>Abortion Surveillance – United States, 2018</i> , Surveillance Summaries, November 27, 2020 | 28 |
| Center for Disease Control (CDC), <i>National Vital Statistics Reports</i> , Vol. 68, No. 13, November 27, 2019 | 27 |
| Center for Religion and Culture, University of Southern California, <i>Report: Church of God in Christ (COGIC)</i> , April 16, 2019 | 9 |
| Church of God in Christ Inc., <i>Resolution on the Sanctity of life #112019-0</i> , General Assembly, Resolution Committee – November 2019 | 9 |
| Colman McCarthy, <i>Jackson's Reversal on Abortion</i> , The Washington Post, May 21, 1988 | 10 |
| Dempsey, <i>Dr. Guttmacher Is the Evangelist of Birth Control</i> , N.Y. Times Magazine, Feb. 9, 1969 | 9 |
| Diane B. Paul, <i>From Eugenics to Medical Genetics</i> , The Journal of Policy History (Winter 1997) | 20 |

| | |
|--|--------|
| Donald R. McClarey, <i>Mildred Fay Jefferson, Requiescat In Pace</i> , The American Catholic, October 18, 2010..... | 21 |
| Editor, <i>Q&A with Catherine Davis</i> , Life Issues Institute, June 18, 2018..... | 12 |
| Elizabeth Crisp, <i>Meet the anti-abortion Louisiana Democrat at the heart of the Supreme Court’s abortion debate</i> , The Advocate, February 29, 2020 | 11 |
| Ellsworth Huntington, <i>Tomorrow’s Children: The Goal of Eugenics</i> , (John Wiley & Sons, Inc. 1935) | 18 |
| Emily Bazelon, <i>The Place of Women on the Court</i> , The New York Times Magazine, July 7, 2009..... | 6 |
| Francis Galton, <i>Inquiries into Human Faculty and its Development</i> , (Macmillan 1883) | 14 |
| Frederick Osborn, Transcript, <i>Oral History Interview</i> , Columbia University, New York, July 10, 1974..... | 20 |
| Grand Jury Rpt. 1, <i>In re County Investigating Grand Jury XXIII</i> , No. 9901-2008, 2011 WL 711902 (1 st Jud. Dist. Pa. Jan. 14, 2011) | 25, 26 |
| Guttmacher Institute, <i>The History of the Guttmacher Institute</i> | 18 |
| Havelock Ellis, <i>The World’s Racial Problem</i> , Birth Control Review, October 1920 | 17 |
| Jesse Jackson, <i>How we respect life is the over-riding moral issue</i> , Right to Life News, January 1977 | 10 |
| Jesse Jackson, <i>Legal Abortion: Is it Genocide or a Blessing in Disguise</i> , Jet Magazine, March 22, 1973 | 10 |
| Katherine Kortsmit, <i>et al.</i> , <i>Abortion Surveillance – United States, 2018</i> , Surveillance Summaries, Centers for Disease Control and Prevention, November 27, 2020 | 8 |
| Letter from Margaret Sanger to Dr. C.J. Gamble (Dec. 10, 1939)..... | 16 |

| | |
|--|--------|
| Margaret Sanger, Biography.com | 14 |
| Margaret Sanger, <i>Birth Control and Racial Betterment</i> , Feb. 1919, Library of Congress Microfilm 131:0099B..... | 14, 15 |
| Margaret Sanger, <i>My Way to Peace</i> , January 17, 1932 | 15 |
| Margaret Sanger, <i>Support for Birth Control</i> , Birth Control Review, Apr. 1928, 107-108, Margaret Sanger Microfilm C16:288 | 16 |
| Margaret Sanger, <i>The Eugenic Value of Birth Control Propaganda</i> , Birth Control Review, Oct. 1921 | 15 |
| Mark Crutcher, <i>Racial Targeting and Population Control</i> , Life Dynamics, 2011 | 22 |
| Morgan Zalot, <i>Steinem stresses reproductive rights at Planned Parenthood gathering</i> , Philadelphia Daily News, April 18, 2013 | 27 |
| Naomi Gray, <i>Black Genocide Seen</i> , New York Times, April 16, 1971 | 19 |
| New York State Department of Health, <i>Induced Abortion and Abortion Ratios* by Race/Ethnicity and Resident County New York State – 2018</i> | 7 |
| New York State Department of Health, <i>Total Pregnancies by Race/Ethnicity and Resident County New York State – 2018</i> | 7 |
| New York University, <i>Newsletter #28: Birth Control or Race Control? Sanger and the Negro Project</i> , The Margaret Sanger Papers Project, Fall 2001 | 14 |
| Pennsylvania Department of Health, <i>2019 Abortion Statistics</i> , December 2020..... | 9, 23 |
| Pennsylvania Department of Health, <i>2020 Abortion Quarterly Facilities Reports</i> | 29 |

| | |
|---|----|
| Pennsylvania Department of Health, <i>Reported Pregnancies by Race and Hispanic Origin of Woman and Outcome Number and Percent*</i> , <i>Pennsylvania Residents - 2019</i> , Pennsylvania Vital Statistics | 5 |
| Planned Parenthood, <i>Stand With Black Women</i> | 22 |
| Rachel A. Snell, <i>C.C. Little: A Complicated Legacy</i> , 2013..... | 18 |
| Richard Nixon, White House Tape 700/10, April 3, 1972 | 5 |
| Sam Dorman, <i>Black pro-life leaders pan Planned Parenthood’s Sanger disavowal: ‘Like changing the name of Auschwitz.’</i> July 23, 2020 | 22 |
| Shane Benjamin, <i>Niece of MLK applies civil rights message to unborn in Durango speech</i> , The Durango Herald, February 20, 2016 | 11 |
| Star Parker, <i>Policy Report: The Effects of Abortion on the Black Community</i> , Center for Urban Renewal and Education, June 2015 | 12 |
| Susan W. Enouen, P.E., <i>New Research Shows Planned Parenthood Targets Minority Neighborhoods</i> , Life Issues Connector, October 2012 | 23 |
| Susan W. Enouen, <i>Planned Parenthood Minority Targeting Goes Into Overdrive</i> , Life Issues, June 20, 2017 | 23 |
| The Planned Parenthood Black Community, Twitter, October 31, 2017..... | 12 |
| Theodore Lothrop Stoddard, <i>The Rising Tide of Color Against White World-Supremacy</i> , (Charles Scribner’s Sons 1920)..... | 17 |
| United States Census Bureau, <i>Quick Facts, Pennsylvania</i> | 9 |
| United States Census Bureau, <i>Quick Facts, Population</i> | 23 |
| United States Census Bureau, <i>Quick Facts: Philadelphia County; Delaware County</i> | 24 |
| University of Michigan Central Student Government, <i>Assembly Resolution 7-009: A Resolution to Support the Proposal to Rename the Clarence Cook Little Science Building</i> , November, 2017..... | 18 |

Update on An Open Letter, Save PPGNY (June 18, 2020)6

INTEREST OF AMICI¹

Amici are nationally recognized organizations and leaders in the Black community with a common mission of promoting civil rights and life-affirming opportunities for all Black Americans, including the unborn. Amici understand the true impact of abortion on the Black population and particularly the historical role that eugenics has played, and continues to play, in the abortion industry's targeting of Black babies for abortion.

Ryan Bomberger- The Radiance Foundation

Ryan Bomberger is the co-founder and Chief Creative Officer of The Radiance Foundation, a life-affirming organization that illuminates that every human life has purpose. As an author, factivist and international speaker, he addresses culture-shaping issues from a fact-based, hope-filled, Biblically-sound perspective.

Dr. Alveda C. King – Speak for Life

Evangelist Dr. Alveda King founded and directs the pro-life organization Speak for Life. King leads the organization with a focus on mobilizing generations to boldly value life and the dignity of all people.

¹ No party's counsel authored any part of this brief. No person other than *amici* and their counsel contributed any money intended to fund the preparation or submission of this brief.

Reverend Dean Nelson – Frederick Douglass Foundation

Reverend Nelson, a licensed minister, is Chairman of the Board for the Douglass Foundation and was recently appointed to serve on the congressional Frederick Douglass Bicentennial Commission.

Star Parker – CUREpolicy.org

Star Parker is the founder and president of CUREpolicy.org. She founded CURE in 1995 to bring new ideas to policy discussions on fighting poverty. In 2020, she was appointed to the U.S. Commission on Civil Rights California Advisory Committee.

Stacy Washington – Project 21 National Advisory Council

Stacy Washington, co-chair of Project 21, hosts a talk show that airs daily on SiriusXM's Patriot Channel; she also serves as Communications Director for Family Vision Media.

Catherine Davis – The Restoration Project

Catherine Davis is the founder and President of The Restoration Project, which is dedicated to transforming American public policy on Black life to restore a culture of uprightness, evenhandedness and virtue.

Day Gardner - National Black Pro-Life Union

Day Gardner is the founder and President of The National Black Pro-Life Union, Associate Director of The National Pro-Life Center on Capitol Hill and an executive member of the National Clergy Council.

Walter B. Hoye, II – Issues 4 Life Foundation

Walter B. Hoye, II is both founder and President of the Issues4Life Foundation and the California Civil Rights Foundation; he is also founder of the Frederick Douglass Foundation of California.

SUMMARY OF ARGUMENT

Appellants, claiming to advocate on behalf of Black women, assert racism and systemic discrimination as justification for publicly funded abortions. Claiming that Black women are underserved when it comes to reproductive healthcare, Appellants argue that striking down the Medicaid prohibition of abortion funding will provide greater access and equality.

This is the wrong way to approach the issue. When it comes to access to abortion, the impact has indeed been unequal—but not in the way Appellants would likely admit. Nearly half of the next generation of Black Americans is being exterminated through racially targeted abortion. Black women have indeed been underserved—not through lack of access, but through the predatory objectives and actions of the abortion industry, especially Planned Parenthood. From its inception,

the abortion industry has sought to control and hinder the growth of the Black population, a core objective of the movement’s founders.

Abortion has proven to be a highly lucrative business. In spite of this industry’s undeniable financial success, its proponents continue to demand access to State funds, even though it means hurting the Black women and communities that they claim to serve.

Abortion—as weaponized against the Black population—comes from a history of eugenics and pervasive racism, spawning a legacy that harms the Black community. If our goal is to improve access to beneficial healthcare for Black communities, abortion is not the way.

ARGUMENT

Appellants assert that the “harm [resulting from the coverage ban] falls with special cruelty on women of color . . .” (Appellants Br. P. 55). Likewise, Amici New Voices for Reproductive Justice and Pennsylvania and National Organizations Advocating for Black Women and Girls (Amici New Voices) claim that the restrictions on the use of public funds for abortion “fall more heavily on Black women and girls . . . because Black women and girls . . . face economic disadvantage and health disparities that are the ongoing legacy of structural racism and gender discrimination.” (Amici New Voices Br. P. 2, internal footnote omitted).

This argument is rife with contradiction: Appellants and the abortion industry owe their existence to the racist eugenic agenda launched by Planned Parenthood's Margaret Sanger in the early 1900's. Through her birth-control movement and self-styled "Negro Project," Sanger's stated goal was to decimate the Black community through eugenics. The subsequent growth of this multi-billion-dollar abortion industry took Black population control to a whole new level—with the result that today in Pennsylvania, almost 40% of all Black babies are aborted.²

Access to federal funds only served to compound this assault against Black communities. In 1970, President Richard Nixon signed the *Family Planning Services and Population Research Act* that began federal funding of Planned Parenthood. Contemporaneous considerations regarding family planning and abortion in particular are clear in statements Nixon made in 1972:

A majority of people in Colorado voted for abortion. I think a majority of people in Michigan are for abortion. I think in both cases, well, certainly in Michigan they will vote for it because they think that what's going to be aborted generally are the little black bastards. . . . As I told you—we talked about it earlier—that a hell of a lot of people want to control the Negro bastards. . . . People who don't control their families are people in—the people that shouldn't have kids.³

² Pennsylvania Department of Health, *Reported Pregnancies by Race and Hispanic Origin of Woman and Outcome Number and Percent**, Pennsylvania Residents - 2019, Pennsylvania Vital Statistics, 187-188, available at: https://www.health.pa.gov/topics/HealthStatistics/VitalStatistics/PAVitalStatistics/Documents/PA_Vital_Statistics_Pregnancy_2019.pdf.

³ Richard Nixon, White House Tape 700/10, April 3, 1972, available at: <https://www.nixonlibrary.gov/white-house-tapes/700/conversation-700-010>.

These ugly motivations for abortion are well recognized, as when Justice Ruth Bader Ginsberg acknowledged the true justification for abortion in a 2009 New York Times interview:

Frankly I had thought that at the time *Roe* was decided, there was concern about population growth and particularly growth in populations that we don't want to have too many of so that *Roe* was going to be then set up for Medicaid funding for abortion.⁴

Historically, Planned Parenthood has denied the obvious; however, on June 18, 2020, *Planned Parenthood of Greater New York* (PPGNY) admitted that “Planned Parenthood was founded by a racist, white woman. That is part of history that cannot be changed.”⁵ The chair of the PPGNY board, Karen Seltzer, admitted: “The removal of Margaret Sanger's name from our building is both a necessary and overdue step to reckon with our legacy and acknowledge Planned Parenthood's contributions to historical reproductive harm within communities of color.”⁶

These declarations, coming from the city where Planned Parenthood is headquartered, are confirmed by the fact that in New York City, 43% of all viable Black pregnancies end in abortion—a level unparalleled among the non-Black

⁴ Emily Bazelon, *The Place of Women on the Court*, The New York Times Magazine, July 7, 2009, available at: <https://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html>

⁵ *Update on An Open Letter*, Save PPGNY (June 18, 2020), available at: <https://saveppgny.wordpress.com/>.

⁶ Allison Gordon, *New York's Planned Parenthood will remove founder's name over her views on eugenics*, CNN, July 22, 2020, available at: <https://www.cnn.com/2020/07/22/us/margaret-sanger-planned-parenthood-trnd/index.html>.

population. The discrepancy between the numbers is disturbing: in the borough of Manhattan, among the white population, 14% of pregnancies end in abortion; for the Black population it is 53%.⁷ The effect of abortions on Black communities is shameful and obvious: a Black baby is almost four times more likely to die through abortion than her white neighbor.

I. Far from Lacking Abortion Access, Black Women and Their Offspring are Targeted by the Abortion Industry.

Appellants argue that the coverage ban upheld by the Pennsylvania Supreme Court in *Fischer v. Department of Public Welfare*, 502 A.2d 114 (Pa. 1985), “is a form of sex discrimination that perpetuates invidious gender and racial stereotypes.” (R. p. 115a). Amici New Voices assert that health “disparities impact Black Pennsylvanians . . . because of historical and present-day intersectional race and gender-based oppression” and that “Medicaid restrictions, like Pennsylvania’s coverage ban, are an ongoing legacy of that discrimination.” (Amici New Voices Br. p. 1).

Appellants and Amici New Voices cannot make their argument that Black women are in need of greater access to abortion without using and perpetuating the

⁷ New York State Department of Health, *Total Pregnancies by Race/Ethnicity and Resident County New York State – 2018* – available at: https://www.health.ny.gov/statistics/vital_statistics/2018/table29.htm; *Induced Abortion and Abortion Ratios* by Race/Ethnicity and Resident County New York State – 2018* – available at: https://www.health.ny.gov/statistics/vital_statistics/2018/table23.htm

same invidious stereotypes which they condemn. Indeed, their argument rests on the racial-stereotype premise that Black women do not have equal access to abortion simply because they are Black and, therefore, more likely to be poor.

There is no evidence to support Appellants’ assertion that Black women lack access to abortion. On the contrary, the evidence shows that Black women and their babies are discriminately targeted as part of an industry-wide strategy to maximize profits. According to state and national statistics, the abortion industry has disproportionately impacted the poor and the Black communities, with the result that—far from lacking access—Black women are now more than three times more likely than white women to obtain an abortion.⁸ Justice Clarence Thomas summarized this situation in his concurring opinion in *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780 (2019):

Eight decades after Sanger’s “Negro Project,” abortion in the United States is also marked by a considerable racial disparity. The reported nationwide abortion ratio—the number of abortions per 1,000 live births—among black women is nearly 3.5 times the ratio for white women. And there are areas of New York City in which black children are more likely to be aborted than they are to be born alive—and are up to eight times more likely to be aborted than white children in the same area. Whatever the reasons for these disparities, they suggest that, insofar as abortion

⁸ Katherine Kortsmitt, *et al.*, *Abortion Surveillance – United States, 2018*, Surveillance Summaries, Centers for Disease Control and Prevention, November 27, 2020, at Table 5, available at: <https://www.cdc.gov/mmwr/volumes/69/ss/ss6907a1.htm>

is viewed as a method of “family planning,” black people do indeed “tak[e] the brunt of the ‘planning.’”⁹

A similar situation exists in Pennsylvania, where the Black community comprises only 12% of the total population,¹⁰ but accounts for almost half of all abortions.¹¹ Any claim that Black women suffer from a lack of access to abortion is a distortion of the facts.

II. Many in the Black Community have Long Decried this Targeting.

Civil rights leaders are aware of this assault on the Black community. In 2019, the Church of God in Christ, whose more than six million members¹² are overwhelmingly Black, issued the following resolution:

Abortion is genocide. Abortion must end to protect the life of the unborn. The Church of God in Christ opposes elective abortions. This issue of personhood has haunted America since the *Dred Scott*, *Plessy v. Ferguson* and *Roe v. Wade* decisions. Just as slavery was overturned in America, Jim Crow was defeated, and Nazi Germany was overthrown, it is our prayer that the heinous industry of abortion will become morally reprehensible worldwide.¹³

⁹ *Id.* at 1791. (internal citations omitted, quoting Dempsey, *Dr. Guttmacher Is the Evangelist of Birth Control*, N.Y. Times Magazine, Feb. 9, 1969, 82).

¹⁰ U.S. Census Bureau, *Quick Facts, Pennsylvania*, available at: <https://www.census.gov/quickfacts/PA>

¹¹ Total number abortions: 31,018. Number of Black abortions: 13,516. Pennsylvania Department of Health, *2019 Abortion Statistics*, December 2020, available at: https://www.health.pa.gov/topics/HealthStatistics/VitalStatistics/Documents/Pennsylvania_Annual_Abortion_Report_2019.pdf.

¹² Center for Religion and Culture, University of Southern California, *Report: Church of God in Christ (COGIC)*, April 16, 2019, available at: <https://crcc.usc.edu/report/national-association-of-real-estate-brokers-nareb-religious-literacy-primer-2019/church-of-god-in-christ-cogic/>

¹³ Church of God in Christ Inc., *Resolution on the Sanctity of life #112019-0*, General Assembly, Resolution Committee – November 2019, at 1 (italics added), available at: https://www.cogic.org/wp-content/uploads/2019/12/SOLife-Resolution-11_12_19-1.pdf

Their condemnation echoes out of a history of engagement on this issue from within the civil rights movement. In 1973, Reverend Jesse Jackson unequivocally declared his position. “Abortion,” he stated, “is genocide.”¹⁴ Leaving no room for doubt as to where he stood at the time on the issue of federal funding, in his 1977 *Open Letter to Congress*, Jackson urged support for Representative Henry Hyde’s amendment: “As a matter of conscience I must oppose the use of federal funds for a policy of killing infants.”¹⁵

For Jesse Jackson, this was hardly an abstract issue. He identified himself as a likely target of abortion, had his 16-year-old mother followed the advice of her doctor. Jackson wrote: “What happens to the mind of a person, and the moral fabric of a nation, that accepts the aborting of the life of a baby without a pang of conscience? What kind of a person, and what kind of a society will we have in 20 years hence if life can be taken so casually?”¹⁶

¹⁴ Jesse Jackson, *Legal Abortion: Is it Genocide or a Blessing in Disguise*, Jet Magazine, March 22, 1973, available at: https://books.google.com/books?id=5bEDAAAAMBAJ&printsec=frontcover&source=gbs_ge_s ummary_r&cad=0#v=onepage&q&f=false

¹⁵ Colman McCarthy, *Jackson’s Reversal on Abortion*, The Washington Post, May 21, 1988, available at: <https://www.washingtonpost.com/archive/opinions/1988/05/21/jacksons-reversal-on-abortion/dd9e1637-020d-447b-9329-95ec67e41fd5/>

¹⁶ Jesse Jackson, *How we respect life is the over-riding moral issue*, Right to Life News, January 1977.

Nor is Jackson the only leader to have expressed such misgivings. Alveda King, who herself had two abortions early in life, now asks: “How can The Dream survive if we murder the children?”¹⁷ She quotes her uncle, Dr. Martin Luther King, Jr., reminding us that “the Negro cannot win if he is willing to sacrifice the future of his children for personal and immediate comfort and safety.”¹⁸

Louisiana State Senator Katrina Jackson, an African-American Democrat and leader in the Legislative Women’s Caucus and the Legislative Black Caucus, aligns with her liberal colleagues on many issues, but when it comes to abortion, she is fighting what she calls “a modern-day genocide.”¹⁹

Catherine Davis is an African-American pro-life activist who speaks about her own experience of having two abortions. As the founder and President of the Restoration Project, which educates Americans about issues impacting the Black community, she was asked about her thoughts on abortion:

We’re at genocide right now. In every state that reports by race, black women are leading in the number of abortions. . . . And I believe it’s genocidal by design. I like to say, when Planned Parenthood and other abortion providers say there’s no racial impetus to it they are spitting in our faces and calling it rain. I

¹⁷ Shane Benjamin, *Niece of MLK applies civil rights message to unborn in Durango speech*, The Durango Herald, February 20, 2016, available at: <https://durangoherald.com/articles/101774>

¹⁸ *Id.*

¹⁹ Elizabeth Crisp, *Meet the anti-abortion Louisiana Democrat at the heart of the Supreme Court’s abortion debate*, The Advocate, February 29, 2020, available at: https://www.theadvocate.com/baton_rouge/news/politics/article_0ee860ec-59a3-11ea-a903-bb38c5a9d9f4.html.

know the difference between spit and rain, and there is a racial impetus and it is decimating the black community today.²⁰

Amici New Voices argue that Black women face “the ongoing legacy of structural racism and gender discrimination.” (Amici New Voices Br. p. 2). We agree: the eugenics movement, through its promotion of abortion as a form of birth control, has targeted Black women as a means to limit the Black population. The proof of this movement’s effectiveness lies in the statistics.

By intentionally targeting poor, Black women for its services and branding those services “healthcare” that will deliver “equality” and “freedom,” the abortion industry has sold abortion to Black women as an opportunity to attain essential and equal rights, while simultaneously eliminating nearly half of the Black population. “Historically, blacks have been the unwitting victims of a hidden racist agenda of those behind abortion and birth control organizations because they believed they were receiving a new civil right—choice.”²¹ This strategy was clear when The Planned Parenthood Black Community Tweeted in 2017: “If you’re a Black woman in America, it’s statistically safer to have an abortion than to carry a pregnancy to term or give birth.”²²

²⁰ Editor, *Q&A with Catherine Davis*, Life Issues Institute, June 18, 2018, *available at*: <https://www.lifeissues.org/2018/06/qa-with-catherine-davis/>

²¹ Star Parker, *Policy Report: The Effects of Abortion on the Black Community*, Center for Urban Renewal and Education, June 2015, at 3, *available at*: <https://www.congress.gov/115/meeting/house/106562/witnesses/HHRG-115-JU10-Wstate-ParkerS-20171101-SD001.pdf>

²² *Available at*: <https://twitter.com/PPBlackComm/status/925380307242582016>.

III. The Targeting of Black Women and Their Offspring has its History in American Eugenics.

The targeted marketing of the abortion industry is illustrated by Amici New Voices, who characterize the lifting of Medicaid restrictions for abortion funding as a triumph that will raise Black women and girls from “second-class citizenship” and enable them to “live long, healthy, and joyful lives.” (Amici New Voices Br. p. 2). Abortion has always been presented as a woman’s right championed by liberal and progressive movements—the right of women to control their own bodies and direct their own destiny. However, many civil rights leaders now recognize that abortion emerged from the racist eugenics movement, whose primary goals were to reduce and control the Black population which had emerged from slavery and was perceived as a threat to elite, white society.

History documents the abortion industry’s targeting of the Black community. From its very beginnings, the goals of the abortion industry—and the largest abortion provider, Planned Parenthood—have intertwined and run parallel with the American racist eugenics movement. In 1883 Sir Francis Galton coined the term *eugenics* to “express the science of improving stock. . . to give to *the more suitable*

races or strains of blood *a better chance of prevailing speedily over the less suitable* than they otherwise would have had.”²³

In 1921, Margaret Sanger enthusiastically embraced eugenics when she founded the American Birth Control League, later named *Planned Parenthood*.²⁴ Sanger’s now well-known bigotry and racist eugenics agenda came to full light in 1939 when she launched the “Negro Project,” a birth control program that Sanger considered necessary because “Negroes present the great problem of the South” and “breed carelessly and disastrously.”²⁵ However, Sanger’s writings reveal that the eugenic targeting of the Black race was always the defining and driving force for her birth control movement. In her 1919 article entitled *Birth Control and Racial Betterment*, Sanger stated that “Birth control . . . not only opens the way to the eugenicist, but it preserves his work,”²⁶ and again in 1921 she wrote:

Today Eugenics is suggested by the most diverse minds as the most adequate and thorough avenue to the solution of racial, political and social problems. . . . Birth Control is not merely of

²³ Francis Galton, *Inquiries into Human Faculty and its Development*, (Macmillan 1883), at 17, footnote 1 (emphasis added), available at: <https://galton.org/books/human-faculty/text/galton-1883-human-faculty-v4.pdf>

²⁴ Margaret Sanger, Biography.com, available at: <https://www.biography.com/activist/margaret-sanger>.

²⁵ New York University, *Newsletter #28: Birth Control or Race Control? Sanger and the Negro Project*, The Margaret Sanger Papers Project, Fall 2001, available at: https://web.archive.org/web/20141129060006/http://www.nyu.edu/projects/sanger/article/s/bc_or_race_control.php.

²⁶ Margaret Sanger, *Birth Control and Racial Betterment*, Feb. 1919. Library of Congress Microfilm 131:0099B, available at: <https://web.archive.org/web/20160107185318/http://www.nyu.edu/projects/sanger/webedition/ap/p/documents/show.php?sangerDoc=143449.xml>.

eugenic value, but is practically identical in ideal, with the final aims of Eugenics.²⁷

Throughout the early 1900's, Sanger proudly championed forced sterilization as a method of birth control. In 1932, Sanger delivered a speech in which she advocated for the creation of a "special department" which would control the population with the following objectives:

(d) apply a stern and rigid policy of sterilization, and segregation to that grade of population whose progeny is already tainted or whose inheritance is such that objectionable traits may be transmitted to offspring.

(e) to insure the country against future burdens of maintenance for numerous offspring as may be born of feeble-minded parents, the government would pension all persons with transmissible disease who voluntarily consent to sterilization.

(f) the whole dysgenic population would have its choice of segregation or sterilization.²⁸

While not specifically mentioning race in defining the subjects for her "special department," Sanger had made clear that race was a key factor in defining the "unfit"²⁹ and "feeble-minded,"³⁰ words she frequently used to describe those who should be targeted for population control.

²⁷ Margaret Sanger, *The Eugenic Value of Birth Control Propaganda*, Birth Control Review, Oct. 1921, at 5, available at:

<https://babel.hathitrust.org/cgi/pt?id=coo.31924007352325&view=1up&seq=1&skin=2021>.

²⁸ Margaret Sanger, *My Way to Peace*, January 17, 1932, available at:

<https://web.archive.org/web/20160109145356/http://www.nyu.edu/projects/sanger/webedition/app/documents/show.php?sangerDoc=129037.xml>.

²⁹ Sanger, *Birth Control and Racial Betterment*, *supra*.

³⁰ *Id.*

Upon her return from Europe in 1928, Sanger spoke at a mass meeting of the American Birth Control League, delivering these words:

America, on the other hand, considers that she has been overstocked with undesirable elements; that her dream of the melting-pot of assimilating the various races, colors, grades of mentalities through education by an American type of intelligence, has not succeeded. She now regrets her mistake, and has established a rigid system of immigration barriers for her own national and racial protection.³¹

Any ambiguity with regard to Sanger's racist eugenic targeting of the Black community disappeared when she described "the execution of the details" for her "Negro Project"³²: "*We do not want word to go out that we want to exterminate the Negro population. . . .*"³³ Sanger described how she proposed to sell the Project to the Negro population:

It seems to me from my experience where I have been in North Carolina, Georgia, Tennessee and Texas that while the colored Negroes have great respect for white doctors they can get closer to their own members and more or less lay their cards on the table which means their ignorance, superstitions and doubts. They do not do this with the white people and if we can train the Negro doctor at the Clinic he can go among them with enthusiasm and with knowledge, which, I believe, will have far-reaching results among the colored people. His work in my opinion should be entirely with the Negro profession and the nurses, hospital, social

³¹ Margaret Sanger, *Support for Birth Control*, Birth Control Review, Apr. 1928, 107-108, Margaret Sanger Microfilm C16:288, available at: <https://web.archive.org/web/20160107185604/https://www.nyu.edu/projects/sanger/webedition/app/documents/show.php?sangerDoc=302113.xml>

³² Letter from Margaret Sanger to Dr. C.J. Gamble (Dec. 10, 1939) (emphasis added), available at: <https://libex.smith.edu/omeka/files/original/d6358bc3053c93183295bf2df1c0c931.pdf>.

³³ *Id.*

workers, as well as the County's white doctors. His success will depend upon his personality and his training by us.³⁴

Sanger's close ties with leaders in the eugenics community have been well-documented, beginning with Sanger's 1921 founding of the American Birth Control League (renamed Planned Parenthood in 1942) with the support of co-founders and American Eugenics Society board members Lothrop Stoddard and C.C. Little. Stoddard, a white supremacist and member of the Ku Klux Klan, wrote the racist book *The Rising Tide of Color Against White World-Supremacy*.³⁵ Stoddard argued that white "crossings with the negro" were "uniformly fatal," and further, that "[w]hites, Amerindians, or Asiatics—all are alike vanquished by the invincible prepotency of the more primitive, generalized, and lower negro blood." For this reason, he concluded that "artificial barriers" were necessary, without which "the various races will increasingly mingle, and the inevitable result will be the supplanting or absorption of the high by the lower types."³⁶

³⁴ *Id.* at 2.

³⁵ Havelock Ellis, *The World's Racial Problem*, Birth Control Review, October 1920 at 14-16.

³⁶ Theodore Lothrop Stoddard, *The Rising Tide of Color Against White World-Supremacy*, (Charles Scribner's Sons 1920) at 301-302, available at: <https://www.gutenberg.org/files/37408/37408-h/37408-h.htm>.

Little served as president of the racist Third Race Betterment Conference in 1928,³⁷ and in 1929 served as president of the American Eugenics Society.³⁸ In comparing the eugenic efforts to eliminate the “defectives” that “create new cancers in the body politic” with the elimination of cancer in the body, he stated “[i]t would by no means be a misnomer to call the American Eugenics Society a Society for the Control of Social Cancer.”³⁹

Ties between the two organizations continued to remain close: in 1962, Alan Guttmacher, Vice President of the American Eugenics Society, became President of Planned Parenthood Federation of America (PPFA), a role which he held for more than ten years. Planned Parenthood subsequently named its Center for Family Planning Program Development, which originally was housed within the corporate structure of PPFA, *The Guttmacher Institute*.⁴⁰ Judging by the sustained and disproportionate impact of those policies on the Black community, the racist eugenics legacy of Planned Parenthood and Alan Guttmacher continues to this day.

³⁷ University of Michigan Central Student Government, *Assembly Resolution 7-009: A Resolution to Support the Proposal to Rename the Clarence Cook Little Science Building*, November, 2017, available at: <https://umcsg.files.wordpress.com/2017/11/7-009.pdf>.

³⁸ Rachel A. Snell, *C.C. Little: A Complicated Legacy*, 2013, available at: <https://khronikosum.wordpress.com/2013/06/21/c-c-little-a-complicated-legacy/>. In 1935, the American Eugenics Society published a eugenics manifesto in which then American Eugenics Society President, Ellsworth Huntington, called eugenics “race hygiene” and “racial preventive medicine.” Ellsworth Huntington, *Tomorrow’s Children: The Goal of Eugenics*, (John Wiley & Sons, Inc. 1935), at 45, available at:

<https://babel.hathitrust.org/cgi/pt?id=mdp.39015034788995&view=1up&seq=9>

³⁹ *Id.* at 45-46.

⁴⁰ Guttmacher Institute, *The History of the Guttmacher Institute*, available at: <https://www.guttmacher.org/about/history#>.

The goals of that legacy have remained consistent over time; only the tools of the industry have changed.

The forced sterilization policies advanced by Sanger and which continued to exist in the United States into the 1970's were eventually questioned and challenged. Conveniently, at the same time, abortion emerged and found support as the ultimate population control vehicle. By 1970, the shared goals of the eugenics movement and Planned Parenthood were clearly entrenched in personal and public writings, speeches, and public policy, culminating in President Nixon's signing of the Family Planning Services and Population Research Act, granting federal funding to Planned Parenthood and other self-styled "family planning" organizations.

In 1971, former Planned Parenthood World Population VP and Black family planning consultant Naomi Gray made the following statement about how Blacks viewed the goal of *zero population growth*: "To many blacks, the zero sounds like zero black children." Gray said that poor blacks resented government sponsored birth control clinics in slum areas that had inadequate hospitals. "It could then legitimately be said that some white interests are more concerned with causing certain black babies not to get born than they are with the survival of those already born."⁴¹

⁴¹ *Black Genocide Seen*, New York Times, April 16, 1971, available at: <https://www.nytimes.com/1971/04/16/archives/black-genocide-seen.html>.

In 1973, two months after *Roe v. Wade*, Frederick Osborn, co-founder of the American Eugenics Society, stated that “[b]irth control and abortion are turning out to be great eugenic advances of our time. If they had been advanced for eugenic reasons it would have retarded or stopped their acceptance.”⁴²

The termination of human life is now packaged and sold under such palatable euphemisms as “family planning” and “reproductive health,” but the result to Black communities has not changed. Abortion is still the only time where a “failed” procedure means a human being survived an intended death, and where a successful procedure means a human being is now dead. The abortion industry continues to further the goals of the eugenics movement by ensuring that nearly half of all Black babies end up dead. Dr. Mildred Jefferson, the first Black woman to graduate from Harvard Medical School, as well as the first female surgeon at Boston Medical and cofounder of the National Right to Life Committee, summarized the impact this way in 2003:

After 44 million abortions, most people have not noticed that the population descended from U.S. African slaves, comprising around 12% of the population, make up about 35% of the abortion population. That means that more Americans of African

⁴² Diane B. Paul, *From Eugenics to Medical Genetics*, *The Journal of Policy History* (Winter 1997), at 104, available at: https://www.dianebpaul.com/uploads/2/3/2/9/23295024/from_eugenics_to_medical_genetics.pdf. Citing Frederick Osborn, Transcript, *Oral History Interview*, Columbia University, New York, July 10, 1974, at 7.

descent have died in the abortion chambers than have died in all the years of slavery and lynchings.⁴³

Although proponents of expanding access to abortion will argue that Sanger's racist agenda and the eugenics movement no longer influence the abortion industry, its continued effects on the Black community demonstrate a willful and ongoing legacy of hate. By achieving and sustaining a Black abortion rate that is more than three times greater than among whites, the industry is succeeding beyond expectations in its original mission as defined by Sanger. This was the impact noted by Justice Clarence Thomas in his concurring opinion in *Box v. Planned Parenthood*, *supra*.

In her open letter to *The New York Times* dated April 17, 2021, Planned Parenthood Federation of America Director, Alexis McGill Johnson, publicly acknowledged Planned Parenthood's racist roots and eugenic mission. "It's a question that we've tried to avoid, but we no longer can." Johnson admitted that Sanger associated with eugenicists and white supremacist groups, cultivated connections with the Ku Klux Klan and endorsed forced sterilization for "unfit" people, which led to the sterilization of tens of thousands of individuals in the 20th century.⁴⁴ This acknowledgement of what Planned Parenthood has denied for a

⁴³ Donald R. McClarey, *Mildred Fay Jefferson, Requiescat In Pace*, *The American Catholic*, October 18, 2010, available at: <https://the-american-catholic.com/2010/10/18/mildred-fay-jefferson-requiescant-in-pace/>.

⁴⁴ Available at: <https://www.nytimes.com/2021/04/17/opinion/planned-parenthood-margaret-sanger.html>

century does nothing to change its ugly history. Nor does it change the continuity of its objectives of further increasing the number of Black babies whose lives are ended through abortion. “For me, this was kind of like changing the name of Auschwitz,” responded Roland Warren, the CEO of Care Net.⁴⁵ The packaging and strategy of Planned Parenthood may be new, but the objectives remain the same.

IV. Even Now, Abortion Providers are Disproportionately Located within Black Communities.

The racist history of the abortion industry lives on. “[T]he fact is,” said Planned Parenthood, in a recent email made public, “Black people are our base.”⁴⁶ One need only look at the location of abortion clinics in the United States to identify how Planned Parenthood recruits that “base.” In 2011, Life Dynamics initiated a study to determine whether the abortion industry had targeted Black and/or Hispanic communities by placing their facilities in areas where those minority populations are disproportionately represented. They concluded that the areas in which the facilities were placed were “more than two-and-a-half times as likely to be disproportionately minority as not.”⁴⁷

⁴⁵ Sam Dorman, *Black pro-life leaders pan Planned Parenthood’s Sanger disavowal: ‘Like changing the name of Auschwitz.’* July 23, 2020, available at: <https://www.foxnews.com/us/planned-parenthood-margaret-sanger-black-pro-life-leaders>.

⁴⁶ Available at: <https://www.plannedparenthoodaction.org/stand-with-black-women>.

⁴⁷ Mark Crutcher, *Racial Targeting and Population Control*, Life Dynamics, 2011, available at: <https://klannedparenthood.com/wp-content/themes/trellis/PDFs/Racial-Targeting-Population-Control.pdf>.

Life Issues Institute’s analysis also revealed that “79% of Planned Parenthood abortion facilities are located near either an African American or a Hispanic neighborhood and 45% are placed so that they are within walking distance of both types of minority neighborhoods.”⁴⁸

More recently, in 2017, Life Issues Institute analyzed Planned Parenthood’s placement of 25 new abortion mega-centers. The study identified all minority neighborhoods within a walking distance of the mega-center facilities and revealed that “80% target Black communities.”⁴⁹

The 2021 census data indicate that 12% of Pennsylvania’s population is Black or African American.⁵⁰ According to the 2019 statistics, 59% of the state’s abortions were performed in southeastern Pennsylvania—in Philadelphia, Delaware, Chester, Bucks and Montgomery Counties.⁵¹ Nine of the seventeen abortion clinics are located in these five counties. Five of these clinics are located in Philadelphia and

⁴⁸ Susan W. Enouen, P.E., *New Research Shows Planned Parenthood Targets Minority Neighborhoods*, Life Issues Connector, October 2012 at 3, available at: <https://www.protectingblacklife.org/pdf/PP-Targets-10-2012.pdf>.

⁴⁹ Susan W. Enouen, *Planned Parenthood Minority Targeting Goes Into Overdrive*, Life Issues, June 20, 2017, available at: <https://www.lifeissues.org/2017/06/planned-parenthood-minority-targeting-goes-overdrive/>.

⁵⁰ United States Census Bureau, *Quick Facts, Population*, available at: <https://www.census.gov/quickfacts/fact/table/PA/RHI225219>.

⁵¹ Pennsylvania Department of Health, *2019 Abortion Statistics*, December 2020, available at: https://www.health.pa.gov/topics/HealthStatistics/VitalStatistics/Documents/Pennsylvania_Annual_Abortion_Report_2019.pdf.

Delaware Counties alone, where Blacks comprise 33.15% of the population.⁵² One thing is clear—there is no lack of access to abortion in southeastern Pennsylvania.

V. Abortion Providers within the Black Community have Failed to Stop Healthcare Atrocities Targeting the Black Community.

Not only have Blacks been targeted to limit their population, with a continuing legacy of strategic placement of abortion clinics in Black neighborhoods—the abortion industry has failed in an experiment of self-regulation that has disproportionately harmed Black women. From the time of the Rendell and Ridge administrations, abortion clinics in Pennsylvania were permitted to operate without government regulation or oversight. Substandard care was rampant, but state officials repeatedly turned a blind eye to numerous reports of health abuses in abortion clinics. The abortion industry was aware of what was happening in these clinics, but likewise turned a blind eye. Once again, the Black community took the brunt of the harm.

Black women in Pennsylvania have suffered harm through clinics operated under dangerous and squalid conditions, in predominantly poor and Black communities. The 2011 Grand Jury investigation and subsequent prosecution of Philadelphia abortion doctor Kermit Gosnell revealed just how easy it was for

⁵² United States Census Bureau, *Quick Facts: Philadelphia County; Delaware County*, available at: <https://www.census.gov/quickfacts/fact/table/philadelphiacountypennsylvania,delawarecountypennsylvania,PA/RHI225219>.

Gosnell’s “House of Horrors,” as it came to be known, to be overlooked and ignored by local and state health authorities. The 281-page grand jury report details the state of Gosnell’s benignly named “Women’s Medical Society,” which was located in a poor, minority neighborhood of Philadelphia.

What law enforcement officials found was a clinic that:

[R]eeked of animal urine, courtesy of the cats that were allowed to roam (and defecate) freely. Furniture and blankets were stained with blood. Instruments were not properly sterilized. Disposable medical supplies were not disposed of; they were reused, over and over again. . . . The emergency exit was padlocked shut. And scattered throughout, in cabinets, in the basement, in a freezer, in jars and bags and plastic jugs, were fetal remains.⁵³

The Grand Jury described Gosnell’s operation:

[T]he real business of the “Women’s Medical Society” was not health; it was profit. There were two primary parts to the operation. By day it was a prescription mill. By night an abortion mill.⁵⁴

“The bigger the baby, the more he charged.”⁵⁵ Gosnell performed late-term abortions, which as the Grand Jury found, presented a difficulty:

When you perform late-term “abortions” by inducing labor, you get babies. Live, breathing squirming babies. By 24 weeks, most babies born prematurely will survive if they receive appropriate medical care. But that was not what the Women’s Medical Society was about. Gosnell had a simple solution for the unwanted babies he delivered: he killed them. He didn’t call it

⁵³ Grand Jury Rpt. 1, *In re County Investigating Grand Jury XXIII*, No. 9901-2008, 2011 WL 711902 (1st Jud. Dist. Pa. Jan. 14, 2011), at 2, available at: <http://www.toomanyaborted.com/wp-content/uploads/2013/04/GrandJuryWomensMedical.pdf>.

⁵⁴ *Id.* at 2.

⁵⁵ *Id.* at 3.

that. He called it “ensuring fetal demise.” The way he ensured fetal demise was by sticking scissors into the back of the baby’s neck and cutting the spinal cord. He called that “snipping.”⁵⁶

One section of the report is entitled “Butcher of Women,” in which the Grand Jury made the following findings:

Dr. Gosnell didn’t just kill babies. He was also a deadly threat to mothers. Not every abortion could be completed by inducing labor and delivery. On these occasions, Gosnell would attempt to remove the fetus himself. The consequences were often calamitous—although that didn’t stop the doctor from trying to cover them up.

One woman, for example, was left lying in place for hours after Gosnell tore her cervix and colon while trying, unsuccessfully, to extract the fetus. Relatives who came to pick her up were refused entry into the building; they had to threaten to call the police. They eventually found her inside, bleeding and incoherent, and transported her to the hospital, where doctors had to remove almost half a foot of her intestines.⁵⁷

The Grand Jury, wrestling with the question of how Gosnell was able to butcher women and babies for so long, concluded, “We think the reason no one acted is because the women in question were poor and of color, because the victims were infants without identities, and because the subject was the political football of abortion.”⁵⁸

Planned Parenthood of Southeastern Pennsylvania’s President, Dayle Steinberg, admitted at a 2013 fundraising Gala that even though Planned Parenthood

⁵⁶ *Id.* at 4.

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* at 13.

knew about the squalid conditions at Gosnell’s clinic, they never reported it: “Steinberg said that when Gosnell was in practice, women would sometimes come to Planned Parenthood for services after first visiting Gosnell’s West Philadelphia clinic, and would complain to staff about the conditions there.”⁵⁹

Planned Parenthood’s disregard contradicts Appellants’ claim that their concern for poor, minority women motivates their efforts to increase access to abortion for Black women through public funding. Planned Parenthood and the abortion industry have inflicted unspeakable atrocities on Black communities: the flagrant killing of infants born alive and the harming of women subjected to inhumane and filthy conditions—in clinics whose stated purpose was to serve those Black communities. Of course, the abortion industry will argue that these harms to Black women and their babies were caused by lack of access to better care. However, even after the state finally started licensing and regulating these clinics pursuant to Act 122 of 2011, and substandard clinics were closed, the impact of abortion on the Black community did not end: Black babies continue to be aborted at more than three times the rate of white babies.⁶⁰ Lack of access to abortion and abortion funding are

⁵⁹ Morgan Zalot, *Steinem stresses reproductive rights at Planned Parenthood gathering*, Philadelphia Daily News, April 18, 2013, available at: https://web.archive.org/web/20150618132440/http://articles.philly.com/2013-04-18/news/38619220_1_gosnell-trial-abortion-issue-kermit-gosnell.

⁶⁰ Calculated using data from 2018 - Center for Disease Control (CDC), *National Vital Statistics Reports*, Vol. 68, No. 13, November 27, 2019 at Table 1, at 12, available at: https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_13-508.pdf and CDC, *Abortion Surveillance*

not the problems facing Black women; racist attitudes toward Black women—permeating the abortion culture and driving the industry’s mission—are the problem.

VI. Appellants and Their Amici Seem to Suggest that Abortion is a Better Alternative than Addressing the Health Issues Experienced by the Black Community.

To make its point that abortion is good for Black babies, Amici New Voices paint a grim picture of Black American existence: “Racial disparities in health outcomes in the U.S. are well-documented and stark. Black Americans are twice as likely to die at earlier ages from all causes.” (Amici New Voices Br. p. 4). They continue: “Racial disparities are as severe in Pennsylvania, where Black people have worse health outcomes, shorter life expectancy, and higher death rates than white people.” (*Id.* p. 5). These sweeping assertions are seemingly offered to advance the argument that Black lives are not worth living; therefore, the termination of Black life is a good—maybe better—alternative.

After asserting that the health disparities experienced by Black women and girls are part of an ongoing legacy of structural racism, Amici New Voices argue that Pennsylvania’s Medicaid program should “redress, rather than entrench, such disparate harms.” (*Id.* p. 2). Amici New Voices argue that true “reproductive justice” would require “that the Commonwealth sets its sights—and focuses its policies—on

– *United States, 2018*, Surveillance Summaries, November 27, 2020 at Table 13, *available at*: https://www.cdc.gov/mmwr/volumes/69/ss/ss6907a1.htm#T13_down.

ensuring that Black women and girls, and all pregnant people, have the same optimal maternal health outcomes” through increasing access to abortion. (*Id.* p. 7). Amici New Voices do not cite any statistics to support their premise that increasing Black women’s access to abortion through public funding would result in enhanced maternal health outcomes. Indeed, there are zero statistics that show elective abortion improving the physical health of the mother.⁶¹ Sadly, Amici New Voices propose to “redress, rather than entrench such disparate harms” faced by Black women by allowing more Black babies to be aborted through access to public funding. (*Id.* p. 2).

VII. This Case is About Enriching the Abortion Industry at the Expense of Black Women.

This case was not brought by Black women who could not afford an abortion. Instead, this was initiated by the largest abortion businesses in Pennsylvania to fund elective abortions. In 2020, Appellants were responsible for roughly 21,721 abortions in Pennsylvania, representing almost 72% of all abortions in the Commonwealth.⁶² The estimated revenue in 2020 of these providers was above \$46 million.⁶³ Clearly this industry has the financial resources to provide free abortions

⁶¹ Byron Calhoun, *The Maternal Mortality Myth in the Context of Legalized Abortion*, 80 *The Linacre Quarterly*, No. 3, November 15, 2013, available at: <https://doi.org/10.1179%2F2050854913Y.0000000004>.

⁶² Pennsylvania Department of Health, *2020 Abortion Quarterly Facilities Reports*.

⁶³ This is based on over \$39 million for the 990s for those abortion providers organized as non-profits and estimated profits for the for-profit abortion businesses based on the number of abortions performed and estimated costs to patients.

to those who cannot afford the industry's price tag. These providers boast about the monies they raise and set aside for free or reduced-cost abortions. In fact, when calling many of these providers, callers immediately encounter offers for free and reduced cost abortions on the automated calling system. Unless abortion providers are lying in their online and telephonic offers of free and reduced-cost abortions, the abortion industry's argument that access is being denied to Black women cannot stand. The two positions are contradictory.

Clearly there is no lack of access. Instead, this wealthy industry claims it is entitled to more government funds to avoid funding these abortions through its profits. That hardly rises to a constitutional crisis requiring *Fischer* to be overturned. Appellants should not be permitted to raise a claim that is not their own or to manipulate the facts merely to feed their corporate greed.

CONCLUSION

For the reasons set forth above, the Commonwealth Court should be affirmed.

Respectfully submitted,

/s/Janice Martino-Gottshall

JANICE MARTINO-GOTTSHALL

RANDALL L. WENGER

JEREMY L. SAMEK

CHERYL LYNN ALLEN

Independence Law Center

23 N. Front Street, First Floor

Harrisburg, PA 17101

(717) 657-4990

jmgottshall@indlawcenter.org

Dated: December 13, 2021

Counsel for Amici Curiae

CERTIFICATE OF WORD COUNT

I certify pursuant to Pa.R.A.P. 531 that this brief does not exceed 7,000 words.

CERTIFICATE OF COMPLIANCE WITH RULE 127

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties via PACFile.

Respectfully submitted,

/s/Janice Martino-Gottshall
JANICE MARTINO-GOTTSHALL