

**SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 26 MAP 2021

ALLEGHENY REPRODUCTIVE HEALTH CENTER, ALLENTOWN WOMEN'S CENTER,
DELAWARE COUNTY WOMEN'S CENTER, PHILADELPHIA WOMEN'S CENTER, PLANNED
PARENTHOOD KEYSTONE, PLANNED PARENTHOOD SOUTHEASTERN PENNSYLVANIA, AND
PLANNED PARENTHOOD OF WESTERN PENNSYLVANIA

APPELLANTS,

v.

PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES, MEG SNEED, ANDREW BARNES,
AND SALLY KOZAK, IN THEIR OFFICIAL CAPACITIES

APPELLEES.

Appeal from the March 26, 2021 Opinion of the Commonwealth Court of
Pennsylvania, No. 26 MD 2019

**BRIEF AMICI CURIAE OF THE AMERICAN ASSOCIATION OF PRO-LIFE
OBSTETRICIANS AND GYNECOLOGISTS, THE PRO-LIFE UNION OF
GREATER PHILADELPHIA, THE CHARLOTTE LOZIER INSTITUTE, AND
HUMAN COALITION IN SUPPORT OF DEFENDANT-APPELLEES**

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INTEREST OF AMICI CURIAE¹

American Association of Pro-Life Obstetricians and Gynecologists

(AAPLOG) is the largest organization of pro-life obstetricians and gynecologists in the world. AAPLOG advocates for the unique value and dignity of individual human life in all stages of growth and development, from conception to natural death. The organization does this in part by equipping medical professionals to provide an evidence-based rationale for defending the lives of both the pregnant mother and her unborn child. AAPLOG now has over 6,000 members and associates.

Pro-Life Union of Greater Philadelphia is the largest pro-life group in the Greater Philadelphia area. It offers education and abortion alternatives and engages in public advocacy to promote life in its community. To further its mission, Pro-Life Union runs Guiding Star Ministries Maternity Home, which gives shelter and assistance to pregnant women and their children. The organization also helps women by providing rent assistance, housing, job and life skills, and more so that women can confidently choose life for their unborn children.

Charlotte Lozier Institute (CLI) is a nonprofit research and education organization that brings together physicians, sociologists, statisticians, and policy researchers to perform original and interpretative research on a wide range of life issues. CLI is committed to ensuring policymakers, reporters, and thought leaders

¹ This brief is filed under Pennsylvania Rule of Appellate Procedure 531(1)(i). No party or party's counsel authored this brief in whole or in part or financially supported this brief, and no one other than amicus curiae, its members, or its counsel contributed money intended to fund preparing or submitting this brief.

know how modern science, medicine, and research support strong protections for the unborn, which helps promote a culture that values all human life.

Human Coalition is a nonprofit organization committed to rescuing children, serving families, and making abortion unthinkable and unnecessary by offering pregnant women life-affirming counsel and tangible and needed services. The group builds holistic, comprehensive-care networks across the United States to reach pregnant women and provide needed support and care to empower them to choose life for their children. Human Coalition operates its own specialized women's care clinics and virtual clinics in major cities across the country, including a location in Pittsburgh.

Amici have a strong interest in preserving the life and health of unborn children and their mothers. They believe that all human life is worth protecting—from conception until natural death—and that abortion is a great moral and social wrong. Amici support the Commonwealth of Pennsylvania's commonsense, pro-life law, which restricts taxpayer funding of elective abortion through Pennsylvania's Medicaid program, Medical Assistance. *See* 18 Pa. C.S. §§ 3215(c), (j).

SUMMARY OF THE ARGUMENT

Abortion harms women. It causes deep emotional pain, which increases the risk that survivors will suffer serious mental health problems, including depression, anxiety, substance abuse, and suicidal ideation and behavior. Abortion also poses physical risks for women—both during and after the procedure. These risks include uterine perforation, injury to other organs, damage to major blood vessels, and even

death. Some risks never go away: Modern research shows that abortion increases the risk of death from *all* causes. It also makes later pregnancies more dangerous—both for women and their children. Abortion increases the chances that women will suffer cervical trauma, cervical incompetence, and faulty placentation. And it can lead to preterm birth. These harms present grave public health concerns.

To address those concerns, the Commonwealth of Pennsylvania forbids the taxpayer funding of abortion, even in its Medicaid program (Medical Assistance), except in cases of rape, incest, and where the life of the mother is in danger. *See* 18 Pa. C.S. § 3215(c), (j). It does this to protect unborn children “in all situations except where another life would have to be sacrificed,” thereby saving as many “lives” as possible. *Fischer v. Dep’t of Public Welfare*, 509 Pa. 293, 309 (1985). And this Court has upheld the Commonwealth’s right to do so—because the restriction implicates neither a fundamental right nor a suspect class and passes rational-basis and even intermediate scrutiny under the Pennsylvania Constitution’s guarantee of equal protection. *Id.* at 307–09. That decision was correct then; it remains so now.

Likewise, in *Fischer*, this Court correctly held that Pennsylvania’s restriction on taxpayer-funded abortion does not violate the Equal Rights Amendment to the Pennsylvania Constitution because it does not discriminate on the basis of sex. *Id.* at 315. That logic still holds true: because the law implicates only abortion, which affects women alone, it cannot treat people differently based on their sex. So Amici ask this Court to uphold *Fischer* and affirm the decision below—and so ensure that the Commonwealth can continue protecting as many human lives as possible.

ARGUMENT

I. Abortion causes significant mental health problems, which increases women’s risks of depression, anxiety, substance abuse, and suicide.

Pregnancy is a life-altering event. It often invokes feelings of joy, satisfaction, and anticipation, but it can also trigger fear, worry, and stress. No matter a person’s view on abortion, people widely accept that women who choose abortion often suffer grief, sadness, and feelings of loss.² And some of these women suffer “clinically significant disorders” — including depression, anxiety, substance use, suicidal behaviors, and “abortion-specific post-traumatic stress disorder.”³ Medical research supports this conclusion. So too the stories of countless women who are trying to recover from this trauma.

A. Women who undergo abortion experience a higher rate of mental health disorders compared to women who carry their pregnancies to term.

Abortion can seriously harm a woman’s mental health. Research has shown that women face an 81% increase in risk of mental health disorders after receiving

² David C. Reardon, *The abortion and mental health controversy: A comprehensive literature review of common ground agreements, disagreements, actionable recommendations, and research opportunities*, SAGE OPEN MED. (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6207970/> (citing Major B, et al. *Report of the APA Task Force on mental health and abortion*, American Psychological Association, at 105 (2008), <http://www.apa.org/pi/women/programs/abortion/mental-health.pdf>).

³ *Id.* (citing Brenda Major, et al., *Report of the APA Task Force on mental health and abortion*, American Psychological Association, at 105 (2008), <http://www.apa.org/pi/women/programs/abortion/mental-health.pdf>; and Brenda Major, et al., ARCHIVES GENERAL PSYCHIATRY Vol. 57, No. 8, 777–84. (Aug. 2000), <https://pubmed.ncbi.nlm.nih.gov/10920466/>).

an abortion.⁴ These women also face a 34% increased risk of anxiety, 36% increased risk of depression, and 155% increased risk of suicidal behavior.⁵ “[M]ost social and medical science scholars [agree] that a minimum of 20% to 30% of women who abort suffer from serious, prolonged negative psychological consequences, yielding at least 260,000 new cases of mental health problems each year.”⁶ Many studies have also shown that “abortion significantly increases the risk” that a woman will engage in substance abuse.⁷ One problem often leads to another for abortion survivors.

⁴ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 8, <https://perma.cc/236K-PLE6> (last accessed Nov. 2, 2021) (citing Priscilla K. Coleman, *Abortion and mental health: quantitative synthesis and analysis of research published 1995–2009*, BRITISH J. PSYCHIATRY Vol. 199, No. 3, 180–86 (Sept. 2011), <https://pubmed.ncbi.nlm.nih.gov/21881096/>).

⁵ *Id.* (citing Priscilla K. Coleman, *Abortion and mental health: quantitative synthesis and analysis of research published 1995–2009*, BRITISH J. PSYCHIATRY Vol. 199, No. 3, 180–86 (Sept. 2011), <https://pubmed.ncbi.nlm.nih.gov/21881096/>).

⁶ AAPLOG, *Practice Bulletin: Abortion and Mental Health* at 6, <https://perma.cc/UQ9Y-4G9K> (last accessed Nov. 2, 2021) (citing Brenda Major & Cathetine Cozzarelli, *Psychological predictors of adjustment to abortion*, J. OF SOCIAL ISSUES Vol. 48, No. 3, 121–142 (1992), <https://perma.cc/C47U-CCV2>; and G. Zolese & C.V. Blacker, *The psychological complications of therapeutic abortion*, BRITISH J. PSYCHIATRY Vol. 160, 742–49 (June 1992), <https://pubmed.ncbi.nlm.nih.gov/1617354/>).

⁷ *Id.* (citing Priscilla K. Coleman, *Resolution of unwanted pregnancy during adolescence through abortion versus childbirth: Individual and family predictors and psychological consequences*, J. YOUTH ADOLESCENCE Vol. 35, 903–11 (2006), <https://link.springer.com/article/10.1007%2Fs10964-006-9094-x>; Daniel I. Rees and Joseph J. Sabia, *The relationship between abortion and depression: New evidence from the Fragile Families and Child Wellbeing Study*, MED. SCI. MONITOR Vol. 13, No. 10, CR430–36 (Oct. 2007) <https://pubmed.ncbi.nlm.nih.gov/17901849/>; Willy Pedersen, *Childbirth, Abortion and subsequent substance use in young women: a population-based longitudinal study*, *Addiction*. 2007 Vol. 102, No. 12, 1971–78 (2007), <https://pubmed.ncbi.nlm.nih.gov/18031432/>; and David C. Reardon, et al., *Substance use associated with prior history of abortion and unintended birth: A*

Abortion places women at risk of suffering PTSD—post-traumatic stress disorder. PTSD “is a psychiatric disorder” often seen in “people who have experienced or witnessed a traumatic event[.]”⁸ Women who suffer from this disorder experience “have intense, disturbing thoughts and feelings related to their experience that last long after the traumatic event has ended.”⁹ And research has show that “women who disagree[] with their partners concerning the decision to abort were more likely to report symptoms of intrusion and to meet the diagnostic criteria for PTSD.”¹⁰ Not surprisingly, then, women who think their pre-abortion counseling was inadequate are “more likely to report relationship problems, symptoms of intrusion, avoidance, and hyperarousal and to meet diagnostic criteria for” PTSD.¹¹

A woman’s risk of experiencing such emotional trauma increases the further she has progressed in her pregnancy when she receives an abortion. Research shows

national cross sectional cohort study, AMERICAN JOURNAL OF DRUG AND ALCOHOL ABUSE Vol. 30, No. 2, 369–83 (May 2004), <https://pubmed.ncbi.nlm.nih.gov/15230081/>.

⁸ American Psychiatric Association, *What Is Posttraumatic Stress Disorder?*, <https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd> (last accessed Dec. 9, 2021).

⁹ *Id.*

¹⁰ AAPLOG, *Practice Bulletin: Abortion and Mental Health at 6* <https://perma.cc/UQ9Y-4G9K> (citing C. T. Coyle, et al., *Inadequate preabortion counseling and decision conflict as predictors of subsequent relationship difficulties and psychological stress in men and women*, TRAUMATOLOGY Vol. 16, No. 1, 16–30 (2010), <https://doi.org/10.1177/1534765609347550>).

¹¹ *Id.*

that “[w]omen who have abortions after the first trimester” likely face a higher risk of suffering “trauma symptoms than those who [receive] an abortion” earlier in the pregnancy.¹² And these women more often report “disturbing dreams, reliving of the abortion, and trouble falling asleep.”¹³ But timing is not the only factor that makes an abortion survivor more susceptible to mental health problems.

Indeed, the American Psychological Association’s Task Force on Mental Health and Abortion identified 14 significant risk factors, some of which include: perceived pressure from others to have an abortion; terminating a wanted or “meaningful” pregnancy; feelings of commitment to the pregnancy; lack of social support; history of previous abortion; abortion after the first trimester; and a history of mental health problems.¹⁴ These risk factors are significant given the demographics of women who have abortions in the United States:

¹² AAPLOG, *Practice Bulletin: Abortion and Mental Health* at 6 <https://perma.cc/UQ9Y-4G9K> (citing Priscilla K. Coleman, et al., *Late-term elective abortion and susceptibility to posttraumatic stress symptoms*, J. PREGNANCY, 2010:130519 (2010), <https://www.ncbi.nlm.nih.gov/pubmed/21490737>).

¹³ See *id.* <https://pubmed.ncbi.nlm.nih.gov/21490737/> (Quoted material from abstract of Coleman study).

¹⁴ *Id.* at 3; David C. Reardon, *The abortion and mental health controversy: A comprehensive literature review of common ground agreements, disagreements, actionable recommendations, and research opportunities*, Table 1: “Risk factors for mental health problems after an abortion identified by the American Psychological Association’s Task Force on Mental Health and Abortion (TFMHA) in 2008,” Table: <https://perma.cc/GF5D-Q4D9> (last accessed Dec. 9, 2021).

- Up to 64% of women may desire to continue their pregnancy but are pressured or coerced into having an abortion.¹⁵
- Only 46% of women seeking abortions describe their pregnancies as never wanted. The remainder describe their pregnancies as either wanted, mistimed, or of unsure intent.¹⁶
- Research has shown that 14% of women who have an abortion “lack support from [their] husband or partner,” 19% “are not sure about [the] relationship” with the child’s father, 25% do not want others to know about the pregnancy, and in 6% of abortions, the parents of the woman pressure her to end the pregnancy.¹⁷
- Some women end a desired pregnancy through abortion “due to perceived health risks for themselves (12%)” or “perceived abnormalities in the baby (13%).”¹⁸
- 15–30% of abortions occur in minor girls. Studies have shown “that these young women have a significantly higher suicide rate than their peers.”¹⁹

¹⁵ Vincent Rue, et al., *Induced abortion and traumatic stress: A preliminary comparison of American and Russian women*, MED. SCI. MONITOR, Vol. 10, No. 10, SR5–16 (2004), <https://www.medscimonit.com/download/index/idArt/11784>.

¹⁶ M. Antonia Biggs, et al., *Developing and validating the psychosocial burden among people Seeking Abortion Scale (PB-SAS)*, PLOS ONE Vol. 15, No. 12 (Dec. 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7728247/>.

¹⁷ AAPLOG, *Practice Bulletin: Abortion and Mental Health* at 3, <https://perma.cc/UQ9Y-4G9K> (citing Lawrence B. Finer, et al., *Reasons women have abortions: Quantitative and Qualitative Perspectives*, PERSPECTIVES ON SEXUAL AND REPRODUCTIVE HEALTH Vol. 37, No. 3, 110–118 Table 2 (2005), https://www.guttmacher.org/sites/default/files/article_files/3711005.pdf).

¹⁸*Id.* (internal citations omitted).

¹⁹ AAPLOG, *Practice Bulletin: Abortion and Mental Health* at 3, <https://perma.cc/UQ9Y-4G9K> (citing Garfinkel, et al., *Adolescent Stress, Depression and Suicide: A Study of Adolescents in Minnesota. Univ of Minnesota Extension Service* (1986), <https://perma.cc/4KJG-FFRA>; and C.L. Morgan, et al., *Suicides after*

- Up to 50% of women who have abortions “have preexisting mental health conditions that may be triggered or aggravated by the abortion.”²⁰

If the significant risk factors identified by the APA “are applied to the cohort of women who present to the abortion clinic, then the overwhelming majority of women have at least one of the 14 risk factors.”²¹ As a result, “a majority of women who actually abort are at risk for adverse mental health outcomes.”²²

B. Studies show that the risk of death by suicide substantially increases after an abortion compared to women who give birth.

For some abortion survivors, their mental suffering leads to far more severe outcomes—including suicide. Medical research shows that U.S. women face nearly double the risk for suicide compared to women who carry their pregnancies to term. For example, in one study of 173,279 low-income women in California, researchers “found that women who underwent abortions had nearly double the chance of dying in the following two years, and ‘had a 154 percent higher risk of

pregnancy. Mental health may deteriorate as a direct effect of induced abortion, THE BMJ Vol. 314, No. 7084, 902–03 (Mar. 1997), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2126260/>

²⁰ *Id.* (citing Vincent Rue, et al., *Induced abortion and traumatic stress: A preliminary comparison of American and Russian women*, MED. SCI MONITOR Vol. 10, No. 10, SR5–16 (2004), <https://www.medscimonit.com/download/index/idArt/11784>; and Natalie P. Mota, et al., *Associations Between Abortion, Mental Disorders, and Suicidal Behavior in A Nationally Representative Sample*, CANADIAN J. OF PSYCHIATRY Vol. 55, No. 4, 239–247 (2010), <https://www.ncbi.nlm.nih.gov/pubmed/20416147>).

²¹ AAPLOG, *Practice Bulletin: Abortion and Mental Health* at 4, <https://perma.cc/UQ9Y-4G9K>.

²² *Id.*

death from suicide' than if they gave birth.”²³ This study concluded that “[h]igher death rates associated with abortion persist over time and across socioeconomic boundaries,” which “may be explained by self-destructive tendencies, depression, and other unhealthy behavior aggravated by the abortion experience.”²⁴

Results of foreign studies show an even bleaker picture. For example, when Italian researchers studied suicide rates “during pregnancy or within 1 year after giving birth,” they “concluded that—of the maternal suicides [studied]—the suicide rate of women who underwent an abortion “was *more than double* the suicide rate of women who gave birth.”²⁵ In a similar study, Finnish researchers found that within one year of an abortion, “women were *three times* more likely to commit suicide than

²³ Charlotte Lozier Institute, *New Study: Elevated Suicide Rates Among Mothers after Abortion*, <https://lozierinstitute.org/new-study-elevated-suicide-rates-among-mothers-after-abortion/> (last accessed Nov. 2, 2021) (citing Elliot Institute, *New Study Shows Abortion Death Rate Higher Than Previously Known* (July-September 2002), <https://afterabortion.org/new-study-shows-abortion-death-rate-higher-than-previously-known/>); see also David C. Reardon et al., *Deaths associated with pregnancy outcome: a record linkage study of low income women*, SOUTHERN MED. J. Vol. 95, No. 8, 834–41 (2002), <https://pubmed.ncbi.nlm.nih.gov/12190217/> (last accessed Dec. 9, 2021).

²⁴ Quotation from abstract of the following study: David C. Reardon et al., *Deaths associated with pregnancy outcome: a record linkage study of low income women*, SOUTHERN MED. J. Vol. 95, No. 8, 834–41 (2002), <https://pubmed.ncbi.nlm.nih.gov/12190217/>.

²⁵ Charlotte Lozier Institute, *New Study: Elevated Suicide Rates Among Mothers after Abortion*, <https://lozierinstitute.org/new-study-elevated-suicide-rates-among-mothers-after-abortion/> (citing Ilaria Lega, et al., *Maternal suicide in Italy*, ARCHIVES OF WOMEN’S MENTAL HEALTH 23, 199–206 (2020) <https://doi.org/10.1007/s00737-019-00977-1>) (emphasis added).

the general population, and *nearly six times* more likely to [do so] than women who gave birth,” while most of these deaths occur in the first two months.²⁶

C. The stories of mothers who survived abortion highlight the reality of the psychological harm that abortion inflicts.

The poignant stories women harmed by abortion affirm the medical research and statistics. Amicus Human Coalition runs the website “The Abortion Memorial,” where individuals can post their abortion experiences. Many of these stories detail the psychological harm that mothers suffer after abortion. Many mothers give their child a name, write directly to them, and express regret at never meeting them.

A woman, who identified herself as “Laura,” described the trauma she experienced after having an abortion:

I had my abortion 11 years ago. I can remember the day as if it were yesterday. . . . I thought this was, “the right thing to do,” I thought I was, “making life easier.” . . . The truth is, you leaving made my life so dull, so full of pain, and nothing got easier. Nightmares haunted me, I dulled the pain the best way I knew how. I remember laying my head down on my pillow that night thinking, “I just had to make this right,” so 4 months later I conceived my oldest son. I couldn’t bare [sic] the loss of you. I love my son more than anything, but he didn’t fill your hole. Deeper I sank into depression, and the world lost its vibrance. I needed help[.]²⁷

²⁶ Charlotte Lozier Institute, *New Study: Elevated Suicide Rates Among Mothers after Abortion*, <https://lozierinstitute.org/new-study-elevated-suicide-rates-among-mothers-after-abortion/> (citing Gissler, et al., *Suicides after pregnancy in Finland, 1987-94. Register linkage study*, THE BMJ Vol. 313, 1431–34 (Dec. 1996) <https://perma.cc/U7ZP-MWC2>).

²⁷ Hannah’s Mom, *The Abortion Memorial*, <https://abortionmemorial.com/hannahs-mom/> (last accessed Dec. 9, 2021) (cleaned up).

And one woman anonymously wrote a letter to her deceased child that she named “Nic,” expressing deep regret for having an abortion:

I am [truly] sorry for being so selfish, ignorant, [and] unloving to have made that choice. I am regretting it everyday. For years, I have pretended I was ok, but I’m not. . . . I feel really alone now, there’s an emptiness that can’t be filled. . . . I am sorry for my selfish and rush decision 4 [years] ago. It was the worst choice of my life. Please forgive me[.] I took your life for selfish reasons. If I could turn back time, I would choose you over me, over and over again without doubt.²⁸

Abortion-induced emotional and psychological trauma can endure long after the procedure. One woman anonymously posted about the abortion she had 14 years earlier, and how that life-altering choice continues to haunt her:

Fourteen years ago, I made a decision that wasn’t easy. I thought I could make a mistake go away and forget about it, but the emotional scars and guilt that decision left in its wake will forever remain. At the time, it didn’t seem real. . . . I kept having moments where I would change my mind, but ultimately I went through with it. I laid on the table, took the pills, accepted the reality of what was happening. Before I knew it, I was in recovery and felt empty. I felt like someone had ripped half of my heart from my chest. That day, those moments will forever be ingrained into my memory; a searing memory that hurts deeper than any physical pain that can be imagined. . . . I’ve cried many tears over the years and still wonder if you were a boy or a girl. Would your eyes have been blue or brown? Would you have my love for music or would you be a talented artist? All these things, I will never know. I am so deeply sorry

²⁸ I am sorry. If only I knew., *The Abortion Memorial*, <https://abortionmemorial.com/i-am-sorry-if-only-i-knew/> (last accessed Dec. 9, 2021).

that I took away those possibilities. I shattered those memories I will never have. I love you, please forgive me.²⁹

These stories show that abortion decisions do not occur in a vacuum. They can have profound negative mental health consequences. Whatever the particular circumstances that each individual woman faces, the pattern of personal stories of regret, anguish, and sadness after abortion must be considered and acknowledged.

II. Abortion increases the risk of immediate and long-term physical harms to the mother and her children in future pregnancies.

Adding to the emotional and psychological harms described above, abortion poses many physical risks to a woman and her children in future pregnancies. Some risks to the mother are immediate—like uterine perforation, harm to other organs and blood vessels, hemorrhage, and even death. Others are more distant, such as a heightened risk of death from all causes and, in some cases, a higher likelihood of damaging reproductive organs in future pregnancies. The woman’s future children also bear increased risks—placing them in greater jeopardy of preterm birth, which can cause complex and lifelong medical problems and even lead to death.

A. Surgical abortion poses various immediate physical risks—including the risk of death—resulting from procedural complications.

Surgical abortion poses many physical risks to those affected both during and after the procedure. The risk to the unborn child is clear: death. But the mother also faces serious risks to her physical health, including a risk of death.

²⁹ Gone but not forgotten, *The Abortion Memorial*, <https://abortionmemorial.com/gone-but-not-forgotten/> (last accessed Dec. 9, 2021).

Abortion complications can lead to the mother’s death in many ways.³⁰ For example, women can die from “vaginal and intra-abdominal hemorrhage, sepsis, thrombotic emboli, intravascular amniotic or air emboli, complications of anesthesia and cardiac or cerebrovascular events.”³¹ In one study, researchers found that most “abortion-related deaths at [or before] 13 weeks of gestation” come from anesthesia complications and infection, whereas most abortion-related deaths after that inflection point “were associated with infection and hemorrhage.”³²

Surgical abortion can also result in injury to internal organs and major blood vessels. “Severe physical injuries occur from surgical abortion.”³³ Even experienced abortion providers “not infrequently damage adjacent organs or major blood vessels as they insert suction curettes or grasping forceps into the soft, gravid uterus.”³⁴

³⁰ Suzanne Dane, et al., *Abortion-Related Mortality in the United States 1998–2010*, OBSTET. GYNECOL. Vol. 126, No. 2, 258–265 (Aug. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4554338/> (last accessed Nov. 8, 2021).

³¹ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 7, <https://perma.cc/236K-PLE6>.

³² *Supra* note 30.

³³ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 7, <https://perma.cc/236K-PLE6>.

³⁴ *Id.* (citing S. Lalitkumar, et al., *Mid-trimester induced abortion: a review*, HUMAN REPRODUCTION UPDATE Vol. 13, No. 11, 37–52. (Jan.–Feb. 2007), <https://academic.oup.com/humupd/article/13/1/37/751686>; and Amy Autry, et al., AM. J. OBSTETRICS & GYNECOLOGY Vol. 187, No. 2, 393–97 (Aug. 2002), <https://pubmed.ncbi.nlm.nih.gov/12193931/>)

Such injuries often require “emergency abdominal surgical exploration to perform a hysterectomy, bowel resection, bladder repair, or other repair.”³⁵

Abortion become more dangerous as the pregnancy progresses.³⁶ This is “due to greater technical complexity related to the anatomical and physiologic changes that occur.”³⁷ The “risk of death from abortion increases by 38% for each additional week beyond 8 weeks” of pregnancy.³⁸ Compared to abortions performed earlier in pregnancy, “the relative risk of death was 76.6 times higher beyond 21 weeks (rate 8.9/100,000).”³⁹ And in extreme late-term abortions, the abortion provider will often

³⁵ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 7, <https://perma.cc/236K-PLE6> (citing Maarit Niinimaki, M.D., et al., *Immediate complications after medical compared with surgical termination of pregnancy*, OBSTETRICS & GYNECOLOGY Vol. 114, No. 44, 795–804 (Oct. 2009) https://journals.lww.com/greenjournal/fulltext/2009/10000/Immediate_Complications_After_Medical_Compared.14.aspx; and Cunningham F. Williams, *Obstetrics* (19th edition 1993), 81–246.

³⁶ *Id.*

³⁷ *Id.* (citing Suzanne Zane, et al., *Abortion-related mortality in the United States: 1998-2010*, OBSTETRICS & GYNECOLOGY Vol. 126, No. 2, 258–65 (Aug. 2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4554338/>).

³⁸ *Id.* (citing Linda A. Bartlett, et al., *Risk factors for legal induced abortion related mortality in the U.S.*, OBSTETRICS & GYNECOLOGY Vol. 103, No. 4, 729–37 (Apr. 2004), <https://pubmed.ncbi.nlm.nih.gov/15051566/>; P. Sykes, *Complications of termination of pregnancy: a retrospective study of admissions to Christchurch Women’s Hospital, 1989 and 1990*, NEW ZEALAND MED. J. Vol. 106, No. 951, 83–85 (Mar. 1993), <https://pubmed.ncbi.nlm.nih.gov/8474707/>; and Daniel Grossman, et al., *Complications after second trimester surgical and medical abortion*, REPRODUCTIVE HEALTH MATTERS Vol. 16, No. 31 Suppl., 173–82 (May 2008) [https://www.tandfonline.com/doi/full/10.1016/S0968-8080\(08\)31379-2](https://www.tandfonline.com/doi/full/10.1016/S0968-8080(08)31379-2)).

³⁹ *Id.*

induce labor, introducing even greater risk.⁴⁰ “Labor-induction abortions are often complicated by immediate maternal hemorrhage, requiring an invasive surgical procedure to extract retained placental tissue.”⁴¹

B. Induced abortion increases the risk of death from all causes.

Abortion also leads to an increased risk of death from *all* causes, likely contributing to rising maternal-mortality and late maternal death rates.⁴²

The maternal-mortality rate in the United States is high compared to similar nations, and it continues to climb. The reasons why are unclear, partly because poor recordkeeping, restricted data access, and the lack of mandatory reporting prevent establishing the abortion-mortality rate in the United States. But research shows

⁴⁰ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 6, <https://perma.cc/236K-PLE6>.

⁴¹ *Id.*

⁴² The phrase “maternal death” or “maternal mortality” refers to the death of a mother “from any cause related to or aggravated by pregnancy or its management (excluding accidental or incidental causes) during pregnancy and childbirth or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy.” World Health Organization, *Maternal Deaths*, <https://www.who.int/data/gho/indicator-metadata-registry/imr-details/4622> (last accessed Nov. 23, 2021). This term is distinct from deaths linked to pregnancy, childbirth, or abortion that occurred more than one year after pregnancy ends. “Late maternal death” is the death of a woman from direct or indirect obstetric causes more than 42 days, but within 365 days of the end of pregnancy. AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 3, <https://perma.cc/236K-PLE6>. “Pregnancy-related death” is the death of a woman while pregnant or within 365 days of the end of pregnancy, in which pregnancy may have contributed to the cause of the death. *Id.* (internal citations omitted). “Pregnancy-associated death” is the death of a woman while pregnant or within 365 days of the end of pregnancy from a cause that is either not related to pregnancy or pregnancy relatedness cannot be determined. *Id.*

that abortion leads to an increased risk in death from *all* causes, suggesting that abortion contributes *both* to the higher maternal-mortality rate and late maternal death. Women face many long-term complications after an abortion.⁴³

For example, one study shows that, compared to those who delivered a baby, women who underwent induced abortion had higher age-adjusted risks of death from all causes (162%), from suicide (254%), and from natural causes (144%).⁴⁴ And late-term abortions pose an even higher risk of death: another study concluded that, “the [U.S.] death rate from legal induced abortion performed at 18 weeks gestation is more than double that observed for women experiencing vaginal delivery.”⁴⁵ This is likely due in part to mental health disorders resulting from abortion, which “may contribute to drug overdoses, suicides, homicides or even accidents due to risk-taking behavior.”⁴⁶ But poor data collection makes this link difficult. *Id.*

Research from other developed nations also suggests that abortion had led to an uptick in maternal deaths and late maternal deaths. One Finnish study showed that, after receiving an abortion, “a woman was two to three times as likely to die

⁴³ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 7, <https://perma.cc/236K-PLE6>.

⁴⁴ *Id.* (citing David C. Reardon, et al., *Deaths associated with pregnancy outcome: a record linkage study of low income women*, *SOUTH MED. J.* Vol. 95, No. 8, 834–41. (Aug. 2002), <https://pubmed.ncbi.nlm.nih.gov/12190217/>).

⁴⁵ Patrick J. Marmion & Ingrid Skop, *Induced Abortion and the Increased Risk of Maternal Mortality*, *LINACRE Q.* Vol. 87, No. 3, 302–310. (Aug. 2020) <https://pubmed.ncbi.nlm.nih.gov/32699440/>.

⁴⁶ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 8, <https://perma.cc/236K-PLE6>.

within a year, six times as likely to commit suicide, four times as likely to die from an accident, and fourteen times as likely to be murdered” compared to women who carried their pregnancies to term.⁴⁷ Finnish studies also “revealed that the risk of death from abortion (101 deaths per 100,000 ended pregnancies) was almost four times greater than the risk of death from childbirth (27 deaths per 100,000 ended pregnancies).”⁴⁸ And Danish studies showed “that the risk of death within 180 days after a first trimester abortion w[as] 244% higher than the risk of death after childbirth.”⁴⁹

No one knows the full picture of the abortion mortality rate in the United States because of “restricted data access, poor record keeping[,] and [the] lack of

⁴⁷ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 8, <https://perma.cc/236K-PLE6> (citing Mika Gissler, et al., *Suicides after pregnancy in Finland, 1987-94. Register linkage study*, THE BMJ Vol. 313, 1431–34 (Dec. 1996) <https://perma.cc/U7ZP-MWC2>; E. Karalis, et al., *Decreasing mortality during pregnancy and for a year after while mortality after termination of pregnancy remains high: a population based register study of pregnancy associated deaths in Finland 2001-2012*, BJOG: AN INTERNATIONAL JOURNAL OF OBSTETRICS & GYNAECOLOGY, Vol. 124, No. 7, 1115–1121. (June 2017), <https://perma.cc/EM3T-G3B8>; and Mika Gissler, et al., *Injury deaths, suicides and homicides associated with pregnancy, Finland 1987–2000*, EUROPEAN J. PUBLIC HEALTH Vol. 15, No. 5, 459–63. (Oct. 2005), <https://academic.oup.com/eurpub/article/15/5/459/526248>).

⁴⁸ *Id.* (citing Mika Gissler, et al., *Pregnancy-associated deaths in Finland, 1987–1994—definition problems and benefits of record linkage*, ACTA OBSTETRICRA GYNECOLOGICA SCANDINAVICA Vol. 76, No. 7, 651–57 (Aug. 1997), <https://perma.cc/PBL5-GZK6>).

⁴⁹ *Id.* at 9 (citing Catherine Deneux-Tharaux, et al., *Underreporting of pregnancy related mortality in the U.S. and Europe*, OBSTETRICS & GYNECOLOGY Vol. 106, No. 4, 684–92 (Oct. 2005), <https://pubmed.ncbi.nlm.nih.gov/16199622/>).

mandatory complication reporting.”⁵⁰ While state health departments may report *estimated* abortion totals to the CDC, their accuracy cannot be checked.⁵¹ Without better data collection and reporting requirements, we will never have a complete picture of the rate at which abortion leads to the death of U.S. women.⁵²

C. Abortion can lead to physical harms to the mother in later pregnancies, such as cervical trauma, cervical incompetence, and faulty placentation.

Abortion not only impacts the pregnancy it ends, but also can cause physical harms to the woman in later pregnancies due to potential injury to reproductive organs. Some of these complications can be severe and life-threatening.

Forcibly opening a cervix that is supposed to remain closed until childbirth—which happens during an abortion—“may result in cervical trauma and cervical incompetence in future pregnancies.”⁵³ This may cause the now-weakened cervix to “dilate early in a subsequent pregnancy, predisposing the woman to premature rupture of membranes, intrauterine infections and possible sepsis.”⁵⁴

Surgical abortions can also harm the placenta in later pregnancies. The placenta is a vital organ that develops in pregnancy to support the unborn child. It

⁵⁰ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 8, <https://perma.cc/236K-PLE6>.

⁵¹ *Id.* at 5.

⁵² *Id.* at 10.

⁵³ *Id.* at 7.

⁵⁴ *Id.*

“provides oxygen and nutrients to [the] growing baby and removes waste . . . from [the] baby's blood.”⁵⁵ Abortion injuries may cause serious (and even fatal) placental positioning problems in later pregnancies. “Instrumental trauma to the endometrium” during a surgical abortion “may result in faulty placentation in subsequent pregnancies.”⁵⁶ This can cause Placenta Accreta Spectrum (PAS), an “abnormal placentation in which the placenta invades into the cervix, uterine wall, or other adjacent organs.”⁵⁷

PAS is a potentially life-threatening pregnancy complication. It often leads to death or serious health problems “because of severe and sometimes life-threatening hemorrhage, which often requires blood transfusion.”⁵⁸ The American College of Obstetricians and Gynecologists has noted that these risks appear even in the best cases.⁵⁹ And women experiencing PAS “are more likely to require hysterectomy . . . and have longer hospital stay.”⁶⁰ All of these consequences are more likely because of a past abortion.

⁵⁵ Mayo Clinic, *Placenta: How it works, what's normal*, <https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/placenta/art-20044425> (last accessed Dec. 9, 2021).

⁵⁶ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 7, <https://perma.cc/236K-PLE6>.

⁵⁷ *Id.*

⁵⁸ The American College of Obstetricians and Gynecologists, *Placenta Accreta Spectrum* (July 2012), <https://perma.cc/N2MJ-W47Y> (last accessed Dec. 10, 2021).

⁵⁹ *Id.*

⁶⁰ *Id.*

D. Abortion can increase the risk of serious harm to children in future pregnancies due to premature birth.

Medical research has confirmed a link between induced abortion and preterm birth in later pregnancies. Preterm birth can harm a newborn child and the birthing mother, leading to lifelong medical problems.

Studies show a connection with abortion and preterm birth in later pregnancies.⁶¹ “Fueled by the overwhelming findings on the medical effects of abortion on the increased incidence of” preterm birth, researchers argue “that induced abortion increased the incidence of [preterm birth] by approximately 31.5%.”⁶² One meta-analysis of several studies “found that there was a 25% increased risk of premature birth in a subsequent pregnancy after one abortion, 32% after more than one, and 51% after more than two abortions.”⁶³ Another meta-

⁶¹ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 7, <https://perma.cc/236K-PLE6>.

⁶² AAPLOG, *Practice Bulletin 5: Abortion and Risks of Preterm Birth* at 3, <https://perma.cc/3Y5Z-YZYW> (citing Byron C. Calhoun, *Cost consequences of induced abortion as an attributable risk for preterm birth and impact on informed consent*, J. REPRODUCTIVE MED. Vol. 52, No. 10, 929–37 (Oct. 2007), <https://pubmed.ncbi.nlm.nih.gov/17977168/>).

⁶³ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 7, <https://perma.cc/236K-PLE6> (citing Hanes M. Swingle, et al., *Abortion and the risk of subsequent preterm birth: a systematic review and meta-analysis*, J. REPRODUCTIVE MED. Vol. 54, No. 2, 95–108 (Feb. 2009), <https://pubmed.ncbi.nlm.nih.gov/19301572/>).

analysis “found a 35% increased risk of delivery of a very low birth weight infant” after only one abortion and an alarming “72% after two or more abortions.”⁶⁴

Preterm birth can lead to various short- and long-term health problems for the baby. Short-term problems can include breathing, heart, brain, temperature-control, gastrointestinal, blood, metabolism, and immune-system problems.⁶⁵ And babies can suffer long-term complications such as cerebral palsy, cognitive impairment, and vision, hearing, dental, behavioral, and psychological problems.⁶⁶

III. Pennsylvania’s law prohibiting taxpayer-funded abortion survives constitutional scrutiny under the Pennsylvania Constitution’s guarantee of equal protection and the Equal Rights Amendment. This Court should accordingly uphold *Fischer*.

Pennsylvania’s law prohibiting government funding of abortion (including through the Medical Assistance program) except in cases of rape, incest, and where the life of the mother is in danger, 18 Pa. C.S. §§ 3215(c), (j), survives constitutional scrutiny under the Pennsylvania Constitution’s guarantee of equal protection and its Equal Rights Amendment. This Court already upheld this law in *Fischer*. 509 Pa. at 309. It held that the law implicates neither a fundamental right nor a suspect class and applied rational basis scrutiny. *Id.* at 307–09. This Court concluded that

⁶⁴ AAPLOG, *Committee Opinion 6: Induced Abortion & the Increased Risk of Maternal Mortality* at 7, <https://perma.cc/236K-PLE6> (citing Hua Liao, et al., *Repeated medical abortions and the risk of preterm birth in the subsequent pregnancy*, ARCHIVES OF GYNECOLOGY & OBSTETRICS Vol. 284, No. 3, 579–86 (September 2011) <https://link.springer.com/article/10.1007%2Fs00404-010-1723-7>).

⁶⁵ Mayo Clinic, *Premature Birth*, <https://www.mayoclinic.org/diseases-conditions/premature-birth/symptoms-causes/syc-20376730> (last accessed Dec. 9, 2021).

⁶⁶ *Id.*

the law survives rational-basis review—and would survive even intermediate scrutiny—under the right to equal protection. *Id.* at 309. This Court also held that the law does not discriminate on the basis of sex and does not violate the Equal Rights Amendment of the Pennsylvania Constitution. *Id.* at 315.

A. Pennsylvania’s law survives rational basis scrutiny under the Pennsylvania Constitution’s guarantee of equal protection because it furthers the Commonwealth’s legitimate interests in the preservation of the life and health of mother and child.

Pennsylvania’s ban on taxpayer-funded abortion survives constitutional scrutiny under the Pennsylvania Constitution’s right to equal protection.

Rational-basis scrutiny applies to Pennsylvania’s prohibition on taxpayer-funded abortion because the law still does not implicate either a fundamental right or a suspect class. The law does not affect a fundamental right because there is still no fundamental right “to have the state subsidize the individual exercise of a constitutional right, when it chooses to subsidize alternative constitutional rights.” *Fischer*, 509 Pa. at 307. This is because the Pennsylvania Constitution does not embrace a right to abortion, and abortion therefore “cannot be considered [a] fundamental” right. *Id.* (internal citations omitted). The law also does not implicate a suspect class because “financial need” does not create a suspect class for purposes of the equal protection analysis. *Id.*

Pennsylvania’s ban on taxpayer-funded abortion still survives rational-basis scrutiny because it furthers the government’s legitimate interest in preserving life. *Fischer*, 509 Pa. at 309–10. “[T]o say that the Commonwealth’s interest in attempting to preserve a potential life is not important, is to fly in the face of our

own existence.” *Id.* at 308–09. Because this interest is important, it is also legitimate. The Commonwealth’s law serves its stated purpose of “the preservation of life,” because “the Commonwealth has made a decision to encourage the birth of a child in all situations except where another life would have to be sacrificed” and this “classification is specifically related to the ends sought.” *Id.* The law “accomplishes the preservation of the maximum amount of lives: i.e., those unaborting new babies, and those mothers who will survive though their fetus be aborted.” *Id.*

Pennsylvania’s law also furthers its legitimate interest in protecting the health of mother and child and survives rational basis scrutiny for this additional reason. The health of Pennsylvania citizens is undeniably a legitimate government interest. *See, e.g., Friends of Danny DeVito v. Wolf*, 227 A.3d 872, 898 (Pa. 2020) (“Protection of the health and safety of the public is a paramount governmental interest . . .”) (cleaned up). Abortion leads to many risks to a mother’s mental and physical health, leading to increased risk of mental health disorders, short- and long-term harms to physical health, and even death. *See* Sections I, II A, B & C. And abortion can harm children in later pregnancies due to an increased risk of preterm birth. *See* Section II.D. The Commonwealth’s refusal to fund a procedure that leads to substantial harm to women and children serves its interest in protecting the health of mother and child. The Commonwealth’s prohibition on taxpayer-funded abortion accordingly survives rational-basis scrutiny.

B. The law also does not discriminate on the basis of sex and therefore does not violate the Equal Rights Amendment of the Pennsylvania Constitution.

Pennsylvania’s law prohibiting taxpayer-funded abortion does not violate the Equal Rights Amendment because it does not discriminate on the basis of sex. The law implicates the decision to have an abortion, which only affects women. 509 Pa. at 315. Pregnancy “is so unique as to have no concomitance in” men and does not lead to differential treatment of the sexes. *Id.* at 314–15. Pennsylvania’s law is “solely directed to that unique facet [and] is in no way analogous to those situations where the distinctions were based exclusively on the circumstance of sex, social stereotypes connected with gender, or culturally induced dissimilarities.” *Id.* at 315 (cleaned up). It therefore does not discriminate based on sex. *Id.*

CONCLUSION

Modern medical research strong shows that abortion harms women. The Commonwealth’s prohibition on taxpayer-funded abortion (including through Medical Assistance) serves its legitimate interests in preserving the life and health of both mother and child. *See Fischer*, 509 Pa. at 309. Amici accordingly urge this Court to affirm the decision below and uphold *Fischer*.

Dated: December 13, 2021

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I certify that this brief complies with the type-volume limitation set forth in Pa.R.A.P 531. This brief contains 6,557 words.

Dated: December 13, 2021

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CERTIFICATE OF COMPLIANCE

I certify that this brief 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 requires filing confidential information and documents differently than non-confidential information and documents.

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2021, I caused a copy of the foregoing to be served on the following via PACFile to all counsel of record and by First Class Mail to pro se parties below, which satisfies Pennsylvania Rule of Appellate Procedure 121:

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