

**No. 22-1795**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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COLLEEN REILLY; BECKY BITER,

*Plaintiffs-Appellants,*

v.

CITY OF HARRISBURG; HARRISBURG CITY COUNCIL; ERIC  
PAPENFUSE, in his official capacity as Mayor of Harrisburg,

*Defendants-Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
CASE NO. 1:16-cv-00510-SHR

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**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*  
PHYSICIANS FOR REPRODUCTIVE HEALTH AND PITTSBURGH  
PRO-CHOICE ESCORTS IN SUPPORT OF DEFENDANTS-APPELLEES  
FOR AFFIRMANCE**

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Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, *amici curiae* Physicians for Reproductive Health and Pittsburgh Pro-Choice Escorts hereby move this Honorable Court for leave to file a Brief as *Amici Curiae* in the above-captioned matter in support of Defendants-Appellees and affirmance.

In support of their Motion, *amici curiae* state the following:

1. Proposed *amici curiae* Physicians for Reproductive Health and Pittsburgh Pro-Choice Escorts are national and local organizations, respectively, dedicated to ensuring safe access to reproductive healthcare.
2. Physicians for Reproductive Health (“PRH”) is a doctor-led 501(c)(3) nonprofit organization with a mission to ensure meaningful access to safe, effective, and comprehensive reproductive healthcare, including abortion. Since its founding in 1992, PRH has organized and amplified the voices of medical providers to advance sexual and reproductive health, rights, and justice. PRH’s network is comprised of over 450 PRH-trained physicians working in forty-seven states and the District of Columbia. PRH has insight into the challenges providers and patients face when confronted by laws designed or applied to prevent pregnant people from accessing necessary medical care and harming their ability to live freely, with dignity, safety, and security.

3. Pittsburgh Pro-Choice Escorts (“PPCE”) is an unincorporated association of volunteer escorts who provide accompaniment to patients, companions, and staff to ensure that they are not impeded or intimidated as they enter or leave the two reproductive healthcare facilities that provide abortion care in Pittsburgh, Pennsylvania. PPCE volunteers began supporting patients, companions, and staff before the implementation of Pittsburgh’s buffer zone and have witnessed firsthand the benefits of the buffer zone for clinic access and public safety.
4. The Brief of proposed *amici curiae* seeks to assist the Court in understanding the history of violence targeted at reproductive healthcare facilities and their patients, the increased occurrence of violence and obstruction in recent years and months, and the devastating impacts of extremist activity on patient health and access to medical care.
5. Counsel for Defendants-Appellees City of Harrisburg, et al., has consented to the filing of this Brief.
6. Counsel for Plaintiffs-Appellants Colleen Reilly and Becky Biter has not consented to the filing of this Brief.
7. Pursuant to Federal Rule of Appellate Procedure 29(a)(3), the Brief of proposed *amici curiae* is conditionally filed as an attachment to this Motion.

Wherefore, Petitioners request that the Court grant them leave to file Brief of *Amici Curiae* Physicians for Reproductive Health and Pittsburgh Pro-Choice Escorts in Support of Defendants-Appellees for Affirmance.

Dated: December 13, 2022

Respectfully submitted,

*s/ Margaret Neely*

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## CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2022, I caused the foregoing Motion to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the Court's CM/ECF system, which will automatically serve electronic copies upon all counsel of record.

*s/ Margaret Neely*

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# **EXHIBIT A**

No. 22-1795

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HEALTH AND PITTSBURGH PRO-CHOICE ESCORTS IN SUPPORT  
OF DEFENDANTS-APPELLEES FOR AFFIRMANCE**

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## CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Third Circuit LAR 26.1, *amici curiae* Physicians for Reproductive Health and Pittsburgh Pro-Choice Escorts make the following disclosure:

1) For non-governmental corporate parties, please list all parent corporations:

**None.**

2) For non-governmental corporate parties, please list all publicly held

companies that hold 10% or more of the party's stock: **None.**

3) If there is a publicly held corporation which is not a party to the proceeding

before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests: **None.**

4) In all bankruptcy appeals, counsel for the debtor or trustee of the bankruptcy

estate must list: (1) the debtor, if not identified in the case caption; (2) the members of the creditors' committee or the top 20 unsecured creditors; and (3) any entity not named in the caption which is an active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by the appellant. **N/A.**

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## **INTEREST OF *AMICI CURIAE***

*Amici curiae* Physicians for Reproductive Health (“PRH”) and Pittsburgh Pro-Choice Escorts (“PPCE”) are national and local organizations, respectively, dedicated to ensuring safe access to reproductive healthcare. PRH is a doctor-led 501(c)(3) nonprofit organization with a mission to ensure meaningful access to safe, effective, and comprehensive reproductive healthcare, including abortion. PRH has insight into the challenges providers and patients face when confronted by laws designed or applied to prevent pregnant people from accessing necessary medical care and harming their ability to live freely, with dignity, safety, and security. PPCE is an unincorporated association of volunteer escorts who provide accompaniment to patients, companions, and staff to ensure that they are not impeded or intimidated as they enter or leave the two reproductive healthcare facilities that provide abortion care in Pittsburgh, Pennsylvania: Allegheny Reproductive Health Center and Planned Parenthood of Western Pennsylvania. PPCE volunteers began supporting patients, companions, and staff before the implementation of Pittsburgh’s buffer zone and have witnessed firsthand the benefits of the buffer zone for clinic access and public safety.

*Amici* believe that buffer zones like that enacted by Harrisburg are critical to protecting access to reproductive healthcare facilities. Reasonable buffer zones reduce the risk of violent encounters and, consequently, the physical intimidation

experienced by many patients. *Amici* submit this brief in support of affirmance to highlight the history of violence targeted at reproductive healthcare facilities and their patients, the increased occurrence of violence and obstruction in recent years and months, and the devastating impacts of extremist activity on patient health and access to medical care. *Amici* urge this Court to uphold Harrisburg Code of Ordinances § 3-371.4 (“the Ordinance” or “Harrisburg’s buffer zone ordinance”).<sup>1</sup>

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29, undersigned counsel for *amici* certify that no party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money intended to fund preparing or submitting this brief; and no person or entity, other than *amici*, their members, or their counsel, contributed money intended to fund the preparation or submission of this brief. Women’s Law Project thanks legal interns Hannah Brem and Namita Dwarakanath for their valuable contributions to this brief.

## SUMMARY OF ARGUMENT

The Harrisburg buffer zone ordinance (“the Ordinance”) was proposed against a backdrop of decades of violence and harassment targeted at reproductive healthcare facilities, intended to terrorize staff and patients and ultimately eliminate abortion access. Such tactics have deterred medical providers from entering the field of abortion care and led to a reduction in the number of clinics providing abortion care, thereby decreasing access to necessary reproductive healthcare.

After the U.S. Supreme Court overruled *Roe v. Wade* in June 2022, government officials warned of an escalation in extremist activity and identified reproductive healthcare facilities as primary targets. Concerns about the threat of violence have been borne out in subsequent months, underscoring the City’s interest in providing protection around healthcare facilities.

The Ordinance furthers the City’s interest in promoting patients’ health not only by decreasing the risk of violent encounters outside of reproductive healthcare facilities, but also by decreasing the health impacts associated with physically intimidating protest activity. Patients encountering aggressive, close-range protest activity fear violence and feel unsafe, and studies have found a correlation between such activity and patient stress. Stress itself is harmful to health, and it causes physical responses that can detrimentally impact the delivery of abortion care,

raising the risk of complications in an otherwise extremely safe procedure. Buffer zones reduce stress by decreasing the opportunity for violent encounters.

Protecting access to abortion in Harrisburg has taken on a new urgency, as states near Pennsylvania have banned or severely restricted abortion and clinics across the state are caring for an influx of out-of-state patients. The Ordinance is critical to keeping Harrisburg's one remaining clinic that provides abortion care in operation, ensuring that staff can do their jobs with less fear of harassment and violence and that patients can safely access the care they need.

For these reasons, *amici* urge the Court to affirm the district court's order upholding the Ordinance.

## ARGUMENT

### **I. Anti-abortion Extremists Have Historically Targeted Abortion Clinics with the Goal of Reducing or Eliminating Access to Abortion.**

Clinics that provide abortion care have historically been targets of violence and harassment intended to impede access and disrupt services. Over the past forty-five years, the National Abortion Federation (NAF) has documented more than one million acts of anti-abortion violence, harassment, and disruption, including 11 murders, 26 attempted murders, 42 bombings, 196 arsons, 491 incidents of assault and battery, and 1,064 blockades. Nat'l Abortion Fed'n, *2021 Violence & Disruption Statistics* (2022), [https://prochoice.org/wp-content/uploads/2021\\_NAF\\_VD\\_Stats\\_Final.pdf](https://prochoice.org/wp-content/uploads/2021_NAF_VD_Stats_Final.pdf). Extremists have intentionally

directed these acts at clinics, their employees, and their patients as part of a strategy to eliminate abortion access. *See, e.g.*, Mireille Jacobson & Heather Royer, *Aftershocks: The Impact of Clinic Violence on Abortion Services*, *Am. Econ. J.: Applied Econ.*, Jan. 2011, at 189, 193–96; Kathy Spillar, *The Anti-Abortion Movement Has a Long History of Terrorism. A Roe Repeal Will Make It Worse*, *Ms.* (May 6, 2022), <https://msmagazine.com/2022/05/06/anti-abortion-violence-terrorism-roe-v-wade> (quoting “justifiable homicide” statement signed by anti-abortion extremists supporting the use of “all godly action necessary,” including “lethal force,” to stop abortion). Such tactics have been successful in contributing to a reduction in the number of abortion clinics, deterring trained providers from entering the field of abortion care, and forcing abortion providers to “leav[e] the practice due to the stress and burdens of living with the constant threat of violence.” Spillar, *supra*. Threats against clinics that provide abortion care are so pervasive that a study found that twenty-one percent of evaluated clinic employees reported symptoms similar to post-traumatic stress disorder, even when controlling for outside life circumstances. Kevin M. Fitzpatrick & Michele Wilson, *Exposure to Violence and Posttraumatic Stress Symptomatology Among Abortion Clinic Workers*, 12 *J. Traumatic Stress* 227, 227 (1999). Concurrent attempts to restrict abortion through legislative channels have not placated anti-abortion extremists but rather “emboldened [them] to disrupt patient services” through whatever means

necessary. Nat'l Abortion Fed'n, *2019 Violence and Disruption Statistics 2* (2020), <https://prochoice.org/wp-content/uploads/NAF-2019-Violence-and-Disruption-Stats-Final.pdf>.

## **II. Recent Increases in Abortion Restrictions Have Corresponded with a Drastic Increase in Anti-abortion Extremism.**

As restrictions on abortion have increased over the past few years, so too have incidents of anti-abortion extremism. In 2021, states enacted 108 abortion restrictions — the highest number in any year since 1973, when *Roe v. Wade* established a federal constitutional right to abortion. Elizabeth Nash, *State Policy Trends 2021: The Worst Year for Abortion Rights in Almost Half a Century*, Guttmacher Inst. (Jan. 5, 2022), <https://www.guttmacher.org/article/2021/12/state-policy-trends-2021-worst-year-abortion-rights-almost-half-century>. That same year, NAF observed an “increase in intimidation tactics, vandalism, and other activities aimed at disrupting services, harassing providers, and blocking patients’ access to abortion care.” Nat'l Abortion Fed'n, *2021 Violence & Disruption Statistics*, *supra* at 2.

NAF's most recent report on anti-abortion violence and disruption documents an increase in almost every form of these tactics. Specifically, the report documents a drastic increase in incidents of assault and battery over the past few years, with NAF members reporting 123 such incidents in 2021 compared to 54 in 2020, 24 in 2019, and 15 in 2018. *Id.* at 4. Most of these incidents

“involv[ed] anti-abortion protesters having altercations with clinic escorts, clinic staff, patient companions, and patients.” *Id.* Additionally, the report notes a 450% increase in clinic blockades over the past year, with 11 blockades occurring in 2021 compared to just 2 in 2020. *Id.* at 7. The report also documents an increase in invasions, vandalism, stalking, hoax devices or suspicious packages, bomb threats, and burglary. *Id.* at 3. While the reported rates of anti-abortion activity are alarming, they likely undercount the actual incidents of anti-abortion violence and disruption in 2021, since COVID-related staff and volunteer shortages limited clinics’ ability to monitor anti-abortion activity, 20% of NAF’s member facilities did not report data for 2021, and NAF includes in its statistics only incidents it is able to validate. *Id.* at 2, 9.

Now, in the wake of the loss of the federal constitutional right to abortion, anti-abortion extremism is expected to surge. In a bulletin published on June 7, 2022, the United States Department of Homeland Security (DHS) warned that the Supreme Court’s then-pending decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022) — a case that challenged the constitutional right to abortion established in *Roe v. Wade*, 410 U.S. 113, 153–54 (1973) — “could inspire individuals to mobilize to violence.” U.S. Dep’t of Homeland Sec., *National Terrorism Advisory System Bulletin* (June 7, 2022), [https://www.dhs.gov/sites/default/files/ntas/alerts/22\\_0607\\_S1\\_NT\\_AS-](https://www.dhs.gov/sites/default/files/ntas/alerts/22_0607_S1_NT_AS-)

[Bulletin\\_508.pdf](#). The bulletin noted that individuals had taken to public forums to “encourage violence, including against . . . reproductive healthcare personnel and facilities.” *Id.*

On June 24, 2022, after the Supreme Court released its decision overruling *Roe*, see *Dobbs*, 142 S. Ct. at 2242, DHS wrote in an unclassified memo that “[s]ome domestic violent extremists” would likely “intensify violence against a wide range of targets.” Memorandum from Off. of Intel. & Analysis, U.S. Dep’t of Homeland Sec. 1 (June 24, 2022),

<https://www.documentcloud.org/documents/22068133-dhs-memo>. This prediction, the memo explained, was based “on an observed increase in violent incidents across the United States” after a draft of the *Dobbs* majority opinion was leaked in May. *Id.* For instance, just weeks after the leak, an individual set fire to an abortion clinic in Wyoming. *Masked, Hooded Woman Seen on Video Setting Fire at What Would Be Wyoming’s Only Abortion Clinic*, CBS News (June 9, 2022, 8:09 AM), <https://www.cbsnews.com/news/wyoming-only-abortion-clinic-arson-video-reward>. Additionally, a neo-Nazi channel of a public forum posted a “graphic calling to ‘bomb’ reproductive healthcare clinics and to ‘kill’ pro-choice individuals.” Betsy Woodruff Swan, *Law Enforcement Officials Brace for Potential Violence Around SCOTUS Draft Opinion*, Politico (May 5, 2022, 6:29 PM), <https://www.politico.com/news/2022/05/05/law-enforcement-violence->



[scotus-draft-roe-opinion-00030509](#) (quoting Site Intelligence Group bulletin). The DHS memo advised that reproductive healthcare facilities would likely “continue to remain primary targets for criminal incidents, and violence could escalate against these facilities or personnel.” Memorandum from Off. of Intel. & Analysis, *supra*, at 2.

Concerns about the threat of violence have already been borne out. In the week after the Supreme Court announced its decision in *Dobbs*, armed individuals attended eight abortion-related protests. Vera Bergengruen, *Armed Demonstrators and Far-Right Groups Are Escalating Tensions at Abortion Protests*, Time (July 8, 2022, 7:00 AM), <https://www.time.com/6194085/abortion-protests-guns-violence-extremists>. In the first half of 2022, armed demonstrators had been present at ten such protests, representing a nearly twofold increase in attendance compared to the entire preceding year. *Id.* When people with firearms attend abortion-related protests, the protests are “more likely to turn violent.” *Id.*

Of further concern, there is an increasing overlap between anti-abortion extremists and anti-government extremists. Expert analyses have identified anti-government militias as the “greatest” and “most lethal” domestic terror threat in the United States. Catrina Doxsee, *Examining Extremism: The Militia Movement*, Ctr. for Strategic & Int’l Stud. (Aug. 12, 2021), <https://www.csis.org/blogs/examining-extremism/examining-extremism-militia->

[movement](#). Many of the militia groups involved in the white supremacist rally in Charlottesville in 2017 and the January 6th insurrection at the U.S. Capitol “are now threatening abortion providers,” Bergengruen, *supra*, and several people who have been identified or charged for their participation in the January 6th attack were already well-known anti-abortion extremists, *see* Nat’l Abortion Fed’n, *2021 Violence & Disruption Statistics*, *supra*, at 8; Jessica Winter, *The Link Between the Capitol Riot and Anti-abortion Extremism*, *New Yorker* (Mar. 11, 2021), <https://www.newyorker.com/news/daily-comment/the-link-between-the-capitol-riot-and-anti-abortion-extremism>. As of July 1, 2022, anti-government militias and extremist groups had appeared at twenty-seven abortion-related demonstrations — more than double their appearances at similar events last year. *See* Bergengruen, *supra*. According to Melissa Fowler, NAF’s Chief Program Officer: “People with militia gear, with weapons, the rhetoric like calling for people to be hung and to be harmed . . . those are all things that that [sic] these extremists do outside of clinics and have been using to torment providers for years.” *Id.* (omission in original).

### **III. Extremist Activity Jeopardizes the Safety of Patients and Can Detrimentially Impact Patient Health.**

Patients seeking reproductive healthcare frequently describe feeling threatened when approaching groups of protestors outside of the medical facility. In one study of patients across the United States, women described the presence of protestors outside of the facility as “very intimidating” and “expressed a fear of

violence based on [their] confrontations” with protestors. Katrina Kimport, Kate Cockrill & Tracy A. Weitz, *Analyzing the Impacts of Abortion Clinic Structures and Processes: A Qualitative Analysis of Women’s Negative Experience of Abortion Clinics*, 85 *Contraception* 204, 205, 207 (2012), [https://www.ansirh.com/documents/library/kimport-cockrill-weitz\\_contraception2-2012.pdf](https://www.ansirh.com/documents/library/kimport-cockrill-weitz_contraception2-2012.pdf). Similarly, in a midwestern clinic’s survey of patients’ experiences with protestors, patients described feeling fearful and unsafe. See David S. Cohen & Carole Joffe, *Obstacle Course: The Everyday Struggle to Get an Abortion in America* 124–26 (2020). Patients at a Kentucky clinic described protestors getting “too close” and “breathing down my neck.” Richalle Sullivan, *Anti-abortion Picketing and Mental Health: Is There a Correlation Between Picketers and Post-traumatic Stress?*, *Am. Coll. of Obstetricians & Gynecologists* (Oct. 30, 2020), <https://acog.multilearning.com/acog/2020/eposters/288824/richalle.sullivan.anti-abortion.picketing.and.mental.health.is.there.a.html>.<sup>2</sup> At another clinic, a staff

member described a protestor “following patients along the sidewalk and targeting them and screaming at them and calling them these vulgar names.” Cohen & Joffe,

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<sup>2</sup> Even staff at crisis pregnancy centers and people seeking services at those centers — which do not provide abortion care and thus are not the targets of anti-abortion extremists’ activity — have been so afraid of protestors at neighboring abortion clinics that they have asked the clinic escorts for help. See Cohen & Joffe, *supra*, at 141.

*supra*, at 113. The staff member said a patient became “paralyzed and couldn’t move” due to the abuse. *Id.*

Relatedly, studies show a correlation between aggressive anti-abortion protest activity and increased patient stress. For example, patients who were harassed by anti-abortion protestors outside a clinic in Boulder, Colorado, before that city’s adoption of a bubble zone ordinance, displayed evidence of “psychophysiological stress,” including “palpitations, hyperventilation, and urinary retention.” Warren M. Hern, *Proxemics: The Application of Theory to Conflict Arising from Antiabortion Demonstrations*, 12 *Population & Env’t* 379, 380–81 (1991), available at [https://www.researchgate.net/publication/226220130\\_Proxemics\\_The\\_application\\_of\\_theory\\_to\\_conflict\\_arising\\_from\\_antiabortion\\_demonstrations](https://www.researchgate.net/publication/226220130_Proxemics_The_application_of_theory_to_conflict_arising_from_antiabortion_demonstrations); *see also* Cohen & Joffe, *supra*, at 127 (noting that physical reactions to aggressive protest activity “are not uncommon and can be quite serious”). Additionally, a study of the Kentucky patients mentioned above found that those who perceived larger numbers of protestors were more likely to experience levels of stress associated with a probable diagnosis of post-traumatic stress disorder, suggesting that protestor aggression may significantly increase patient stress. *See* Sullivan, *supra*. At another clinic, a patient encountered a protestor who tried to jump onto the hood

of her car; the patient was visibly upset throughout her appointment and exhibited high blood pressure. *See* Cohen & Joffe, *supra*, at 127.

While abortion is extremely safe and has far fewer complications than childbirth and other common medical procedures, stress increases the risk of negative health outcomes during and after abortions. A consensus study report of the National Academies of Sciences, Engineering, and Medicine concluded that “[s]erious complications [from abortion] are rare and occur far less frequently than during childbirth.” Nat’l Acads. of Scis., Eng’g, & Med., *The Safety and Quality of Abortion Care in the United States* 11 tbl.S-1 (2018), <https://nap.nationalacademies.org/read/24950/chapter/1>. However, stress — which has detrimental health consequences in itself<sup>3</sup> — can impact the delivery of abortion care and alter the patient’s course of treatment. In *Pine v. City of West Palm Beach*, 762 F.3d 1262 (11th Cir. 2014), the Eleventh Circuit took up a similar issue to the present case and cited the testimony of Dr. Jay Trabin, a physician, to the West Palm Beach City Commission that stress “increases blood pressure and heart rate, which can cause complications and infections for patients undergoing medical procedures.” *Id.* at 1266. According to Dr. Trabin, stress

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<sup>3</sup> *See, e.g.*, Daryl B. O’Connor, Julian F. Thayer & Kavita Vedhara, *Stress and Health: A Review of Psychobiological Processes*, 72 *Ann. Rev. Psych.* 663, 681 (2021) (“The cumulative science linking stress to negative health outcomes is vast.”).

factors may also lessen the effectiveness of anesthesia and increase the need for patient sedation, further increasing the risk of negative health outcomes. *See id.*

Studies confirm that patient stress can hinder and complicate the delivery of abortion care. A study discussing the impact of close-range protest activity on patient stress explained that symptoms of psychophysiological stress can make it “difficult or impossible” to perform examinations that are “essential in the proper preoperative evaluation of abortion patients,” and can also increase the risk of complications by heightening patient anxiety and agitation during the procedure. Hern, *supra*, at 380–81. Clinical studies in other settings have found that patients “who exhibit a high level of preoperative anxiety require a greater total dose of [anesthesia] to achieve and maintain a clinically acceptable level of sedation and are more prone to unwanted movement while under sedation.” Timothy M. Osborn & Noah A. Sandler, *The Effects of Preoperative Anxiety on Intravenous Sedation*, 51 *Anesthesia Progress* 46, 46 (2004); *see also* Cohen & Joffe, *supra*, at 127 (“Research in other medical settings confirms that patients who experience emotional stress immediately prior to a medical procedure suffer from greater pain and risk of complications.”). Thus, by causing physical stress in patients, close-range, physically intimidating protest activity can raise the risks of a normally safe procedure.

By decreasing the opportunity for physically intimidating and violent encounters, buffer zones like the one enacted in Harrisburg decrease patient stress and promote the government's interest in protecting patient health. A team of researchers examined abortion patients' experiences with protestors in Jackson, Mississippi, before the City passed a buffer zone ordinance. Erin Carroll et al., *Abortion Patient Experiences with Protestors While Accessing Care in Mississippi*, 19 *Sexuality Rsch. & Soc. Pol'y* 886, 887 (2022). They discovered that about one-third of patients felt unsafe during their time at the clinic, in particular "because they viewed protestors as unpredictable and were aware of violence that had taken place at other clinics." *Id.* at 890. However, "[n]early all [participants] felt the city ordinance would have improved their experience by making them feel safer and more at ease." *Id.* at 886.

#### **IV. Harrisburg's Buffer Zone Ordinance Is Essential to Protecting Access to Reproductive Healthcare Facilities.**

With anti-abortion violence escalating, Harrisburg's buffer zone ordinance remains essential to protecting access to reproductive healthcare facilities. While abortion remains legal in Pennsylvania, reproductive healthcare facilities within the state — and their staff and patients — are prime targets for anti-abortion extremists. *Cf. Spillar, supra* (noting that six of the eleven murders anti-abortion extremists have committed since 1977 occurred in Colorado, Massachusetts, and New York — states that have generally been protective of abortion rights). Indeed,

in 2022, an anti-abortion extremist was indicted for violations of the Freedom of Access to Clinic Entrances Act after he assaulted an escort at a Philadelphia clinic “twice on the same date, with one assault resulting in bodily injury.” *Recent Cases on Violence Against Reproductive Health Care Providers*, U.S. Dep’t of Just. (Oct. 18, 2022), <https://www.justice.gov/crt/recent-cases-violence-against-reproductive-health-care-providers>.

Extremist anti-abortion groups are already targeting reproductive healthcare facilities in Pennsylvania. Red Rose Rescue, a group that invades and terrorizes clinics with the goal of obstructing patients from obtaining abortion care, *see Mission Statement*, Red Rose Rescue, <https://www.redroserescue.com/about> (last visited Dec. 12, 2022), recently invaded two Pennsylvania clinics, *see Red Rose Rescues in Pennsylvania Target Planned Parenthood*, Calif. Catholic Daily (Sept. 1, 2021), <https://www.cal-catholic.com/red-rose-rescues-in-pennsylvania-target-planned-parenthood>. During one such invasion, a member of the group barricaded himself inside the clinic’s bathroom, forcing clinic staff to call the police, evacuate the building, and cancel all appointments for the day — thereby effecting a complete disruption in patient care. *See id.* Red Rose Rescue members travel across state lines to invade clinics, *see, e.g.*, Mike Randall, *Anti-abortion Activists Sentenced for Trespassing at White Plains Medical Facility*, Yahoo News (Aug. 3, 2022), <https://www.news.yahoo.com/anti-abortion-activists-sentenced-trespassing->



[124246068.html](#) (describing invasion of a New York abortion clinic by three Red Rose Rescue members, one of whom traveled from Minnesota and another of whom traveled from Wisconsin), and their goal is to stop abortions at “reproductive health clinics all over the country, all of the time,” Sofia Resnick, *Why a Trespassing Trial This March Has Caught the Attention of Activists on Both Sides of the Abortion Movement (Updated)*, Rewire News Grp. (Mar. 1, 2018, 8:41 AM), <https://rewirenewsgroup.com/2018/03/01/trespassing-trial-march-caught-attention-activists-sides-abortion-movement>.

Not only does Red Rose Rescue impede clinic operations and patient care, but it also poses a grave threat to the safety of clinic staff and patients. The group is outspoken about its disregard for the rule of law and has stated in defense of its tactics that “to vow never to break an unjust law when one may need to do so . . . is hardly a virtue.” *A Defense of Red Rose Rescue Against Accusations by Lauren Muzyka of Sidewalk Advocates for Life*, Red Rose Rescue, <https://www.redroserescue.com/defense-of-rrr> (last visited Dec. 12, 2022).

Moreover, many members of the group come from an “older rescue school” that “engaged in radical tactics,” including clinic bombings. Resnick, *supra*.

Harrisburg is not safe from anti-abortion extremism. Harrisburg’s one remaining abortion clinic, Harrisburg Medical Center (“HMC”), has been targeted by anti-abortion extremists for years, *see* JA104, 106 (Decl. of Sari Stevens);

JA178–79 (Tr. of Dep. of Brad Koplinski); JA194–95 (Tr. of Dep. of Andrew Guth); JA209–10, 214–15 (Tr. of Dep. of Heather Shumaker); JA269 (Tr. of Dep. of Lindsey Mauldin), and there is “little question” that it will “remain [a] target[] of violence,” Spillar, *supra*. HMC is one of only two abortion clinics in all of central Pennsylvania. See Pa. Dep’t of Health, *Health Care Facilities*, <https://sais.health.pa.gov/commonpoc/content/publiccommonpoc/normalSearch.asp> (select “Abortion Facility” from first dropdown menu; then click “Submit”) (last visited Dec. 12, 2022) (listing licensed abortion facilities in Pennsylvania). Were anti-abortion extremists to succeed in their goal of terrorizing providers and patients away from HMC, many Pennsylvanians who currently rely on HMC for reproductive healthcare could be forced to travel hundreds of miles to receive care — an insurmountable barrier for many people, particularly people of color, people with low incomes, and young people. See, e.g., Lisa H. Harris, *Navigating Loss of Abortion Services — A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade*, *New England J. Med.* (June 2, 2022), <https://www.nejm.org/doi/full/10.1056/NEJMp2206246>; Katy Backes Kozhimannil, Asha Hassan & Rachel R. Hardeman, *Abortion Access as a Racial Justice Issue*, *New England J. Med.* (Oct. 27, 2022), <https://www.nejm.org/doi/full/10.1056/NEJMp2209737>.

Moreover, as states near Pennsylvania have banned or severely restricted

abortion post-*Dobbs*, protecting access to abortion in Harrisburg has taken on a new urgency. From the end of June until the middle of September in 2022, Ohio was enforcing a ban on abortions after six weeks from the pregnant person's last menstrual period, though the ban has been preliminarily enjoined by court order. *See Preterm Cleveland v. Yost*, No. A2203203, 2022 WL 16137799, at \*1 (Ct. C.P. Ohio Oct. 12, 2022); *After Roe Fell: Abortion Laws by State: Ohio*, Ctr. for Reprod. Rts., <https://reproductiverights.org/maps/state/ohio> (last visited Dec. 12, 2022). Kentucky is currently enforcing its trigger law, which bans all abortions except those necessary to save the life of the pregnant person. *See EMW Women's Surgical Ctr., P.S.C. v. Cameron*, Nos. 2022-SC-0326-I, 2022-SC-0329-TG, 2022 WL 3641196, at \*1 (Ky. Aug. 18, 2022). On September 16, 2022, the Governor of West Virginia signed a near-total abortion ban into law. *See Alison Durkee, Abortion Now Illegal in West Virginia as Gov. Signs Ban into Law*, Forbes (Sept. 16, 2022, 2:30 PM), <https://www.forbes.com/sites/alisondurkee/2022/09/16/abortion-now-illegal-in-west-virginia-as-gov-signs-ban-into-law>. The nearest abortion provider for many people in these states is now in Pennsylvania. *Cf. If Roe v. Wade Falls: Travel Distance for People Seeking Abortion: Pennsylvania*, Guttmacher Inst., <https://web.archive.org/web/20220622213911/https://states.guttmacher.org/#pennsylvania> (last visited Dec. 12, 2022) (calculating a 1,169% increase in the number of

women of reproductive age whose nearest abortion provider would be in Pennsylvania if *Roe v. Wade* were overturned).

Consequently, clinics across Pennsylvania are caring for an influx of out-of-state patients, not only from neighboring states like Ohio and West Virginia — whose residents are traveling as far as southeastern Pennsylvania to receive care — but also from more distant states, including Florida, Louisiana, and Texas.<sup>4</sup> See, e.g., Sarah Gantz, Jasen Lo & Jonathan Lai, *Thousands of Out-of-State Patients Are Coming to Pennsylvania for Abortions They Can't Get at Home*, Phila. Inquirer (Sept. 19, 2022), <https://www.inquirer.com/health/inq2/abortion-ban-pennsylvania-clinics-access-patients-20220919.html>; E. Tammy Kim, *The Abortion Surge Engulfing Clinics in Pennsylvania*, New Yorker (July 22, 2022), <https://www.newyorker.com/news/dispatch/the-abortion-surge-engulfing-clinics-in-pennsylvania>; Cassie Miller, *Western Pa. Abortion Providers Say They Are Seeing an Increase in Out-of-State Patients Post-Dobbs*, Pa. Capital-Star (Aug. 11, 2022, 5:30 PM), <https://www.penncapital-star.com/health-care/western-pa-abortion-providers-say-they-are-seeing-an-increase-in-out-of-state-patients-post-dobbs>; Jan Murphy, *Pa. Planned Parenthood Sees an Uptick in Out-of-Staters Seeking Abortion Access*, PennLive (Aug. 9, 2022, 9:42 PM),

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<sup>4</sup> These surges in patient volume are expected to ebb and flow as surrounding states' abortion laws are blocked or put into effect in response to legal challenges.

<https://www.pennlive.com/news/2022/08/pa-planned-parenthood-sees-an-uptick-in-out-of-staters-seeking-abortion-access.html>. The buffer zone is critical for clinics to adequately serve this increased demand, helping staff to focus on the care they are providing inside the clinic and to do their jobs with less fear of harassment and violence. The buffer zone is also critical for patients to access care without feeling unsafe — particularly since protestors are “most aggressive” at “higher-volume facilities.” Cohen & Joffe, *supra*, at 115 (citing Diana Greene Foster et al., *Effect of Abortion Protesters on Women’s Emotional Response to Abortion*, 87 *Contraception* 81, 83 (2013)). As clinic capacity across the state is strained and patients — Pennsylvania residents and nonresidents alike — are forced to travel to seek care, the buffer zone is essential to keeping Harrisburg’s clinic in operation and ensuring that patients can safely access the care they need.

## CONCLUSION

For the foregoing reasons, *amici curiae* ask the Court to affirm the district court's order.

Dated: December 13, 2022

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Pursuant to Third Circuit Local Appellate Rule 28.3(d), I hereby certify that I am a member of the bar of the United States Court of Appeals for the Third Circuit.

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