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26 MD 2019

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

ALLEGHENY REPRODUCTIVE HEALTH CENTER et al.,	:	
Petitioners,	:	No. 26 MD 2019
v.	:	
PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES et al.,	:	
Respondents.	:	

ORDER

AND NOW, this day of , 2020, upon consideration of the Application of New Voices for Reproductive Justice and 24 Additional Pennsylvania and National Organizations for leave to file the attached Brief of *Amici Curiae* New Voices for Reproductive Justice and Pennsylvania and National Organizations Advocating for Black Women and Girls, proposed to be filed in support of Petitioners' Opposition to Respondents' Preliminary Objections, it is hereby ORDERED that the Application is GRANTED.

The Prothonotary is directed to accept the Brief of *Amici Curiae* attached to the Application for filing.

BY THE COURT: _____

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v.	:	No. 26 MD 2019
PENNSYLVANIA DEPARTMENT OF HUMAN SERVICES et al.,	:	
Respondents.	:	

APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE

Proposed *amici curiae* New Voices for Reproductive Justice ("New Voices") and Pennsylvania and National Groups Advocating for Black Women and Girls (collectively, "Proposed *Amici*"), through counsel and pursuant to Pa. R.A.P. 123 and 531, submit this application for leave to file the Brief of *Amici Curiae* New Voices for Reproductive Justice and Pennsylvania and National Organizations Advocating for Black Women and Girls, attached hereto as Exhibit A, and proposed to be filed in support of Petitioners' Opposition to Respondents' Preliminary Objections ("Proposed Brief of *Amici Curiae*").

1. New Voices is a Pennsylvania non-profit organization that works through leadership development, community organizing, policy advocacy, and culture change to amplify the voices of Black women and girls, who demand and deserve access to quality and culturally responsive health care. New Voices was

instrumental in the passage of the Affordable Care Act, its implementation in Pennsylvania, and the expansion of Medicaid in Pennsylvania.

2. The additional 24 proposed *amici* are also organizations working in Pennsylvania and throughout the United States to ensure Reproductive Justice and the health and well-being of Black women and girls.

3. This case concerns the failure of Pennsylvania's Medicaid program to cover abortion care ("Coverage Ban"). As explained in the Proposed Brief of *Amici Curiae* attached hereto, Proposed *Amici* have a substantial interest in this matter. Indeed, while the Coverage Ban has consequences for all Medicaid beneficiaries in Pennsylvania, those consequences fall more heavily on Black women and girls.

4. As a result, the Coverage Ban directly and disparately affects the communities served by Proposed *Amici*. Proposed *Amici* are thus uniquely positioned to address these disparate consequences. The Proposed Brief of *Amici Curiae* examines these consequences and situates the underlying litigation in the context of the lived experiences of Black women and girls throughout the Commonwealth of Pennsylvania as well as in the United States generally.

5. The attached brief does not exceed 7,000 words.

6. No person or entity other than New Voices and counsel for Proposed *Amici* paid for or authored the Proposed Brief of *Amici Curiae*.

WHEREFORE, Proposed *Amici* respectfully requests that this Court grant leave to file the attached Proposed Brief of *Amici Curiae*.

DATED: May 15, 2020

Respectfully submitted,

/s/ Krysten L. Connon

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CERTIFICATE OF SERVICE

I, Krysten L. Connon, hereby certify that I am this day serving a true and correct copy of the foregoing Application and attached Proposed Brief of *Amici Curiae*, which service satisfies the requirements of Pa.R.A.P.121.

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EXHIBIT A

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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BRIEF OF *AMICI CURIAE* NEW VOICES FOR REPRODUCTIVE JUSTICE AND PENNSYLVANIA AND NATIONAL ORGANIZATIONS ADVOCATING FOR BLACK WOMEN AND GIRLS

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LIST OF *AMICI CURIAE*

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Black Women for Wellness
Black Women's Health Imperative
Center for Women's Health Research and Innovation
Gwen's Girls
Healthy Start, Inc.
In Our Own Voice: National Black Women's Reproductive Justice Agenda
Let's Get Free: The Women & Trans Prisoner Defense Committee
Mary's Daughter For the Formerly Incarcerated
National Asian Pacific American Women's Forum
New Voices for Reproductive Justice
Oshun Family Center
Pittsburgh Action Against Rape
SisterLove, Inc.
SisterReach
SisterSong Women of Color Reproductive Justice Collective
SPARK Reproductive Justice NOW!, Inc.
The Afiya Center
The Midwife Center for Birth & Women's Health
The Opportunity Fund
The Pennsylvania Immigration and Citizenship Coalition
The Womanist Working Collective
Women and Girls Foundation
Women With A Vision, Inc.
Women's Center & Shelter of Greater Pittsburgh

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INTERESTS OF AMICUS CURIAE

Amici are 25 organizations working in Pennsylvania and throughout the U.S. to ensure Reproductive Justice and the health and well-being of Black women and girls. Lead *amicus* New Voices for Reproductive Justice ("New Voices") is a Pennsylvania non-profit organization that works through leadership development, community organizing, policy advocacy, and culture change to amplify the voices of Black women and girls, who demand and deserve access to quality and culturally responsive health care.[1] New Voices was instrumental in the passage of the Affordable Care Act, its implementation in Pennsylvania, and the expansion of Medicaid in Pennsylvania.

Comprehensive health care access is critical in Pennsylvania, where health care outcomes for Black women and girls are abysmal by every measure, from life expectancy to maternal health. These health disparities impact Black Pennsylvanians not because of an inherent problem with Black people – as has been asserted for over 150 years – but because of historical, intersectional race and gender oppression. Medicaid restrictions, like the coverage ban at issue here, are an ongoing legacy of that discrimination and stigma. These restrictions undermine Reproductive Justice –

[1] Statements of interest for individual *amici* are set forth in Appendix A. No person or entity other than New Voices and counsel paid for or authored this brief.

the human right to control our bodies, sexuality, gender, work, reproduction, and ability to form our families.

New Voices and all *amici* share the goal that Black women and girls live long, healthy, and joyful lives – goals that are impeded when Medicaid restrictions relegate Black women and girls to second-class citizenship in health care.

ARGUMENT

I. INTRODUCTION AND SUMMARY OF ARGUMENT.

Pennsylvania's Medicaid program violates the Pennsylvania Constitution's guarantee of equality by failing to cover abortion care.[2] That violation (hereinafter "Coverage Ban") has consequences for all Medicaid beneficiaries in Pennsylvania, but those consequences fall more heavily on Black women and girls.[3] This is because Black women and girls, despite high levels of workforce participation and educational attainment, face economic disadvantage and health disparities that are the ongoing legacy of deeply-entrenched structural race and gender discrimination.

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[2] Pennsylvania bans coverage of abortion care except in cases of rape or incest, or when the abortion is necessary to avert the death of the pregnant woman. *See* 18 Pa. C.S. § 3215(c) & (j).

[3] *Amici* are organizations that work to advance Reproductive Justice for Black women and girls. Centering those communities is not intended to exclude Black transgender and gender non-conforming Pennsylvanians who are also harmed by the Coverage Ban.

Pennsylvania's Medicaid program should redress, rather than entrench, such disparate harms.

Black women and girls in Pennsylvania – and throughout the U.S. – suffer from health disparities present in no other well-resourced nation in the world. These disparities affect Black women and girls regardless of socio-economic status, but are compounded for those who need publicly-funded health care. In a context where improving maternal and lifelong health of Black women and girls remains a struggle, singling out any health care – but especially reproductive health care – for a coverage ban is unconscionable. Instead of restricting access, the Commonwealth should ensure that health care is accessible to all.

Similarly, the Commonwealth should work to eliminate poverty. This includes ensuring living wages, increasing access to paid leave, providing decent child care options, and addressing structural race and gender discrimination that have led to shocking pay gaps and wealth disparities. Black women and girls in Pennsylvania are more likely to work in low-wage jobs; more likely to be paid less for the same work than their white and/or male counterparts; and far less likely to have the means to weather a financial blow to a family – like a costly health care need – than white women. This means they are more likely to rely on Medicaid, and less likely to be able to pay out-of-pocket for abortion care.

The Coverage Ban means that Black women and girls who need abortion care are forced to forego or delay it while they attempt to raise the money – sometimes giving up critical necessities – to cover the costs. If they are also an immigrant, or abused, or enduring additional discrimination because of their gender identity or sexual orientation, the challenges of obtaining needed abortion care are compounded. Delay or denial of abortion care threatens the well-being of the person who needs an abortion.

Disparate health risks for Black women and girls are even more obvious now. The COVID-19 pandemic has shown that structural discrimination uniquely exposes Black communities to economic strain, health inequities, and death. The pandemic has also increased the need for and the challenges of obtaining abortion care. During the pandemic, unintended pregnancies are likely to rise due to increased intimate partner violence and disruptions to contraceptive access caused by the loss of jobs and employer-based health insurance. And the pandemic has exacerbated the challenges of paying out-of-pocket for abortion care, underscoring the need for Medicaid coverage.

II. HEALTH DISPARITIES HARM BLACK WOMEN AND GIRLS.

a. Black people experience shocking health disparities.

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.

Centers for Disease Control and Prevention, *African American Health*, https://www.cdc.gov/vitalsigns/aahealth/infographic.html#graphic (last visited May 8, 2020). Black people experience serious illnesses earlier and have higher rates of morbidity than white people. *Id*. Put another way, "almost 100,000 Black persons die prematurely each year who would not have died if there were no racial disparities in health." David R. Williams and Selena Mohammed, *Discrimination and Racial Disparities in Health: Evidence and Needed Research*, 32 J. Behav. Med. 20 (2008).

Racial disparities are as severe in Pennsylvania, where Black people have worse health outcomes, shorter life expectancy, and higher death rates than white people. Office of Health Equity, *The State of Health Equity in Pennsylvania* 11 (Jan 2019), https://www.health.pa.gov/topics/Documents/Health%20Equity/The%20State%20of%20Health%20Equity%20in%20PA%20Report%20FINAL.pdf. These disparities have myriad causes, including lack of access to health care, race and gender discrimination, and geographic isolation. *Id*.; *see also* Elizabeth J. Brown et al., *Racial Disparities in Geographic Access to Primary Care in Philadelphia*, 14 Health Affairs 1 (2016) (finding "stark racial disparities" in access to primary care across Philadelphia neighborhoods). For Black women and girls, the impact of past policies – from redlining to school segregation – and current experiences of discrimination directly affect their health and well-being. *The State of Health Equity in Pennsylvania*, *supra* p. 22.

b. Black women in Pennsylvania are more likely to die from pregnancy-related causes.

The U.S. has worse maternal health outcomes than any other well-resourced nation. *See* Marcela Howell et al., *Addressing American's Black Maternal Health Crisis*, In Our Own Voice: National Black Women's Reproductive Justice Agenda 1 (2020), http://blackrj.org/wp-content/uploads/2020/04/6217-IOOV_Maternal_trifold.pdf (noting that "U.S. women are more likely to die from pregnancy-related complications than women in 45 other countries…"); *see also* Governor Tom Wolf, *Governor Wolf Signs Bill to Investigate Maternal Deaths* (May 9, 2018), https://www.governor.pa.gov/newsroom/governor-wolf-signs-bill-investigate-maternal-deaths/ (noting that Pennsylvania's maternal mortality rate has more than doubled since 1994). Disturbingly, the U.S. is "the only country with an advanced economy where the [maternal mortality rate] is getting worse." Pilar Herrero et al., *Black Mamas Matter: Advancing the Human Right to Safe and Respectful Maternal Health Care*, Black Mamas Matter Alliance 9 (2018), https://www.reproductiverights.org/sites/default/files/documents/USPA_BMMA_Toolkit_Booklet-Final-Update_Web-Pages.pdf. *Amici* note that true Reproductive Justice would mean that the Commonwealth would set its sights – and focus its policies – on ensuring that Black women and girls, and all pregnant people, have the same good maternal health outcomes as those successful nations (not merely achieving the same outcomes of their white American counterparts).

But as of this writing, Black women in the U.S. experience appalling disparities in maternal health. From 2011 to 2016, Black women were *three times* more likely than white women to die from pregnancy-related complications. Centers for Disease Control and Prevention, *Reproductive Health: Pregnancy Mortality Surveillance System*, https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Freproductivehealth%2Fmaternalinfanthealth%2Fpregnancy-mortality-surveillance-system.htm (last visited May 8, 2020). And they are twice as likely as white women to experience other severe pregnancy-related health complications. Howell et al., *Addressing America's Black Maternal Health Crisis*, *supra*, p. 1; *see also Black Mamas Matter*, *supra*, p. 21.

Pennsylvania fares no better: from 2011 to 2015, Black women in Pennsylvania died from pregnancy and childbirth at a rate more than three times that of white women. *See The State of Health Equity in Pennsylvania, supra.* Eleven percent of women in Pennsylvania are Black, yet Black women account for 31 percent of all pregnancy-related deaths. Mashayla Hays, *Let's Make Black Women's Maternal Mortality a Priority in PA*, Philadelphia Inquirer, (Dec. 20, 2018), https://www.inquirer.com/opinion/commentary/black-women-maternal-mortality-philadelphia-pennsylvania-20181220.html. In Philadelphia, Black women comprised three-quarters of all pregnancy-related deaths between 2010 and 2012.

Alexandra Grizos and Janet Weiner, *Eight Steps to Preventing Pregnancy-Related Mortality in Philadelphia*, Penn LDI (June 30, 2015), https://ldi.upenn.edu/eight-steps-preventing-pregnancy-related-mortality-philadelphia. These grossly disparate outcomes are attributable to several factors, including systemic racism within the health care system. *See, e.g.*, Hays, *supra* (explaining that Black women "struggle to find culturally competent and responsive doctors, all while navigating health care systems where racism is at play, and where black providers are underrepresented"); *see also Eight Steps*, *supra* ("most [maternal] deaths can be traced to coordination of care, access issues, and systemic inequities in health care and social services resources . . . ").

These disparities, and their underlying causes, are not indelible. There are numerous ways to promote health equity, including improving access to responsive, unbiased, community-influenced health care. *See, e.g.*, Cynthia Prather et al., *The Impact of Racism on the Sexual and Reproductive Health of African American Women*, 25 J. of Women's Health (2016), https://www.liebertpub.com/doi/10.1089/jwh.2015.5637 (explaining that "it is critical to examine how long-standing and even some contemporary statutes (i.e., welfare system, access to quality health care) ultimately impact the health and well-being of marginalized populations, including African American women."). But rather than promoting racial and gender equity, the Coverage Ban exacerbates these disparities for Black women and girls.

c. Barriers and gaps in contraceptive access increase Black women's and girls' risks of unintended pregnancy.

While all Medicaid beneficiaries are more likely to experience gaps in contraception use that increase the risk of unintended pregnancy, Black women and girls are disparately likely to experience those gaps, regardless of income level. Jennifer J. Frost et al., *Factors Associated with Contraceptive Use and Nonuse, United States, 2004*, 39 Perspectives on Sexual & Repro. Health 90 (2007), https://www.guttmacher.org/journals/psrh/2007/factors-associated-contraceptive-use-and-nonuse-united-states-2004. There are multiple reasons for this disparity, including funding cuts to programs that provide free and low-cost contraception; the expenses of obtaining contraception; and the dearth of reproductive health care providers in low-income communities and communities of color. *See, e.g.*, Alisa Von Hagel & Daniela Mansbach, Scholars Strategy Network, *The Abortion Barriers and Needs of Black Women* (Apr. 26, 2018), https://scholars.org/brief/abortion-barriers-and-needsblack-women. Black women and girls are also more likely to have had negative and racist encounters with medical providers, contributing to racial disparities in unintended pregnancies. *See* Christine Dehlendorf et al., *Racial/Ethnic Disparities in Contraceptive Use*, 210 Am. J. Obstet. Gynecol. 526e1 (2014).

National health care policy has, of late, made it harder for people to access contraceptive care. Millions of Americans rely on federally-funded providers for contraceptive care. *See* Blueprint for Sexual and Reproductive Health, Rights, and

Justice (July 2019), https://reproblueprint.org/wp-content/uploads/2019/07/BlueprintPolicyAgenda-v14-PR-All-1.pdf. The Trump Administration's rule prohibiting federally-funded providers from referring patients for abortion care has reduced funding to Planned Parenthood health centers, which provide contraceptive and other care to 41 percent of people who rely on such providers. *See* Physicians for Reproductive Health, *What is Title X? An Explainer*, https://prh.org/what-is-title-x-an-explainer/. Among the 3.9 million people served by such programs the previous year, Black women comprised 22 percent and people under age 30 comprised over 66 percent. Office of Population Affairs, *Title X Family Planning Annual Report Summary*, U.S. Dep't of Health & Human Services, https://www.hhs.gov/opa/title-x-family-planning/fp-annual-report/fpar-infographic/index-text-only.html (last visited May 5, 2020). Young Black women, then, are particularly vulnerable to losing access to contraceptive care because they are more likely to rely on federally-funded programs.

d. Health disparities are compounded for Black women and girls who are immigrants or survivors of sexual and intimate partner violence.

Economic insecurity and the need for Medicaid coverage for abortion care is exacerbated by the realities of peoples' complex identities. A person is not singularly a woman, low-income, Black, or an immigrant; they experience these identities

simultaneously.[4] They may have experienced sexual abuse or intimate partner violence; they may have lost a job because of discrimination based on their gender identity or sexual orientation. The intersection of these identities and experiences compounds the disparities that Pennsylvanians experience as a result of the Coverage Ban.

1. Black women and girls who are immigrants face additional barriers to health care access.

The health care experiences of Black women and girls who are immigrants, whether from African nations, the Caribbean, Europe, or other countries, are seriously under-studied. *See, e.g.*, Ogbonnaya Omenka et al., *Understanding the Health Care Experiences and Needs of African Immigrants in the United States: A Scoping Review*, 20 BMC Public Health 27 (2020) (immigrants to the U.S. from African countries are the "least-studied immigrant group"). However, it is well understood that immigrant women, especially those who are low-income and need language access, face significant barriers to health care. *See, e.g.*, Sheila Desai et al., *Characteristics of Immigrants Obtaining Abortions and Comparison with U.S.-Born Individuals*, 28 J. Women's Health 1505 (Nov. 2019). Those barriers impede access

[4] *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139 (1989).

to abortion care: the limited data indicates that the majority of immigrants needing abortion care were living near or at the poverty level. *Id*. at 1506.

Immigrants also face threats to their immigration status as reprisal for seeking medical care. *Id.* at 1505. Such threats have increased since the expansion of the federal "public charge" rule to include receipt of Medicaid. Adam Sonfield, et al., *'Public Charge' Rule: A Blatant Attack on Immigrants' Rights with Severe Reproductive Health Consequences*, Guttmacher Institute (Feb. 24, 2020), https://www.guttmacher.org/article/2019/10/public-charge-rule-blatant-attack-immigrants-rights-severe-reproductive-health. Even before that rule went into effect, the threat of immigration consequences prevented many immigrants from getting needed health care. Krista M. Perreira et al., *Barriers to Immigrants' Access to Health and Human Services Programs*, Office of the Assistant Secretary for Planning and Evaluation, Office of Human Services Policy, U.S. Dep't of Health and Human Services 11 (May 2012), https://aspe.hhs.gov/sites/default/files/pdf/76471/rb.pdf. Women of color immigrants are among the most likely to be deterred by the risk of immigration consequences. *See* Desai et al., *supra* at 1509 (immigrant women of color's access to reproductive health care is impeded because of the "pervasive history of racism and xenophobia in the [U.S.]").

2. Black women and girls who are survivors of sexual abuse and intimate partner violence face additional barriers to obtaining abortion care.

Black women and girls who are survivors of sexual abuse and intimate partner violence ("IPV") face increased risk of negative health outcomes, and unique barriers to obtaining reproductive health care.

a) Experiences of sexual abuse and assault are linked to negative health outcomes for Black women and girls.

In a landmark report, Black Women's Blueprint described the impact of sexual abuse and assault on the health and well-being of Black women in pregnancy and childbirth. Farah Tanis et al., *The Sexual Abuse to Maternal Mortality Pipeline*, Black Women's Blueprint (July 2019), https://drive.google.com/file/d/1S3qcOb0oCvYcAjttaldgwbH_ErwovSzd/view. The report found that nearly 70 percent of Black girls surveyed reported experiencing sexual violence before age 18. *Id*., p. 5. Those experiences have profound after-effects: Black women, girls, transgender, and gender non-conforming people who have experienced sexual abuse suffer health disparities later in life. *Id*., pp. 36-45. While calling for additional research, the report explains that trauma affects interactions with health care providers, making it more likely that survivors will delay seeking reproductive health care, or will be harmed when they do. *Id*.

b) Survivors of IPV face additional barriers to accessing health care.

Survivors of IPV are also harmed by the Coverage Ban because they face additional, abuser-generated obstacles to obtaining health care.

Nearly one in four U.S. women will experience severe IPV in her lifetime. S.G. Smith et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010-2012 State Report* 120 (2017). From 2008 – 2018, more than 1,600 Pennsylvanians died from domestic violence-related incidents. Pennsylvania Coalition Against Domestic Violence, *2018 Domestic Violence Fatality Report* 3 (2018), https://www.pcadv.org/wp-content/uploads/2018-Fatality-Report_web.pdf. IPV is an even more common experience for women of color: four in ten Black and Native American women, and one in two multiracial women, will be raped, physically assaulted, or stalked by an intimate partner in their lifetime. Michele C. Black et al., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* (2011), http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

Unintended pregnancy is a risk of IPV, as abusive partners frequently use "reproductive coercion" as a tool of control. Reproductive coercion describes conduct, ranging from rape to sabotaging birth control, that abusers use to force a partner to become pregnant. Elizabeth Miller et al., *Pregnancy Coercion, Intimate*

Partner Violence, and Unintended Pregnancy, 81 Contraception 316 (2010). Black young women and girls experience higher rates of reproductive coercion. Amber Hill et al., *Reproductive Coercion and Relationship Abuse Among Adolescents and Young Women Seeking Care at School Health Centers*, 134 Obstetrics & Gynecology 351, 357 (2019). Although reproductive coercion may take place in a non-violent relationship, in the context of IPV the prevalence is higher, the severity is higher, and the risk of unintended pregnancy is doubled. Jonel Thaller and Jill Theresa Messing, *Reproductive Coercion by an Intimate Partner: Occurrence, Associations, and Interference with Sexual Health Decision Making*, 42 Health & Soc. Work e11 (2016).

And when survivors of IPV become pregnant, abusers' conduct makes it harder for them to obtain abortion care. Abusers use a range of tactics to dominate and isolate a partner, including monitoring the survivors' activities and communications with others, Karla Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 S.M.U. L. Rev. 2117, 2126-27 (1993); restricting the survivor's access to financial resources, *see* Adrienne E. Adams, *Measuring the Effects of Domestic Violence on Women's Financial Well-Being*, CFS Research Brief 2011-5.6, at 1 (2011); and withholding funds to cover co-pays or to purchase a prescription, *see* Karen Oehme et al., *Unheard Voices of Domestic Violence Victims: A Call to Remedy Physician Neglect*, 15 Geo. J. Gender

& L. 613, 633 (2014). Public policy should counteract abuser-generated barriers to health care for IPV survivors, rather than impose additional barriers through the programs designed to ensure health care access.

III. BLACK WOMEN AND GIRLS EXPERIENCE ECONOMIC DISPARITIES THAT INCREASE THE NEED FOR COMPREHENSIVE MEDICAID COVERAGE.

In addition to health disparities, Black women and girls are more likely to experience economic disparities, necessitating their participation in Medicaid.

a. Black women and girls are more likely to rely on Medicaid.

Given the racial and gender disparities of economic insecurity, it is not surprising that Medicaid enrollees are disproportionately Black women and women of color. Indeed, 31 percent of Black women of reproductive age are enrolled in Medicaid, compared to only 16 percent of white women. Adam Sonfield, *Why Protecting Medicaid Means Protecting Sexual and Reproductive Health*, 20 Guttmacher Pol'y Rev. 39, 40 (2017). And 43 percent of non-elderly Black Pennsylvanians rely on Medicaid coverage, compared to only 16 percent of their white counterparts. *See* Kaiser Family Foundation, *Medicaid Coverage Rates for the Nonelderly by Race/Ethnicity*, https://www.kff.org/medicaid/state-indicator/rate-by-raceethnicity-3.

b. Black women experience higher rates of economic insecurity.

In Pennsylvania, 76 percent of the Black families living in poverty are headed by single women. *See* Marcela Howell and Michelle Batchelor, *Pennsylvania Fact Sheet*, In Our Own Voice, https://blackwomen.vote/wp-content/uploads/2018/09/Voices_Fact_Sheet_PA.pdf. National figures illuminate one of the reasons why: "less than one-third of black working mothers are eligible for and can afford unpaid leave through the Family Medical Leave Act." Jamila Tayler, et al, *Eliminating Racial Disparities in Maternal and Infant Mortality: A Comprehensive Policy Blueprint*, Center for American Progress 65 (May 2, 2019), https://cdn.americanprogress.org/content/uploads/2019/04/30133000/Maternal-Infant-Mortality-report.pdf. Without access to paid leave, Black women with caregiving responsibilities spend approximately 41 percent of their annual incomes on caregiving expenses, while white men and women with caregiving responsibilities spend just 14 percent of their annual incomes on such expenses. *Id*.

Black and multiracial women have the highest labor force participation rate; however, at all educational levels, Black women are concentrated in lower-paying jobs. *See* Asha DuMonthier et al., *The Status of Black Women in the United States: Executive Summary* ix (2017), http://statusofwomendata.org/wp-content/uploads/2017/06/SOBW_ExecutiveSummary_Digital-2.pdf. Regardless of the job they hold, pay inequity for Black women is stark; as of 2014, Black women

who worked full-time, year-round earned only 64 cents for every dollar earned by white men in comparable roles. *Id.*

Black women's economic insecurity in Pennsylvania is at least as prevalent. Philadelphia is the most impoverished among the ten largest cities in the U.S. Pew Charitable Trusts, *Philadelphia's Poor: Who they Are, Where They Live, and How that has Changed* (2017) https://www.pewtrusts.org/-/media/assets/2017/11/pri_philadelphias_poor.pdf. Nearly half of all low-income Philadelphians live in deep poverty (meaning incomes less than half the poverty level). *Id.* Black Philadelphians account for approximately half of Philadelphia's low-income residents. *Id.* And among 44 metro areas with populations of at least 100,000 Black women, Pittsburgh ranked third to last in Black women's economic outcome. Notably, it ranked *last* in health outcomes for Black women. *See* Brentin Mock, *What 'Livability' Looks Like for Black Women*, City Lab (Jan. 9, 2020), https://www.citylab.com/equity/2020/01/best-cities-black-women/604384/.

But it is not only pay inequity that disadvantages Black women. Wealth, or net worth, is also critical to economic security. *See* Insight Center for Community Economic Development, *Lifting as We Climb: Women of Color, Wealth, and America's Future* (Spring 2010), http://ww1.insightcced.org/uploads/CRWG/LiftingAsWeClimb-WomenWealth-Report-InsightCenter-Spring2010.pdf. Without assets that outweigh debt, a family

may be one paycheck – or one health care crisis – away from poverty. *Id*., p. 5. While the median wealth for single white women ages 18-64 in 2007 was $41,500, the median wealth for single Black women in that same age range was only $100. *Id*., p. 7. Nearly half of single Black women had negative wealth. *Id*., p. 8. This is because "half of all single black and Hispanic women could not afford to take an unpaid sick day or to even have a major appliance repaired without going into debt." *Id*. For Black women facing such tight economic margins, the Coverage Ban may make abortion care entirely out of reach, or economically devastating to obtain.

c. LGBTQ-GNC people – including Black LGBTQ-GNC people – are also disparately likely to live in poverty.

Lesbian, gay, bisexual, transgender, queer, and gender non-conforming (LGBTQ-GNC) people are more likely to live in poverty than heterosexual and cisgender people. M.V. Lee Badgett et al., Williams Inst., *New Patterns of Poverty in the Lesbian, Gay, and Bisexual Community* 2 (2013); *see also* Jennifer Russomanno et al., *Food Insecurity Among Transgender and Gender Non-conforming Individuals in the Southeast United States: A Qualitative Study*, 4 Transgender Health 89 (2019). The disproportionality of poverty is even more drastic among bisexual women and transgender individuals, whose respective poverty rates of 30 and 29 percent are nearly double that of the general population. Badgett et al., *supra*, p. 2; Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* 144 (2016), http://www.ustranssurvey.org/reports. Here, racial

disparities are present as well: Black people in same-sex couples are at least six times more likely than white men in same-sex couples and two times more likely than Black people in different-sex marriages to have low incomes. *Id*.

Unintended pregnancy is more common among bisexual women than it is among heterosexual women. Bethany G. Everett et al., *Sexual Orientation Disparities in Mistimed and Unwanted Pregnancy Among Adult Women*, 49 Perspectives on Sexual & Repro. Health 157, 161 (2017). It is reasonable to presume that bisexual women end unintended pregnancies at a rate consistent with the national average. Caroline S. Hartnett et al., C*ongruence across Sexual Orientation Dimensions and Risk for Unintended Pregnancy Among Adult U.S. Women*, Women's Health Issues (2016). And, because an estimated 1.2 million LGBTQ adults are enrolled in Medicaid, Kerith J. Conron & Shoshana K. Goldberg, Williams Inst., *LGBT Adults with Medicaid Insurance* 1 (Jan. 2018), it follows that LGBTQ-GNC enrollees – including Black women, girls, transgender, and GNC people – will need Medicaid coverage for abortion care.

d. People living in poverty – including Black women and girls – are more likely to need abortion care.

The Coverage Ban is particularly pernicious when the people denied care are those facing the worst health outcomes. A national review of individuals seeking

financial assistance[5] for abortion care in the absence of Medicaid or other forms of coverage revealed that the majority were Black women. J. Kotting & G.E. Ely, *The Undue Burden of Paying for Abortion: An Examination of Abortion Fund Cases* 2 (2017), https://abortionfunds.org/cms/assets/uploads/2017/08/Tiller-Fund-Report-2017-National-Network-of-Abortion-Funds.pdf. In Southeastern Pennsylvania, a staggering 85 percent of people seeking financial assistance for abortion care in 2019 identified as Black or Latinx; of those, more than half were living in deep poverty. Women's Medical Fund, *Impact*, https://www.womensmedicalfund.org/impact (last visited May 8, 2020). Absent the Coverage Ban, the majority of people seeking funding support – 62 percent – would have had coverage for abortion care. *Id.*

Yet, those with the least access to abortion care are most likely to need it. *See generally* WMF Needs Assessment. Three-fourths of all abortion patients in 2014 were low-income, and people with incomes less than 100 percent of the federal poverty level accounted for almost half of all abortion patients. Rachel K. Jones &

[5] Non-profit organizations provide financial assistance to low-income people seeking abortion care. *See generally* Declaration of Elicia Gonzales. Each year, in Southeastern Pennsylvania alone, approximately 6,300 people need assistance paying for abortion care because of the Coverage Ban. *See* Women's Medical Fund, *People Who Cannot Afford an Abortion in Southeastern Pennsylvania: A Needs Assessment* (2019), https://www.womensmedicalfund.org/resources (hereinafter "WMF Needs Assessment"). But demand far exceeds available funds. *See* Declaration of Elicia Gonzales (WMF is never able to cover the entire cost of an abortion).

Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 Am. J. of Pub. Health 1904 (Dec. 2017).

Lower income is correlated with unintended pregnancy. In 2011, the rate of unintended pregnancy among women with incomes less than 100 percent of the poverty level was more than five times that of women with incomes at or above 200 percent of the poverty level. Guttmacher Institute, *Unintended Pregnancy in the United States* (Jan. 2019), https://www.guttmacher.org/fact-sheet/unintended-pregnancy-united-states; Lawrence B. Finer & Mia R. Zolna, *Declines in Unintended Pregnancy in the United States*, 2008–2011, 374 New Eng. J. Med. 843 (2016). This correlation is not surprising, since Medicaid beneficiaries, who are by definition low-income, are more likely to experience gaps in contraception use that put them at higher risk of unintended pregnancy than those with other insurance. Jennifer J. Frost et al., *supra*.

IV. THE IMPORTANCE OF MEDICAID COVERAGE OF ABORTION CARE FOR BLACK WOMEN AND GIRLS.

Having a lower income makes it more challenging to raise a child. Approximately 73 percent of respondents in a national survey indicated that they sought abortion care because they could not afford to have a child. Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37 Perspectives on Sexual & Repro. Health 110 (2005). Most people who seek abortion care are already parents; almost 60 percent are parenting at least

one child, and one-third have two or more children. *See* Jerman et al., *supra*, *Characteristics of U.S. Abortion Patients*. Yet, the same financial constraints that increase the need for abortion care also make it harder to access it – necessitating Medicaid coverage of abortion care.

a. Out-of-pocket costs for abortion services are prohibitively high for low-income people.

In 2014, the mean cost of an abortion at 10 weeks of pregnancy was $500, and $1,195 at 20 weeks. Guttmacher Institute, *Medicaid Funding of Abortion* (Jan. 2020), https://www.guttmacher.org/evidence-you-can-use/medicaid-funding-abortion. The cost of abortion care in Pennsylvania reaches upwards of $3,500. *See* Petition for Review, Declaration of Elicia Gonzales ("Declaration of Elicia Gonzales").

These are not expenses that people can simply absorb. More than half of respondents to a national survey reported that out-of-pocket costs for abortion represented more than one-third of their monthly income. Sarah C.M. Roberts et al., *Out-of-Pocket Costs and Insurance Coverage for Abortion in the United States*, 24 Women's Health Issues 211 (2014). Many people do not have the resources to handle an emergency expense of this magnitude – a 2016 national survey found that over 40 percent of adults said they could not cover an emergency expense of $400, or would cover it by selling something or borrowing money. *See* Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S.*

Households in 2016 (May 2017), https://www.federalreserve.gov/publications/files/2016-report-economic-well-being-us-households-201705.pdf. As noted, more than half of single Black women have negative wealth and could not absorb such an emergency expense, or would be forced into debt to do so.

Moreover, the out-of-pocket costs for abortion services do not include the costs of obtaining that care, including travel, overnight stays, and childcare. *See* Terri-Ann Thompson & Laura Fix, All* Above All and Ibis Reproductive Health, *Research Brief: The Impact of Out-of-pocket Costs on Abortion Care Access* (Sept. 2016), https://www.ibisreproductivehealth.org/publications/research-brief-impact-out-pocket-costsabortion-care-access. For many Pennsylvanians, these added costs are unavoidable: approximately 85 percent of Pennsylvania counties lack a clinic that provides abortion services, substantially increasing the financial burden for people who need to travel to seek abortion care. *See* Rachel K. Jones et al., *Abortion Incidence and Service Availability in the United States, 2017*, Guttmacher Institute (2019), https://www.guttmacher.org/sites/default/files/report_pdf/abortion-incidence-service-availability-us-2017.pdf. Indeed, nearly half the women in Pennsylvania live in counties with no abortion clinic. *Id.; see also* Usha Ranji, et al., Kaiser Family Foundation, *Beyond the Numbers: Access to Reproductive Health Care for Low-Income Women in Five Communities*, https://www.kff.org/report-

section/beyond-the-numbers-access-to-reproductive-health-care-for-low-income-women-in-five-communities-erie-county-pa/ (there are no clinics providing abortion care in Erie County, so people must travel at least 100 miles to Pittsburgh, New York, or Ohio).

b. Delay in abortion care may increase costs and risks.

Low-income people are often forced to carry unwanted pregnancies longer while they attempt to obtain funds for abortion care. *See* Rachel K. Jones & Jenna Jerman, *Characteristics and Circumstances of U.S. Women Who Obtain Very Early and Second-Trimester Abortions*, 12 PLoS One (2017); Rachel K. Jones et al., *At What Cost? Payment for Abortion Care by U.S. Women*, 23 Women's Health Issues e173 (2013). To raise necessary funds, low-income people must often forego necessities, sell possessions, or obtain exploitative payday or other loans. *See* Amanda Dennis et al., *Does Medicaid Coverage Matter? A Qualitative Multi-State Study of Abortion Affordability for Low-income Women*, 25 J. Health Care for the Poor and Underserved 1571 (2014). Yet even when they make those sacrifices, low-income Pennsylvanians may *still* be unable to cover the full cost of abortion care. *See generally* Declaration of Elicia Gonzales.

Those who eventually raise the funds may end up paying *more* for abortion care because of delays necessitated by costs and travel. It is expensive to be poor. Approximately 11.3 percent of people who have abortions do so after 13 weeks

gestation because of these costs. *See* WMF Needs Assessment. The Women's Medical Fund estimates that in Southeastern Pennsylvania *alone* that means that *at least* 718 abortions – 11.3 percent of the number of abortions among Medicaid-eligible women of childbearing age – are pushed until the second trimester each year due to difficulty obtaining funds. *Id.* Low-income women may be forced to go three weeks longer to obtain an abortion than those who have abortion coverage, even though 67 percent of low-income women seeking abortion care report that they would have preferred to have the service earlier. *Id.*

The delay in obtaining funds for abortion care also means that people are later in pregnancy when they finally have the money; however, the later in pregnancy, the higher the cost of abortion care itself. *Id.* Those costs include health risks: while risks of later abortion are still very low, they are higher than abortions provided during the first trimester. *See* Suzanne Zane et al., *Abortion-Related Mortality in the United States: 1998-2010,* 126 Obstet. & Gynecol. 258 (2015).

And the longer the delay, the more likely a person is to have to forego an abortion and carry a pregnancy to term. Nationally, over 4,000 pregnant people each year are unable to obtain abortion care before they reach gestational limits. Ushma D. Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits in the United States,* 104 Am. J. Pub. Health 1687 (2014). The most common reason for being unable to obtain care in time was the cost associated with the procedure

and travel. *Id.* Pennsylvania generally does not permit abortions after 24 weeks, so pregnant people who have to delay abortion to gather funds are likely to be denied outright after that point. *See* Guttmacher Institute, *State Bans on Abortion Throughout Pregnancy* (Apr. 1, 2020), https://www.guttmacher.org/print/state-policy/explore/state-policies-later-abortions.

c. Having to forego abortion care has significant harmful consequences.

As shown, Black women and girls face structural inequities that, until they are redressed, increase their vulnerability to economic and health disparities. The very disparities that make them more likely to need Medicaid coverage and to lack funds to pay out-of-pocket for abortion care are the same disparities that increase the likelihood of unintended pregnancy and the need for abortion care. Not getting a needed abortion can make these disparities – from increased economic insecurity to negative health outcomes – worse.

For people living in poverty – disproportionately Black women and girls – not getting the abortion they need increases their risk of remaining in long-term poverty. One study demonstrated that women who sought but were unable to obtain abortion care were almost four times more likely to live below the federal poverty line than women who received abortion care – a difference that persisted over four years. Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 Am. J. Pub.

Health 407 (2018). This is unsurprising, because getting needed abortion care enables people to achieve significant life goals related to education, employment, and relocating. *Id.; see also* Ushma D. Upadhyay et al., *The Effect of Abortion on Having and Achieving Aspirational One-Year Plans*, 15 BMC Women's Health 102 (Nov. 2015).

Ongoing poverty is not the only risk. The risk of death associated with carrying a pregnancy to term is 14 times higher than the risk of an abortion. *See* Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstet. & Gynecol. 215 (2012). In one study, researchers found that potentially life-threatening complications were *only* experienced by patients denied abortions and forced to carry pregnancies to term – not by those who received abortion care. *See* Caitlin Gerdts et al., *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth after an Unwanted Pregnancy*, 26 Women's Health Issues 55, 57 (2016), https://www.whijournal.com/article/S1049-3867(15)00158-9/fulltext. These general statistics do not take into account that Black women and girls are disproportionately likely to die or experience serious complications in pregnancy, as discussed above.

For all people, including Black women and girls, who are experiencing IPV, policies like the Coverage Ban heighten vulnerability to abuse. *See* Sarah C.M.

Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC Med. 1 (Sept. 2014), https://bmcmedicine.biomedcentral.com/track/pdf/10.1186/s12916-014-0144-z. Pregnant women experience high rates of intimate partner violence that is often severe, frequently resulting in serious injuries. Beth A. Bailey, *Partner Violence During Pregnancy: Prevalence, Effects, Screening, and Management*, 2 Int'l J. Women's Health 183 (2010), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2971723/; Julie A. Gazmararian et al., *Prevalence of Violence Against Pregnant Women*, 275 JAMA 1915, 1918 (1996). Homicide may also be a risk: Black women and very young women are most likely to be murdered during pregnancy. Jeani Chang et al., *Homicide: A Leading Cause of Injury Deaths Among Pregnant and Postpartum Women in the United States, 1991-1999*, 95 Am. J. Pub. Health 471, 473 (2005), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1449204.

Further, survivors of IPV may be trapped in violent relationships if they cannot access abortions when they seek them. *See* Roberts, *Risk of Violence* (between six and 22 percent of abortion patients report recent violence from an intimate partner). For people in abusive relationships who sought abortions but were denied them, having a baby with the abuser resulted in ongoing violence, measured over the course of two and one-half years after the pregnancy. *Id*. Conversely,

"having an abortion was associated in a reduction over time in physical violence" from the abuser involved in the pregnancy. *Id.*

In short, the Coverage Ban exposes people needing abortions – especially Black women and girls – to additional serious harms.

V. THE COVID-19 PANDEMIC HAS HIGHLIGHTED AND WORSENED RACIAL AND ECONOMIC DISPARITIES, WHILE INCREASING BOTH THE NEED FOR ABORTION CARE AND THE CHALLENGES OF ACCESSING IT.

The COVID-19 pandemic has highlighted racial health care disparities and the importance of publicly-funded health care. It has also increased both the likelihood that people will need abortion care and the challenges of obtaining that care.

a. COVID-19 has dramatically increased economic insecurity.

Unemployment rates skyrocketed as the pandemic spread across the U.S. – upwards of 26 million people filed claims for unemployment in the five weeks preceding April 23, 2020. Patricia Cohen, New York Times, *Jobless Numbers Are 'Eye-Watering' but Understate the Crisis* (Apr. 23, 2020), https://www.nytimes.com/2020/04/23/business/economy/unemployment-claims-coronavirus.html. Pennsylvania saw one of the largest percentages of job cuts, with one in six workers losing their jobs. *See* Nigel Chiwaya and Jiachuan Wu, *The Coronavirus has Destroyed the Job Market in Every State*, https://www.nbcnews.com/business/economy/unemployment-claims-state-see-

how-covid-19-has-destroyed-job-n1183686 (Apr. 14, 2020). Low-wage workers are especially vulnerable to layoffs, with restaurant and retail workers most at risk. *See, e.g.*, Martha Ross and Nicole Bateman, Brookings Institute, *COVID-19 Puts America's Low-Wage Workforce in an Even Worse Position* (Mar. 19, 2020), https://www.brookings.edu/blog/the-avenue/2020/03/19/covid-19-puts-americas-low-wage-workforce-in-an-even-worse-position/.

For low-wage workers still employed, many have jobs that put them put them at risk of exposure to COVID-19. Nearly two-thirds of pandemic frontline workers are women, overrepresented in the health care system and in frontline industries. Center for Economic Policy Research, *A Basic Demographic of Workers in Frontline Industries*, https://cepr.net/a-basic-demographic-profile-of-workers-in-frontline-industries/ (Apr. 7, 2020). People of color are overrepresented in health care (except registered nurses, physicians, managers, and administrators), and most occupations in trucking, warehouse, and postal service fields. *Id.* Immigrant workers are overrepresented in the home health aide field. *Id.*

The risks faced by these workers are compounded by lack of paid sick leave, childcare responsibilities, and reliance on public transportation. *See, e.g.*, Elise Gould, Economic Policy Institute, *Amid Covid-19 Outbreak, the Workers who Need Paid Sick Days the Most Have the Least* (Mar. 9, 2020), https://www.epi.org/blog/amid-covid-19-outbreak-the-workers-who-need-paid-

sick-days-the-most-have-the-least/. Although Philadelphia had paid sick leave protections in place before the pandemic, *see* City of Philadelphia, *Working & Jobs*, https://www.phila.gov/services/working-jobs/paid-sick-leave/ (last visited May 12, 2020), and Pittsburgh's protections took effect March 15, 2020, *see* Pittsburgh Office of Equity, *Paid Sick Days Act*, https://pittsburghpa.gov/mayor/paidsickleave (last visited May 12, 2020), Pennsylvanians have no statewide protections. *See, e.g.*, Pennsylvania Department of Labor and Industry, *General Wage and Hour Questions*, https://www.dli.pa.gov/Individuals/Labor-Management-Relations/llc/Pages/Wage-FAQs.aspx (last visited April 15, 2020).

A. COVID-19 exposes and exacerbates health disparities.

Not only are women of color more likely to work in low-wage jobs directly affected by COVID-19, Black people are more likely than white people to become ill and die of COVID-19, likely the result of disparities rooted in structural and systemic racism, economic inequality, and depletion of resources for publicly funded health centers. *See* Anna North, Vox, *Every Aspect of the Coronavirus Pandemic Exposes America's Devastating Inequalities* (Apr. 10, 2020), https://www.vox.com/2020/4/10/21207520/coronavirus-deaths-economy-layoffs-inequality-covid-pandemic; *see also* Harvard T.H.Chan School of Public Health, *COVID-19 Pandemic Highlights Longstanding Health Inequities in U.S.*, https://www.hsph.harvard.edu/news/hsph-in-the-news/covid-19-pandemic-

highlights-longstanding-health-inequities-in-u-s/ (last visited May 11, 2020). For Black women and girls who are also immigrants, accessing health care remains a risk: immigrants report that they are reluctant to seek testing or virus-related care out of concerns for their immigration status. *See* Miriam Jordan, New York Times, *We're Petrified: Immigrants Afraid to Seek Medical Care for Coronavirus* (Apr. 10, 2020), https://www.nytimes.com/2020/03/18/us/coronavirus-immigrants.html. For survivors of IPV, including Black women and girls, the pandemic has brought added risks – since the institution of stay-at-home orders, IPV has increased worldwide. *See, e.g.*, Amanda Taub, *A New Covid-19 Crisis: Domestic Abuse Rises Worldwide*, New York Times (Apr. 2020), https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html. And the economic consequences of the pandemic affect IPV survivors as well. "[T]he loss of work and income resulting from this public health crisis can mean the difference between safety and independence and life with an abuser." Pennsylvania Coalition Against Domestic Violence, *Coronavirus and COVID-19 Resources*, https://www.pcadv.org/coronavirus-covid-19-resources.

b. Access to coverage for abortion care is critical during COVID-19.

The COVID-19 pandemic is imposing unprecedented financial strains on all people, including Black women and girls. As a result of this unprecedented job loss, many people will lose access to health insurance, and Medicaid enrollment will

likely increase. *See generally* Robin Rudowitz, Kaiser Family Foundation, *COVID-19: Expected Implications for Medicaid and State Budgets* (Apr. 3, 2020), https://www.kff.org/coronavirus-policy-watch/covid-19-expected-implications-medicaid-state-budgets/. Even for people with health coverage, stay-at-home orders make it harder to get contraceptive care, and increase the likelihood of unintended pregnancies. Increased IPV is also likely to lead to more forced pregnancies.

Thus, the pandemic has only exacerbated the need for accessible abortion care and the difficulties in obtaining the funds necessary to pay out-of-pocket for the service and its attendant costs. Preventing Black women and girls in Pennsylvania who need abortions from getting the care they need is harmful and undermining of public health at any time; maintaining the Coverage Ban now, during a global pandemic, is unconscionable.

CONCLUSION

The Coverage Ban violates the Pennsylvania Constitution, and particularly harms Black women and girls. Accordingly, *Amici* urge this Court to overrule the preliminary objections of Respondents and Intervenors, and state that the Coverage Ban violates the Pennsylvania Constitution's guarantees of equality.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 127

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

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APPENDIX A

INDIVIDUAL STATEMENTS OF *AMICI CURIAE* ORGANIZATIONS

Alliance for Police Accountability

The Alliance for Police Accountability (APA) is a grassroots organization in Pittsburgh dedicated to criminal justice reconstruction, specializing in community/police relations. It is the mission of the APA to bring the community, police, and government officials to a working relationship and put an end to racial profiling, police brutality, and injustice within the criminal legal system through advocacy, education, and policy. We believe that healthcare is a human right and we believe in the importance of healthcare coverage that people, especially the most vulnerable, actually need. Equitable access to healthcare is imperative.

Black Women for Wellness

Black Women for Wellness (BWW) is a multi-generational, grassroots community-based organization committed to uplifting the well-being of Black women and girls. Black women and girls experience staggering barriers to good health contributing to poor health status, increased morbidity, and premature death. BWW, based in California, engages with many diverse stakeholders, including public and private health insurance, toward increasing our community's access to quality health care that will impact and influence our health status. Public health access is essential, reproductive health access is critical, and abortion is an

important element of reproductive health. Public health insurance covering this essential, critical and important service for Black women is absolutely needed.

Black Women's Health Imperative

BWHI is a national non-profit organization that helps to protect and advance the health and wellness of Black women and girls. Since 1983, we have been the only national organization dedicated solely to improving the health and wellness of our nation's Black women and girls – physically, emotionally and financially. Our mission is to lead the effort to solve the most pressing health issues that affect Black women and girls in the United States. Through investments in evidence-based strategies, we deliver bold new programs and advocate health-promoting policies. BWHI continues to be dedicated to promoting physical, mental and spiritual health and well-being for the nation's 21 million African American women and girls.

Center for Women's Health Research and Innovation

The Center for Women's Health Research and Innovation at the University of Pittsburgh strives to elevate the state of women's health and health care by fostering innovation in research, education, and clinical practice. We are particularly interested in producing, supporting, and implementing evidence-based strategies to advance health equity. Our vision is to elevate the state of women's health by fostering innovation in research, education, and clinical practice. Our work focuses on women's health across the lifespan and includes adolescent

health, contraception, preconception and prenatal health care, lactation, and the menopausal transition. Expanding Medicaid coverage to include abortion care is one such strategy that will enhance access to this critical component of reproductive health care among socially and economically marginalized populations.

Gwen's Girls

Promoting and advocating for the health and well-being of Black women and girls is essential to the mission of Gwen's Girls. Gwen's Girls is a non-profit organization based in Pittsburgh. Our vision is one of girls becoming self-sufficient adults, equipped with the capacity to continuously evolve emotionally, physically, and spiritually; build strong family units; develop a strong support system; and contribute to community life. We agree that all women and girls should have a full range of access to healthcare and Medicaid is the predominant source of healthcare for Black people in Pennsylvania.

Healthy Start, Inc.

Healthy Start Inc. supports women, children, fathers, families and communities through comprehensive community-based programming, systems coordination, advocacy, research and training. The mission of Healthy Start Pittsburgh is to improve maternal and child health and to reduce poor birth outcomes and infant mortality in our region. Our programming spans Allegheny and Westmoreland

Counties. We are part of a network of more than 100 community-based Healthy Start projects across the United States. Our goal is to make sure all families have access to affordable, quality care to improve maternal and child health outcomes and quality of life.

In Our Own Voice: National Black Women's Reproductive Justice Agenda

In Our Own Voice: National Black Women's Reproductive Justice Agenda is a national-state partnership of eight Black women's Reproductive Justice organizations including: Black Women for Wellness, Black Women's Health Imperative, New Voices for Reproductive Justice, SisterLove, Inc., SisterReach, SPARK Reproductive Justice NOW!, Inc., The Afiya Center, and Women With a Vision. In Our Own Voice provides a platform for Black women to speak for themselves and present a proactive strategy for advancing reproductive justice, which includes eliminating restrictions that deny insurance coverage for abortion care at the state and federal levels.

Let's Get Free: The Women & Trans Prisoner Defense Committee

Let's Get Free: The Women and Trans Prisoner Defense Committee is a Pennsylvania group that educates and organizes around issues of prison injustice, addressing policies, contributing factors and collateral consequences of mass incarceration, as well as envisioning new systems of transformative justice and

healing. We prioritize the experiences of women and trans prisoners. We believe that abortion is health care.

Mary's Daughter For the Formerly Incarcerated

Mary's Daughter for the Formerly Incarcerated (MDFI) is an advocacy-based Pennsylvania non-profit serving as an intersectional platform for currently and formerly incarcerated Black womxn, trans, and non-binary people of color. MDFI advocates on behalf of directly impacted individuals, while uplifting their experiences through ARTivism(activist art). We believe that all women need access to abortion care.

National Asian Pacific American Women's Forum

The National Asian Pacific American Women's Forum (NAPAWF) is the leading national multi-issue community organizing and policy advocacy organization for Asian American and Pacific Islander (AAPI) women and girls in the United States. NAPAWF's mission is to build collective power of all AAPI women and girls to gain full agency over our lives, our families, and our communities. NAPAWF advocates and organizes with a reproductive justice framework that acknowledges the diversity within our community and ensures that different aspects of our identity – such as ethnicity, immigration status, education, sexual orientation, gender identity, and access to health – are considered in tandem when addressing our social, economic, and health needs. Our work includes advocating for the

reproductive rights and health care needs of AAPI women and ensuring AAPI women's access to sexual and reproductive health care services.

New Voices for Reproductive Justice

New Voices for Reproductive Justice ("New Voices") is a Pennsylvania non-profit organization that works through leadership development, community organizing, policy advocacy, and culture change to amplify the voices of Black women and girls, who demand and deserve access to quality and culturally responsive health care. New Voices was instrumental in the passage of the Affordable Care Act, its implementation in Pennsylvania, and the expansion of Medicaid in Pennsylvania.

Comprehensive health care access is critical in Pennsylvania, where health care outcomes for Black women and girls are abysmal by every measure, from life expectancy to maternal health. These health disparities impact Black Pennsylvanians not because of an inherent problem with Black people – as has been asserted for over 150 years – but because of historical, intersectional race and gender oppression. Medicaid restrictions, like the coverage ban at issue here, are an ongoing legacy of that discrimination and stigma. These restrictions undermine Reproductive Justice – the human right to control our bodies, sexuality, gender, work, reproduction, and ability to form our families.

New Voices and all *amici* share the goal that Black women and girls live long, healthy, and joyful lives – goals that are impeded when Medicaid restrictions relegate Black women and girls to second-class citizenship in health care.

Oshun Family Center

Oshun Family Center is a Pennsylvania non-profit organization, birthed from an experience by the founder, Saleemah J. McNeil. She suffered a traumatic birth in 2006 while delivering her son. From suffering severe preeclampsia to an emergency c-section, Saleemah has worked hard to recover from this experience. Our mission at Oshun Family Center is to fight the stigma of mental health by providing culturally sensitive services to women, children and families impacted by perinatal mood and anxiety disorders in minority communities. It is our vision to charge constituents, legislators, policy makers and stake holders to raise awareness and advocate for Black maternal health. Abortion care is maternal care – therefore it is our priority to support causes and legislation that understand the importance of being inclusive.

Pittsburgh Action Against Rape

Pittsburgh Action Against Rape (PAAR) has been serving the Pittsburgh community for more than 43 years through advocacy, counseling, prevention and education. PAAR's mission is to Respond, Advocate and Educate to end sexual violence. Since its inception in 1972, PAAR has a rich history of providing

knowledge, skill-building and support for every member of our community. We are dedicated to assisting victims of sexual abuse and ending sexual violence in our community.

SisterLove, Inc.

SisterLove, Inc. is an Atlanta-based HIV/AIDS and reproductive justice nonprofit service organization focusing on women, particularly women of African descent. SisterLove's mission is to eradicate the adverse impact of HIV/AIDS and other sexual and reproductive oppressions upon all women, their families, and their communities. The organization seeks to educate and empower youth and women of color to influence the laws and policies that disparately impact them.

SisterReach

SisterReach, founded in 2011, is a Memphis, Tennessee based grassroots non-profit supporting the reproductive autonomy of women and teens of color, poor and rural women, LGBT+ and GNC folx, and their families through the framework of Reproductive Justice. Our mission is to empower our base to lead healthy lives, raise healthy families and live in healthy and sustainable communities. We work from a four-pronged strategy of education, policy and advocacy, culture shift, and harm reduction.

SisterSong Women of Color Reproductive Justice Collective

SisterSong Women of Color Reproductive Justice Collective (SisterSong) is a Southern-based national organization working to strengthen and amplify the voices of Indigenous women and women of color to achieve Reproductive Justice by eradicating reproductive oppression and securing human rights for all people. Reproductive Justice is a social movement based in Black feminist theory and the human rights framework that centers the right to have children, the right to not have children, the right to parent our children in safe environments with the appropriate social supports, and the right to bodily autonomy. As such, we fight for all people's access to the information, resources, and services they need to make decisions for their lives and their families.

SPARK Reproductive Justice NOW!, Inc.

Founded in 2007 by two Queer women of Color, SPARK Reproductive Justice NOW works to build and strengthen the power of our communities and a reproductive justice movement that centers Black women, women of Color, and Queer & Trans young People of Color in Georgia and the South. SPARK's mission is to build new leadership, change culture, and advance knowledge in Georgia and the South to ensure individuals and communities have resources and power to make sustainable and liberatory decisions about our bodies, gender, sexualities, and lives. SPARK envisions a world where economic, social and cultural equity, restorative

justice, body autonomy, and comprehensive reproductive and sexual freedom exists; where all people are empowered, valued, and able to make liberatory decisions about their communities, families, and lives. SPARK works to ensure the liberation of all people, but our analysis is specifically anchored in the historical lasting legacy of the enslavement and exploitation of Black people in the South, a legacy that includes economic disenfranchisement, racial inequality, and reproductive oppression. We foster a dynamic, collaborative model of advocacy, leadership development, collective action, and discourse that creates change and impact for Black women and Queer folx's struggles for reproductive justice.

The Afiya Center

The Afiya Center (TAC) was established in response to the increasing disparities between HIV incidences worldwide and the extraordinary prevalence of HIV among Black women and girls in Texas. TAC is unique in that it is the only Reproductive Justice (RJ) organization in North Texas founded and directed by Black women. TAC believes that reproductive justice is a platform to create advocacy that is informed, self-actualized, and protects women's reproductive health, rights, and justice. Our mission is to serve Black women and girls by transforming their relationship with their sexual and reproductive health through addressing the consequences of reproduction oppression. As an organization that commits itself to serving Black women and non-binary folk, we are committed to ensuring that

all segments of the community have access to full reproductive healthcare access. We believe that includes access through Medicaid coverage for abortion care. We do not want the lives, families and futures of Black women and non-binary folk to be thwarted because they do not have access to resources.

The Midwife Center for Birth & Women's Health

The Midwife Center for Birth & Women's Health (TMC) has offered primary gynecological care, prenatal care, and childbirth services to individuals of all ages since 1982. TMC promotes wellness by providing exceptional, client-centered primary gynecological, pregnancy and birthing care in southwestern Pennsylvania's only independent birth center. TMC focuses outreach efforts on communities who experience poor health outcomes in order to have a more significant impact on improving the health of people in our region.

The Opportunity Fund

The Opportunity Fund is a Pittsburgh-based foundation that, among other things, supports reproductive freedom. Opportunity Fund awards grants to small and midsize arts organizations and initiatives that advance social and economic justice, including those that champion reproductive freedom. At least 75% of our grants are awarded to projects that benefit the Greater Pittsburgh Community. Without coverage for abortion under Medicaid, women must pay out-of-pocket for the procedure and, for many low-income women, the lack of Medicaid coverage for

abortion effectively becomes an abortion ban. Adding a racial justice lens, Medicaid is the predominant source of healthcare for Black people in Pennsylvania. The lack of Medicaid funding for abortion care disproportionately restricts Black people from accessing their legal right to an abortion.

The Pennsylvania Immigration and Citizenship Coalition

The Pennsylvania Immigration and Citizenship Coalition (PICC) is a diverse coalition of over 50 member organizations across the state. Our membership includes community groups, social, health and legal service providers, advocacy organizations, labor unions, and faith communities. PICC plays a unique role as the only organization in Pennsylvania that brings together organizations and individuals representing different ethnicities, immigration statuses, faiths, and other backgrounds, to work collectively on immigrant rights in Pennsylvania. PICC leads and supports campaigns to advance immigrant rights at the local, state, and federal levels; builds immigrant electoral power through voter registration and education; supports grassroots community-led organizations through training and capacity building; and helps increase access to immigration services through the PA is Ready! project. Our mission is to advance immigrants' rights and promote immigrants' full integration into society by advocating with a unified voice for greater public understanding and welcoming public policies throughout Pennsylvania.

The Womanist Working Collective

Established in 2015, the Womanist Working Collective is a social action and support collective for Black womyn (both cis & trans), femmes, and gender non-conforming folks, based in Philadelphia. Our Community of Practice unapologetically centers the Quality of Life and livelihoods for Black womyn, transwomen, femmes and gender variant folks through Community Organizing, Philanthropy and Self-care. When low-income Black women, femmes and gender non-conforming and non-binary folx cannot access abortions, it keeps them and their families in cycles of poverty impacting both their quality of life and ability to maintain their basic needs. Not covering abortions for Medicaid patients has a snowball effect, as it impacts the economic security of our communities which are already experiencing compounding structural inequalities.

Women and Girls Foundation

The mission of the Women and Girls Foundation (WGF) is to achieve equality for women and girls, now and for generations to come. Our vision is for women and girls in Pennsylvania to have equal access, opportunity, and influence in all aspects of their public and private lives. To realize this vision, the organization's active work is focused on developing the female leaders of tomorrow and advancing women's rights today. Women, especially low-income women and women of color, will be prevented from being able to exercise their constitutional rights to

full and comprehensive reproductive healthcare, if the Commonwealth continues the exclusion of abortion care from Pennsylvania's Medicaid program. This exclusion is particularly harmful to the health and well-being of Black women in Pennsylvania.

Women With A Vision, Inc.

Women With A Vision, Inc (WWAV) is a community-based nonprofit in New Orleans, Louisiana, founded in 1989 by a grassroots collective of African-American women in response to the spread of HIV/AIDS in communities of color. The mission of WWAV is to improve the lives of marginalized women, their families, and communities by addressing the social conditions that hinder their health and well-being. We accomplish this through relentless advocacy, health education, supportive services, and community-based participatory research.

Women's Center & Shelter of Greater Pittsburgh

Women's Center & Shelter has been a trusted and respected resource in the Pittsburgh Community for more than 45 years, offering hope and healing to survivors and children who have suffered from the devastating effects of domestic abuse. A disproportionate percentage of our clients are Black women and girls who are victims of intimate partner violence and experience financial abuse as part of this cycle of abuse. They are reliant on public insurance for their health care and deserve equity in healthcare access. Public insurance coverage for abortion

care is especially critical to those who have experienced reproductive coercion at the hands of their partners. Public insurance coverage is consistent with the mission of Women's Center & Shelter, which is to advance the safety and well-being of victims of intimate partner violence and prevent and respond to intimate partner violence through social change.

Respectfully submitted,

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