

IN THE SUPREME COURT OF WISCONSIN

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PLANNED PARENTHOOD OF WISCONSIN, et al.

*Petitioners,*

Case No. 2024AP330-OA

v.

JOEL URMANSKI, et al.

*Respondents.*

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**NON-PARTY BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES  
UNION OF WISCONSIN FOUNDATION, WISCONSIN DOULAS OF  
COLOR COLLECTIVE, FREEDOM, INC., WISCONSIN ABORTION  
SUPPORT NETWORK, AND REPRODUCTIVE JUSTICE ACTION  
MILWAUKEE IN SUPPORT OF PETITIONERS**

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Hayley I. Archer  
State Bar. No. 1101459  
AMERICAN CIVIL LIBERTIES OF WISCONSIN  
FOUNDATION, INC.  
207 East Buffalo Street #325  
Milwaukee, WI 53202  
Tel: (414) 272-4032 x 245  
Email: harcher@aclu-wi.org  
*Counsel for Amici Curiae*

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## INTEREST OF AMICI CURIAE

**The American Civil Liberties Union Foundation of Wisconsin, Inc.** is a statewide, non-profit, non-partisan organization dedicated to the liberty and equality embodied in the Constitution and civil rights laws, including the individual right to make reproductive decisions.

**Wisconsin Doulas of Color Collective** is a village of doulas of color reaffirming birthing people's power and providing accessible and culturally sensitive full-spectrum support for all pregnancy experiences, as well as addressing infant and maternal mortality rates and birth disparities for people of color across the state of Wisconsin.

**Freedom, Inc.** is a Black and Southeast Asian non-profit organization working with low- to no-income communities of color to achieve social justice through direct services with leadership development and community organizing to bring social, political, cultural, and economic change to end violence against women, gender-non-conforming and transgender folks, and children within communities of color.

**Wisconsin Abortion Support Network** is a group of volunteers offering free abortion doula support, including physical, mental, emotional, and informational support, to pregnant people before, during, and after abortion care.

**Reproductive Justice Action-Milwaukee** is a grassroots organization of activists fighting for reproductive justice for all humans in Milwaukee.

## INTRODUCTION

Petitioners argue that a near-total abortion ban would violate Article I, Section 1, of the Wisconsin Constitution, which affirms “[a]ll people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.” Wis. Const. art. I, § 1.

If enforced as to abortion (and thus becoming the Wisconsin Ban<sup>1</sup>), the law would disproportionately affect communities already facing significant disparities in reproductive healthcare access. These include people of color, rural residents, immigrants, undocumented individuals, and low-income populations. The adverse consequences range from deteriorating health outcomes to financial burdens on Wisconsin’s most vulnerable people, exacerbated by the need for interstate travel. In turn, this would deepen existing economic inequalities across the state.

Indeed, a near-total abortion ban in Wisconsin would contravene the state’s constitutional guarantee of equal rights as enshrined in Article I, Section 1. The Wisconsin Ban’s disproportionate burden on marginalized groups, including people of color, residents of rural areas, undocumented and immigrant individuals, and low-income populations, would exacerbate existing health disparities and economic inequalities, and impose severe financial and logistical challenges on Wisconsin’s most vulnerable residents. A near-total abortion ban would unduly infringe on the constitutional rights of those most affected, undermining their access to essential healthcare and their ability to exercise fundamental rights under the state constitution.

## ARGUMENT

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<sup>1</sup> We refer to Wisconsin Statute § 940.04, if applied to abortion, as the “Wisconsin Ban.” We do not concede that the statute applies to abortion.



## **I. The Wisconsin Ban Would Worsen Health Outcomes and Exacerbates Disparities in Maternal Health**

Ensuring the health and wellness of pregnant people is a priority in Wisconsin. Black Maternal Health Week, Proclamation of Tony Evers, Governor, State of Wisconsin, (Apr. 2, 2024), [https://evers.wi.gov/Documents/041124\\_Proclamation\\_Black%20Maternal%20Health%20Week.pdf](https://evers.wi.gov/Documents/041124_Proclamation_Black%20Maternal%20Health%20Week.pdf). Even so, the state's healthcare systems are woefully inadequate, especially for marginalized populations, including people of color. Truly, Governor Evers acknowledged that, "[d]espite advances in medical science and technology, pregnancy-related complications and deaths continue to occur at high levels in Wisconsin," and that "disparities in maternal health and health outcomes persist along racial lines." *Id.*

The Wisconsin Ban would exacerbate inequities in health, healthcare access, and health outcomes for pregnant people. *Health Disparities Overview*, Nat'l Conf. of St. Legs. (May 2021), <https://www.ncsl.org/health/health-disparities-overview>. The research is clear: limiting access to abortion care contributes to poor maternal health outcomes. *The U.S. Maternal Health Divide: The Limited Maternal Health Services and Worse Outcomes of States Proposing New Abortion Restrictions*, The Commonwealth Fund (Dec. 14, 2022), <https://www.commonwealthfund.org/publications/issue-briefs/2022/dec/us-maternal-health-divide-limited-services-worse-outcomes>. In 2020, maternal mortality rates were 62% higher in states with abortion restrictions than in those with abortion access. *Id.* Moreover, from 2018 to 2020, maternal death rates increased at nearly twice the pace in states restricting abortion access, where the proportion of individuals giving birth without prenatal care (or with limited or late access to prenatal care) was 62% percent higher. *Id.*

The negative impacts of bans already evident on the national stage would undoubtedly manifest in Wisconsin and the Ban would deepen existing disparities

and threaten the lives, liberty, and ability to pursue happiness for millions of people in Wisconsin.

### **A. Increased Burdens on Women of Color**

Across all racial and ethnic groups, maternal death rates are higher in states that restrict abortion access: 20% higher among Black women, 33% higher among white women, and 31% higher among Hispanic women. *Id.* Nationally, Black women already experience maternal mortality rates nearly three times higher than their white counterparts. Donna L Hoyert, *Maternal Mortality Rates in the United States, 2022*, Nat'l Ctr. for Health Stat. (May 2024), <https://www.cdc.gov/nchs/data/hestat/maternal-mortality/2022/maternal-mortality-rates-2022.pdf>. In Wisconsin, Black women face a grim reality: between 2016 and 2019, they accounted for just 10% of births but over one-third of pregnancy-associated deaths. *Wisconsin Maternal Mortality Review: Pregnancy-associated overdose deaths 2016-2019*, Wis. Dept. of Health Servs., (July 2021), <https://prc.wisc.edu/wp-content/uploads/sites/1127/2021/09/MMR-RMOR-Rep.pdf>.

People of color in Wisconsin face higher pre-existing health risks contributing to adverse pregnancy outcomes. In 2018 in Wisconsin, 42% of pregnant people of color had at least one medical risk factor of a pregnancy complication or adverse birth outcome, compared to 32% of pregnant white individuals. Annual Wisconsin Birth and Infant Mortality Report 2018, Wis. Dept. of Health Servs., (December 2022), <https://www.dhs.wisconsin.gov/publications/p01161-18.pdf>.

Significantly, about one out of every five pregnant people of color in Wisconsin reported experiencing interpersonal racism in the year before giving birth, *id.* at 6, which is linked to high blood pressure and poor health status. *Id.* at 2. Black people in Wisconsin are less likely to receive timely prenatal care compared with other

populations. *Wisconsin Pregnancy Risk Assessment Monitoring Systems 2018-2019 Surveillance Report*, Wis. Dept. of Health Servs. (Mar. 2022), <https://www.dhs.wisconsin.gov/publications/p02500-2019.pdf>.

In short, the Wisconsin Ban would exacerbate the heightened health risks of women of color, particularly Black women. By limiting access to essential reproductive care, including abortion, the Wisconsin Ban will force women of color to carry pregnancies to term, thereby denying their bodily autonomy and exposing them to increased risks of long-term harm as a result of the disproportionate health risks already faced in these communities. In other words, the Ban would deepen health access disparities and threaten the health and well-being of women of color in the state.

### **B. Increased Burdens on Rural Residents**

The Wisconsin Ban would intensify the significant risks to prenatal and maternal health faced by rural residents in the state. Forty-four percent of the twenty-seven rural hospitals in Wisconsin do not provide obstetric services -- meaning they do not perform birth deliveries. *Obstetric Delivery Services and Workforce in Rural Wisconsin Hospitals*, Wis. Off. of Rural Health (July 2019), <https://worh.org/wp-content/uploads/2019/09/ObstetricServicesReport2018Revised.pdf>. Only six provide specialty obstetric care and none offer subspecialty care. *Id* at 6. The lack of local maternal health services increases the risk of negative outcomes, such as neonatal mortality and maternal complications. *Id*.

Under the Wisconsin Ban, would-be abortion patients in rural areas could be forced to carry pregnancies to term without accessible obstetric care, increasing the likelihood of poor maternal outcomes. The Ban's limited exception for life-saving

“therapeutic abortions”<sup>2</sup> falls short of its purpose because rural hospitals may fail to meet the requirements to authorize the emergency procedure. Phoebe Petrovic, *Wisconsin's 1849 ban allows only life-saving 'therapeutic abortions' – no one knows what that means*, Wis. Pub. Broad. Serv. (Aug. 31, 2022), <https://pbswisconsin.org/news-item/wisconsins-1849-ban-allows-only-life-saving-therapeutic-abortions-no-one-knows-what-that-means/>. In other words, people in rural areas could face potentially severe maternal health consequences – including life-threatening risks -- resulting from their inability to receive requisite care or an emergency abortion as needed.

### **C. Increased Burdens on Immigrant and Undocumented Women**

Immigrant and undocumented women already face systemic barriers to healthcare access, including reproductive health services like prenatal care, pregnancy care, and abortion, which would worsen under the Wisconsin Ban. In 2016, 34% of noncitizen immigrant women of reproductive age were uninsured and 45% of undocumented individuals were uninsured. Samantha Artiga & Maria Diaz, *Health Coverage and Care of Undocumented Immigrants*, Kaiser Fam. Found. (Jul. 15, 2019), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/health-coverage-and-care-of-undocumented-immigrants/>.

People without health insurance coverage for reproductive care are likely to find funding for such care out-of-pocket—especially when forced to travel out-of-state for care. Undocumented people, who are ineligible for Medicare, Medicaid, the Children’s Health Insurance Program (CHIP), and often the Affordable Care Act Marketplaces, frequently work jobs without workplace insurance plans. *Id.*

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<sup>2</sup> Exempted under the Wisconsin Ban, a “therapeutic abortion” must be performed by a doctor in a licensed hospital (unless prevented by an emergency) and must be “deemed necessary, or...advised by two other physicians as necessary, to save the life of the mother.” Wis. Stat § 940.04(5)(a)-(c).

Immigrant women are less likely to have insurance coverage than U.S.-born women, increasing the risk of negative outcomes. Kinsey Hasstedt, et al, *Immigrant Women's Access to Sexual and Reproductive Health Coverage and Care in the United States*, The Commonw. Fund, (Nov. 2018), <https://www.commonwealthfund.org/publications/issuebriefs/2018/nov/immigrant-womens-access-sexual-reproductive-health-coverage>.

In Wisconsin, fears of deportation and language barriers further inhibit access to healthcare, especially in emergencies when timely access to abortion or prenatal care is critical. *Id.* Such fears may cause reluctance to seek healthcare. *Latina/o Voters' Views & Experiences Around Reproductive Health Care*, Nat'l Latina Inst. for Reprod. Health & PerryUndem, (2018), [https://www.latinainstitute.org/wp-content/uploads/2018/10/NLIRH20Polling20Press20Kit\\_ENG\\_11.1.18-1.pdf](https://www.latinainstitute.org/wp-content/uploads/2018/10/NLIRH20Polling20Press20Kit_ENG_11.1.18-1.pdf). Such barriers highlight the need for access to reproductive care within immigrant communities.

Additionally, thirty-two states, including Wisconsin, prohibit undocumented people from obtaining driver's licenses, increasing the risk of arrest and deportation for driving to receive medical services, including abortion. *Barriers to sexual and reproductive health services faced by immigrant women of reproductive age in the United States*, Ibis Reprod. Health (Jan. 2023), [https://www.ibisreproductivehealth.org/sites/default/files/files/publications/Access%20to%20SRH%20services\\_immigrants%20brief%20FINAL.pdf](https://www.ibisreproductivehealth.org/sites/default/files/files/publications/Access%20to%20SRH%20services_immigrants%20brief%20FINAL.pdf).

In sum, immigrant and undocumented women experience barriers to adequate and timely prenatal and maternal health care, which the Wisconsin Ban would heighten by forcing these women to cross state lines seeking abortion care or to carry unwanted pregnancies to term, endangering their health without the assurance of proper care.

## II. The Wisconsin Ban Would Force Patients to Travel Out of State, Which Poses Additional Challenges to Vulnerable Groups

The Wisconsin Ban would compel increasing numbers of patients to seek care out of state, imposing significant hardships, particularly on vulnerable communities. Even before the Supreme Court's ruling in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), Wisconsin's limited clinics<sup>3</sup> forced roughly one in five patients to seek abortion care out of state. Smith MH, Muzyczka Z, Chakraborty P, et al. Mikaela H. Smith, et al. *Abortion travel within the United States: An observational study of cross-state movement to obtain abortion care in 2017*, 10 *The Lancet Reg'l Health - Am.* (Mar. 4, 2022), <https://doi.org/10.1016/j.lana.2022.100214>. The Wisconsin Ban would, of course, force even greater numbers to neighboring states. However, the financial and logistical challenges of traveling across state lines are often more prohibitive for some populations than others.

One major obstacle is transportation. Individuals without car access face significant challenges in reaching a provider. In Wisconsin, Black, Hispanic, Asian American, and Native American households are less likely to own vehicles compared to white households. Car Access: Everyone needs reliable transportation access and in most American communities that means a car, Nat'l Equity Atlas, (last visited Sept. 25, 2024), [https://nationalequityatlas.org/indicators/Car\\_access?geo=02000000000055000](https://nationalequityatlas.org/indicators/Car_access?geo=02000000000055000). Additionally, female-headed households across all racial groups are less likely to have access to a vehicle than male-headed households. *Id.*

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<sup>3</sup> Prior to *Dobbs*, four clinics provided services. They were located in three counties (Dane, Sheboygan, and two in Milwaukee), meaning that 96% of the state's counties, and 70% of Wisconsin women who reside in those countries, did not have an abortion clinic.

Beyond transportation, interstate travel causes financial strain: in one study, women cited one of the most significant barriers to abortion access as lost income. *Paid Sick Days Enhance Women's Abortion Access and Economic Security*, Nat'l Partnership for Women and Fams. (May 2019), <https://nationalpartnership.org/wp-content/uploads/2023/02/Paid-Sick-Days-Enhance-Womens-Abortion-Access-and-Economic-Security.pdf>. This burden is especially heavy on those in low-wage or entry-level jobs, as they are less likely to have access to paid time off. Gregory Acs & Pamela Loprest, *Low-Skill Jobs, Work Hours, and Paid Time Off*, The Urb. Inst., Brief No. 2 (Nov. 2008), <https://www.urban.org/sites/default/files/publication/32211/411802-Low-Skill-Jobs-Work-Hours-and-Paid-Time-Off.pdf>.

Courts recognize that increasing distance to an abortion provider disproportionately impacts vulnerable populations. For example, in a case striking a medically unjustified regulation of abortion providers that would have forced some clinics in Wisconsin to close altogether, the U.S. District Court for the Western District of Wisconsin highlighted the numerous costs associated with traveling for care, including expenses for childcare, gas, tolls, bus tickets, overnight stays, and lost income. *Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 94 F. Supp. 3d 949, 991 (W.D. Wis. 2015), *aff'd sub nom. Planned Parenthood of Wisconsin, Inc. v. Schimel*, 806 F.3d 908 (7th Cir. 2015). The court noted that the majority of patients seeking abortion care were living at or below the poverty line. *Id.* The Seventh Circuit has emphasized that increased travel distance poses a "a nontrivial burden on the financially strapped and those who have difficulty traveling long distances to obtain an abortion, such as those who already have children." *Planned Parenthood of Wis., Inc. v. Van Hollen*, 738 F.3d 786, 796 (7th Cir. 2013).

Even when patients have the means to travel out of state, the surge in demand from Wisconsin overwhelms clinics in neighboring states, significantly increasing

patient wait times. Because of the Wisconsin Ban, after the *Dobbs* decision, Planned Parenthood of Illinois saw a tenfold increase in the number of patients from Wisconsin – rising from about 35 per month to 350. Kristen Schorsch, *Abortion is legal in Illinois. In Wisconsin, it's nearly banned. So clinics teamed up*, NPR (Aug. 11, 2022), <https://www.npr.org/sections/healthshots/2022/08/11/1114647820/illinois-wisconsin-abortions>. This caused wait times at one clinic to jump from three days to three weeks. *Id.* Although some providers began to resume care in September 2023 following the lower court’s decision, *Kaul v. Urmanski*, No. 2022CV001594 (Wis. Cir. Ct. Dane Cnty. June. 28, 2022) (Dec. 5, 2023 Decision and Order), bringing the number of clinics offering procedural and medical abortions back to pre-*Dobbs* levels, we can assume the same sharp increase in patients seeking out-of-state care will result from the Wisconsin Ban. *Two years after Dobbs, abortion is available in Wisconsin, but restrictions are fierce*, UW Collaborative for Reprod. Equity (June 24, 2024), <https://core.wisc.edu/2024/06/24/two-years-after-dobbs-abortion-is-available-in-wisconsin-but-restrictionsarefierce/#:~:text=Abortion%20healthcare%20services%20were%20unavailable,returned%20to%20pre%2DDobbs%20levels>.

In sum, the Wisconsin Ban would disproportionately impact those already facing financial and logistical hurdles, forcing vulnerable groups to navigate significant barriers and potentially forego time-sensitive medical care.

### **III. The Wisconsin Ban Would Exacerbate Economic Disparities**

The Wisconsin Ban would deepen existing economic inequalities across the state. Even before the *Dobbs* decision, the majority of abortion patients—three-quarters—were living on low incomes, with half below the federal poverty line. Jenna Jerman et al., *Characteristics of U.S. abortion patients in 2014 and changes since 2008*, Guttmacher Institute (May 2016),



<https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>.

When denied access to abortion, women face greater economic hardships, including higher rates of bankruptcy, eviction, lower credit scores, and increased debt. Annotation, *Introduction to the Turnaway Study*, *Advancing New Standards in Reproductive Health* (Dec. 2022), <https://www.ansirh.org/sites/default/files/2022-12/turnawaystudyannotatedbibliography122122.pdf>.

Economic and social safety nets tend to be weaker in states with abortion bans, leaving women with fewer resources if they are forced to carry a pregnancy to term. Asha Banerjee, *The economics of abortion bans*, *Econ. Pol’y Inst.* (Jan. 18, 2023), <https://www.epi.org/publication/economics-of-abortion-bans>. Wisconsin is at risk of becoming one such state: we have no law providing paid family and medical leave, *State Family and Medical Leave Laws*, *Nat’l Conf. of St. Legs.*, (Aug. 21, 2024), <https://www.ncsl.org/research/labor-and-employment/state-family-and-medical-leave-laws.aspx>, no extended Medicaid coverage postpartum, *Medicaid Postpartum Coverage Extension Tracker*, Kaiser Fam. Found. (Aug. 2024), <https://www.kff.org/medicaid/issue-brief/medicaid-postpartum-coverage-extension-tracker/>, no Medicaid expansion, *Status of State Medicaid Expansion Decisions: Interactive Map*, Kaiser Fam. Found. (May 2024), <https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/>, and the state’s minimum wage remains at the federal rate of \$7.25, *Minimum Wage Tracker*, *The Econ. Pol’y Inst.*, <https://www.epi.org/minimum-wage-tracker>.

Moreover, because pregnancy and childbirth can disrupt a woman’s participation in the workforce, abortion restrictions push women into lower-wage work, exacerbating the gender pay gap. Itay Ravid & Jonathan Zandberg, *The Future of Roe and the Gender Pay Gap: An Empirical Assessment*, 98 *Ind. L.J.* 1089 (May 2023), <https://ssrn.com/abstract=4048004>. As of 2020, white women earn

only 73 cents for every dollar their male counterparts earn. Lauren Hoffman and Bela Salas-Betsch, *Including All Women Workers in Wage Gap Calculations* Ctr. for Am. Progress (May 24, 2022), <https://americanprogress.org/article/including-all-women-workers-in-wage-gap-calculations>. Black women earn 58 cents to every white man's dollar, and Latina women 49 cents. Jasmine Tucker, *The Wage Gap Robs Women of Economic Security as the Harsh Impact of COVID-19 Continues*, Nat'l Women's L. Ctr., (March 2022), <https://nwlc.org/wp-content/uploads/2022/03/Equal-Pay-Day-Factsheet-2022.pdf>.

Additionally, the Wisconsin Ban would negatively impact children because most abortion patients are already parents. Jenna Jerman et al., *Characteristics of U.S. abortion patients in 2014 and changes since 2008*, Guttmacher Inst. (May 2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>. When parents are denied or cannot access abortion care, their children are more likely to experience economic insecurity and poverty compared to children whose parents received abortions when sought. Diane Greene Foster et al. *Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children*, 205 J. Pediatrics, 183 (2019), doi: 10.1016/j.jpeds.2018.09.026. In other words, the Wisconsin Ban would cause disproportionate harm to families already experiencing economic hardship.

## **CONCLUSION**

A near-total abortion ban in Wisconsin would violate the state's constitutional guarantee of equal rights in Article I, Section 1. By disproportionately impacting marginalized groups, such as people of color, rural residents, undocumented individuals, and low-income populations, it would worsen existing health disparities and economic inequalities. Such a ban would impose severe challenges on Wisconsin's most vulnerable residents, infringing on their access to essential healthcare and fundamental rights.



## FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b), (bm), and (c) for a brief produced with serif font. The brief is set in 13-point Times New Roman. The length of this brief is 2,949 words.

## EFILE/SERVICE CERTIFICATION

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated: January 7, 2025.



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Hayley I. Archer  
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