

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 22-0207

HELEN WEEMS and JANE DOE,

Plaintiffs and Appellees,

v.

STATE OF MONTANA, by and through AUSTINKNUDSEN, in his official capacity as Attorney General; and TRAVIS R. AHNER, in his official capacity as County Attorney for Flathead County,

Defendants and Appellants.

On appeal from the First Judicial District Court, Lewis and Clark County,
Cause No. ADV-2018-73, The Hon. Mike Menahan, Presiding

**BRIEF OF AMICI CURIAE
LEGAL VOICE AND WOMEN'S LAW PROJECT**

Matthew Gordon
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000
Attorneys for *Amici Curiae*

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INTRODUCTION

This Court has long recognized that the fundamental right to privacy guaranteed by the Montana Constitution “protects a woman’s right of procreative autonomy,” which includes “the right to seek and to obtain a specific lawful medical procedure, a pre-viability abortion, from a health care provider of her choice.” *Armstrong v. State*, 1999 MT 261, ¶ 75, 296 Mont. 361, 989 P.2d 364. The District Court properly concluded that this “fundamental privacy right” to obtain abortion care “from a health care provider that has been determined by the medical community to be competent to provide that service and who has been licensed to do so,” App.A.012 (citing *Armstrong*, 1999 MT 261, ¶ 62), protects Montanans’ freedom to choose to have abortion care provided by advanced practice registered nurses (APRNs) who are qualified by their education and training to provide such services.

On appeal, the State does not argue that *Armstrong* should be overruled. Instead, the State contends that the Montana statute permitting only physicians and physician assistants to provide abortion care (§ 50-20-109(1)(a), MCA) does not implicate the Montana Constitution’s right to privacy and should not be subject to strict scrutiny by this Court.

In their response brief, Plaintiffs demonstrate that the State’s arguments are directly contradicted by *Armstrong* and by the record in this case. As regional and

state-based gender justice organizations, *amici* write separately to underscore two points: (1) in other states that have joined Montana in recognizing procreative autonomy as a fundamental right under their state constitutions, restrictions on abortion services are subject to strict scrutiny; and (2) enabling APRNs to provide abortion services is of particular importance to survivors of intimate partner violence (IPV).¹

ARGUMENT

A. Strict Scrutiny Applies to the Challenged Statute

The District Court properly recognized that because “Montana Code Annotated § 50-20-109(1)(a) infringes patients’ fundamental rights,” the State has the burden “to establish the law can survive strict scrutiny analysis.” App.A.012. And the District Court correctly noted that to satisfy strict scrutiny, “the legislation must be justified by a compelling state interest and must be narrowly tailored to effectuate only that compelling interest.” App.A.012–013 (quoting *Gryczan v. State*, 283 Mont. 433, 449, 942 P.2d 112 (1997)).

The State argues that this Court “should scrutinize MCA § 50-20-109(1)(a) under rational basis review.” State Br. at 43. As Plaintiffs note, the State’s argument is flatly contrary to *Armstrong*, where this Court held that “Article II, Section 10,

¹ *Amici*’s motion for leave to appear, submitted concurrently with this brief, sets forth *amici*’s interest in this matter more fully.

protects a woman’s right of procreative autonomy – here, the right to seek and to obtain a specific lawful medical procedure, a pre-viability abortion *from a health care provider of her choice.*” *Armstrong*, 1999 MT 261, ¶ 75 (emphasis added). Accordingly, this Court reviewed the statute at issue in *Armstrong* under strict scrutiny and held that the State failed to demonstrate a compelling state interest in preventing qualified physician assistants from providing abortion care. *Id.* at ¶75.

The application of strict scrutiny to restrictions on fundamental rights protected by a state constitution is not only uncontroversial, it is well-settled law. And it is not unique to the right of abortion care under the Montana state constitution. In states that have similarly found a fundamental right to abortion care in their state constitution—whether because of an express guarantee of a right to privacy or due to some other right guaranteed in the constitution—the state supreme courts have applied strict scrutiny to laws infringing on that right.

1. State supreme courts that recognize abortion as a fundamental right under express privacy guarantees in their state constitutions subject abortion restrictions to strict scrutiny

Like the Montana Constitution, the state constitutions of Alaska, California, and Florida expressly protect the right to privacy. *See* Alaska Const., art. I, § 22; Cal. Const., art. I, § 1; Fla. Const., art. I, § 23. Those states have joined this Court in recognizing that the explicit privacy guarantees in their respective constitutions protect the right to abortion care and provide greater protection from government

interference in personal decisions than the U.S. Constitution. *See Valley Hosp. Ass'n, Inc. v. Mat-Su Coal. for Choice*, 948 P.2d 963, 969 (Alaska 1997) (“[R]eproductive rights are . . . encompassed within the right to privacy expressed in article I, section 22 of the Alaska Constitution These fundamental reproductive rights include the right to an abortion.”); *Comm. To Def. Reprod. Rts. v. Myers*, 625 P.2d 779, 798 (Cal. 1981) (“By virtue of the explicit protection afforded an individual’s inalienable right of privacy by . . . the California Constitution, however, the decision whether to bear a child or to have an abortion is so private and so intimate that each woman . . . is guaranteed the constitutional right to make that decision”); *In re T.W.*, 551 So. 2d 1186, 1193 (Fla. 1989) (“The Florida Constitution embodies the principle that [f]ew decisions are more personal and intimate, more properly private, or more basic to individual dignity and autonomy, than a woman’s decision . . . whether to end her pregnancy.”) (alterations omitted)).

These courts have repeatedly held that a variety of different government restrictions on abortion must be subject to strict scrutiny because they interfere with the exercise of a fundamental right guaranteed by their state constitutions.

The Alaska Supreme Court applied strict scrutiny to a quasi-public hospital’s restrictions on providing abortion services, holding that reproductive rights “may be legally constrained *only* when the constraints are justified by a compelling state

interest, and no less restrictive means could advance that interest.” *Mat-Su*, 948 P.2d at 969 (emphasis added).²

Likewise, the California Supreme Court applied a strict scrutiny “compelling interest” test in striking down a state law requiring a pregnant minor to obtain parental consent or judicial authorization before obtaining an abortion. *Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 819 (Cal. 1997). The court held that “under the California constitutional privacy clause, a statute that impinges upon the fundamental autonomy privacy right of either a minor or an adult must be evaluated under the demanding ‘compelling interest’ test,” under which “the defendant *must* demonstrate a compelling state interest which justifies the intrusion and which cannot be served by alternative means less intrusive on fundamental rights.” *Id.* at

² Subsequent decisions from the Alaska Supreme Court have affirmed that the right to privacy includes personal decision-making without government interference, including the right to choose abortion. *See State v. Planned Parenthood of Alaska*, 35 P.3d 30, 39 (Alaska 2001) (recognizing that the right to privacy extends to minors); *State v. Planned Parenthood of Alaska*, 171 P.3d 577, 581–82 (Alaska 2007) (striking down parental consent law as “the primary purpose of [] [the privacy] section is to protect Alaskans’ personal privacy and dignity against unwarranted intrusions by the State”) (internal quotations and citations omitted); *see also State, Dep’t of Health & Soc. Servs. v. Planned Parenthood of Alaska, Inc.*, 28 P.3d 904, 906, 909 (Alaska 2001) (striking down public funding restriction on abortion on equal protection grounds because it “affects the exercise of a constitutional right, the right to reproductive freedom”); *State v. Planned Parenthood of the Great NW.*, 436 P.3d 984, 1003 (Alaska 2019) (same); *Planned Parenthood of The Great NW. v. State*, 375 P.3d 1122, 1143 (Alaska 2016) (“The Notification Law’s discriminatory barrier to those minors seeking to exercise their fundamental privacy right to terminate a pregnancy violates Alaska’s equal protection guarantee.”).

818 (quoting *White v. Davis*, 533 P.2d 222, 232 (Cal. 1975) (emphasis added) (alterations omitted)).³

The Florida Supreme Court has also long subjected restrictions on abortion to strict scrutiny because such restrictions violate the right to privacy guaranteed by the Florida Constitution. *See, e.g., T.W.*, 551 So. 2d at 1193 (holding that to defend an abortion restriction “[t]he State must prove that the statute furthers a compelling state interest through the least intrusive means”).

More recently, the Florida Supreme Court held that “laws that place the State between a woman, or a minor, and her choice to end her pregnancy clearly implicate the right of privacy” and must be subject to strict scrutiny, even if the laws at issue “merely placed an additional obstacle” in exercising that right. *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1254 (Fla. 2017). The court noted that “Florida’s constitutional right of privacy encompasses a woman’s right to choose to end her pregnancy” and that “[t]his right would have little substance if it did not also include the woman’s right to effectuate her decision to end her pregnancy.” *Id.* And the court reiterated that, “[b]ecause the right of privacy is a fundamental right within Florida’s constitution, this Court consistently has required that any law intruding on

³ The opinion in *American Academy of Pediatrics* was a plurality opinion joined by three of the Court’s seven members; however, a concurring fourth justice agreed that the “compelling interest” test applied in the case. *See id.* at 842 (Kennard, J., concurring) (“The proper legal standard by which to judge the state’s asserted justification for the parental consent law is the compelling state interest standard.”).

this right is presumptively unconstitutional and must be justified by a ‘compelling state interest’ which the law serves or protects through the ‘least restrictive means.’”⁴

Id. at 1246.

Like this Court, each of these state supreme courts has recognized that the explicit privacy guarantees in their state constitutions make abortion a fundamental right, and, as in Montana, state laws that infringe on fundamental rights, including the right to abortion care, must be subject to strict scrutiny.

2. High courts in other states have also held that abortion is a fundamental right under their state constitutions and have applied strict scrutiny to abortion restrictions

High courts in other states have also held that broad and inclusive provisions in their state constitutions protect reproductive autonomy, even in the absence of an express privacy clause, and have subjected restrictions on reproductive autonomy to strict scrutiny.

For example, the Kansas Supreme Court recently held that the Kansas Constitution protects the right to choose abortion as “an inalienable natural right.”

⁴ Press reports indicate that the Attorney General of Florida is now asking the Florida Supreme Court to overrule its longstanding precedent that the privacy clause of the Florida Constitution protected the right to pre-viability abortions. *See, e.g.,* Jim Saunders, *State again targets the privacy clause in the fight over Florida’s abortion law*, WUSF Public Media (Sept. 16, 2022), <https://wusfnews.wusf.usf.edu/health-news-florida/2022-09-16/state-again-targets-privacy-clause-florida-abortion-law>. Such a reversal would undo over thirty years of precedent in Florida that has been repeatedly reaffirmed by the Florida Supreme Court.

Hodes & Nauser, MDs, P.A. v. Schmidt, 440 P.3d 461, 466–67 (Kan. 2019) (per curiam).⁵ In affirming a temporary injunction enjoining the enforcement of a state law that limited access to the safest procedure for second-trimester abortions, the court concluded, after an extensive analysis, that the Kansas Constitution requires strict scrutiny of restrictions on abortion: “any government infringement of the inalienable natural right of personal autonomy *requires* the State to establish a compelling state interest and to show that [the government’s infringement] is narrowly tailored to promote it.” *Id.* at 498 (emphases added). The court found that a lower standard of review “cheapens the rights at stake” and that “[t]he strict scrutiny test better protects these rights.” *Id.*

The Minnesota Supreme Court similarly held that the Minnesota Constitution’s bill of rights confers privacy rights that protect personal decision-making from government interference, including abortion, and that infringements on those rights must be subject to strict scrutiny. *Women of Minn. v. Gomez*, 542 N.W.2d 17, 19 (Minn. 1995). The court located these rights in Article I, Sections 2, 7, and 10 of the state constitution, *id.*, which collectively address rights ranging from

⁵ On August 2, 2022, by a margin of 59-41 percent, Kansas voters rejected a proposed constitutional amendment that sought to overturn this decision. *See Kansas No State Constitutional Right to Abortion and Legislative Power to Regulate Abortion Amendment (August 2022)*, Ballotpedia (last visited Sept. 19, 2022), [https://ballotpedia.org/Kansas_No_State_Constitutional_Right_to_Abortion_and_Legislative_Power_to_Regulate_Abortion_Amendment_\(August_2022\)](https://ballotpedia.org/Kansas_No_State_Constitutional_Right_to_Abortion_and_Legislative_Power_to_Regulate_Abortion_Amendment_(August_2022)).

privileges of citizens, to protection from slavery, to due process in criminal proceedings, to freedom from unreasonable searches and seizures. *See* Minn. Const. Art. I, §§ 2, 7, 10. Drawing on these broad provisions, the court observed that “the right of privacy begins with protecting the integrity of one’s own body and includes the right not to have it altered or invaded without consent.” *Gomez*, 542 N.W.2d at 27 (internal quotations omitted) (citing *Jarvis v. Levine*, 418 N.W.2d 139, 148 (Minn. 1988) (protecting right to refuse medical treatment)). And in striking down statutes prohibiting use of public funds for abortion but not for childbirth, the court held that “[b]ecause the challenged provisions infringe on the fundamental right of privacy, we must subject them to strict scrutiny.” *Gomez*, 542 N.W.2d at 31.

In short, state supreme courts from across the country have repeatedly joined this Court in subjecting government restrictions on abortion to strict scrutiny because such restrictions infringe either the right to privacy or other fundamental rights under their state constitutions. Subjecting the restriction of abortion care by APRNs in this case to strict scrutiny is consistent with both this Court’s jurisprudence requiring that level of review for statutes that interfere with the exercise of a fundamental right under the Montana Constitution and with the approach taken by supreme courts in other states.⁶

⁶ In 2018, the Iowa Supreme Court also held that a law imposing a medically-unnecessary 72-hour waiting period for abortion violated the state constitution’s due process and equal protection clauses. *See Planned Parenthood of the Heartland v.*

B. The Freedom to Have Abortion Care Provided By APRNs Is Particularly Important for Survivors of Intimate Partner Violence

Barring pregnant people from accessing abortion care from a health care provider of their choice strikes at the heart of the right guaranteed by *Armstrong*. And for survivors of intimate partner violence (IPV), the freedom to choose an abortion care provider is particularly important.

In *Armstrong*, this Court recognized that given “invasions of body and psyche” involved in accessing health care, a person has a fundamental right to access care, including abortion care, from a provider of their choice. *Armstrong*, 1999 MT 261, ¶ 58. Interference with that right is particularly serious for survivors of IPV. As discussed below, abusers employ a wide variety of tactics to deprive IPV survivors of control over their lives and their decision-making. Survivors often face unwanted pregnancies due to reproductive coercion by their abusers and significant barriers to obtaining abortion care due to the controlling behaviors of their abusers. Having the

Reynolds ex rel. State, 915 N.W.2d 206, 212 (Iowa 2018). In June of 2022, however, the Iowa Supreme Court reversed course, holding that “the Iowa Constitution is not the source of a fundamental right to an abortion necessitating a strict scrutiny standard of review for regulations affecting that right.” See *Planned Parenthood of the Heartland, Inc. v. Reynolds*, 975 N.W.2d 710, 716 (Iowa 2022). Press reports noted that after the Iowa Supreme Court’s 2018 decision, the governor subsequently appointed four new justices to the state’s high court. Katie Akin & William Morris, *Iowa Supreme Court says fundamental right to abortion not guaranteed under state constitution*, Des Moines Register (June 17, 2022), <https://www.desmoinesregister.com/story/news/2022/06/17/iowa-supreme-court-abortion-law-ruling-planned-parenthood-kim-reynolds/7646049001/>.

ability to choose to have abortion care provided by qualified APRNs is important to advancing the autonomy of IPV survivors and to promoting their safety.

1. IPV survivors face multiple barriers to obtaining abortion care

IPV—defined as “behaviour within an intimate relationship that causes physical, sexual or psychological harm, including acts of physical aggression, sexual coercion, psychological abuse and controlling behaviors”⁷—is common and widespread, affecting nearly one third of women in the United States.⁸

IPV is even more prevalent in Montana.⁹ During their lifetimes, more than 41 percent of Montana women report experiencing contact sexual violence, almost one-quarter report experiencing attempted or completed rape, and 29 percent report experiencing unwanted sexual contact.¹⁰ And IPV is even more common among historically marginalized populations: indigenous women in Montana have

⁷ Megan Hall et al., *Associations between Intimate Partner Violence and Termination of Pregnancy: A Systemic Review and Meta-Analysis*, 11 PLoS Med. e1001581 (2014), <https://journals.plos.org/plosmedicine/article/file?id=10.1371/journal.pmed.1001581&type=printable>.

⁸ Michele C. Black et al., Ctrs. for Disease Control & Prevention, Nat’l Ctr. for Injury Prevention & Control, *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report 2* (2011), http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf.

⁹ Sharon G. Smith et al., Ctrs. for Disease Control & Prevention, *Nat’l Ctr. for Injury Prevention & Control, The National Intimate Partner and Sexual Violence Survey (NISVS): 2010-2012 State Report 33–37* (2017), <https://www.cdc.gov/violenceprevention/pdf/nisvs-statereportbook.pdf>.

¹⁰ *Id.*

experienced disproportionately high rates of sexual abuse and domestic violence dating back to colonization and the forced placement of indigenous children in boarding schools.¹¹

Physical abuse is only one aspect of IPV. Abusers also exert control over survivors by isolating them from family and friends and monitoring their whereabouts and relationships,¹² limiting their access to financial resources, tracking their use of transportation and time away from home,¹³ and threatening to harm or kidnap children, among other things.¹⁴ These forms of abuse are often referred to as “coercive control.”¹⁵

Abusers also use “reproductive coercion” and rape to force victims into unwanted pregnancies.¹⁶ “Reproductive coercion” describes a spectrum of conduct

¹¹ Usha Ranji et al., Kaiser Fam. Found., *Beyond the Numbers: Access to Reproductive Health Care for Low-Income Women in Five Communities: Crow Tribal Nation, MT* (2019), <https://www.kff.org/report-section/beyond-the-numbers-access-to-reproductive-health-care-for-low-income-women-in-five-communities-crow-tribal-reservation-mt/>.

¹² Karla Fischer et al., *The Culture of Battering and the Role of Mediation in Domestic Violence Cases*, 46 SMU L. Rev. 2117, 2126–27 (1993).

¹³ *Id.* at 2121–22, 2131–32; see also Leigh Goodmark, *A Troubled Marriage: Domestic Violence and the Legal System* 42 (2012).

¹⁴ Fischer et al., *supra* note 12, at 2122–23.

¹⁵ Melena Ryzik & Katie Benner, *What Defines Domestic Abuse? Survivors Say It’s More Than Assault*, N.Y. Times (Jan. 22, 2021), <https://www.nytimes.com/2021/01/22/us/cori-bush-fka-twigs-coercive-control.html>

¹⁶ Elizabeth Miller et al., *Pregnancy Coercion, Intimate Partner Violence, and Unintended Pregnancy*, 81 *Contraception* 316 (2010); see also Anne M. Moore et

to force pregnancy ranging from rape to threats of physical harm to sabotaging a partner's birth control.¹⁷ Abusers may interfere with their partners' contraceptive use by discarding or damaging contraceptives, removing prophylactics during sex without consent, forcibly removing internal use contraceptives, or retaliating against or threatening harm.¹⁸ Unsurprisingly, reproductive coercion dramatically increases the risk of unintended pregnancy.¹⁹ For example, when the National Domestic Violence Hotline surveyed over 3,000 women seeking help, more than 25 percent reported that their abusive partner sabotaged birth control and tried to coerce pregnancy.²⁰

al., *Male Reproductive Control of Women Who Have Experienced Intimate Partner Violence in the United States*, 70 Soc. Sci. & Med. 1737 (2010).

¹⁷ Miller et al., *supra* note 16, at 316–17; Moore et al., *supra* note 16, at 1738; *see also* ACOG Committee Opinion No. 554: *Reproductive and Sexual Coercion*, 121 *Obstetrics & Gynecology* 411, 411–15 (2013).

¹⁸ Ann L. Coker, *Does Physical Intimate Partner Violence Affect Sexual Health? A Systematic Review*, 8 *Trauma, Violence, & Abuse* 149, 151–53 (2007); *see also* Miller et al., *supra* note 16 at 319; *see also* Lauren Maxwell et al., *Estimating the Effect of Intimate Partner Violence on Women's Use of Contraception: A Systematic Review and Meta-Analysis*, 10 *PLoS One* e0118234 (2015), <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0118234>.

¹⁹ Elizabeth Miller et al., Editorial, *Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy*, 81 *Contraception* 457, 457 (2010).

²⁰ *1 in 4 Callers to the National Domestic Violence Hotline Report Birth Control Sabotage and Pregnancy Coercion*, Nat'l Domestic Violence Hotline (Feb. 15, 2011), <https://www.thehotline.org/news/1-in-4-callers-to-the-national-domestic-violence-hotline-report-birth-control-sabotage-and-pregnancy-coercion/>; *see also* Heike Thiel de Bocanegra et al., *Birth Control Sabotage and Forced Sex: Experiences Reported by Women in Domestic Violence Shelters*, 16 *Violence Against Women* 601–12 (2010).

A key motivation for forcing pregnancy is to increase dependency and make it harder for the survivor to escape. And the coercive control exerted by abusers limits IPV survivors' access to the resources necessary to escape the abusive relationship, as well as their ability to access health care.

IPV survivors from marginalized communities face systemic inequities that make them even more vulnerable to coercive control and reproductive coercion by further limiting their access to resources necessary to seek safety from abuse. Put simply, it takes money to flee an abusive relationship—for hotel rooms, gas, food, and childcare, for example—as well as other resources. Yet nearly one-third of Native American women in Montana live in poverty, more than twice the rate of their white counterparts.²¹ These high poverty rates correlate with lower pay. Women of color in Montana make far less than white men: Native American women make less than 67 cents on the dollar, and Hispanic women make only 54 cents on the dollar compared to white men.²² They also correlate with education inequities. Fewer than 16 percent of Native American women in Montana have a bachelor's degree or higher, half the rate for white women.²³ This limited access to stable jobs and income and higher education exacerbates the effects of coercive control on IPV

²¹ Inst. for Women's Pol'y Rsch., *Status of Women in the States: The Economic Status of Women in Montana* 3 (2018), <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-montana.pdf>.

²² *Id.*

²³ *Id.*

survivors, making it all the more difficult to summon the resources necessary to escape abusive relationships.²⁴

Women living in Indian Country in Montana face particular challenges in accessing health care, which can further exacerbate the conditions for abuse and the resulting consequences, including unwanted pregnancy. While more than 87 percent of nonelderly white women in Montana have health insurance, only 57 percent of Native American women do.²⁵ Moreover, many Montana counties that encompass Indian Reservations are federally designated Medically Underserved Communities, meaning they have few primary care providers, high infant mortality, high poverty or a high elderly population.²⁶ These disparities manifest in decreased access to services. The Crow Indian Reservation in Montana is one example. “Although Montana maintains many policies that protect access and coverage for reproductive health services, Crow women living on the reservation face sociodemographic, systemic, and cultural barriers that prevent many from readily accessing services.”²⁷ Among those barriers is the practicality of living in rural Montana: “In many parts

²⁴ Ranji, *supra* note 11.

²⁵ *Id.*

²⁶ *MUA Find*, Health Res. & Servs. Admin., <https://data.hrsa.gov/tools/shortage-area/mua-find> (last visited Sept. 19, 2022).

²⁷ Ranji, *supra* note 11.

of the reservation, the nearest health care provider is an hour drive away; yet, transportation is not readily available in this low-income, rural community”²⁸

2. IPV survivors urgently need abortion care

Countless studies have found a strong association between IPV and pregnancy termination.²⁹ A survivor may choose to terminate a pregnancy that results from rape or coercion,³⁰ or out of fear of increased violence and/or being trapped in the relationship if the pregnancy continues.³¹ These fears are not academic: while having a baby with the abuser is likely to result in increased violence,³² having an abortion is associated with less physical violence over time.³³ A survivor of IPV also may terminate a pregnancy to avoid exposing a child to violence.³⁴ And many survivors have children whom they already struggle to protect.³⁵ Having a child, or another

²⁸ *Id.*

²⁹ See Hall et al., *supra* note 7 (identifying 74 studies from the United States and around the world that demonstrated a correlation between IPV and abortion).

³⁰ Melisa M. Holmes et al., *Rape-Related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women*, 175 *Am. J. Obstetrics & Gynecology* 320, 322 (1996) (50 percent of women pregnant through rape had abortions).

³¹ Sarah CM Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 *BMC Med.* 1, 2, 5 (2014).

³² *Id.* at 5.

³³ *Id.*

³⁴ Karuna S. Chibber et al., *The Role of Intimate Partners in Women’s Reasons for Seeking Abortion*, 24 *Women’s Health Issues* e131, e134 (2014).

³⁵ See, e.g., Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions*, 11 *Am. U. J. Gender Soc. Pol’y & L.* 657 (2003).

child, with an abusive partner increases the risks of poverty and homelessness upon leaving the abuser.³⁶

Moreover, abortion is lifesaving medical care for many survivors. While every pregnancy carries some level of risk, unintended pregnancies have significantly greater health risks,³⁷ including pregnancy complications and poor birth outcomes, including miscarriage or stillbirth.³⁸ These problems are compounded for survivors of IPV because abusers often prevent survivors from making or keeping medical appointments or from having private conversations with health care providers.³⁹ As a result, IPV survivors are less likely to receive prenatal care and more likely to miss doctors' appointments than pregnant people in non-violent relationships, increasing the risk of poor health outcomes.⁴⁰

³⁶ Carmela DeCandia et al., Nat'l Ctr. on Fam. Homelessness, *Closing the Gap: Integrating Services for Survivors of Domestic Violence Experiencing Homelessness*, *The National Center on Family Homelessness* 4 (2013), https://www.air.org/sites/default/files/downloads/report/Closing%20the%20Gap_Homelessness%20and%20Domestic%20Violence%20toolkit.pdf.

³⁷ Judith McFarlane, *Pregnancy Following Partner Rape: What We Know and What We Need to Know*, 8 *Trauma, Violence, & Abuse* 127, 130 (2007); see also *Public Health Impact: Unintended Pregnancy*, *America's Health Rankings*: United Health Foundation, https://www.americashealthrankings.org/explore/health-of-women-and-children/measure/unintended_pregnancy/state/ALL (last visited Sept. 19, 2022).

³⁸ McFarlane, *supra* note 37, at 130.

³⁹ Nat Stern et al., *Unheard Voices of Domestic Violence Victims: A Call to Remedy Physician Neglect*, 15 *Geo. J. Gender & L.* 613, 633 (2014).

⁴⁰ Gunnur Karakurt et al., *Mining Electronic Health Records Data: Domestic Violence and Adverse Health Effects*, 32 *J. of Fam. Violence* 79–87 (2016).

Not only do pregnant people in abusive relationships face increased health risks associated with pregnancy itself, the violence they suffer is likely to increase both in frequency and intensity during pregnancy.⁴¹ In fact, the leading cause of maternal death in the U.S. is homicide.⁴² And the staggering number of murdered and missing indigenous women suggests that homicide may be responsible for even more pregnancy-related deaths among that population than researchers have been able to document.⁴³

3. Having access to abortion care from APRNs would advance autonomy and promote safety for IPV survivors

The right to seek and obtain abortion care “from a health care provider of her choice,” *Armstrong*, 1999 MT 261, ¶ 75, is particularly important for IPV survivors. For this vulnerable population, the ability to choose abortion care providers is especially important to survivors’ ability to regain control over their lives and protect their safety. Enabling qualified APRNs to provide abortion care would help IPV

⁴¹ Beth A. Bailey, *Partner Violence During Pregnancy: Prevalence, Effects, Screening, and Management*, 2 Int’l J. Women’s Health 183 (2010); see also Julie A. Gazmararian et al., *Prevalence of Violence Against Pregnant Women*, 275 JAMA 1915, 1918 (1996).

⁴² Hall et al., *supra* note 7; see also Jennifer L. Heck et al., *Maternal Mortality Among American Indian/Alaska Native Women: A Scoping Review*, 30 J. Women’s Health 220–29 (2021) (intimate partner violence contributes to 45.3 percent of pregnancy-related homicides), [https://pubmed.ncbi.nlm.nih.gov/33211616/Heck et al.](https://pubmed.ncbi.nlm.nih.gov/33211616/Heck%20et%20al)

⁴³ Heck, *supra* note 42. See also, Ranji, *supra* note 11.

survivors access care from trusted providers of their choice, in settings that may feel more comfortable and be closer to their communities.

For example, as Plaintiffs indicate in their response brief, Plaintiff Weems is currently the only health care provider who provides abortion services in the northwest region of Montana. *See* Pls.' Br. at 32–33. Without her services, IPV survivors in that region of the state would face even greater barriers to making choices to protect their medical care and their lives.

As discussed above, IPV survivors are often closely controlled and monitored by their abusers. Indeed, abusers exert coercive control over survivors, including reproductive coercion, specifically to increase dependency and limit their autonomy. Being able to rely upon trusted, qualified APRN providers can make the difference between an IPV survivor's ability to reassert reproductive autonomy, reduce the extent of the abuser's control, and increase chances of escape, and being forced to continue an unwanted pregnancy, increasing health risks, and decreasing the ability to escape.

CONCLUSION

For the foregoing reasons, *amici* request that this Court affirm the District Court's order granting summary judgment in favor of Plaintiffs.

Respectfully submitted this 23rd day of September, 2022

/s/ Matthew Gordon

Matthew Gordon
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000
Attorneys for Amici Curiae

CERTIFICATE OF COMPLIANCE

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/s/ Matthew Gordon

Matthew Gordon

Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I, Matthew Prairie Gordon, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 09-23-2022:

Hillary Anne Schneller (Attorney)
Center for Reproductive Rights
199 Water Street
22nd Floor
New York NY 10038
Representing: Helen Weems
Service Method: eService

Brent A. Mead (Govt Attorney)
215 North Sanders
Helena MT 59601
Representing: State of Montana
Service Method: eService

Patrick Mark Risken (Govt Attorney)
215 N. Sanders
Helena MT 59620-1401
Representing: State of Montana
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: State of Montana
Service Method: eService

David M.S. Dewhirst (Govt Attorney)
215 N Sanders
Helena MT 59601
Representing: State of Montana
Service Method: eService

Travis R. Ahner (Govt Attorney)
820 South Main Street
Kalispell MT 59901

Representing: State of Montana
Service Method: eService

Alexander H. Rate (Attorney)
713 Loch Leven Drive
Livingston MT 59047
Representing: Helen Weems
Service Method: eService

Akilah Maya Lane (Attorney)
2248 Deerfield Ln
Apt B
Helena MT 59601
Representing: Helen Weems
Service Method: eService

Electronically Signed By: Matthew Prairie Gordon
Dated: 09-23-2022