

No. 19-1392

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS E. DOBBS, State Health Officer of the
Mississippi Department of Health, et al.,
Petitioners,

v.

JACKSON WOMEN'S HEALTH ORGANIZATION, et al.,
Respondents.

**On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

**BRIEF FOR AMICI CURIAE AFRICAN-
AMERICAN, HISPANIC, ROMAN CATHOLIC
AND PROTESTANT RELIGIOUS AND CIVIL
RIGHTS ORGANIZATIONS AND LEADERS
SUPPORTING PETITIONERS**

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INTEREST OF AMICI¹

Amici are the National Hispanic Christian Leadership Conference, led by its President, Rev. Samuel Rodriguez; the Frederick Douglass Foundation, led by Chairman Dean Nelson; Rev. Alveda King, President of Stand for Life; Deacon Keith Fournier, Esq., of the Common Good Foundation; and the Roman Catholic Diocese of Tyler, led by Bishop Joseph Edward Strickland.

The National Hispanic Christian Leadership Conference (NHCLC) is America's largest Hispanic Christian evangelical organization. Founded in 1995, NHCLC serves as a representative voice for the more than 100 million Hispanic Evangelicals assembled in over 40,000 U.S. churches and hundreds of thousands of additional congregations spread worldwide throughout the Spanish-speaking diaspora. Seeking to reconcile evangelist Billy Graham's message of salvation with Dr. Martin Luther King, Jr.'s march of prophetic activism, the NHCLC emphasizes seven Directives, one of which is focused on the sanctity of human life. Under that directive, NHCLC members pledge to bring assistance, comfort, and care to pregnant

¹ Counsel for *Amici Curiae* certify that no party authored this brief in whole or in part, and no such counsel or party contributed money to prepare or submit this brief. Petitioners and Respondents have filed blanket consents with the Clerk to the filing of amicus briefs.

women in need and those who have undergone an abortion. NHCLC members are deeply concerned about the abortion industry's eugenic targeting of minority women, including Hispanic women, for abortions.

The Frederick Douglass Foundation is a national grassroots education and public policy organization with local chapters across the United States. The Foundation supports strengthening the Black Family, criminal justice reform, and economic opportunity. Led by Dean Nelson, the Foundation is committed to developing innovative and new approaches to today's problems in partnership with elected officials, scholars, ministers, professionals, and community advocates. Reflecting its namesake's focus on promoting the long-term interests of African Americans and the equality of all persons, the Frederick Douglass Foundation is pro-life and speaks out against the damage that the abortion epidemic has wreaked on the African American community.

Dr. Alveda C. King is a pro-life advocate, former Georgia state representative, and the niece of Martin Luther King, Jr. Following in her uncle's footsteps, Dr. King is a nationally recognized civil rights leader and embraces the fight against abortion—including its impact on the African American community—as a continuation of her uncle's work. Through her civil rights work for the unborn, Dr. King seeks to reach Black Americans and the general population with the truth about the harmful impact of abortion and its byproducts. Dr.

King's mission was featured in the 2009 pro-life documentary, *Maafa 21: Black Genocide in 21st Century America*.

Deacon Keith A. Fournier, J.D., M.T.S., M. Phil., is General Legal Counsel and Director of Deacon Formation for the Catholic Diocese of Tyler, Texas. Deacon Fournier advocates for human rights and the recognition of the dignity of human life from conception to natural death. He supports laws that recognize unborn children's fundamental right to life.

The Common Good Foundation is a nonprofit educational and ministry organization dedicated to advancing authentic social justice and culture through four pillars of participation: the dignity of human life, the importance of marriage and family, religious freedom, and social solidarity through subsidiarity.

The Diocese of Tyler (legally the Roman Catholic Bishop of Tyler) includes 33 counties and 23,443 square miles of Northeast Texas. Led by Bishop Joseph Edward Strickland, the Diocese ministers to 130,000 Catholics in its 52 parishes and 14 missions. Consistent with Catholic teaching, the Diocese supports laws that recognize the sanctity of human life, including unborn children's fundamental right to life.

Amici are a diverse group of organizations, churches, religious leaders, and individuals. Together, they represent millions of people who believe that legalized abortion violates the right to life. The organizational *Amici* represent or minister

to significant portions of the African American and Hispanic communities. Accordingly, they speak on behalf of more than 70,000 African American and Hispanic churches and tens of millions of African Americans and Hispanic Americans across the United States.

As members of or ministers to the African American and Hispanic communities, in both Roman Catholic and Protestant traditions, *Amici* have a strong interest in denouncing the district court's spurious conclusion that laws prohibiting abortion are inherently racist. The district court failed to contemplate the racist and eugenic history of the abortion movement. The district court also failed to consider that abortion is largely a minority epidemic—and purposefully so. Consistent with the constitutional right to life and equal protection guarantees, *Amici* argue that states have a compelling interest in preventing eugenic abortions, which thus nullifies any absolute constitutional right to an abortion.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should be “deeply troubled” by the district court’s handling of this case. *Jackson Women’s Health Org. v. Dobbs*, 945 F.3d 265, 278 (5th Cir. 2019) (Ho., J., concurring in the judgment). After disregarding Mississippi’s justifications for House Bill 1510, the district court opined that Mississippi’s interest in women’s health was “pure

gaslighting” and that the law instead represented the “old Mississippi” that was “bent on controlling women and minorities.” *Jackson Women’s Health Org. v. Currier*, 349 F. Supp. 3d 536, 540 n.22, 543 n.40 (S.D. Miss. 2018), *aff’d sub nom. Jackson Women’s Health Org. v. Dobbs*, 945 F.3d 265 (5th Cir. 2019) (hereinafter “Dist. Ct. Op.”).

Judge Ho in the Fifth Circuit condemned the district court’s opinion, noting that it “displays an alarming disrespect for the millions of Americans who believe that babies deserve legal protection during pregnancy as well as after birth, and that abortion is the immoral, tragic, and violent taking of innocent human life.” *Dobbs*, 945 F.3d at 284 (Ho., J., concurring in the judgment). Judge Ho also added that the district court, “without a hint of irony, ... smear[ed] Mississippi legislators by linking House Bill 1510 to the state’s tragic history of race relations, while ignoring abortion’s own checkered racial past.” *Id.* at 278.

This Court should likewise condemn the district court’s rhetoric. As Judge Ho pointed out, and as *Amici* expand on below, the district court’s conclusion that a State’s interest in protecting the lives of the unborn is racist “is particularly noxious, considering the racial history of abortion advocacy as a tool of the eugenics movement.” *See Dobbs*, 945 F.3d at 284 (Ho, J., concurring in the judgment). Moreover, Planned Parenthood—the largest abortion provider in the United States—has continued the legacy of its founder, Margaret Sanger, of eliminating or preventing unborn

children based on race, sex, and disability. And States have a compelling interest “in preventing abortion from becoming a tool of modern-day eugenics.” *Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, 139 S. Ct. 1780, 1783 (2019) (Thomas, J., concurring). For these reasons, among many, this case is an ideal vehicle for the Court to finally overrule *Roe v. Wade* and its progeny, which have constitutionalized eugenic abortions as a fundamental right.

ARGUMENT

I. ABORTION GREW OUT OF AND REMAINS ROOTED IN EUGENICS IDEOLOGY THAT ELIMINATES “LESS DESIRABLE” RACES AND CERTAIN CLASSES OF PEOPLE TO EVOLVE A SUPERIOR HUMAN POPULATION.

By asserting that H.B. 1510 reflects “the old Mississippi” that was “bent on controlling women and minorities,” the district court essentially concluded that anti-abortion laws are racist. Dist. Ct. Op., at 541 n.22. As Judge Ho in the Fifth Circuit pointed out, however, the district court’s claim is “particularly noxious” in light of the “the racial history of abortion advocacy as a tool of the eugenics movement.” *Dobbs*, 945 F.3d at 284 (Ho., J., concurring in the judgment).

A. The Birth Control Movement, Abortion Advocacy, and Eugenics Are All Rooted In Social Darwinism and the Elimination of Undesirable Populations.

Modern abortion advocacy arose out of the birth control movement, which was “developed alongside the American eugenics movement.” *Box Planned Parenthood of Indiana & Kentucky, Inc.*, 139 S. Ct. 1780, 1783 (2019) (Thomas, J., concurring). Coined in the 1880s by Francis Galton, a British scientist and cousin of Charles Darwin, “eugenics” is “the science of improving stock through all influences that tend in however remote a degree to give to the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have.” *Id.* at 1784 (Thomas, J., concurring) (internal quotation marks omitted). Put simply, the sinister goal of the eugenics movement was to eliminate “unfit” and “undesirable” people—those with mental and physical disabilities as well as certain races.

Indeed, Charles Darwin himself did not hide his eugenic inclinations, highlighting them in the very title of his 1859 tome, which his modern day adherents conveniently truncate nowadays: “*The Origin of Species by means of Natural Selection or the Preservation of Favoured Races in the Struggle for Life*” (emphasis added). And, in his subsequent book *The Descent of Man*, published in 1871, Darwin unabashedly revealed his insidious racist and white supremacist thinking:

Over the course of the book, Darwin describes Australians, Mongolians, Africans, Indians, South Americans, Polynesians, and even Eskimos as “savages.” It becomes clear that he considers every population that is not white and European to be savage. The word savage is disdainful, and Darwin constantly elevates white Europeans above the savages. Darwin explains that the “highest races and the lowest savages” differ in “moral disposition ... and in intellect.” The idea that white people are more intelligent and moral persists throughout. At one point, Darwin says that savages have “low morality,” “insufficient powers of reasoning,” and “weak power of self-command.” ... Darwin writes that Australians are incapable of complex thought, and insinuates that they are akin to lower animals: His perspective on non-European races is incredibly prejudiced and absurd. ...

Darwin makes a disturbing link between his belief in white supremacy and his theory of natural selection. He justifies violent imperialism. “From the remotest times successful tribes have supplanted other tribes. ... At the present day civilised nations are everywhere supplanting barbarous nations.” Darwin’s theory applies survival of the fittest to human races, suggesting that extermination of non-white races is a natural consequence of white Europeans being a superior and more successful race. Further, Darwin justifies violently overtaking other

cultures because it has happened regularly throughout natural history. The arc of Darwin's evolutionary universe evidently does not bend toward justice: He has no problem with continuing the vicious behavior of past generations. ...

Not only does Darwin believe in white supremacy, he offers a biological explanation for it, namely that white people are further evolved.

Austin Anderson, *The Dark Side of Darwinism*, <https://sites.williams.edu/engl-209-fall16/uncategorized/the-dark-side-of-darwinism/> (last visited July 26, 2021).

By the 1920s, the eugenics movement was immensely popular among progressives, professionals, academics, and the medical community.² “Many leading figures of the day—Theodore Roosevelt, John D. Rockefeller, Mrs. Mary Harriman, David Starr Jordan (a biologist and the first president of Stanford University), to name some—were fervent eugenicists, putting their money, their power, their time, and their research behind the effort.”³

Margaret Sanger, Planned Parenthood's founder, was one of the most outspoken members of the

² See Adam Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* 2 (2016).

³ Jeffrey Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 87 (2018).

American eugenics movement. Sanger argued that eugenics was “the most adequate and thorough avenue to the solution of racial, political and social problems.”⁴ She accordingly praised sterilization as the “remedy” to the problem of “an increasing rate of morons.”⁵

In the first two decades of the twentieth century, the eugenics movement altered the legal landscape. Between 1907 and 1922, a dozen states passed eugenic sterilization laws.⁶ And one court upheld eugenic sterilization as a valid exercise of the state’s police power “based on the growing belief that, due to the alarming increase in the number of degenerates, criminals, feebleminded, and insane, our race is facing the greatest peril of all time.” *Smith v. Wayne*, 231 Mich. 409, 425 (1925).

B. The Eugenics Movement’s Racist Roots.

Many eugenicists drew “the distinction between the fit and the unfit ... along racial lines.” *See Box*, 139 S. Ct. at 1785 (Thomas, J., concurring) (citing

⁴ Margaret Sanger, *The Eugenic Value of Birth Control Propaganda*, BIRTH CONTROL REV., Oct. 1921, at 5.

⁵ Margaret Sanger, *The Function of Sterilization*, BIRTH CONTROL REV., Oct. 1926, at 299.

⁶ *See* Paul Lombardo, *Disability, Eugenics, and the Culture Wars*, 2 ST. LOUIS U. J. HEALTH L. & POL’Y 57, 61 n.33 (2008) (listing 12 states that enacted involuntary sterilization statutes).

examples).⁷ The Immigration Act of 1924 “represented a eugenic (and racist and nativist) attempt to protect the integrity of Anglo-American stock.”⁸ And a disproportionate number of the sterilized individuals, particularly in the South, were minorities. For example, in 1955, South Carolina reported that all 23 persons sterilized at the State Hospital over the previous year were Black women.⁹ In the 1930s and 1940s, the North Carolina Eugenics Commission sterilized nearly 8,000 “mentally deficient persons,” some 5,000 of whom were Black.¹⁰ Even the district court acknowledged that Mississippi “sterilized six out of ten black

⁷ See Lombardo, *supra* note 6, at 76 (noting that Margaret Sanger was open about “voicing her contempt for the poor, disabled and minorities”).

⁸ Corinna Lain, *Three Supreme Court “Failures” and a Story of Supreme Court Success*, 69 VANDERBILT L. REV. 1040 (2019); see also Cohen, *supra* note 2, at 132–35 (discussing role of eugenicists in passing the act).

⁹ See Dorothy Roberts, *Killing The Black Body: Race, Reproduction, and The Meaning Of Liberty* 88–89 (1997).

¹⁰ *Ibid.* (footnote omitted); see also Maya Manian, *Coerced Sterilization of Mexican-American Women: The Story of Madrigal v. Quilligan*, in REPRODUCTIVE RIGHTS & JUSTICE STORIES 97, 99 (Melissa Murray et al. eds., 2019) (describing the forced sterilization of Mexican-American women in California into the 1970s).

women” at a local county hospital “against their will.” Dist. Ct. Op., at 541 n.22.

C. A Dark Stain Upon This Court, *Buck v. Bell* Legitimized the Eugenics Movement.

In *Buck v. Bell*, 274 U.S. 200 (1927), this Court “threw its prestige behind the eugenics movement.” *Box*, 139 S. Ct. at 1786 (Thomas, J., concurring). In *Buck*, the Court approved the compulsory sterilization of an allegedly “feeble minded” woman who had been falsely adjudged “the probable potential parent of socially inadequate offspring.” *Buck*, 274 U.S. at 205, 207. In a short opinion, Justice Oliver Wendell Holmes, Jr., joined by seven other Justices, “offered a full-throated defense of forced sterilization,” *Box*, 139 S. Ct. at 1786 (Thomas, J., concurring), as a means to “prevent” society from being “swamped with incompetence,” *Buck*, 274 U.S. at 207. According to this Court:

It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. **Three generations of imbeciles are enough.**

Ibid. (citation omitted) (emphasis added).

The *Buck* decision had a profound impact on the eugenics movement.¹¹ Within five years, 28 states had adopted compulsory sterilization laws; and between 1907 and 1983, more than 60,000 people were involuntarily sterilized.¹²

The *Buck* decision is also a dark stain on this Court, which has resulted in the forced sterilization of helpless human beings made in the image and likeness of God.¹³

¹¹ See Sutton, *supra* note 3, at 117 (“As an advertisement for eugenics, *Buck v. Bell* worked.”)

¹² See Cohen, *supra* note 2, at 299–300, 319; see generally Peter Quinn, *Race Cleansing In America*, 54 AMERICAN HERITAGE 2–3 (2003).

¹³ Cf. Paul Lombardo, *Three Generations, No Imbeciles: Eugenics, The Supreme Court, and Buck v. Bell* xiii (2008) (“The *Buck* case represents one of the low points in Supreme Court history—on a par with *Plessy v. Ferguson*, which announced the now-discredited legal doctrine of ‘separate but equal,’ and the *Korematsu* case, which permitted the internment of Japanese citizens during World War I.”); Victoria Nourse, *Buck v. Bell: A Constitutional Tragedy from a Lost World*, 39 PEPP. L. REV. 101, 101 (2011) (“A mere five paragraphs long, *Buck v. Bell* could represent the highest ratio of injustice per word ever signed on to by eight Supreme Court Justices, progressive and conservative alike.”).

II. THE EUGENIC ERA LIVES ON THROUGH THE ABORTION MOVEMENT—AND THROUGH *ROE V. WADE* AND ITS PROGENY.

The eugenics movement fell out of fashion after the fall of Nazi Germany,¹⁴ but “[t]ragically, ... the practice continues today with modern-day abortions,” *Preterm-Cleveland v. McCloud*, 994 F.3d 512, 540 (6th Cir. 2021) (Griffin, J., concurring). Indeed, “[f]rom the beginning, birth control and abortion were promoted as means of effectuating eugenics.” *Box*, 139 S. Ct. at 1787 (Thomas, J., concurring); *id.* at 1789 (“Support for abortion can ... be found throughout the literature on eugenics.”).

For example, Margaret Sanger argued that birth control “is really the greatest and most truly eugenic method” of “human generation,” and “its adoption as part of the program of Eugenics would immediately give a concrete and realistic power to that science.”¹⁵ Sanger further argued that “eugenists and others who are laboring for racial betterment” could not “succeed” unless they “first clear[ed] the way for Birth Control.”¹⁶ Many eugenicists supported legalizing abortion, and abortion advocates—including future Planned Parenthood President Alan Guttmacher—endorsed abortion for eugenic

¹⁴ See Sutton, *supra* note 3, at 87.

¹⁵ Margaret Sanger, *Pivot of Civilization* 189 (1922).

¹⁶ Margaret Sanger, *Birth Control and Racial Betterment*, BIRTH CONTROL REV., Feb. 1919, at 11.

reasons. And as the late Justice Ginsburg once observed: “[A]t the time *Roe* was decided, there was concern about population growth and particularly growth in populations that we don’t want to have too many of. So that *Roe* was going to be then set up for Medicaid funding of abortion.”¹⁷

A. The Birth Control and Abortion Movements Are Racist and Eugenic.

The links between abortion and racist eugenics are manifold. For openers, Margaret Sanger focused her eugenic goal to eliminate “the unfit” on minorities. In promoting birth control, Sanger advanced a “Negro Project,”¹⁸ gave a speech to the Ku Klux Klan,¹⁹ and advocated eugenic breeding for “the gradual suppression, elimination and eventual extinction, of defective stocks—those human weeds which threaten the blooming of the finest flowers of

¹⁷ Emily Bazelon, *The Place of Women on the Court*, N.Y. TIMES MAGAZINE (July 7, 2009), <https://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html>.

¹⁸ See MARGARET SANGER PAPERS PROJECT, NEWSLETTER #28, *Birth Control or Race Control? Sanger and the Negro Project* (2001) (hereinafter Sanger Newsletter), http://www.nyu.edu/projects/sanger/articles/bc_or_race_control (last visited July 10, 2021).

¹⁹ See Margaret Sanger, *An Autobiography* 366 (1938).

American civilization.”²⁰ She personally set up birth-control clinics in minority communities, including a clinic in Harlem in 1930.²¹ In a personal letter in 1939, Sanger explained her plan to stop Black population growth: “The most successful educational approach to the Negro is through a religious appeal. We do not want word to go out that we want to exterminate the Negro population, and the minister is the man who can straighten out that idea if it occurs to any of their more rebellious members.”²²

For decades, minority groups have complained that Planned Parenthood has been targeting their communities. An example: “Birth control is just a plot just as segregation was a plot to keep blacks down. It is a plot rather than a solution. Instead of working for us and giving us our rights—you reduce us in numbers and do not have to give us anything.”²³ African American leaders such as

²⁰ Opinion, Margaret Sanger, *Apostle of Birth Control Sees Cause Gaining Here*, N.Y. TIMES, Apr. 8, 1923, at 11.

²¹ See Sanger Newsletter, *supra* note 18; see also Mary Ziegler, 25 YALE J.L. & FEMINISM 1, 13 (2013) (noting that in its early advocacy for birth control, Planned Parenthood “focused on unwanted children and pathological parenting in poor African American communities”)

²² Sanger Newsletter, *supra* note 18 (citation omitted).

²³ Donald Critchlow, *Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America* 61 (1999) (quoting a

Julius Lester, Dick Gregory, Daniel H. Watts, and H. Rap Brown described abortion as “black genocide” and called on Blacks to eschew these practices to avoid “race suicide.”²⁴

B. The Abortion Industry, Including Planned Parenthood, Continues Margaret Sanger’s Legacy of “Eliminating” Unborn Children Based on Their Race.

The district court opined that anti-abortion laws actually oppress women and minorities. Dist. Ct. Op., at 541 n.22. History and data tell a different story—that abortion has devastated communities of color. According to one peer-reviewed study, “black women have been experiencing abortions at a rate nearly four times that of white women for more than

1966 communication between a Planned Parenthood Federation of American (PPFA) field consultant to Alan Guttmacher); *see also* *Box*, 139 S. Ct. at 1790 (Thomas, J., concurring) (noting that some Black groups considered “family planning’ as a euphemism for race genocide and believed that black people [were] taking the brunt of the ‘planning’ under Planned Parenthood’s ‘ghetto approach’ to distributing its services” (citation and internal quotation marks omitted)).

²⁴ Critchlow, *supra* note 23, at 142; *cf.* David Beito & Linda Royster Beito, *Black Maverick: T.R.M. Howard’s Fight For Civil Rights and Economic Power* 215 (2009) (noting that some African American civil rights leaders “fretted about the racist implications of abortion”).

30 years.”²⁵ Dr. James Sherley, one of the study’s authors, commented: “Abortion is the hushed killer of Black life that has silenced millions of George Floyds before they even took their first breath of air. Yet, in this remarkable moment of social reform history, the lives of Black preborn children have been forgotten.”²⁶

According to the Centers for Disease Control’s most recent data, Black women accounted for 33.6 percent of all reported abortions in 2018, even though they make up 13 percent of women in the United States.²⁷ Black women also had the highest abortion rate (21.2 abortions per 1,000 women) and ratio (335 abortions per 1,000 live births). Further, abortion-induced deaths of the unborn in the Black community are 69 times higher than HIV deaths, 31

²⁵ James Studnicki et al., HEALTH SERVS. RESEARCH & MANAGERIAL EPIDEMIOLOGY, *Perceiving and Addressing the Pervasive Racial Disparity in Abortion* (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7436774/pdf/10.1177_2333392820949743.pdf.

²⁶ Opinion, James Sherley, *Preborn Black Lives Matter, Too*, WASH. TIMES (Aug. 2, 2020), <https://www.washingtontimes.com/news/2020/aug/2/preborn-black-lives-matter-too/>.

²⁷ Katherine Kortsmit et al., CTRS. FOR DISEASE CONTROL & PREVENTION, *Abortion Surveillance—United States, 2018* (Nov. 27, 2020); U.S. CENSUS BUREAU, *Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin* (2020).

times higher than homicides, 3.6 times higher than cancer-related deaths, and 3.5 times higher than deaths caused by heart disease.²⁸

In Mississippi, 3,005 abortions were reported in 2018. Of those abortions, 72% were performed on black women, compared to just 24% on White women and 4% on women of other races.²⁹ Indeed, the Charlotte Lozier Institute estimates that the Black abortion rate in Mississippi was 8.5 per 1,000 women of childbearing age—over three-and-a-half times the abortion rate of 2.3 per 1,000 for White women.³⁰

C. Planned Parenthood Has Used Abortion to Eliminate “Undesirable” Births, Especially Black and Brown Children.

The racial disparity in abortions is largely intentional: A study based on 2010 Census data shows that nearly eight out of ten Planned Parenthood abortion clinics are within walking distance of predominantly Black or Hispanic

²⁸ CTRS. FOR DISEASE CONTROL & PREVENTION, *Morbidity & Mortality Wkly. Rep., Abortion Surveillance — United States, 2018*, at 8.

²⁹ See Tessa Longbons, CHARLOTTE LOZIER INST., *Abortion Reporting: Mississippi (2018)* (May 8, 2020), <https://lozierinstitute.org/abortion-reporting-mississippi-2018/>.

³⁰ *Ibid.*

neighborhoods.³¹ More specifically, Planned Parenthood intentionally located 86 percent of its abortion facilities in or near minority neighborhoods in the 25 U.S. counties with the most abortions.³² These 25 counties contain 19 percent of the U.S. population, including 28 percent of the Black population and 37 percent of the Hispanic/Latino population. In 12 of these counties, Blacks and Hispanics/Latinos are more than 50 percent of the population. In contrast, Blacks are only 12.6 percent of the U.S. population, and Hispanics and Latinos are 16.3 percent. Planned Parenthood's largest abortion facility in America is situated in the middle

³¹ See Susan Enouen, LIFE ISSUES INST., *New Research Shows Planned Parenthood Targets Minority Neighborhoods*, Life Issues Connector (Oct. 2012), <http://www.protectingblacklife.org/pdf/PP-Targets-10-2012.pdf>; see also Mark Crutcher et al., LIFE DYNAMICS, INC., *Racial Targeting and Population Control* 22 (2011), https://issues4life.org/pdfs/racial_targeting_population_control.pdf (reporting that in every state, “population control centers” are in “zip codes with higher percentages of blacks and/or Hispanics than the state’s overall percentage”).

³² See Susan Enouen, *Research Shows Planned Parenthood Expands Targeting Minorities as it Spurns Racist Founder*, TOWNHALL (Sep. 23, 2020), <https://townhall.com/columnists/susanwillkeenouen/2020/09/23/research-shows-planned-parenthood-expands-targeting-minorities-as-it-spurns-racist-founder-n2576680>.

of a Black and Hispanic neighborhood within walking distance of a nearby school. Given that Planned Parenthood has strategically located abortion clinics near minority neighborhoods, the abortion industry's attempt to deny its eugenic aims cannot withstand objective scrutiny.³³

In short, Margaret Sanger believed, as did her Eugenics Era colleagues, that the “unfit” and “feeble-minded” were a menace to society. And in all contexts, these terms were code words for the poor, Blacks, and other minorities. Sanger clearly believed that these “undesirable” people should not reproduce and thus advocated for their sterilization.³⁴ Moreover, Sanger's life purpose was to implement eugenic population control, and targeted birth control was her way to achieve it. Planned Parenthood has continued Sanger's shameful legacy to this day.

³³ See Crutcher et al., *supra* note 22, at 4 (noting that “these patterns are routinely considered indicative of racial targeting when it comes to other issues,” such as when civil rights advocates criticize tobacco and alcohol companies for concentrating their retail and marketing efforts disproportionately in minority neighborhoods).

³⁴ See generally Margaret Sanger, *My Way to Peace*, Address to the New History Society (Jan. 17, 1932).

III. AFFIRMING *ROE* AND ITS PROGENY WOULD CONTINUE THIS COURT'S IMPOSITION OF EUGENIC IDEOLOGY IN *BUCK V. BELL*.

With the passage of the Fourteenth Amendment, our Nation embraced the principle of equal protection of the law for all persons. Each state must adhere to this principle. *See generally Slaughterhouse Cases*, 83 U.S. 36 (1872). Prohibiting abortions advances equal protection and the right to life by protecting all developing human beings from racially motivated termination while in the womb.

Although the Mississippi statute at issue in this case does not require this Court to consider the validity of an anti-eugenics law, this Court's current abortion jurisprudence presently "constitutionalize[s] the views of the 20th-century eugenics movement," by "[e]nshrining a constitutional right to an abortion based solely on the race, sex, or disability of an unborn child." *Box*, 139 S. Ct. at 1792. (Thomas, J., concurring). Indeed, the introductory paragraphs of Justice Blackmun's opinion in *Roe v. Wade* invoked the eugenic specter of "population growth, pollution, poverty, and racial overtones," which "tend to complicate and not to simplify the problem." 410 U.S. 113, 116 (1973).

Roe and its progeny are the low watermark in this Court's history. They abandoned the Constitution and invented a so-called "right" piecing together the First, Fourth, Fifth, and Fourteenth Amendments; and then not finding support there to justify ending an unborn child's life, *Roe* resorted to

“penumbras” supposedly emanating from the edges like an eclipse. *See Roe*, 410 U.S. at 152. The consequence: *Roe* and its progeny recognize a constitutional right to abortion even for eugenic reasons.

Even though science at *Roe*’s time suggested that life began from fertilization,³⁵ technological advances now indisputably confirm that life begins at fertilization.³⁶ Unfortunately, as Justice Thomas noted, those “[t]echnological advances have only heightened the eugenic potential for abortion, as abortion can now be used to eliminate children with unwanted characteristics, such as a particular sex or disability.” *Box*, 139 S. Ct. at 1784 (Thomas, J., concurring) (citing examples). Thus, abortion may now be used as “a disturbingly effective tool for implementing the discriminatory preferences that undergird eugenics.” *Id.* at 1790. For that reason, states have a compelling interest in “preventing abortion from becoming a tool of modern-day eugenics.” *Id.* at 1783. And that interest far outweighs this Court’s judicially fashioned distortion of the Constitution.

³⁵ *See* Lennart Nilsson, *Drama of Life Before Birth*, LIFE (Apr. 30, 1965), <http://www.lennartnilsson.com/en/a-life-of-stories/the-drama-of-life-before-birth/> (last visited July 19, 2021).

³⁶ *See generally* AM. COLL. OF PEDIATRICIANS, *When Human Life Begins* (Mar. 2017), <https://acpeds.org/assets/imported/3.21.17-When-Human-Life-Begins.pdf>.

CONCLUSION

The Court should condemn the district court's disparaging rhetoric, reverse the decision below, and finally overrule *Roe v. Wade* and its progeny.

Respectfully submitted,

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