

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC22-1050

PLANNED PARENTHOOD OF SOUTHWEST AND CENTRAL
FLORIDA, on behalf of itself, its staff, and its patients, *ET AL.*,

Petitioners,

v.

STATE OF FLORIDA, *ET AL.*,

Respondents.

Discretionary Proceeding to Review Decision of the
First District Court of Appeal

Consolidated with Case No. SC2022-1127
Lower Tribunal Nos. 1D22-2034; 2022-CA-912

**BRIEF OF AMICI CURIAE FREDERICK DOUGLASS
FOUNDATION, THE NATIONAL HISPANIC CHRISTIAN
LEADERSHIP CONFERENCE, AND OTHER ADVOCACY GROUPS
IN SUPPORT OF RESPONDENTS**

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IDENTITIES AND INTEREST OF AMICI CURIAE

Amici Curiae, Frederick Douglass Foundation, The National Hispanic Christian Leadership Conference, Fiona Jackson Center for Pregnancy, and Issues4life Foundation are nonprofit faith organizations who serve members of the African American, Hispanic, and disability communities in Florida and across the United States. Amici have a strong interest in exposing the racist and eugenic history of the abortion movement, which has had catastrophic effects on their communities. Amici relatedly have a strong interest in defending state laws, such as House Bill 5 (HB 5), that protect vulnerable communities from genocidal social policies. Amici submit this brief to share their unique perspective on the eugenic and racist history of abortion and its effects on minority and disability communities. Given Amici's background and experience in this sensitive area, their perspective is unlikely to be represented by the parties or other amici.

SUMMARY OF THE ARGUMENT

Florida's challenged law, HB 5, exercises the State's legitimate interest in, among other revisions, prohibiting abortions after fifteen weeks except for certain limited exceptions. FLA STAT. §§ 390.011,

390.0111. Consistent with the constitutional right to life and equal protection guarantees, Amici argue that Florida and all States have a compelling interest in preventing eugenic abortions. Amici's position is that abortion is largely a minority epidemic—and purposefully so. Margaret Sanger and the early abortion movement purposefully attempted to utilize abortion as a means of population control among those populations they considered lesser than White or fully able Americans. This same ideology drove the United States Supreme Court's notorious decision in *Buck v. Bell*, 274 U.S. 200 (1927). Yet Florida has historically rejected eugenic ideology, as it did in 1933 and 1935 when the state legislature refused to follow the rest of the country down the path of eugenics by rejecting bills that would have codified into state law sterilization practices targeting minority and disabled communities.¹

Abortion is the modern-day offspring of eugenics. The procedure is in direct conflict with Florida's constitutional guarantees to life and liberty. House Bill 5 furthers Florida's compelling interest in ensuring

¹ Lutz Kaelber, Assoc. Professor of Sociology, University of Vermont, Presentation on Eugenic Sterilizations in Comparative Perspective at the 2012 Social Science History Association (2012), <https://www.uvm.edu/~lkaelber/eugenics/FL/FL.html>.

that the rights guaranteed in the Florida Constitution extend to all its citizens, not just the born. By upholding the law, this Court should properly interpret FLA. CONST. ART. 1, SEC. 2 to guarantee the equal right to life of all Floridians and reject modern-day eugenics in this State.

ARGUMENT

Florida's decision to protect innocent and defenseless human life in the womb should be upheld. The abortion movement in the United States is rooted in eugenics ideology, which seeks to eradicate those who are deemed unfit or undesirable. As a consequence, the abortion industry has indisputably targeted Black, Hispanic, and disabled communities. The eugenics-based abortion industry denies the fact that all human beings have inherent value and dignity that are bestowed on them by their Creator. Instead, it leaves to government decisionmakers and powerful, billion-dollar organizations like Planned Parenthood to determine if or when human life has worth and value. *Cf. Obergefell v. Hodges*, 576 U.S. 644, 735 (2015) (Thomas, J., dissenting) ("When the Framers proclaimed in the Declaration of Independence that 'all men are created equal' and 'endowed by their Creator with certain unalienable

Rights,’ they referred to a vision of mankind in which all humans are created in the image of God and therefore of inherent worth.”). Such a practice also violates the Florida Constitution, which guarantees to all Floridians “the right to enjoy and defend life” regardless of “race, religion, national origin, or physical disability.” FLA. CONST. ART. 1, SEC. 2.

I. Abortion Advocacy Rests on the Eugenics Movement, Which Is 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 v. Planned Parenthood of Indiana & Kentucky, Inc.*, 139 S. Ct. 1780, 1783 (2019) (Thomas, J., concurring). Coined in the 1880s by a British scientist who was a 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.” *Box*, 139 S. Ct. 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, unabashedly revealing in his writings his insidious racist and white supremacist thinking. As one commentator explained:

It becomes clear that he considers every population that is not white and European to be savage. . . . 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. 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. Not only does Darwin believe in white supremacy, he offers a biological explanation for it, namely that white people are further evolved.²

By the 1920s, the eugenics movement was immensely popular among progressives, professionals, academics, and the medical community.³ Many leading figures of the day, including Theodore Roosevelt and John D. Rockefeller, “were fervent eugenicists, putting

² Austin Anderson, *The Dark Side of Darwinism* (Nov. 16, 2016), <https://sites.williams.edu/engl-209-fall16/uncategorized/the-dark-side-of-darwinism/> (last visited Sept. 16, 2022).

³ See Adam Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* 2 (2016).

their money, their power, their time, and their research behind the effort.”⁴

Petitioner Planned Parenthood’s founder, Margaret Sanger, was one of the most outspoken members of the American eugenics movement. Sanger argued that eugenics was “the most adequate and thorough avenue to the solution of racial, political, and social problems.”⁵ She accordingly praised sterilization as the “remedy” to the problem of “an increasing rate of morons.”⁶ In the first two decades of the twentieth century, a dozen states passed eugenic sterilization laws.⁷ One court even 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).

⁴ Jeffrey Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 87 (2018).

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

⁶ Margaret Sanger, *The Function of Sterilization*, BIRTH CONTROL REV. (Oct. 1926), at 299.

⁷ 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).

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 examples).⁸ The Immigration Act of 1924 “represented a eugenic (and racist and nativist) attempt to protect the integrity of Anglo-American stock.”⁹ 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.¹⁰ In the 1930s and 1940s, the North Carolina Eugenics Commission sterilized nearly 8,000 “mentally deficient persons,” some 5,000 of whom were Black.¹¹

⁸ See Lombardo, *supra* note 7, at 76 (noting that Margaret Sanger was open about “voicing her contempt for the poor, disabled and minorities”).

⁹ 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).

¹⁰ See Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* 88–89 (1997).

¹¹ *Id.* (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).

In *Buck v. Bell*, 274 U.S. 200 (1927), the Supreme 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.” 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. In a now, infamous passaged, the Supreme Court declared:

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.**

Id. (emphasis added) (citation omitted).

Within five years after *Buck*, 28 states had adopted compulsory sterilization laws; and between 1907 and 1983, more than 60,000

helpless human beings made in the image and likeness of God were involuntarily sterilized.¹²

II. The Eugenic Era Lives on Through the Modern Abortion Movement.

“Tragically, . . . the [eugenics] 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

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

the program of Eugenics would immediately give a concrete and realistic power to that science.”¹³ 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.”¹⁴ Many eugenicists supported legalizing abortion, and abortion advocates—including future Planned Parenthood President Alan Guttmacher—endorsed abortion for eugenic 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.”¹⁵

A. The American Abortion Movement is Steeped in Racism.

The links between abortion and racist eugenics are manifold. For starters, Margaret Sanger focused her eugenic goal to eliminate “the unfit” minorities. In promoting birth control, Sanger advanced a

¹³ Margaret Sanger, *Pivot of Civilization* 189 (1922).

¹⁴ Margaret Sanger, *Birth Control and Racial Betterment*, BIRTH CONTROL REV. (Feb. 1919), at 11.

¹⁵ 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>.

“Negro Project,”¹⁶ gave a speech to the Ku Klux Klan,¹⁷ 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 American civilization.”¹⁸ She personally set up birth-control clinics in minority communities, including a clinic in Harlem in 1930.¹⁹ 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.²⁰

Minority groups have complained for decades that Planned Parenthood was targeting their communities. For example, a minority

¹⁶ 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 Sept. 16, 2022).

¹⁷ See Margaret Sanger, *An Autobiography* 366 (1938).

¹⁸ Margaret Sanger, *Apostle of Birth Control Sees Cause Gaining Here*, N.Y. TIMES (Apr. 8, 1923), at 11.

¹⁹ See Sanger Newsletter, *supra* note 16; 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”).

²⁰ Sanger Newsletter, *supra* note 16 (citation omitted).

field agent complained to former Planned Parenthood president Alan Guttmacher: “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.”²¹ African American leaders such as 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.”²²

History and data reveal 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

²¹ Donald Critchlow, *Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America* 61 (1999) (quoting a 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)).

²² Critchlow, *supra* note 21, 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”).

that of white women for more than 30 years.”²³ 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.”²⁴ Black women have been lied to and manipulated into believing that that Planned Parenthood and other abortion providers have their best interests at heart.

According to the Centers for Disease Control and Prevention’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.²⁵ Black women also had the highest

²³ 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.

²⁴ 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/>.

²⁵ Katherine Kortsmitt et al., CTRS. FOR DISEASE CONTROL & PREVENTION, Morbidity & Mortality Wkly. Rep., *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).

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 times higher than homicides, 3.6 times higher than cancer-related deaths, and 3.5 times higher than deaths caused by heart disease.²⁶

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.²⁷ 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.²⁸

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

²⁶ Kortsmit et al., *supra* note 25, at 8.

²⁷ See Tessa Longbons, CHARLOTTE LOZIER INST., *Abortion Reporting: Mississippi* (2018) (May 8, 2020), <https://lozierinstitute.org/abortion-reporting-mississippi-2018/>.

²⁸ *Supra* note 27.

predominantly Black or Hispanic neighborhoods.²⁹ 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.³⁰ 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 of a Black and Hispanic neighborhood within walking

²⁹ 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”).

³⁰ 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>.

distance of a nearby school. Given that Planned Parenthood has strategically opened abortion clinics near minority neighborhoods, the abortion industry's attempt to deny its eugenic aims and racist roots cannot withstand objective scrutiny.³¹

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, disabled, and other minorities. Sanger clearly believed that these “undesirable” people should not reproduce and thus advocated for their sterilization.³² Planned Parenthood has continued Sanger's shameful legacy to this day.

B. Modern Abortion Policy Promotes the Eradication of Preborn Children with Down Syndrome and Other Disabilities.

Just last month, millions across the globe celebrated World Down Syndrome Day, an annual observance on March 21 started by

³¹ See Crutcher et al., *supra* note 29, 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).

³² See generally Margaret Sanger, *My Way to Peace*, Address to the New History Society (Jan. 17, 1932).

the United Nations in part to “ensur[e] and promot[e] the full realization of all human rights and fundamental freedoms for all persons with disabilities.”³³ Yet in recent years, due to the “abortion-on-demand” movement and advances in prenatal screening technology, unborn children with Down syndrome and other genetic disabilities are increasingly being destroyed.

This practice is morally and ethically wrong. Aborting children based on prenatal diagnosis of Down syndrome is effectively promoting eugenics. It also sends a message to society that individuals with Down syndrome are less valuable and less deserving of life than those without the condition. This is a dangerous precedent to set, as it leads to a devaluation of human life and an erosion of the rights of individuals with disabilities.³⁴ Accordingly, the State of Florida has a compelling interest in “preventing abortion

³³ See G.A. RES. 66/149, ¶ 3 (Dec. 19, 2011).

³⁴ Sadly, the American Medical Association has endorsed disability selective abortion at least since 1967. See American Medical Association, House of Delegates Proceedings, Annual Convention 1967 40, 50 (adopting as policy “an occasional obstetric patient ... would warrant the institution [sic] of therapeutic abortion ... to prevent the birth of a severely crippled, deformed or abnormal infant”).

from becoming a tool of modern-day eugenics” against the disabled. *Box*, 139 S. Ct. at 1783 (Thomas, J., concurring).

As discussed above, abortion is used as “a disturbingly effective tool for implementing the discriminatory preferences that undergird eugenics.” *Box*, 139 S. Ct. at 1790 (Thomas, J., concurring) (citing examples). As Justice Thomas presciently observed, today’s “[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.” *Id.* at 1784 (Thomas, J., concurring) (citing examples).³⁵ This observation is not drawn from a dystopian novel but from the real world. Data from the United States and Europe show that over 92% of parents who learn through prenatal genetic testing that their child has Down syndrome opt to abort the baby.³⁶ Indeed, Iceland and

³⁵ Cell-free DNA testing enables genetic screening through a simple blood draw during the first trimester. The American College of Obstetricians and Gynecologists recommends offering cell-free testing for Down Syndrome to all pregnant women “as early as possible in pregnancy, ideally at the first obstetric visit.” American College of Obstetricians & Gynecologists, *Practice Bulletin 162: Prenatal Diagnostic Testing for Genetic Disorders* (May 2016).

³⁶ See Caroline Mansfield et al., *European Concerted Action, Termination Rates After Prenatal Diagnosis of Down Syndrome*, *Spina*

Denmark have nearly eliminated all children with Down syndrome through selective abortion. Since prenatal screening was introduced in Iceland, “close to 100 percent” of preborn children diagnosed with Down syndrome are aborted.³⁷ The one or two babies with Down syndrome who survive to birth do so because, as one Icelandic doctor disturbingly observed, “we didn’t find them in our screening.”³⁸

Nor is the eugenic application of abortion in the United States merely hypothetical: An estimated 67% of babies with Down syndrome are aborted in our country. *See Box*, 139 S. Ct. at 1783, 1790 (Thomas, J., concurring). Other studies estimate that 80% of women who learn of a Down syndrome diagnosis before 24 weeks abort their baby.³⁹ Furthermore, a review of nine hospital-based

Bifida, Anencephaly, and Turner and Klinefelter Syndromes: A Systematic Literature Review, 19 *PRENATAL DIAGNOSIS* 808, 810 (1999).

³⁷ Julian Quinones & Arijeta Lajka, “*What Kind of Society Do You Want to Live in?*”: *Inside the Country Where Down Syndrome is Disappearing*, CBS NEWS (Aug. 14, 2017), <https://www.cbsnews.com/news/down-syndrome-iceland/>.

³⁸ Dave Maclean, *Iceland Close to Becoming First Country Where No Down’s Syndrome Children Are Born*, INDEPENDENT (Aug. 16, 2017), <https://www.independent.co.uk/lifestyle/health-and-families/iceland-downs-syndrome-no-children-born-first-countryworld-screening-a7895996.html>.

³⁹ Susan Donaldson James, *Down Syndrome Births are Down in the U.S.*, ABC NEWS (Oct. 30, 2009),

studies indicates that over 85% of babies are aborted following a prenatal diagnosis of Down syndrome.⁴⁰ This review also suggests that higher abortion rates following a Down syndrome diagnosis “were consistently associated with earlier gestational age,” with one study reporting that 93% of women at 16 weeks or less into their pregnancy aborted their babies compared to 85% at 17 weeks or greater.⁴¹ Even more alarming, anonymous survey of nearly 500 physicians who had delivered after prenatal diagnoses revealed that 13% of the providers emphasized the negative aspects of Down syndrome so that patients would favor terminating the pregnancy and 10% actively “urge” parents to terminate the pregnancy.⁴² In short, the eugenic use of abortion in America is not an overblown conspiracy theory promoted by pro-life activists—it is actually happening. Florida’s fifteen-week ban on abortion thus promotes the

https://abcnews.go.com/Health/w_ParentingResource/down-syndrome-births-dropus-women-abort/story?id=8960803.

⁴⁰ Jaime L. Natoli et al., *Prenatal Diagnosis of Down Syndrome: A Systematic Review of Termination Rates (1995-2011)*, 32:2 *PRENATAL DIAGNOSIS* 142, 147 (2012).

⁴¹ *Supra* note 40 at 149.

⁴² Brian G. Skotko, *Prenatally Diagnosed Down Syndrome: Mothers Who Continued Their Pregnancies Evaluate Their Health Care Providers*, 192 *AM. J. OF OBSTETRICS & GYNECOLOGY* 670, 670–71 (Nov. 2004).

compelling interest in “preventing abortion from becoming a tool of modern-day eugenics.” *Box*, 139 S. Ct. at 1783 (Thomas, J., concurring).

Critically, individuals with Down syndrome offer much to society and are a joy to their loved ones. A 2011 Harvard study found that “[a]mong those surveyed, nearly 99% of people with DS indicated that they were happy with their lives, 97% liked who they are, and 96% liked how they look. Nearly 99% of people with DS expressed love for their families, and 97% liked their brothers and sisters.”⁴³ Children’s Hospital Boston also found that 99% of parents or guardians loved their child with Down syndrome, and 79% “felt their outlook on life was more positive because of their child.”⁴⁴ The same study found that 94% of siblings 12 years and older reported that they were proud of their brother or sister with Down syndrome, and 88% said that they were better persons because of their sibling.

⁴³ Brian G. Skotko et al., *Self-Perceptions from People with Down Syndrome*, AM. J. MED. GENETICS 2360, 2360, 2364 (Oct. 2011).

⁴⁴ Press Release, Children’s Hospital Boston, *Parents Siblings and People With Down Syndrome Report Positive Experiences* (Sept. 23, 2011), available at <https://medicalxpress.com/news/2011-09-parents-siblings-people-syndrome-positive.html>.

Despite their limitations, children with Down syndrome can achieve great things. Take Karen Gaffney, for example. Gaffney has Down syndrome, yet she earned a two-year Associates of Science degree from Portland Community College, successfully swam the English Channel as part of a six-person relay team and swam nine miles straight across Lake Tahoe in 59-degree water to raise money for the National Down Syndrome Congress.⁴⁵ On top of that, she leads a nonprofit foundation dedicated to advocating for those with Down syndrome. Her message is simple: “Down Syndrome Is a Life Meant to Be Saved!”⁴⁶ Other children with Down syndrome have gone on to perform at Carnegie Hall, launch a fashion label, and open their own restaurant.⁴⁷ In short, people with Down syndrome have contributed to society in meaningful ways. By advocating for permissive abortion laws, Petitioners are in effect seeking to eradicate

⁴⁵ Karen Gaffney Foundation, *Karen’s Story*, <https://karengaffneyfoundation.org/karens-story/> (last accessed Mar. 23, 2023).

⁴⁶ *Supra* note 45.

⁴⁷ Zoe Ettinger, *13 People with Down Syndrome Who Are Breaking Barriers in Entertainment, Athletics, Fashion, and More*, INSIDER (Mar. 10, 2020), <https://www.insider.com/people-with-down-syndrome-breaking-barriers>.

people who have the potential to enrich our communities and foster compassion for vulnerable communities.

In sum, pro-life laws such as Florida’s counteract the nefarious eugenicist agenda that targets children with Down syndrome. At a minimum, Florida’s protection of unborn babies aligns with the federal policy of protecting people with disabilities. *See generally* Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327; Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No 108-446, 118 Stat. 2647. By contrast, Petitioners’ position—which necessarily advocates for selective abortion on demand—promotes disability discrimination and threatens to eradicate a group of individuals with unique abilities and experiences.

CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court uphold HB 5’s fifteen-week ban and hold that the Florida Constitution confers no freewheeling right to abort unwanted children but instead affirms the rights to life and equal protection.

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Dated this April 10, 2023.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was prepared in 14-point Bookman Old Style in compliance with Rule 9.045 of the Florida Rules of Appellate Procedure. I further certify that this brief contains 4,571 words, which complies with the word limit for computer generated briefs stated in Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by electronic service through the Florida Courts E-Filing Portal to all counsel of record, pursuant to Rule 2.516(b)(1), Fla. R. Jud. Admin., on this April 10, 2023.

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