

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC2022-1050

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.

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

Lower Tribunal Nos. 1D22-2034; 2022-CA-912

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**MOTION FOR LEAVE TO FILE BRIEF BY *AMICI CURIAE*  
LATINOJUSTICE, FLORIDA ACCESS NETWORK, NATIONAL LATINA  
INSTITUTE FOR REPRODUCTIVE JUSTICE, ESPERANZA UNITED,  
AND A.L. IN SUPPORT OF PETITIONERS' BRIEF**

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LatinoJustice PRLDEF (“LatinoJustice”), the Florida Access Network (“FAN”), National Latina Institute for Reproductive Justice (“Latina Institute”), Esperanza United, (“organizational Movants”) and A.L. (collectively, “Movants”), by counsel and pursuant to Rule 9.370(a) of the Florida Rules of Appellate Procedure, collectively move for leave to file the attached *amici curiae* brief in support of Petitioners in *Planned Parenthood of Southwest and Central Florida, et al. v. State of Florida, et al.*, Case No. 2022-CA-912.

### **INTEREST OF THE MOVANTS**

On June 1, 2022, Florida health care providers brought a state constitutional challenge to Florida House Bill 5 (“HB 5”), a ban on abortions after fifteen weeks of pregnancy. The state trial court issued an order blocking the 15-week ban on July 5, 2022, finding that HB 5 likely violates the state’s constitution and will cause irreparable harm. The State of Florida appealed the ruling, triggering an automatic stay of the injunction. The Petitioners then appealed to the Florida Supreme Court.

LatinoJustice is a national civil rights organization with an office in Orlando, Florida. For over fifty years, LatinoJustice has brought landmark cases and secured significant rights for Latinos in the fields of economic justice, criminal justice reform, immigrants’ rights, and voting rights, among others causes. LatinoJustice has filed numerous amicus briefs before the Supreme Court of the United States, Circuit Courts of Appeal, and in state courts. Notably, LatinoJustice has appeared as *amicus*

*curiae* in *Drew Adams v. School Bd. of St. Johns Cty.*, No. 18-13592 (11th Cir. 2021) and *Dobbs v. Jackson Women’s Health Org.*, No. 19-1392 (2021).

LatinoJustice represents the interests of the Latinx<sup>1</sup> community and communities of color who otherwise may be underrepresented in matters before the executive, legislative, and judicial branches. Through its Latinas-at-Work project, LatinoJustice litigates on behalf of women who experience gender-based discrimination and advocates for them before administrative and legislative tribunals. When HB 5 was pending before the Florida legislature, for example, LatinoJustice, in collaboration with local partners, engaged in a media campaign to draw attention to the perils of the legislation.

Florida Access Network (“FAN”) is a Florida-based organization dedicated to advancing reproductive justice. A Black, Indigenous and People-Of-Color led, community-centered, non-profit, FAN facilitates access for people seeking the medical procedure of an abortion. FAN connects patients to resources, including transportation, childcare, pre- and post-procedure counseling and stipends. FAN assists patients in protecting their right to decide when and if they want to procreate

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<sup>1</sup> The term Latinx and Latino are used interchangeably herein, but mean different things. “Hispanic” refers to individuals who originate from Spanish-speaking countries. *See* 42 U.S.C. § 300u-6(g)(2). “Latino” or the gender neutral “Latinx,” meanwhile, refers to individuals whose origins are from Latin America. *See* Hugo Lopez et al., *Who is Hispanic?*, PEW RSCH. CTR. (Sept. 23, 2021), <https://www.pewresearch.org/fact-tank/2021/09/23/who-is-hispanic/>.

and their choice to delay having a child so that they can enter the workforce, pursue an education, or make other life choices. FAN was previously known as Central Florida Women’s Emergency Fund and has been providing abortion services since 1996.

Latina Institute is a national organization with an office in Florida that aims to build Latinx power to fight for the fundamental human right to reproductive health, dignity, and justice through education, research, carrying out civic and voter engagement, and supporting government policies that improve the reproductive health and well-being of Latinx people. Latina Institute has built a state-based network of activists in Florida that organize movements for reproductive justice at the community level. For example, soon after HB 5 became law, Latina Institute issued a report detailing its impacts, as well as the impacts of other restrictive abortion laws, on Latinas. The report found, for example, that 6.5 million Latinas of childbearing age, nationwide, were denied access to abortion care in their home states, including Florida.<sup>2</sup> Latina Institute is also frequently cited in news articles for its work advocating against abortion bans, financial barriers to reproductive care, religious refusals of abortion and contraception, forced parental involvement laws,

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<sup>2</sup> Katherine Gallagher Robbins, Candace Gibson, and Shaina Goodman, *State Abortion Bans Threaten 6.5 Million Latinas*, NAT’L P’SHIP FOR WOMEN & FAM. (Nov. 2022), <https://www.nationalpartnership.org/our-work/health/reports/state-abortion-bans-threaten-latinas.html>.

state-mandated restrictions on abortion care, and fake clinics that often target communities of color.

Esperanza United is a national Latinx organization focused on ending gender-based violence. Esperanza United provides family advocacy directly to communities; provides training and technical assistance on how to meet the needs of Latinx survivors of domestic violence to service providers; and conducts research that promotes social justice in the field of domestic violence and sexual assault. Esperanza United's work reaches Latinx survivors of intimate partner violence in Florida.

A.L. is a Florida Latina who was directly harmed by HB 5.<sup>3</sup> Unable to obtain an abortion in Florida because of HB 5, A.L. was forced to travel out-of-state, at substantial personal and financial cost, to end her pregnancy. Despite A.L.'s fetus having a life-threatening health condition, and the serious health risks to A.L. of continuing the pregnancy due to her own preexisting medical condition, A.L.'s doctor's office would not assist her with her abortion because it was uncertain about qualifying for HB 5's narrow exceptions and feared prosecution for violating the law. A.L. is uniquely suited, given her first-hand experience with lack of abortion care

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<sup>3</sup> In the exercise of her privacy right over her medical information, A.L. has refrained from using her full name and will use her initials instead.

under HB 5, to inform this Court about the direct and devastating harms of HB 5 on a woman's fundamental right to end her pregnancy prior to viability.

Movants' interests in this case are two-fold: a) to underscore the irreparable harm and disproportionate impacts of HB 5 on Floridian Latinas; and b) to emphasize how HB 5 impacts the work that the organizational Movants have done to protect the right to abortion care, reproductive freedom, and economic security for women.

*First*, Latina Floridians face a unique risk of being disproportionately harmed by enforcement of HB 5. Nationally, about 58% of Latinas in the United States are of childbearing age, compared to 38% of white women.<sup>4</sup> Similarly, in Florida, there is a nearly 20-point differential between the Latina (49%) and white women (31%) childbearing populations. Thus, Latina Floridians face a unique and growing risk of being disproportionately harmed by the enforcement of HB 5.

*Second*, collectively, the organizational Movants have worked for decades to remove barriers like that described above, which disproportionately burden Latina women and impede their freedom and economic security. For example, to highlight the impacts of HB 5 and other restrictive abortion bans, LatinoJustice worked with local partners on communications strategies, including issuing numerous press

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<sup>4</sup> See Josefina Flores Morales, Ph.D, and Julia Hernandez Nierenberg, *Differential Rights: How Abortion Bans Impact Latinas in Their Childbearing Years*, UCLA LATINO POL'Y & POL. INST. 7 (2022).

releases.<sup>5</sup> Similarly, FAN has coordinated outreach, trainings, and community education to inform Floridians, particularly those in South Florida, about the likely devastating impacts of HB 5. When HB 5 subsequently became law, FAN mobilized allies, and continues to do so, to secure funding to provide needed services to Floridians forced to flee the state to obtain abortion care. FAN has had to redouble its efforts to protect the reproductive freedoms of women as the need for its services has increased exponentially since HB 5's enactment.

For the foregoing reasons, the Movants have an interest in protecting the reproductive choices of Latina Floridians and low-income women. Movants aim to address the impacts to reproductive freedom to Florida Latinx women as *amici curiae* in this case.

### **HOW MOVANTS CAN ASSIST THE COURT**

Movants' *amici* brief will demonstrate the irreparable harms that HB 5 visits on Florida Latinx women by describing the narrative of a Latina Floridian directly

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<sup>5</sup> See e.g., *LatinoJustice Stands Ready to Defend Women's Reproductive Rights with Potential Overturn of Roe v. Wade*, LATINOJUSTICE (May 3, 2022), <https://www.latinojustice.org/en/news/latinojustice-stands-ready-defend-womens-reproductive-rights-potential-overturn-roe-v-wade>; *LatinoJustice Calls Upon All Texans to Organize Against Dehumanizing Bills*, LATINOJUSTICE (Sept. 3, 2021), <https://www.latinojustice.org/en/news/latinojustice-calls-upon-all-texans-organize-against-dehumanizing-bills>; Jose Luis Perez, *SCOTUS Review – June Medical Services v. Gee*, LATINOJUSTICE (2020), <https://www.latinojustice.org/en/latinojusticeopina/scotus-review-june-medical-services-v-gee>.

harmful by HB 5, and by sharing data and statistics regarding the nexus between reproductive and economic justice for Florida Latinx women and women of color.

**PARTICULAR ISSUE TO BE ADDRESSED**

While other briefs may focus on health disparities, legislative history, or provider narratives, this brief is centered specifically around the narratives of Florida Latinx women and women of color. More than one million Latina Floridians of childbearing age will likely be severely impacted by HB 5. Many of them are low-income women whose voices and experiences are often unheard. This makes the Movants’ brief particularly unique and necessary for the Court’s consideration.

Wherefore, Movants respectfully seek leave to file an *amici curiae* brief in support of Petitioners.

**CONSENT**

Both Petitioners and Respondents have consented to the filing of this *amicus* brief. Under Florida Rules of Appellate Procedure 9.370(c), *amicus curiae* must serve its brief no later than ten days after the first brief, petition, or response of the party being supported is filed. Movants will file this motion with an accompanying *amici* brief.

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Respectfully submitted this 9th day of March, 2023.

/s/ Angela C. Vigil

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## STATEMENT OF INTEREST OF AMICI CURIAE

*Amici Curiae* (“*Amici*”) are civil rights and non-profit organizations, and one individual, committed to protecting the rights of the Latino and broader community and concerned with the disproportionate impact of HB 5 on Latina and other women of color.<sup>1</sup> They are:

**LatinoJustice PRLDEF (“LatinoJustice”)**, a national civil rights organization with an office in Orlando, Florida. LatinoJustice regularly engages in impact litigation, representing the Latinx<sup>2</sup> and other communities in areas including economic justice, immigrant rights, and voting rights. For more than fifty years, LatinoJustice has worked to eliminate barriers that disproportionately burden Latinx women and their economic security.

**Florida Access Network (“FAN”)**, a Black, Indigenous, and People of Color-led non-profit, community-centered organization that facilitates access for people seeking abortion access in Florida, and has been doing so since 1996. FAN connects patients to resources like transportation, childcare, counseling, and stipends. Since

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<sup>1</sup> The *Amici Curiae* more fully describe their interests in their accompanying Motion for Leave to File Brief by *Amici Curiae*.

<sup>2</sup> The term Latinx and Latina are used interchangeably throughout this brief. We note that “Hispanic,” “Latino,” and “Latinx,” while often used interchangeably, mean different things. “Hispanic” refers to individuals who originate from Spanish-speaking countries. *See* 42 U.S.C. § 300u-6(g)(2). “Latino” or the gender neutral “Latinx,” meanwhile, refers to individuals whose origins are from Latin America. *See* Hugo Lopez et al., *Who is Hispanic?*, PEW RSCH. CTR. (Sept. 23, 2021), <https://www.pewresearch.org/fact-tank/2021/09/23/who-is-hispanic/>.

the implementation of HB 5, the demand for FAN's services has increased exponentially. Between July and November 2022, FAN has seen a 240% increase in services compared to the same period in 2021. FAN has assisted hundreds of individuals, many of whom are under-employed, low-income, people of color, or minors.

**National Latina Institute for Reproductive Justice (“Latina Institute”)**, a non-partisan, non-profit organization, established in 1994, that fights for equal access to reproductive health for Latina and Latinx communities throughout the U.S. including Florida, Texas, Virginia, and New York. Latina Institute works with activists and leaders to organize and advocate throughout South Florida and to mobilize communities on reproductive justice issues. Since its founding, Latina Institute has worked to increase Latina and Latinx visibility in the reproductive justice movement through building networks of activists in states, including Florida, to support its policy goals.

**Esperanza United**, a national organization founded in 1982, provides emergency shelter and support for Latina women and children experiencing domestic and sexual violence. Esperanza United provides training, technical assistance, research, and national policy advocacy to address and prevent gender-based violence affecting the Latina and immigrant communities. Esperanza United



works directly with Latina survivors of domestic and sexual violence who seek services and safety, including Latina Floridians.

A.L., a Latina Floridian, who was directly harmed by HB 5. Unable to obtain abortion care in Florida because of HB 5, A.L. was forced to travel out-of-state, at substantial personal and financial cost, to terminate her pregnancy. A.L.'s fetus had a life-threatening health condition, and A.L. had a previous medical condition that risked her own health if she continued the pregnancy. However, Florida health care providers are uncertain about how to apply HB 5's narrow exceptions in practice, and her doctor's office was unable to assist her with abortion care, fearing prosecution under the law's harsh civil and criminal penalties.

Together, *Amici* submit this brief in support of Petitioners to inform the Court about the irreparable harms suffered by childbearing Latina Floridians resulting from the implementation of Florida's 15-week abortion ban. Latina Floridians are more likely to face pregnancy-associated health care risks, more likely to be low-income, and least likely to be able to afford the prohibitive expense of traveling out-of-state to obtain abortion care. These and other harms discussed below justify reinstating the district court's order enjoining HB 5.

## INTRODUCTION

Florida’s 15-week abortion ban, (“HB 5”), results in irreparable harm to childbearing Latina Floridians. *Amicus Curiae* A.L.’s story is a telling illustration.<sup>3</sup> When A.L., a Latina Floridian, learned she was pregnant, she was elated. But genetic testing proved foreboding. At 15 weeks of pregnancy, A.L. learned that her unborn child was afflicted with a rare genetic disorder—Trisomy 18—causing severe heart defects, lung defects, and deformities. A.L. also had a previous medical condition that risked her own health if she continued her pregnancy. Although A.L. had never contemplated an abortion before, she made the deeply personal and exceedingly difficult decision to end her pregnancy because of life-threatening health risks to both her unborn child and herself.

A.L.’s decision to end her pregnancy did not come easily; it was laden with psychological, physiological, and economic repercussions. HB 5 irreparably exacerbated these harms by (a) depriving A.L. of her fundamental right to make this decision in her home state; (b) forcing her to flee out-of-state to access abortion services, at substantial personal and economic cost; and (c) delaying her care, causing A.L. to suffer increased physiological and emotional health risks as a result.

Like A.L., 1.4 million Latinas of reproductive age live in Florida, the state

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<sup>3</sup> In the exercise of her privacy right over her medical information, A.L. has refrained from using her full name and will use her initials instead.

with the second highest number of childbearing Latinas among abortion-restrictive states.<sup>4</sup> Latina Floridians will be significantly and disproportionately impacted by HB 5 because they are more likely to be forced to carry an unwanted pregnancy to term, more likely to have a higher risk of maternal mortality and comorbidities that increase the health risks associated with pregnancy, more likely to experience delays in accessing abortion care, more likely to be low-income and not have the means to travel out of Florida to seek abortion care, and more likely to be denied time off from work to secure care.

Accordingly, *Amici* join Petitioners in urging this Court to affirm the district court order enjoining HB 5. As *Amici* argue below, HB 5 irreparably and disproportionately harms Latina Floridians and low-income women of color.

## ARGUMENT

“Florida’s Constitution [has long] embodie[d] the principle that few 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. A woman’s right to make that choice freely is fundamental.” *In re T.W.*, 551 So. 2d 1186, 1193 (Fla. 1989) (quotation marks and citations omitted). The fundamental

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<sup>4</sup> See Katherine Gallagher Robbins, Candace Gibson, and Shaina Goodman, *State Abortion Bans Threaten 6.5 Million Latinas*, NAT’L P’SHIP FOR WOMEN & FAM. (Nov. 2022), <https://www.nationalpartnership.org/our-work/health/reports/state-abortion-bans-threaten-latinas.html>.

right to decide to end a pregnancy derives from Article 1, Section 23, of Florida’s Constitution, which expressly declares that “[e]very natural person has the right to be let alone and free from governmental intrusion into the person’s private life.” Any law that “places the state between a woman, or minor, and her choice to end her pregnancy clearly implicates the [fundamental] right of privacy.” *Gainesville Woman Care, LLC. v. State*, 210 So. 3d 1243, 1254 (Fla. 2017). Such a law “is presumptively unconstitutional” and must be subjected to strict judicial scrutiny. *Id.* at 1265.<sup>5</sup>

The district court correctly enjoined HB 5. The district court ruled that Petitioners demonstrated a likelihood of success—the first prong for injunctive relief—because HB 5 infringes the fundamental right to end a pregnancy prior to viability. *Planned Parenthood of Southwest & Central Florida v. State of Florida*, No. 2022 CA 912, 2022 WL 2436704, at \*20 (Fla. Cir. Ct. July 5, 2022) (hereinafter *Planned Parenthood*). As to the second prong, the district court found that HB 5 would “cause . . . patients [like A.L.] to suffer irreparable harm.” *Id.* at \*24.<sup>6</sup> The harms suffered, *inter alia*, are: (a) health risks to the woman and/or the fetus; (b)

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<sup>5</sup> As Petitioners cogently argue in their brief, Florida’s freestanding constitutionally enshrined privacy protection is unencumbered by the Supreme Court’s recent decision in *Dobbs v. Jackson Women’s Health Organization*, 142 S. Ct. 2228 (2022). See Pet. Op. Br. at 40-45.

<sup>6</sup> The district court also ruled that the “threatened or actual loss of a constitutional right, even temporarily, is *per se* irreparable harm.” *Planned Parenthood*, at \*24 (citation omitted).

poverty status and its attendant challenges; and (c) delays in confirming pregnancy, researching and considering options, and obtaining treatment. *Id.* at \*6-8. Here, *Amici* amplify the irreparable harms to childbearing, low-income women, and Latina Floridians.

### **I. HB 5 Visits Dire and Disproportionate Health and Economic Harms on Latinas**

While HB 5 harms all women, it disparately harms Latina Floridians in three critical respects: *first*, they are a larger share of Florida’s childbearing population and so will suffer more; *second*, they face more pregnancy-related health risks which deepen preexisting health disparities; and *third*, they are more likely to be low-income and lack access to healthcare.

#### **a. Latinas Are Overrepresented in the Childbearing Population**

Latinas constitute a higher share of the childbearing population. Nationally, they are 58% of the childbearing population, compared to 38% of white women.<sup>7</sup> Similarly, in Florida, there is a nearly 20-point differential gap between childbearing Latinas (49%) and white women (31%).<sup>8</sup> Between 2010 and 2020, the Latino population, which is expected to continue to grow, increased by 53.8%, while the

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<sup>7</sup> See Josefina Flores Morales and Julia Hernandez Nierenberg, *Differential Rights: How Abortion Bans Impact Latinas in Their Childbearing Years*, UCLA LATINO POL’Y & POL. INST. 7 (Dec. 13, 2022), <https://latino.ucla.edu/research/abortion-bans-latinas/>.

<sup>8</sup> *Id.*

non-Latino population increased by only 8.7%.<sup>9</sup> By sheer numbers alone, the impacts of HB 5 will fall more acutely on childbearing Latinas.

### **b. Latinas Face Higher Pregnancy-Related Health Risks**

The mortality rate of women of color in childbirth is three times higher than that of white, non-Hispanic women. *Planned Parenthood*, at \*27-28. This high mortality rate is a result of systemic racism and poverty causing a lack of accessibility to healthcare and abortion procedures. Restrictive laws that criminalize abortion compel doctors to refuse to provide the procedure until they have waited long enough for the risk-to-a-woman's-health exception to fully materialize. In many cases, that is too late. Research shows that the inaccessibility of abortion will increase the mortality rate for women by a staggering 24%.<sup>10</sup> For women of color, that rate will soar to 39% nationwide.<sup>11</sup> For Florida, the expected increase in mortality rate is 29% among all women,<sup>12</sup> making Florida one of the deadliest states in the country for women. These are not just numbers—they represent the preventable deaths of Floridian women. Thus, HB 5 further marginalizes Latina and

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<sup>9</sup> See *2020 Census Profiles Florida*, NAT'L ASSOC. OF LATINO ELECTED & APPOINTED OFF. (2020), <https://naleo.org/wp-content/uploads/2021/12/2020-Census-Profiles-FL.pdf>.

<sup>10</sup> See Elyssa Spitzer, Tracy Weitz, Maggie Jo Buchanan, *Abortion Bans Will Result in More Women Dying*. CTR. FOR AMERICAN PROGRESS (Nov. 2, 2022), <https://www.americanprogress.org/article/abortion-bans-will-result-in-more-women-dying/>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

other women of color by rendering abortion care inaccessible before viability, threatening to worsen already distressingly high mortality rates.<sup>13</sup>

**c. Latinas Are More Likely to be Low-Income and Lack Access to Healthcare, Which HB 5 Worsens**

The barriers imposed by HB 5 are especially difficult for approximately 75% of abortion patients who live under or near the poverty line. *Planned Parenthood*, at \*15-16. Poverty exists in Florida, and it is not color-blind. In Florida, 13% of the population lives below the poverty level,<sup>14</sup> with women being the majority (55.1%).<sup>15</sup> Latinas and other people of color in Florida constitute more than half (approximately 1.5 million) of that population below the poverty line.<sup>16</sup>

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<sup>13</sup> While *Amici* define Latinas to include Afro-Latinas, the dismal maternal health outcomes for women identifying as Black alone merits attention. Black women are three to four times at greater risk of maternal mortality. Florida's abortion ban compounds existing maternal mortality rates and poor health outcomes for Black women. See e.g., Liza Fuentes, *Inequity in U.S. Abortion Rights and Access: The End of Roe is Deepening Existing Divides*, GUTTMACHER INST. (Jan. 17, 2023), <https://www.guttmacher.org/2023/01/inequity-us-abortion-rights-and-access-end-roe-deepening-existing-divides>.

<sup>14</sup> Per United States Census Bureau, the poverty threshold for one person without children is \$15,225, with the amount per person decreasing with each additional household member. *Poverty Thresholds: Poverty Thresholds by Size of Family and Number of Children*, U.S. CENSUS BUREAU (2022), <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html>.

<sup>15</sup> *S1701: Poverty Status in the Past 12 Months*, U.S. CENSUS BUREAU (2021), [https://data.census.gov/table?q=S1701:+POVERTY+STATUS+IN+THE+PAST+12+MONTHS&t=Income+and+Poverty&g=0100000US\\_0400000US12&tid=ACSS+T1Y2021.S1701](https://data.census.gov/table?q=S1701:+POVERTY+STATUS+IN+THE+PAST+12+MONTHS&t=Income+and+Poverty&g=0100000US_0400000US12&tid=ACSS+T1Y2021.S1701).

<sup>16</sup> *Id.*

Compounding the issue, the wage gap also disproportionately impacts Latinas. Latinas earn 54 cents for every dollar paid to white, non-Hispanic men, which makes their financial situation even more precarious.<sup>17</sup>

These economic outcomes directly translate to unaffordable healthcare for Latina women in Florida. In 2021, 19.4% of Hispanic Florida residents were uninsured.<sup>18</sup> Notably, there are no state programs that make abortion accessible to women living in poverty. For example, Medicaid in Florida does not cover the costs of abortion, except in the case of life endangerment, rape, or incest. Thus, even when the procedure is available under Florida law, there is no funding for abortion except in very narrow circumstances. And, when low-income Latina Floridians are able to secure financial assistance from non-profit organizations like *Amicus* Florida Access Network (“FAN”) to access abortion care out-of-state, they find their choices are severely limited, resulting in delays in accessing care. *See infra*, at Section II. Notwithstanding its services, FAN is not equipped to provide financial assistance to the exponential increase in the number of abortion seekers forced to obtain care out-of-state. HB 5’s implementation is exacerbating financial stressors to low-income

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<sup>17</sup> *See* Robbins, et al., *supra*, note 4.

<sup>18</sup> *Uninsured Rates for the Nonelderly by Race/Ethnicity*, KAISER FAM. FOUNDATION (2021), <https://www.kff.org/uninsured/state-indicator/nonelderly-uninsured-rate-by-raceethnicity/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D>.



women and Latinas disproportionately.

## **II. Latinas Forced to Travel Out-of-State for Abortion Care Encounter Restrictive Abortion Bans and Economic Hardships Severely Delaying and, Sometimes, Foreclosing Access to Care**

Latina Floridians forced to secure abortion care out-of-state have circumscribed choices, causing further irreparable harm. “HB 5 delay[s] some patients in obtaining abortions because they [are being] forced to travel out of state to access care” that is foreclosed in many states. *Planned Parenthood*, at \*20. The prohibitive costs of out-of-state travel may well force some low-income Latinas to forgo abortion entirely and carry an unwanted pregnancy to term.

### **a. Out-of-State Travel is Foreclosed in Half of U.S. States**

*Amicus Curiae* A.L. was forced to travel to Washington D.C., delaying her healthcare, because she could not access care in Florida or surrounding states. *See* Appendix, Declaration of A.L. (“A.L. Decl.”) ¶ 11; Declaration of FAN (“FAN Decl.”) ¶ 4.<sup>19</sup> The neighboring states of Alabama, Mississippi, Louisiana, Georgia, and Texas all preclude Latina Floridians from traveling to these states for care because they all have a near-total ban of abortion, except Georgia, which has a six-week ban.<sup>20</sup> Likewise, Latina Floridians cannot obtain abortion care in Arkansas,

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<sup>19</sup> *J.B. v. Fla. Dep’t of Child. & Fams.*, 170 So. 3d 780, 800, n. 4 (Fla. 2015) (Florida Supreme Court may consider evidence submitted by *amici curiae* in their brief.)

<sup>20</sup> *See* Elizabeth Nash and Isabel Guarnieri, *Six Months Post-Roe, 24 States Have Banned Abortion or Are Likely to Do So: A Roundup*, GUTTMACHER INST. (Jan. 10,

Kentucky, Missouri, Oklahoma, South Dakota, Tennessee, and West Virginia. All these states have near total abortion bans while Arizona has a 15-week ban, similar to Florida's, and Utah has an 18-week ban.<sup>21</sup>

All told, in almost half the country, including Florida, “approximately 6.5 million [childbearing] Latinas” cannot access abortion care in their home states.<sup>22</sup> *Amicus Curiae* Latina Institute’s research reached the same conclusion about Latina women in over two dozen states.<sup>23</sup> Tellingly, the report found that Florida, Texas, and Arizona, combined, account for 75% of childbearing Latinas who cannot access abortion care in their home states.<sup>24</sup>

#### **b. Prohibitive Cost of Out-of-State Travel May Result in Carrying Unwanted Pregnancies**

Given that abortion care is unobtainable in many neighboring states, Latina Floridians are forced to travel to far-away states, which invariably delays their care

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2023), <https://www.guttmacher.org/2023/01/six-months-post-roe-24-us-states-have-banned-abortion-or-are-likely-do-so-roundup>.

<sup>21</sup> *Id.* Exacerbating the problem, on March 7, 2023, the Florida legislature proposed a bill to prohibit abortion after just six weeks of pregnancy, further restricting the availability of abortion care in the state. *See* Florida Senate, *SB 300: Pregnancy and Parenting Support* (Mar. 8, 2023), <https://www.flsenate.gov/Session/Bill/2023/300>.

<sup>22</sup> *See* Morales and Nierenberg, *supra*, note 4, at 5. The researchers included Pennsylvania, Michigan, Kansas, South Carolina, and North Carolina in their methodology. *Id.* at 11.

<sup>23</sup> *See* Robbins, et al., *supra*, note 17.

<sup>24</sup> *Id.* Of abortion restrictive states, at nearly one million, Florida has the second highest number of childbearing Latinas. *Id.* *See also* Morales and Nierenberg, *supra*, note 7, at 11.

and subjects them to greater health and economic harms. Forced travel to abortion-safe jurisdictions hundreds of miles away like Washington, D.C., Maryland, and New York has “steep, negative economic shocks on low-income women and their families [ranging from] missed work, travel expenses to [potential] pregnancy-related deaths.”<sup>25</sup> *See Cameron v. EMW Women’s Surgical Center, P.S.C.*, No. 22-CI-003225, 2023 WL 2033788, at \*22, n.123 (Ky. 2023) (Bisig J., concurring in part, dissenting in part) (“[d]istressingly, many [low-income Latinas] do not possess the financial resources or means to travel and obtain care out-of-state.”). *Amicus Curiae* FAN reports that abortion seekers forced to flee the state for care are incurring substantial costs, at an average of \$3,000 per person, including the cost of medical procedure, transportation, childcare and lodging. In the eight months since HB 5’s effective date, more than \$1.5 million has been expended to support people seeking abortion care compared to just \$150,000 in all of 2021. *See* FAN Decl. ¶ 5.

Immigrants, people experiencing intimate partner violence, and people with small children also are least likely to travel far for abortion care.<sup>26</sup> *See Planned Parenthood of the Heartland, Inc. v. Reynolds, ex. rel State*, 975 N.W.2d 710, 758 (Iowa 2022) (Appel, J., dissenting) (noting increased travel “impose significant financial strain on low-income women . . . and cause additional burden on abused

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<sup>25</sup> *See* Morales and Nierenberg, *supra*, note 7, at 5.

<sup>26</sup> *Id.*

women who want to seek an abortion privately and discretely.”).<sup>27</sup> For low-income Latinas, survivors of intimate partner violence, and immigrants—especially those who are undocumented—the costs of out-of-state travel may prove prohibitive, coercing them to endure unwanted pregnancies.

Because out-of-state travel for abortion care is unobtainable in many states, imposes significant financial burdens on many low-income Latina Floridians, and, worse, impermissibly delays abortion care and amplifies pregnancy-related health risks, *Amici* urge this Court to affirm the order enjoining HB 5.

### **III. A.L.’s Story Exemplifies the Irreparable Harm that HB 5 causes Latinas**

While alarming, the statistics shared above do not fully convey the grave consequences that HB 5 visits upon Latina Floridians and low-income women of color. To further demonstrate the impacts of HB 5 to the Court, *Amicus Curiae* A.L. shares her firsthand experience of how this law has irreparably harmed her health, well-being, and constitutional rights.

#### **a. A.L.’s Pregnancy**

A.L. is a 44-year-old Latina woman who was born and raised in Brazil, where she studied nursing. A.L. has lived in Southern Florida for ten years with her husband,

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<sup>27</sup> For example, an abortion seeker in Texas has to travel, on average, “seven hours longer, adding nearly a full workday in travel time to get an abortion.” Deidre McPhillips, *Travel Time To Abortion Facilities Grew Significantly After Supreme Court Overturned Roe v. Wade*, CNN (Nov. 1, 2022), <https://www.cnn.com/2022/11/01/health/abortion-access-travel-time/index.html>.

with whom she has been married for twenty-three years. A.L. Decl., ¶ 1. When A.L. learned that she was pregnant in March 2022, she and her husband were overjoyed. They very much wanted the pregnancy. When A.L. learned that the fetus was a girl, A.L. named her in honor of her sister, who had recently passed away. *Id.* ¶ 2. Given that she was over 43 at the time and had a previous medical condition, A.L. knew that her pregnancy would be high risk. She consulted her physician who advised her to undergo genetic testing, which she did. *Id.* ¶ 3.

From the genetic testing, A.L. learned that her fetus tested positive for Trisomy 18, a very rare chromosomal disorder. A.L. learned that Trisomy 18, also known as Edwards syndrome, causes severe physical growth delays during fetal development. Most babies with Trisomy 18 die before they are born. Of the babies who make it to term, the majority die within 5 to 15 days, usually due to severe heart and lung defects.<sup>28</sup> *Id.* ¶ 4. At 15 weeks of pregnancy, further testing confirmed this devastating diagnosis. A.L. was told that her unborn fetus' chances of survival, if the baby was even born alive, ranged from only 1 to 5 days. *Id.* ¶ 5.

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<sup>28</sup> See *Trisomy 18 (Also Known as Edwards Syndrome)*, MINN. DEP'T OF HEALTH (NOV. 14, 2022), <https://www.health.state.mn.us/diseases/cy/trisomy18.html> (“Studies have shown that only 50% of babies who are carried to term will be born alive. The median of survival among live births has varied between 2.5 and 14.5 days. About 90% - 95% of babies do not survive beyond the first year and many live only a few days.”).

According to A.L., “Only someone that went through the same situation knows the psychological stress that is to know that your child is not going to live.” A.L. was overwhelmed with both grief and fear for her unborn child. A.L. even developed suicidal thoughts due to stress . *Id.* ¶¶ 5-6.

On top of her child’s diagnosis, A.L. worried about her own health. A.L. had previously been treated for thrombosis, the medical term for blood clots. As such, A.L.’s physician told her that she would be putting her own health at risk by continuing the pregnancy. *Id.* ¶ 5. Given the extremely low chance of survival for the unborn child, the severe deformities the child would face if it survived, and the serious health risks to A.L. of continuing the pregnancy due to her thrombosis, A.L.’s physician informed her of the choice to terminate her pregnancy. A.L. had never even considered having an abortion before this experience. *Id.* ¶¶ 6-7.

In spite of her staunch Catholic beliefs, A.L. and her husband made the heart-wrenching decision to terminate the pregnancy. According to A.L., “I did not come to the decision to end my pregnancy easily. It was not my wish. I did what was best for me and my unborn child. I believe every woman should have the option to do the same.” *Id.* ¶ 7.

**b. HB 5 Forces A.L. to Delay Obtaining Care**

After A.L. made her decision, her physician referred her to an abortion clinic in Florida where she learned about HB 5. A.L. was just over 15 weeks pregnant when

she went to the clinic, so the clinic informed her that she was prohibited from receiving the procedure. However, due to A.L.'s circumstances, the clinic stated that she could possibly fit within an exception under the law.<sup>29</sup> *Id.* ¶ 8.

The clinic asked A.L. to obtain a letter from her physician documenting the medical necessity for the abortion. A.L. made the request but was told that she would not be provided a letter because her doctor's office did not want to potentially run afoul of the new 15-week abortion ban. *Id.* ¶ 9. Because HB 5's exceptions are exceedingly narrow, require two physicians to make the determination that an exception applies, and subject providers to harsh penalties, the clinic feared providing the abortion A.L. needed; this in turn delayed her ability to receive care, compounding the harms that she endured. *Id.* ¶ 10.

Consequently, A.L. was forced to look to jurisdictions outside of Florida to receive her care. However, A.L. could not secure an appointment in any states adjacent to Florida because those states either prohibited abortion after 15 weeks or

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<sup>29</sup> HB 5 contains two extremely limited exceptions for circumstances in which "two physicians certify in writing that, in [their] reasonable medical judgment," either: (1) the abortion is "necessary to save the pregnant woman's life or avert a serious risk of substantial and irreversible physical impairment of a major bodily function," not including psychological conditions, or (2) the fetus has "a terminal condition" that is "incompatible with life outside the womb and will result in death upon birth or imminently thereafter." ROA 15-16 (citing HB 5, §§ 3(6), 4 (codified at §§ 390.011(6), 390.0111(1)(a)-(c), Fla. Stat.)).

their service providers were fully booked. Ultimately, A.L. was forced to travel to Washington D.C. to receive her care. *Id.* ¶ 11.

On July 17, 2022, at 16 weeks and 3 days pregnant, A.L. underwent an abortion to terminate her pregnancy. In total, A.L. and her husband spent nearly \$3,000, including flights, lodging, and clinic fees for her out-of-state medical procedure. *Id.* ¶ 11.

**c. A.L. was Irreparably Harmed by HB 5**

A.L.’s abortion experience was already harrowing, but it was exacerbated by HB 5 in at least three ways: *first*, the loss of A.L.’s fundamental right to make this highly personal decision in her home state of Florida; *second*, the delay in A.L. obtaining care due to the uncertainty caused by HB 5 and the increased physiological and emotional health risks she suffered as a result; and *third*, being forced to flee out-of-state to access abortion services, at substantial personal and economic cost.

To this day, A.L. is “saddened and distraught by the extremely personal and emotionally agonizing decision” she had to make. *Id.* ¶ 12. She shares her story with the Court because she is worried about other women who will face the same decision, especially “low-income women who have limited means and may not have the resources to afford travel out of Florida to obtain an abortion.” *Id.* ¶ 13. “Many of these women,” A.L. warns, “will be forced to carry an unwanted pregnancy to term.” *Id.*



## CONCLUSION

A.L.'s worry is not unfounded. The overwhelming data described herein demonstrates the devastating effects of HB 5 on Latina Floridians and low-income women of color. A.L.'s account confirms the irreparable harm that this law is already inflicting. For the foregoing reasons, *Amici* respectfully request that the Court reinstate the temporary injunction to prevent the irreparable harms that HB 5 is causing to Floridians' health, well-being, and long-established fundamental rights.

Respectfully submitted this 9th day of March, 2023.

/s/ Angela C. Vigil

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A.L.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of AMICI CURIAE BRIEF OF LATINOJUSTICE PRLDEF, FLORIDA ACCESS NETWORK, NATIONAL LATINA INSTITUTE FOR REPRODUCTIVE JUSTICE, ESPERANZA UNITED, AND A.L. has been furnished by electronic mail to all counsel of record by filing the document with service through the e-Service system, Fla. R. Jud. Admin. 2.516(b)(1), this 9th day of March, 2023.

/s/ Angela C. Vigil  
Angela C. Vigil

**CERTIFICATE OF COMPLIANCE FOR  
COMPUTER-GENERATED BRIEFS**

I certify that this brief complies with the applicable form and font requirements under Florida Rule of Appellate Procedure 9.045. I further certify that this brief complies with the word limit for computer-generated briefs stated in Florida Rule of Appellate Procedure 9.210(a)(2)(A).

/s/ Angela C. Vigil  
Angela C. Vigil

**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC2022-1050

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.

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

Lower Tribunal Nos. 1D22-2034; 2022-CA-912

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**APPENDIX TO BRIEF OF *AMICI CURIAE* LATINOJUSTICE, FLORIDA  
ACCESS NETWORK, NATIONAL LATINA INSTITUTE FOR  
REPRODUCTIVE JUSTICE, ESPERANZA UNITED, AND A.L. IN  
SUPPORT OF PETITIONERS' BRIEF**

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**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC2022-1050

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

Lower Tribunal Nos. 1D22-2034; 2022-CA-912

**DECLARATION OF A.L., AN INDIVIDUAL IMPACTED BY HB 5, IN  
SUPPORT OF AMICI CURIAE BRIEF OF LATINOJUSTICE PRLDEF,  
FLORIDA ACCESS NETWORK, NATIONAL LATINA INSTITUTE FOR  
REPRODUCTIVE JUSTICE, AND A.L.**

I, A.L., pursuant to FL. ST. 95.525, declare as follows<sup>1</sup>:

1. I am a 44-year-old Florida resident, who was born and raised in Brazil, where I studied nursing. I identify as Latina. I have lived in Southern Florida for ten years with my spouse with whom I have been married for twenty-three years.

2. When I learned in March 2022 that I was pregnant, my spouse and I were elated. We wanted this pregnancy. I named my unborn fetus in honor of my sister who had recently passed away because I found out that the fetus was a girl.

3. Given my age—over 43 at the time—and a previous medical condition, I knew that my pregnancy was high risk. I was advised by my treating physician to undergo genetic testing, which I did.

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<sup>1</sup> In exercise of my right to the privacy of my medical information, I refrain from using my name.

4. I learned from the testing that my fetus tested positive for Trisomy 18—a very rare chromosomal disorder. I also learned from my testing report that Trisomy 18, also known as Edwards syndrome, causes physical growth delays during fetal development. Most babies with Trisomy 18 die before they are born. The majority of babies who make it to term die within 5 to 15 days, usually due to severe heart and lung defects. The information I obtained from my genetics testing report also indicated that the common features associated with the genetic disorder include severe abnormalities of the head and facial (craniofacial) area; malformations of the spine, hands, and/or feet; neuromuscular abnormalities, such as increased muscle tone (hypertonia), increased reflex reactions (hyperreflexia), and difficulty coordinating movement; intellectual disability, kidney (renal) malformations; heart defect and seizure disorder.

5. At 15 weeks of pregnancy, further testing confirmed the devastating diagnosis. I understood that my unborn fetus's chances of survival, assuming she was born alive, ranged from 1 to 5 days. Only someone that went through the same situation knows the psychological stress that is to know that your child is not going to live. I feared for my unborn child but also worried about my own health. I had previously been treated for thrombosis or blood clot. I knew that I would be putting my health at risk by continuing the pregnancy. I was also aware of the severity of the deformities that my unborn child, if she lived, would face.

6. I recall having suicidal thoughts. I wondered why my unborn child was saddled with such a genetic disorder. I was overwhelmed with grief. But I was also acutely cognizant, given my nursing background and conversations with my medical geneticist, of the grim odds of survival for my unborn child. My physician informed me of the choice to terminate my pregnancy.

7. In spite of my staunch Catholic beliefs, my spouse and I made the heart-wrenching decision to terminate my pregnancy. I had never thought about having an abortion before this experience. I did not come to the decision to end my pregnancy easily. It was not my wish. I did what was best for me and my unborn child. I believe every woman should have the option to do the same.

8. My physician referred me to an abortion clinic in Florida where I learned about HB 5—the 15-week abortion ban. Because I was about 16 weeks pregnant when I went to the clinic, the clinic informed me that I might fit within an exception under the law.

9. The clinic asked me to obtain a letter from my physician documenting the medical necessity for the abortion. I made the request but was told that I would not be provided a letter because my doctor's office did not want to potentially run afoul of the new 15-week abortion ban.

10. The lack of clarity about whether I was eligible for an exception under HB 5 because my pregnancy was just over 15 weeks caused a delay in my receiving abortion care.

11. On July 17, 2022, 16 weeks and 3 days pregnant, I underwent an abortion to terminate my pregnancy. I was forced to travel to Washington D.C. for the procedure. I could not secure abortion care in states adjacent to Florida because those that provide the service were fully booked. My spouse and I spent nearly \$3,000, including flights, lodging and clinic fees for my out-of-state medical procedure.

12. I am still saddened and distraught by the extremely personal and emotionally agonizing decision that I had to make for my own health and that of my unborn child. Although my Catholic faith teaches me to value life, I understand that an abortion is a personal choice a person should make in consultation with their family and physician.

13. My decision to have an abortion remains deeply personal. I share my story because I worry about other women who face the similar agonizing decision to terminate a pregnancy. I am particularly concerned about low-income women who have limited means and may not have the resources to afford travel out of Florida to obtain an abortion. Many of these women will be forced to carry an unwanted pregnancy to term.

14. I believe that the right to bodily autonomy and to have an abortion—a medical procedure—should not be dictated by the state.

Under penalty of perjury, I declare that I have read the foregoing and that the facts stated are true.

Dated: March .06, 2023

Signed

AL

A.L.



**IN THE SUPREME COURT OF FLORIDA**

CASE NO. SC2022-1050

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

Lower Tribunal Nos. 1D22-2034; 2022-CA-912

**DECLARATION OF FLORIDA ACCESS NETWORK IN SUPPORT OF  
AMICI CURIAE BRIEF OF LATINOJUSTICE PRLDEF, FLORIDA  
ACCESS NETWORK, NATIONAL LATINA INSTITUTE FOR  
REPRODUCTIVE JUSTICE, ESPERANZA UNITED AND A.L.**

I, Stephanie Loraine Piñeiro, pursuant to FL. ST. § 95.525, declare as follows:

1. I am the Executive Director of Florida Access Network (“FAN”), a position I have occupied since 2020. I’m a social worker, with a Masters in Social Work. Prior to my current position, I served as a volunteer and Board member for FAN for five years.

2. FAN is a Black, Indigenous and People-Of-Color led, non-profit, community-centered, organization that facilitates access for people seeking the medical procedure of an abortion. FAN connects patients to resources, including transportation, childcare, pre- and post-procedure counseling, and stipends. FAN assists patients in protecting their right to decide when and if they want to procreate and their choice to delay having a child so that they can enter the workforce, pursue an education or make other life choices. FAN believes that reproductive justice is economic justice. FAN also engages in community

organizing and public education. FAN was previously known as Central Florida Women's Emergency Fund and has been funding abortion services since 1996.

3. Although I am familiar with FL HB 5—the 15-weeks abortion ban, I consulted with my staff to provide the information set forth here. Since HB 5 went into effect, FAN's services has increased exponentially. Between July to November 2022 alone, FAN served about 660 people—a nearly 240% increase over the same period in 2021.

4. Many Floridians who seek an abortion are being forced to obtain care out-of-state. FAN's clients have to travel to abortion safe jurisdictions for their abortion care. There was already a dearth of abortion providers in some communities in Florida, the HB 5 ban has made that shortage more acute by further limiting the number of providers willing to provide abortion care.

5. Abortion seekers forced to flee the state for care are incurring substantial costs, at an average of \$3,000, per person, including the cost of the medical procedure, transportation, childcare and lodging. In the eight months since HB 5's effective date, FAN has pledged \$300,000 of support to abortion seeker appointment and travel costs and has received more than \$1.5 million—compared to \$150,000 in 2021—worth of support requests to assist people who chose to exercise their right to end their pregnancy.

6. HB 5 is wrecking untold hardship on many of FAN's clients. Of the hundreds of individuals that FAN has assisted, nearly 70% are people of color, many are under-employed or low-income, and a significant number are minors. Low-income people who are least able to afford the cost of travel out of Florida also suffer lost wages because they often have to take time off, sometimes up to 4 days, to go out-of-state for an abortion. They also find it challenging to arrange for dependable over-night child care.

7. Minors who must terminate an unwanted pregnancy are also adversely impacted by HB 5's ban. Not only do they have to obtain parental consent but they also must have a parent or guardian accompany them out-of-state for the procedure. The minor misses days from school while the parent or guardian has to take time off from work.

8. HB 5 is also exacting a toll on survivors of domestic or sexual violence and survivors of human trafficking who must engage in safety planning. Survivors must now use aliases when they travel and seek lodging out-of-state; they must

investigate multiple out-of-state providers before selecting a clinic which delays the date of their medical procedure; and they must also orchestrate elaborate plans to conceal their out-of-state travel from their victimizers causing further delays and prolonging their unwanted pregnancy.

9. HB 5 is not only impairing the right to privacy, but it is imposing undue financial and emotional costs on marginalized people, heightening anxiety and trauma for people faced with making a difficult decision to terminate a pregnancy, and causing unnecessary delays in obtaining abortion care.

10. To eliminate the impacts of HB 5 on FAN's clients, FAN supports upholding the district court order enjoining HB 5.

Dated: March 8, 2023

Signed: DocuSigned by: *Stephanie Loraine Piñero*  
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Stephanie Loraine Piñero, MSW