

Nos. 23-726 and 23-727

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IN THE  
**Supreme Court of the United States**

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MIKE MOYLE, SPEAKER OF THE IDAHO HOUSE OF  
REPRESENTATIVES, ET AL., *Petitioners*,

v.

UNITED STATES, *Respondent*.

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STATE OF IDAHO, *Petitioner*,

v.

UNITED STATES, *Respondent*.

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*On Writs of Certiorari to the United States Court of  
Appeals for the Ninth Circuit*

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**BRIEF OF THE U.S. WOMEN'S CHAMBER OF  
COMMERCE AND OTHER BUSINESSES AS  
AMICI CURIAE SUPPORTING RESPONDENT  
AND AFFIRMANCE**

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**INTERESTS OF *AMICI CURIAE***<sup>1</sup>

*Amici* are businesses and business-focused organizations that are concerned for their economic well-being and the economic well-being of the states in which they operate.<sup>2</sup>

This case involves a federal law guaranteeing emergency healthcare (EMTALA, 42 U.S.C. § 1395dd) and a state law restricting abortion (Idaho Code § 18-622). This might seem an unusual case for businesses to raise concerns over economic issues. But the hard truth is that Idaho’s attempt to carve out an exception to the federal guarantee of emergency medical care for pregnant women raises critical—and even existential—concerns for businesses across the country, especially those that are women-owned and operated. Recent experience shows conclusively that restrictions on reproductive healthcare are bad for business and correspondingly bad for state economies.

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<sup>1</sup> No party or counsel for a party authored any part of this brief, and no person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

<sup>2</sup> *Amici* include the U.S. Women’s Chamber of Commerce, Amalgamated Bank, Argent, Bumble Inc., KraveBeauty, Levi Strauss & Co., Lyft, Match Group, Inc., Small Business Majority, and Yelp.

The negative effect starts with individuals who are employed in the healthcare field. Restrictions, and sometimes criminal penalties, imposed on the delivery of needed reproductive healthcare compromise or threaten medical judgments. As a result, these restrictions cause medical professionals to relocate and, as a result, leave maternity care “deserts” in their wake. In turn, a lack of options for reproductive healthcare weighs heavily on career decisions across industries, as shown through studies, polls, and individual testimonials—from people in Idaho and around the country. Consequently, businesses that operate in states with legal restrictions on reproductive healthcare face obstacles in recruiting top talent, building inclusive workplaces, and protecting the health of their employees. These businesses must spend significant resources developing additional healthcare policies and offering additional healthcare benefits.

These issues are even more evident when it comes to *emergency* reproductive healthcare, which can be necessary to treat infection, hemorrhage, sepsis, preeclampsia, preterm labor, among other serious conditions. When a woman experiencing an emergency condition presents in a Medicare-funded hospital, EMTALA requires the hospital to offer “necessary stabilizing treatment.” However, Idaho Code § 18-622 makes it a felony for a doctor to terminate a pregnancy unless doing so is “necessary” to prevent the



patient’s “death.” With this conflict in mind, many pregnant women (and their families) can find themselves in a situation where a medical professional believes that pregnancy termination is “necessary stabilizing treatment” for an emergency condition that threatens serious harm to the woman’s health, but the medical professional cannot determine that pregnancy termination is “necessary” to prevent “death.”

On balance, if states are permitted to nullify the provision of emergency treatment for pregnant women, then healthcare-related challenges faced by businesses will be compounded. EMTALA was enacted to guarantee emergency care, and it makes no exception for pregnant women who need reproductive healthcare. In that regard, and under the Act, pregnant women stand on no different footing than any other patient—man, woman, or child—who needs emergency care. In this instance, state laws that interfere with a physician’s ability to exercise medical judgment in responding to emergency medical conditions for pregnant women should be preempted just as they would be preempted for any other patient.

*Amici* include the following businesses and business organizations:

**The U.S. Women’s Chamber of Commerce (USWCC)** is serving as lead amicus and is the leading advocate for women on economic and leadership issues. USWCC helps drive progress, advance legislation, and provide tools and solutions to support the economic growth of women across America.

**Amalgamated Bank** is a full-service financial institution providing banking, lending, and investment management with a specialization in nonprofit organizations and socially responsible businesses. Founded 100 years ago by a union of low-wage immigrant workers, Amalgamated has clients in all 50 states, with \$8B in bank deposits and over \$56.5B in custody and investment assets under management.

**Argent** is a contemporary women’s workwear brand with retail and professional customers throughout the United States.

**Bumble Inc.’s** platforms enable people to build healthy and equitable relationships through Kind Connections. Founded in 2014, the Bumble App was one of the first dating apps built with women at the center.

**KraveBeauty**, a pioneering skincare company, is dedicated to forging a more sustainable and equitable world. Founded by a female entrepreneur, Liah Yoo, the brand seeks to revolutionize conventional business practices that fuel hyper consumerism.

**Levi Strauss & Co.** is one of the world's largest brand-name apparel companies and a global leader in jeanswear. The company designs and markets jeans, casual wear and related accessories for men, women, and children under the Levi's®, Dockers®, Signature by Levi Strauss & Co.™, Denizen® and Beyond Yoga® brands. Its products are sold in more than 110 countries worldwide through a combination of chain retailers, department stores, online sites, and a global footprint of approximately 3,200 brand-dedicated stores and shop-in-shops.

**Lyft** is one of the largest transportation networks in North America, bringing together rideshare, bikes, and scooters all in one app. Lyft is customer-obsessed and driven by its purpose: getting riders out into the world so they can live their lives together, and providing drivers a way to work that gives them control over their time and money.

**Match Group, Inc.** ("Match Group") is a publicly traded corporation (NASDAQ: MTCH) headquartered in Dallas, Texas, USA. Through its portfolio of companies, Match Group provides online dating services available in over 40 languages to customers in more than 190 countries through apps and websites. Match Group's portfolio brands include Tinder, Hinge, Match, OkCupid, and PlentyOfFish.

**Small Business Majority** fosters a network of small business owners nationally and partners with other business groups, organizations, and experts throughout all 50 states to advance economic policy goals for entrepreneurs.

**Yelp:** With trusted local business information, photos and review content, Yelp provides a one-stop local platform for consumers to discover, connect and transact with local businesses of all sizes by making it easy to request a quote, join a waitlist or make a reservation, and make an appointment or purchase.

## SUMMARY OF ARGUMENT

Restrictions on reproductive healthcare result in maternity care deserts—counties with no hospitals offering critically needed obstetric care. Maternity care deserts are becoming alarmingly more common in the United States, and especially in states with strict legal restrictions on reproductive healthcare. Idaho Code § 18-622 is a major reason why access to maternity care has diminished in Idaho since August 2022. Medical professionals understandably do not want to practice in an environment where they must choose between acting in the best interests of a patient and avoiding a felony charge. Unfortunately, this undesirable result is not limited to Idaho. Maternity care deserts are growing across the country.

A lack of options for reproductive healthcare weighs heavily on career decisions in industries across the country for women who are pregnant, as well as women who want to get pregnant, and their partners and families. In addition to studies, surveys, and polls, individual experiences (as discussed below) also show that legal restrictions on reproductive healthcare impact important decisions on where people live and work. And these concerns are intensified when access to *emergency* reproductive healthcare is limited. Data shows that many women decline work opportunities in states with strict limits on reproductive healthcare. Family planning and career decisions are directly influenced by the availability of emergency care.

Businesses that operate in states with legal restrictions on reproductive healthcare face obvious difficulties recruiting and retaining top talent, which negatively affects a business's ability to create and maintain an inclusive workforce, which negatively affects the business's bottom line. The harmful effects do not stop there.

What is bad for business is also bad for state economies. If comprehensive healthcare is unavailable, then fewer women can pursue higher education and join the workforce, and thereby contribute to state economies. As discussed below, restrictions on reproductive healthcare access cost the United States an

average of \$173 billion per year by reducing labor force participation and earnings levels and increasing turnover and time off from work among women employed in the private sector.

*Amici* believe that these unfortunate and undesirable impacts will be exacerbated if federal emergency healthcare options for pregnant women are curtailed or eliminated by statutes like the one enacted by Idaho here. Congress did not intend that, and recognized principles of federal preemption should prohibit it.

## ARGUMENT

### **I. Restrictions on reproductive healthcare result in maternity care deserts.**

Counties that have no hospital offering obstetric care and no OB/GYN or certified nurse midwife providers are known as “maternity care deserts,” and they are becoming more common in the United States, especially in Idaho.<sup>3</sup> According to a recent study published by the Idaho Coalition for Safe Healthcare, only half of Idaho counties have access to any practicing

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<sup>3</sup> Maeve Wallace et al., *Maternity Care Deserts and Pregnancy-Associated Mortality in Louisiana*, 31 *Women’s Health Issues* 122 (2021); *Nowhere to Go: Maternity Care Deserts Across the U.S.*: 2022 Report, March of Dimes at 5 (2022).

obstetricians.<sup>4</sup> Between August 2022 and November 2023—*i.e.*, the 15 months after Idaho Code § 18-622 was set to become effective—Idaho lost 22% of its practicing obstetricians.<sup>5</sup> Over that same period, only two obstetricians moved to Idaho, while between 40 to 60 obstetricians quit practicing, left the state, or retired altogether.<sup>6</sup> The ratio of people served by obstetricians went from 1 obstetrician per 6,668 Idahoans to 1 obstetrician per 8,510 Idahoans.<sup>7</sup>

Idaho Code § 18-622 is a substantial reason why access to maternity care has diminished in Idaho since August 2022. This is evidenced by the testimonials of Idaho medical professionals:

**Dr. Kylie Cooper.** Dr. Cooper is a maternal-fetal medicine physician. She is the vice chairwoman of the Idaho section of the American College of Obstetricians and Gynecologists. In February 2023, she wrote, “Idaho’s maternal and infant health is worsening, mothers are dying at an increasing rate. A lack of physicians and access to care are major contributors. These bans make it difficult to attract physicians to the state. The loss of health care providers due to the criminalization of medicine will only further these

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<sup>4</sup> *A Post Roe Idaho*, Idaho Coalition for Safe Healthcare 4 (Feb. 2024).

<sup>5</sup> *Id.* at 3.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.*

health disparities. These factors made my decision to leave an immensely difficult one, but I cannot continue to practice in a place where I do not feel safe.”<sup>8</sup>

**Dr. Amelia Huntsberger.** Dr. Huntsberger is an OB-GYN who formerly practiced in Idaho. She moved to Oregon in 2023. Dr. Huntsberger describes preparing to perform emergency surgery in Idaho on a pregnant patient who was bleeding internally: “I know that this is a high-stakes case, I know I need to move quickly. I need to get in there. I need to do my job. That stress, I know what to do with that. I can handle that.” But in the middle of the emergency, she found herself wondering about the potential threat of prosecution or a lawsuit: “What would a prosecutor choose to do, or the family [choose to do], because we have both civil penalty and criminal penalty laws?” In the end, Dr. Huntsberger chose to leave the state due to the risks and anxiety these laws created.<sup>9</sup>

**Dr. Lauren Miller.** Dr. Miller founded the Idaho Coalition for Safe Reproductive Health Care. She recently moved to Colorado. “I was always one of those people who had been super calm in emergencies,” Dr. Miller said. “But I was finding that I felt very anxious

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<sup>8</sup> Kylie Cooper, *I came to provide care for complicated pregnancies; I’m leaving because of Idaho’s abortion bans*, Idaho Capital Sun (Feb. 10, 2023).

<sup>9</sup> Kathleen McLaughlin, *No OB-GYNs left in town: what came after Idaho’s assault on abortion*, The Guardian (Aug. 22, 2023).



being on the labor unit, just not knowing if somebody else was going to second-guess my decision. That's not how you want to go to work every day.”<sup>10</sup>

But the deleterious effects of Idaho Code § 18-622 are not limited to reproductive healthcare professionals. The law also adversely impacts hospitals. Bonner General Health in Sandpoint, Idaho, for example, issued a press release in March 2023 stating that it would no longer be providing obstetrical services. As reason for this decision, it explained: “Highly respected, talented physicians are leaving. Recruiting replacements will be extraordinarily difficult. In addition, the Idaho Legislature continues to introduce and pass bills that criminalize physicians for medical care nationally recognized as the standard of care. Consequences for Idaho Physicians providing the standard of care may include civil litigation and criminal prosecution, leading to jail time or fines.”<sup>11</sup>

Idaho's obstetrics exodus is not happening in isolation. Across the country, in states with legal restrictions on reproductive healthcare, obstetricians—

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<sup>10</sup> Sheryl Gay Stolberg, *As Abortion Laws Drive Obstetricians From Red States, Maternity Care Suffers*, N.Y. Times (Sept. 7, 2023).

<sup>11</sup> Press Release, Bonner General Health, Discontinuation of Labor & Delivery Services at Bonner General Hospital (Mar. 17, 2023).

including highly skilled doctors who specialize in handling complex and risky pregnancies—are leaving their practices or choosing not to begin their practice in the state.<sup>12</sup> As just one example, Alireza Shamshirsaz, a maternal-fetal medicine specialist, lived and practiced in Texas for a decade until 2022.<sup>13</sup> But when a Texas law prevented him from treating a woman whose twin pregnancy took a turn for the worse, causing her to become septic and ultimately need an organ transplant to survive, he left Texas and moved to Boston.<sup>14</sup>

The effect also can be seen in national studies. According to the March of Dimes *Maternity Care Deserts Report* (2022), between 2020 and 2022, many counties in the United States lost some level of maternity care access.<sup>15</sup> The distribution of this decrease was as follows: 56 counties due to fewer obstetric providers; 37 counties due to a decrease in hospitals; and 20 counties due to a combination of obstetric providers and

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<sup>12</sup> Sheryl Gay Stolberg, *supra* note 10; Alexandra L. Woodcock et al., *Effects of the Dobbs v Jackson Women’s Health Organization Decision on Obstetrics and Gynecology Graduating Residents’ Practice Plans*, 142 *Obstetrics & Gynecology* 1105 (2023).

<sup>13</sup> Shefali Luthra, “We’re Not Going to Win That Fight”: Bans on Abortion and Gender-Affirming Care are Driving Doctors From Texas, *The 19th News* (June 21, 2023).

<sup>14</sup> *Id.*

<sup>15</sup> March of Dimes, *supra* note 3 at 7.

hospitals.<sup>16</sup> In turn, the number of maternity care deserts in the United States increased between 2020 and 2022.<sup>17</sup>

Unfortunately, but not surprisingly, the growth of maternity care deserts directly impacts maternal mortality rates. In 2021, scholars at Tulane University School of Public Health found that the incidence of death during pregnancy is increasing.<sup>18</sup> And, as relevant here, the study also found that “risk of death during pregnancy and up to 1 year postpartum due to any cause (pregnancy-associated mortality) and in particular death due to obstetric causes (pregnancy-related mortality) was significantly elevated among women residing in maternity care deserts compared to women in areas with greater access.”<sup>19</sup> As discussed in the following section, this situation has had—and will continue to have—widespread consequences on women’s decisions to live and work in states that limit options for reproductive healthcare.

## **II. Restrictions on reproductive health care impact career decisions across industries.**

Laws in the mold of Idaho Code § 18-622 have cascading effects. In particular, the consequences of such

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

<sup>17</sup> *Id.*

<sup>18</sup> Maeve Wallace et al., *supra* note 3.

<sup>19</sup> *Id.*

laws are not limited to the healthcare industry. A lack of options for reproductive healthcare weighs heavily on career decisions in industries across the country for women who are pregnant, as well as women who want to get pregnant, and their partners and families. According to a 2023 opinion poll conducted by Small Business Majority, women small business owners are especially concerned about restrictions on reproductive healthcare, with more than three-quarters sharing the view that they are concerned (78% concerned / 59% very concerned).<sup>20</sup> In turn, nearly two-thirds of women small business owners (64%) say their ability to decide if and when to have children has allowed them to advance in their career and start their own businesses.<sup>21</sup>

A 2022 Lake Research Partners poll similarly found that more than half of young women polled had their plans affected by state restrictions on reproductive healthcare, with ten percent already having declined a job in a state lacking comprehensive reproductive healthcare options.<sup>22</sup> Even before the develop-

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<sup>20</sup> *Opinion Poll, Women entrepreneurs see access to reproductive health as essential to their economic security*, Small Business Majority 2 (June 14, 2023).

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Headlines from a survey of likely voters ages 18 to 29 in battleground states*, Lake Research Partners 5 (Oct. 14, 2022); *Continued on following page*

ments of 2022, a national survey of 3,464 college-educated adults employed full time in the workforce or looking for full-time work showed that 65% believed they would be discouraged from taking a job in a state if “politicians in the state recently tried to restrict access to reproductive health care.”<sup>23</sup>

In addition to studies, surveys, and polls, individual experiences also show that legal restrictions on reproductive healthcare impact important decisions on where people live and work:

**Hayley Hollands.** Ms. Hollands, an attorney and native Texan, and her husband, Steve Beaman, an oil worker, reportedly moved from Texas to Colorado amid concerns regarding Texas’s restrictive reproductive health care landscape. Mr. Beaman “le[ft] behind a more than decade-long career in oil and gas” in Texas.<sup>24</sup>

**Kristi Bradford.** Ms. Bradford, 32, walked away from a \$300,000 job based in Oklahoma out of concern

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Linda Burstyn, *Employers, Take Note—Young Women Are Planning Their Lives Around State Abortion Laws*, Ms. Magazine (Jan. 23, 2023).

<sup>23</sup> *How “Top Talent” Views Politics and Social Issues in their Workplace*, PerryUndem 28 (Oct. 4, 2021).

<sup>24</sup> Liz Hampton & Sabrina Valle, *How Texas’ Abortion Ban Hurts Big Oil’s Effort to Transform its Workforce*, Reuters (Sept. 23, 2022).

for her health. She's a strategic investment professional living in Los Angeles and was set to start working remotely for a company based in Oklahoma. But once Oklahoma enacted its trigger law banning certain reproductive healthcare procedures, Bradford says the uncertainty surrounding the state's restricted reproductive care led her to pull out of the job altogether.<sup>25</sup>

**Alesha Thayer.** Ms. Thayer, a physical scientist and academic, worked out a plan with her husband in 2022 to leave the state where she had been a faculty member for more than 5 years. The state where she worked had put legal restrictions on reproductive healthcare, and Thayer, who has experienced miscarriages and complicated pregnancies and hopes to grow her family, feared the new legal landscape would limit her reproductive autonomy and the care she could receive. "We just can't be here anymore," she said. "It's hard at my stage. I have a very expensive lab. I have established my career already. It will be terribly disruptive to move." But she's determined to make it happen—so much so that if she doesn't land

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<sup>25</sup> Jennifer Liu, *Turning down a \$300K job, deferring dreams of Austin: How Roe's end is changing millennials' career plans—and lives*, CNBC (Aug. 18, 2022).

another faculty job within the next few years, she's prepared to leave academia.<sup>26</sup>

These concerns are true enough for general reproductive healthcare access—and they are heightened for *emergency* reproductive healthcare access. Women may be less likely to take advantage of work opportunities requiring travel to states with strict limits on reproductive healthcare, especially if they no longer have a federal right to emergency care. Kristina, a 33-year-old resident of Massachusetts, reportedly canceled a recent business trip to Dallas during which she was planning to hold a leadership development workshop for a client.<sup>27</sup> Kristina was 19 weeks pregnant and “feared that abortion restrictions in Texas would prevent her from getting the care she needed should an emergency occur.”<sup>28</sup> Regrettably, Kristina is not alone. For example, “[s]ome California members of the Society of Women Engineers (SWE) ... declined

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<sup>26</sup> Katie Langin, *Abortion laws are driving academics out of some U.S. states—and keeping others from coming*, *Science* (July 11, 2023).

<sup>27</sup> Felice J. Freyer, ‘*A Truly Surreal Experience*’: *Reversal of Roe Leaves Some Hesitant to Travel Outside of Mass. While Pregnant*, *Boston Globe* (June 21, 2023) (Kristina withheld her last name from the article).

<sup>28</sup> *Id.*

to attend the group’s conference in Houston in October 2023 because of the state’s anti-abortion law,” according to reporting.<sup>29</sup>

In the end, this emergency care issue affects women, men, and families. Lack of access to needed reproductive emergency healthcare can impact a family’s decision on where to work and live. By the same token, when women are given the opportunity to succeed and to advance because of access to reproductive healthcare, their partners, families, and children succeed too.

### **III. Restrictions on reproductive health care impact businesses as a whole and broader economies.**

Businesses that operate in states with legal restrictions on reproductive healthcare face obvious difficulties recruiting and retaining top talent. Those difficulties, in turn, directly impact their ability to create and maintain an inclusive workforce. The result is bad for working environments and even worse for business economics. This is not idle speculation.

A group of Fortune 500 companies and small businesses formed a coalition called Don’t Ban Equality to “acknowledge how restricting reproductive rights is

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<sup>29</sup> Liz Hampton & Sabrina Valle, *supra* note 24.



bad for business.”<sup>30</sup> 1,000 companies have signed on since the coalition was created in 2019, including Patagonia, Dove, Etsy and more.<sup>31</sup> “Access to reproductive healthcare is a core business issue because it impacts operations, benefits, culture, workforce health and safety, and competitiveness for talent—and it is backed by bipartisan public opinion.”<sup>32</sup> This is especially true for women small business owners, a majority of whom (according to a 2023 opinion poll) agree that their ability to decide if and when to have children impacts their financial security, as well as their ability to grow their businesses.<sup>33</sup> In states where reproductive rights are being threatened or restricted, about 10% more women small business owners said their revenues were declining than improving.<sup>34</sup>

What is bad for business is also bad for state economies. If comprehensive healthcare (including reproductive healthcare) is available, then more women can pursue higher education and join the workforce. “Women’s participation and advancement in the

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<sup>30</sup> Amy Shoenthal, *The Business Impact of Dobbs a Year Later*, *Forbes* (June 23, 2023); Don’t Ban Equality, <https://dontbanequality.com/>.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Small Business Majority, *supra* note 20 at 3.

<sup>34</sup> *Id.*

workforce is key to creating a positive business environment and spurring economic growth.”<sup>35</sup> Nationwide, “if all state-level abortion restrictions were eliminated, 505,000 more women aged 15-44 would be in the labor force and ... they would earn[] over \$3.0 billion dollars annually, an amount that would go back into the state’s economy.”<sup>36</sup>

The Institute for Women’s Policy Research estimates that restrictions placed on abortion access cost the United States an average of \$173 billion per year by reducing labor force participation and earnings levels and increasing turnover and time off from work among women employed in the private sector. This is up from estimated \$146 billion in 2020.<sup>37</sup> In 2022, the 10 states with the highest economic loss all had the most restrictive abortion laws in the country, including Idaho.<sup>38</sup>

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<sup>35</sup> *The Costs of Reproductive Health Restrictions: An Economic Case for Ending Harmful State Policies*, Institute for Women’s Policy Research (“IWPR”) 2 (May 2021).

<sup>36</sup> *Id.*; see also Asha Banerjee, *The economics of abortion bans*, Economic Policy Institute (Jan. 18, 2023).

<sup>37</sup> *Updated Analysis of the Cost of Abortion Restrictions to States*, Institute for Women’s Policy Research 2 (Jan. 18, 2024). In Idaho, the average annual economic estimated loss is 1.1% of state GDP. That amounts to a \$1,208,139,811 total average annual economic loss and 1.8% average annual labor force loss in women ages 15-44. *Id.*

<sup>38</sup> *Id.*

The cascading and adverse effects described above will be exacerbated if federal guarantees of emergency care under EMTALA are reduced or eliminated by threats of criminal prosecution imposed by state laws.

### CONCLUSION

Congress spoke clearly on the need to make emergency care available, knowing full well that pregnant women would need access to such care for a wide variety of complications that threaten their health or the health of a child. That is because reproductive healthcare is healthcare. Accordingly, state laws that interfere with a physician's exercise of medical judgment in responding to emergency medical conditions for pregnant women should be preempted just as such laws would be preempted for any other patient. *Amici* support the United States' effort to preserve federal emergency healthcare options for all patients, including pregnant women.

Respectfully submitted,

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