No. 19-1392

In the Supreme Court of the United States

THOMAS E. DOBBS, STATE HEALTH OFFICER OF THE MISSISSIPPI DEPARTMENT OF HEALTH, *et al.*,

Petitioners,

v.

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

Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE STATES OF CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, OREGON, PENNSYLVANIA, RHODE ISLAND, VERMONT, VIRGINIA, WASHINGTON, AND WISCONSIN, THE DISTRICT OF COLUMBIA, AND THE NORTH CAROLINA ATTORNEY GENERAL AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether all pre-viability prohibitions on elective abortions are unconstitutional.

TABLE OF CONTENTS

Page

Interests of amici 1

Summary of argument 2

Argument 4

I. Mississippi's prohibition on pre-viability abortions is—and should remain—unconstitutional 4

A. Mississippi's law violates settled precedent 4

B. The Court should not overrule its precedent regarding the viability line 8

C. The Court should limit review to the question presented in this case—and only that question 23

II. Overturning the viability rule would harm the amici States and our residents 25

Conclusion 31

TABLE OF AUTHORITIES

Page

CASES

Allied-Signal, Inc. v. Dir., Div. of Tax'n
504 U.S. 768 (1992) ... 12

Arizona v. Rumsey
467 U.S. 203 (1984) ... 9

Ayotte v. Planned Parenthood of N. New England
546 U.S. 320 (2006) ... 20

Blackburn v. Blue Mountain Women's Clinic
951 P.2d 1 (Mont. 1997) ... 11

City & Cnty. of San Francisco v. Sheehan
575 U.S. 600 (2015) ... 23, 24

City of Akron v. Akron Ctr. for Reprod. Health, Inc.
462 U.S. 416 (1983) ... 5

Cooper v. Aaron
358 U.S. 1 (1958) ... 8

Dickerson v. United States
530 U.S. 428 (2000) ... 9, 19

Dobbs v. Jackson Women's Health Org.
__ S. Ct. __, 2021 WL 1951792 (2021) ... 23

TABLE OF AUTHORITIES
(continued)

Page

Edwards v. Beck
786 F.3d 1113 (8th Cir. 2015) 6, 10

Fryover v. Forbes
446 N.W.2d 292 (Mich. 1989) 11

Garcia v. San Antonio Metro. Transit Auth.
469 U.S. 528 (1985) 9

Gonzales v. Carhart
550 U.S. 124 (2007) 5, 19, 20, 21

Griswold v. Connecticut
381 U.S. 479 (1965) 17

Guam Soc'y of Obstetricians & Gynecologists v. Ada
962 F.2d 1366 (9th Cir. 1992) 10

Harris v. McRae
448 U.S. 297 (1980) 20

Isaacson v. Horne
716 F.3d 1213 (9th Cir. 2013) 10, 12

Jane L. v. Bangerter
102 F.3d 1112 (10th Cir. 1996) 10

Janus v. Am. Fed'n of State, Cnty., & Mun. Employees, Council 31
138 S. Ct. 2448 (2018) 9, 15

TABLE OF AUTHORITIES
(continued)

Page

Kimble v. Marvel Entm't, LLC
576 U.S. 446 (2015) 12

Korematsu v. United States
323 U.S. 214 (1944) 17

Lawrence v. Texas
539 U.S. 558 (2003) 17

Loving v. Virginia
388 U.S. 1 (1967) 17

Maher v. Roe
432 U.S. 464 (1977) 20

Mazurek v. Armstrong
520 U.S. 968 (1997) 20, 21

McCormack v. Herzog
788 F.3d 1017 (9th Cir. 2015) 10

Meyer v. Nebraska
262 U.S. 390 (1923) 17, 18

Michigan v. Bay Mills Indian Cmty.
572 U.S. 782 (2014) 8

MKB Mgmt. Corp. v. Stenehjem
795 F.3d 768 (8th Cir. 2015) 10

Obergefell v. Hodges
576 U.S. 644 (2015) 17

TABLE OF AUTHORITIES
(continued)

Page

Payne v. Tennessee
501 U.S. 808 (1991) 8, 9

PDK Labs. Inc. v. Drug Enforcement Admin.
362 F.3d 786 (D.C. Cir. 2004) 24

Pierce v. Soc'y of Sisters
268 U.S. 510 (1925) 17

Planned Parenthood of Se. Pa. v. Casey
505 U.S. 833 (1992) .... *passim*

Planned Parenthood of Wis., Inc. v. Schimel
806 F.3d 908 (7th Cir. 2015) 27

Plessy v. Ferguson
163 U.S. 537 (1896) 17

Prince v. Massachusetts
321 U.S. 158 (1944) 17

Ramos v. Louisiana
140 S. Ct. 1390 (2020) 12, 16

Rochin v. California
342 U.S. 165 (1952) 18

Roe v. Wade
410 U.S. 113 (1973) .... *passim*

TABLE OF AUTHORITIES
(continued)

Page

Rust v. Sullivan
500 U.S. 173 (1991) 20

Skinner v. Oklahoma ex rel. Williamson
316 U.S. 535 (1942) 17

State v. Horne
319 S.E.2d 703 (S.C. 1984)................................... 11

Stenberg v. Carhart
530 U.S. 914 (2000) 5

Swift & Co. v. Wickham
382 U.S. 111 (1965) 9

Thibert v. Milka
646 N.E.2d 1025 (Mass. 1995) 11

Thornburgh v. Am. College of Obstetricians & Gynecologists
476 U.S. 747 (1986) 5, 18

United States v. Int'l Bus. Machs. Corp.
517 U.S. 843 (1996) 9

Washington v. Glucksberg
521 U.S. 702 (1997) 17, 24

Whole Women's Health v. Hellerstedt
136 S. Ct. 2292 (2016) 21, 23

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

United States Constitution
amend. XIV 17, 18, 24
art. VI, cl. 2 7

STATUTES

Ala. Code § 26-22-4 11

Ariz. Rev. Stat. § 36-2301.01 10

Ark. Code
§ 20-16-1301 6
§ 20-16-1307 6

Ark. S.B. 149, 92nd Gen. Assem., Reg.
Sess. (Ark. 2019) 8

Cal. Health & Safety Code
§ 1200 21
§ 1204 21
§ 123468(b) 10

Conn. Gen. Stat. § 19a-602(b) 10

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Haw. Rev. Stat. § 453-16 10

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§ 18-604 10
§ 18-608(3) 10

TABLE OF AUTHORITIES
(continued)

Page

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Ind. Code § 16-34-2-2.. 11

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La. Stat. § 40:1061.10(B).. 11

Md. Code, Crim. Law § 2-103................................... 11

Md. Code, Health-Gen. § 20-209(b)........................... 10

Me. Rev. Stat. tit. 22, § 1598(4) 10

Minn. Stat. § 145.412(3).. 10

Miss. Code § 41-41-191(4) 5

Mo. Stat. § 188.030(1).. 10, 11

Mont. Code § 50-20-109(1)(b) 10

N.Y. Public Health Law § 2599-bb(1) 10, 21

Ohio Rev. Code § 3702.30(A)(1) 21

R.I. Gen. Laws § 23-4.13-2(d)................................... 10

Tenn. Code
§ 39-15-211 10
§ 39-15-212 11

Utah Code § 76-7-302(b)... 10

TABLE OF AUTHORITIES
(continued)

Page

Wash. Rev. Code
§ 9.02.110 10
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Wyo. Stat. § 35-6-102 10

COURT RULES

United States Supreme Court
Rule 14.1(a) 23
Rule 37.4 1

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Page

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Page

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Page

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Page

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Page

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(continued)

Page

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INTERESTS OF AMICI

Amici are the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, the District of Columbia, and the Attorney General of North Carolina. We submit this brief in support of respondents pursuant to Rule 37.4. Each of the amici States has important interests in protecting the health, safety, and constitutional rights of its residents. As this Court has repeatedly recognized over the last half century, one such right protects a woman's ability to make the profoundly personal decision of whether to carry a pregnancy to term.

Under the Court's precedents, that right is not without limitations. Beyond the point when a fetus would be viable outside the womb, States may prohibit abortions altogether, provided that they make certain minimum exceptions (such as for pregnancies that endanger a woman's life). Many of the amici States have adopted such prohibitions. Before that point, States may further their interests in sustaining medical standards, promoting the safety and health of women, and protecting potential life by adopting a wide range of abortion regulations, so long as those regulations satisfy constitutional scrutiny. Amici States have adopted many such regulations as well. But this Court has long adhered to a bright-line constitutional rule that States may not ban abortions before the point of viability. Amici States have a powerful interest in preserving that settled rule, which draws an appropriate line that respects state interests while safeguarding a woman's ability to make one of the

most consequential, intimate, and properly private decisions she will ever confront.

Amici States also have a substantial interest in the evenhanded, predictable, and consistent development of legal principles. The doctrine of *stare decisis* preserves stability in the law and promotes the legitimacy of our judicial system. Since 1973, the States and citizens of this Nation have ordered their conduct and made decisions in reliance on the existence of a constitutional right to decide whether to have an abortion before the point of viability. Departing from that established and workable rule would disrupt settled expectations, impose substantial burdens on amici States, and jeopardize the health of our residents and others. Petitioners cannot establish the kind of extraordinary justification that would warrant upending this long-settled aspect of constitutional law.

SUMMARY OF ARGUMENT

The Mississippi statute at issue here bans most abortions after 15 weeks' gestation. Petitioners concede that the ban takes effect well before the point at which a fetus would be viable outside the womb. The statute thus plainly violates this Court's settled precedent, which directs that States may not ban abortions before viability.

Petitioners now ask the Court to overturn that viability rule, but they have not advanced the kind of special justification required to abandon an established precedent of this Court. The viability rule is a straightforward and workable standard; millions of women and families have reasonably relied on it in ordering their lives; the States have relied on it in structuring their policies; it has not been overtaken by any

factual or legal developments; and it represents a reasonable constitutional judgment that this Court has repeatedly reaffirmed.

The viability rule also respects the States' interests. Contrary to petitioners' contentions, States retain substantial latitude under the viability rule to regulate the medical profession, protect potential life, and safeguard women's health and safety. They also have many alternatives for reducing the incidence of abortion—including a range of policies adopted by amici States to provide access to contraception and family planning services—without depriving women of control over a deeply personal and intimate decision regarding their autonomy over their own bodies.

Abandoning the viability rule would harm the interests of the States and our citizens. Many pregnant women residing (permanently or temporarily) in areas with restrictive abortion bans would be forced either to journey to another State to seek care or to carry an unwanted pregnancy to term. The resulting influx of patients could strain the healthcare systems of amici States and other jurisdictions that continue to protect a woman's right to decide whether to have an abortion before the point of viability. For women unable to make that journey, laws banning abortions before viability would lead to materially worse health outcomes and reduced socioeconomic opportunities. There is no sound basis for imposing those harms. The Court should adhere to its longstanding precedent guaranteeing women in every State the right to decide, before the point of viability, whether to carry a pregnancy to term.

ARGUMENT

I. MISSISSIPPI'S PROHIBITION ON PRE-VIABILITY ABORTIONS IS—AND SHOULD REMAIN—UNCONSTITUTIONAL

In *Roe v. Wade*, 410 U.S. 113 (1973), this Court held that before the "point at which the fetus becomes 'viable'"—"that is, potentially able to live outside the mother's womb"—the Constitution does not permit a State to prohibit a woman from deciding whether to carry her pregnancy to term. *Id.* at 160, 163-164. This Court has repeatedly reaffirmed that viability rule over the last half century. And the Mississippi statute at issue in this case plainly contravenes it. In fact, that was the point of the enactment. Mississippi asks the Court to abandon the viability rule (indeed, it now urges the Court to abandon *Roe* altogether, *see infra* pp. 23-25), but the factors this Court consults in determining whether to depart from long-established doctrine all counsel against overruling it.

A. Mississippi's Law Violates Settled Precedent

Roe recognized that the Constitution protects a "woman's decision whether or not to terminate her pregnancy." 410 U.S. at 153. At the same time, the Court acknowledged that a State maintains "important interests in safeguarding health," in "protecting potential life" from the outset of a pregnancy, and in sustaining medical standards. *Id.* at 154. At the point of viability, those state interests "become sufficiently compelling to sustain regulation of the factors that govern the abortion decision," *id.*, including by prohibiting abortions altogether (with certain minimum exceptions, such as for the life of the pregnant woman). But "[b]efore viability, the State's interests

are not strong enough to support a prohibition of abortion." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846 (1992). *Roe* thus recognized "the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State." *Id.*; *see also id.* at 853 (States' interests cannot "outweigh the interests of the woman in choosing to terminate her pregnancy" before viability).

As Judge Higginbotham recognized below, "[i]n an unbroken line" of precedent since *Roe*, this Court has "affirmed, and re-affirmed . . . a woman's right to choose an abortion before viability." Pet. App. 1a-2a. The Court "twice reaffirmed" the viability line in the 1980s, in the face of calls by the United States and others to reject it. *Casey*, 505 U.S. at 870 (plurality opinion) (citing *Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*, 476 U.S. 747 (1986), and *City of Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416 (1983)); *see id.* at 845. In the 1990s, *Casey* reiterated that before "viability," a "woman has a right to choose to terminate her pregnancy." *Id.* at 870 (plurality opinion). Multiple times in the following decades, the Court has declined to "revisit" that rule, *Stenberg v. Carhart*, 530 U.S. 914, 921 (2000), instead accepting the premise that "[b]efore viability, a State 'may not prohibit any woman from making the ultimate decision to terminate her pregnancy,'" *Gonzales v. Carhart*, 550 U.S. 124, 146 (2007).

There can be no doubt that Mississippi's statute contravenes the viability rule. The statute prohibits abortion "if the probable gestational age" is "greater than fifteen (15) weeks," "[e]xcept in a medical emergency or in the case of a severe fatal abnormality[.]" Miss. Code § 41-41-191(4); *see* Pet. App. 70a. Missis-

sippi conceded in the courts below that it "had no evidence of viability at 15 weeks" and acknowledged that its own Department of Health takes the view "that a fetus cannot survive outside the womb at 15 weeks." Pet. App. 8a. In seeking review in this Court, Mississippi argued that the case was an "ideal" vehicle precisely because its law prohibits abortions far in advance of "the viability line." Pet. 34 ("A 20-, 22-, or 24-week law is too close to the viability line[.]"). And its merits brief again concedes that the challenged statute "prohibits (with exceptions for life and health) abortion after 15 weeks' gestation and thus before viability." Pet. Br. 1.

Indeed, the circumstances surrounding the enactment of Mississippi's statute suggest that its *purpose* was to violate this Court's precedent. State legislators observed during a floor debate that a similar abortion ban had already been struck down as unconstitutional in light of this Court's precedent.[1] But the Mississippi Legislature passed the statute anyway, and close observers of that legislative process have understandably concluded that it did so "with the aim of undoing" *Roe.*[2]

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[1] *See* Mississippi College of Law, *Legislative History Project, HB 1510, Gestational Age Act* (Feb. 2, 2018), https://tinyurl.com/ymcvdbju (at 40:54-41:23); *see generally* Arkansas Human Heartbeat Protection Act, Ark. Code §§ 20-16-1301 to 1307 (2013) (ban on abortions after 12 weeks' gestation); *Edwards v. Beck*, 786 F.3d 1113, 1117 (8th Cir. 2015) (holding Arkansas statute unconstitutional).

[2] Mason, *State Lawmakers Continue Crusade Against Roe v. Wade With Flood of New Abortion Bills*, L.A. Times (Apr. 22, 2021), https://tinyurl.com/7rpptad8; *see, e.g.*, Dreher, *Reversing 'Roe'; Outside Group Uses Mississippi as 'Bait' to End Abortion*, Jackson Free Press (Mar. 14, 2018), https://tinyurl.com/rhnhtpt5

And Mississippi is not alone. Recent years have seen a surge in state legislatures passing bans on abortion before viability. In 2019, for example, Georgia, Kentucky, Louisiana, and Missouri enacted laws that "effectively prohibit abortions after six to eight weeks."[3] This year has seen 10 additional abortion bans, including a six-week abortion ban in Texas.[4] In all, 16 States have now enacted pre-viability abortion bans.[5] Some state officials who supported those laws have admitted that they "contradict[] . . . binding precedents of the U.S. Supreme Court"—and that it was "the intent of the legislation to set the stage" for "the Supreme Court [to] overturn[] current case law."[6]

As States in our federal system, amici recognize that the Constitution is "the supreme Law of the Land," U.S. Const. art. VI, cl. 2, and that this Court is

(Mississippi Legislature "used a template developed outside the state" by an organization that "want[s] to cause a legal battle that will eventually overturn the 1973 *Roe v. Wade* decision").

[3] Lai, *Abortion Bans: 9 States Have Passed Bills to Limit the Procedure This Year*, N.Y. Times (May 29, 2019), https://tinyurl.com/6h2xmwvz.

[4] *See* Lai, *supra*; Sandoval, *Near-Complete Ban on Abortion Is Signed Into Law in Texas*, N.Y. Times (May 19, 2021), https://tinyurl.com/4knfxajn.

[5] Guttmacher Inst., *State Bans on Abortion Throughout Pregnancy* (Sept. 1, 2021), https://tinyurl.com/2jhry22n.

[6] Mason, *supra* (reporting remarks of Arkansas Governor upon signing abortion ban in March 2021); *see also* Office of Alabama Governor Kay Ivey, *Governor Ivey Issues Statement After Signing the Alabama Human Life Protection Act* (May 15, 2019), https://tinyurl.com/p8zbv52u (acknowledging that Alabama abortion ban is likely "unenforceable as a result of the U.S. Supreme Court decision in *Roe v. Wade*," but that it presented "the best opportunity" for "the U.S. Supreme Court to revisit this important matter").

the ultimate arbiter of the requirements imposed by the Constitution, *see, e.g.*, *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) ("Every state legislator and executive and judicial officer is solemnly committed . . . 'to support this Constitution.'"). We take seriously our obligation to abide by the precedents of this Court—even when we respectfully disagree with them. We also acknowledge our sister States' prerogative to use constitutional means to register their disapproval of precedents with which they disagree. *See, e.g.*, S.B. 149, 92nd Gen. Assem., Reg. Sess. (Ark. 2019) ("trigger law" that becomes effective only after certification that *Roe* and *Casey* have been overruled or displaced by a constitutional amendment). But the concerted effort by Mississippi and other States to enact statutes that deliberately infringe the existing constitutional rights of their citizens and violate this Court's constitutional precedent, for the stated purpose of undermining that precedent, is a disturbing and destabilizing trend.

B. The Court Should Not Overrule Its Precedent Regarding the Viability Line

Because its law directly conflicts with Supreme Court precedent, *see* Pet. App. 8a, 13a, 18a, 20a, 45a, 50a, 54a, Mississippi urges this Court to overrule that precedent, Pet. Br. 1. "But this Court does not overturn its precedents lightly"; to the contrary, adherence to precedent is "a foundation stone of the rule of law." *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014). *Stare decisis* "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). It is "not an inexorable command," but "[e]ven in constitutional cases, the doctrine carries

such persuasive force that" this Court has "always required a departure from precedent to be supported by some special justification." *United States v. Int'l Bus. Machs. Corp.*, 517 U.S. 843, 856 (1996) (internal quotation marks and alteration omitted); *see also Dickerson v. United States*, 530 U.S. 428, 443 (2000); *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984). The Court consults a range of factors in evaluating whether a party seeking to overturn settled precedent has established such a justification. Here, those factors all point against abandoning the viability rule.

1. A critical consideration in any *stare decisis* analysis is whether the existing rule has proven "to be unworkable in practice." *Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965); *see, e.g.*, *Janus v. Am. Fed'n of State, Cnty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2481 (2018); *Casey*, 505 U.S. at 854-855; *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546 (1985). The Court has recognized that there is less cause for adhering to an existing legal principle if that principle depends on a "line" that has "proved to be impossible to draw with precision," *Janus*, 138 S. Ct. at 2481, or has otherwise "defied consistent application by the lower courts," *Payne*, 501 U.S. at 830. That is not the case here.

The viability line is straightforward: "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Casey*, 505 U.S. at 879 (plurality opinion). That rule "represent[s] . . . a simple limitation beyond which a state law is unenforceable." *Id.* at 855 (majority opinion). The courts below had no difficulty applying the rule in this case. *See* Pet. App. 13a, 45a. And although Mississippi disagrees with the rule, it concedes that the rule applies to its statute. *See, e.g.*, Pet. Br. 1.

Cases from other jurisdictions further demonstrate that the viability rule is workable in practice. Since *Casey*, the courts of appeals that have considered laws prohibiting abortions before viability have had no difficulty applying the rule. *See, e.g.*, *MKB Mgmt. Corp. v. Stenehjem*, 795 F.3d 768, 773 (8th Cir. 2015); *McCormack v. Herzog*, 788 F.3d 1017, 1029 (9th Cir. 2015); *Edwards*, 786 F.3d at 1117; *Isaacson v. Horne*, 716 F.3d 1213, 1231 (9th Cir. 2013); *Jane L. v. Bangerter*, 102 F.3d 1112, 1114, 1117-1118 (10th Cir. 1996); *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 962 F.2d 1366, 1368-1369, 1372 (9th Cir. 1992); *see also* Resp. Br. 23, 41 n.26.

The experience of the States offers still more evidence of the workability of this rule. Eighteen States—including States on both sides of this case—expressly use "viability" as the point beyond which most abortions are prohibited under state law. *See, e.g.*, Ariz. Rev. Stat. § 36-2301.01; Cal. Health & Safety Code § 123468(b); Conn. Gen. Stat. § 19a-602(b); Del. Code. tit. 24, § 1790(b); Haw. Rev. Stat. § 453-16(b); Idaho Code §§ 18-604, 18-608(3); Ill. Comp. Stat. 55/1-25(a); Me. Rev. Stat. tit. 22, § 1598(4); Md. Code, Health-Gen. § 20-209(b); Minn. Stat. § 145.412(3); Mo. Stat. § 188.030(1); Mont. Code § 50-20-109(1)(b); N.Y. Pub. Health Law § 2599-bb(1); R.I. Gen. Laws § 23-4.13-2(d); Tenn. Code § 39-15-211(b)(1); Utah Code § 76-7-302(b); Wash. Rev. Code §§ 9.02.110, 9.02.120; Wyo. Stat. § 35-6-102. There is no indication that the legislators who drafted those statutes, the courts that apply them, or the physicians and women who are subject to them, have experienced difficulty understanding or applying that line.

Indeed, many state statutes require physicians to make a viability determination before certain abortions based on assessments of the fetus's gestational age, weight, lung maturity, or other tests to determine whether it would be viable. *See, e.g.*, Ala. Code § 26-22-4; Ind. Code § 16-34-2-2; Kan. Stat. § 65-6703(c)(2); La. Stat. § 40:1061.10(B); Mo. Stat. § 188.030; Tenn. Code § 39-15-212. And outside of the abortion context, several States have conditioned civil recovery under wrongful death statutes or criminal liability under murder or manslaughter statutes on a determination that a fetus was viable.[7]

Although petitioners argue extensively about the administrability of "[a]bortion jurisprudence" in *other* respects, *see* Pet. Br. 3, 19-28, they fail to identify any workability concerns specific to the viability rule, *see id.* at 38-45. Some of their amici assert that "viability is a complex medical assessment" that cannot "be determined with . . . precision." *E.g.*, Catholic Medical Ass'n Br. 11. As noted, however, lawmakers across the Nation have concluded that the concept of viability is sufficiently precise that it warrants inclusion in state statutes. *See supra* pp. 10-11. That is for good reason.

[7] *See, e.g.*, Md. Code, Crim. Law § 2-103 ("a prosecution may be instituted for murder or manslaughter of a viable fetus"); *Thibert v. Milka*, 646 N.E.2d 1025, 1027 (Mass. 1995) ("[T]here is no cause of action under the wrongful death statute for the death of a child who was not viable at the time of injury and was not born alive."); *Fryover v. Forbes*, 446 N.W.2d 292, 292 (Mich. 1989) (similar); *Blackburn v. Blue Mountain Women's Clinic*, 951 P.2d 1, 16 (Mont. 1997) (similar); *State v. Horne*, 319 S.E.2d 703, 704 (S.C. 1984) ("[A]n action for homicide may be maintained in the future when the state can prove beyond a reasonable doubt the fetus involved was viable, *i.e.*, able to live separate and apart from its mother without the aid of artificial support.").

There is an "established medical consensus" that viability typically begins "between 23 to 24 weeks." Pet. App. 44a. And although viability is a somewhat flexible point when considered across all pregnancies, "it is medically determinable" in any individual pregnancy. *Isaacson*, 716 F.3d at 1225.

2. The Court's *stare decisis* inquiry also asks whether overruling precedent would "unduly upset reliance interests," with a "focus[] on the legitimate expectations of those who have reasonably relied on the precedent." *Ramos v. Louisiana*, 140 S. Ct. 1390, 1415 (2020) (Kavanaugh, J., concurring); *see, e.g.*, *Kimble v. Marvel Entm't, LLC*, 576 U.S. 446, 457-458 (2015); *Allied-Signal, Inc. v. Dir., Div. of Tax'n*, 504 U.S. 768, 785-786 (1992). This Court has already recognized the profound reliance interests at stake here—and the "certain cost of overruling" the central holding of *Roe* "for people who have ordered their thinking and living around that case[.]" *Casey*, 505 U.S. at 856.

Those reliance interests have only grown in the three decades since the Court considered them in *Casey*. Americans have continued to "organize[] intimate relationships" and make major life choices "in reliance on the availability of abortion [before viability] in the event that contraception should fail." *Casey*, 505 U.S. at 856. The ability of women to have autonomy over their bodies and "control [over] their reproductive lives" has contributed materially to their ability "to participate equally in the economic and social life of the Nation." *Id.* No doubt, many women have succeeded in economic or social life after choosing to carry pregnancies (planned or unplanned) to term. But the right to consider a pre-viability abortion in the event of an unplanned pregnancy has factored critically into how millions of women have structured their lives and

careers; and, for many women, the choice to exercise that right has profoundly influenced the course of their lives and allowed them to realize their professional and personal dreams and ambitions. *See generally* Foster*, The Turnaway Study: Ten Years, A Thousand Women, and the Consequences of Having—or Being Denied—an Abortion* (2020).

Amici States are well familiar with the reliance interests that have built up around the viability rule. Consistent with our constitutional obligations, we protect the right of women within our borders to choose whether or not to have an abortion before viability. Indeed, in reliance on this Court's precedents, many of our States have enshrined the viability line in our statutory frameworks regulating abortion. *See supra* pp. 10-11.

While those protections might remain in place in the amici States regardless of how the Court resolves this case, our residents have also relied on the viability rule in making decisions regarding relocating to other States to pursue temporary educational, professional, or personal opportunities. In California, for example, tens of thousands of young people choose to pursue degrees at public schools in other States each year, including in States that have recently enacted statutes that contravene the viability rule.[8] And nearly half of public high school graduates from Illinois who enroll in four-year universities go to out-of-state schools, with a growing number choosing schools

[8] *See* Strayer, *The Great Out-of-State Migration: Where Students Go*, N.Y. Times (Aug. 16, 2016), https://tinyurl.com/k8f28hje (for example, Californians represent the largest share of out-of-state students at public universities in Texas).

in Mississippi.[9] In making such decisions, many of which involve substantial investments of time and money, our residents have relied on the availability of modern health and reproductive services in their destination State. It would upend their expectations if those States were suddenly allowed to adopt restrictive laws banning abortions well in advance of the point of viability.

For many such women, and for many permanent residents of States like Mississippi, abandonment of the viability rule could mean the difference between being able to have an abortion and not.[10] Those women and their families would confront the considerable harm that can result when a woman is forced to carry an unwanted pregnancy to term. *See infra* pp. 28-31. Others might have the wherewithal to travel to a different State in which abortion services remain available. And that, too, would upset important reliance interests—including those of States that have structured and budgeted for their healthcare systems without the prospect of providing care for a sudden influx of out-of-state patients. *See infra* pp. 25-28.

Petitioners contend that the "fractured and unsettled" nature of abortion jurisprudence undermines any claim to reliance. Pet. Br. 31. But there is nothing

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[9] *See* Rhodes, *Illinois Losing Even More High School Graduates to Out-of-State Colleges*, Chicago Tribune (Mar. 12, 2019), https://tinyurl.com/53yhmwjv (noting that, in 2017, Mississippi recorded a double-digit increase in the number of Illinois public high school graduates enrolling at its schools).

[10] *See, e.g.*, Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits in the United States*, 104 Am. J. Pub. Health 1687, 1693 (Sept. 2014), https://tinyurl.com/k2etbta8.

unsettled about the viability rule. That rule is the central holding of a landmark decision that this Court has "affirmed[] and re-affirmed" for nearly fifty years. Pet. App. 2a; *see supra* p. 5. Americans have properly relied on that precedent in forming legitimate expectations regarding a woman's options with respect to a pre-viability pregnancy. And the fact that Mississippi and some other States have enacted laws "exploring"—and sometimes deliberately exceeding—"*Roe*'s bounds," and have "contested" that decision "continuously," does not "sap[] any claim that reliance interests support" the viability rule. Pet. Br. 33. To the contrary. In our system of government, it is imperative that citizens be able to rely on the constitutional holdings of this Court even when political actors in the States disagree with them.

3. Nor have any legal or factual developments "'eroded'" the "'underpinnings'" of the viability rule. Pet. Br. 28 (quoting *Janus*, 138 S. Ct. at 2482). The underpinning of that rule—in 1973, 1992, and today—is the judgment "that viability marks the earliest point at which the State's interest in fetal life is constitutionally adequate to justify a legislative ban on nontherapeutic abortions." *Casey*, 505 U.S. at 860. While medical and scientific advances may affect the point at which viability occurs, *see* Pet. Br. 30, they "in no sense" affect "[t]he soundness or unsoundness of that constitutional judgment[.]" *Casey*, 505 U.S. at 860.

Petitioners assert that progress achieved through pregnancy-discrimination laws, liberal leave policies, safe-haven guarantees, and access to child care have "dulled" the concerns that supported the viability line in the first place. Pet. Br. 29. Amici States have been leaders in adopting those reforms; and where those policies have been adopted, they provide important

protections to women and children. But that type of law does not bear on the validity of *Roe*'s central holding: that before the point when a fetus is potentially able to live outside the womb, a State's interest in potential life or in protecting the health and safety of a woman is not constitutionally sufficient to justify a categorical prohibition on abortions and cannot override a woman's interest in retaining the ability to decide whether to carry a pregnancy to term.

The same is true of policies that have expanded access to contraceptives. *See* Pet. Br. 29. Although affordable access to effective contraceptives has been demonstrated to reduce the incidence of unwanted pregnancies, access is not universal.[11] Nor are contraceptives fail-safe, even as failure rates decline.[12] Because abortion is "customarily chosen as an unplanned response to the consequence of unplanned activity or to the failure of conventional birth control," *Casey*, 505 U.S. at 856, the interests and considerations that support the viability line are as relevant today as they were decades ago.

4. Petitioners also urge the Court to abandon the viability line on the ground that it "rests on flawed reasoning" and is "not well grounded in precedent." Pet. Br. 39. But the relevant question at this point and in this case is not whether that decades-old rule is arguably erroneous, but rather whether it is "grievously or egregiously wrong." *Ramos*, 140 S. Ct. at 1414

[11] *See, e.g.*, Andrews, *Contraception is Free Except When It is Not*, KHN News (July 23, 2021), https://tinyurl.com/4p4w36wz; Siegel, *ProChoiceLife: Asking Who Protects Life and How—and Why It Matters in Law and Politics*, 93 Ind. L.J. 207, 208 n.5 (2018), https://tinyurl.com/ydjcfp47.

[12] Centers for Disease Control and Prevention, *Contraception*, https://tinyurl.com/ke73kary (last visited Sept. 18, 2021).

(Kavanaugh, J., concurring); *see id.* at 1415 (citing *Korematsu v. United States*, 323 U.S. 214 (1944), and *Plessy v. Ferguson*, 163 U.S. 537 (1896)). "As Justice Scalia put it, the doctrine of *stare decisis* always requires 'reasons that go beyond mere demonstration that the overruled opinion was wrong,' for 'otherwise the doctrine would be no doctrine at all.'" *Id.* at 1414.

Petitioners cannot make the necessary demonstration here. The Due Process Clause of the Fourteenth Amendment prohibits the States from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. The word "liberty" is not self-defining, and "[i]n a long line of cases," the Court has held that "the 'liberty' specially protected by the Due Process Clause includes" certain rights "in addition to the specific freedoms protected by the Bill of Rights." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). For example, the Court has held that the Fourteenth Amendment protects personal and private decisions relating to education, *see Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923), family relationships, *see Prince v. Massachusetts*, 321 U.S. 158 (1944), marriage, *see Obergefell v. Hodges*, 576 U.S. 644 (2015); *Loving v. Virginia*, 388 U.S. 1 (1967), intimate relations, *see Lawrence v. Texas*, 539 U.S. 558 (2003); *Griswold v. Connecticut*, 381 U.S. 479 (1965), contraception, *Griswold*, 381 U.S. 479, and procreation, *see Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *see also* Resp. Br. 17-21.

In line with that precedent, this Court has recognized that "the Due Process Clause includes the right[] . . . to abortion." *Glucksberg*, 521 U.S. at 720. That was a reasonable judgment: The Constitution's "promise that a certain private sphere of individual

liberty will be kept largely beyond the reach of government" extends to "a woman's decision . . . whether to end her pregnancy"—one of the most "personal[,] intimate, [and] properly private" decisions a human being can make. *Thornburgh*, 476 U.S. at 772.

The viability rule appropriately safeguards that established constitutional right. Because viability is the moment when "there is a realistic possibility of maintaining and nourishing a life outside the womb," *Casey*, 505 U.S. at 870 (plurality opinion), it marks the proper dividing line before which a State may not categorically prohibit the decision to obtain an abortion. Beyond that point, "the independent existence of the second life can in reason and all fairness be the object of state protection that now overrides the rights of the woman." *Id.* Before that point, the viability rule imposes a "clear" line, preventing a State from extinguishing a woman's right to "retain the ultimate control" over whether to have an abortion. *Id.* at 869.

Petitioners challenge that line, but their arguments are not persuasive. They assert, for example, that the viability line cannot be found in the "constitutional text or structure." Pet. Br. 39. Of course, neither can many other judicial standards that this Court has developed to safeguard recognized liberty interests. *See, e.g.*, *Meyer*, 262 U.S. at 403 (examining whether law was "arbitrary and without reasonable relation to any end within the competency of the state"); *Rochin v. California*, 342 U.S. 165, 172-173 (1952) (whether conduct "shocks the conscience").

Petitioners also suggest that the viability rule draws the line in the wrong place. Pet. Br. 39-41. But if the Court assumes the validity of its precedent that "the 'liberty' secured by the Due Process Clause [does] protect some right to abortion," *id.* at 39—as it should

for purposes of resolving the question presented in this case, *see infra* pp. 23-25; *cf. Gonzales*, 550 U.S. at 146—there must be some point in a pregnancy before which a State may not destroy that right. And petitioners offer no plausible alternative. They suggest that a more appropriate line would be at "quickening" (which is "the first recognizable movement of the fetus in utero, appearing usually from the 16th to the 18th week of pregnancy," *Roe*, 410 U.S. at 132) or perhaps at some "other point[] before viability." Pet. Br. 39, 41. But "[p]hysicians and their scientific colleagues" have regarded quickening as an "event" of "less interest" in fetal development. *Roe*, 410 U.S. at 160. And petitioners do not identify any persuasive reason why quickening (or some other line) would be more workable or justifiable than viability. *See* Resp. Br. 22, 24, 31-34, 41-50; *cf. Casey*, 505 U.S. at 870 (plurality opinion) ("[T]here is no line other than viability which is more workable.").

However petitioners or their amici would have drawn the line as a matter of first impression, their disagreement with the line that this Court has embraced is not a sufficient basis for upending settled precedent on which generations of women have relied. *See, e.g.*, *Dickerson*, 530 U.S. at 443 ("Whether or not we would agree with *Miranda*'s reasoning and its resulting rule, were we addressing the issue in the first instance, the principles of *stare decisis* weigh heavily against overruling it now.").

5. Finally, petitioners invoke the interests of the States, arguing that the Court should abandon the viability rule because it "defeat[s] state interests in a sweeping way." Pet. Br. 42. As the amici States can attest, however, that argument ignores the many

ways in which existing precedent allows States to promote their interests in women's health, fetal life, and proper oversight of the medical profession.

This Court has recognized that States have legitimate interests "in protecting the health of the woman and the life of the fetus that may become a child." *Casey*, 505 U.S. at 846. It has made clear that States may further those interests by regulating abortions before the point of viability, subject to constitutional scrutiny. *See id.* at 853; *see, e.g.*, *Gonzales*, 550 U.S. at 168; *Mazurek v. Armstrong*, 520 U.S. 968, 975 (1997). For example, it has rejected constitutional challenges to certain informed-consent regulations, *Casey*, 505 U.S. at 881 (plurality opinion), recognizing a "substantial government interest justifying a requirement that a woman be apprised of the health risks of abortion and childbirth," *id.* at 882. It has held that States are permitted to impose certain "waiting period" requirements in order to "implement the State's interest in protecting the life of the unborn." *Id.* at 885. States may also express a "preference for childbirth over abortion," *id.* at 883, and decline to "allocat[e] public funds" for abortion services, *see, e.g.*, *Rust v. Sullivan*, 500 U.S. 173, 192-193 (1991); *Harris v. McRae*, 448 U.S. 297, 315-317 (1980); *Maher v. Roe*, 432 U.S. 464, 474 (1977). They may advance their "strong and legitimate interest in the welfare of [their] young citizens" by imposing parental involvement requirements, subject to certain judicial bypass procedures. *See Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 326, 328 (2006). And the Court has held that they may restrict certain abortion procedures, in certain circumstances, to "express[] respect for the dignity of human life" and protect the "integrity and ethics of the medical profession." *Gonzales*, 550 U.S. at 157.

The State also "has a significant role to play in regulating the medical profession," including medical professionals who provide abortion services. *Gonzales*, 550 U.S. at 157. The Court has held that professional licensing and reporting requirements are permissible so long as they advance a "legitimate interest in protecting women's health" and do not impose an undue burden. *Whole Women's Health v. Hellerstedt*, 136 S. Ct. 2292, 2311 (2016); *see also Mazurek*, 520 U.S. at 975. Many States impose generally applicable licensing requirements for all medical clinics, including those that perform abortions.[13] Thirty-eight States permit abortions to be performed only by licensed physicians.[14] Petitioners' assertion that the viability rule "defeat[s] state interests" (Pet. Br. 42) thus ignores the substantial latitude the States retain to protect those interests through regulations.

Petitioners also ignore the broad range of policies—adopted by state and local governments across the Nation—that safeguard women's health and reduce abortions without proscribing pre-viability abortions. For example, California provides a year's supply of birth control to financially eligible individuals, as well as family planning counseling and education services.[15] Illinois offers pregnancy planning services to low-in-

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[13] *See, e.g.*, Cal. Health & Safety Code §§ 1200, 1204; N.Y. Pub. Health Law § 2599-bb; Ohio Rev. Code § 3702.30(A)(1).

[14] Guttmacher Inst., *An Overview of Abortions Laws* (Sept. 1, 2021), https://tinyurl.com/93edyejz.

[15] *See* Cal. Dep't of Health Care Servs., *Office of Family Planning*, https://tinyurl.com/38zpf8sy (last visited Sept. 18, 2021).

come individuals, reducing the incidence of unintended pregnancies.[16] Michigan provides robust prenatal care to reduce maternal and infant mortality.[17] And New York offers comprehensive family planning services as well as prenatal and postpartum care to women, particularly low-income individuals and those without health insurance.[18] The evidence establishes that access to such comprehensive reproductive healthcare services leads to better health outcomes for both women and infants.[19]

Amici States recognize and share petitioners' interests in protecting potential life, women's health, and the integrity of the medical profession. *See* Pet. Br. 41.

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[16] *See* Ill. Dep't of Pub. Health, *Family Planning*, https://tinyurl.com/fxeh9s8d (last visited Sept. 18, 2021).

[17] *See* Michigan Dep't of Health and Human Servs., *Michigan Mother Infant Health & Equity Improvement Plan*, https://tinyurl.com/yvbb33f7 (last visited Sept. 18, 2021).

[18] *See, e.g.*, New York State Dep't of Health, *Comprehensive Family Planning and Reproductive Health Care Services Program*, https://tinyurl.com/55mxn73s (last visited Sept. 18, 2021); New York State Dep't of Health, *New York State's Family Support Programs for Pregnant and Parenting Families,* https://tinyurl.com/ebz4hfhc (last visited Sept. 18, 2021).

[19] *See also* Am. Coll. of Obstetricians and Gynecologists, *Abortion Policy* (Nov. 2020), https://tinyurl.com/ACOG-Abortionpolicy; Guttmacher Inst., *Induced Abortion Worldwide* 2 (Mar. 2018), https://tinyurl.com/zvpbtytz; Gerdts, et al., *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth after an Unwanted Pregnancy*, 26 Women's Health Issues 55, 58 (2016), https://tinyurl.com/y3yhv6ex; Latt, et al., *Abortion Laws Reform May Reduce Maternal Mortality: An Ecological Study in 162 Countries*, 19 BMC Women's Health 1, 5, 8 (2019), https://tinyurl.com/BMCwomen-health (162-country study concluding that "maternal mortality is lower when abortion laws are less restrictive").

Our experience demonstrates that the States may advance those interests without adopting statutes that deliberately contravene this Court's long-established constitutional precedents.

C. The Court Should Limit Review to the Question Presented in This Case—and Only That Question

At the certiorari stage, petitioners sought to present three questions: whether "all pre-viability prohibitions on elective abortions are unconstitutional"; whether the validity of a pre-viability law "should be analyzed under *Casey*'s 'undue burden' standard or *Hellerstedt*'s balancing of benefits and burdens"; and whether "abortion providers have third-party standing" to challenge a law concerning pre-viability abortions. Pet. i. "To be clear," petitioners argued, "the questions presented in this petition do not require the Court to overturn *Roe* or *Casey*." *Id.* at 5. "They merely ask[] the Court to reconcile a conflict in its own precedents" and "reconsider the bright-line viability rule." *Id.*; *see also id.* at 5 n.1.

After this Court granted certiorari and limited its review to the first of the three questions presented, *Dobbs v. Jackson Women's Health Org.*, ___ S. Ct. ___, 2021 WL 1951792 (2021), petitioners filed a merits brief that argues—on the first page and for most of the next thirty-seven—that "this Court should overrule . . . *Roe* and *Casey*" and hold that there is no constitutional right to abortion. Pet. Br. 1. Whether or not that expansive argument addresses a "subsidiary question fairly included" in the question presented, S. Ct. R. 14.1(a), the merits brief the Court received is not what petitioners originally advertised. The Court ordinarily takes a dim view of "such bait-and-switch tactics." *City & Cnty. of San Francisco v. Sheehan*, 575

U.S. 600, 621 (2015) (Scalia, J., concurring in part); *see id.* at 608-610, 617 (opinion of the Court) (dismissing first question presented as improvidently granted). It should not reward petitioners' tactic here by entertaining their post-grant request for the Court to broaden the scope of its review and hold that the Constitution does not protect any right to abortion. *See* Resp. Br. 11-12.

Principles of judicial restraint also counsel against taking up that broader issue in the context of this case. The Court's longstanding recognition that "the Due Process Clause includes the right[] . . . to abortion," *Glucksberg*, 521 U.S. at 720, is a matter of enormous national importance and debate. On this issue, perhaps more than any other, "if it is not necessary to decide more, it is necessary not to decide more." *PDK Labs. Inc. v. Drug Enforcement Admin.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment). And in this case, where the Court granted review only with respect to a single question regarding the point in gestation at which a State may categorically ban abortions, that "cardinal principle of judicial restraint" (*id.*) weighs strongly in favor of limiting plenary review to the question on which the Court granted certiorari—and *only* that question.

If this Court does choose to grant a future petition raising the broader question of whether "the Constitution protects a right to [an] abortion," Pet. Br. 1, it would need to confront (among other things) the extraordinary reliance interests that have built up around that general right in our society. As already discussed, women across our Nation have ordered their lives around the option of having an abortion up to the point of viability in the event of an unplanned

pregnancy, *see supra* pp. 12-15; those reliance interests would be defeated entirely if the Court were to hold that States may categorically bar women from having an abortion beginning at the moment of conception.

The States, too, would be greatly harmed if this Court abandoned the basic premise of *Roe* at this late juncture. Millions of amici States' residents have structured their schooling and employment decisions in light of the constitutional protections recognized in *Roe* and *Casey*. *See supra* pp. 13-14. And amici States would experience strains on their healthcare systems from an influx of women from other States seeking abortions if this Court were to abandon those protections entirely. *See infra* pp. 26-27.

Those considerations, and the other factors governing the *stare decisis* inquiry, should foreclose any argument for the Court to overrule its "holding that the Constitution protects a woman's right to terminate her pregnancy in its early stages"—just as they did three decades ago. *Casey*, 505 U.S. at 844; *see id.* at 854-861. But those are questions for another day. In this case, the Court should limit its review to the only question that was addressed by the courts below, presented by the petition, and granted by this Court. As to that question, precedent and principles of *stare decisis* compel the conclusion that Mississippi's statute banning abortions "after 15 weeks' gestation and thus before viability" (Pet. Br. 1) is unconstitutional.

II. OVERTURNING THE VIABILITY RULE WOULD HARM THE AMICI STATES AND OUR RESIDENTS

A retreat from the viability line would undermine the interests of amici States and our residents, in ad-

dition to millions of others across the Nation. In Mississippi and other States that have adopted restrictive bans on abortions far in advance of viability, *see supra* pp. 6-7, many pregnant women would be forced either to journey to another State to seek care or to carry an unwanted pregnancy to term. That would impose substantial costs on States and local governments and jeopardize women's health—including the health of our residents who have temporarily relocated to Mississippi or other States with similar laws. *See supra* pp. 13-14.

Consistent with this Court's precedents and our commitment to the rights and liberty interests of women and their families, amici States have structured our policies to allow women to choose whether to have an abortion before viability. If the Court upholds Mississippi's law and authorizes States to ban abortions before viability, our healthcare systems would come under significant strain as a result of increased demand from women in those States who need safe and legal abortion care.

History demonstrates that a substantial reduction in the availability of abortion services in one State can cause its residents to seek services in other States. In the short period between when New York relaxed its abortion restrictions and this Court's decision in *Roe*, for example, nearly 350,000 women traveled from out of state to obtain abortion services in New York.[20] More recently, after certain States curtailed abortion

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[20] Gold, *Abortion and Women's Health: A Turning Point for America?* 3 (1990).

services within their borders, many of their residents have traveled elsewhere for abortions.[21]

A sudden spike in the need for services within the amici States could lead to backlogs and lengthy wait times—and result in later-term abortions for many women who would prefer to have them both earlier and closer to home. In New York, for example, demand from out-of-state residents in the 1970s led to wait times of up to six weeks.[22] More recently, abortion providers have reported that they would expect an 8- to 10-week delay because of the inability to absorb additional demand for abortion services. *Planned Parenthood of Wis., Inc. v. Schimel*, 806 F.3d 908, 918 (7th Cir. 2015).[23] For some "women well into their pregnancies, this time lapse" could be "critical, if not prohibitive to having the abortion at all."[24]

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[21] *See, e.g.*, Raifman, et al., *Border-State Abortions Increased for Texas Residents after House Bill 2*, 104 Contraception 314 (Sept. 1, 2021), https://tinyurl.com/mhyv3pez; White, et al., *Changes in Abortion in Texas Following an Executive Order Ban During the Coronavirus Pandemic*, 325 J. Am. Med. 691, 693 (Jan. 4, 2021), https://tinyurl.com/4dw2ukjy; Cassidy, *Women Facing Restrictions Seek Abortions Out of State*, AP News (Sept. 7, 2019), https://tinyurl.com/6xhfvc87.

[22] *See* Carmody, *Abortion Facilities Under Strain*, N.Y. Times (July 19, 1970), https://tinyurl.com/watxyjkk.

[23] *See also* U.S. Mot. for TRO or Prelim. Inj. at 7-12, *United States v. Texas*, D. Ct. No. 21-796, Dkt. 8 (W.D. Tex. Sept. 15, 2021).

[24] Carmody, *supra*; *see also* Lourgos, *Inside the Illinois Abortion Clinic that Could Become the Nearest Option for Women in St. Louis and Beyond*, Chicago Tribune (June 10, 2019), https://tinyurl.com/33rehvme; *Schimel*, 806 F.3d at 918 ("Other women would be unable to obtain any abortion, because the delay would push them past the . . . deadline for the Planned Parenthood clinics' willingness to perform abortions.").

Other women may lack the ability to travel out of state to obtain healthcare services—including women with limited resources who have temporarily relocated for academic opportunities or seasonal work. For them, a law prohibiting abortions well in advance of the point of viability in the State in which they currently reside would effectively deprive them of any choice over whether or not to carry their pregnancy to term. Pregnant women are frequently unaware of their pregnancy until weeks or months into the gestational period.[25] When they learn of the pregnancy, seeking an abortion in a different State may require taking time off work or school, arranging for child care, and securing and paying for transportation and lodging.[26] And for women in some regions, where neighboring States have all adopted similar bans, obtaining healthcare in another State could mean extended travel distances and increased expenses. For women without the resources to make such trips—a disproportionate share of whom are racial minorities—abandonment of the viability line could entirely deprive them of the ability to make the decision to have an abortion.[27]

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[25] *See* Upadhyay, *supra*.

[26] *See* Varney, *Long Drives, Air Travel, Exhausting Waits: What Abortion Requires in the South*, Kaiser Family Foundation (Aug. 3, 2021), https://tinyurl.com/myy63upd; Jerman, et al., *Barriers to Abortion Care and Their Consequences for Patients Traveling for Services: Qualitative Findings from Two States*, 49 Perspectives on Sexual and Reprod. Health 2, 95-102 (Apr. 10, 2017), https://tinyurl.com/dh5rhc33.

[27] Varney, *supra*; Rice, et al., *Sociodemographic and Service Use Characteristics of Abortion Fund Cases from Six States in the U.S. Southeast*, 18 Int. J. Environ. Res. & Public Health 3813

Those women would face worse health outcomes than otherwise: Evidence demonstrates that women in States and nations with restrictive abortion laws already suffer significantly worse health outcomes, including higher morbidity and mortality rates.[28] Women who carry a pregnancy to term against their wishes are several times more likely to develop potentially life-threatening conditions, including postpartum hemorrhages and eclampsia, and show "an increased risk of death."[29] And when women are forced to carry multiple pregnancies to term close together in time, they face an increased risk of premature birth, and their children are more likely to suffer from low birth weight, congenital disorders, and schizophrenia.[30]

By contrast, as both the American Medical Association and the American College of Obstetricians and

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(Apr. 6, 2021), https://tinyurl.com/nhyut4vz.

[28] *See, e.g.*, Ibis Reproductive Health & Ctr. for Reproductive Rights, 2 *Evaluating Priorities: Measuring Women's and Children's Health and Well-Being Against Abortion Restrictions in the States* 16-18 (2017), https://tinyurl.com/uka7daju; Latt, *supra*; Guttmacher Inst., *Induced Abortion Worldwide* 2 (Mar. 2018), https://tinyurl.com/zvpbtytz; Gerdts, *supra*.

[29] Gerdts, *supra*; *see also* Raymond & Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics and Gynecology 215-219 (Feb. 2012), https://tinyurl.com/Safety-of-Legal-Abortion (risk of death is approximately 14 times higher for women forced to carry an unwanted pregnancy to term than for women who can secure a legally-induced abortion).

[30] Mayo Clinic, *Family Planning: Get the Facts About Pregnancy Spacing*, https://tinyurl.com/y2zy24qj (last visited Sept. 18, 2021).

Gynecologists have recognized, preserving "[a]ccess to safe and legal abortion benefits the health and wellbeing of women and their families."[31] Amici States know from experience that the most effective way to reduce maternal mortality is to commit resources to a variety of reproductive healthcare programs. For example, California saw maternal mortality decline by 57 percent between 2006 to 2013 after investing in wide-ranging reproductive health programs; it now has the lowest maternal mortality rates in the Nation.[32] Amici States of Massachusetts, Connecticut, and Colorado have seen similar success in reducing maternal mortality rates.[33] Beyond these improvements in health outcomes, studies show that meaningful access to abortion services is associated with better socioeconomic outcomes—including higher employment rates and reduced reliance on public assistance.[34]

As this Court has recognized, "[t]he ability of women to participate equally in the economic and so-

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[31] Complaint 5 ¶ 16, *Am. Med. Ass'n, et al. v. Stenehjem*, Dist. Ct. of North Dakota, No. 19-cv-125, Dkt. 1 (D.N.D. June 25, 2019); *see also* Am. Coll. of Obstetricians and Gynecologists, *supra*.

[32] Ollove, *More U.S. Women Dying from Childbirth. How One State Bucks the Trend*, Stateline (Oct. 23, 2018), https://tinyurl.com/2nafej2j.

[33] Advisory Board, *The States With the Highest (and Lowest) Maternal Mortality, Mapped* (Nov. 9, 2018), https://tinyurl.com/3b47sukm.

[34] *See* Foster, et al., *Socioeconomic Outcomes of Women Who Receive and Women Who are Denied Wanted Abortions in the United States*, 108 Am. J. Pub. Health 407, 409 (2018), https://tinyurl.com/tyejxdze; Bernstein, et al., *The Economic Effects of Abortion Access: A Review of the Evidence* (2019), https://tinyurl.com/y3msrssg.

cial life of the Nation has been facilitated by their ability to control their reproductive lives." *Casey*, 505 U.S. at 856. For decades, women have ordered their family and professional lives, "and made choices that define their views of themselves and their places in society," in reliance on the fact that they have the constitutional right—before viability—to make the deeply personal decision whether to carry a pregnancy to term. *Id.* Petitioners may disagree with that rule, but they have not established the kind of justification that would be needed to upend those long-settled interests and transfer authority over that intimate decision from women to the States.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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