

# **EXHIBIT A**

STATE OF MICHIGAN  
IN THE SUPREME COURT

GRETCHEN WHITMER,  
on behalf of the State of Michigan,

Plaintiff,

v.

Supreme Court No. 164256

Oakland Circuit Court No. 22-193498-CZ

Hon. Jacob J. Cunningham

**This case involves a claim that state  
government action is invalid.**

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Defendants.

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**BRIEF OF HUMAN RIGHTS CAMPAIGN FOUNDATION, EQUALITY MICHIGAN,  
& 8 LGBTQ+ INCLUSIVE ORGANIZATIONS AS *AMICI CURIAE*  
IN SUPPORT OF THE GOVERNOR'S EXECUTIVE MESSAGE**

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

*Amici Curiae*— Lesbian, Gay, Bisexual, Transgender, Queer, and Plus (“LGBTQ+”) inclusive organizations doing work in Michigan—submit this brief in support of the Governor’s Executive Brief requesting the Court authorize certification of the questions presented in her Executive Message and declare MCL § 750.14 unconstitutional.

***The Human Rights Campaign Foundation*** is the educational arm of the Human Rights Campaign (“HRC”), America’s largest civil rights organization working to achieve equality for LGBTQ+ people. Through its programs, the HRC Foundation seeks to make transformational change in the everyday lives of LGBTQ+ people, shedding light on inequity and deepening the public’s understanding of LGBTQ+ issues, including advancing transgender and racial justice and the importance of reproductive health care.

***Equality Michigan*** provides education, victim services, and outreach that empowers LGBTQ+ neighbors throughout the state to live in safe communities, take care of our families, and create positive impact by improving our social, cultural, and economic lives and wellbeing.

***Grand Rapids Pride Center*** empowers our LGBTQ community through supportive services and awareness, aiming to be the center of a vibrant and inclusive community that supports all LGBTQ people. We offer a variety of programs and services such as social and support groups, education/trainings for the community, our Health Equity Program which provides valuable healthcare resources to the LGBTQ community, and finally we host our local Pride Festival.

***Hands Across The Water (“HATW”)*** is a private non-profit child welfare agency located in Ann Arbor, Michigan serving nearly over 1,200 children and parents annually. Over the past

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no counsel for a party and no party made a monetary contribution intended to fund the preparation or submission of the brief.

23 years, HATW has supported and empowered thousands of children and families in our community, state, country and across the globe through inclusive, strengths-based services. HATW provides holistic services to strengthen families including parent education/prevention programs, foster care, adoption (international, infant and state ward), pregnancy counseling and behavioral health programs. In 2011, HATW was the first agency in Michigan to be certified by the Human Rights Campaign's All Children All Families program in recognition of our agency's commitment to inclusive services to LGBTQIA+ children and families, which continues to be at the core of our agency mission and vision.

***Jim Toy Community Center*** envisions an inclusive community where people of diverse sexual orientation and gender identity are visible and live together in equality, respect and happiness. It has been a resource center that provides information, education, social events, and advocacy by and for the Queer and Ally community in the Washtenaw County area for over 25 years. The first publicly "out" gay man in Michigan (1970), Jim Toy established the first campus center in history devoted to the support of sexual minority group members.

***LGBT Detroit*** commits to increasing the prominence and visibility of Detroit's LGBT culture, building a strong, healthy and vibrant community with a focus on youth and young adult development, sexual orientation and gender identity education and advocacy, and emotional and physical well-being. For over two decades, it has received unwavering community support, promoting the well-being and integrity involved in fostering an environment conducive to lesbian, gay, bi and transgender individuals irrespective of race, culture, or socio-economic status.

***Michigan Organization on Adolescent Sexual Health ("MOASH")*** is a statewide nonprofit that mobilizes youth voices, engages community partners, and informs decision-



makers to advance sexual health, identities, and rights. MOASH works to advance comprehensive sex education across the state, increase access to sexual and reproductive health services, and combat sexual violence towards and amongst youth. Throughout all of our work, MOASH advocates for supporting and affirming LGBTQIA+ students—within their schools, healthcare, and broader society. Some examples of MOASH’s work includes: creating resources for educators and health care officials to support and affirm LGBTQIA+ youth; advocating for trans inclusion in sports; and hosting an annual LGBTQIA+ Youth Summit (BAMM Pride). Non-discrimination and protective policies and practices are essential to ensuring all young people have safe, healthy, and fulfilling lives.

***Ruth Ellis Center***, founded in 1999, has established a national reputation for quality and innovation in providing trauma-informed services for lesbian, gay, bi-attractional, transgender and questioning (LGBTQ+) youth and young adults, with an emphasis on young people of color, experiencing homelessness, involved in the child welfare system, and/or experiencing barriers to health and wellbeing. It works to create opportunities with LGBTQ+ young people to build their vision for a positive future and towards a world where LGBTQ+ young people are safe and supported no matter where they go.

***SAGE Metro Detroit*** is a local affiliate of the national Services & Advocacy for GLBT Elders (“SAGE”), the country’s largest and oldest organization dedicated to improving the lives of lesbian, gay, bisexual, and transgender (“LGBT”) older adults. It offers supportive services and consumer resources for LGBTQ+ older adults and their caregivers, advocate for public policy changes that address the needs of LGBT older people, and provide training for aging providers and LGBTQ+ organizations.

*Stand with Trans* is a not-for-profit based out of Farmington, Michigan that empowers and supports transgender youth and their loved ones. It works towards a world where gender diverse youth are validated while committing to dismantle the barriers faced by our community based on racism, sexism, and queer-antagonism.

## INTRODUCTION

In the weeks since the Supreme Court’s divided ruling in *Dobbs v Jackson Women’s Health Org*, 142 S Ct 2228 (2022), the disastrous consequences of overturning *Roe v Wade*, 410 US 113 (1973) are becoming increasingly clear across the country. It is already impacting men and women alike, communities big and small, and healthcare providers in various ways—but at bottom, eliminating the federal constitutional right to reproductive choice has stark consequences for all Americans.

As this Court examines weighty questions about the important individual rights remaining under the Michigan Constitution, we respectfully urge the Court to consider the current and future effects on LGBTQ persons—a perspective that is often under-appreciated or ignored in debates and legal analyses about reproductive health.

Sexual and gender minorities in this country need access to abortions for their safety, well-being, financial stability, and decision-making over their own bodies.<sup>2</sup> These important interests shine through in a number of surveys, studies, and data analyzed below: in sum, those who are sexual or gender minorities are statistically more likely to have abortions than those who are not. Lesbian, bisexual, and queer cisgender women who have been pregnant have reported

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<sup>2</sup> For this brief, “sexual minority” refers to people who identify as other than heterosexual with no history of same-sex partnering and “gender minority” refers to people whose gender identify or expression is different from their sex assigned at birth. Aside from heterosexual cisgender women, people who are capable of becoming pregnant may include queer women and transmasculine and nonbinary people.

unwanted or mistimed pregnancies at a higher proportion than relative to heterosexual cisgender women. Hiding behind these patterns and figures is the fact that many LGBTQ+ people experience structural and systemic inequities, such as diminished access to sexual health trainings, and negative and discriminatory interactions with health care providers, particularly when it comes to accessing reproductive health care services. This can understandably lead patients to delay—or forgo entirely—seeking such care.

In Michigan, approximately 19.2% of its residents who are of reproductive age identify as LGBTQ+. <sup>3</sup> As discussed *infra*, the Michigan abortion criminal ban, MCL § 750.14 (“Criminal Abortion Ban”), will harm the people of Michigan in profound, multi-faceted ways. In addition to heterosexual cisgender women, the Criminal Abortion Ban would have real world, generational consequences for sexual minority women, gender minority people capable of pregnancy, and their families. This Court should grant the Governor’s Executive Message to consider whether the Criminal Abortion Ban violates the Michigan Constitution.

## ARGUMENT

### **I. Sexual Minority Women and Gender Minority People Capable of Pregnancy are Statistically More Likely to Need Abortion Access than Heterosexual Cisgender Women and Thus Would Be Distinctly Harmed by the Criminal Abortion Ban**

Restricted access to abortion care contributes to, among other things, economic constraints, negative health implications, and mortality rates among people who give birth. Notably, sexual minority women and gender minority people capable of pregnancy require

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<sup>3</sup> U.S. CENSUS BUREAU, *Household Pulse Survey Data*, Phase 3.4 (conducted March 2, 2022 to May 9, 2022), <https://perma.cc/2T4L-FF22> (analysis ran by HRC Foundation staff, for people who are female sex assigned at birth, ages 18 to 44, who identify as: gay or lesbian, bisexual, other sexual identity; and/or transgender/other gender identity, and female sex assigned at birth; and/or male gender identity and female sex assigned at birth).

access to abortions and have had abortions at a greater rate than heterosexual cisgender women. As a result, these communities would be distinctly harmed by the Criminal Abortion Ban.<sup>4</sup>

Accidental or mistimed pregnancies are quite common across multiple demographics. With respect to women who have been pregnant, an analysis of the 2017–2019 National Survey of Family Growth (“NSFG”) shows that except for lesbian women—38% of whom have ever been pregnant—the majority of women who have had sex with a man have been pregnant at some point in their lives.<sup>5</sup> To offer greater detail, this includes: 71% of heterosexual women who report a history of same-sex sexual partnering; 55% of bisexual women; and 75.6% of women who identify as heterosexual and report only male sexual partners in their lifetime.<sup>6</sup>

Analyzing the NSFG data shows that among women who have been pregnant, sexual minority women were statistically more likely to have had an abortion than heterosexual women.<sup>7</sup> Adjusting for age, race and ethnicity, and educational attainment, bisexual women and heterosexual women with a history of same-sex partnering were each over twice as likely as heterosexual women who have reported only having male sexual partners to have ever had an abortion.<sup>8</sup> Just under 18% of all women surveyed in the NSFG who had ever been pregnant self-reported having at least one abortion in their lifetime, including: 15% of exclusively heterosexual women; over a fifth (22.8%) of lesbians; over a quarter (26.7%) of heterosexual

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<sup>4</sup> See Heidi Moseson et al., *Abortion Experiences and Preferences of Transgender, Nonbinary, and Gender-Expansive People in the United States*, 224 AM. J. OBSTETRICS & GYNECOLOGY 376, 376 (2021) (“A substantial proportion of [transgender and gender-expansive] individuals who were assigned female sex at birth may need pregnancy and/or abortion care during their lives.”).

<sup>5</sup> HUM. RTS. CAMPAIGN FOUND., *Fact Sheet: LGBTQ+ People & Roe v Wade 2* (2022), <https://perma.cc/4YVK-RYHB> (hereinafter HRCF Fact Sheet).

<sup>6</sup> *Id.* at 2–3.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> See also Kerith Conron, Shoshana K. Goldberg et al., *Reproductive Health Care and LBT Adults*, UCLA SCHOOL OF LAW, WILLIAMS INST. 1 (2020), <https://perma.cc/TC2R-WSYC> (“Among women ages 15–44, the odds of an unwanted pregnancy are 1.75 times greater for bisexually identified women than their heterosexual peers.”).

women with a history of same-sex partnering; and over a quarter of bisexual women (27.2%).<sup>9</sup> Even so, it is likely that these numbers are even higher than reflected by the NSFG sample,<sup>10</sup> given common issues with under-reporting abortion and sexual health.

Other surveys also demonstrate the critical need for abortion access for sexual and gender minorities. For example, in a 2021 survey of over 1,700 transgender, non-binary, and gender expansive adults (ages 18 and over) assigned female or intersex at birth, 4% had ever had an abortion, including a third of those who had ever been pregnant.<sup>11</sup> The majority of those pregnancies were unintended.<sup>12</sup> Of the 433 pregnancies reported across 210 respondents—12% of the sample had ever been pregnant—almost a third of those pregnancies ended in an abortion.<sup>13</sup> For most recent abortions, 34% of abortions were carried out via medication, 61% were completed through surgical or procedural abortions, and 5% were by some other method, typically with herbal treatment or self-induced methods.<sup>14</sup>

As demonstrated by available data, reports, and surveys, sexual and gender minorities need access to abortions, to do so in a safe environment, and that a lack of access to this medical care does significant and tangible harm.

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<sup>9</sup> HRCF Fact Sheet, *supra* note 5.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*; see also Moseson et al., *supra* note 4. “Gender expansive” is “[an] umbrella term for those who do not follow gender stereotypes, or who expand ideas of gender expression or gender identity. Gender expansive does NOT mean non-binary and cisgender people can be gender expansive as well.” PFLAG, *PFLAG Nat. Glossary of Terms* (2022), <https://perma.cc/432Z-BXZZ>.

<sup>12</sup> HRCF Fact Sheet, *supra* note 5; see also Moseson et al., *supra* note 4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* Sexual minority women also require abortions outside of hospitals. In a 2014 survey conducted by the Guttmacher Institute, 6% of all women who had an abortion in a non-hospital setting in the United States identified as having a sexual orientation other than heterosexual. *Id.* (citing Jenna Jerman, Rachel K. Jones, and Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, GUTTMACHER INST. 7 (2016) [https://www.guttmacher.org/sites/default/files/report\\_pdf/characteristics-us-abortion-patients-2014.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf)).

## II. Michigan's Criminal Abortion Ban Would Cause Serious Harm to Sexual Minority Women and Gender Minority People Capable of Pregnancy

The criminalization of abortions will undermine the safety, wellbeing, and health care access of sexual minority women and gender minority people capable of pregnancy across the state of Michigan. These consequences are serious and will deepen the systemic and structural inequities encountered by this population.

### A. Michigan's Criminal Abortion Ban harms sexual minority women and gender minority people capable of pregnancy because they experience sexual violence at a heightened rate

It is widely documented that LGBTQ+ people are already at increased risk for sexual and physical intimate partner violence. In a 2018 survey, sexual and gender minorities seeking an abortion were substantially more likely to report that the pregnancy was the result of a forced or non-consensual encounter, as well as that the other individual had sexually and/or physically abused them, when compared to heterosexual women seeking an abortion.<sup>15</sup> To be more specific, 14.8% of lesbian women and 3.2% of bisexual women who had an abortion, compared to 1.2% of heterosexual women who had an abortion, reported that the pregnancy was the result of a forced sexual encounter.<sup>16</sup> Over a third of lesbian women seeking abortions had experienced physical abuse (33.3%) or sexual abuse (34.6%) from the individual who got them pregnant.<sup>17</sup> And 7.1% of bisexual women had experienced sexual abuse from the person who got them pregnant, with almost 9% having experienced physical abuse.<sup>18</sup> In comparison, approximately 2% of heterosexual women had experienced sexual abuse from the person who got them

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<sup>15</sup> Rachel K. Jones et al., *Sexual Orientation and Exposure to Violence Among U.S. Patients Undergoing Abortion*, 132 OBSTETRICS & GYNECOLOGY 605, 609 (2018) (“Exposure to physical and sexual violence was substantially higher among each of the sexual minority groups [(lesbians, bisexual women, or something else)] compared with their heterosexual counterparts, sometimes by a factor of 15 or more.”).

<sup>16</sup> HRCF Fact Sheet, *supra* note 5, at 5; Jones et al. at 609.

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

<sup>18</sup> *Id.*

pregnant, and 3.6% had experienced physical abuse.<sup>19</sup> Practically speaking, requiring sexual and gender minorities—especially transgender men—to carry unwanted pregnancies to term can also put them at risk of social stigma, hostility, and potentially hate crimes.<sup>20</sup>

Statistics concerning LGBTQ+ youth also bear out similar results. From the 2019 Youth Risk Behavior System for Michigan, data show that LGB high-school girls were significantly more likely to have been physically forced to have sex, to experience sexual violence, and to have experienced physical violence while on a date (also sometimes called “date rape”).<sup>21</sup>

Unfortunately, these statistics and experiences have continued and in many instances been worsened during the COVID-19 pandemic. Since the onset of the COVID-19 pandemic, LGBTQ+ adults have reported an increased risk of intimate partner violence.<sup>22</sup> LGBTQ+ adults were almost twice as likely as cisgender, straight adults to experience intimate partner violence since the onset of the pandemic.<sup>23</sup> More than half of transgender and non-binary adults had experienced intimate partner violence in their lifetimes.<sup>24</sup> Among those who had experienced intimate partner violence, LGBTQ+ adults were more likely to report that the duration and frequency of such violence had increased since the start of the COVID-19 pandemic.<sup>25</sup> Were the Criminal Abortion Ban in effect and permitted to be enforced, it would cause particular harm to sexual minority women and gender minority people capable of pregnancy, since they experience

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

<sup>20</sup> Robin Marantz Henig, *Transgender Men Who Become Pregnant Face Social, Health Challenges*, NPR (Nov. 7, 2014, 3:53 PM ET), <https://perma.cc/ACP9-5KBX>.

<sup>21</sup> CTR. FOR DISEASE CONTROL, *High School YRBS – Michigan 2019 Results, Sexual Identity*, <https://perma.cc/3NU7-UT2G>.

<sup>22</sup> HRCF Fact Sheet, *supra* note 5, at 5; see also HUM. RTS. CAMPAIGN FOUND., *LGBTQ Intimate Partner Violence and COVID-19* 7 (2020), <https://perma.cc/NM2A-B9GZ>.

<sup>23</sup> HRCF Fact Sheet, *supra* note 5, at 6.

<sup>24</sup> Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey* 15, NAT’L CTR. FOR TRANSGENDER EQUAL. (2016), <https://perma.cc/CE8D-QL53> [hereinafter U.S. Transgender Survey].

<sup>25</sup> HRCF Fact Sheet, *supra* note 5, at 6.

a higher rate of sexual violence, resulting in unwanted pregnancies and the need for abortion care.

**B. Michigan’s Criminal Abortion Ban impedes access to health care for sexual minority women and gender minority people capable of pregnancy, causing significant harm to those already underserved individuals**

Due to a variety of structural and logistical barriers, LGBTQ+ people are often stymied in obtaining meaningful healthcare, including abortion access. Statistics show that women denied an abortion “had almost 4 times greater odds of a household income below the federal poverty level and 3 times greater odds of being unemployed.”<sup>26</sup> Further, “[t]hirteen percent (13%) of [respondents to the 2015 U.S. Transgender Survey] reported that they were denied coverage for services often considered to be gender-specific, including routine sexual or reproductive health screenings (such as Pap smears, prostate exams, and mammograms).”<sup>27</sup> And approximately 15% of lesbians and 12% of bisexual women have reported that they could not receive healthcare because it would have been cost prohibitive, compared to around 6% of heterosexual women who reported that they could not access healthcare due to cost.<sup>28</sup>

LGBTQ+ youth are also disadvantaged when it comes to receiving sexual health education and education on abortion and/or unwanted pregnancy prevention, which presents continued effects as they become adults. The Michigan Board of Education does not require schools to teach sex education, nor is it required under state law,<sup>29</sup> and the predictable result is that many do not. For the 2017–2018 school year, only 50.9% of Michigan secondary schools

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<sup>26</sup> Bixby Center for Global Reproductive Health & Advancing New Standards in Reproductive Health, *Turnaway Study*, UNI. OF CALIF. SAN FRANCISCO (2020), <https://perma.cc/C4AA-ZAMZ>.

<sup>27</sup> U.S. Transgender Survey, *supra* note 24, at 95.

<sup>28</sup> CTR. FOR DISEASE CONTROL, *Sexual Orientation and Health among U.S. Adults: National Health Interview Survey 5* (2018), <https://perma.cc/VTAS-AK6Z>.

<sup>29</sup> Meghan Maury & Taissa Morimoto (Eds.), *Guide on Implementing Queer- and Trans-Inclusive Sex Education in Michigan 15–17*, NAT’L LGBTQ TASK FORCE (2019), <https://perma.cc/JTF7-ERCR>.



reported providing students with curricula or materials that included HIV, sexually transmitted diseases, or pregnancy prevention information relevant to LGBTQ youth.<sup>30</sup> Of these schools, 36.2% taught students about sexual orientation in a required course in any of the grades 6th through 8th, and 47.9% in any of the grades 9th through 12th.<sup>31</sup> As for teaching students about gender roles, gender identity, or gender expression in a required course, 35.8% of Michigan secondary schools reported doing so in any of the grades 6th through 8th and 50.8% in any of the grades 9th through 12th.<sup>32</sup> These statistics indicate that LGBTQ+ people rarely receive appropriate, relevant, and inclusive sex education that they require from an early age through adulthood to prevent unwanted and mistimed pregnancies.

The lack of access to healthcare and sex education leads sexual minority women and those capable of pregnancy to be at greater risk for mistimed and unwanted pregnancies, or to consider obtaining abortions “without clinical supervision” (e.g., a self-managed abortion). In an analysis of the NSFG, among women who have ever been pregnant, sexual minority women are more likely to have had a mistimed pregnancy (pregnancy which occurred earlier than they would have liked) or unwanted pregnancy (a pregnancy which the person did not want at that particular time).<sup>33</sup> Less than half (47.6%) of exclusively heterosexual women who have ever been pregnant have had a mistimed pregnancy, compared with: over half (56%) of lesbian women; approximately two-thirds (65.3%) of bisexual women; and approximately two-thirds (64.4%) of heterosexual women with a history of same-sex partnering.<sup>34</sup>

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<sup>30</sup> SIECUS, SEX ED FOR SOC. CHANGE, *Michigan’s Sex Education Snapshot* (2021), <https://perma.cc/S4NV-XH7D>.

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

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

<sup>33</sup> HRCF Fact Sheet, *supra* note 5, at 4; *see also* Bethany G. Everett et al., *Sexual Orientation Disparities in Mistimed and Unwanted Pregnancy Among Adult Women*, 49 PROSPECT. SEX REPROD. HEALTH, 157, 164 (2017).

<sup>34</sup> HRCF Fact Sheet, *supra* note 5, at 4.

Adjusting for age, race and ethnicity, and educational attainment, bisexual women (and heterosexual women with a history of same-sex partnering) were more likely than exclusively heterosexual women to have experienced a mistimed pregnancy.<sup>35</sup> Bisexual women were almost twice as likely to have a mistimed pregnancy.<sup>36</sup> Heterosexual women who have a history of same-sex partnering are over twice as likely to have had a mistimed pregnancy.<sup>37</sup> Just over one-quarter (27.3%) of exclusively heterosexual women who have ever been pregnant have had an unwanted pregnancy, compared to over a third each of lesbian women (38.9%), heterosexual women with a history of same-sex partnering (33.6%), and over a quarter (29%) of bisexual women.<sup>38</sup>

In the same dataset on transgender, non-binary, and gender expansive people, *supra* n.11, 36% of transgender people who had been pregnant had considered attempting to end their pregnancy by themselves.<sup>39</sup> In fact, almost one in five from this dataset on transgender, non-binary, and gender expansive people had actually attempted to have an abortion without clinical supervision.<sup>40</sup> Among those who had attempted a self-managed abortion, reasons for attempting an abortion without clinical supervision varied, including: “insurance coverage, gestational age limits, provider bias, as well as complications from comorbidities or the fear of a partner finding out”; 13% said they attempted self-managed abortion due to “difficult situations” such as ongoing intimate partner violence, suicidality, and fear for personal safety if someone were to discover the pregnancy.<sup>41</sup> Others were denied care due to their providers’ opinions on either

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<sup>35</sup> *Id.* at 3.

<sup>36</sup> *Id.* at 4.

<sup>37</sup> *Id.*

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

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 5.

abortion or their gender identity.<sup>42</sup> Given these numerous barriers, it is even more critical that sexual minority women and gender minority people who could become pregnant have appropriate options to reproductive care, including access to abortion, in order to reduce or prevent substantial risk of harm.

**C. Michigan’s Criminal Abortion Ban heightens economic and social barriers for LGBTQ+ people**

During the decades that *Roe v Wade* remained binding precedent, abortion access was empirically correlated with increased educational attainment and labor force participation by women, particularly Black women.<sup>43</sup> For LGBTQ+ people, particularly bisexual women,<sup>44</sup> who are statistically more likely to live in poverty, their ability to afford out-of-state travel to obtain an abortion may be substantially limited.

In Michigan too, poverty and LGBTQ status intersect with and collectively exacerbate health care access and outcomes: A Gallup poll from 2015 to 2017 revealed that 25% of LGBT adults in Michigan reported not having enough money for food in the prior year and 28% of LGBT adults in Michigan reported having a household income below \$24,000.<sup>45</sup> The 2015 National Transgender Discrimination Survey found that 19% of transgender respondents in Michigan were unemployed while 30% were living in poverty.<sup>46</sup>

As for children generally, 18.7% of all children in Michigan live in households where the income is below poverty level and 25.7% of all children in Michigan live in households that receive Supplemental Nutrition Assistance Program (“SNAP,” formerly known as “food

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<sup>42</sup> *Id.*

<sup>43</sup> Anna Bernstein & Kelly M. Jones, *The Economic Effects of Abortion Access*, INST. FOR WOMEN’S POLICY RSCH., CTR. ON THE ECON. OF REPROD. HEALTH 7–9 (2019), <https://perma.cc/QC25-P5QD>.

<sup>44</sup> HRCF Fact Sheet, *supra* note 5, at 2.

<sup>45</sup> Christy Mallory et al., *The Impact of Stigma and Discrimination Against LGBT People in Michigan*, UCLA SCH. OF LAW, WILLIAMS INSTIT. (2019), <https://perma.cc/KR27-PQDB>.

<sup>46</sup> *Id.*

stamps”) benefits.<sup>47</sup> Requiring women and sexual minority women to carry children to term could increase the number of family households experiencing homelessness across Michigan.<sup>48</sup>

In light of the Supreme Court’s contentious decision to overturn *Roe*, many Michigan residents may face a Hobson’s choice between carrying an unwanted, financially infeasible, and/or dangerous pregnancy to term, attempting self-managed abortion, or spending significant time and resources to try to obtain abortion care outside of their home state. This is a terrible position for any individual, and the costs can prove untenable given an individual or a family’s limited financial and social circumstances. Moreover, even those who could find a way to pay for an out-of-state abortion might still face investigation or attempted prosecution in other states. No one in Michigan should be forced into such a perilous position, and sexual and gender minorities—who are already more likely to be economically disadvantaged—would be particularly harmed by these same socioeconomic consequences of the Criminal Abortion Ban.

## CONCLUSION

For the reasons stated above, *amici curiae* respectfully request that the Court authorize the circuit court to certify questions of public law concerning the right to abortion under the Michigan Constitution and the enforceability of the Criminal Abortion Ban to this Court, and this Court should declare the Criminal Abortion Ban unconstitutional.

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<sup>47</sup> U.S. CENSUS BUREAU, *American Community Survey: Demographic and Housing Estimates* (2021) (go to “Tables,” filter “children” and “Michigan”). The 2021 Federal Poverty Guidelines for Michigan are \$12,800 for a 1-person household and an additional \$4,540 for each additional household member (i.e., \$12,880 for a 1-person household; \$17,420 for a 2-person household; and \$21,960 for a 3-person household). U.S. DEP’T OF HEALTH AND HUMAN SERVS., OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING AND EVALUATION, *2021 Poverty Guidelines*, <https://perma.cc/TW93-TYDT>. SNAP benefits are means-tested benefits whereby an individual’s or a family’s eligibility for its receipt is subject to certain requirements such as resource and income limits. U.S. DEP’T OF AGRIC., *SNAP Eligibility*, <https://perma.cc/NTC6-P7CZ>.

<sup>48</sup> U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, *Michigan Homelessness Statistics*, <https://www.usich.gov/homelessness-statistics/mi/>.

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**Word Count Certification**

This brief complies with the word limit set forth in Michigan Court Rule (“MCR”) 7.212(B)(1) because it contains 4,407 words, inclusive of all portions of the brief required to be counted pursuant to MCR 7.212(B)(2). This brief also complies with the typeface and type-style requirements of MCR 7.212(B)(5) because it was prepared using Microsoft Word in 12-point font, double-spaced, and with 1-inch margins.

**Certificate of Service**

I hereby certify that on October 7, 2022, I caused the foregoing documents to be electronically filed with the Clerk of the Court using the MiFile e-Filing system, which serves such filing to all counsels of record.

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