

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**No. 73 MM 2022**

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**TOM WOLF, Governor of the Commonwealth  
of Pennsylvania, and LEIGH M. CHAPMAN, Acting Secretary  
of the Commonwealth of Pennsylvania,**

**Petitioners,**

**v.**

**GENERAL ASSEMBLY OF THE  
COMMONWEALTH OF PENNSYLVANIA,**

**Respondent.**

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**APPLICATION FOR LEAVE TO FILE AMICUS BRIEF**

1. On July 28, 2022, Petitioners filed an Application for Invocation of King's Bench Jurisdiction seeking to invalidate Senate Bill 106 of 2021, which, among other things, proposes an amendment to Pennsylvania's constitution that would deny the right to abortion care in Pennsylvania, and to enjoin Respondent from taking further action on constitutional amendments.
2. Given the importance of this issue and the unique perspective that CHILD USA can offer as amicus curiae, in accordance with **Pa.R.A.P. 531(b)(4)**,

CHILD USA asks the Court for permission to file an amicus brief in this matter.

3. Given the emergent nature of this matter, CHILD USA has attached the Brief it proposes to file as **Exhibit A**.

Respectfully submitted,

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# **EXHIBIT A**

**IN THE SUPREME COURT OF PENNSYLVANIA  
MIDDLE DISTRICT**

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**No.73 MM**

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**TOM WOLF, Governor of the Commonwealth  
of Pennsylvania, and LEIGH M. CHAPMAN, Acting Secretary  
of the Commonwealth of Pennsylvania,**

**Petitioners,**

**v.**

**GENERAL ASSEMBLY OF THE  
COMMONWEALTH OF PENNSYLVANIA,**

**Respondent.**

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**BRIEF OF AMICUS CURIAE CHILD USA IN SUPPORT OF  
PETITIONERS APPLICATION FOR INVOCATION OF KING'S BENCH  
JURISDICTION**

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## **STATEMENT OF INTEREST OF CHILD USA AS *AMICUS CURIAE***

CHILD USA is the leading non-profit national think tank fighting for the civil rights of children. CHILD USA's mission is to employ in-depth legal analysis and cutting-edge social science research to protect children, prevent future abuse and neglect, and bring justice to survivors. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, youth-serving organizations, media, and the public to increase child protection and the common good.

CHILD USA's interests in this case are directly correlated with its mission to protect the rights of children and eliminate barriers to justice for victims of child sexual abuse. CHILD USA is uniquely situated to present this Court with social science research about how restrictive abortion laws impact children and survivors of sexual violence.

## ARGUMENT

### **I. AMENDING THE PENNSYLVANIA STATE CONSTITUTION TO ELIMINATE RIGHTS TO ABORTION WILL DISPROPORTIONATELY IMPACT PREGNANT YOUTH AND THEIR OFFSPRING AND NEGATIVELY AFFECT THE COMMONWEALTH**

Adolescent pregnancy is a major public health concern, because of its high costs for young parents, their children, and society more broadly. While rates of adolescent pregnancy have declined significantly in recent decades, the United States still has one of the highest adolescent pregnancy rates in the developed world. J.A. Martin, et. al., *Births: final data for 2019*, 70(2) NAT'L VITAL STAT. REP. 1 (2021). Nearly half of these pregnancies—the majority of which are unintended—are estimated to end in abortion. Jenna Jerman, Rachel K. Jones & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, Guttmacher Institute (2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014>. Indeed, teens under age 20 make up 12% of individuals who have abortions nationally; minors, age 17 or younger, account for about 4% of all abortions in the U.S. *Id.* This means at least 50,000 adolescents need abortion care each year in the United States. *Id.* Amending the Pennsylvania Constitution to remove the right to abortion will severely impact girls and teens who are pregnant. . The existing barriers to legal access to abortion already place pregnant youth at risk. With SB 106, the harm will be exacerbated.

**A. Pregnant Youth and Their Children Are at Increased Risk of Adverse Health Outcomes**

Pregnancy at a young age is associated with increased risk of several maternal complications during pregnancy and at delivery, as well as increased risks to the fetus and neonate. For example, adolescent mothers face a greater risk of suffering from hypertensive disorders, eclampsia, and sexually transmitted infections. Staniczenko, A. P., et. al., *MPH Deliveries Among Patients Aged 11–19 Years and Risk for Adverse Pregnancy Outcomes*, 139(6) *OBSTETRICS & GYNECOLOGY* 989 (2022). The risks of hypertensive disorders such as preeclampsia, which can be deadly, are especially high among those under the age of 15 years. Eliner, Y., et. al., *Maternal and Neonatal Complications in Teen Pregnancies: A Comprehensive Study of 661,062 Patients*, 70(6) *J. OF ADOLESCENT HEALTH* 922 (2022). Similarly, adolescent pregnancy is associated with higher rates of postpartum complications such as endometriosis, re-opening of surgical wounds, and kidney infection. Fraser, A. M., Brockert, J. E., & Ward, R. H., *Association of Young Maternal Age with Adverse Reproductive Outcomes*, 332(17) *NEW ENGLAND J. OF MEDICINE* 1113 (1995).

Not only do pregnant youth have an increased risk of complications during pregnancy, but their offspring are also more likely to suffer from adverse health outcomes including congenital birth defects and low Apgar scores. *Id.* Adolescent

pregnancy is also more likely to result in pre-term birth and low birthweight, which are in turn the leading causes of infant mortality, and child illness. See Prakesh S. Shah et al., *Intention to Become Pregnant and Low Birth Weight and Preterm Birth: A Systematic Review*, 15 *MATERNAL & CHILD HEALTH J.* 205, 209 (2011); see also, COMMITTEE ON UNDERSTANDING PREMATURE BIRTH & ASSURING HEALTHY OUTCOMES, *Preterm Birth: Causes, Consequences, and Prevention* (Richard E. Behrman & Adrienne Stith Butler eds., 2007); Jennifer A. Hall et al., *Pregnancy Intention and Pregnancy Outcome: Systematic Review and Meta-Analysis*, 21 *MATERNAL & CHILD HEALTH J.* 670, 678 (2017). Further, preterm birth is associated with increased breathing problems, chronic lung disease, cardiovascular disorders, feeding difficulties, intestinal injury, cerebral palsy, intellectual disabilities, vision and hearing problems, and a compromised immune system. See CDC, *Preterm Birth* (2020), <http://www.cdc.gov/reproductivehealth/maternalinfanthealth/pretermbirth.htm>; MARCH OF DIMES, *Long-Term Health Effects of Premature Birth* (2019), <https://www.marchofdimes.org/complications/long-term-health-effects-of-premature-birth.aspx>. Likewise, low birthweight increases children's risk for neurodevelopmental issues and congenital anomalies and elevates lifelong health risks. *Id.*

The children born of unintended adolescent pregnancies are also more likely to be exposed to potentially traumatic events in childhood, or adverse child experiences (“ACEs”). CDC, *Preventing Adverse Childhood Experiences* (2021), <https://www.cdc.gov/violenceprevention/aces/fastfact.html>. ACEs, including lack of adequate food or housing, and exposure to violence, abuse and neglect, cause toxic stress which often leads to serious physical and mental health consequences that can plague children into adolescence and well into adulthood. CDC, *Adverse Childhood Experiences* (2020), <https://www.cdc.gov/violenceprevention/aces/index.html> (ACEs “have a tremendous impact on future violence victimization and perpetration, and lifelong health and opportunity”); see also, DATA RESOURCE CTR. FOR CHILD & ADOLESCENT HEALTH, *2018–2019 National Survey of Children’s Health* (2021), <https://www.childhealthdata.org/browse/survey/results?q=4783&r=1&g=606>

## **B. Young People Face Greater Legal Restrictions to Abortion Than Adults**

Restrictions on abortion access vary among states but often include bans after a certain number of weeks, the imposition of waiting periods, arbitrary counseling and ultrasound requirements, and laws which place medically unnecessary restrictions on how clinics operate. GUTTMACHER INSTITUTE, *An Overview of Abortion Laws* (2022), <https://www.guttmacher.org/state-policy/explore/overview->

abortion-laws. Young people face even more legal restrictions than adults because most states, including Pennsylvania, require parental consent for those under age 18 to receive abortion care. *Id.* Most minors who experience an unintended pregnancy *do* choose to involve their parents. However, parental notification laws further impede abortion access for those children who can't, those who lack access to their parents, those who fear rejection, or those who face the threat of violence. GUTTMACHER INSTITUTE, *Parental Involvement in Minors' Abortions* (2021), <https://www.guttmacher.org/state-policy/explore/parental-involvement-minors-abortions>. Given that young people also face greater barriers to preventing pregnancy in the first place, including access to contraception and comprehensive sexual health education, the door is closed for them at every turn. Diana Cheng et al., *Unintended Pregnancy and Associated Maternal Preconception, Prenatal and Postpartum Behaviors*, 79 *CONTRACEPTION* 194 (2009).

Even if young people are able to overcome these legal obstacles, they still face significant economic, informational, and social barriers to access. First, young people are more likely to experience irregular periods which disproportionately leads to delays in recognizing that a pregnancy has begun. Lauren Ralph, et. al., *The Role of Parents and Partners in Minors' Decisions to Have an Abortion and Anticipated Coping After Abortion*, 54(4) *J. OF ADOLESCENT HEALTH* 428 (2013) (On average, adults become aware that they are pregnant at 9.6 weeks while minors don't notice

until 10.7 weeks). Moreover, young people have lower income, making cost a barrier to obtaining abortion care, and they are less able to take time off from work or school to travel the long distance that is often required to obtain abortion care. *Id.* The costs associated with abortion care range from \$250 up to thousands of dollars depending on the stage and circumstances surrounding the pregnancy, though this cost is expected to increase in our post-*Roe* world. Heidi Williamson, *The Real Cost of Abortion* (updated 2022), <https://www.americanprogress.org/article/infographic-the-real-cost-of-abortion/>. Federal and state restrictions on abortion care coverage under Medicaid insurance plans require the millions of youths who rely on such plans to either purchase private insurance or forgo coverage altogether. See, AMERICAN CIVIL LIBERTIES UNION, *Access Denied: Origins of the Hyde Amendment and Other Restrictions on Public Funding for Abortion* (2017), <https://www.aclu.org/other/access-denied-origins-hydeamendment-and-other-restrictions-public-funding-abortion>; see also, KAISER FAMILY FOUNDATION, *Medical enrollment by age* (2019), <https://www.kff.org/medicaid/state-indicator/medicaid-enrollment-by-age/?dataView=1&currentTimeframe=0&selectedDistributions=0-18-19-26&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%22>

7. Moreover, young people, particularly those who are in the foster care or criminal justice system, are also least likely to have the resources and social networks to

support them as they navigate these barriers to abortion access thereby exacerbating existing inequities. CDC, *Social Determinants and Eliminating Disparities in Teen Pregnancy* (2021), <https://www.cdc.gov/teenpregnancy/about/social-determinants-disparities-teen-pregnancy.htm>.

### **C. Adolescent Pregnancy Carries Significant Social and Economic Consequences**

The high economic and social costs of adolescent pregnancy can have short and long-term negative consequences that impact young parents, their children, and society more broadly. Young mothers are more likely to experience poorer educational outcomes; for example, nearly one-third of teen girls who have dropped out of high school cite pregnancy or parenting as a reason. Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108(3) AJPH 407, 411-12 (2018). Lower levels of education means that the Commonwealth economy is deprived of the highest achievements of those pregnant youth who are not permitted to obtain an abortion. It reduces the potential for economic self-sufficiency, thus increasing the likelihood of living in poverty and relying on public assistance from the Commonwealth. *Id.*

Similarly, children of adolescent mothers have poorer outcomes than children of mothers who gave birth at age 20 or later. Hall, et. al. (2017). In general, these children are more likely to do poorly in school, experience teen pregnancy, to be unemployed or underemployed as a young adult, and to be involved in the juvenile dependency and criminal justice systems. *Id*; see also, Diana Greene Foster et al., *Comparison of Health, Development, Maternal Bonding, and Poverty Among Children Born After Denial of Abortion vs After Pregnancies Subsequent to an Abortion*, 172 JAMA PEDIATRICS 1053 (2018). In other words, they are more likely to be dependent on the Commonwealth or to add to the costs of the Commonwealth's juvenile justice system.

Adolescent pregnancy costs taxpayers an estimated \$11 billion annually due to increased health care and foster care utilization, increased incarceration rates among children born to young mothers, and lost tax revenue as a result of lower educational attainment and income among adolescent parents. THE NATIONAL CAMPAIGN TO PREVENT TEEN AND UNPLANNED PREGNANCY, *Campaign update* (2011), <http://www.thenationalcampaign.org/about-us/PDF/Spring2011Update.pdf>. Recent studies suggest that the cost may actually be closer to \$28 billion annually with the majority of this cost associated with those who give birth before age 18. HOFFMAN S, & MAYNARD R, KIDS HAVING KIDS: ECONOMIC COSTS AND SOCIAL

CONSEQUENCES OF TEEN PREGNANCY. Washington, DC: (The Urban Institute Press; 2008).

## **II. AMENDING THE PENNSYLVANIA CONSTITUTION TO LIMIT ABORTION CARE WILL DISPROPORTIONATELY HARM VICTIMS OF CHILD SEXUAL ABUSE, INCEST, AND HUMAN TRAFFICKING**

Research on rape-related pregnancy is limited, and even more so with respect to youth pregnancies. As a result, the precise number of youth pregnancies that result from rape or incest is unknown. However, the American Congress of Obstetricians and Gynecologists report that in the United States 10,000 to 15,000 abortions annually occur among women whose pregnancies are a result of rape or incest. Holmes, M.M., et. al., *Rape-related pregnancy: estimates and descriptive characteristics from a national sample of women*, 175 AM. J. OBSTET. GYNECOL. 320, 324 (1996). Pregnancy rates are especially high among adolescent sexual abuse victims because of their relatively low use of contraception and higher baseline fertility. *Id.* When sexual abuse results in pregnancy, women and girls are more likely to need or want pregnancy termination than continuation. *Id.* Thus, victims of sexual violence, including children and adolescents, disproportionately suffer from restrictions on abortion care.

### **A. Victims of Child Sexual Abuse May Be Subject to Criminal Penalties Under the Broad-Based Abortion Ban**

Compared to other victims of violent crimes, victims of rape and incest, particularly children, are far less likely to report their abuse to the police, which leads to far fewer rape-related arrests and convictions. Department of Justice, *Office of Justice Programs, Bureau of Justice Statistics, National Crime Victimization Survey, 2015-2019* (2020). Many seek an abortion in these circumstances in order to avoid being further traumatized at home or in their community, as the United States Supreme Court has noted. *Hodgson v. Minnesota*, 497 U.S. 417 (1990). It is common for victims of sexual violence to have difficulty identifying let alone reporting their abuse. Ramona Alaggia et al., *Facilitators and Barriers to Child Sexual Abuse (CSA) Disclosures: A Research Update (2000-2016)*, 20 TRAUMA VIOLENCE ABUSE 260, 279 (2019). It is even more challenging when the abuser is someone they know such as a family member or close friend. *Id.* It often takes years for victims to call what they endured rape, at which point it is too late to seek an exemption. CHILD USA, *Delayed Disclosure of Child Sexual Abuse (2020)*, <https://childusa.org/wp-content/uploads/2020/03/delayeddisclosure-childUSA-1.jpg>. Therefore, to the extent that SB 106 opens the door to abortion bans, it will increase harm and trauma to child victims of rape and incest.

## **CONCLUSION**

For the foregoing reasons, Amicus Curiae CHILD USA requests that this Court grant the Petition invoking King’s Bench Jurisdiction and invalidate Senate Bill 106 of 2021.

Respectfully submitted,

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DATED: August 15, 2022

**CERTIFICATE OF COMPLIANCE UNDER Pa.R.A.P. 2171**

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Signed,

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DATED: August 15, 2022

**WORD COUNT CERTIFICATION**

I hereby certify that the above brief complies with the 4,500 word count limit of Pa.R.A.P. 531(b)(3). Based on the word count feature of the word processing system used to prepare this brief, this document contains 2,770 words.

Signed,

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*Counsel for Amicus Curiae CHILD USA*

DATED: August 15, 2022

**CERTIFICATE OF SERVICE**

I, Jessica Schidlow, Esq., do hereby certify that I have this day caused to be served the foregoing Amicus Curiae Brief by electronic service via PACFile

Signed,

/s/ Jessica Schidlow, Esq.  
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DATED: August 15, 2022