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ABSTRACT

Standing is a long held, judicially-created doctrine intended to establish the proper role of courts by identifying who may bring a case in federal court. While standing usually requires that a party asserts his or her own rights, the Supreme Court has created certain exceptions that allow litigants to bring suit on behalf of third parties when they suffer a concrete injury, they have a "close relation" to the third party, and there are obstacles to the third party's ability to protect his or her own interests. June Medical Services*, heard by the Supreme Court on June 29, 2020, involves the Unsafe Abortion Protection Act, a Targeted Regulation of Abortion Providers (TRAP) law which requires abortion providers in Louisiana to have admitting privileges at a hospital within thirty miles of where the providers perform abortions. This law decreased the number of abortion clinics in Louisiana from six to three. In addition to the admitting privileges issue in the case, Louisiana challenged the entitlement of the plaintiff-providers to third-party standing in bringing suit, arguing that abortion providers do not meet the requirements of third-party standing. Louisiana's arguments pose a grave danger to reproductive rights across the country, as the abolishment of third-party standing for abortion providers would severely restrict the number of cases brought forth challenging abortion restrictions. Louisiana's arguments ignore a long line of precedent that recognizes third-party standing of abortion providers challenging health and safety regulations, as well as the well-documented dangers of TRAP laws to women's health. In addition, Louisiana's rationale rests on inaccurate assumptions about the dynamic between abortion providers and their patients, and disregards the very real and dangerous hindrance in the path of women seeking to file lawsuits on their own behalf in cases involving abortion restrictions.*

INTRODUCTION

2019 brought some of the strictest abortion bans in recent American history, including bans in Alabama, Georgia, and Missouri.[1] While these bans garnered national attention and outrage, a less well-known case threatens the foundations of reproductive rights across the country. *June Medical Services v. Gee* is the first abortion case taken up

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[1] K.K. Rebecca Lai, *Abortion Bans: 9 States Have Passed Bills to Limit the Procedure This Year*, N.Y. TIMES (May 29, 2019), https://www.nytimes.com/interactive/2019/us/abortion-laws-states.html.

by the Supreme Court since Justices Neil Gorsuch and Brett Kavanaugh, two of Donald Trump's appointees, took the bench.[2]

June Medical involves the Unsafe Abortion Protection Act (Act 620), a bill requiring abortion providers to have admitting privileges at a hospital within thirty miles of where the providers perform abortions.[3] On June 12, 2014, the Governor of Louisiana signed the Act into law, effective September 1, 2014.[4] After the passage of Act 620, the number of abortion clinics in Louisiana decreased from six to three, severely impacting women's[5] access to abortion services in the state.[6] Abortion providers in Louisiana, including Hope Medical Group for Women, filed suit, arguing that the Act threatened their and their patients' procedural and substantive due process rights, and seeking injunctive relief.[7]

The law at issue in *June Medical* is strikingly similar to the law overruled in *Whole Woman's Health v. Hellerstedt*.[8] Both *Whole Woman's Health* and *June Medical* involve Targeted Regulation of Abortion Providers (TRAP) laws, which impose particularly stringent requirements on abortion providers not required of other medical providers.[9] These laws, passed under the pretense of protecting women's health and safety, substantially restrict access to abortion, "add nothing to existing patient protections," and allow "hospitals effective veto power over whether an abortion provider can exist."[10] Specifically, some TRAP laws, like Act 620 in *June Medical*, mandate that providers performing abortions have relationships with local hospitals, requirements that have negligible benefits for patient care but set nearly impossible standards for providers to meet.[11]

While the admitting privileges issue of *June Medical* has garnered public attention, the quieter and less glaring third-party standing challenge presented by the state of Louisiana presents significantly more widespread and devastating potential for damage to reproductive rights. Louisiana filed a cross-petition challenging the entitlement of the litigants—in this case Hope Clinic as well as two physicians—to third-party standing in

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[2] Leah Litman, *How the Court Could Limit Abortion Rights Without Overturning Roe*, THE ATLANTIC (Oct. 8, 2019), https://www.theatlantic.com/ideas/archive/2019/10/how-june-medical-services-v-gee-could-restrict-legal-abortion/599560/.

[3] June Med. Servs. L.L.C. v. Gee, 905 F.3d 787, 790 (5th Cir. 2018).

[4] June Med. Servs. L.L.C. v. Gee, 814 F.3d 319, 321 (5th Cir. 2016).

[5] While this Note refers to individuals impacted by abortion restrictions as "women," it is important to note that individuals identifying with any gender may seek abortions and be impacted by abortion restrictions.

[6] June Med. Servs. L.L.C. v. Kliebert, 250 F.Supp.3d 27, 36 (M.D. La. 2017).

[7] *June Med. Servs. L.L.C.*, 814 F.3d at 321–22. The plaintiffs in this case consist of abortion providers in Louisiana, including Hope Medical Group for Women, Bossier City Medical Suite, and Causeway Medical Clinic, as well as two physicians. *Id.* at 319. "John Doe 1 is a physician in Family Medicine and Addiction Medicine who performs abortions at Hope Clinic and has not obtained admitting privileges within thirty miles of Hope. John Doe 2 is an obstetrician-gynecologist who performs abortions at Bossier and Causeway. Doe 2 has not obtained admitting privileges within thirty miles of Bossier but has obtained conditional privileges at a hospital within thirty miles of Causeway." *Id.* at 321 n.2.

[8] Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2297 (2016).

[9] *Targeted Regulation of Abortion Providers (TRAP)*, CTR. FOR REPROD. RTS. (Aug. 28, 2015), https://reproductiverights.org/document/targeted-regulation-abortion-providers-trap.

[10] *Targeted Regulation of Abortion Providers*, Guttmacher Institute (Dec. 1, 2020), https://www.guttmacher.org/state-policy/explore/targeted-regulation-abortion-providers.

[11] *Id.*

bringing suit.[12] Louisiana argues that abortion providers do not meet the requirements of third-party standing because their interests are at odds with those of patients; they do not have a "close" relationship with patients that resembles traditional doctor-patient relationships; and there is no absolute hindrance to the ability of third-parties, women seeking abortions in this case, to bring suit on their own behalf.[13]

The Court has no basis for denying third-party standing to abortion providers in this case. A long line of cases before *June Medical* established that abortion providers are entitled to third-party standing in suits that impact the reproductive choices of their patients, and that the traditional doctor-patient relationship is different than that developed in other professional relationships.[14] In *June Medical*, the State argues that the traditional doctor-patient relationship does not exist between patients and abortion providers at all.[15] This argument ignores the Court's history of having long revered and protected the doctor-patient relationship, a history which suggests that if other individuals are privy to third-party standing in their professional relationships, this standing is even more warranted for abortion providers.[16] The attempt to deny abortion providers third-party standing is a thinly veiled attempt to restrict the right to an abortion without overruling *Roe*.[17] The denial of third-party standing will turn the constitutional right to an abortion into a mere formality, quietly devastating reproductive rights as we know them.

In Part I, this Note examines third-party standing criteria. Part II analyzes the three challenges to third-party standing for abortion providers laid out by Louisiana in its conditional cross-petition and demonstrates that they are neither supported by law nor evidence. Lastly, Part III provides a picture of the consequences that will arise if the Court agrees with Louisiana by ruling that providers do not have third-party standing to bring cases on behalf of their patients.[18]

I. STANDING

A. Procedural History of Third-Party Standing

Standing is a long-held, judicially-created doctrine intended to establish the proper role of courts by identifying who may bring a case in federal court. The doctrine emerges from Article III's case-or-controversy requirement, which grants the federal courts "[t]he judicial power of the United States" and limits this power to hearing "cases" and "controversies."[19]

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[12] Conditional Cross-Petition, Gee v. June Med. Servs. L.L.C., (No. 18-1460), 2019 WL 2241856.
[13] *Id*. at *22.
[14] *See e.g*., Eisenstadt v. Baird, 405 U.S. 438, 444 (1972); Griswold v. Connecticut, 381 U.S. 479, 481 (1965).
[15] June Med. Servs. L.L.C. v. Russo, 140 S. Ct. 2103 (2020). The case was decided on June 29, 2020. *Id.* In a 5-4 decision, the Court found Act 620 to be unconstitutional, as it posed an undue burden and placed a substantial obstacle in the path of women seeking an abortion. *Id.*
[16] *See e.g*., Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016); Roe v. Wade, 410 U.S. 113 (1973).
[17] *Roe*, 410 U.S. 113.
[18] *June Med. Servs. L.L.C.*, 140 S. Ct. 2103.
[19] U.S. CONST art. III, § 2.

In *Lujan v. Defenders of Wildlife*, the Court clarified the requirements necessary for standing.[20] First, the plaintiff must have suffered an '"injury in fact'—an invasion of a legally protected interest" which is "concrete and particularized . . . and actual or imminent, not 'conjectural' or 'hypothetical.'"[21] In other words, the injury must be clear and specific, as opposed to a mere possibility. Second, there must be a causal connection between the injury and the conduct in question.[22] The injury must be "fairly . . . trace[able]" to the action of the defendant, rather than resulting from the action of a third party not before the court.[23] Finally, it must be "likely," as opposed to "speculative," that the injury will be remedied by a favorable court decision.[24]

Standing usually requires that a party asserts his or her own rights. However, the Court has created certain exceptions for third parties. To establish third-party standing, a litigant must first have suffered an "injury in fact"—a specific, concrete injury as opposed to a hypothetical one—giving the individual a tangible interest in the outcome of the matter in question.[25] Second, the litigant must have a "close relation" to the third party.[26] Third, there must be an obstacle to the third party's ability to protect his or her own interests.[27]

B. Third-Party Standing in June Medical

In *June Medical*, Louisiana argues that the litigants in the case, Hope Clinic and two physicians, do not have third-party standing to bring suit because abortion providers do not meet the requirements of third-party standing.[28] Before addressing the merits of Louisiana's argument against granting third-party standing, it is important to note that in considering precedent, this issue should have been waived. Act 620 is strikingly similar to the Act in *Whole Woman's Health*, which was found unconstitutional, to the extent that the District Court in *June Medical* actually invalidated Act 620 as facially unconstitutional in light of the *Whole Woman's Health* ruling.[29] Given that the entirety of Louisiana's argument hinges on the constitutionality of Act 620, an act incredibly similar to legislation the Supreme Court found to be unconstitutional in Whole Women's Health, the issue of Act 620's constitutionally should have been waived as the act was now unconstitutional on its face.

In *Whole Woman's Health,* the Court found that two provisions in Texas House Bill 2 (HB 2) were unconstitutional.[30] The first provision required that physicians performing abortions have admitting-privileges at a hospital no further than thirty miles away from the abortion facility on the day of the procedure, decreasing the number of clinics providing

[20] Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Other cases examining the issue of standing include Spokeo, Inc. v. Robbins, 136 S. Ct. 1540, 1546 (2016); Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408 (2013); Baker v. Carr, 369 U.S. 186, 204 (1962).
[21] *Lujan*, 504 U.S. at 560.
[22] *Id*.
[23] *Id*.
[24] *Id*. at 561.
[25] Powers v. Ohio, 499 U.S. 400, 411 (1991).
[26] *Id*.
[27] *Id*.
[28] Conditional Cross-Petition, *supra* note 12.
[29] June Med. Servs. L.L.C. v. Kliebert, 250 F.Supp.3d 27, 35 (M.D. La. 2017).
[30] Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2297 (2016).

abortions in Texas from forty-two to nineteen.[31] The second provision required that the center meet the standards for an ambulatory surgical center.[32] The Court in *Whole Woman's Health* ruled that both provisions of HB 2 placed a "substantial obstacle" in the path of women seeking abortions and constituted an "undue burden," rendering the requirements unconstitutional.[33]

While the District Court in *June Medical* found Act 620 facially unconstitutional in light of *Whole Woman's Health*, the Fifth Circuit reversed the decision, finding that Act 620 did not "impose a substantial burden on a large fraction of women," rendering it constitutional.[34] Louisiana objected to the granting of third-party standing to providers for the first time almost five years into litigation, and only after the Supreme Court granted plaintiffs' emergency application to stay the Fifth Circuit's decision finding Act 620 constitutional.[35] The timing of Louisiana's argument is suspicious because it asks the Court to conduct a de novo review of evidence "cherry-picked" from the extensive trial record.[36] Louisiana's arguments against granting third-party standing were not analyzed in lower courts, and the District Court found no facts supporting the state's objections to providers' standing, ruling that Louisiana's arguments on this point failed.[37] In addition, federal courts have already thoroughly investigated the issues raised in this claim.[38] While all of these factors suggest the third-party standing objection should be subject to waiver, this Note will assume that the state has not waived this issue.

II. LOUISIANA'S CHALLENGE

Louisiana makes three challenges to the third-party standing of abortion providers in *June Medical*. Louisiana first argues that the plaintiffs' interest "conflict[s]" with those of their patients because the plaintiffs' interest is to reduce the number of regulations on abortion while providing "as many abortions as possible."[39] Second, Louisiana argues that the relationship between the providers and their patients lacks the sufficient "closeness" of a traditional doctor-patient relationship, and is thus nonexistent.[40] Third, Louisiana argues that there is no evidence of a "hindrance" to women seeking abortions to represent themselves in these cases and bring suit.[41]

A. Conflict of Interest

In *June Medical*, Louisiana argues on behalf of Act 620. Act 620 requires abortion providers to have admitting privileges at a hospital within thirty miles of where the providers perform abortions, and has decreased the number of abortion clinics in Louisiana

[31] *Id.*
[32] *Id.*
[33] *Id.* at 2298.
[34] June Med. Servs. L.L.C. v. Gee, 905 F.3d 787, 805 (5th Cir. 2018).
[35] Opposition to Conditional Cross-Petition, Gee v. June Medical Services, (No. 18-1460), 2019 WL 2241856, at *8.
[36] *Id.*
[37] *Id.* at *9.
[38] *Id.*
[39] Conditional Cross-Petition, *supra* note 12 at *25.
[40] *Id.* at *22.
[41] *Id.*

from six to three, severely restricting women's access to abortion services.[42] The plaintiff-providers in this case are abortion providers in Louisiana who argue that the Act is unconstitutional, and threatens their and their patients' procedural and substantive due process rights, while Louisiana asserts that Act 620 is constitutional.[43]

Louisiana first claims that plaintiffs' interests as abortion providers conflict with the interests of their patients.[44] Louisiana argues the plaintiff-providers' interest is to reduce the medical providers' "present and future compliance obligations" and provide "as many abortions as possible," whereas patients primarily have an interest in safety by getting an abortion from doctors with admitting privileges at a hospital within thirty miles of where the providers perform abortions.[45] Louisiana argues that adopting Act 620 would improve the quality of patient care and protect women's health, leading physicians to adopt a level of care higher than they "would otherwise provide."[46] This argument assumes not only that abortion is an inherently risky procedure, but that the level of care provided to patients is inadequate and will further degrade without state intervention. However, study after study has revealed that abortion is an extremely safe medical procedure that carries little or no risk of "fertility-related problems, cancer or psychological illnesses," and that TRAP laws, such as Act 620, and other regulations, presented under the guise of protecting the health and safety of women, compromise women's access to abortions without actually increasing the safety of the procedure.[47] Louisiana argues that doctors and patients have an inherent conflict of interest concerning health and safety regulations, a conflict that exists regardless of the merits of how much Act 620 serves patient health and safety.

Louisiana's rationale rests on inaccurate assumptions about the doctor-patient dynamic. First, the assumption that doctors and patients have a conflict of interest regarding health regulations is logically flawed. Physicians are bound by ethical guidelines that require them to prioritize the health and safety of their patients.[48] In addition, the district court found that in the decades before the passage of Act 620, abortion in Louisiana was "extremely safe," and that this safety was reflected in the records of the clinic and two physicians who brought suit in this case.[49]

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[42] June Med. Servs. L.L.C. v. Kliebert, 250 F.Supp.3d 27, 36 (M.D. La. 2017).
[43] June Med. Servs. L.L.C. v. Gee, 814 F.3d 319, 321–22 (5th Cir. 2016).
[44] *Id.*
[45] *Id.* at *25.
[46] *Id.*
[47] Heather D. Boonstra, Rachel Benson Gold, Cory L. Richards & Lawrence B. Finer, *Abortion in Women's Lives*, Guttmacher Institute (2006), https://www.guttmacher.org/report/abortion-womens-lives ("Induced abortion in the United States is now an extremely safe procedure; injuries and deaths from abortion are rare."). *See also* Mads Melbye, Jan Wohlfahrt, Jorgen H. Olsen, Morten Frisch, Tine Westergaard, Karin Helweg-Larsen & Per Kragh Andersen, *Induced Abortion and The Risk of Breast Cancer*, 336 NEW ENGLAND J. MED. 81-85 (1997) (Finding no link between abortion and breast cancer.); News Release, *The Quality of Abortion Care Depends on Where a Woman Lives, Says One of Most Comprehensive Reviews of Research on Safety and Quality of Abortion Care in the U.S.*, NAT'L ACADS. SCIS., ENG'G & MED. (Mar.16, 2018), http://www8.nationalacademies.org/onpinews/newsitem.aspx?RecordID=24950 (Finding that having an abortion does not increase a woman's risk of "secondary infertility, pregnancy-related hypertensive disorders, preterm birth, breast cancer, or mental health disorders such as depression, anxiety, or post-traumatic stress disorder," and that "abortion-specific regulations" create barriers to "safe and effective care.").
[48] *Code of Medical Ethics Overview*, AMERICAN MEDICAL ASSOCIATION (2019), https://www.ama-assn.org/delivering-care/ethics/code-medical-ethics-overview.
[49] June Med. Servs. L.L.C. v. Kliebert, 250 F.Supp.3d 27, 35 (M.D. La. 2017).

In addition, TRAP laws are damaging. A 2016 study in *Critical Public Health* found that laws such as Act 620 damage patient care, harm which providers must then work to minimize.[50] Researchers focused on providers in North Carolina after the passage of House Bill 854 (HB 854), a TRAP law that mandated patients receive counseling with state-determined information as well as a twenty-four-hour waiting period between counseling and the procedure.[51] Researchers found that most providers made changes not only to meet HB 854's legal requirements, but also to "minimize the burden of the law" on patients.[52] Providers chose to implement measures that eased the difficulties posed by HB 854 on their patients, but required the providers themselves to perform substantial amounts of "invisible labor" in order to minimize this burden.[53]

Providers offered telephone counseling rather than requiring multiple clinic visits, a measure that, although beneficial for patients, imposed considerable financial, time, and labor costs for providers.[54] Some practices hired additional staff while others extended the hours of existing staff to meet demands, with one physician choosing to take calls at all hours of the day, even while at home, to facilitate patient access.[55] Providers described working more uncompensated hours to meet the law's requirements, and physicians performed work not typically taken on by those in their profession, such as answering phones and making appointments for patients.[56] In addition, providers generally absorbed both the financial and time burden of these changes, without increasing their prices for patients to compensate for the additional costs.[57] Providers stated that passing the financial burden onto patients would have been "not fair" or "unkind," given that patients already struggled to pay for these procedures.[58]

The study concludes that TRAP laws harm patients, but also suggests that providers place patient care above their own interests. Not only do providers not hold interests that conflict with those of their patients, but they act as barriers between their patients and the harms created by laws such as Act 620, thus revealing that their interests are far more aligned with their patients' than Louisiana suggests. Many providers in the study also described feeling emotionally burdened by the law due to their concern that it was "harmful to women."[59] Providers felt frustrated that the regulation was "unnecessary," "irrelevant," and led them to balance compliance with the law's requirements against their commitment to provide high quality, responsible medical care.[60] The conflict of interest described by Louisiana is not between providers and their patients, but the combined interest of patients and providers against laws that jeopardize reproductive care and safety.

In addition, studies have repeatedly shown that TRAP laws such as Act 620 hold no benefits for patient safety. In a recent study analyzing induced abortions among 49,287

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[50] Rebecca J. Mercier, Mara Buchbinder, Amy Bryant, *TRAP Laws and the Invisible Labor of US Abortion Providers*, 26 CRITICAL PUB. HEALTH 1, 2 (2016).
[51] *Id*. at 5.
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] *Id*. at 6.
[56] *Id*.
[57] *Id*.
[58] *Id*.
[59] *Id*. at 7.
[60] *Id*.

women, researchers found that performance of the abortion in an ambulatory surgery center compared to an office setting was not associated with a significant difference in morbidity and adverse events,[61] demonstrating that many "safety" regulations are unsupported by science. Therefore, even if providers have interests different from their patients, TRAP laws do nothing to protect patients' interests or to keep them safe in the face of supposedly dangerous, irresponsible providers. In addition, by impeding women's access to abortion, TRAP laws delay the procedure, causing women to face greater medical risk than they would have had they been able to access the procedure earlier.[62] Though abortion is extremely safe at any point during pregnancy, the risk of complications from abortion increases later in pregnancy, with the risk of death associated with abortion rising from 0.3 deaths for every 100,000 abortions at or before eight weeks to 6.7 deaths at 18 weeks or later.[63] TRAP laws not only fail to increase patient safety, but endanger patients.

Professional duties and standards aside, a somewhat cynical line of reasoning further demonstrates that physicians have no reason to be at odds with regulations that truly protect the health and safety of their patients. As with many other professions, a physician's professional reputation is vital to the financial success of her practice.[64] Physicians benefit professionally from complying with regulations that protect the health and safety of their patients, not out of the goodness of their hearts, but out of a desire for financial success. Perhaps the resistance of providers to these regulations is evidence that the regulations do nothing for the health and safety of the women they proclaim to protect.[65]

In addition, Louisiana's argument ignores a long line of precedent that recognizes third-party standing of abortion providers challenging health and safety regulations, as petitioners demonstrate in their response to the cross-petition.[66] In *Planned Parenthood of Central Missouri v. Danforth*, the Supreme Court found that physicians had standing to challenge an abortion ban that imposed criminal liability on providers for failure to comply with regulations such as requiring spousal support or parental consent for minors, defining fetal viability, and requiring reporting and recordkeeping of patients from physicians and clinics.[67] In *City of Akron*, the Court allowed physicians to challenge a health regulation that required second trimester abortions to be performed in hospitals.[68] And, in *Doe v. Bolton*, the Court allowed physicians to bring suit on behalf of their patients to challenge laws that required abortions to be performed at accredited hospitals for the supposed health

[61] Sarah C. M. Roberts, Ushma D. Upadhyay, Guodong Liu, Jennifer L. Kerns, Djibril Ba, Nancy Beam & Douglas L. Leslie, *Association of Facility Type with Procedural-Related Morbidities and Adverse Events Among Patients Undergoing Induced Abortions*, 319 *JAMA* 2497, 2501 (June 26, 2018).
[62] Suzanne Zane, Andreea A. Creanga, Cynthia J. Berg, Karen Pazol, Danielle B. Suchdev, Denise J. Jamieson & William M. Callaghan, *Abortion-Related Mortality in the United States: 1998–2010*, 126 OBSTETRICS & GYNECOLOGY 258, 260 *(*Aug. 2015).
[63] *Id*. at 262.
[64] Jonathan Catley, *A Doctor's Reputation Means Everything: How to Protect Yours*, MD CONNECT (Sep. 30, 2014, 1:40 PM), https://www.mdconnectinc.com/medical-marketing-insights/bid/76854/A-Doctor-s-Reputation-Means-Everything-How-to-.
[65] Mercier, *supra* note 50.
[66] Conditional Cross-Petition, *supra* note 12.
[67] Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 62 (1976).
[68] City of Akron v. Akron Center for Reproductive Health, 462 U.S. 416, 434 (1983) ("There can be no doubt that § 1870.03's second trimester hospitalization requirement places a significant obstacle in the path of women seeking an abortion. A primary burden created by the requirement is additional cost to the woman.").

of women, again revealing the Court's receptivity to allowing abortion providers third-party standing.[69]

Lower courts have also found providers to have third-party standing when bringing suit on behalf of their patients, generally rejecting the conflict of interest theory presented by Louisiana. In *Abbott*, the Fifth Circuit, to which Louisiana also belongs, rejected a conflict of interest challenge to an admitting privilege law.[70] The Ninth Circuit in *McCormack* rejected a conflict of interest argument built upon a lack of commitment from physicians to patient safety. This argument is directly presented in *June Medical*, where Louisiana both asserts that health regulations are at odds with the interests of providers, and subsequently attacks the safety record, commitment, and qualifications of providers.[71] The Seventh Circuit, in *Charles*, rejected the argument that a conflict of interest existed between patients and providers because abortion regulations were created to protect women from "abusive medical practices," finding providers were sincerely concerned about the wellbeing of their patients.[72] And perhaps most succinctly, in *Planned Parenthood of Wisconsin*, the Seventh Circuit asserted that the interests of providers and patients are the same because women who want abortions are seeking the same thing clinics are seeking.[73] Ultimately, Louisiana's claim that the interests of patients and abortion providers are at odds holds no basis and has been explicitly rejected in past decisions.

B. Closeness in Relationship

Louisiana next claims that abortion providers are not entitled to third-party standing because they lack the "close relationship" with their patients that is traditionally found in doctor-patient relationships.[74] Louisiana's claims follow a long-standing trend of governmental actors treating abortion providers with distrust and barely-concealed disgust.[75] Historically, society has not considered these providers real doctors, instead viewing them as "abortion doctors" who will harm women and trick them into undergoing abortions unless the state steps in and protects women from the providers' greedy, untrustworthy hands.[76] Louisiana claims this, in the face of overwhelming evidence that abortion is incredibly safe and that providers inform women of their options and in no way pressure them to have abortions. Regardless, Louisiana argues abortion providers and patients do not have a "close relationship," contending that the nature of the relationship

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[69] Doe v. Bolton, 410 U.S. 179, 188 (1973) ("The physician is the one against whom these criminal statutes directly operate," and, therefore, faced a "sufficiently direct threat of personal detriment" to justify standing.).

[70] Planned Parenthood of Greater Texas Surgical Health Services v. Abbott, 748 F.3d 583, 586–87 (5th Cir. 2014).

[71] McCormack v. Herzog, 788 F.3d 1017, 1022 (9th Cir. 2015).

[72] Charles v. Carey, 627 F.2d 772, 775 (7th Cir. 1980).

[73] Planned Parenthood of Wisconsin, Inc. v. Van Hollen, 738 F.3d 786, 788 (7th Cir. 2013).

[74] Conditional Cross-Petition, *supra* note 12, at 22.

[75] *See, e.g.*, Gonzales v. Carhart, 127 S. Ct. 1610, 1614 (2007); Solomon Posen, *The Doctor in Literature: The Abortion and the Abortionist*, HEKTOEN INT'L J. MED. HUMAN. (2011), https://hekint.org/2017/03/04/the-doctor-in-literature-the-abortion-and-the-abortionist/ (Abortion providers in literature are portrayed as "physically and intellectually repulsive" individuals, often drunkards with "lecherous tendencies" and ignorant of basic principles of hygiene.).

[76] *See Gonzales*, 127 S. Ct. at 1614 (linking a graphic description of the abortion process to Congress's legislation blocking respondent "abortion doctors" from "knowingly" performing "[un]necessary" abortions).

between abortion providers and patients is wholly different than that of a traditional doctor-patient relationship.[77] This bias is clear in Louisiana's description of the work of abortion providers as those who Louisiana says "perform very brief procedures on drugged patients whom they never saw before and will never see again."[78]

Yet, abortion providers, like physicians in every other field, consult with their patients, explain their patients' options, inform their patients about the procedures and the related risks, and make themselves available for any questions or concerns after the procedure has been completed. The safety of abortions perhaps lessens the patient's need to contact her doctor after the procedure. Additionally, the nature of abortions, in which the need for them often only arises in the event of an unplanned pregnancy, renders significant advanced planning or numerous prior physician meetings unworkable and unnecessary. Yet, neither the safety nor nature of abortions take away from the doctor-patient relationship.

The relationship between emergency medicine doctors and their patients, for example, despite its similarities to women and abortion providers, is societally considered a valid doctor-patient relationship. Many women do not openly speak about their abortion, due to the persistent social stigma around abortion, as well as the threat of facing harassment if others become aware of their decision. Instead, many women underreport and intentionally misclassify abortion procedures, which results in further misconceptions about the prevalence of abortion, to the extent that only 35%-60% of actual abortions are reported in surveys.[79] This sets the procedure apart from other, even significantly more dangerous procedures, such as childbirth or an organ transplant, because societally, these other procedures are not frowned upon or frequently met with shame or secrecy. As such, a woman seeking an abortion reasonably trusts her provider to deliver medical care rising to the doctor-patient level. Even more, she trusts her provider to perform perhaps the most stigmatized medical procedure in American society safely, expertly, and without judgment. She places her trust in her provider at a time when she is vulnerable to judgment and stigma, strengthening the doctor-patient bond.

In addition, abortion providers face a significant toll, demonstrating that these individuals are so dedicated to providing patients with care that they are willing to make significant personal and professional sacrifices. Many providers experience "career burnout," face harassment by anti-choice individuals, have their occupation and role as physicians questioned and demeaned by society at large, are presented with constant restrictions that impede their ability to provide healthcare, and sometimes are berated for their professional roles by the very patients who seek and gladly accept their services.[80]

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[77] Conditional Cross-Petition, *supra* note 12, at *29.

[78] *Id.*

[79] Radha Jagannathan, *Relying on Surveys to Understand Abortion Behavior: Some Cautionary Evidence*, 91 AM. J. PUB. HEALTH, 1825, 1825 (2001).

[80] Lisa H. Harris, Lisa Martin, Michelle Debbink, & Jane Hassinger, *Physicians, Abortion Provision and the Legitimacy Paradox*, 87 CONTRACEPTION 12 (2013). *See also* KATIE WATSON, SCARLET A: THE ETHICS, LAW, AND POLITICS OF ORDINARY ABORTION 25–26 (2018). In her book, Katie Watson explores the phenomenon of anti-choice individuals seeking abortions, believing their conditions and circumstances to be exceptional in a way that other women's are not. *Id.* Watson details the experience of an abortion provider who recognizes a patient as having participated in an anti-choice protest a week before her appointment. *Id.* The provider, after ensuring that the patient would truly like for the procedure to occur, performs the abortion. *Id.* When she sees the patient a month later at another protest, she walks by and

From 2010 to 2018, abortion providers nationwide reported 471 cases of vandalism, 2,826 cases of trespassing, 108 cases of assault and battery, and 259 death threats.[81] During these years, providers experienced a total of 3,991 instances of violence, in addition to 406,733 instances of disruption, revealing the constant stream of threats, harassment, and violence abortion providers face as a result of the much needed service they provide.[82] Not only do these providers face violence and harassment, they are also met with professional stigma, both by patients and colleagues. In a 2012 study analyzing attitudes regarding the legitimacy of the work of abortion providers, providers reported feeling "looked down upon" by patients and medical colleagues and being judged as "deficient," both "morally and technically."[83] In addition, providers reported feeling that colleagues viewed them as occupying the "low ground" on the moral plane of medicine and "less technically competent" than doctors who make different career choices.[84]

Despite attempts by the anti-choice movement to vilify abortion providers, these providers endure danger, exhaustion, and a lack of professional regard in order to provide their patients with safe and confidential healthcare during a time when patients are particularly vulnerable. If the "traditional doctor-patient relationship" means anything, it is the willingness of the physician to place her patient's health, safety, and well-being above all else, ethical regulations permitting. Abortion providers have demonstrated this, even in the face of harassment, threats to their lives, and a repeated unwillingness for their professional capability and trustworthiness to be taken seriously. Their willingness to file suit on behalf of their patients, individuals who, given statistics regarding women most impacted by TRAP laws, often lack the time, resources, or physical capacity to file suit themselves, suggests that abortion providers not only meet the standards of the traditional doctor-patient relationship, but exceed it, thus satisfying the "closeness" requirement for third-party standing.[85]

Perhaps most importantly, Louisiana's definition of closeness is at odds with how the Court has defined such a relationship. The Court has traditionally found that a close relationship exists when the enforcement of the law in question against the litigant would be "indirectly in the violation of third parties' rights."[86] In *Roe*, the seminal abortion case in United States history, the Court found that the Due Process Clause of the 14th Amendment provides a "right of privacy" that protects a woman's right to have an abortion, a right that is balanced against the state's interest in preserving a woman's health as well as its interest in potential life.[87] The impact of Act 620, however, is directly at odds with

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pretends to not recognize the patient. *Id.* When asked if she felt any desire to "out" the protestor, she replies no, and that her only thought was, "Looks like you recovered well. Good for safe and legal abortion." *Id.*

[81] NAT'L ABORTION FEDERATION, 2018 VIOLENCE AND DISRUPTION STATISTICS 7 (2018), https://prochoice.org/wp-content/uploads/2018-Anti-Abortion-Violence-and-Disruption.pdf.

[82] *Id.* Disruptions in this study include hate mail, harassing calls, internet harassment, hoax devices, suspicious packages, bomb threats, picketing, and obstruction. *Id.*

[83] Harris, *supra* note 80.

[84] *Id.*

[85] Vina Smith-Ramakrishnan, *TRAP Anti-Abortion Laws Are Sexist, Racist, and Not Going Anywhere*, POPULATION INST. (July 2, 2020), https://www.populationinstitute.org/commentary/trap-anti-abortion-laws-are-sexist-racist-and-not-going-anywhere/; Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 AM. J. PUB. HEALTH 1904 (2017); Conditional Cross-Petition, *supra* note 12, at *21, *29.

[86] Warth v. Seldin, 422 U.S. 490, 510 (1975).

[87] Roe v. Wade, 410 U.S. 113, 153 (1973).

the right established in *Roe* to safe, legal abortions for those who seek them within limited time frames.[88] Enforcement of Act 620 against providers would drastically restrict women's access to abortion. The district court found that Act 620 would result in a "substantial" number of women being denied access to abortion and "delays in care" that would increase complications, as well as "unlicensed and unsafe abortions."[89] Louisiana's claim that abortion providers and patients do not share a "close" enough relationship for third-party standing thus does not hold merit.

Interestingly, Louisiana claims that plaintiffs are mere "vendors of abortion services."[90] Louisiana attempts to distinguish this case from myriad others asserting that vendors of products and services, due to the economic impact of regulations, have third-party standing to assert the rights of their customers. In *Craig v. Boren*, the Supreme Court held that beer vendors had third-party standing to assert the equal protection rights of their customers, who faced differences in whether they could purchase near-beer, a beverage with a lower alcohol content than beer, based on their age.[91] Louisiana, however, asserts that it is a "long step" from an ordinary vendor protecting the rights of his customers to a doctor "representing a patient's interest in safety," when the patient is making one of the "most 'grave'" decisions she could ever make.[92] In effect, Louisiana attacks abortion providers' relationship with their patients by suggesting providers are only vendors, thus refusing them status as doctors, while also refusing providers the third-party standing afforded to vendors to sue on behalf of their customers. If abortion providers were considered vendors, their interests would be at odds with those of their patients, suggesting that they do not have a close doctor-patient relationship. Yet, Louisiana cannot frame abortion providers as vendors, because courts have categorically granted third-party standing to vendors asserting the rights of their consumers.

Courts traditionally grant vendors, including pharmaceutical companies, beer manufacturers, lottery ticket sellers, and gun manufacturers third-party standing due to the economic injury they will suffer as a result of regulations.[93] The language in these decisions indicates that when a regulation has substantial impact on the vendor, he or she is granted third-party standing. There are three requirements for third-party standing to be granted to a vendor. First, the regulation must be one that is particularly directed at a vendor; second, it must require the vendor to make significant changes in his or her everyday practices and

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[88] *Id.* at 163.
[89] June Med. Servs. L.L.C. v. Kliebert, 250 F. Supp. 3d 27, 80, 82 (M.D. La. 2017).
[90] Conditional Cross-Petition, *supra* note 12, at *30.
[91] Craig v. Boren, 429 U.S. 190, 197 (1976).
[92] Conditional Cross-Petition, *supra* note 12, at *30.
[93] *See, e.g., Craig*, 429 U.S. at 194, 197 (beer vendor had standing to challenge statute restricting the sale of near-beer because it directly addressed vendors, forcing them to obey the statute and incur a "direct economic injury," or face "sanctions and perhaps loss of license"); Abbott Laboratories v. Gardner, 387 U.S. 136, 154 (1967) (pharmaceutical companies had standing to challenge a regulation mandating new labeling requirements for prescription drug manufacturers because regulation was "directed at them in particular, . . . require[d] them to make significant changes in their everyday business practices," and failure to comply would expose companies to heavy sanctions); National Rifle Ass'n of America v. Magaw, 132 F.3d 272, 283 (6th Cir. 1997) (gun manufacturers and dealers had standing to challenge regulations prohibiting certain weapons); Pic-A-State PA, Inc. v. Reno, 76 F.3d 1294, 1300 (3d Cir. 1996) (lottery ticket seller had standing to challenge the Interstate Wagering Amendment, which prohibited the interstate transmission of information to be used for obtaining lottery tickets).

to incur a "direct economic injury" against the vendor; and third, it must expose him or her to "heavy economic injury" or "loss of license" for failure to comply.[94]

As previously discussed, TRAP laws such as Act 620 are not only directed at abortion providers but force abortion providers to change their everyday practices and incur economic harm as a result of these changes. In addition, providers are exposed to heavy penalties for failure to comply with these regulations, penalties which satisfy precedent's requirements for a vendor to hold third-party standing in challenging a regulation due to economic injury.[95] As such, abortion providers should have third-party standing to challenge TRAP laws such as Act 620 due to economic injury alone, invalidating Louisiana's claim that providers lack standing because they are "vendors" of abortion services.[96] Not only have economic injuries proven sufficient for parties to establish third-party standing, but non-economic injuries for "professional," "aesthetic," "social," and "political" harm have similarly proven enough.[97] The fact that providers clearly suffer economic injuries as a result of TRAP laws, and suffer injury to their professional lives as a result of these restrictions, strengthens providers' claim to third-party standing.

In addition, courts grant medical professionals third-party standing in a manner they have not granted to individuals in other professions, such as lawyers, suggesting that this standing is particularly favored for physician-patient relationships.[98] Louisiana's claim is further undermined by a line of cases that recognize the role of providers as both vendors and health professionals.[99] These cases found no issue with the coexistence of economic stake and the doctor-patient relationship that would warrant a denial of third-party standing for abortion providers.[100] If anything, the combined role of providers as both vendors and individuals privy to a close, confidential relationship with their patients renders them more entitled to third-party standing than those in any other profession.

C. Hindrance

Lastly, Louisiana argues that there is no evidence of a "hindrance" in the path of women seeking abortions to represent themselves in cases involving abortion restrictions.[101] Of all well-publicized abortion cases since the legalization of abortion, *Roe* is the only case brought by a pregnant woman alone (instead of by abortion providers or a team of the woman and providers).[102] *Roe* formalized the right to an abortion.[103] Therefore, it makes sense that *Roe* was brought by a single petitioner seeking an abortion, and later cases were brought under the abortion rights *Roe* granted to providers and women. Notably, the case took several years, and by the time it was decided, the plaintiff had already given

[94] *Craig*, 429 U.S. at 194, 197.
[95] *Id.*
[96] Conditional Cross-Petition, *supra* note 12, at *30.
[97] United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 686–87 (1973); Havens Realty Corp. v. Coleman, 455 U.S. 363, 376–77 (1982).
[98] Kowalski v. Tesmer, 543 U.S. 125, 130–31 (2004).
[99] Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292, 2300 (2016); Eisenstadt v. Baird, 405 U.S. 438, 444 (1972); Griswold v. Connecticut, 381 U.S. 479, 481 (1965).
[100] *Whole Woman's Health*, 136 S. Ct. at 2300; *Eisenstadt*, 405 U.S. at 444; *Griswold*, 381 U.S. at 481.
[101] Conditional Cross-Petition, *supra* note 12, at *22.
[102] Roe v. Wade, 410 U.S. 113 (1973).
[103] *Id.*

birth and in-turn was denied the opportunity to get an abortion.[104] Pregnant women, in particular, face challenges that make filing cases on their own incredibly challenging. These include the lengthiness of the process, made especially glaring given the limited timeline of pregnancy, as well as the knowledge and resources it takes to bring forth a legal challenge.

In Louisiana, the number of abortion clinics decreased from six to three after the passage of Act 620.[105] The reduction in abortion clinics dramatically increased the distance some Louisiana women were forced to travel to obtain an abortion, making the procedure unfeasible for women who did not have the means to travel such distances or receive time off from work.[106] This burden on women reveals the dangers of TRAP laws that are not challenged before or immediately after they go into effect. While the decrease in abortion clinics may suggest that more women may be willing to sue, given how severely their access to abortion has been limited, the women most affected by Act 620 presumably do not have the resources to sue and likely are placed under added stress due to the increased difficulty of attaining care. The poorer these women the greater difficulty they will have in reaching the three available clinics, suggesting that unless providers step in on behalf of these women, they will continue to suffer without the opportunity to realistically advocate for themselves.

TRAP laws also disproportionately impact certain women due to race and economic status, rendering particular groups of women even more vulnerable in the absence of third-party standing.[107] A study tracing the number of abortions per 1,000 women between 2014–2017 revealed vast disparities across individuals seeking abortions based on race as well as income level.[108] In 2017 alone, about 27 per 1,000 black women had abortions, compared to approximately 18 Hispanic and 10 white women, revealing that women of color seek abortions at significantly higher rates than white women.[109] The study also revealed steep differences among women seeking abortions based on income level, finding that in 2017 alone, 49% of abortion patients fell below the federal poverty level, while 26% of patients fell one to two times above the federal poverty level.[110] Thus, stripping providers of third-party standing will not only hinder all women seeking abortions, but will especially harm women of color and low-income women—groups already marginalized due to centuries of racism and income disparity.

The groups of historically marginalized women most directly impacted by TRAP laws also face barriers to suing on their own behalf. While these women have fewer economic resources to shoulder the increased distances and time costs TRAP laws impose on them, such fewer resources also make bringing a lawsuit—a process that is both expensive and time-consuming—more difficult. Third-party standing for providers is therefore critical in providing these women with a legal voice when societal barriers have

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[104] Molly Redden & Edward Helmore, *Norma Mccorvey, 'Roe' in Roe v. Wade Case Legalizing Abortion, Dies Aged 69*, THE GUARDIAN (Feb. 18, 2017), https://www.theguardian.com/us-news/2017/feb/18/norma-mccorvey-roe-v-wade-abortion-case-supreme-court.
[105] June Med. Servs. L.L.C. v. Kliebert, 250 F.Supp.3d 27, 35 (M.D. La. 2017).
[106] *Id*.
[107] Jones, *supra* note 85, at 1908.
[108] *Id*.
[109] *Id*.
[110] *Id*.

realistically stripped them of one, allowing cases to come forward that would otherwise be impossible.

Women who face barriers to accessing legal abortion may be more likely to turn to self-induced abortions.[111] Accordingly, the removal of third-party standing for providers, and the subsequent barrier this will place in the path of women seeking abortion, will place the health and well-being of already vulnerable women in severe danger, exposing them to the possibility of death encountered before *Roe*.[112] In regions of the world where abortion is illegal, botched abortions cause about 8%-11% of all maternal deaths; in Brazil alone, where abortion is unlawful, approximately 200 women die due to abortion complications each year.[113] Contrary to Louisiana's argument in *June Medical*, self-induced botched abortions are direct evidence of a "hindrance" to women seeking abortions representing themselves.[114] Women who experience health complications due to unplanned pregnancies, both mentally and physically, are clearly hindered from pursuing timely legal action.

In addition, the sheer number of women who seek abortions in the United States renders Louisiana's *June Medical* argument that there is no hindrance to legal representation invalid. Studies suggest that each year, more than six million American women become pregnant, and almost half of those pregnancies are unintentional.[115] Hence, nearly half of all American women will face an unintended pregnancy at some point in their lives, amounting to nearly three million unintentional pregnancies a year.[116] If providers are stripped of third-party standing, as Louisiana wishes them to be, three million women each year will be vulnerable to having their choices restricted in some manner, such as an inability to have an abortion or a delay in procuring the procedure.[117] These numbers are so large that any argument that no hindrance exists, such as the availability of legal representation, is not only ignorant but dangerous.

Also, from a practical standpoint, abortion is a time-sensitive procedure. Forcing women to bring challenges against abortion restrictions such as Act 620 given the length of legal cases, which often span years, substantially hinders women's ability to bring such cases because their pregnancy will likely be over by the time the case goes to court. Knowing that these challenges will have no benefit for themselves in their particular pregnancy, women may be less likely to file lawsuits, allowing unconstitutional abortion restrictions to continue without pushback.

Lastly, abortion providers are effective advocates for women. While third-party standing has a complex and inconsistent history, the majority of decisions place "special importance" on whether the litigant will be an "effective advocate" for the third party's rights.[118] In this regard, courts have repeatedly found abortion providers to be effective

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[111] Olga Khazan, *Texas Women Are Inducing Their Own Abortions*, THE ATLANTIC (Nov. 17, 2015), https://perma.cc/SWT5-TSGK.
[112] *Id*.
[113] Olga Khazan, *How Many Women Die from Illegal Abortions*, THE ATLANTIC (Oct. 11, 2018), https://www.theatlantic.com/health/archive/2018/10/how-many-women-die-illegal-abortions/572638/.
[114] Conditional Cross-Petition, *supra* note 12, at *22.
[115] Boonstra, *supra* note 47, at 8.
[116] *Id*.
[117] *Id*.
[118] Hannah Tuschman, *Challenging TRAP Laws: A Defense of Standing for Abortion Providers*, 34 BERKELEY J. GENDER L. & JUST. 235, 259–60 (June 27, 2019) (some third-party cases have failed to

advocates for women. Abortion providers understand the impact of abortion regulations on patients on an unparalleled level because these regulations impact their daily work. Abortion providers meet with these women, perform procedures the women seek, and understand the harm that results when women are denied an extremely safe procedure that they as patients decided was the best choice for them. Providers also have access to resources patients do not, allowing them to advocate for women who are often unable to advocate for themselves. Not only will stripping providers of third-party standing hinder women's access to abortion, it will take away the ability to bring cases on behalf of these women by the very individuals best suited to do so.

III. IMPLICATIONS AND WAY FORWARD

Though Louisiana's arguments for denying abortion providers third-party standing holds no merit, the hostility toward reproductive rights in today's political climate may overcome the years of precedent upholding third-party standing in these cases. The third-party standing question posed by *June Medical* has the potential to devastate reproductive rights quietly. Abortion cases and outcomes are debated and subjected to public attention, yet the legal mechanisms through which these cases emerge are often unacknowledged. The public hears about these cases and discusses them, but *June Medical* threatens a future filled with near silence. This will be a future in which hearing about an abortion case will be a rarity. And, frighteningly, this silence may be perceived as improvement, showing that things have gotten better. A future without third-party standing for abortion providers will be a future of silent suffering, one where the reasons for the silence will be unclear and the communication of the suffering nearly impossible.

Perhaps then, the only remedy is to speak—to acknowledge the legal mechanisms such as standing that allow for cases to exist, to bring attention to these mechanisms, and to recognize that the right to abortion is far more nuanced than agreeing or disagreeing with *Roe*. The only remedy to abortion stigma is speech: speech that allows women to understand that they are not alone, normalizes abortion as a common medical procedure, pushes back against the vilification of abortion providers, and allows for the nuances underlying the right to abortion to be heard and fought for, as opposed to buried under the weight of silence and shame. For women most affected by abortion restrictions, the best opportunity to have this speech heard in the legal arena is through providers. With third-party status, providers hold the ability to speak on behalf of these women, preventing their voices, their health, and their humanity from being muted by a hostile society.

IV. *JUNE MEDICAL SERVICES* HOLDING

On June 29, 2020, the Supreme Court issued its opinion on *June Medical Services L.L.C. v. Russo*.[119] In a 5-4 decision, the Court found Act 620 to be unconstitutional, agreeing with the District Court's findings that the regulation posed an "undue burden" and placed a "substantial obstacle" in the path of women seeking an abortion.[120] The facts in

address the third-party's ability to assert their own rights, while some lower courts have required a significant obstacle in the assertion of these rights to grant standing).

[119] June Med. Servs. L.L.C v. Russo, 140 S. Ct. 2103 (2020).

[120] *Id*. at 2112.

this case, according to the Court, mirrored those made in *Whole Women's Health* in "every relevant aspect," and as such "[required] the same result."[121]

Addressing the State's third-party standing challenge, the Court took issue with the State's failure to mention its objection to third-party standing for abortion providers until it had filed its cross-petition, which was more than five years after it had argued that the plaintiffs' standing was "beyond question."[122] As such, the State's "unmistakable concession" of standing barred consideration of the issue in the opinion.[123] Further, even in the absence of this issue, the Court asserted that it had "long permitted" abortion providers to invoke the rights of their "actual or potential patients" in challenging abortion regulations.[124] In cases where the enforcement of the regulation against the litigant would indirectly harm third parties, the Court has generally permitted plaintiffs to assert third-party rights, as they are the "obvious claimant" and "the least awkward challenger" impacted by the regulation.[125]

The Court found that the case in question "lies at the intersection of these two lines of precedent." Firstly, the plaintiffs are providers challenging a law that "regulates their conduct."[126] Secondly, because they must actually apply and maintain admitting privileges, plaintiffs are "far better positioned than their patients to address the burdens of compliance," making them the most obvious claimants in the case.[127] The plurality, addressing the dissent's assertion that this case was different given that the plaintiffs challenged a law enacted to "protect the women whose rights they are asserting," found that this is a "common feature" of cases in which the Court had found third-party standing. Citing cases such as *Akron* and *Doe*, the plurality asserted that this was far from the first abortion case to address provider standing to challenge regulations supposedly meant to protect women.[128] As such, the State's challenge to the plaintiffs' standing was foreclosed.[129]

CONCLUSION

June Medical involves the Unsafe Abortion Protection Act (Act 620). Act 620 requires abortion providers in Louisiana to have admitting privileges at a hospital within thirty miles of where the providers perform abortions, and has decreased the number of abortion clinics in Louisiana from six to three, severely impacting women's access to abortion services in the state.[130] In addition to the admitting privileges issue in the case, Louisiana filed a cross-petition challenging the entitlement of the plaintiff-providers to third-party standing in bringing suit, arguing that abortion providers do not meet the requirements of third-party standing because their interests are at odds with those of patients, they lack a traditional doctor-patient relationship, and there is no hindrance to the

[121] *Id*. at 2113.
[122] *Id*. at 2118.
[123] *Id*.
[124] *Id*.
[125] *Id*. at 2119.
[126] *Id*.
[127] *Id*.
[128] *Id*.
[129] *Id*. at 2120.
[130] June Med. Servs. L.L.C. v. Kliebert, 250 F.Supp.3d 27, 36 (M.D. La. 2017).

ability of third-parties, in this case women seeking abortions, to bring suit on their own behalf.[131]

Louisiana's arguments, however, lack merit, as they ignore a long line of precedent that recognizes third-party standing of abortion providers challenging health and safety regulations, as well as the well-documented danger of TRAP laws to women's health. In addition, Louisiana's rationale rests on inaccurate assumptions about the doctor-patient dynamic, disregarding the commitment of abortion providers to their patients, and ignores the very real and dangerous hindrance in the path of women seeking to file lawsuits on their own behalf in cases involving abortion restrictions.

While the Court's ruling in *June Medical* demonstrates a hopeful commitment to precedent regarding reproductive rights, with the recent appointment of Amy Coney Barrett to the Supreme Court, and ongoing anti-choice efforts across the country, the future of reproductive rights remains in jeopardy. Threats to reproductive rights are dangerous attacks on autonomy. As Justice Ginsburg stated in her 1993 Senate confirmation hearings, "The decision whether or not to bear a child is central to a woman's life, to her well-being and dignity . . . When government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices."[132]

[131] Conditional Cross-Petition, *supra* note 12, at *22

[132] Louise Melling, *For Justice Ginsburg, Abortion Was About Equality*, ACLU (Sep. 23, 2020), https://www.aclu.org/news/reproductive-freedom/for-justice-ginsburg-abortion-was-about-equality/.