

ARIZONA SUPREME COURT

PLANNED PARENTHOOD ARIZONA,
INC., et al.,

Plaintiffs/Appellants,

v.

KRISTIN MAYES, Attorney General of
the State of Arizona, et al.,

Defendants/Appellees,

and

ERIC HAZELRIGG, M.D., as guardian
ad litem of all Arizona unborn infants,

Intervenor/Appellee.

Supreme Court
No. CV-23-0005-PR

Court of Appeals
Division Two
No. 2 CA-CV 2022-0116

Pima County Superior Court
No. C127867

**CONSENT BRIEF OF AMICI CURIAE ARIZONA LIFE COALITION,
FREDERICK DOUGLASS FOUNDATION, AND THE NATIONAL
HISPANIC CHRISTIAN LEADERSHIP CONFERENCE
IN SUPPORT OF INTERVENOR-APPELLEE**

Timothy D. Ducar (15037)
LAW OFFICES OF
TIMOTHY D. DUCAR, PLC
9280 E. Raintree Dr., Ste. 104
Scottsdale, AZ, 85260-7309
(480) 502-2119
tducar@azlawyers.com

Mathew D. Staver* (P237986)
LIBERTY COUNSEL
PO Box 540774
Orlando, FL 32854
(407) 875-1776
court@LC.org
rgannam@LC.org

Attorneys for Amici Curiae

** Admitted Pro Hac Vice*

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
IDENTITIES AND INTERESTS OF AMICI CURIAE	6
INTRODUCTION.....	6
ARGUMENT	8
I. Abortion advocacy is forever bound to the eugenics movement, rooted in social Darwinism and the elimination of undesirable populations.....	8
II. The eugenic era lives on through the modern abortion movement...	12
A. The American abortion movement is steeped in racism.	13
B. Modern abortion policy promotes the eradication of preborn children with Down syndrome and other disabilities.	18
CONCLUSION.....	23
CERTIFICATE OF COMPLIANCE.....	24

TABLE OF AUTHORITIES

Cases

<i>Box v. Planned Parenthood of Indiana & Kentucky, Inc.</i> , 139 S. Ct. 1780 (2019).....	passim
<i>Buck v. Bell</i> , 274 U.S. 200 (1927).....	7, 11, 12
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015).....	8
<i>Preterm-Cleveland v. McCloud</i> , 994 F.3d 512 (6th Cir. 2021).....	13
<i>Smith v. Wayne</i> , 231 Mich. 409 (1925).....	10

Statutes

A.R.S. § 13-3603	6, 7, 8
A.R.S. § 13-3603.02	6, 7
A.R.S. § 36-2322	7
Ariz. Const. art. II, § 4.....	7
Immigration Act of 1924, Pub. L. 68-139, 43 Stat. 153.....	10

Other Authorities

Adam Cohen, <i>Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck</i> (2016)	9, 10, 12
Am. Coll. of Obstetricians & Gynecologists, <i>Practice Bulletin 162: Prenatal Diagnostic Testing for Genetic Disorders</i> (May 2016).....	19
American Medical Association, House of Delegates Proceedings, Annual Convention 1967	18
Austin Anderson, <i>The Dark Side of Darwinism</i> (Nov. 16, 2016)	9

Brian G. Skotko et al., <i>Self-Perceptions from People With Down Syndrome</i> , AM. J. MED. GENETICS 2360 (Oct. 2011).....	21
Brian G. Skotko, <i>Prenatally Diagnosed Down Syndrome: Mothers Who Continued Their Pregnancies Evaluate Their Health Care Providers</i> , 192 AM. J. OF OBSTETRICS & GYNECOLOGY 670 (Nov. 2004).....	21
Caroline Mansfield et al., <i>Termination Rates After Prenatal Diagnosis of Down Syndrome, Spina Bifida, Anencephaly, and Turner and Klinefelter Syndromes: A Systematic Literature Review. European Concerted Action: DADA (Decision-making After the Diagnosis of a fetal Abnormality)</i> , 19 PRENATAL DIAGNOSIS 808 (1999).....	19
Corinna Lain, <i>Three Supreme Court “Failures” and a Story of Supreme Court Success</i> , 69 VANDERBILT L. REV. 1040 (2019).....	10
Dave Maclean, <i>Iceland Close to Becoming First Country Where No Down’s Syndrome Children Are Born</i> , INDEPENDENT (Aug. 16, 2017).....	19
David Beito & Linda Royster Beito, <i>Black Maverick: T.R.M. Howard’s Fight for Civil Rights and Economic Power</i> (2009)	14
Donald Critchlow, <i>Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America</i> (1999).....	14
Dorothy Roberts, <i>Killing the Black Body: Race, Reproduction, and the Meaning of Liberty</i> (1997)	11
Emily Bazelon, <i>The Place of Women on the Court</i> , N.Y. TIMES Magazine (July 7, 2009).....	13
Jaime L. Natoli et al., <i>Prenatal Diagnosis of Down Syndrome: A Systematic Review of Termination Rates (1995-2011)</i> , 32:2 PRENATAL DIAGNOSIS 142 (2012).....	20
James Sherley, <i>Preborn Black Lives Matter, Too</i> , WASH. TIMES (Aug. 2, 2020).....	15

James Studnicki et al., <i>Perceiving and Addressing the Pervasive Racial Disparity in Abortion</i> , HEALTH SERVS. RESEARCH & MANAGERIAL EPIDEMIOLOGY (2020)	15
Jeffrey Sutton, <i>51 Imperfect Solutions: States and the Making of American Constitutional Law</i> (2018)	9
Karen Gaffney Foundation, <i>Karen’s Story</i>	22
Katherine Kortsmitt et al., <i>Abortion Surveillance — United States, 2018</i> , MMWR SURVEILL. SUMM. (Nov. 27, 2020)	15, 16
Lutz Kaelber, <i>Eugenics: Compulsory Sterilization in 50 American States</i>	7
Margaret Sanger Papers Project, Newsletter #28, <i>Birth Control or Race Control? Sanger and the Negro Project</i> (2001)	13, 14
Margaret Sanger, <i>An Autobiography</i> (1938)	13
Margaret Sanger, <i>Apostle of Birth Control Sees Cause Gaining Here</i> , N.Y. TIMES (Apr. 8, 1923).....	13
Margaret Sanger, <i>My Way to Peace</i> , Address to the New History Society (Jan. 17, 1932).....	18
Margaret Sanger, <i>The Eugenic Value of Birth Control Propaganda</i> , BIRTH CONTROL REV. (Oct. 1921)	10
Margaret Sanger, <i>The Function of Sterilization</i> , BIRTH CONTROL REV. (Oct. 1926)	10
Mark Crutcher et al., <i>Racial Targeting and Population Control</i> (2011).....	17
Mary Ziegler, <i>Roe’s Race: The Supreme Court, Population Control, and Reproductive Justice</i> , 25 YALE J.L. & FEMINISM 1 (2013).....	14
Maya Manian, <i>Coerced Sterilization of Mexican-American Women: The Story of Madrigal v. Quilligan</i> , in REPRODUCTIVE RIGHTS & JUSTICE STORIES (Melissa Murray et al. eds., 2019)	11

Paul Lombardo, <i>Disability, Eugenics, and the Culture Wars</i> , 2 ST. LOUIS U. J. HEALTH L. & POL'Y 57 (2008).....	10
Paul Lombardo, <i>Three Generations, No Imbeciles: Eugenics, The Supreme Court, and Buck v. Bell</i> (2008).....	12
Peter Quinn, <i>Race Cleansing in America</i> , 54:1 AMERICAN HERITAGE (Mar. 2003)	12
Press Release, Children's Hospital Boston, <i>Parents Siblings and People With Down Syndrome Report Positive Experiences</i> (Sept. 23, 2011)	21
Susan Donaldson James, <i>Down Syndrome Births are Down in the U.S.</i> , ABC NEWS (Oct. 30, 2009)	20
Susan Enouen, <i>New Research Shows Planned Parenthood Targets Minority Neighborhoods</i> , LIFE ISSUES CONNECTOR (Oct. 2012)	17
Susan Enouen, <i>Research Shows Planned Parenthood Expands Targeting Minorities as it Spurns Racist Founder</i> , TOWNHALL (Sep. 23, 2020)	17
Tessa Longbons, <i>Abortion Reporting: Mississippi (2018)</i> , CHARLOTTE LOZIER INST. (May 8, 2020)	16
U.S. CENSUS BUREAU, <i>Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin</i> (2020).....	16
Victoria Nourse, <i>Buck v. Bell: A Constitutional Tragedy from a Lost World</i> , 39 PEPP. L. REV. 101 (2011)	12
Zoe Ettinger, <i>13 People with Down Syndrome Who Are Breaking Barriers in Entertainment, Athletics, Fashion, and More</i> , INSIDER (Mar. 10, 2020)	22

IDENTITIES AND INTERESTS OF AMICI CURIAE

Amicus Arizona Life Coalition is a nonprofit, statewide alliance connecting pro-life groups and diverse people with the common mission of defending innocent life. Amici Frederick Douglass Foundation and The National Hispanic Christian Leadership Conference are nonprofit faith organizations that serve the African American, Hispanic, and disability communities in Arizona and across the United States. Amici have a strong interest in exposing the racist and eugenic history of the abortion movement, its catastrophic effects on their communities, and its continuing threat to vulnerable populations. Amici likewise have a strong interest in defending state laws like A.R.S. §§ 13-3603 and 13-3603.02 that protect minority, disability, and other vulnerable communities from eugenic social policies.

INTRODUCTION

A.R.S. § 13-3603 advances Arizona's compelling and long-standing interest in prohibiting abortions with very limited exceptions. The decision below, impliedly repealing the statute for abortions through 15 weeks' gestation, also threatens A.R.S. § 13-3603.02 and its critical protections against sex-, race-, and disability-selective abortions. This eugenic abortion prohibition had been in place for over a decade before

the Legislature added the *Roe*-driven, post-15-week abortion restriction of A.R.S. § 36-2322. The same faulty logic used by the Court of Appeals to write a new 15-week abortion right into § 13-3603 could be used to similarly eviscerate the anti-eugenic protections of § 13-3603.02.

Abortion is the modern-day offspring of eugenics. Margaret Sanger and the early abortion movement promoted abortion to reduce populations they considered *lesser than* White or fully able Americans. The same ideology drove the United States Supreme Court's notorious decision in *Buck v. Bell*, 274 U.S. 200 (1927), and Arizona's sterilization law codifying the State's eugenic regime from 1929 to the mid-1950's.¹ Now, the abortion industry denies that all human beings have inherent value and dignity bestowed on them by their Creator, and has indisputably targeted Black, Hispanic, and disabled communities for reduction. The vast majority of abortions before 15 weeks kill disabled and minority infants. Abortion is in direct conflict with the Arizona Constitution's guarantee of the right to life, *see* Ariz. Const. art. II, § 4, and the founding principles of our country. *See Obergefell v. Hodges*, 576

¹ Lutz Kaelber, *Eugenics: Compulsory Sterilization in 50 American States*, <https://www.uvm.edu/~lkaelber/eugenics/> (select "Arizona") (last visited May 17, 2023).

U.S. 644, 735 (2015) (Thomas, J., dissenting) (“[T]he Framers proclaimed in the Declaration of Independence . . . a vision of mankind in which all humans are created in the image of God and therefore of inherent worth.”). By reversing the implied repeal of A.R.S. § 13-3603 by the Court of Appeals, this Court will restore fidelity to Arizona law, especially its protections against eugenic abortions.

ARGUMENT

I. Abortion advocacy is forever bound to the eugenics movement, rooted in social Darwinism and the elimination of undesirable populations.

Modern abortion advocacy arose from the birth control movement, which was “developed alongside the American eugenics movement.” *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1783 (2019) (Thomas, J., concurring). Coined in the 1880s by a British scientist and cousin of Charles Darwin, “eugenics” is “the science of improving stock through all influences that tend in however remote a degree to give to the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have.” *Id.* at 1784 (Thomas, J., concurring) (cleaned up). The sinister goal of the eugenics movement was to eliminate “unfit” and “undesirable” people—those with mental and physical disabilities as well as certain races.

Darwin himself did not hide his white supremacist and eugenic inclinations:

Darwin explains that the “highest races and the lowest savages” differ in “moral disposition . . . and in intellect.” The idea that white people are more intelligent and moral persists throughout. Darwin’s theory applies survival of the fittest to human races, suggesting that extermination of non-white races is a natural consequence of white Europeans being a superior and more successful race.²

By the 1920s, the eugenics movement was immensely popular among progressives, professionals, academics, and the medical community.³ Many leading figures, including Theodore Roosevelt and John D. Rockefeller, “were fervent eugenicists, putting their money, their power, their time, and their research behind the effort.”⁴

Planned Parenthood’s founder, Margaret Sanger, was one of the most outspoken members of the American eugenics movement. Sanger argued that eugenics was “the most adequate and thorough avenue to the

² Austin Anderson, *The Dark Side of Darwinism* (Nov. 16, 2016), <https://sites.williams.edu/engl-209-fall16/uncategorized/the-dark-side-of-darwinism/> (last visited Sept. 16, 2022).

³ See Adam Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* 2 (2016).

⁴ Jeffrey Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 87 (2018).

solution of racial, political, and social problems.”⁵ She praised sterilization as the “remedy” to the problem of “an increasing rate of morons.”⁶ In the first two decades of the twentieth century, a dozen states passed eugenic sterilization laws.⁷ One court upheld eugenic sterilization as a valid exercise of state police power “based on the growing belief that, due to the alarming increase in the number of degenerates, criminals, feebleminded, and insane, our race is facing the greatest peril of all time.” *Smith v. Wayne*, 231 Mich. 409, 425 (1925).

Many eugenicists drew “the distinction between the fit and the unfit . . . along racial lines.” *See Box*, 139 S. Ct. at 1785 (Thomas, J., concurring) (citing examples). The Immigration Act of 1924 “represented a eugenic (and racist and nativist) attempt to protect the integrity of Anglo-American stock.”⁸ And a disproportionate number of the sterilized were

⁵ Margaret Sanger, *The Eugenic Value of Birth Control Propaganda*, BIRTH CONTROL REV. (Oct. 1921) at 5.,

⁶ Margaret Sanger, *The Function of Sterilization*, BIRTH CONTROL REV. (Oct. 1926), at 299.

⁷ *See* Paul Lombardo, *Disability, Eugenics, and the Culture Wars*, 2 ST. LOUIS U. J. HEALTH L. & POL’Y 57, 61 n.33 (2008).

⁸ Corinna Lain, *Three Supreme Court “Failures” and a Story of Supreme Court Success*, 69 VANDERBILT L. REV. 1040 (2019); *see also* Cohen, *supra* note 3, at 132–35.

minorities. For example, in 1955, South Carolina reported that all 23 persons sterilized at the State Hospital over the previous year were Black women.⁹ In the 1930s and 1940s, the North Carolina Eugenics Commission sterilized nearly 8,000 “mentally deficient persons,” some 5,000 of whom were Black.¹⁰

In *Buck v. Bell*, the Supreme Court “threw its prestige behind the eugenics movement.” *Box*, 139 S. Ct. at 1786 (Thomas, J., concurring). The Court approved the compulsory sterilization of a “feeble minded” woman adjudged to be “the probable potential parent of socially inadequate offspring.” 274 U.S. at 205, 207. Eight justices “offered a full-throated defense of forced sterilization,” *Box*, 139 S. Ct. at 1786 (Thomas, J., concurring), to “prevent” society from being “swamped with incompetence,” *Buck*, 274 U.S. at 207. Infamously, the Court declared:

It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains

⁹ See Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* 88–89 (1997).

¹⁰ *Id.* (footnote omitted); see also Maya Manian, *Coerced Sterilization of Mexican-American Women: The Story of Madrigal v. Quilligan*, in *REPRODUCTIVE RIGHTS & JUSTICE STORIES* 97, 99 (Melissa Murray et al. eds., 2019) (describing forced sterilization of Mexican-American women in California into the 1970s).

compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.

Id. (citation omitted). Within five years after *Buck*, 28 states had adopted compulsory sterilization laws (including Arizona), and between 1907 and 1983, more than 60,000 people were involuntarily sterilized.¹¹

II. The eugenic era lives on through the modern abortion movement.

“From the beginning, birth control and abortion were promoted as means of effectuating eugenics.” *Box*, 139 S. Ct. at 1787 (Thomas, J., concurring); *id.* at 1789 (“Support for abortion can . . . be found throughout the literature on eugenics.”). As the late Justice Ginsburg observed, “at the time *Roe* was decided, there was concern about population growth and particularly growth in populations that we don’t

¹¹ See Cohen, *supra* note 3, at 299–300, 319; see also, generally, Peter Quinn, *Race Cleansing in America*, 54:1 AMERICAN HERITAGE (Mar. 2003), <https://www.americanheritage.com/race-cleansing-america>. Cf. Paul Lombardo, *Three Generations, No Imbeciles: Eugenics, The Supreme Court, and Buck v. Bell* xiii (2008) (“The *Buck* case represents one of the low points in Supreme Court history . . .”); Victoria Nourse, *Buck v. Bell: A Constitutional Tragedy from a Lost World*, 39 PEPP. L. REV. 101, 101 (2011) (“A mere five paragraphs long, *Buck v. Bell* could represent the highest ratio of injustice per word ever signed on to by eight Supreme Court Justices . . .”).

want to have too many of.”¹² “Tragically, . . . the [eugenics] practice continues today with modern-day abortions.” *Preterm-Cleveland v. McCloud*, 994 F.3d 512, 540 (6th Cir. 2021) (Griffin, J., concurring).

A. The American abortion movement is steeped in racism.

The links between abortion and racist eugenics are manifold. In promoting birth control, Sanger advanced a “Negro Project,”¹³ gave a speech to the Ku Klux Klan,¹⁴ and advocated eugenic breeding for “the gradual suppression, elimination and eventual extinction, of defective stocks—those human weeds which threaten the blooming of the finest flowers of American civilization.”¹⁵ She personally set up birth-control facilities in minority communities.¹⁶ In a 1939 letter, Sanger explained her plan to stop Black population growth:

¹² Emily Bazelon, *The Place of Women on the Court*, N.Y. TIMES Magazine (July 7, 2009), <https://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html>.

¹³ See Margaret Sanger Papers Project, Newsletter #28, *Birth Control or Race Control? Sanger and the Negro Project* (2001) (hereinafter Sanger Newsletter), http://www.nyu.edu/projects/sanger/articles/bc_or_race_control (last visited May 19, 2023).

¹⁴ See Margaret Sanger, *An Autobiography* 366 (1938).

¹⁵ Margaret Sanger, *Apostle of Birth Control Sees Cause Gaining Here*, N.Y. TIMES (Apr. 8, 1923), at 11.

¹⁶ See Sanger Newsletter, *supra* note 13; see also Mary Ziegler, *Roe's Race: The Supreme Court, Population Control, and Reproductive Justice*,

The most successful educational approach to the Negro is through a religious appeal. We do not want word to go out that we want to exterminate the Negro population, and the minister is the man who can straighten out that idea if it occurs to any of their more rebellious members.¹⁷

Minority groups have complained for decades that Planned Parenthood targets their communities. In 1966, a Planned Parenthood field agent complained to its then-president Alan Guttmacher: “Birth control is just a plot just as segregation was a plot to keep blacks down. It is a plot rather than a solution. Instead of working for us and giving us our rights—you reduce us in numbers and do not have to give us anything.”¹⁸ Black leaders such as Julius Lester, Dick Gregory, Daniel H. Watts, and H. Rap Brown described abortion as “black genocide” and called on Blacks to eschew these practices to avoid “race suicide.”¹⁹

25 YALE J.L. & FEMINISM 1, 13 (2013) (noting Planned Parenthood’s early advocacy “focused on unwanted children and pathological parenting in poor African American communities”).

¹⁷ Sanger Newsletter, *supra* note 13 (citation omitted).

¹⁸ Donald Critchlow, *Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America* 61 (1999); *see also* Box, 139 S. Ct. at 1790 (Thomas, J., concurring) (“Some black groups saw ‘family planning’ as a euphemism for race genocide and believed that black people were taking the brunt of the ‘planning’ under Planned Parenthood’s ghetto approach to distributing its services.” (cleaned up)).

¹⁹ Critchlow, *supra* note 18, at 142; *cf.* David Beito & Linda Royster Beito, *Black Maverick: T.R.M. Howard’s Fight for Civil Rights and Economic Power* 215 (2009).

History and data reveal that abortion has devastated communities of color. According to one peer-reviewed study, “black women have been experiencing abortions at a rate nearly four times that of white women for more than 30 years.”²⁰ One of the study authors commented: “Abortion is the hushed killer of Black life that has silenced millions of George Floyds before they even took their first breath of air. Yet, in this remarkable moment of social reform history, the lives of Black preborn children have been forgotten.”²¹ Black women have been lied to and manipulated into believing that that Planned Parenthood and other abortion providers have Black women’s best interests at heart.

According to the CDC’s most recent data, Black women accounted for 33.6 percent of all reported abortions in 2018, even though they make up just 13 percent of women in the United States.²² Black women also had

²⁰ James Studnicki et al., *Perceiving and Addressing the Pervasive Racial Disparity in Abortion*, 7 HEALTH SERVS. RESEARCH & MANAGERIAL EPIDEMIOLOGY 1 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7436774/pdf/10.1177_2333392820949743.pdf.

²¹ James Sherley, *Preborn Black Lives Matter, Too*, WASH. TIMES (Aug. 2, 2020), <https://www.washingtontimes.com/news/2020/aug/2/preborn-black-lives-matter-too/>.

²² Katherine Kortsmitt et al., *Abortion Surveillance — United States, 2018*, MMWR SURVEILL. SUMM. (Nov. 27, 2020), <https://pubmed.ncbi.nlm.nih.gov/33237897/>; U.S. CENSUS BUREAU,

the highest abortion rate (21.2 abortions per 1,000 women) and ratio (335 abortions per 1,000 live births). Further, abortion-induced deaths of the unborn in the Black community are 69 times higher than HIV deaths, 31 times higher than homicides, 3.6 times higher than cancer-related deaths, and 3.5 times higher than deaths caused by heart disease.²³

In Mississippi, 3,005 abortions were reported in 2018—72% for Black women compared to just 24% for White women and 4% for women of other races.²⁴ The Charlotte Lozier Institute estimates that the Black abortion rate in Mississippi was 8.5 per 1,000 women of childbearing age—over 3.5 times the abortion rate of 2.3 per 1,000 for White women.²⁵

The racial disparity in abortions is largely intentional: A study based on 2010 Census data shows that nearly eight out of ten Planned Parenthood abortion facilities are within walking distance of

Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin (2020).

²³ Kortsmit et al., *supra* note 22, at 8.

²⁴ See Tessa Longbons, *Abortion Reporting: Mississippi (2018)*, CHARLOTTE LOZIER INST. (May 8, 2020), <https://lozierinstitute.org/abortion-reporting-mississippi-2018/>.

²⁵ *Id.*

predominantly Black or Hispanic neighborhoods.²⁶ More specifically, Planned Parenthood intentionally located 86 percent of its abortion facilities in or near minority neighborhoods in the 25 U.S. counties with the most abortions.²⁷ These 25 counties contain 19 percent of the U.S. population, including 28 percent of the Black population and 37 percent of the Hispanic/Latino population. In 12 of these counties, Blacks and Hispanics/Latinos are more than 50 percent of the population. In contrast, Blacks are only 12.6 percent of the U.S. population, and Hispanics and Latinos are 16.3 percent. Any abortion industry denial of eugenic aims and racist roots cannot withstand objective scrutiny.²⁸

²⁶ See Susan Enouen, *New Research Shows Planned Parenthood Targets Minority Neighborhoods*, LIFE ISSUES CONNECTOR (Oct. 2012), <http://www.protectingblacklife.org/pdf/PP-Targets-10-2012.pdf>; see also Mark Crutcher et al., *Racial Targeting and Population Control* 22 (2011), https://issues4life.org/pdfs/racial_targeting_population_control.pdf.

²⁷ See Susan Enouen, *Research Shows Planned Parenthood Expands Targeting Minorities as it Spurns Racist Founder*, TOWNHALL (Sep. 23, 2020), <https://townhall.com/columnists/susanwillkeenouen/2020/09/23/research-shows-planned-parenthood-expands-targeting-minorities-as-it-spurns-racist-founder-n2576680>.

²⁸ See Crutcher et al., *supra* note 26, at 4 (noting “these patterns are routinely considered indicative of racial targeting when it comes to other issues”—e.g., marketing tobacco and alcohol to disproportionately minority neighborhoods).

Sanger and her eugenics era colleagues believed that the “unfit” and “feeble-minded” were “undesirable” to society and should not reproduce.²⁹ But these terms were code words for the poor, Blacks, disabled, and other minorities. Planned Parenthood continues Sanger’s shameful legacy to this day.

B. Modern abortion policy promotes the eradication of preborn children with Down syndrome and other disabilities.

In recent years, due to the “abortion-on-demand” movement and advances in prenatal screening technology, unborn children with Down syndrome and other genetic disabilities are increasingly being destroyed. This practice promotes eugenics and tells society that persons with Down syndrome are less valuable and less deserving of life than those without—devaluing human life and eroding the rights of individuals with disabilities.³⁰ Abortion is “a disturbingly effective tool for implementing the discriminatory preferences that undergird eugenics.” *Box*, 139 S. Ct. at 1790 (Thomas, J., concurring) (citing examples). “Technological

²⁹ See generally Margaret Sanger, *My Way to Peace*, Address to the New History Society (Jan. 17, 1932).

³⁰ Sadly, the American Medical Association has endorsed disability selective abortion at least since 1967. See American Medical Association, House of Delegates Proceedings, Annual Convention 1967 40, 50.

advances have only heightened the eugenic potential for abortion, as abortion can now be used to eliminate children with unwanted characteristics, such as a particular sex or disability.” *Id.* at 1784 (Thomas, J., concurring) (citing examples).³¹

Data from the United States and Europe show that over 92% of parents opt for abortion when prenatal genetic testing shows Down syndrome.³² Iceland and Denmark have nearly eliminated all children with Down syndrome through selective abortion. In Iceland, “close to 100 percent” of preborn children with Down syndrome are aborted.³³ Only the babies whose Down syndrome is not detected survive.³⁴

³¹ The American College of Obstetricians and Gynecologists recommends testing for Down syndrome “as early as possible in pregnancy, ideally at the first obstetric visit.” Am. Coll. of Obstetricians & Gynecologists, *Practice Bulletin 162: Prenatal Diagnostic Testing for Genetic Disorders* (May 2016).

³² See Caroline Mansfield et al., *Termination Rates After Prenatal Diagnosis of Down Syndrome, Spina Bifida, Anencephaly, and Turner and Klinefelter Syndromes: A Systematic Literature Review. European Concerted Action: DADA (Decision-making After the Diagnosis of a fetal Abnormality)*, 19 *PRENATAL DIAGNOSIS* 808, 810 (1999).

³³ Julian Quinones & Arijeta Lajka, “What Kind of Society Do You Want to Live in?": Inside the Country Where Down Syndrome is Disappearing, CBS NEWS (Aug. 14, 2017), <https://www.cbsnews.com/news/down-syndrome-iceland/>.

³⁴ Dave Maclean, *Iceland Close to Becoming First Country Where No Down's Syndrome Children Are Born*, INDEPENDENT (Aug. 16, 2017),

In the United States, an estimated 67% of babies with Down syndrome are aborted. *See Box*, 139 S. Ct. at 1783, 1790 (Thomas, J., concurring). Other studies estimate 80% of babies diagnosed with Down syndrome before 24 weeks are aborted.³⁵ A review of nine hospital-based studies indicates over 85% of babies are aborted following a prenatal Down syndrome diagnosis.³⁶ This review highlighted that higher abortion rates “were consistently associated with earlier gestational age,” with one study reporting that 93% of babies diagnosed at 16 or fewer weeks’ gestation were aborted compared to 85% at 17 or more weeks.³⁷ And an anonymous survey of nearly 500 physicians who had delivered after prenatal diagnoses revealed that 13% emphasized the negative aspects of Down syndrome to encourage abortion, and 10% actively “urge”

<https://www.independent.co.uk/lifestyle/health-and-families/iceland-downs-syndrome-no-children-born-first-countryworld-screening-a7895996.html>.

³⁵ Susan Donaldson James, *Down Syndrome Births are Down in the U.S.*, ABC NEWS (Oct. 30, 2009), https://abcnews.go.com/Health/w_ParentingResource/down-syndrome-births-dropus-women-abort/story?id=8960803.

³⁶ Jaime L. Natoli et al., *Prenatal Diagnosis of Down Syndrome: A Systematic Review of Termination Rates (1995-2011)*, 32:2 PRENATAL DIAGNOSIS 142, 147 (2012).

³⁷ *Id.* at 149.

abortion.³⁸ Eugenic abortion is the reality in America, not merely a pro-life talking point.

Critically, persons with Down syndrome offer much to society and are a joy to their loved ones. A 2011 Harvard study found that “nearly 99% of people with DS indicated that they were happy with their lives, 97% liked who they are, and 96% liked how they look. Nearly 99% of people with DS expressed love for their families, and 97% liked their brothers and sisters.”³⁹ Children’s Hospital Boston found that 99% of parents or guardians loved their child with Down syndrome, and 79% “felt their outlook on life was more positive because of their child.”⁴⁰ The same study found that 94% of siblings 12 years and older reported that they were proud of their brother or sister with Down syndrome, and 88% said that they were better persons because of their sibling.

³⁸ Brian G. Skotko, *Prenatally Diagnosed Down Syndrome: Mothers Who Continued Their Pregnancies Evaluate Their Health Care Providers*, 192 AM. J. OF OBSTETRICS & GYNECOLOGY 670, 670–71 (Nov. 2004).

³⁹ Brian G. Skotko et al., *Self-Perceptions from People with Down Syndrome*, AM. J. MED. GENETICS 2360, 2360, 2364 (Oct. 2011).

⁴⁰ Press Release, Children’s Hospital Boston, *Parents Siblings and People With Down Syndrome Report Positive Experiences* (Sept. 23, 2011), available at <https://medicalxpress.com/news/2011-09-parents-siblings-people-syndrome-positive.html>.

Children born with Down syndrome can achieve great things. Karen Gaffney, for example, earned an Associates of Science degree, swam the English Channel on a six-person relay team, and swam nine miles across Lake Tahoe.⁴¹ She leads a nonprofit advocacy foundation with a simple message: “Down Syndrome Is a Life Meant to Be Saved!”⁴² Others born with Down syndrome have performed at Carnegie Hall, launched a fashion label, and opened a restaurant.⁴³

Arizona’s pre-*Roe* abortion ban and subsequent eugenic abortion ban advance the State’s compelling interest in “preventing abortion from becoming a tool of modern-day eugenics.” *Box*, 139 S. Ct. at 1783 (Thomas, J., concurring). The order below, rewriting Arizona’s abortion statutes to allow abortion up to 15 weeks, facilitates the eradication of human beings who enrich our communities and foster compassion for vulnerable populations.

⁴¹ Karen Gaffney Foundation, *Karen’s Story*, <https://karengaffneyfoundation.org/karens-story/> (last visited Mar. 23, 2023).

⁴² *Id.*

⁴³ Zoe Ettinger, *13 People with Down Syndrome Who Are Breaking Barriers in Entertainment, Athletics, Fashion, and More*, INSIDER (Mar. 10, 2020), <https://www.insider.com/people-with-down-syndrome-breaking-barriers>.

CONCLUSION

The Court should reverse the order below.

Dated this September 29, 2023.

/s/ Timothy D. Ducar

Timothy D. Ducar (15037)
LAW OFFICES OF
TIMOTHY D. DUCAR, PLC
9280 E. Raintree Dr., Ste. 104
Scottsdale, AZ, 85260-7309
(480) 502-2119
tducar@azlawyers.com

Mathew D. Staver* (P237986)
LIBERTY COUNSEL
PO Box 540774
Orlando, FL 32854
(407) 875-1776
court@LC.org
rgannam@LC.org

Attorneys for Amici Curiae

** Admitted Pro Hac Vice*

CERTIFICATE OF COMPLIANCE

1. This certificate of compliance concerns an amicus curiae brief, and is submitted under Rule 16(b)(4).

2. The undersigned certifies that the brief to which this Certificate is attached uses type of at least 14 points, is double-spaced, and contains 3,510 words.

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/s/ Timothy D. Ducar
Timothy D. Ducar
Attorney for Amici Curiae

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/s/ Timothy D. Ducar
Timothy D. Ducar
Attorney for Amici Curiae

ARIZONA SUPREME COURT

PLANNED PARENTHOOD ARIZONA,
INC., et al.,

Plaintiffs/Appellants,

v.

KRISTIN MAYES, Attorney General of
the State of Arizona, et al.,

Defendants/Appellees,

and

ERIC HAZELRIGG, M.D., as guardian
ad litem of all Arizona unborn infants,

Intervenor/Appellee.

Supreme Court
No. CV-23-0005-PR

Court of Appeals
Division Two
No. 2 CA-CV 2022-0116

Pima County Superior Court
No. C127867

**CONSENT BRIEF OF AMICI CURIAE ARIZONA LIFE COALITION,
FREDERICK DOUGLASS FOUNDATION, AND THE NATIONAL
HISPANIC CHRISTIAN LEADERSHIP CONFERENCE
IN SUPPORT OF INTERVENOR-APPELLEE**

Timothy D. Ducar (15037)
LAW OFFICES OF
TIMOTHY D. DUCAR, PLC
9280 E. Raintree Dr., Ste. 104
Scottsdale, AZ, 85260-7309
(480) 502-2119
tducar@azlawyers.com

Mathew D. Staver* (P237986)
LIBERTY COUNSEL
PO Box 540774
Orlando, FL 32854
(407) 875-1776
court@LC.org
rgannam@LC.org

Attorneys for Amici Curiae

** Admitted Pro Hac Vice*

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
IDENTITIES AND INTERESTS OF AMICI CURIAE	6
INTRODUCTION.....	6
ARGUMENT	8
I. Abortion advocacy is forever bound to the eugenics movement, rooted in social Darwinism and the elimination of undesirable populations.....	8
II. The eugenic era lives on through the modern abortion movement...	12
A. The American abortion movement is steeped in racism.	13
B. Modern abortion policy promotes the eradication of preborn children with Down syndrome and other disabilities.	18
CONCLUSION.....	23
CERTIFICATE OF COMPLIANCE.....	24

TABLE OF AUTHORITIES

Cases

<i>Box v. Planned Parenthood of Indiana & Kentucky, Inc.</i> , 139 S. Ct. 1780 (2019).....	passim
<i>Buck v. Bell</i> , 274 U.S. 200 (1927).....	7, 11, 12
<i>Obergefell v. Hodges</i> , 576 U.S. 644 (2015).....	8
<i>Preterm-Cleveland v. McCloud</i> , 994 F.3d 512 (6th Cir. 2021).....	13
<i>Smith v. Wayne</i> , 231 Mich. 409 (1925).....	10

Statutes

A.R.S. § 13-3603	6, 7, 8
A.R.S. § 13-3603.02	6, 7
A.R.S. § 36-2322	7
Ariz. Const. art. II, § 4.....	7
Immigration Act of 1924, Pub. L. 68-139, 43 Stat. 153.....	10

Other Authorities

Adam Cohen, <i>Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck</i> (2016)	9, 10, 12
Am. Coll. of Obstetricians & Gynecologists, <i>Practice Bulletin 162: Prenatal Diagnostic Testing for Genetic Disorders</i> (May 2016).....	19
American Medical Association, House of Delegates Proceedings, Annual Convention 1967	18
Austin Anderson, <i>The Dark Side of Darwinism</i> (Nov. 16, 2016)	9

Brian G. Skotko et al., <i>Self-Perceptions from People With Down Syndrome</i> , AM. J. MED. GENETICS 2360 (Oct. 2011).....	21
Brian G. Skotko, <i>Prenatally Diagnosed Down Syndrome: Mothers Who Continued Their Pregnancies Evaluate Their Health Care Providers</i> , 192 AM. J. OF OBSTETRICS & GYNECOLOGY 670 (Nov. 2004).....	21
Caroline Mansfield et al., <i>Termination Rates After Prenatal Diagnosis of Down Syndrome, Spina Bifida, Anencephaly, and Turner and Klinefelter Syndromes: A Systematic Literature Review. European Concerted Action: DADA (Decision-making After the Diagnosis of a fetal Abnormality)</i> , 19 PRENATAL DIAGNOSIS 808 (1999).....	19
Corinna Lain, <i>Three Supreme Court “Failures” and a Story of Supreme Court Success</i> , 69 VANDERBILT L. REV. 1040 (2019).....	10
Dave Maclean, <i>Iceland Close to Becoming First Country Where No Down’s Syndrome Children Are Born</i> , INDEPENDENT (Aug. 16, 2017).....	19
David Beito & Linda Royster Beito, <i>Black Maverick: T.R.M. Howard’s Fight for Civil Rights and Economic Power</i> (2009)	14
Donald Critchlow, <i>Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America</i> (1999).....	14
Dorothy Roberts, <i>Killing the Black Body: Race, Reproduction, and the Meaning of Liberty</i> (1997)	11
Emily Bazelon, <i>The Place of Women on the Court</i> , N.Y. TIMES Magazine (July 7, 2009).....	13
Jaime L. Natoli et al., <i>Prenatal Diagnosis of Down Syndrome: A Systematic Review of Termination Rates (1995-2011)</i> , 32:2 PRENATAL DIAGNOSIS 142 (2012).....	20
James Sherley, <i>Preborn Black Lives Matter, Too</i> , WASH. TIMES (Aug. 2, 2020).....	15

James Studnicki et al., <i>Perceiving and Addressing the Pervasive Racial Disparity in Abortion</i> , HEALTH SERVS. RESEARCH & MANAGERIAL EPIDEMIOLOGY (2020)	15
Jeffrey Sutton, <i>51 Imperfect Solutions: States and the Making of American Constitutional Law</i> (2018)	9
Karen Gaffney Foundation, <i>Karen’s Story</i>	22
Katherine Kortsmitt et al., <i>Abortion Surveillance — United States, 2018</i> , MMWR SURVEILL. SUMM. (Nov. 27, 2020)	15, 16
Lutz Kaelber, <i>Eugenics: Compulsory Sterilization in 50 American States</i>	7
Margaret Sanger Papers Project, Newsletter #28, <i>Birth Control or Race Control? Sanger and the Negro Project</i> (2001)	13, 14
Margaret Sanger, <i>An Autobiography</i> (1938)	13
Margaret Sanger, <i>Apostle of Birth Control Sees Cause Gaining Here</i> , N.Y. TIMES (Apr. 8, 1923).....	13
Margaret Sanger, <i>My Way to Peace</i> , Address to the New History Society (Jan. 17, 1932).....	18
Margaret Sanger, <i>The Eugenic Value of Birth Control Propaganda</i> , BIRTH CONTROL REV. (Oct. 1921)	10
Margaret Sanger, <i>The Function of Sterilization</i> , BIRTH CONTROL REV. (Oct. 1926)	10
Mark Crutcher et al., <i>Racial Targeting and Population Control</i> (2011).....	17
Mary Ziegler, <i>Roe’s Race: The Supreme Court, Population Control, and Reproductive Justice</i> , 25 YALE J.L. & FEMINISM 1 (2013).....	14
Maya Manian, <i>Coerced Sterilization of Mexican-American Women: The Story of Madrigal v. Quilligan</i> , in REPRODUCTIVE RIGHTS & JUSTICE STORIES (Melissa Murray et al. eds., 2019)	11

Paul Lombardo, <i>Disability, Eugenics, and the Culture Wars</i> , 2 ST. LOUIS U. J. HEALTH L. & POL'Y 57 (2008).....	10
Paul Lombardo, <i>Three Generations, No Imbeciles: Eugenics, The Supreme Court, and Buck v. Bell</i> (2008).....	12
Peter Quinn, <i>Race Cleansing in America</i> , 54:1 AMERICAN HERITAGE (Mar. 2003)	12
Press Release, Children's Hospital Boston, <i>Parents Siblings and People With Down Syndrome Report Positive Experiences</i> (Sept. 23, 2011)	21
Susan Donaldson James, <i>Down Syndrome Births are Down in the U.S.</i> , ABC NEWS (Oct. 30, 2009)	20
Susan Enouen, <i>New Research Shows Planned Parenthood Targets Minority Neighborhoods</i> , LIFE ISSUES CONNECTOR (Oct. 2012)	17
Susan Enouen, <i>Research Shows Planned Parenthood Expands Targeting Minorities as it Spurns Racist Founder</i> , TOWNHALL (Sep. 23, 2020)	17
Tessa Longbons, <i>Abortion Reporting: Mississippi (2018)</i> , CHARLOTTE LOZIER INST. (May 8, 2020)	16
U.S. CENSUS BUREAU, <i>Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin</i> (2020).....	16
Victoria Nourse, <i>Buck v. Bell: A Constitutional Tragedy from a Lost World</i> , 39 PEPP. L. REV. 101 (2011)	12
Zoe Ettinger, <i>13 People with Down Syndrome Who Are Breaking Barriers in Entertainment, Athletics, Fashion, and More</i> , INSIDER (Mar. 10, 2020)	22

IDENTITIES AND INTERESTS OF AMICI CURIAE

Amicus Arizona Life Coalition is a nonprofit, statewide alliance connecting pro-life groups and diverse people with the common mission of defending innocent life. Amici Frederick Douglass Foundation and The National Hispanic Christian Leadership Conference are nonprofit faith organizations that serve the African American, Hispanic, and disability communities in Arizona and across the United States. Amici have a strong interest in exposing the racist and eugenic history of the abortion movement, its catastrophic effects on their communities, and its continuing threat to vulnerable populations. Amici likewise have a strong interest in defending state laws like A.R.S. §§ 13-3603 and 13-3603.02 that protect minority, disability, and other vulnerable communities from eugenic social policies.

INTRODUCTION

A.R.S. § 13-3603 advances Arizona's compelling and long-standing interest in prohibiting abortions with very limited exceptions. The decision below, impliedly repealing the statute for abortions through 15 weeks' gestation, also threatens A.R.S. § 13-3603.02 and its critical protections against sex-, race-, and disability-selective abortions. This eugenic abortion prohibition had been in place for over a decade before

the Legislature added the *Roe*-driven, post-15-week abortion restriction of A.R.S. § 36-2322. The same faulty logic used by the Court of Appeals to write a new 15-week abortion right into § 13-3603 could be used to similarly eviscerate the anti-eugenic protections of § 13-3603.02.

Abortion is the modern-day offspring of eugenics. Margaret Sanger and the early abortion movement promoted abortion to reduce populations they considered *lesser than* White or fully able Americans. The same ideology drove the United States Supreme Court's notorious decision in *Buck v. Bell*, 274 U.S. 200 (1927), and Arizona's sterilization law codifying the State's eugenic regime from 1929 to the mid-1950's.¹ Now, the abortion industry denies that all human beings have inherent value and dignity bestowed on them by their Creator, and has indisputably targeted Black, Hispanic, and disabled communities for reduction. The vast majority of abortions before 15 weeks kill disabled and minority infants. Abortion is in direct conflict with the Arizona Constitution's guarantee of the right to life, *see* Ariz. Const. art. II, § 4, and the founding principles of our country. *See Obergefell v. Hodges*, 576

¹ Lutz Kaelber, *Eugenics: Compulsory Sterilization in 50 American States*, <https://www.uvm.edu/~lkaelber/eugenics/> (select "Arizona") (last visited May 17, 2023).

U.S. 644, 735 (2015) (Thomas, J., dissenting) (“[T]he Framers proclaimed in the Declaration of Independence . . . a vision of mankind in which all humans are created in the image of God and therefore of inherent worth.”). By reversing the implied repeal of A.R.S. § 13-3603 by the Court of Appeals, this Court will restore fidelity to Arizona law, especially its protections against eugenic abortions.

ARGUMENT

I. Abortion advocacy is forever bound to the eugenics movement, rooted in social Darwinism and the elimination of undesirable populations.

Modern abortion advocacy arose from the birth control movement, which was “developed alongside the American eugenics movement.” *Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1783 (2019) (Thomas, J., concurring). Coined in the 1880s by a British scientist and cousin of Charles Darwin, “eugenics” is “the science of improving stock through all influences that tend in however remote a degree to give to the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have.” *Id.* at 1784 (Thomas, J., concurring) (cleaned up). The sinister goal of the eugenics movement was to eliminate “unfit” and “undesirable” people—those with mental and physical disabilities as well as certain races.

Darwin himself did not hide his white supremacist and eugenic inclinations:

Darwin explains that the “highest races and the lowest savages” differ in “moral disposition . . . and in intellect.” The idea that white people are more intelligent and moral persists throughout. Darwin’s theory applies survival of the fittest to human races, suggesting that extermination of non-white races is a natural consequence of white Europeans being a superior and more successful race.²

By the 1920s, the eugenics movement was immensely popular among progressives, professionals, academics, and the medical community.³ Many leading figures, including Theodore Roosevelt and John D. Rockefeller, “were fervent eugenicists, putting their money, their power, their time, and their research behind the effort.”⁴

Planned Parenthood’s founder, Margaret Sanger, was one of the most outspoken members of the American eugenics movement. Sanger argued that eugenics was “the most adequate and thorough avenue to the

² Austin Anderson, *The Dark Side of Darwinism* (Nov. 16, 2016), <https://sites.williams.edu/engl-209-fall16/uncategorized/the-dark-side-of-darwinism/> (last visited Sept. 16, 2022).

³ See Adam Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* 2 (2016).

⁴ Jeffrey Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 87 (2018).

solution of racial, political, and social problems.”⁵ She praised sterilization as the “remedy” to the problem of “an increasing rate of morons.”⁶ In the first two decades of the twentieth century, a dozen states passed eugenic sterilization laws.⁷ One court upheld eugenic sterilization as a valid exercise of state police power “based on the growing belief that, due to the alarming increase in the number of degenerates, criminals, feebleminded, and insane, our race is facing the greatest peril of all time.” *Smith v. Wayne*, 231 Mich. 409, 425 (1925).

Many eugenicists drew “the distinction between the fit and the unfit . . . along racial lines.” *See Box*, 139 S. Ct. at 1785 (Thomas, J., concurring) (citing examples). The Immigration Act of 1924 “represented a eugenic (and racist and nativist) attempt to protect the integrity of Anglo-American stock.”⁸ And a disproportionate number of the sterilized were

⁵ Margaret Sanger, *The Eugenic Value of Birth Control Propaganda*, BIRTH CONTROL REV. (Oct. 1921) at 5.,

⁶ Margaret Sanger, *The Function of Sterilization*, BIRTH CONTROL REV. (Oct. 1926), at 299.

⁷ *See* Paul Lombardo, *Disability, Eugenics, and the Culture Wars*, 2 ST. LOUIS U. J. HEALTH L. & POL’Y 57, 61 n.33 (2008).

⁸ Corinna Lain, *Three Supreme Court “Failures” and a Story of Supreme Court Success*, 69 VANDERBILT L. REV. 1040 (2019); *see also* Cohen, *supra* note 3, at 132–35.

minorities. For example, in 1955, South Carolina reported that all 23 persons sterilized at the State Hospital over the previous year were Black women.⁹ In the 1930s and 1940s, the North Carolina Eugenics Commission sterilized nearly 8,000 “mentally deficient persons,” some 5,000 of whom were Black.¹⁰

In *Buck v. Bell*, the Supreme Court “threw its prestige behind the eugenics movement.” *Box*, 139 S. Ct. at 1786 (Thomas, J., concurring). The Court approved the compulsory sterilization of a “feeble minded” woman adjudged to be “the probable potential parent of socially inadequate offspring.” 274 U.S. at 205, 207. Eight justices “offered a full-throated defense of forced sterilization,” *Box*, 139 S. Ct. at 1786 (Thomas, J., concurring), to “prevent” society from being “swamped with incompetence,” *Buck*, 274 U.S. at 207. Infamously, the Court declared:

It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains

⁹ See Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* 88–89 (1997).

¹⁰ *Id.* (footnote omitted); see also Maya Manian, *Coerced Sterilization of Mexican-American Women: The Story of Madrigal v. Quilligan*, in *REPRODUCTIVE RIGHTS & JUSTICE STORIES* 97, 99 (Melissa Murray et al. eds., 2019) (describing forced sterilization of Mexican-American women in California into the 1970s).

compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.

Id. (citation omitted). Within five years after *Buck*, 28 states had adopted compulsory sterilization laws (including Arizona), and between 1907 and 1983, more than 60,000 people were involuntarily sterilized.¹¹

II. The eugenic era lives on through the modern abortion movement.

“From the beginning, birth control and abortion were promoted as means of effectuating eugenics.” *Box*, 139 S. Ct. at 1787 (Thomas, J., concurring); *id.* at 1789 (“Support for abortion can . . . be found throughout the literature on eugenics.”). As the late Justice Ginsburg observed, “at the time *Roe* was decided, there was concern about population growth and particularly growth in populations that we don’t

¹¹ See Cohen, *supra* note 3, at 299–300, 319; see also, generally, Peter Quinn, *Race Cleansing in America*, 54:1 AMERICAN HERITAGE (Mar. 2003), <https://www.americanheritage.com/race-cleansing-america>. Cf. Paul Lombardo, *Three Generations, No Imbeciles: Eugenics, The Supreme Court, and Buck v. Bell* xiii (2008) (“The *Buck* case represents one of the low points in Supreme Court history . . .”); Victoria Nourse, *Buck v. Bell: A Constitutional Tragedy from a Lost World*, 39 PEPP. L. REV. 101, 101 (2011) (“A mere five paragraphs long, *Buck v. Bell* could represent the highest ratio of injustice per word ever signed on to by eight Supreme Court Justices . . .”).

want to have too many of.”¹² “Tragically, . . . the [eugenics] practice continues today with modern-day abortions.” *Preterm-Cleveland v. McCloud*, 994 F.3d 512, 540 (6th Cir. 2021) (Griffin, J., concurring).

A. The American abortion movement is steeped in racism.

The links between abortion and racist eugenics are manifold. In promoting birth control, Sanger advanced a “Negro Project,”¹³ gave a speech to the Ku Klux Klan,¹⁴ and advocated eugenic breeding for “the gradual suppression, elimination and eventual extinction, of defective stocks—those human weeds which threaten the blooming of the finest flowers of American civilization.”¹⁵ She personally set up birth-control facilities in minority communities.¹⁶ In a 1939 letter, Sanger explained her plan to stop Black population growth:

¹² Emily Bazelon, *The Place of Women on the Court*, N.Y. TIMES Magazine (July 7, 2009), <https://www.nytimes.com/2009/07/12/magazine/12ginsburg-t.html>.

¹³ See Margaret Sanger Papers Project, Newsletter #28, *Birth Control or Race Control? Sanger and the Negro Project* (2001) (hereinafter Sanger Newsletter), http://www.nyu.edu/projects/sanger/articles/bc_or_race_control (last visited May 19, 2023).

¹⁴ See Margaret Sanger, *An Autobiography* 366 (1938).

¹⁵ Margaret Sanger, *Apostle of Birth Control Sees Cause Gaining Here*, N.Y. TIMES (Apr. 8, 1923), at 11.

¹⁶ See Sanger Newsletter, *supra* note 13; see also Mary Ziegler, *Roe's Race: The Supreme Court, Population Control, and Reproductive Justice*,

The most successful educational approach to the Negro is through a religious appeal. We do not want word to go out that we want to exterminate the Negro population, and the minister is the man who can straighten out that idea if it occurs to any of their more rebellious members.¹⁷

Minority groups have complained for decades that Planned Parenthood targets their communities. In 1966, a Planned Parenthood field agent complained to its then-president Alan Guttmacher: “Birth control is just a plot just as segregation was a plot to keep blacks down. It is a plot rather than a solution. Instead of working for us and giving us our rights—you reduce us in numbers and do not have to give us anything.”¹⁸ Black leaders such as Julius Lester, Dick Gregory, Daniel H. Watts, and H. Rap Brown described abortion as “black genocide” and called on Blacks to eschew these practices to avoid “race suicide.”¹⁹

25 YALE J.L. & FEMINISM 1, 13 (2013) (noting Planned Parenthood’s early advocacy “focused on unwanted children and pathological parenting in poor African American communities”).

¹⁷ Sanger Newsletter, *supra* note 13 (citation omitted).

¹⁸ Donald Critchlow, *Intended Consequences: Birth Control, Abortion, and the Federal Government in Modern America* 61 (1999); *see also* Box, 139 S. Ct. at 1790 (Thomas, J., concurring) (“Some black groups saw ‘family planning’ as a euphemism for race genocide and believed that black people were taking the brunt of the ‘planning’ under Planned Parenthood’s ghetto approach to distributing its services.” (cleaned up)).

¹⁹ Critchlow, *supra* note 18, at 142; *cf.* David Beito & Linda Royster Beito, *Black Maverick: T.R.M. Howard’s Fight for Civil Rights and Economic Power* 215 (2009).

History and data reveal that abortion has devastated communities of color. According to one peer-reviewed study, “black women have been experiencing abortions at a rate nearly four times that of white women for more than 30 years.”²⁰ One of the study authors commented: “Abortion is the hushed killer of Black life that has silenced millions of George Floyds before they even took their first breath of air. Yet, in this remarkable moment of social reform history, the lives of Black preborn children have been forgotten.”²¹ Black women have been lied to and manipulated into believing that that Planned Parenthood and other abortion providers have Black women’s best interests at heart.

According to the CDC’s most recent data, Black women accounted for 33.6 percent of all reported abortions in 2018, even though they make up just 13 percent of women in the United States.²² Black women also had

²⁰ James Studnicki et al., *Perceiving and Addressing the Pervasive Racial Disparity in Abortion*, 7 HEALTH SERVS. RESEARCH & MANAGERIAL EPIDEMIOLOGY 1 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7436774/pdf/10.1177_2333392820949743.pdf.

²¹ James Sherley, *Preborn Black Lives Matter, Too*, WASH. TIMES (Aug. 2, 2020), <https://www.washingtontimes.com/news/2020/aug/2/preborn-black-lives-matter-too/>.

²² Katherine Kortsmitt et al., *Abortion Surveillance — United States, 2018*, MMWR SURVEILL. SUMM. (Nov. 27, 2020), <https://pubmed.ncbi.nlm.nih.gov/33237897/>; U.S. CENSUS BUREAU,

the highest abortion rate (21.2 abortions per 1,000 women) and ratio (335 abortions per 1,000 live births). Further, abortion-induced deaths of the unborn in the Black community are 69 times higher than HIV deaths, 31 times higher than homicides, 3.6 times higher than cancer-related deaths, and 3.5 times higher than deaths caused by heart disease.²³

In Mississippi, 3,005 abortions were reported in 2018—72% for Black women compared to just 24% for White women and 4% for women of other races.²⁴ The Charlotte Lozier Institute estimates that the Black abortion rate in Mississippi was 8.5 per 1,000 women of childbearing age—over 3.5 times the abortion rate of 2.3 per 1,000 for White women.²⁵

The racial disparity in abortions is largely intentional: A study based on 2010 Census data shows that nearly eight out of ten Planned Parenthood abortion facilities are within walking distance of

Annual Estimates of the Resident Population by Sex, Race, and Hispanic Origin (2020).

²³ Kortsmit et al., *supra* note 22, at 8.

²⁴ See Tessa Longbons, *Abortion Reporting: Mississippi (2018)*, CHARLOTTE LOZIER INST. (May 8, 2020), <https://lozierinstitute.org/abortion-reporting-mississippi-2018/>.

²⁵ *Id.*

predominantly Black or Hispanic neighborhoods.²⁶ More specifically, Planned Parenthood intentionally located 86 percent of its abortion facilities in or near minority neighborhoods in the 25 U.S. counties with the most abortions.²⁷ These 25 counties contain 19 percent of the U.S. population, including 28 percent of the Black population and 37 percent of the Hispanic/Latino population. In 12 of these counties, Blacks and Hispanics/Latinos are more than 50 percent of the population. In contrast, Blacks are only 12.6 percent of the U.S. population, and Hispanics and Latinos are 16.3 percent. Any abortion industry denial of eugenic aims and racist roots cannot withstand objective scrutiny.²⁸

²⁶ See Susan Enouen, *New Research Shows Planned Parenthood Targets Minority Neighborhoods*, LIFE ISSUES CONNECTOR (Oct. 2012), <http://www.protectingblacklife.org/pdf/PP-Targets-10-2012.pdf>; see also Mark Crutcher et al., *Racial Targeting and Population Control* 22 (2011), https://issues4life.org/pdfs/racial_targeting_population_control.pdf.

²⁷ See Susan Enouen, *Research Shows Planned Parenthood Expands Targeting Minorities as it Spurns Racist Founder*, TOWNHALL (Sep. 23, 2020), <https://townhall.com/columnists/susanwillkeenouen/2020/09/23/research-shows-planned-parenthood-expands-targeting-minorities-as-it-spurns-racist-founder-n2576680>.

²⁸ See Crutcher et al., *supra* note 26, at 4 (noting “these patterns are routinely considered indicative of racial targeting when it comes to other issues”—e.g., marketing tobacco and alcohol to disproportionately minority neighborhoods).

Sanger and her eugenics era colleagues believed that the “unfit” and “feeble-minded” were “undesirable” to society and should not reproduce.²⁹ But these terms were code words for the poor, Blacks, disabled, and other minorities. Planned Parenthood continues Sanger’s shameful legacy to this day.

B. Modern abortion policy promotes the eradication of preborn children with Down syndrome and other disabilities.

In recent years, due to the “abortion-on-demand” movement and advances in prenatal screening technology, unborn children with Down syndrome and other genetic disabilities are increasingly being destroyed. This practice promotes eugenics and tells society that persons with Down syndrome are less valuable and less deserving of life than those without—devaluing human life and eroding the rights of individuals with disabilities.³⁰ Abortion is “a disturbingly effective tool for implementing the discriminatory preferences that undergird eugenics.” *Box*, 139 S. Ct. at 1790 (Thomas, J., concurring) (citing examples). “Technological

²⁹ See generally Margaret Sanger, *My Way to Peace*, Address to the New History Society (Jan. 17, 1932).

³⁰ Sadly, the American Medical Association has endorsed disability selective abortion at least since 1967. See American Medical Association, House of Delegates Proceedings, Annual Convention 1967 40, 50.

advances have only heightened the eugenic potential for abortion, as abortion can now be used to eliminate children with unwanted characteristics, such as a particular sex or disability.” *Id.* at 1784 (Thomas, J., concurring) (citing examples).³¹

Data from the United States and Europe show that over 92% of parents opt for abortion when prenatal genetic testing shows Down syndrome.³² Iceland and Denmark have nearly eliminated all children with Down syndrome through selective abortion. In Iceland, “close to 100 percent” of preborn children with Down syndrome are aborted.³³ Only the babies whose Down syndrome is not detected survive.³⁴

³¹ The American College of Obstetricians and Gynecologists recommends testing for Down syndrome “as early as possible in pregnancy, ideally at the first obstetric visit.” Am. Coll. of Obstetricians & Gynecologists, *Practice Bulletin 162: Prenatal Diagnostic Testing for Genetic Disorders* (May 2016).

³² See Caroline Mansfield et al., *Termination Rates After Prenatal Diagnosis of Down Syndrome, Spina Bifida, Anencephaly, and Turner and Klinefelter Syndromes: A Systematic Literature Review. European Concerted Action: DADA (Decision-making After the Diagnosis of a fetal Abnormality)*, 19 *PRENATAL DIAGNOSIS* 808, 810 (1999).

³³ Julian Quinones & Arijeta Lajka, “What Kind of Society Do You Want to Live in?": Inside the Country Where Down Syndrome is Disappearing, CBS NEWS (Aug. 14, 2017), <https://www.cbsnews.com/news/down-syndrome-iceland/>.

³⁴ Dave Maclean, *Iceland Close to Becoming First Country Where No Down's Syndrome Children Are Born*, INDEPENDENT (Aug. 16, 2017),

In the United States, an estimated 67% of babies with Down syndrome are aborted. *See Box*, 139 S. Ct. at 1783, 1790 (Thomas, J., concurring). Other studies estimate 80% of babies diagnosed with Down syndrome before 24 weeks are aborted.³⁵ A review of nine hospital-based studies indicates over 85% of babies are aborted following a prenatal Down syndrome diagnosis.³⁶ This review highlighted that higher abortion rates “were consistently associated with earlier gestational age,” with one study reporting that 93% of babies diagnosed at 16 or fewer weeks’ gestation were aborted compared to 85% at 17 or more weeks.³⁷ And an anonymous survey of nearly 500 physicians who had delivered after prenatal diagnoses revealed that 13% emphasized the negative aspects of Down syndrome to encourage abortion, and 10% actively “urge”

<https://www.independent.co.uk/lifestyle/health-and-families/iceland-downs-syndrome-no-children-born-first-countryworld-screening-a7895996.html>.

³⁵ Susan Donaldson James, *Down Syndrome Births are Down in the U.S.*, ABC NEWS (Oct. 30, 2009), https://abcnews.go.com/Health/w_ParentingResource/down-syndrome-births-dropus-women-abort/story?id=8960803.

³⁶ Jaime L. Natoli et al., *Prenatal Diagnosis of Down Syndrome: A Systematic Review of Termination Rates (1995-2011)*, 32:2 PRENATAL DIAGNOSIS 142, 147 (2012).

³⁷ *Id.* at 149.

abortion.³⁸ Eugenic abortion is the reality in America, not merely a pro-life talking point.

Critically, persons with Down syndrome offer much to society and are a joy to their loved ones. A 2011 Harvard study found that “nearly 99% of people with DS indicated that they were happy with their lives, 97% liked who they are, and 96% liked how they look. Nearly 99% of people with DS expressed love for their families, and 97% liked their brothers and sisters.”³⁹ Children’s Hospital Boston found that 99% of parents or guardians loved their child with Down syndrome, and 79% “felt their outlook on life was more positive because of their child.”⁴⁰ The same study found that 94% of siblings 12 years and older reported that they were proud of their brother or sister with Down syndrome, and 88% said that they were better persons because of their sibling.

³⁸ Brian G. Skotko, *Prenatally Diagnosed Down Syndrome: Mothers Who Continued Their Pregnancies Evaluate Their Health Care Providers*, 192 AM. J. OF OBSTETRICS & GYNECOLOGY 670, 670–71 (Nov. 2004).

³⁹ Brian G. Skotko et al., *Self-Perceptions from People with Down Syndrome*, AM. J. MED. GENETICS 2360, 2360, 2364 (Oct. 2011).

⁴⁰ Press Release, Children’s Hospital Boston, *Parents Siblings and People With Down Syndrome Report Positive Experiences* (Sept. 23, 2011), available at <https://medicalxpress.com/news/2011-09-parents-siblings-people-syndrome-positive.html>.

Children born with Down syndrome can achieve great things. Karen Gaffney, for example, earned an Associates of Science degree, swam the English Channel on a six-person relay team, and swam nine miles across Lake Tahoe.⁴¹ She leads a nonprofit advocacy foundation with a simple message: “Down Syndrome Is a Life Meant to Be Saved!”⁴² Others born with Down syndrome have performed at Carnegie Hall, launched a fashion label, and opened a restaurant.⁴³

Arizona’s pre-*Roe* abortion ban and subsequent eugenic abortion ban advance the State’s compelling interest in “preventing abortion from becoming a tool of modern-day eugenics.” *Box*, 139 S. Ct. at 1783 (Thomas, J., concurring). The order below, rewriting Arizona’s abortion statutes to allow abortion up to 15 weeks, facilitates the eradication of human beings who enrich our communities and foster compassion for vulnerable populations.

⁴¹ Karen Gaffney Foundation, *Karen’s Story*, <https://karengaffneyfoundation.org/karens-story/> (last visited Mar. 23, 2023).

⁴² *Id.*

⁴³ Zoe Ettinger, *13 People with Down Syndrome Who Are Breaking Barriers in Entertainment, Athletics, Fashion, and More*, INSIDER (Mar. 10, 2020), <https://www.insider.com/people-with-down-syndrome-breaking-barriers>.

CONCLUSION

The Court should reverse the order below.

Dated this September 29, 2023.

/s/ Timothy D. Ducar

Timothy D. Ducar (15037)
LAW OFFICES OF
TIMOTHY D. DUCAR, PLC
9280 E. Raintree Dr., Ste. 104
Scottsdale, AZ, 85260-7309
(480) 502-2119
tducar@azlawyers.com

Mathew D. Staver* (P237986)
LIBERTY COUNSEL
PO Box 540774
Orlando, FL 32854
(407) 875-1776
court@LC.org
rgannam@LC.org

Attorneys for Amici Curiae

** Admitted Pro Hac Vice*

CERTIFICATE OF COMPLIANCE

1. This certificate of compliance concerns an amicus curiae brief, and is submitted under Rule 16(b)(4).

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/s/ Timothy D. Ducar
Timothy D. Ducar
Attorney for Amici Curiae