

ORIGINAL



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE,
on behalf of itself and its members; TULSA WOMEN'S
REPRODUCTIVE CLINIC, LLC, on behalf of itself, its
physicians, its staff, and its patients; ALAN BRAID,
M.D., on behalf of himself and his patients;
COMPREHENSIVE HEALTH OF PLANNED
PARENTHOOD GREAT PLAINS, INC., on behalf of
itself, its physicians, its staff, and its patients; and
PLANNED PARENTHOOD OF ARKANSAS &
EASTERN OKLAHOMA, on behalf of itself, its
physicians, its staff and its patients,

Petitioners,

v.

JOHN O'CONNOR, in his official capacity as Attorney
General for the State of Oklahoma; DAVID PRATER, in
his official capacity as District Attorney for Oklahoma
County; STEVE KUNZWEILER, in his official capacity
as District Attorney for Tulsa County; LYLE KELSEY,
in his official capacity as Executive Director of the
Oklahoma State Board of Medical Licensure and
Supervision; KATIE TEMPLETON, in her official
capacity as President of the Oklahoma State Board of
Osteopathic Examiners; and KEITH REED, in his official
capacity as the Commissioner of the Oklahoma State
Board of Health,

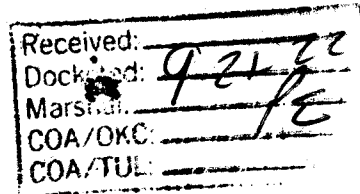
Respondents.

FILED
SUPREME COURT
STATE OF OKLAHOMA

SEP 21 2022

JOHN D. HADDEN
CLERK

CASE NO. 120543



BRIEF OF AMICI CURIAE THE REV. BARBARA PROSE, REV. DR. DIANA K.
DAVIES, REV. T. SHERI DICKERSON, RABBI MARC BOONE FITZGERMAN,
RABBI VERED HARRIS, RABBI ABBY JACOBSON, RABBI DAN KAIMAN, REV.
DR. MARLIN LAVANHAR, AND REV. DR. LORI WALKE

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STATEMENT OF INTEREST

Amici curiae are leaders of churches, synagogues, and other communities of faith across the state of Oklahoma. Lead amicus Rev. Barbara Prose is Executive Minister at All Souls Unitarian Church in Tulsa, and has served as a minister to that congregation for a dozen years. Rev. Dr. Diana K. Davies is Lead Minister at the First Unitarian Church of Oklahoma City, and has served that congregation since August 2018. Rev. T. Sheri Dickerson is Associate Pastor at East Sixth Street Christian Church, where she has served since 2021. Rabbi Marc Boone Fitzerman and Rabbi Dan Kaiman are Rabbis at Congregation B'nai Emunah in Tulsa, where they have served since 1985 and 2013. Rabbi Vered Harris is Rabbi at Temple B'nai Israel in Oklahoma City, where she has served as Rabbi for ten years. Rabbi Abby Jacobson is Rabbi at Emanuel Synagogue in Oklahoma City, where she has served as Rabbi for thirteen years. Rev. Dr. Marlin Lavanhar serves as Senior Minister at All Souls Unitarian Church in Tulsa, where he has served for 22 years. Rev. Dr. Lori Walke is Senior Minister at Mayflower Congregational United Church of Christ in Oklahoma City where she has served for ten years. Through their work, many *amici* have provided counseling to individuals concerning healthcare decisions, including around issues of reproductive rights and abortion.

Though they come from diverse religious traditions, *amici* share a belief in an individual's moral authority to terminate a pregnancy in consultation with their faith and values, consistent with the guarantees of liberty enshrined in the Oklahoma Constitution.

ARGUMENT

The inherent rights protected by the Oklahoma Constitution include an individual's fundamental rights to bodily autonomy and integrity. Okla. Const. Art. II, § 2; *see also In re*

K.K.B., 1980 OK 7, ¶¶ 8, 11-12, 609 P.2d 747, 749–50. As this Court has recognized, those rights may be broader than the interests protected by the U.S. Constitution. *See Prescott v. Oklahoma Capitol Preservation Comm.*, 2015 OK 54, ¶ 6, 373 P.3d 1032, 1034. Central to those rights is the freedom for individuals to make health care decisions—including about whether to terminate a pregnancy—according to their own religious beliefs. *Cf. Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992) (“At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe and of the mystery of human life.”). The criminal abortion ban passed earlier this year, Senate Bill 612, codified at 63 Okla. Stat. Ann. § 1-731.3, as well as the 1910 criminal abortion ban, codified at 21 Okla. Stat. Ann. § 861 (together the “Bans”), deny Oklahomans the ability to do so. The Bans expressly adopt the view that human life begins at conception, *see* 63 Okla. Stat. Ann. § 1-730(A)(4) (defining “unborn child” to mean “the unborn offspring of human beings from the moment of conception . . . including the human conceptus, zygote, morula, blastocyst, embryo and fetus”), and Oklahoma has justified these measures as necessary to protect the unborn, *see* Brief in Objection to Petitioners’ Emergency Motion at 1 (arguing criminal abortion ban prevents “kill[ing] a whole, separate, unique, and living human being in the womb”).

In contrast to the view adopted by the Bans, religious traditions espouse myriad views on when a human life begins and the process through which that occurs. Numerous religious traditions posit that life begins at some point during pregnancy or even after a child has been born, while others decline to identify a precise moment when life begins. Consistent with these beliefs, many religions teach that abortion is morally permissible or even required under certain

circumstances and recognize the moral right of each individual to make decisions about their pregnancy in accordance with their own faith, beliefs, and conscience.

The Bans are of significant concern to *amici* because they fail to respect the diversity of religious views regarding when and how life begins and the moral implications of terminating a pregnancy, and because they threaten the ability of thousands of Oklahomans to make decisions about reproductive health care in accordance with their own beliefs.

I. Religious Traditions Do Not Share a Uniform View of When Life Begins

There is a diversity of views both within and across religions concerning the nature and timing of the beginning of life. For example, the United Church of Christ acknowledges that “there are many religious and theological perspectives on when life and personhood begin,” and affirms that “public policy must honor this rich religious diversity.”¹ The Presbyterian Church U.S.A. and the Evangelical Lutheran Church in America have likewise noted the range of views on this question and have declined to identify a particular moment as the beginning of life.² Catholic teachings on this question have also varied dramatically.³ At various points in time, Catholic scholars and the Catholic Church have espoused the view that ensoulment

¹ See United Church of Christ, *Statement on Reproductive Health and Justice*, https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf.

² See Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>; Evangelical Lutheran Church in America, *Social Statement on Abortion* at 1, 3 n.2 (1991), <http://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf>.

³ See Vatican Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion*, at n.19 (Nov. 18, 1974), https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html.

occurs at conception;⁴ at the time of quickening;⁵ at or near the time of childbirth;⁶ or at some moment during fetal development that is impossible to pinpoint.⁷ Indeed, in the view of some scholars, the Catholic Church has *never* defined the moment when life begins, and therefore, as a matter of Catholic dogma, “[t]here is no defined moment of ensoulment.”⁸ Similarly, the Church of Jesus Christ of Latter-Day Saints (the “LDS Church”) has never taken an official position on when a fetus acquires personhood.⁹

In the Jewish tradition, the creation of a human life is generally viewed as something that happens gradually over time.¹⁰ The majority of Jews do not believe that life begins at conception; rather, Jewish “tradition holds that we enter life in stages and leave in stages.”¹¹ The Talmud teaches that the fetus is “mere fluid” up to the point of 40 days gestation, *see* Yevamot 69b,¹² and following this period, the fetus is considered a physical part of the pregnant woman’s body, *see* Gittin 23b, not yet having a life of its own or independent rights.¹³

⁴ *See id.*; Frank K. Flinn, *Encyclopedia of Catholicism* 4 (2007); *see also* Elissa Strauss, *When Does Life Begin? It’s Not So Simple*, Slate (April 4, 2017), <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html> (hereinafter “Strauss, *When Does Life Begin?*”).

⁵ Strauss, *When Does Life Begin?*

⁶ *See* St. Thomas Aquinas, *Summa Contra Gentiles* 2.88-89; *Summa Theologiae* 1.118; *see also* Gary Wills, *Abortion Isn’t a Religious Issue*, The Los Angeles Times (November 4, 2007).

⁷ *See Roe v. Wade*, 410 U.S. 113, 134 n.22 (1973) (citing Augustine, *De Origine Animae* 4.4).

⁸ Strauss, *When Does Life Begin?* (quoting Daniel Sulmasy, Catholic bioethicist and director of the Program on Medicine and Religion at the University of Chicago).

⁹ Peggy Fletcher-Stack, *Surprise! The LDS Church can be seen as more ‘pro-choice’ than ‘pro-life’ on abortion. Here’s why*, The Salt Lake Tribune (June 1, 2019), <https://www.sltrib.com/religion/2019/06/01/surprise-lds-church-can/>; *see also* *The Latter-day Saints Tradition: Religious Beliefs and Healthcare Decisions* (Deborah Abbott, ed.) at 10 (2002), https://www.advocatehealth.com/assets/documents/faith/latterday_saints_tradition.pdf.

¹⁰ *See* Strauss, *When Does Life Begin?*

¹¹ *See id.*; National Council of Jewish Women, *Abortion and Jewish Values Toolkit* at 16 (2020), https://www.ncjw.org/wp-content/uploads/2020/05/NCJW_ReproductiveGuide_Final.pdf (hereinafter, “NCJW, *Abortion and Jewish Values*”).

¹² *See* <https://www.sefaria.org/sheets/234926.8?lang=bi>. Note that this is understood as 40 days from conception, or approximately 7-8 weeks gestation.

¹³ *See id.*; *see also* Strauss, *When Does Life Begin?*; NCJW, *Abortion and Jewish Values* at 16.

It is not until the moment of birth when the head has emerged and the baby has breathed outside air that it is considered a living being, *see* Mishnah Ohalot 7:6.¹⁴

The Bans fail to account for the diverse religious views of the people of Oklahoma; instead they impose a particular viewpoint on those who may not share the same faith and beliefs. Being forced to carry a pregnancy to term in contravention of one's own beliefs violates the fundamental liberty interests protected by the Oklahoma Constitution.

II. Religious Traditions Affirm Individuals' Moral Right to Decide Whether and Under What Circumstances to Terminate a Pregnancy

A broad range of religious traditions recognize and support the moral right of individuals to make their own decisions about pregnancy in accordance with their faith.

Numerous Protestant denominations expressly affirm that every pregnant person is a moral agent with the capacity and ultimate right to determine whether an abortion is justified, consistent with their faith. For instance, the United Church of Christ embraces the view that "[e]very woman must have the freedom of choice to follow her personal religious and moral convictions concerning the completion or termination of her pregnancy."¹⁵ Similarly, the Presbyterian Church asserts that "[h]umans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a pregnancy."¹⁶ The Episcopal Church has adopted the position that the "decision to terminate a pregnancy . . . properly belongs to the couple, in consultation with their physician and the Church."¹⁷

¹⁴ See <https://www.sefaria.org/sheets/234926.8?lang=bi>; NCJW, *Abortion and Jewish Values* at 16; Strauss, *When Does Life Begin?*; Rashi on Sanhedrin 72b:14.

¹⁵ Thirteenth General Synod of the United Church of Christ, *Resolution on Freedom of Choice*, 81-GS-60 (1981) at 10, <https://www.uccfiles.com/pdf/GS-Resolutions-Freedom-of-Choice.pdf>.

¹⁶ Minutes of the 217th General Assembly of the Presbyterian Church (U.S.A.) at 905 (2006).

¹⁷ Episcopal Church, *Standing Commission on Human Affairs and Health*, Resolution #A087 at 153 (1988), https://www.episcopalarchives.org/e-archives/gc_reports/reports/1988/bb_1988-R016.pdf.

Likewise, the Disciples of Christ has resolved that “the place of decision making on abortion [is] not with public legislators, but with the individuals involved with the pregnancy . . . on the basis of ethical and moral grounds.”¹⁸ And the Unitarian Universalist Association asserts that “the personal right to choose in regard to contraception and abortion” is an important aspect of the “right of individual conscience” and the “inherent worth and dignity of every person.”¹⁹ Many other Protestant denominations embrace similar views.²⁰

In addition, a number of Protestant denominations teach that deciding to terminate a pregnancy is a morally permissible choice consistent with Christian ethics, at least in certain circumstances, and that the law should not preclude a pregnant person from making the ultimate determination to obtain an abortion according to their own faith. For instance, the Presbyterian Church affirms that “[t]he considered decision of a woman to terminate a pregnancy can be morally acceptable,” and “therefore should not be restricted by law.”²¹ Similarly, the Evangelical Lutheran Church in America affirms that “there can be sound reasons for ending a pregnancy through induced abortion,” and that there are situations where obtaining an abortion may be a “morally responsible” choice.²² And the Episcopal Church of

¹⁸ Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. on Labor and Human Resources, 101st Cong. 237 (1990) (testimony of John O. Humbert, General Minister and President, Christian Church (Disciples of Christ) in the USA and Canada).

¹⁹ Unitarian Universalist Association, *General Resolution on the Right to Choose* (1987), <https://www.uua.org/action/statements/right-choose>.

²⁰ See, e.g., American Baptist Association, *Resolution Concerning Abortion and Ministry in the Local Church* (1987), <http://www.abc-usa.org/wp-content/uploads/2012/06/Abortion-and-Ministry-in-the-Local-Church.pdf>; Brief of Amici Curiae Religious Coalition for Reproductive Choice, et al., *Stenberg v. Carhart*, No. 99-380 (Mar. 29, 2000); Metropolitan Community Churches, *Statement of Faith on Women's Reproductive Health, Rights, and Justice* (March 20, 2013), <https://www.mcccchurch.org/statement-of-faith-on-womens-reproductive-health-rights-and-justice/>.

²¹ Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>.

²² Evangelical Lutheran Church in America, *Social Statement on Abortion* (1991), at 6-10, <https://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf>.

America recognizes “the moral option for termination of [a] pregnancy in specific instances” and expresses a “deep conviction” that any legislation surrounding abortion “must take special care to see that individual conscience is respected,”²³ and must not “abridge[] the right of a woman to reach an informed decision about the termination of pregnancy” or limit her access “to safe means of acting on her decision.”²⁴ Other Protestant denominations, including the United Church of Christ, the Alliance of Baptists, and the Disciples of Christ, espouse similar views.²⁵ There are also diverse views within the Catholic Church on the moral propriety of obtaining an abortion. While the official stance of the Catholic Church is that abortion is impermissible,²⁶ the majority of American Catholics believe that abortion can be a morally acceptable choice and should be legal in all or most cases.²⁷

Traditional Jewish teachings view abortion as permissible and even as required when necessary to safeguard the well-being of the mother, *see* Mishnah Ohalot 7:6,²⁸ and Reform,

²³ Episcopal Church, *Standing Commission on Human Affairs and Health*, Resolution #A087 at 153 (1988) https://www.episcopalarchives.org/e-archives/gc_reports/reports/1988/bb_1988-R016.pdf.

²⁴ General Convention, *Journal of the General Convention of...The Episcopal Church*, Indianapolis, 1994 (New York: General Convention, 1995), pp. 323-25, https://www.episcopalarchives.org/cgi-bin/acts/acts_generate_pdf.pl?resolution=1994-A054.

²⁵ *See* Thirteenth General Synod of the United Church of Christ, *Resolution on Freedom of Choice* 81-GS-60 (1981), <https://www.uccfiles.com/pdf/GS-Resolutions-Freedom-of-Choice.pdf>; Alliance of Baptists, *A Statement on Lifelong Sexual Education, Sexual & Reproductive Rights, and Opposing Sexual Justice and Violence* (2012), <http://www.sitemason.com/files/kuGj7y/StatementonLifelongSexualEducation.pdf>; Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. On Labor and Human Resources, 101st Cong. 237 (1990) (testimony of John O. Humbert, General Minister and President, Christian Church (Disciples of Christ) in the USA and Canada) (citing General Assembly Resolutions of the Christian Church (Disciples of Christ) Resolution S9854 (1989) and 7524 (1975)).

²⁶ Vatican Congregation for the Doctrine of the Faith, *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation*, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html.

²⁷ Belden Russonello Strategists, *2016 Survey of Catholic Likely Voters*, at 5 (October 2016) <http://www.rifuture.org/wp-content/uploads/2016-Catholic-Voter-Poll.pdf>; Dalia Fahmy, *8 Key Findings about Catholics and Abortion*, Pew Research Center (October 20, 2020), <https://www.pewresearch.org/fact-tank/2020/10/20/8-key-findings-about-catholics-and-abortion/>.

²⁸ *See* Strauss, *When Does Life Begin?*; NCJW, *Abortion and Jewish Values* at 16; Rashi on Sanhedrin 72b:14, <https://www.sefaria.org/sheets/234926.8?lang=bi>.

Reconstructionist, and Conservative Judaism all adopt the view that “women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion.”²⁹ Other major religions likewise teach that abortion is both permissible and moral under certain circumstances and affirm that it is an individual’s decision whether to terminate a pregnancy, consistent with their faith and values.³⁰

While the view adopted by the Bans reflects the stance of certain religious traditions, it is at odds with the teachings of other faiths. The Bans use this distinct, faith-based view as the predicate for their sweeping prohibitions on virtually all abortions from the moment of conception. In doing so, the Bans disregard the diversity of religious viewpoints on when life begins and divest Oklahomans of their capacity to make personal decisions about abortion according to their own consciences and moral and religious beliefs, in contravention of the protections for inherent rights embodied the Oklahoma Constitution.

III. Religious Traditions Affirm the Importance of Ensuring Reproductive Choice for Pregnant Persons in Marginalized Communities

A broad array of religions embrace as a central tenet of their faith the importance of serving and supporting vulnerable and marginalized communities. Many of these traditions teach that people of faith have a moral obligation to protect, succor, uplift, and advocate on behalf of those who are poor and low-income and those who have historically been disenfranchised and discriminated against. And numerous religions expressly affirm that this

²⁹ 144 Cong. Rec. S10491 (daily ed. Sept. 17, 1998) (quoting Letter of 729 Rabbis in Support of President Clinton’s Veto of H.R. 1122 (Sept. 10, 1998)).

³⁰ See, e.g., Mohammad A. Albar, *Induced Abortion From An Islamic Perspective: Is It Criminal Or Just Elective*, 8 J. Fam. Cmty. Med. 25, 29-32 (2001); Strauss, *When Does Life Begin?*; Buddhist Churches of America Social Issues Committee, *A Shin Buddhist Stance on Abortion* at 6, Buddhist Peace Fellowship Newsletter 6 (1984); *Hindus in America Speak Out On Abortion Issues*, Hinduism Today, (Sept. 1985), <https://www.hinduismtoday.com/magazine/september-1985/1985-09-hindus-in-america-speak-out-on-abortion-issues/>

charge includes ensuring that individuals from these communities have the same access to health care and the same freedom to make decisions concerning their reproductive health.

For example, the United Church of Christ has adopted resolutions supporting measures to ensure that “women with limited financial means” are able to “exercise [their] legal right to the full range of reproductive health services,” and affirming that “[w]hat is legally available to women must be accessible to all women.”³¹ Similarly, the Unitarian Universalist Association has affirmed its support for reproductive justice as an extension of its core theological teachings, seeking to ensure “control of personal reproductive decisions” for people of “all genders, sexual orientations, abilities, gender identities, ages, classes, and cultural and racial identities,” “especially the most vulnerable and marginalized,”³² and condemning attempts “to restrict access to birth control and abortion by overriding individual decisions of conscience” which “often result in depriving poor women of their right to medical care.”³³ And many believers from the Jewish tradition expressly link the Jewish teaching of *tzedek tzedek tirdof*—i.e., to pursue justice for all—to the obligation to advocate for the reproductive rights of *all* persons as a matter integral to religious liberty.³⁴

The Bans will have a particularly devastating impact on vulnerable and low-income communities. The majority of abortion patients nationwide are either poor or low-income,³⁵

³¹ United Church of Christ, *Statement on Reproductive Health and Justice*, https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf; see also Connecticut Conference of the U.C.C., *Resolution: Freedom of Choice Concerning Abortion* (1971), http://www.ctucc.org/files/tables/content/7726678/fields/files/327cad155b9c43dd8a95e03e4179fbe8/1971_freedom_of_choice.pdf.

³² Unitarian Universalist Association, *Statement of Conscience on Reproductive Justice*, <https://www.uua.org/action/statements/reproductive-justice>.

³³ Unitarian Universalist Association, *General Resolution on the Right to Choose* (1987), <https://www.uua.org/action/statements/right-choose>.

³⁴ See NCJW, *Abortion and Jewish Values* at 13-14.

³⁵ See Guttmacher Institute, *Fact Sheet: Induced Abortion in the United States*, at 1 (2019), https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf.

and Oklahoma has one of the highest poverty rates in the country.³⁶ Oklahoma also “ranks among the states with the worst rates” of maternal deaths in the United States, OCRJ Aff. ¶ 10,³⁷ and maternal mortality in Oklahoma has *worsened* in recent years, even as childbearing has declined.³⁸ Maternal mortality rates are significantly higher among Black and Indigenous women. *See* OCRJ Aff. ¶ 11. The Bans thus place a disproportionate burden on the most vulnerable Oklahomans, and effectively deny them the freedom to make determinations about their reproductive health and family formation in accordance with their own beliefs.

CONCLUSION

Being forced to carry a pregnancy to term against their wishes is an affront to Oklahomans’ moral authority to make decisions about their own lives and bodies in keeping with their religious faith and values. By prohibiting and indeed criminalizing abortions, the Bans preclude people of faith throughout Oklahoma from making that choice in accordance with their own moral, spiritual, and religious beliefs.

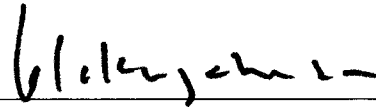
³⁶ *See* Oklahoma State Department of Health, *Maternal Mortality Review*, <https://oklahoma.gov/health/health-education/children---family-health/maternal-and-child-health-service/perinatal-and-reproductive-health-/maternal-mortality-review.html#:~:text=According%20to%20the%20CDC%2C%20Oklahoma,deaths%20per%20100%2C000%20live%20births>.

³⁷ Affidavit of Priya Desai (attached as Exhibit 2 to Petitioners’ Appendix (“OCRJ Aff.”)).

³⁸ *See* Oklahoma State Department of Health, *Oklahoma Maternal Health, Morbidity and Mortality Annual Report 2021*, at 5, <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/family-health/maternal-and-child-health/maternal-mortality/maternal-morbidity-mortality-annual-report-2021.pdf>.

Dated this 21st day of September, 2022.

Respectfully Submitted,



J. Blake Johnson, OBA No. 32433
Wyatt McGuire, OBA No. 34720
OVERMAN LEGAL GROUP
809 NW 36th St.
Oklahoma City, OK 73118
Phone: (405) 605-6718
blakejohnson@overmanlegal.com
wyattmcguire@overmanlegal.com

Eugene M. Gelernter*
PATTERSON BELKNAP WEBB
& TYLER LLP
1133 Avenue of the Americas
New York, NY 10036-6710
Phone: (212) 336-2000
emgelernter@pbwt.com

Counsel for Amici Curiae

*Out-of-State Attorney Application Pending

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing was mailed the 21st day of September, 2022, by depositing it in the U.S. Mail, postage prepaid, to the following:

J. Blake Patton, Esquire
WALDING & PATTON, PLLC
518 Colcord Drive, Suite 100
Oklahoma City, OK 73102
Attorneys for Petitioners

Zach West, Esquire
Audrey A. Weaver, Esquire
Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Attorneys for Respondents

Linda C. Goldstein, Esquire
Samantha DeRuvo, Esquire
Jenna Newmark, Esquire
DECHERT, LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
*Attorneys for Petitioners, Oklahoma Call
For Reproductive Justice, Tulsa
Women's Reproductive Clinic, LLC, and
Alan Braid, M.D.*

Jonathan Tam, Esquire
DECHERT, LLP
One Bush Street, Suite 1600
San Francisco, CA 94104
*Attorneys for Petitioners, Oklahoma Call
For Reproductive Justice, Tulsa
Women's Reproductive Clinic, LLC, and
Alan Braid, M.D.*

Jerome A. Hoffman Esquire
Rachel Rosenberg, Esquire
DECHERT, LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
*Attorneys for Petitioners, Oklahoma Call
For Reproductive Justice,
Tulsa Women's Reproductive Clinic,
LLC, and Alan Braid, M.D.*

Rabia Muqaddam, Esquire
Center for Reproductive Rights
199 Water Street
22nd Floor
New York, NY 10038
*Attorneys for Petitioners, Oklahoma Call
For Reproductive Justice,
Tulsa Women's Reproductive Clinic,
LLC, and Alan Braid, M.D.*

Camila Vega, Esquire
Planned Parenthood Federation of America
123 Williams St., 9th Floor
New York, NY 10038
*Attorneys for Petitioners, Comprehensive
Health of Planned Parenthood Great
Plains, Inc. and Planned Parenthood of
Arkansas & Eastern Oklahoma*

Diana Salgado, Esquire
Planned Parenthood Federation of America
1110 Vermont Ave NW, Suite 300
Washington, DC 20005
*Attorneys for Petitioners, Comprehensive
Health of Planned Parenthood Great
Plains, Inc. and Planned Parenthood of
Arkansas & Eastern Oklahoma*

Kimberly A. Parker, Esquire
Nathanial W. Reisinger, Esquire
WILMER CUTLER PICKERING
HALE AND DORR, LLP
1875 Pennsylvania Avenue NW
Washington D.C. 20006
*Counsel for Amici Curiae, American
College of Obstetricians and
Gynecologists, American Medical
Association, and Society for Maternal-
Fetal Medicine*

Molly A. Meegan, Esquire
American College of Obstetricians and
Gynecologists
406 12th Street, SW
Washington DC 20024
*Counsel for Amicus Curiae, American
College of Obstetricians and
Gynecologists*

Leah R. Bruno, Esquire
DENTONS US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606
*Counsel for Amici Curiae, Erika Lucas
and Vest Her, Inc.*

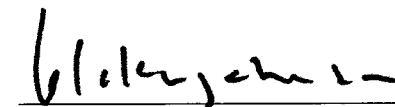
Benjamin P. Sisney, Esquire
American Center for Law & Justice
201 Maryland Avenue, NE
Washington D.C. 20002
*Counsel for Amici Curiae,
Members of OK Senate and OK House*

Lucas L. Fortier, Esquire
WILMER CUTLER PICKERING
HALE AND DORR, LLP
60 State Street
Boston, MA
*Counsel for Amici Curiae, American
College of Obstetricians and
Gynecologists, American Medical
Association, and Society for Maternal-
Fetal Medicine*

Eugene M Gelernter, Esquire
PATTERSON BELKNAP WEBB & TYLER, LLP
1133 Avenue of the Americas
New York, NY 10036-6710
*Counsel for Amicus Curiae, Rev. Barbara
Prose and Oklahoma Faith Leaders*

Edward L White, III, Esquire
American Center for Law and Justice
3001 Plymouth Road, Suite 203
Ann Arbor, MI 48105
*Counsel for Amici Curiae,
Members of OK Senate and OK House*

Erin Donovan, Esquire
ERIN DONOVAN & ASSOCIATES
1616 South Main Street
Tulsa, OK 74119
*Counsel for Amici Curiae, Professor
Carter Snead, The Roman Catholic
Archdiocese of Oklahoma City
and Diocese of Tulsa*



For the Firm