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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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SUPREME COURT
STATE OF OKLAHOMA**

SEP 21 2022

Supreme Court Case No. 120543

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OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE; TULSA WOMEN'S
REPRODUCTIVE CLINIC, LLC; ALAN BRAID, M.D.; COMPREHENSIVE
HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, INC.; and
PLANNED PARENTHOOD OF ARKANSAS & EASTERN OKLAHOMA,

Petitioners

v.

JOHN O'CONNOR; DAVID PRATER; STEVE KUNZWEILER; LYLE
KELSEY; KATIE TEMPLETON; and KEITH REED,

Respondents.

**BRIEF IN SUPPORT OF PETITIONERS' POSITION BY *AMICUS*
CURIAE ERIKA LUCAS, VEST HER AND OKLAHOMA BUSINESSES
AND BUSINESS LEADERS**

Received: 9-21-22
Docketed: _____
Marshal: _____
COA/OKC: CD
COA/TUL: _____

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INTRODUCTION

As employees, managers, executives, and customers, women are essential to building thriving businesses and sustaining a healthy economy. The ability of women to participate and succeed in business depends on access to abortion—a crucial component of healthcare that improves womens’ control over their education, careers, and lives. For businesses, a ban on abortion will result in stressed and distracted employees, absenteeism, higher rates of turnover and overall decreased productivity. At the same time, businesses and the economy benefit when women have meaningful access to reproductive healthcare, such that working women can choose whether and when to have children. For these reasons, *amici curiae* urge this Court to hold Okla. Stat. tit. 21, § 861 (the “1910 Ban”) and S.B. 612 (the “2022 Ban”; collectively “the Bans”) in violation of the Oklahoma Constitution.

ARGUMENT

I. ACCESS TO ABORTION HAS ALLOWED WOMEN TO PLAY AN INCREASINGLY CRITICAL ECONOMIC ROLE.

Many studies show that women have made significant employment and educational gains when they are able to determine whether and when to have children.¹ Indeed, “the weight of the evidence across numerous studies... shows significant employment and educational gains have followed directly from women’s ability to better time their entry into

¹ E.g. Adam Sonfield, et. al., *The Social and Economic Benefits of Women’s Ability to Determine Whether and When to Have Children*, Guttmacher Inst. (Mar. 2013), <https://www.guttmacher.org/pubs/social-economic-benefits.pdf> (“Sonfield”); Nat’l Women’s Law Ctr., *Fact Sheet: Reproductive Health is Part of the Economic Health of Women and Their Families* (May 2015), <https://nwlc.org/wp-content/uploads/2015/05/Reproductive-Health-is-Part-of-the-Economic-Health-of-Women-2.19.166.pdf> (“NWLC”); Kelly Jones, *At a Crossroads: The impact of abortion access on future economic outcomes* (Am. Univ. Working Paper, 2021), <https://doi.org/10.17606/0Q51-0R11> (“Jones”).

parenthood[.]”²

A. Abortion Access Enhances Women’s Education and Workforce Participation and the Well-Being of Women and Families.

The ability to time pregnancy and birth assists women at all stages of their career paths, beginning with education. Women who do not have children when they are teenagers, on average obtain more education.³ Recent studies have demonstrated that access to abortion increases rates of high school graduation and college matriculation and graduation, with black women seeing even larger increases in educational achievement than average.⁴ Today, women earn a majority of all college and postgraduate degrees—61% of associate’s degrees, 58% of bachelor’s degrees, 64% of master’s degrees and 56% of Ph.D.s.⁵ Women’s educational advancement is possible, in part, due to the ability of women to exercise reproductive control.

The ability to engage in family planning also includes career-path considerations. One study of Fortune 500 companies reported that 86% of professional women agreed that reproductive autonomy is important to their careers.⁶ Women now comprise nearly 50% of the

² Kelleen Kay, et. al., *The Nat’l Campaign to Prevent Teen and Unplanned Pregnancy, The Benefits of Birth Control in America: Getting the Facts Straight* (2014), <https://powertodecide.org/sites/default/files/resources/primary-download/benefits-of-birth-control-in-america.pdf> (“Kay”).

³ Sonfield, *supra* note 1, at 9; Ana Bernstein and Lindsey Reichlin Cruse, Inst. For Women’s Pol’y Res., *Improving Success in Higher Education through Increased Access to Reproductive Health Services 2* (Jan. 2020), <https://iwpr.org/wp-content/uploads/2020/07/CERH-Higher-Ed-brief.pdf>.

⁴ Jones, *supra* note 1, at 6. These increases in education as a result of access to abortion are much larger than any increases due to access to contraception alone. *Id.*

⁵ Nat’l Ctr. For Educ., *Statistics, Degrees Conferred by Race/Ethnicity and Sex* (last visited July 22, 2022), <https://nces.ed.gov/fastfacts/display.asp?id=72>.

⁶ *Hidden Value: The Business Case for Reproductive Health*, Rhia Ventures 18 (June 2022), <https://rhiaventures.org/wp-content/uploads/2022/08/Hidden-Value-The-Business-Case-for-Reproductive-Health-2022.pdf> (“*Hidden Value*”) (“Recent polling reveals that 83% of women of reproductive age say they would want their employers’ insurance to cover...abortion.”). Recent studies indicate that full access to abortion has been found to increase the full time working status of women. *See* Jones, *supra* note 1, at 6.

national workforce.⁷ The increased role of women in the workforce since 1970 accounts for 25% of modern GDP.⁸ Not only are women valuable employees, but Fortune 500 companies with women serving on their boards of directors outperform companies without female directors.⁹ Plainly, businesses thrive with women's active participation and leadership.

Women also are majority owners of approximately 11.6 million businesses, accounting for 37.6% of all businesses nationally.¹⁰ These women-owned businesses employ 10 million people, representing approximately 20% of all employer firms.¹¹ Between 2015 and 2019, women-owned businesses in Oklahoma grew by nearly 10%.¹²

Due to their increased participation in the economy, women are better able to provide for themselves and their families. Women who postpone parenthood until their late 20s or 30s increase their short-term and long-term earning power.¹³ Women see “a 3% increase in weekly wages and a 9% increase in career earnings *for each year of delayed childbearing*, even after accounting for differences in other background characteristics that could affect women's

⁷ Bureau of Lab. Stat., *The Employment Situation – June 2022* (last visited July 22, 2022), https://www.bls.gov/news.release/pdf/empsit.pdf?mod=article_inline&mod=article_inline.

⁸ Joanna Barsh and Lareina Yee, McKinsey & Co., *Special Report: Unlocking the Full Potential of Women in the US Economy* (Apr. 2011), <https://www.mckinsey.com/capabilities/people-and-organizational-performance/our-insights/unlocking-the-full-potential-of-women>.

⁹ Nat'l Women's Business Council, *Reasons to Invest in Women Entrepreneurs*, <https://www.nawrb.com/archives/1384>.

¹⁰ Nat'l Women's Business Council, *Annual Report 2021*, https://cdn.www.nwbc.gov/wp-content/uploads/2022/01/28162608/202201_NWBC_Annual-Report-508.pdf.

¹¹ *Id.* Nationally, women-owned businesses contribute \$3.2 trillion and generate 16 million jobs. American Express, *The 2019 State of Women-Owned Businesses Report*, <http://about.americanexpress.com/sites/americanexpress.newshq.businesswire.com>.

¹² Dr. Laura J. Ahlstrom and Malabi Dass, *Status of Women in Oklahoma*, (April 2022), <https://static1.squarespace.com/static/545815dce4b0d75692c341a8/t/62693a7d43c97453461b96ec/1651063421480/Status+of+Women+in+Oklahoma+Report.pdf> (“Ahlstrom and Dass”).

¹³ Sonfield, *supra* note 1, at 15, 17.

earnings.”¹⁴ With control of their reproductive health, the prevalence of breadwinning mothers (earning at least half of total household income) has increased, jumping to 41% in 2019.¹⁵

It is no surprise that the economy has grown considerably since women gained meaningful access to contraception and safe and legal abortions.¹⁶ With these victories, women won the freedom to pursue academic and professional pursuits, and their resulting contributions to the economy have been undeniable. “In states with strong abortion protections and coverage, women have higher levels of education, lower levels of poverty, and experience a higher ratio of female-to-male earnings.”¹⁷

B. Abortion Bans Negatively Impact Educational and Economic Outcomes for Women and Children.

Women who bear children earlier in life are less likely to obtain a college degree, and for women already enrolled in college, those with children are less likely to graduate.¹⁸ Obstacles to education lower the likelihood of a woman obtaining a professional or managerial role and securing higher earning potential.¹⁹ When women are affected by unintended pregnancy, their educational goals may be delayed or derailed in their entirety.²⁰ Either scenario diminishes the career advancement opportunities.

Initially, if local abortion restrictions simply cause a woman to seek the procedure in

¹⁴ Kay, *supra* note 2, at 30.

¹⁵ Sarah Jane Glynn, *Breadwinning Mothers Are Critical to Families' Economic Security*, Ctr. for Am. Progress (Mar. 2021), <https://www.americanprogress.org/article/breadwinning-mothers-critical-familys-economic-security/>.

¹⁶ Kay, *supra* note 2, at 3, 6; NWLC, *supra* note 1.

¹⁷ *Hidden Value*, *supra* note 6, at 17.

¹⁸ Jones, *supra* note 1, at 2.

¹⁹ *Id.* Being deprived of the opportunity to earn a college degree can cost a woman \$1.286 million in lower earnings over her lifetime. *Id.*

²⁰ Sonfield, *supra* note 1.

another state, the cost of the delayed abortion is often higher.²¹ Complications accessing abortion can also result in psychological and emotional stress that has adverse effects on a woman's productivity and financial well-being. Women who are denied wanted abortions also face potential lost wages as well as the additional medical expenses associated with prenatal care, birth, and postpartum recovery. Women who give birth often endure decreased earnings²² and the well-documented gender income gap.²³ This gap is even larger in Oklahoma than it is in other parts of the country.²⁴

Women denied abortions experience other negative economic consequences. For example, women denied abortions are more likely to be unemployed six months later, and experience higher rates of poverty, and are more likely to rely on public assistance four years later.²⁵ Naturally, parenting a child leads causes greater economic pressure.²⁶ Remarkably, however, evidence shows that this increased pressure *does not* correspond to increased

²¹ Sarah Miller et al., *The Economic Consequences of Being Denied an Abortion 1*, Nat'l Bureau of Econ. Res., Working Paper No. 26662 (2022), <https://www.nber.org/papers/w26662> ("Miller").

²² E.g. Henrik Kleven et al., *Child Penalties Across Countries: Evidence and Explanations*, Nat'l Bureau of Econ. Res., Working Paper No. 25524 (2019), https://www.henrikkleven.com/uploads/3/7/3/1/37310663/klevenetal_aea-pp_2019.pdf; Danielle Sandler et al., *Maternal Labor Dynamics: Participation, Earnings, and Employer Changes*, Ctr. for Econ. Stud., Working Paper No. CES 19-33 (2019), <https://www2.census.gov/ces/wp/2019/CES-WP-19-33.pdf>; Jerome Adda et al., *The Career Costs of Children*, 125(2) J. of Pol. Econ., 293–337 (2017), https://www.researchgate.net/publication/228283258_The_Career_Costs_of_Children.

²³ See, e.g., Amanda Barroso and Anna Brown, *Gender pay gap in U.S. held steady in 2020*, Pew Res. Ctr. (May 25, 2021), <https://www.pewresearch.org/fact-tank/2021/05/25/gender-pay-gap-facts/>.

²⁴ Ahlstrom and Dass, *supra* note 12, at 2.

²⁵ Jones, *supra* note 1, at 6.

²⁶ Additional costs associated with raising a child typically exceed \$9,000 in annual expenses for those making under \$59,200 annually (pre-tax). See Mark Lino et al., *Expenditures on Children by Families*, 2015, US Dep't of Agric., Ctr. for Nutrition Pol'y and Promotion, Miscellaneous Report No. 1528-2015 (2017), https://cdn2.hubspot.net/hubfs/10700/blog-files/USDA_Expenditures%20on%20children%20by%20family.pdf?t=1520090048492.

financial support for women with children, whether from the government, family, or partners.²⁷ The financial stress associated with childbirth is also greater for those denied an abortion and forced to carry an unwanted pregnancy to term than it is for mothers in similar socioeconomic circumstances who do not seek an abortion.²⁸

Abortion restrictions can also have detrimental effects on children. For example, children born after legalization of abortion live in better economic conditions than those born prior to its legalization, with those born after being less likely to live in poverty or receive income assistance.²⁹ There is also evidence that, when denied an abortion, mothers experience greater struggles bonding with their child than do women who obtained an abortion and later gave birth.³⁰ Put simply, by banning abortion in Oklahoma, the overall quality of life—not only for women of child-bearing age, but also for the next generation of Oklahomans—is likely to decrease. Banning abortion is a step backward for the well-being of Oklahomans.

II. OKLAHOMA’S BUSINESSES AND ECONOMY WILL SUFFER IF WORKING WOMEN LACK ACCESS TO ABORTION SERVICES.

Abortion bans “do[] more than hold back [women’s] careers and aspirations for a better life,” they also “stifl[e] the economy’s ability to grow.”³¹ This Court should safeguard the rights of women—like all Oklahomans—“to determine what shall be done with [their] own

²⁷ Miller, *supra* note 21, at 6.

²⁸ *Id.*

²⁹ Jonathan Gruber et al., *Abortion Legalization and Child Living Circumstances: Who is the Marginal Child?*, 114 *Quarterly J. of Econ.* 263-291 (1999). The cohorts followed in the Gruber study were also followed in Ananat et al. (2009), where additional evidence of improved outcomes was detected. Elizabeth Oltmans Ananat et al., *Abortion and Selection*, 91 *The Rev. of Econ. and Stat.* 124-136 (2009), <https://repository.wellesley.edu/object/ir94>.

³⁰ Miller, *supra* note 21, at 38.

³¹ Diane Whitmore Schanzenbach and Ryan Nunn, The Hamilton Project, *The 51%: Driving Growth Through Women’s Economic Participation* 1 (Oct. 2017), https://www.brookings.edu/wp-content/uploads/2017/10/es_121917_the51percent_ebook.pdf.

bod[ies],” and, by doing so, promote the health of Oklahoma’s economy. *Scott v. Bradford*, 1979 OK 165, ¶ 14, 606 P.2d 554, 557.

A. The Bans Undermine Employee Well-Being and Increase Stress, Which Harms Oklahoma’s Businesses and Economy.

Employee well-being is essential to businesses’ economic success, and for women, a vital part of well-being is control over reproductive health.³² When employees’ well-being is compromised, businesses suffer demonstrable economic losses related to, among other things: (i) reduced productivity and presenteeism;³³ (ii) absenteeism;³⁴ and (iii) employee turnover.³⁵ These losses can cost businesses up to \$300 billion annually.³⁶ For example, a single employee’s health issues can cause a business to incur “an estimated cost of 16 days of

³² “Being denied a wanted abortion may have further reduced or maintained women’s lower than average self-esteem and satisfaction with life.” M.S. Biggs, et al., *Does Abortion Reduce Self-Esteem and Life Satisfaction?*, 23(9) Qual. Life Res. 2505 (April 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4186981/>.

³³ Presenteeism refers to employees who are physically present but performing at reduced capacity because of stress. Wladislaw Rivkin, et al., *Should I stay or should I go? The role of daily presenteeism as an adaptive response to perform at work despite somatic complaints for employee effectiveness*, 27(4) J. of Occupational Health Psychol. 411–425, https://www.researchgate.net/publication/359309998_Should_I_stay_or_should_I_go_The_role_of_daily_presenteeism_as_an_adaptive_response_to_perform_at_work_despite_somatic_complaints_for_employee_effectiveness.

³⁴ “[E]motional well-being is positively related to physical well-being, which, in turn, promotes a reduction in absenteeism.” Jose Aurelio Medina-Garrido, et al., *I Can’t Go to Work Tomorrow! Work-Family Policies, Well-Being, and Absenteeism*, Sustainability 2020, 12(14), 5519 (July 2020), <https://doi.org/10.3390/su12145519>.

³⁵ Beth Umland, *The Surprisingly Strong Connection Between Well-being and Turnover, Well-being & Lifestyle Benefits* (Apr. 2018), <https://www.mercer.us/our-thinking/healthcare/the-surprisingly-strong-connection-between-well-being-and-turnover.html>; Amy Richman, et. al., *Corporate Voices for Working Families, Business Impacts of Flexibility: An Imperative for Expansion* 13 (Feb. 2011), https://www.wfd.com/PDFS/BusinessImpactsOfFlexibility_March2011.pdf. (“Richman”) (stress is responsible for 40 percent of turnover); see also Workplace Stress, The American institute of Stress, www.stress.org/workplace-stress.

³⁶ Richman, *supra* note 35, at 13.

[incidental] sick leave and [loss of] \$8,000 . . . per year.”³⁷ Abortion restrictions also reduce labor participation, and “eliminating abortion restrictions nationwide would result in 1.15% growth in labor force participation and 9.12% growth in private sector earnings.”³⁸

Stress associated with lack of control over reproductive health also damages businesses. Stress is a leading cause of employee turnover, costing business an average of \$15,000 per departing worker,³⁹ and \$700 billion annually.⁴⁰ If women are forced to carry unwanted pregnancies to term,⁴¹ or suffer added abortion-related stress, businesses suffer. “[L]ack of access to reproductive health care may heighten attrition and turnover costs,”⁴² and it is likely that employee turnover rates will increase as affected women seek less burdensome employment or leave the workforce altogether to raise those children. This is particularly true in Oklahoma, where childcare availability has plummeted, and the childcare that is available is unaffordable according to national standards.⁴³

**B. Lack of Access to Abortion Services in Oklahoma Harms Businesses—
Small Businesses in Particular—By Increasing Employee Absences.**

Banning abortion will increase absenteeism by forcing women to travel to other states

³⁷ *Id.*

³⁸ *Hidden Value*, *supra* note 6, at 9.

³⁹ *Id.* at 20; *see also* Thomas F. Mahan, et al., 2022 Retention Report, Work Institute at 11, <https://info.workinstitute.com/hubfs/2022%20Retention%20Report/2022%20Retention%20Report%20-%20Work%20Institute.pdf>.

⁴⁰ *Id.* at 11.

⁴¹ In states that restricted Medicaid recipients’ access to abortions, 25 percent of women seeking Medicaid-funded abortions were forced to carry unwanted pregnancies to term. Rebecca Wind, *News Release: Restricting Medicaid Funding for Abortion Forces One in Four Poor Women to Carry Unwanted Pregnancies to Term*, Guttmacher Inst. (July 8, 2009), <https://www.guttmacher.org/news-release/2009/restricting-medicaid-funding-abortion-forces-one-four-poor-women-carry-unwanted>.

⁴² *Hidden Value*, *supra* note 6, at 9.

⁴³ Ahlstrom and Dass, *supra* note 12, at 25–27.

to obtain procedures, resulting in increased travel-related expenses and missed work.⁴⁴ These burdens disproportionately affect poor and low-wage workers with little control over work schedules or little ability to absorb extra costs.⁴⁵ In Oklahoma, where poverty rates trend higher than the national average, these consequences are particularly grave.⁴⁶

In particular, small businesses suffer when employees are absent because “they have a smaller pool of workers from which to draw when an employee is out of the office or not working at full capacity for health reasons.”⁴⁷ As small businesses account for over 51% of Oklahoma employment—more than the national standard—and over 97% of those businesses have fewer than twenty employees,⁴⁸ absences due to seeking out-of-state abortion would have an extraordinary impact on these businesses and the state’s economy. Moreover, “female entrepreneurs who experience challenges between business and family may be significantly more likely to exit their business than their male counterparts.”⁴⁹

C. The Bans Deter Businesses From Doing Business in and with Oklahoma.

The Bans threaten Oklahoma’s economy by deterring employees and employers from doing business in the state. A recent study found that “70% of women ages 18-44 would be

⁴⁴ NWLC, *supra* note 1.

⁴⁵ As of late 2021, “only 33% of the lowest paid workers [were] able to earn paid sick days.” Elise Gould, *Two-thirds of low wage workers still lack access to paid sick days during an ongoing pandemic*, Econ. Pol’y Inst. (Sept. 2021), <https://epi.org/237141>; Jones, *supra* note 1 (“barriers to abortion access are hindering the economic success of those who are already economically disadvantaged, and increasing the social burden in terms of public assistance”).

⁴⁶ Ahlstrom and Dass, *supra* note 12, at 28, 29.

⁴⁷ Executive Office of the President, Council of Econ. Advisers, *The Economic Effects of Health Care Reform on Small Businesses and Their Employees* 14 (July 25, 2009), <https://obamawhitehouse.archives.gov/administration/eop/cea/Health-Care-Reform-and-Small-Businesses>.

⁴⁸ U.S. Small Business Administration Office of Advocacy, 2021 Small Business Profile: Oklahoma, <https://cdn.advocacy.sba.gov/wp-content/uploads/2021/08/30143128/Small-Business-Economic-Profile-OK.pdf>.

⁴⁹ Ahlstrom and Dass, *supra* note 12, at 20.

discouraged from taking a job in a state that restricts access to abortion, as would 59% of men” in the same age range⁵⁰ and “63% of college-educated workers would not apply to a job in a state that has recently banned abortion.”⁵¹ Illustrating the gravity of this concern, Panasonic recently announced its decision to locate a new production facility in Kansas rather than Oklahoma after Kansas residents voted to protect abortion rights.⁵² At the same time, there are women choosing to pursue professional careers in other states because of the restrictions imposed by the Bans.⁵³ One investor group estimated that Oklahoma’s abortion restrictions cost the state \$1.7 billion in economic losses in 2020.⁵⁴

Simply stated, by undermining women’s autonomy and well-being, the Bans will harm Oklahoma’s economy. This Court should protect Oklahomans’ right to reproductive autonomy, and, by doing so, promote Oklahoma’s economic success.

CONCLUSION

For the reasons set forth above, *amici curiae* urge this Court to declare the Bans unconstitutional under the Oklahoma Constitution.

⁵⁰ *Hidden Value*, *supra* note 6, at 9.

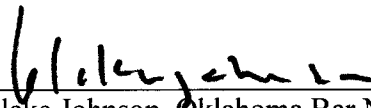
⁵¹ *Id.* at 18.

⁵² Ben Felder, *Are red states like Oklahoma bad for business? California thinks so*, *The Oklahoman* (Aug. 7, 2022), <https://www.oklahoman.com/story/news/politics/government/2022/08/07/californias-governor-calls-for-film-companies-to-leave-oklahoma/65393204007/>.

⁵³ Jennifer Liu, *Turning down a \$300k job, deferring dreams of Austin: How Roe’s end is changing millennials’ career plans—and lives*, *CNBC* (Aug. 18, 2022), <https://www.cnbc.com/2022/08/18/how-roes-end-is-changing-millennials-career-plans-and-lives.html> (detailing story of woman who turned down a lucrative job in Oklahoma based on its abortions bans).

⁵⁴ Janelle Stecklein, *Investment group warns that Oklahoma abortion laws could hurt business recruitment, economic development*, *The Express-Star* (May 27, 2022), https://www.chickashanews.com/community/investment-group-warns-that-oklahoma-abortion-laws-could-hurt-business-recruitment-economic-development/article_607d24a4-ddd8-11ec-bc69-5b93cbc720c2.html.

Respectfully Submitted,



J. Blake Johnson, Oklahoma Bar No. 32433
OVERMAN LEGAL GROUP, PLLC
809 NW 36th Street
Oklahoma City, OK 73118
Phone: (405) 605-6718
blakejohnson@overmanlegal.com

Leah R. Bruno*
DENTONS US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606
Phone: (312) 876-7456
Leah.bruno@dentons.com

*Out-of-State Attorney Application
Forthcoming

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.*

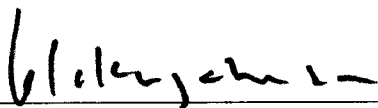
Benjamin P. Sisney, Esquire
American Center for Law & Justice
201 Maryland Avenue, NE
Washington D.C. 20002
*Counsel for Amici Curiae,
Members of OK Senate and OK House*

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

APPENDIX – LIST OF *AMICI CURIAE*⁵⁵

Erika Lucas, CEO of VEST and General Partner of VEST Her Ventures

Dr. Steven Agee, Business Leader

Michael Basch, Business Leader

Leslie Batchelor, President of the Center for Economic Development Law

Ian Bennett, Small Business Owner

Lori Blumenthal, Business Leader

Elizabeth Frame Ellison, Investor, VEST Founding Member and Business Leader

Suzette Grillot, Owner of Equity Brewing Company

Dr. Elaine Hamm, COO and Co-Founder of Cadenza Bio

Vicki Langford, Small Business Owner

Chris Lucas, Investor and Serial Entrepreneur

Reina Mohan, CEO of Mera Sona

Cheena Pazzo, CEO of One 80 Consulting

Shannon Rich, Founder of Leadherboard

Ahniwake Rose, Director, Public Health Policy, National Indian Health Board

Kathy Taylor, Former Secretary of Commerce and Former Mayor of Tulsa

Shagah Zakerion, Zakerion Strategies & Consulting

Vest Her Ventures

One 80 Consulting

⁵⁵ All individual *amici* identified are participating in this brief in their individual capacity and not as representatives of any corporation, business, organization or institution with which they are affiliated.