

ORIGINAL



IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE
on behalf of itself and its members, *et al.*,

Petitioners,

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JOHN D. HADDEN
CLERK

v.

JOHN O'CONNOR, in his official capacity as Attorney
General for the State of Oklahoma, *et al.*,

Respondents.

Case No. PR-120,543

**PETITIONERS' RESPONSE TO BRIEFS OF AMICI CURIAE (1) OKLAHOMA
BUSINESS LEADERS, (2) PROLIFE CENTER AT THE UNIVERSITY OF ST.
THOMAS, AND (3) FREDERICK DOUGLASS FOUNDATION AND NATIONAL
HISPANIC CHRISTIAN LEADERSHIP CONFERENCE**

Blake Patton, Oklahoma Bar No. 30673
WALDING & PATTON PLLC
518 Colcord Drive, Suite 100
Oklahoma City, OK 73102

Attorney for Petitioners

Diana Salgado*
PLANNED PARENTHOOD
FEDERATION OF AMERICA
1110 Vermont Ave., NW, Suite 300
Washington, DC 20005

Camila Vega*
PLANNED PARENTHOOD
FEDERATION OF AMERICA
123 William 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*

* Out-of-state Registered Attorney
† Out-of-State Registration Pending

Linda C. Goldstein*
Jenna C. Newmark*
Meghan Agostinelli†
Samantha DeRuvo*
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036

Jerome Hoffman*
Rachel Rosenberg*
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

Jonathan Tam*
DECHERT LLP
One Bush Street, Suite 1600
San Francisco, CA 94104-4446

Rabia Muqaddam*
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, L.L.C, and Alan Braid,
M.D.*

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FEDERATION OF AMERICA
123 William St., 9th Floor
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DECHERT LLP
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Jerome Hoffman*
Rachel Rosenberg*
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808

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DECHERT LLP
One Bush Street, Suite 1600
San Francisco, CA 94104-4446

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CENTER FOR REPRODUCTIVE RIGHTS
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M.D.*

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I. INTRODUCTION

Amici Oklahoma Business Leaders, Prolife Center at The University of St. Thomas, and Frederick Douglass Foundation and National Hispanic Christian Leadership Conference (together, “Amici”) falsely assert that economics research has not reliably demonstrated that abortion has been and continues to be essential to protect the economic liberty of pregnant people. Oklahoma Business Leaders Brief (“Business Leaders Br.”); Prolife Center Brief (“Prolife Center Br.”); Frederick Douglass Foundation Brief (“FDF Br.”). In order to reach this conclusion, Amici outright ignore the robust literature showing just that and attempt to draw misleading inferences from general data about women’s advancement since *Roe*. But none of these mischaracterizations undermine the extensive evidence put forth by Petitioners and Amici in support of Petitioners. This evidence reliably shows that abortion is essential, and that this is particularly true for low-income people and communities of color who already face significant health and socioeconomic disparities.

II. ARGUMENT

A. **Amici Ignore the Relevant, Highly Reliable, Causal Economics Literature Showing the Salutary Impact of Abortion Legalization in Favor of a Handful of Unreliable and/or Irrelevant Publications**

Amici incorrectly suggest that it is nearly impossible to determine whether abortion access has facilitated women’s economic advancement over the last fifty years since *Roe* was decided. Prolife Center Br. at 2; Business Leaders Br. at 4. To the contrary, causal inference statistical methodologies, including highly reliable difference-in-difference models, have allowed economists to rigorously measure the causal impact of abortion access on people’s lives. *See* Affidavit of Dr. Caitlin Myers (“Myers Aff.”) ¶ 16.

Economics research has shown that abortion legalization, *independent of* other factors such as contraception, state laws governing workplace discrimination, and no-fault divorce, has had a direct and significant impact on birth rates.¹ This causal inference research has further demonstrated that abortion legalization had large beneficial effects on women's education, labor force participation, occupations, and earnings.² These effects were particularly strong among Black women.³ Abortion legalization reduced the number of women who became teen mothers by 34% and the number who entered into marriage as teenagers by 20%, with even larger observed effects for Black teenagers, specifically. Myers Aff. ¶ 5. The nationwide legalization of abortion had the greatest impact in areas that were geographically distant from the handful of states that had repealed abortion prohibitions prior to *Roe*. Myers Aff. ¶ 6.

Further, abortion legalization reduced the number of children who lived in single parent households, who lived in poverty, and who received social services.⁴ As children born under

¹ Phillip B. Levine, et al., *Roe v Wade and American Fertility*, 89 Am. J. of Pub. Health 199 (1999); Joshua D. Angrist & William N. Evans, *Schooling and Labor Market Consequences of the 1970 State Abortion Reforms*, Nat'l Bureau of Econ. Research, Working Paper No. 5406 (1996), https://www.nber.org/system/files/working_papers/w5406/w5406.pdf; Jonathan Gruber, et al., *Abortion Legalization and Child Living Circumstances: Who Is the 'Marginal Child'*, 114 Q. J. of Econ. 263 (1999); Elizabeth Oltmans Ananat, et al., *Abortion and Selection*, 91 Rev. of Econ. & Stat. 124 (2009); Melanie Guldi, *Fertility Effects of Abortion and Birth Control Pill Access for Minors*, 45 Demography 817 (2008); Caitlin Knowles Myers, *The Power of Abortion Policy: Reexamining the Effects of Young Women's Access to Reproductive Control*, 125 J. of Pol. Econ. 2178 (2017); Ali Abboud, *The Impact of Early Fertility Shocks on Women's Fertility and Labor Market Outcomes* (Nov. 22, 2019), <https://ssrn.com/abstract=3512913>; Kelly Jones, *At a Crossroads: The Impact of Abortion Access on Future Economic Outcomes*, American Univ. Working Paper (2021), <https://doi.org/10.17606/0Q51-0R11>; David E. Kalist, *Abortion and Female Labor Participation: Evidence Prior to Roe v. Wade*, 25(3) Journal of Labor Research 503 (2004).

² Jones, *supra* n.1; Kalist, *supra* n.1, Jason M. Lindo et al., *Legal Access to Reproductive Control Technology, Women's Education, and Earnings Approaching Retirement*, 110 AEA Papers & Proc. 231 (2020); Abboud, *supra* n.1.

³ Jones, *supra* n.1; Kalist, *supra* n.1; Lindo, *supra* n.2.

⁴ Gruber, *supra* n.1.

Roe became adults, they had higher rates of college graduation, lower rates of single parenthood, and lower rates of receiving welfare.⁵

This robust literature “untangle[s]” the various influences on women’s lives during the era of *Roe*, Prolife Center Br. at 3, and shows statistically that access to legal abortion significantly improved economic outcomes for women. This literature also belies the idea that laws addressing sex discrimination, Business Leaders Br. at 5, or women’s progress in college enrollment and entrepreneurship, Prolife Center Br. at 4-7, are exclusively responsible for women’s advancement.

Amici purport to rely on an article by Martha Bailey and Thomas DiPrete, which they claim highlights the statistical difficulties of untangling causation, including because of “conflicting studies,” “different methodologies,” and “widely varying statistical significance of the results.” Prolife Center Br. at 2. But this article does no such thing. Nowhere does it state that the causal effects of abortion policy cannot be determined due to these factors. In fact, Bailey and DiPrete acknowledge that causal-inference research designs have succeeded in studying the causal effects of abortion policy, observing that “a growing literature in economics suggests many of the longer-term changes in family formation and childbearing—as well as the previously described changes in women’s education and labor force outcomes—are related to the introduction of modern contraception and abortion.”⁶

Amici’s argument that abortion has disadvantaged women and undermined women’s happiness and satisfaction in life is based on two law review articles, Prolife Center Br. at 9-

⁵ Ananat, *supra* n.1.

⁶ Martha J. Bailey & Thomas A. DiPrete, *Five Decades of Remarkable but Slowing Change in Women’s Economic and Social Statutes and Political Participation*, 2 Russel Sage Foundation J. Soc. Sci. 1 (2016).

10, that run counter to the immense weight of the reliable scientific evidence demonstrating how essential abortion access is to individual autonomy.

In short, Amici have provided no evidence to contradict the wealth of reliable economics research showing that abortion legalization profoundly improved economic outcomes for women and their families. Nor does such evidence exist.

B. Another Body of Robust Literature Shows that People Denied Wanted Abortions Face Poor Economic Outcomes

When women are denied wanted abortions, they are exposed to long-lasting economic hardship. Using data from the Turnaway Study, researchers demonstrated that women who were denied a wanted abortion and went on to give birth experienced an increase in household poverty lasting at least four years relative to those who received an abortion. Myers Aff. ¶ 9. Years after an abortion denial, women were more likely to not have enough money to cover basic living expenses like food, housing, and transportation. *Id.* ¶ 10. Being denied an abortion lowered women's credit scores, increased their debt, and increased their number of negative public financial records, such as bankruptcies and evictions. *Id.* ¶ 11.

Amici criticize the Turnaway Study as being unreliable, Prolife Center Br. at 6, but that flies in the face of mainstream social science. The Turnaway Study is a groundbreaking longitudinal study by preeminent public health researchers at the University of California, San Francisco examining the effects of unintended pregnancy on women's lives. As the National Academies of Sciences, Engineering and Medicine ("NAS") wrote in their report:

The Turnaway study contributes unique insight into the consequences of receiving a desired abortion versus being denied the procedure and carrying the pregnancy to term. The study sample included 956 English- and Spanish-speaking women aged 15 and over who sought abortions between 2008 and 2010 from 30 abortion facilities in the United States. The sample design was unique because it drew from groups of women who presented up to 3 weeks beyond a facility's gestational age limit and were denied an abortion, women

presenting within 2 weeks of the limit who received an abortion, and women who received a first-trimester abortion.⁷

The resulting data reliably demonstrated that people who were denied wanted abortions experienced poor health, mental, and economic outcomes as compared to their counterparts who were able to obtain a wanted abortion. Myers Aff. ¶¶ 9-13; Upadhyay Aff. ¶¶ 17-21.

The only sources Amici cite to criticize the Turnaway Study are David Reardon, Business Leaders Br. at 6; Pro-life Center Br. at 8-9, and Priscilla Coleman, Pro-life Center Br. at 9, whose “studies” on abortion have been thoroughly discredited. Priscilla Coleman herself admitted, at a federal trial in Tennessee, that Reardon was a “political” figure who was “not good at statistics” or “writing.” *Adams & Boyle, P.C. v. Slatery*, Trial Tr. Vol. 3-A, No. 3:15-cv-00705, Doc. 221, 87:5-88:17, 89:13-90:15 (Oct. 20, 2019). Reardon obtained his “doctorate” in bioethics from an unaccredited correspondence school with no classroom instruction, and he is not an economist or a social scientist.⁸

Dr. Coleman’s testimony and research have been rejected by numerous courts as unreliable. For instance, in *Planned Parenthood of Indiana & Kentucky v. Commissioner*, the Southern District of Indiana rejected Dr. Coleman’s studies, noting that they “have been almost uniformly rejected by other experts in the field” and that her work has been criticized as having “methodological problems that bring into question both the results and conclusions.” *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of Ind. State Dep’t of Health*, 273 F. Supp. 3d 1013, 1036 (S.D. Ind. 2017) (internal quotation marks and citations omitted). The Seventh Circuit

⁷ National Academies of Sciences, Engineering, and Medicine, *The Safety and Quality of Abortion Care in the United States* (2018), available at <http://nap.edu/24950> [hereinafter, “NAS, *Safety and Quality of Abortion Care*”], at 151.

⁸ Pam Chamberlain, *Politicized Science: How Anti-Abortion Myths Feed the Christian Right Agenda*, *The Public Eye, Political Research Associates* (Summer 2006), http://www.publiceye.org/magazine/v20n2/chamberlain_politicized_science.html.

affirmed, finding “no reason to disturb [the district court’s] thoroughly reasoned findings” regarding Coleman’s “much maligned” research. *Planned Parenthood of Ind. & Ky., Inc. v. Comm’r of Ind. State Dep’t of Health*, 896 F.3d 809, 826, 830 (7th Cir. 2018), *cert. granted, judgment vacated sub nom. Box v. Planned Parenthood of Ind. & Ky., Inc.*, 141 S. Ct. 184 (2020). In *Whole Woman’s Health Alliance v. Rokita*, the Southern District of Indiana excluded Dr. Coleman’s testimony regarding studies “infect[ed]” with methodological errors, finding it “insufficiently reliable to become evidence at trial that will inform the Court’s decision-making.” *Whole Woman’s Health All. v. Rokita*, No. 118CV01904SEBMJD, 2021 WL 650589, at *6-7 (S.D. Ind. Feb. 19, 2021). In *Adams & Boyle, P.C. v. Slatery*, the Court found: “Dr. Coleman’s testimony [is] not credible and not worthy of serious consideration Plaintiffs have presented persuasive evidence that Dr. Coleman’s opinions lack support and that her work has serious methodological flaws.” 494 F.Supp.3d 488, 538 (M.D. Tenn. 2020), *rev’d and remanded on other grounds sub nom. Bristol Reg’l Women’s Ctr., P.C. v. Slatery*, 7 F.4th 478 (6th Cir. 2021).

The ipse dixit of Dr. Reardon and Dr. Coleman that the Turnaway Study makes use of flawed or hidden data should be rejected. Unlike The Turnaway Study, the research of both Reardon and Coleman was repeatedly criticized by the National Academies for failing to use proper statistical methods.⁹

C. Abortion Rates Have Declined, But Abortion Remains Essential for People’s Economic Liberty, Particularly for People of Color and Low-Income People Who Face Significant Health Disparities

Amici point to declining abortion rates as a reason abortion is no longer essential for protecting economic liberty, but they misunderstand the implications of this decline. *See*

⁹ NAS, *Safety and Quality of Abortion Care*, *supra* n.7, at 49-150, 152.

Business Leaders Br. at 3, 7; ProLife Center Br. at 3, 6. Abortion rates have declined, but this is largely due to a decline in pregnancies more generally, which is thereby reflected in lower birth and abortion rates.¹⁰ The decline in pregnancies is due at least in part to improvements in contraception, including the increased use of long-acting reversible birth control, such as intrauterine devices (IUDs).¹¹ But, not everyone has been able to access advancements in reproductive preventive care.¹² In Oklahoma, 217,460 low-income women live in contraceptive deserts, and 21.4% women of reproductive age are less likely to have health insurance coverage for contraception than similar women nationwide.¹³ Health disparities particularly affect people of color.¹⁴ OCRJ Aff. ¶ 9.

The Literature also continues to show the burdens that women can face when they birth and raise children. When women become parents, their earnings diverge sharply from men: mothers experience an immediate and persistent one-third drop in expected earnings, while fathers' earnings remain largely unaffected.¹⁵ Further, women face challenges in obtaining childcare and economic support as parents.¹⁶

¹⁰ Rachel K. Jones, et al., *Abortion Incidence and Service Availability in the United States, 2017*, Guttmacher (Sept. 2019), [abortion-incidence-service-availability-us-2017.pdf](https://www.guttmacher.org/abortion-incidence-service-availability-us-2017.pdf).

¹¹ *Id.*; NAS, *Safety and Quality of Abortion Care*, *supra* n.7, at 28.

¹² Megan L. Kavanaugh, et al., *Changes in Use of Long-Acting Reversible Contraceptive Methods Among United States Women, 2009–2012*, 126(5) *Obstetrics & Gynecology* 917 (2015).

¹³ Power to Decide, *Fact Sheet Contraceptive Access in Oklahoma* (Feb. 2022), https://powertodecide.org/sites/default/files/2022-02/State%20Factsheet_Oklahoma.pdf.

¹⁴ Susan A. Cohen, *Abortion and Women of Color*, Guttmacher Institute (Aug. 2008), <https://www.guttmacher.org/gpr/2008/08/abortion-and-women-color-bigger-picture> [*hereinafter*, “Cohen, *Abortion and Women of Color*”] (describing how women of color are more likely to have unintended pregnancies due to socioeconomic inequality, a lack of healthcare access, and unequal opportunities regarding contraception and sex education).

¹⁵ Henrik Kleven, et al., *Child Penalties Across Countries: Evidence and Explanations*, 109 *AEA Papers & Proc.* 122 (2019).

¹⁶ Sam Khater, et al., *Family Budget Burdens Squeezing Housing: Child Care Costs*, Freddie Mac Economic & Housing Research Group (Dec. 2019), <https://www.freddiemac.com/research/insight/20200107-family-budget-burdens>; Nina Chien, *Factsheet: Estimates of Child Care Eligibility & Receipt for Fiscal Year*

In short, declining abortion rates do not show that abortion access is no longer important to people's autonomy and economic potential; they show that abortion is increasingly needed by people of color and those living on low-incomes due to societal disparities.¹⁷ Amici's suggestion that "increased teleworking and flexible employment arrangements," Business Leaders Br. at 3, which are not options for many low-wage workers,¹⁸ are going to mitigate the harm of a total abortion ban is thus remarkably tone-deaf.

Rather than address the underlying causes of income and racial disparities in abortion rates—structural racism in access to healthcare including access to contraception and sexual health education, socioeconomic inequality, and higher rates of unintended pregnancies¹⁹—Amici use these disparities generated by inequity to justify further burdens on women of color and people living on low incomes. *See* FDF Br. at 7-9.

Amici make much of the motives of early proponents of birth control, such as Margaret Sanger, the white founder of Planned Parenthood who joined forces with eugenicists in promoting family planning to Black women. *See* FDF Br. at 1-6. Though not a new concept, anti-abortion advocates have increasingly utilized this argument to couch their mission as a form of racial justice work. By "selectively co-opting civil rights rhetoric," anti-abortion groups misleadingly present abortion as "eugenicist plots disguised as voluntary reproductive

2018, U.S. Dep't of Health and Human Servs. (Aug. 2021), <https://aspe.hhs.gov/sites/default/files/2021-08/cy-2018-child-care-subsidy-eligibility.pdf>; Sophia Quinton, *Child Care Subsidies, Vital for Many Workers, Are Dwindling*, Pew Stateline Blog (Dec. 9, 2016), <http://pew.org/2gpl8zi>.

¹⁷ *See* Cohen, *Abortion and Women of Color*, *supra* n.14.

¹⁸ Elise Gould & Heidi Shierholz, *Not Everyone Can Work From Home*, Economic Policy Institute (Mar. 19, 2020), <https://www.epi.org/blog/black-and-hispanic-workers-are-much-less-likely-to-be-able-to-work-from-home/>.

¹⁹ *See* Cohen, *Abortion and Women of Color*, *supra* n.14.

choices, which are leading to a slow ‘Black genocide.’”²⁰ But whatever the motives of historical figures, Black women have embraced birth control and abortion as a component of reproductive freedom.²¹

This false equivalency to eugenics practices invokes and perverts this country’s deeply troubling history of forcibly sterilizing tens of thousands of people of color, including Native American, African American, Puerto Rican, and Mexican American women,²² in order to now compel similar communities of color to bring to term fetuses that the State has decided it wants them to birth. OCRJ Aff. ¶ 9. But controlling the reproduction of Black women and other people of color *is eugenics* whether the government seeks to force people to carry to term or forcibly prevent them from birthing, and thus the Bans create the very evil Amici seek to invoke.²³ This is particularly true in light of the grave maternal mortality and health disparities that these communities face in Oklahoma. OCRJ Aff. ¶¶ 10-11.

Notably, in describing purported support Amici intend to foster for pregnant Oklahomans, Business Leaders Br. at 10, nowhere do they address that Oklahoma fails to

²⁰ Kathryn Joyce, *Abortion as “Black Genocide” An Old Scare Tactic Re-Emerges*, Political Research Associates (Apr. 2010), <https://www.politicalresearch.org/2010/04/29/abortion-as-black-genocide-an-old-scare-tactic-re-emerges>.

²¹ Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (1997); Loretta J. Ross, *African-American Women and Abortion: A Neglected History*, 3 *J. of Health Care for the Poor and Underserved* 274 (1992); Melissa Murray, *Race-Ing Roe: Reproductive Justice, Racial Justice, and the Battle for Roe v. Wade*, 134 *Harv. L. Rev.* 2025 (2021).

²² See Alexandra Stern, *Forced Sterilization Policies in the US Targeted Minorities and Those With Disabilities – and Lasted into the 21st Century*, Univ. of Mich. Institute for Healthcare Policy & Innovation (Sept. 23, 2020), <https://ihpi.umich.edu/news/forced-sterilization-policies-us-targeted-minorities-and-those-disabilities-and-lived-21st>.

²³ Dorothy Roberts, *Dorothy Roberts Argues that Justice Clarence Thomas’s Box v. Planned Parenthood Concurrence Distorts History*, U. Penn. Law (June 6, 2019), <https://www.law.upenn.edu/live/news/9138-dorothyroberts-argues-that-justice-clarence> (“[E]ugenics laws passed in the early 20th century relied on coerced sterilization, not abortion, to regulate devalued populations . . . Such [eugenics laws] are actually similar to today’s abortion bans: both seek to control reproductive decision making for repressive political ends. Thus, if you oppose eugenic birth control, you should also oppose abortion bans as forms of reproductive oppression.”).

facilitate access to contraception or other preventive reproductive health care for Oklahomans, while also making it impossible to receive abortion care. *See* Pets.' Br. at 23.

D. Amici Fail to Grapple with the Effect of a Total Abortion Ban

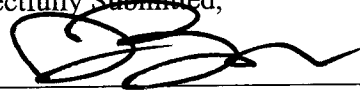
Amici argue that “sensible abortion restrictions” will have a minimal impact on businesses operating in the state and will not drive corporations out of the state. Business Leaders Br. 8-9. However, the laws at issue here are not in any sense “sensible abortion restrictions”; the State is advocating for, and Amici write to support, *total criminal abortion bans*. As discussed further in Petitioners’ briefing, the State seeks to outright deny pregnant Oklahomans their rights to personal autonomy and bodily integrity with respect to a life-altering medical decision with irrevocable consequences for a person’s economic liberty. The State does not dispute that the unborn are not “persons” within the meaning of the Oklahoma Constitution, and thus do not enjoy the full scope of “inherent rights” pregnant Oklahomans enjoy. *See* Pets.’ Br. at 20. There is thus no credible basis for Amici to assert that any interest a fetus has outweighs the fundamental right of pregnant Oklahomans to choose whether and when to bear children.

III. CONCLUSION

For the foregoing reasons, Petitioners respectfully contend that Amici’s argument that abortion is not essential for the economic liberty of pregnant Oklahomans is baseless and must be rejected.

Dated: October 13, 2022

Respectfully Submitted,



J. Blake Patton, Oklahoma Bar No. 30673
WALDING & PATTON PLLC
518 Colcord Drive, Suite 100
Oklahoma City, OK 73102
Phone: (405) 605-4440
Fax: N/A
bpatton@waldingpatton.com

Attorney for Petitioners

Linda C. Goldstein*
Jenna C. Newmark*
Meghan Agostinelli†
Samantha DeRuvo*
DECHERT LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
Phone: (212) 649-8723
Fax: (212) 314-0064
linda.goldstein@dechert.com
jenna.newmark@dechert.com
meghan.agostinelli@dechert.com
samantha.deruvo@dechert.com

Jerome Hoffman*
Rachel Rosenberg*
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Phone: (215) 994-2496
Fax: (215) 665-2496
jerome.hoffman@dechert.com
rachel.rosenberg@dechert.com

Jonathan Tam*
DECHERT LLP
One Bush Street, Suite 1600
San Francisco, CA 94104-4446
T: (415) 262-4518
F: (415) 262-4555
jonathan.tam@dechert.com

Rabia Muqaddam*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street
22nd Floor
New York, NY 10038
Phone: (917) 637-3645
Fax: (917) 637-3666
rmuqaddam@reprorights.org

*Attorneys for Petitioners Oklahoma Call for
Reproductive Justice, Tulsa Women's
Reproductive Clinic, L.L.C, and Alan Braid,
M.D.*

Diana Salgado*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
1110 Vermont Avenue, NW, Suite 300
Washington, DC 20005
202-973-4830
diana.salgado@ppfa.org

Camila Vega*
PLANNED PARENTHOOD FEDERATION
OF AMERICA
123 Williams St., 9th Floor
New York, NY 10038
(212) 261-4548
camila.vega@ppfa.org

*Attorneys for Petitioners Comprehensive Health
of Planned Parenthood Great Plains, Inc. and
Planned Parenthood of Arkansas & Eastern
Oklahoma*

*Out-Of-State Attorney Applications Granted

† Out-Of-State Attorney Application
Forthcoming

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of October, 2022 a true and correct copy of the foregoing was served via email to the following:

Zach West
Solicitor General
Audrey A. Weaver
Assistant Solicitor General
Office of the Oklahoma Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
Zach.west@oag.ok.gov
Audrey.weaver@oag.ok.gov

Attorneys for Respondents

The undersigned further certifies that on this 13th day of October, 2022, a true and correct copy of the foregoing was served via U.S. mail to the following:

Teresa S. Collett
University of St. Thomas School of Law
MSL 400, 1000 LaSalle Ave
Minneapolis, MN 55403

*Attorney for Amicus Curiae, the
Prolife Center at the University
of St. Thomas*

John Paul Jordan
The Jordan Law Firm
PO Box 850342
Yukon, OK 73085

*Attorney for Amicus Curiae, the Oklahoma
Faith Leaders*

Wyatt Mcguire
J. Blake Johnson
Overman Legal Group LLC
809 NW 36th Street
Oklahoma City, OK 73118

Lucas Fortier
Wilmer Cutler Pickering Hale and Dorr
LLP
60 State Street
Boston, MA 02109

Kimberly Parker
Wilmer Cutler Pickering Hale and Dorr
LLP
1875 Pennsylvania Ave, NW
Washington, DC 20006

Molly Meegan
American College of Obstetricians and
Gynecologists
409 12th St. SW
Washington, DC 20024

*Attorneys for Amicus Curiae,
American College of Obstetricians
and Gynecologists, the American
Medical Association, and the Society
for Maternal-Fetal Medicine*

Brently C. Olsson
Cheek Law Firm, P.L.L.C
311 North Harvey Avenue,
Oklahoma City, OK 73102

Christopher E. Mills
Spero Law LLC
557 East Bay St.
Charleston, SC 29413

*Attorneys for Amicus Curiae, Gateway
Women's Resource Center, Inc.*

Jay Alan Sekulow
Stuart J. Roth
Olivia F. Summers
Jordan Sekulow
Benjamin P. Sisney
American Center For Law & Justice
201 Maryland Ave., NE
Washington, DC 20002

Edward L. White, III
Erik M. Zimmerman
3001 Plymouth Road, Suite 203
Ann Arbor, MI 48105

*Attorneys for Amicus Curiae, the
American Center for Law & Justice*

Erin Donovan
Erin Donovan and Associates
1616 South Main Street
Tulsa, OK 74119

*Attorney for Amicus Curiae, Professor
Carter Snead, the Roman Catholic
Archdiocese of Oklahoma City, and
Diocese of Tulsa*

Steven Lewis
Steven Lewis, PLLC
3233 E. Memorial Rd., Ste 105
Edmond, OK 73013

*Attorney for Amicus Curiae, Oklahoma
Business Leaders*

Eugene M Gelernter
Patterson Belknap Webb & Tyler, LLP
1133 Avenue of the Americas
New York, NY 10036

*Attorney for Amicus Curiae, Rev. Barbara
Prose and Oklahoma Faith Leaders*

Charles E. Wetsel
Teague & Wetsel, PLLC
1741 West 33rd Street, Suite 120
Edmond, OK 73013

*Attorney for Amicus Curiae, Frederick
Douglass Foundation and National
Hispanic Christian Leadership
Conference*

Jay W. Barnett
Barnett Legal, PLLC
3404 NW 135th Street
Oklahoma City, OK 73120

*Attorney for Amicus Curiae, Oklahoma
Physicians*

Leah R. Bruno
Dentons US LLP
233 S. Wacker Drive, Suite 5900
Chicago, IL 60606

*Attorney for Amicus Curiae, Erika Lucas and
Vest Her, Inc.*



J. BLAKE PATTON