

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.

THE STATE OF OKLAHOMA; NICHOLE COOPER in her official capacity as court clerk of Adair County; TAMMI MILLER in her official capacity as court clerk of Alfalfa County; ANGELA NUTTALL in her official capacity as court clerk of Atoka County; TAMMIE PATZKOWSKY in her official capacity as court clerk of Beaver County; DONNA HOWELL in her official capacity as court clerk of Beckham County; CHRISTY MATLI in her official capacity as court clerk of Blaine County; DONNA ALEXANDER in her official capacity as court clerk of Bryan County; PATTI BARGER in her official capacity as court clerk of Caddo County; MARIE HIRST in her official capacity as court clerk of Canadian County; RENEE BRYANT in her official capacity as court clerk of Carter County; LESA ROUSEY-DANIELS in her official capacity as court clerk of Cherokee County; LAURA SUMNER in her official capacity as court clerk of Choctaw County; METZI BROWN in her official capacity as court clerk of Cimarron County; MARILYN WILLIAMS in her official capacity as court clerk of Cleveland County; LaDONNA FLOWERS in her official capacity as court clerk of Coal County; ROBERT MORALES in his official capacity as court clerk of Comanche County; TERRY KELLEY in her official capacity as court clerk of Cotton

FILED
SUPREME COURT
STATE OF OKLAHOMA
APR 20 2022
JOHN D. HADDEN
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CASE NO. _____

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County; DEBORAH MASON in her official capacity as court clerk of Craig County; AMANDA VANORSOL in her official capacity as court clerk of Creek County; STACI HUNTER in her official capacity as court clerk of Custer County; CAROLINE WEAVER in her official capacity as court clerk of Delaware County; RACHELLE ROGERS in her official capacity as court clerk of Dewey County; SALLY WAYLAND in her official capacity as court clerk of Ellis County; JANELLE SHARP in her official capacity as court clerk of Garfield County; LAURA LEE in her official capacity as court clerk of Garvin County; LISA HANNAH in her official capacity as court clerk of Grady County; DEANA KILIAN in her official capacity as court clerk of Grant County; JEANNA SCOTT in her official capacity as court clerk of Greer County; STACY MACIAS in her official capacity as court clerk of Harmon County; SUSAN BREON in her official capacity as court clerk of Harper County; TINA OAKS in her official capacity as court clerk of Haskell County; ASHLEY SANFORD in her official capacity as court clerk of Hughes County; TINA SWAILES in her official capacity as court clerk of Jackson County; KIMBERLY BERRY in her official capacity as court clerk of Jefferson County; CASSANDRA SLOVER in her official capacity as court clerk of Johnston County; MARILEE THORNTON in her official capacity as court clerk of Kay County; LISA MARKUS in her official capacity as court clerk of Kingfisher County; KAY RICHARDS in her official capacity as court clerk of Kiowa County; MELINDA BRINLEE in her official capacity as court clerk of Latimer County; MELBA HALL in her official capacity as court clerk of Le Flore County; CINDY KIRBY in her official capacity as court clerk of Lincoln County; CHERYL SMITH in her official capacity as court clerk of Logan County; WENDY HOLLAND in her official capacity as court clerk of Love County; SHAUNA HOFFMAN in her official capacity as court clerk of Major County; WANDA PEARCE in her official capacity as court clerk of Marshall County; JENIFER CLINTON in her official capacity as court clerk of Mayes County; KRISTEL GRAY in her official capacity as court clerk of McClain County; KATHY GRAY in her official capacity as court clerk of McCurtain County; LISA RODEBUSH in her official capacity as court clerk of McIntosh County; JODI JENNINGS in her official capacity as court clerk of Murray County; ROBYN BOSWELL in her official capacity as court clerk of Muskogee County; HILLARY VORNDRAN

in her official capacity as court clerk of Noble County; APRIL FRAUENBERGER in her official capacity as court clerk of Nowata County; SHERRI FOREMAN in her official capacity as court clerk of Okfuskee County; RICK WARREN in his official capacity as court clerk of Oklahoma County; CHARLY CRINER in her official capacity as court clerk of Okmulgee County; JENNIFER BURD in her official capacity as court clerk of Osage County; CASSIE KEY in her official capacity as court clerk of Ottawa County; ILA POTTS in her official capacity as court clerk of Pawnee County; LORI ALLEN in her official capacity as court clerk of Payne County; PAM SMITH in her official capacity as court clerk of Pittsburg County; KAREN DUNNIGAN in her official capacity as court clerk of Pontotoc County; VALERIE UELTZEN in her official capacity as court clerk of Pottawatomie County; TINA FREEMAN in her official capacity as court clerk of Pushmataha County; JAN BAILEY in her official capacity as court clerk of Roger Mills County; CATHI EDWARDS in her official capacity as court clerk of Rogers County; KIMBERLY DAVIS in her official capacity as court clerk of Seminole County; GINA COX in her official capacity as court clerk of Sequoyah County; MELODY HARPER in her official capacity as court clerk of Stephens County; M. RENEE ELLIS in her official capacity as court clerk of Texas County; KEVIN STEVENS in his official capacity as court clerk of Tillman County; DON NEWBERRY in his official capacity as court clerk of Tulsa County; JIM HIGHT in his official capacity as court clerk of Wagoner County; JILL SPITZER in her official capacity as court clerk of Washington County; LYNDA VERMILLION in her official capacity as court clerk of Washita County; STACI DAVEY in her official capacity as court clerk of Woods County; TAMMY ROBERTS in her official capacity as court clerk of Woodward County,

Respondents.

**APPLICATION FOR ORIGINAL JURISDICTION AND PETITION FOR
DECLARATORY AND INJUNCTIVE RELIEF AND/OR A WRIT OF PROHIBITION**

COME NOW, 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 herein, by and through their attorneys, and request that this Honorable Court assume original jurisdiction to issue declaratory and injunctive relief and/or a writ of prohibition barring Respondents from implementing Oklahoma Senate Bill 1503, Reg. Sess. (2022) (“S.B. 1503” or “the Act”) in any way, including by enjoining the state court clerks from docketing lawsuits brought under S.B. 1503, and including as to any future suits for conduct that occurred during the pendency of this injunction.¹ In support of these requests, Petitioners allege the following:

RELEVANT FACTS

1. On April 28, 2022, the Oklahoma Legislature passed S.B. 1503. The Act will become effective immediately when signed by the Governor, which is expected imminently.²

2. S.B. 1503 is modeled after Texas Senate Bill 8, 87th Leg., Reg. Sess. (2021) (“S.B. 8”), which for more than 7 months has prevented almost all abortions in Texas. Like S.B. 8, S.B. 1503 is a 6-week ban on abortion enforced through private, civil lawsuits. S.B. 1503, however, is even more radical than the Texas law. This is because S.B. 1503 also attempts to bar the state courts from granting *any declaratory or injunctive remedy* against not only the State itself but also all its subdivisions, employees, and officers, as well as all would-be enforcers.

¹ Although Petitioners are making efforts to notify all Respondents as quickly as possible, the emergency presented by the immediately effective S.B. 1503 warrants expedited hearing prior to completed notice. Sup. Ct. Rule 1.191(e).

² Even if the Governor takes no action, the law becomes effective 5 days following transmittal to his office. Okla. Const. art. VI, § 11.

3. S.B. 1503 offends numerous guarantees of the Oklahoma Constitution and threatens grave harm to Petitioners and the Oklahomans they represent.

I. Parties

A. Petitioners

i. Oklahoma Call for Reproductive Justice (“OCRJ”)

4. OCRJ is a 501(c)(4) nonprofit founded in 2010 to advance reproductive justice and protect access to reproductive healthcare, including abortion, in Oklahoma. OCRJ is dedicated entirely to this cause. OCRJ’s mission is to promote reproductive justice in Oklahoma through education, empowerment, and advocacy.

5. OCRJ pursues its mission by providing education in the community. OCRJ publishes a zine, *How to Get an Abortion in Oklahoma*, which is updated regularly and provides information to Oklahomans who need to navigate the many overlapping laws and regulations restricting abortion in the state. OCRJ has also held educational campaigns, such as “Faith & Abortion” and “Abortion is an Act of Love,” to lessen the stigma attached to abortion, abortion providers, and patients.

6. OCRJ also pursues its mission by lobbying against bills that restrict abortion and other reproductive healthcare. It supports the few Oklahoma bills that help pregnant people, including legislation barring the shackling of pregnant incarcerated patients during labor. Prior to the COVID-19 pandemic, OCRJ hosted lobby days, during which it organized its members to lobby legislators around issues of reproductive justice. OCRJ holds events and speaks to the media in order to educate Oklahomans about legislation and the potential impact of such legislation on Oklahomans’ access to reproductive healthcare.

7. OCRJ's members are diverse in their party affiliation, economic background, and lived experience, but all believe that pregnant Oklahomans deserve the ability to make decisions about their healthcare in line with their own values and intentions.

ii. Tulsa Women's Reproductive Clinic ("Tulsa Women's")

8. Tulsa Women's is an abortion facility licensed by the Oklahoma State Department of Health located in Tulsa, Oklahoma and has been offering abortion services since 1974. Until 2018, Tulsa Women's was operated by a predecessor, Nova Health Systems. Tulsa Women's provides reproductive healthcare services, including contraception and medication and procedural abortions. Tulsa Women's brings claims on behalf of itself, its physicians, its staff, and its patients.

9. Tulsa Women's provides medication abortion up through 10 weeks, 0 days as measured from the first day of a patient's last menstrual period ("LMP") and procedural abortion up through 18 weeks LMP. People who reside throughout the State of Oklahoma, as well as people from Missouri, Kansas, Arkansas, and Texas, travel to Tulsa Women's to access high quality abortion services.

iii. Dr. Alan Braid

10. Alan Braid, M.D. is a board-certified OB/GYN and is the principal owner of Tulsa Women's. He took ownership of the clinic in 2018 after the previous owner retired to ensure that it continued to provide Oklahomans with high quality abortion care. Dr. Braid also provides abortions at Tulsa Women's. Dr. Braid sues on behalf of himself and his patients.

iv. Comprehensive Health of Planned Parenthood Great Plains ("CHPPGP")

11. CHPPGP is a not-for-profit corporation organized under the laws of Kansas and registered to do business in Oklahoma. CHPPGP operates one health center in Oklahoma,

located in Oklahoma City, which is licensed as an abortion facility by the Oklahoma State Department of Health. CHPPGP sues on behalf of itself, its physicians, its staff, and its patients.

12. CHPPGP provides a wide variety of sexual and reproductive healthcare at its Oklahoma City location, including contraceptives, cancer screenings, pap smears, wellness exams, breast exams, colposcopies, and abortions. CHPPGP's Oklahoma City location provides medication abortion up through 11 weeks, 0 days LMP, as well as procedural abortion up through 18 weeks LMP.

v. Planned Parenthood of Arkansas & Eastern Oklahoma ("PPAEO")

13. PPAEO is a not-for-profit corporation organized under the laws of Oklahoma. It operates one health center in Oklahoma, located in Tulsa, which is licensed as an abortion facility by the Oklahoma State Department of Health. PPAEO sues on behalf of itself, its physicians, its staff, and its patients.

14. PPAEO provides a wide variety of sexual and reproductive healthcare at its Tulsa location, including contraceptives, cancer screenings, pap smears, wellness exams, breast exams, colposcopies, and abortions. PPAEO's Tulsa location provides medication abortion up through 11 weeks, 0 days LMP, as well as procedural abortion up through 17 weeks LMP.

B. Respondents

15. The State of Oklahoma is obligated to uphold the Oklahoma Constitution.

16. The remaining 77 Respondents are all state court clerks in the State of Oklahoma who are each responsible for filing and docketing cases presented to them. Okla. Stat. Ann. tit. 12, § 29(A). In discharging their duties, clerks "may refuse to file any document

presented for filing if the clerk believes that the document constitutes sham legal process”

Id. § 29(B).

III. Abortion in the United States and Oklahoma

17. Legal abortion is one of the safest medical procedures in the United States. The risk of death associated with childbirth is approximately 14 times higher than that associated with abortion, and every pregnancy-related complication is more common among those giving birth than among those having abortions.

18. Abortion is also very common: approximately one in four women in the United States has an abortion by age 45.³

19. Those seeking abortions do so for a variety of deeply personal reasons, including familial, medical, and financial ones. Deciding whether to carry to term or end a pregnancy implicates a person’s core religious beliefs, values, and family circumstances.

20. Access to abortion benefits the health and well-being of pregnant people and their families, including people who already have children. Over the past fifty years, abortion has been essential to people’s ability to participate in the economic and social life of the nation and Oklahoma.

21. When people are denied the ability to have an abortion, their lives are irrevocably altered—the State intrudes on their bodily autonomy and their ability to direct their own lives. Denial of care also imposes substantial medical risk, as carrying a pregnancy to term is far riskier than any method of abortion. Further, people denied access to abortion experience worse psychological, physical, and financial health outcomes than people who were

³ Abortion is also sought by people who do not identify as women. People with other gender identities, including transgender men and gender-diverse individuals, may become pregnant and seek abortions.

able to access such care. These people are more likely to experience poverty, health difficulties, and physical violence, as are their families.

22. In Oklahoma, the Legislature has engaged in a persistent campaign to make abortion as difficult to access as it can. Since 2008, the Oklahoma Legislature has enacted over 20 bills addressing abortion, imposing a maze of requirements.

23. Oklahoma's administrative code outlines extensive regulations for abortion facilities. Okla. Admin. Code §§ 310:600-1-1 to 310:600-13-3. No public facilities or hospitals may be used for abortions, and, with limited exceptions, no public employees may provide abortions. Okla. Stat. Ann. tit. 63, § 1-741.1(A). All patients seeking abortions are required to wait 72 hours after receiving state-mandated information. *Id.* § 1-738.2(B)(1). People who rely on Medicaid can obtain coverage for abortion only if the pregnancy is life-threatening or the result of rape or incest. *Id.* § 1-741.1(B); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 128 Stat. 409, §§ 613-14.

IV. Statutory Framework of S.B. 1503

A. S.B. 1503: The 6-Week Ban and Liability for Violations

24. S.B. 1503 requires physicians who perform abortions in Oklahoma to first determine whether “a detectable fetal heartbeat” is present. S.B. 1503 § 3(B). The Act prohibits the physician from providing an abortion after “detect[ing] a fetal heartbeat” or if the physician “failed to perform a test to detect a fetal heartbeat.” *Id.* § 4(A). S.B. 1503 contains no exception for pregnancies that result from rape or incest or for fetal health conditions that are incompatible with sustained life after birth. The only exception is for a medical emergency. *Id.* § 5(A). Section 5 of S.B. 1503 imposes additional reporting requirements on abortions performed because of a medical emergency. *Id.* § 5(B)-(C).

25. S.B. 1503 defines “fetal heartbeat” as “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” S.B. 1503 § 2(1). In a typically developing pregnancy, ultrasound can generally detect cardiac activity beginning at approximately 6 weeks LMP.

26. A full-term pregnancy is approximately 40 weeks LMP.

27. The cells that produce the early cardiac activity described in S.B. 1503 have not yet formed a “heart.” The term “heartbeat” in S.B. 1503 thus covers not just a “heartbeat” in the lay sense but also early cardiac activity—more accurately, electrical impulses—present before full development of the cardiovascular system. Similarly, a developing pregnancy is properly referred to as an “embryo” until approximately 10 weeks LMP, when it becomes a “fetus.” So, despite S.B. 1503’s use of the phrase “fetal heartbeat,” the Act forbids abortion even when electrical impulses are detected in an embryo. *See* S.B. 1503 §§ 2-4. Because neither “fetal” nor “heartbeat” is accurate medical terminology at this stage of pregnancy, Petitioners refer to the prohibition against providing an abortion after the detection of a “fetal heartbeat” as a “6-week ban.”

28. No embryo is viable at 6 weeks LMP or at any other point when cardiac activity can first be detected by ultrasound. Instead, viability is generally understood as the point in pregnancy when a fetus, if born at that time, has a reasonable likelihood of sustained life after birth, with or without artificial support.

29. Viability generally does not occur until approximately 23-24 weeks LMP. By prohibiting abortion after approximately 6 weeks LMP, S.B. 1503 bans abortion roughly four months before viability.

30. Although patients generally obtain an abortion as soon as they can, the majority of abortions in Oklahoma occur after 6 weeks of pregnancy. Many patients do not even realize they are pregnant before 6 weeks LMP—for instance, because they have irregular menstrual periods, or because they mistake the vaginal bleeding that is common in early pregnancy for a period. Even those patients who do confirm a pregnancy before 6 weeks LMP and decide quickly that they want an abortion often encounter substantial financial and logistical difficulties in obtaining one before 6 weeks LMP. They must also navigate Oklahoma’s onerous legal scheme for abortion. *See, e.g.*, Okla. Stat. Ann. tit. 63, §§ 1-741.1, 1-738.2.

31. S.B. 1503 creates liability for “perform[ing] or induc[ing] an abortion in violation of” the 6-week ban. S.B. 1503 § 9(A)(1).

32. S.B. 1503 also creates liability for “[k]nowingly engag[ing] in conduct that aids or abets the performance or inducement of an abortion” that violates the 6-week ban. S.B. 1503 § 9(A)(2). Although S.B. 1503 does not define what constitutes aiding or abetting, it expressly provides that “paying for or reimbursing the costs of an abortion” is prohibited activity. *Id.* S.B. 1503’s aiding-and-abetting liability would apply “regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of” the Act. *Id.*

33. Even if someone does not actually perform a prohibited abortion or aid and abet a prohibited abortion, the Act provides that they can still be sued if they merely intend to do so. S.B. 1503 § 9(A)(3).

B. S.B. 1503: Enforcement Actions and Penalties

34. S.B. 1503 expressly precludes the State or any political subdivision, as well as officers or employees of a state or local government entity in Oklahoma, from directly

enforcing the 6-week ban. S.B. 1503 § 9(A). Instead, S.B. 1503 creates a private, civil enforcement mechanism: “[a]ny person, other than the state, its political subdivisions, and any officer or employee of a state or local governmental entity in this state, may bring a civil action against any person” who performs a prohibited abortion, aids or abets a prohibited abortion, or intends to engage in these activities. *Id.*

35. Besides government officials, the only people not permitted to initiate an S.B. 1503 enforcement action are those “who impregnated a woman seeking an abortion through an act of rape, sexual assault, incest,” or certain other crimes. S.B. 1503 § 9(K)(4). However, because the 6-week ban itself contains no exception for pregnancies resulting from rape, sexual assault, or incest, anyone other than the perpetrator—including the perpetrator’s family members—could still sue a clinic, physician, friend, or family member who assists a patient in terminating a pregnancy that resulted from the offense. *See id.* § 9.

36. S.B. 1503 does not permit suits against abortion patients. S.B. 1503 § 9(K)(1). But it provides a ready tool for abusive and manipulative partners or family members to try to block a patient’s abortion decision. Under S.B. 1503, if such individuals know about a patient’s plan to obtain an abortion, they could sue the patient’s abortion provider, or anyone else who “intends” to assist with that abortion, to try to prevent the patient from accessing care. *Id.* § 9(A)(3).

37. S.B. 1503 imposes mandatory draconian penalties. Where an S.B. 1503 claimant prevails, “the court *shall* award”: (1) “[i]njunctive relief sufficient to prevent” future violations or conduct that aids or abets violations; (2) “[s]tatutory damages” to the claimant “in an amount of *not less than* Ten Thousand Dollars (\$10,000) for each abortion” that was provided or aided and abetted; (3) “[n]ominal and compensatory damages” if the claimant

“suffered harm . . . including but not limited to loss of consortium and emotional distress”; and (4) the claimant’s “costs and attorney fees.” S.B. 1503 § 9(B) (emphases added). S.B. 1503 imposes no cap on the “statutory damages” and provides no room for discretion (or standards to guide the discretion) of judges or juries in determining what amount of damages to award.

38. S.B. 1503 allows “[a]ny person” to bring a claim alleging violation of S.B. 1503’s prohibitions. S.B. 1503 § 9(A). S.B. 1503 incentivizes the public at large, including politically or economically motivated strangers, to interfere in the personal health decisions of Oklahomans across the state.

39. At every turn, S.B. 1503’s rules for its enforcement proceedings sharply diverge from those normally applicable to Oklahoma litigants and make it impossible for those sued to fairly defend themselves.

40. **Statewide venue:** S.B. 1503 allows claimants to file enforcement lawsuits in their home counties and then veto transfer to a more appropriate venue. As a result, because there is effectively no limit on private parties bringing S.B. 1503 suits, abortion providers and alleged aiders and abettors could be forced to defend themselves in multiple, simultaneous enforcement proceedings in far-flung courts across the state. S.B. 1503 § 11(A)(4) (permitting suit in the claimant’s county of residence if “the claimant is a natural person residing in” Oklahoma); *id.* § 11(B) (providing that an S.B. 1503 “action shall not be transferred to a different venue without the written consent of all parties”). In contrast, venue in Oklahoma is generally limited to where the events giving rise to a claim took place or where the defendant resides, *see* Okla. Stat. Ann. tit. 12, §§ 133, 139, and an Oklahoma state court may generally transfer venue “in the interest of justice and for the convenience of the parties,” *id.* § 140.3.

41. ***Draconian fee-shifting in favor of S.B. 1503 claimants:*** S.B. 1503 provides that, in enforcement proceedings, anyone who brings an S.B. 1503 claim and prevails is entitled to recover costs and attorney's fees. S.B. 1503 § 9(B)(4). Meanwhile, abortion providers and other people sued under S.B. 1503 cannot be awarded costs or attorney's fees if they prevail, no matter how many times they are sued or the number of courts in which they must defend themselves, irrespective of whether the claims against them on their face make out an S.B. 1503 violation, and irrespective of the fact that every S.B. 1503 claim is barred by binding federal law. *Id.* § 9(I).

42. Moreover, S.B. 1503 provides that plaintiffs challenging abortion restrictions who are seeking declaratory and injunctive relief can be forced to pay defendants' attorney's fees unless they prevail on every single claim covered by S.B. 1503's fee-shifting provision. S.B. 1503 § 13(A)-(B). If the Court dismisses a claim, regardless of the reason, or enters judgment in defendants' favor on that claim, the party defending the abortion restriction is deemed to have "prevail[ed]." *Id.* § 13(B).

43. What is more, this "prevailing party" could then seek fees not only against the plaintiffs, but also against their attorneys and any corresponding law firms. S.B. 1503 § 13(A). The clear purpose of this statute is to make it difficult for abortion providers and others challenging S.B. 1503 (or sued under it) to identify counsel willing to risk extreme financial penalties.

44. ***Elimination of defenses:*** S.B. 1503 purports to bar people who are sued under the Act from raising seven defenses, including that they believed the law was unconstitutional or that the patient consented to the abortion. S.B. 1503 § 9(E). S.B. 1503 also states that people who are sued may not rely on non-mutual issue or claim preclusion or rely as a defense on any

other “state or federal court decision that is not binding on the court in which the action” was brought. *Id.* The clear import of these provisions is to cast a pall on constitutionally protected activity, to force abortion providers and others who assist abortion patients to defend themselves over and over again, and to hamstring that defense. Further, S.B. 1503 § 9(J) purports to eliminate for those sued under the Act the protections of the Oklahoma Religious Freedom Restoration Act and the Oklahoma Citizens Participation Act.

45. S.B. 1503 also purports to override binding federal law when applied in state-court enforcement proceedings. As one example, S.B. 1503 directs Oklahoma judges to ignore judgments and injunctions issued by federal courts by telling Oklahoma courts to refuse to apply non-mutual collateral estoppel based on such judgments and by mandating that they ignore whether a federal injunction expressly permitted activity by an abortion provider or other person sued in S.B. 1503 proceedings. S.B. 1503 § 9(E)(4)-(5).

46. ***Threat of retroactive liability:*** S.B. 1503 also threatens potential defendants with retroactive liability under a 6-year statute of limitations. S.B. 1503 § 9(D). It expressly states that defendants may not rely for their defense on court decisions that are later overruled, “*even if that court decision had not been overruled when the defendant engaged in conduct*” challenged under S.B. 1503. *Id.* § 9(E)(3) (emphasis added). S.B. 1503 further eliminates as a defense to its punitive attorney’s fee provision the fact that “[t]he court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.” *Id.* § 13(D)(3).

47. ***Purported jurisdiction stripping for declaratory and injunctive relief:*** S.B. 1503 also claims to bar state courts from hearing any claims for declaratory or injunctive relief against S.B. 1503. This jurisdiction-stripping provision purports to categorically prohibit

Oklahoma courts from considering any “action, claim, or counterclaim that seeks declaratory or injunctive relief to prevent” enforcement of the Act, and as against “this state, a political subdivision, any officer or employee of the state or a political subdivision, or any person.” S.B. 1503 § 12(D). Therefore, not only would this provision eliminate any opportunity to seek pre-enforcement review of S.B. 1503 as permitted by the Oklahoma Uniform Declaratory Judgment Act, but it also would bar counterclaims for declaratory or injunctive relief in an S.B. 1503 suit itself.

48. *Purported unfettered sovereign immunity*: In addition to stripping Oklahoma courts of the ability to issue declaratory or injunctive relief as to any defendant, whether public or private, S.B. 1503 also purports to immunize from suit not only the State itself, but also all political subdivisions, each officer and employee of this state in “any type of legal or equitable action that challenges the validity of any provision or application of this act, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this act.” S.B. 1503 § 12(A). The obvious intent of these provisions is to deny potential S.B. 1503 defendants their day in court to challenge the flagrantly unconstitutional nature of the statutory regime.

V. **Texas S.B. 8 Litigation**

49. S.B. 1503 is an iteration of Texas S.B. 8, which for more than 7 months has prevented almost all abortions in Texas, but S.B. 1503 is even more extreme.

50. Like S.B. 8, S.B. 1503 is a 6-week ban on abortion enforced through private, civil lawsuits that can be brought by “any person,” with no requirement to demonstrate injury, damages, or any connection to an abortion. S.B. 1503 § 9(A); Tex. Health & Safety Code

§ 171.208(a). This was designed to insulate a blatantly unconstitutional 6-week ban from federal pre-enforcement review—a goal Texas achieved.⁴ Indeed, the U.S. Supreme Court held that the state actors sued by Texas abortion providers in federal court were not proper defendants under the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908), which provides a limited exception to the Eleventh Amendment for suits alleging that state actors are violating federal law. *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 532 (2021). The *Whole Woman’s Health* opinion, therefore, hinged on Eleventh Amendment immunity for state actors sued in federal court, as well as Article III standing, neither of which are issues presented in this state court case.

51. Unlike S.B. 8, S.B. 1503 further purports to strip jurisdiction from the state courts to grant declaratory or injunctive relief to prevent enforcement of the Act or the filing of a civil enforcement suit, in either a defensive or offensive posture and as against any defendant. S.B. 1503 § 12(D). In short, S.B. 1503 is designed to foreclose *both* federal and state court proceedings regarding its ultimate constitutionality.

52. Abortion providers in Oklahoma have already seen the devastating effects of Texas S.B. 8 in treating Texas patients seeking care out of state. Texas patients have been

⁴ Although federal pre-enforcement review has been foreclosed, Planned Parenthood entities and one of their providers have filed suit in Texas state court seeking declaratory and injunctive relief against S.B. 8 under the Texas Constitution. *See* Pls.’ Orig. Pet. & Req. for Declaratory J. & Appl. for TRO &/or Anti-Suit Inj., *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Tex. Right to Life*, No. D-1-GN-21-004632 (Tex. Dist. Ct. Sept. 2, 2021). That case has been transferred to a multidistrict litigation court along with a number of other cases seeking declaratory judgments that S.B. 8 is unconstitutional, and the multidistrict litigation court has found that S.B. 8 is unconstitutional as a violation of Texas’s constitutional separation of powers and due process protections. Order Declaring Certain Civil Procedures Unconstitutional & Issuing Declaratory J., *Van Stean v. Tex. Right to Life*, No. D-1-GN-21-004179, slip. op. at 47 (Tex. Dist. Ct. Dec. 9, 2021), *appeal filed*, No. 03-21-00650-CV (Tex. App. Dec. 9, 2021). The case in the district court is currently stayed pending resolution of the private would-be enforcer defendants’ motion to dismiss under the Texas Citizens Participation Act. Br. of the Planned Parenthood Plaintiffs-Appellees, at xiv, *Tex. Right to Life v. Van Stean*, No. 03-21-00650-CV, 2022 WL 672468, at *xiv (Tex. App. Feb. 28, 2022).

blocked from accessing abortions in their state, and not all patients are able to travel out of state to seek abortions. Even those who are able to travel are often delayed in accessing care, given the increased demand on out-of-state providers, and that delay can increase the complexity of their abortions and may subject patients to increased medical risks. S.B. 1503 is even more radical than S.B. 8 and, with its immediate effective date, threatens imminent harm throughout the state and the region.

VI. Irreparable Harm

A. Impact on Abortion Patients

53. S.B. 1503 restricts the ability of Oklahomans to access constitutionally protected abortion care.

54. For those able to scrape together the necessary funds, S.B. 1503 will force them to travel out of state to access abortion care. Others will attempt to self-manage their own abortions without medical supervision. And many Oklahomans will have no choice but to continue their pregnancies against their will.

55. Being forced to continue a pregnancy against one's will jeopardizes a person's physical, mental, and emotional health, as well as the stability and well-being of their family, including existing children.

56. Even for someone who is otherwise healthy and has an uncomplicated pregnancy, being forced to carry that pregnancy to term and give birth poses serious medical risks with both short- and long-term consequences for the patient's physical health and mental and emotional well-being. For someone with a medical condition caused or exacerbated by pregnancy, these risks are increased.

57. For people experiencing intimate partner violence, forced pregnancy also often exacerbates the risk of violence and further tethers the pregnant person to their abuser.

58. In addition, forced pregnancy will add to the anguish of patients and their families who receive fetal diagnoses that are incompatible with sustained life after birth—forcing patients to carry doomed pregnancies for months and suffer the physical and emotional pains of labor and delivery, knowing all the while that their child will not survive.

59. S.B. 1503 is particularly devastating for Oklahomans of color, particularly Black and Indigenous populations, as well as for Oklahomans with low incomes and those living in rural areas—communities that already face heightened barriers to medical care.

60. Low-income populations and people of color seek abortions at a higher rate than wealthier and white populations (both in Oklahoma and nationally) due to inadequate access to contraceptive care, income inequity, and other facets of structural racism. These communities will thus necessarily bear an outsized share of S.B. 1503’s burdens.

61. Black and Indigenous Oklahomans will also disproportionately suffer the gravest consequences of forced pregnancy if litigations enforcing S.B. 1503 are allowed to proceed in light of the significantly higher rates of maternal mortality in their communities. Oklahoma “persistently ranks among the states with the worst rates” of maternal deaths in the United States, and maternal deaths in Oklahoma have “increased in recent years.”⁵ Specifically, Black women in Oklahoma are currently over one-and-a-half times more likely to die of complications related to birth or pregnancy than white women.⁶ From 2004 to 2018, Black women in Oklahoma were two-and-a-half times more likely to die of complications related to birth or pregnancy than white women, a statistic the Oklahoma Maternal Mortality

⁵ Okla. State Dep’t of Health, Okla. Maternal Mortality Rev. Comm., *Oklahoma Maternal Health, Morbidity and Mortality: Annual Report 2021*, at 5-6 (2021), <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>

⁶ *Id.* at 8.

Review Committee called an “alarming disparity.”⁷ Indigenous women in Oklahoma have also faced increased rates of maternal mortality over the years and at times were more than one-and-a-half times more likely to die than white women during the same time period.⁸ Moreover, “[f]or every woman who dies, about 70 experience potentially fatal complications” related to birth or pregnancy, according to data obtained from the Oklahoma State Department of Health.⁹

62. Those who attempt to travel out of state to access care will have to pay for and arrange transportation, childcare, and time off work. Because the majority of abortion patients are poor or have low incomes, these financial and other costs may be insurmountable or require them to forgo other basic needs for themselves and their existing families.

63. Even those able to amass funds and make arrangements to travel outside Oklahoma for care will be delayed in obtaining an abortion. While abortion is very safe at all stages, the complexity increases as pregnancy advances. Moreover, the cost of an abortion generally increases with gestational age.

64. Additionally, by targeting individuals who provide financial, practical, or emotional support for abortion access, S.B. 1503 is decimating the support system on which Oklahomans with low incomes rely to access abortion. By imposing aiding-and-abetting liability “regardless of whether the person knew or should have known that the abortion would

⁷ Okla. State Dep’t of Health, Okla. Maternal Mortality Rev. Comm., *Maternal Mortality in Oklahoma 2004-2018*, at 4 (2020), <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/family-health/maternal-and-child-health/maternal-mortality/annual-mmrc-report.pdf>.

⁸ *Id.*

⁹ Kassie McClung, *Most of Oklahoma’s Maternal Deaths Preventable, State Review Finds*, The Frontier (Aug. 10, 2020), <http://www.readfrontier.org/stories/mostof-oklahomas-maternal-deaths-preventable-state-review-finds>.

be performed or induced in violation” of S.B. 1503, *id.* § 9(A)(2), the Act chills support even for those abortions that remain permissible under S.B. 1503.

65. Abortion access in Oklahoma has already been strained by the devastating impact of S.B. 8 in Texas, which has caused many Texans who would ordinarily be able to seek care in their home state to try to obtain that care in Oklahoma instead. If providers in Oklahoma are also forced to start turning away patients after the earliest stages of pregnancy, this domino effect will continue, as patients who are able to travel to try to access abortion will be forced to travel farther and farther to find a provider, and as providers in neighboring states will struggle to find ways to meet patients’ desperate need for care.

B. Impact on Petitioners and Their Physicians and Staff

66. S.B. 1503 will force Petitioners to stop providing abortions and engaging in activities that assist with abortion provision after 6 weeks of pregnancy.

67. But even full compliance with S.B. 1503 does not protect Petitioners from frivolous and harassing S.B. 1503 suits, a possibility all the more likely given the bounty offered by S.B. 1503 and its one-sided enforcement scheme.

68. If S.B. 1503 goes into effect, Petitioners may lose or lay off staff in light of the reduced services.

69. In addition to these harms, S.B. 1503’s fee-shifting provisions will penalize and deter challenges to S.B. 1503 in any enforcement proceedings that are brought, thus burdening the Petitioners’ right to petition the courts and to speak freely and exposing them to potentially ruinous liability for attorney’s fees and costs because they attempt to vindicate their own and others’ constitutional rights through public-interest litigation.

70. In sum, Petitioners may be forced to stop providing abortions starting at approximately 6 weeks in pregnancy. They and their staff will suffer profound harm to their property, business, reputations, and a deprivation of their own constitutional rights. And their patients will be denied access to constitutionally protected healthcare, and will continue to be irreparably injured, unless this Court intervenes.

JURISDICTION AND VENUE

71. Petitioners include citizens of the State of Oklahoma.

72. Jurisdiction and venue are both proper in this court pursuant to this Court's jurisdiction conferred in Okla. Const. art. VII, § 1.

CAUSES OF ACTION

First Cause of Action (Substantive Due Process)

73. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

74. S.B. 1503's prohibition violates the fundamental right to choose to terminate a pregnancy and to bodily integrity in violation of Okla. Const. art. II, § 7.

Second Cause of Action (Substantive Due Process - Violation of the Right to Health)

75. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

76. S.B. 1503's prohibition violates the right to health in violation of Okla. Const. art. II, § 7.

Third Cause of Action
(Equal Protection)

77. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

78. S.B. 1503's prohibition violates the guarantee of equal protection of the laws contained in Okla. Const. art. II, § 7.

Fourth Cause of Action
(Open Courts)

79. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

80. S.B. 1503 violates Petitioners' rights under Okla. Const. art. II, § 6 to seek relief from Oklahoma courts by purporting to categorically prohibit Oklahoma courts from considering any "action, claim, or counterclaim that seeks declaratory or injunctive relief to prevent" enforcement of the Act. S.B. 1503 § 12(D).

81. S.B. 1503 also violates Petitioners' rights under Okla. Const. art. II, § 6 by purporting to shield from suit—including suits for declaratory and injunctive relief—the State, all its subdivisions, and all employees or officers of the State and its subdivisions.

82. S.B. 1503's harsh penalties, coupled with the fee-shifting provisions serve to stifle any defense of those sued under the Act. As a result, S.B. 1503 penalizes use of Oklahoma courts for the redress of grievances, in violation of Okla. Const. art. II, § 6.

83. S.B. 1503's imposition of joint and several liability for attorney's fees on litigants and attorneys or firms that challenge abortion restrictions further violates Petitioners' rights under Okla. Const. art II, § 6 by stifling their representation in public interest litigation.

84. Further, S.B. 1503's immediate effective date has forced Petitioners to bring a challenge on extremely short notice.

Fifth Cause of Action
(Unlawful Delegation of Police Power)

85. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

86. “[T]he state’s police power is inalienable” and cannot be given to private individuals to enforce as they choose. *Tenneco Oil Co. v. El Paso Nat. Gas Co.*, 1984 OK 52, 687 P.3d 1049, 1059 n.14. S.B. 1503 improperly delegates the State’s police power to private citizens in violation of the Oklahoma Constitution.

Sixth Cause of Action
(Special Law)

87. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

88. S.B. 1503 creates an unconstitutional special law relating to a topic on which Okla. Const. art. V, § 46 categorically prohibits special laws.

89. S.B. 1503 further violates Okla. Const. art. V, § 59 and creates a special law where general laws could be made applicable by, among other things, establishing onerous and unique procedural requirements applicable only to S.B. 1503 enforcement proceedings.

Seventh Cause of Action
(Void for Vagueness)

90. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

91. S.B. 1503 fails to adequately inform regulated parties and those charged with the law’s enforcement of what conduct is prohibited and/or leads to penalties. S.B. 1503

deprives Petitioners of notice as to what actions violate the law by prohibiting S.B. 1503 defendants from relying on precedent or court decisions in place at the time that they engage in conduct prohibited by S.B. 1503. Specifically, with regard to alleged “aiders and abettors,” S.B. 1503’s aiding-and-abetting liability may attach “regardless of whether [a] person knew or should have known that the abortion” they aided “would be performed or induced in violation” of the 6-week ban. S.B. 1503 § 9(A)(2). Such uncertainty and vagueness violates Okla. Const. art. II, § 7.

Eighth Cause of Action
(Ex Post Facto Law)

92. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

93. S.B. 1503 eliminates defenses to liability in S.B. 1503 § 9, including that defendants may not rely for their defense on court decisions that are later overruled, “even if that court decision had not been overruled when the defendant engaged in conduct” challenged under S.B. 1503. S.B. 1503 § 3(E)(3). Retroactive statutes such as S.B. 1503 violate Okla. Const. art. II, § 15.

Ninth Cause of Action
(Freedom of Speech)

94. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

95. S.B. 1503’s broad prohibition on activity that “aids or abets” a prohibited abortion, and on an intent to engage in such activity even without corresponding action, burdens Petitioners’ speech and expressive conduct, in violation of Okla. Const. art. II, § 22.

96. S.B. 1503 further restricts speech by assigning “joint and several” liability to those who challenge abortion restrictions but do not prevail on every claim. S.B. 1503’s fee-shifting provisions are thus viewpoint- and content-based restrictions on abortion-related activity and have the effect of chilling those who might litigate against abortion restrictions.

Tenth Cause of Action
(Unreasonable Access to Patient Medical Records)

97. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

98. The Oklahoma Constitution protects the right “of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.” *Alva State Bank & Tr. Co. v. Dayton*, 1988 OK 44, 755 P.2d 635, 639 (Kauger, J. specially concurring). That is, “[t]he guarantee of security found in [Okla. Const.] art. 2, § 30 of the right of the people to be secure in their papers encompasses the people’s right to preserve confidentiality in their personal papers. This security, which must be strictly construed, is a fundamental, constitutional right applicable to both civil and criminal actions.” *Id.*

99. S.B. 1503 violates this right by granting to S.B. 1503 claimants an entitlement to put at issue in litigation Petitioners’ patients’ private healthcare decisions, irrespective of their wishes or consent. In so doing, S.B. 1503 incentivizes the invasion of patient privacy by individuals with no connection to the patient. It also intrudes on the right to privacy held by patients who become pregnant from sexual assault or incest by putting private information about the circumstances of a patient’s pregnancy at issue in litigation with respect to whether an S.B. 1503 claimant may recover under the statute.

Eleventh Cause of Action
(Declaratory Judgment - Unconstitutional and Void)

100. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-72.

101. Because S.B. 1503 violates the Oklahoma Constitution, and a declaratory judgment would terminate the controversy giving rise to this proceeding, Petitioners request a declaration from this Court stating that S.B. 1503 is unconstitutional and void. Okla. Stat. Ann. tit. 12, § 1651.

Twelfth Cause of Action
(Temporary Injunction - Unconstitutional and Void)

102. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1-72.

103. Temporary injunctive relief is warranted because Petitioners, and those whose interests Petitioners represent, will suffer irreparable injury if S.B. 1503 is allowed to take effect.

Thirteenth Cause of Action
(Permanent Injunction - Unconstitutional and Void)

104. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

105. Because S.B. 1503 violates the Oklahoma Constitution, warranting a declaratory judgment stating that S.B. 1503 is unconstitutional and void, Respondents should be permanently enjoined from implementing it in any way, including by docketing lawsuits brought under S.B. 1503.

Fourteenth Cause of Action
(Writ of Prohibition)

106. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 72.

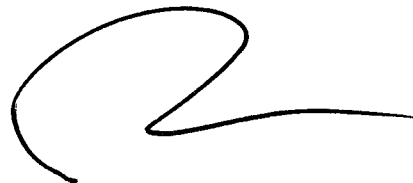
107. It is also within the discretion of this Court to grant a writ of prohibition to prevent the State and its clerks from exercising judicial power “unauthorized by law” that “will result in injury for which there is no other adequate remedy.” *Maree v. Neuwirth*, 2016 OK 62, ¶ 6, 374 P.3d 750, 752.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court issue declaratory and injunctive relief and/or a writ of prohibition to prevent Respondents from implementing S.B. 1503 in any way, including by enjoining the state court clerks from docketing S.B. 1503 lawsuits, and including as to any future suits for conduct that occurred during the pendency of this injunction.

Dated: April 28, 2022

Respectfully Submitted,



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J. BLAKE PATTON