



ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA **FILED**
SUPREME COURT
STATE OF OKLAHOMA

APR 28 2022

JOHN D. HADDEN
CLERK

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,

CASE NO. **#120376**

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
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

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Reynolds _____
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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.

BRIEF IN SUPPORT OF
PETITIONERS' APPLICATION TO ASSUME ORIGINAL JURISDICTION AND
FOR DECLARATORY AND INJUNCTIVE RELIEF AND/OR A WRIT OF
PROHIBITION

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I. INTRODUCTION

On April 28, 2022, the Oklahoma Legislature passed Senate Bill 1503 (“S.B. 1503” or the “Act”). The Act becomes effective immediately upon the Governor’s signature, which is expected imminently. S.B. 1503 is modelled after Texas S.B. 8, which for more than seven 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 of its subdivisions, employees, and officers, as well as all would-be private enforcers. In short, like S.B. 8, S.B. 1503 is designed to insulate its clearly unconstitutional ban from federal pre-enforcement review and, unlike S.B. 8, it is *also* designed to foreclose pre-enforcement state court review. “But [this Court is] *required* to apply the Oklahoma Constitution with absolute fidelity.” *Beason v. I. E. Miller Servs., Inc.*, 2019 OK 28, ¶ 15, 441 P.3d 1107, 1113. S.B. 1503 thus thumbs its nose at this Court’s “solemn yet urgent duty to act when a statute is clearly, palpably and plainly inconsistent with the constitution—as here.” *Id.* (internal citation and quotation marks omitted).

Like the criminal 6-week abortion ban currently enjoined by this Court, *see* October 25, 2021 Order Granting Emergency Temporary Injunction, No. IN-119918, S.B. 1503 is indisputably an unconstitutional ban on previability abortion. The State already conceded the unconstitutionality of such a ban in that case. *See* Oct. 4, 2021 Temporary Injunction Hearing Transcript, *Oklahoma Call for Reproductive Justice, et al., v. O’Connor, et al.*, (filed with this Court on appeal on March 4, 2022, No. IN-119918, Tr. 15:13-21); October 25, 2021 Order Granting Emergency Temporary Injunction, No. IN-119918. Beyond banning abortion in

violation of Article II, § 7, S.B. 1503 flagrantly violates multiple other provisions of the Oklahoma Constitution, including the Oklahoma Constitution's open courts provision and its prohibition on special laws.

Absent swift action by this Court, S.B. 1503 will immediately stop the provision of abortion care after approximately 6 weeks. If S.B. 1503 is allowed to take effect, many Oklahomans who have made the decision to have an abortion will be unable to access care. Restrictions proliferating in neighboring states have caused lengthy delays at clinics throughout the region, and those clinics cannot withstand the influx of patients that will be caused by enforcement of S.B. 1503. Shefali Luthra, *Oklahoma Was Key to Abortion Access for Texans. Now, the State Could Ban the Procedure Entirely*, The 19th (Mar. 29, 2022), <https://19thnews.org/2022/03/oklahoma-abortion-ban-access-texas>; Caroline Kitchener, Kevin Schaul & Daniela Santamariña, *Tracking New Action on Abortion Legislation Across the States*, Wash. Post (Mar. 26, 2022), <https://www.washingtonpost.com/nation/interactive/2022/abortion-rights-protections-restrictions-tracker>.

Given these extremely urgent circumstances and the fact that S.B. 1503 is flagrantly unconstitutional, it is necessary for this Court to assume original jurisdiction. Petitioners respectfully request that the Court consider their application and petition on an expedited basis,¹ assume original jurisdiction, declare S.B. 1503 unconstitutional, and grant declaratory and injunctive relief and/or a writ of prohibition sufficient to prevent Respondents from implementing S.B. 1503 in any way, including by docketing lawsuits, and including as to any future suits for conduct that occurred during the pendency of this injunction.

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).

II. THE CHALLENGED LAW

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,” which occurs around 6 weeks or even earlier as measured from a person’s last menstrual period (LMP),² or if the physician “failed to perform a test to detect a fetal heartbeat.” *Id.* § 4(A). Six weeks LMP is roughly four months before viability. Braid Aff. ¶ 6. S.B. 1503’s prohibition 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, which is not defined in the law. S.B. 1503 § 5.

S.B. 1503 creates liability for:

- “perform[ing] or induc[ing] an abortion in violation of” the 6-week ban. *Id.* § 9(A)(1).
- “[k]nowingly engag[ing] in conduct that aids or abets the performance or inducement of an abortion” that violates the 6-week ban. *Id.* § 9(A)(2). S.B. 1503 does not define what constitutes aiding or abetting, except that 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 applies “regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of” S.B. 1503. *Id.*

² A “heartbeat” is an inaccurate term for early electrical activity that precedes the development of a heart, and such activity is generally detectible in an embryo via ultrasound beginning at approximately six weeks LMP. Petitioners’ Appendix Exhibit 3 (“Braid Aff.”) ¶ 5; Petitioners’ Appendix Exhibit 4 (“Wales Aff.”) ¶¶ 5, 14.

- intending to perform a prohibited abortion or aid a prohibited abortion, even if the individual does not actually do so. *Id.* § 9(A)(3).

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 or indirectly enforcing the 6-week ban. *Id.* § 9(A). Instead, S.B. 1503 creates a private, civil enforcement action: “[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, without regard to whether a plaintiff alleges injury or damages. *Id.* Suits may not be brought against the patient. *Id.* § 9(K). While S.B. 1503 prohibits suits by “a person who impregnated a woman seeking an abortion through an act of rape, sexual assault, incest, or any other act prohibited by state law,” it makes no mention of how that limitation works in practice. And, because the 6-week prohibition itself has no such exception, the Act does not prohibit suits by third parties, such as a perpetrator’s family members, for abortions that are the result of such crimes. *Id.* § 9(K)(4). The statute of limitations for bringing an action under the Act is six years. *Id.* § 9(D).

S.B. 1503 imposes draconian mandatory 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.” *Id.* § 9(B). S.B. 1503 imposes no cap on the “statutory damages” and

provides no room for discretion—nor standards to guide the discretion—of judges or juries in determining an amount of damages to award. Prevailing defendants will not be awarded attorney’s fees, no matter how many times they are sued or the number of courts in which they must defend themselves. *Id.* § 9(I).

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: S.B. 1503 also allows claimants to file enforcement lawsuits in their home counties and to veto transfer to a more appropriate venue, *id.* § 11; provides for drastic and unilateral fee-shifting arrangements in favor of claimants, *id.* §§ 9, 13; purports to prohibit raising certain defenses in enforcement suits, including non-mutual issue or claim preclusion—thus allowing defendants to be sued repeatedly for the same conduct even if courts consistently reject the suits as unconstitutional, *id.* § 9(E); and threatens potential defendants with retroactive liability, *id.* § 9(E)(3). And shockingly, S.B. 1503 also claims to immunize the state and all state actors from suit in any action challenging it, *id.* § 12(A), and also to bar state courts from hearing any claims for declaratory or injunctive relief against S.B. 1503, *id.* § 12(D). This is regardless of whether relief is sought in the context of pre-enforcement review as permitted by the Oklahoma Uniform Declaratory Judgment Act or as counterclaims for declaratory or injunctive relief after being sued for a claimed violation of S.B. 1503, and regardless of whether the defendant sued is a state actor or a private individual threatening enforcement. *Id.*

S.B. 1503 also contains provisions affecting *all litigation* of abortion restrictions imposed by the state or any subdivision. The law makes “any party, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief” against an abortion restriction

“jointly and severally liable for court costs and attorney fees of the prevailing party,” including even for claims the court does not reach because defendants prevailed. *Id.* § 13(A); § 13(B)(1).

III. THE COURT SHOULD ASSUME ORIGINAL JURISDICTION FOR THREE REASONS

Where, as here, the Supreme Court and the district courts have concurrent jurisdiction under Article VII of the Oklahoma Constitution, this Court has discretion to assume original jurisdiction. *Edmondson v. Pearce*, 2004 OK 23, ¶ 10, 91 P.3d 605, 613. The Court has assumed original jurisdiction in several contexts. First, jurisdiction “may be assumed (1) in matters of public interest where there is (2) an element of urgency or a pressing need for an early decision.” *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶ 11, 163 P.3d 512, 521. Second, the Court’s original jurisdiction may be invoked “upon the circumstances of [the] dispute as being one between two powers of State government, each imbued with constitutionally vested authority.” *Ethics Comm’n of State of Okla. v. Cullison*, 1993 OK 37, 850 P.2d 1069, 1072. Third, the Court may assume original jurisdiction based on its “general superintending control over all inferior courts and all Agencies, Commissions and Boards created by law” pursuant to Okla. Const. art. VII, § 4. *Sparks v. State Election Bd.*, 1964 OK 114, 392 P.2d 711, 715.

Here, all three grounds are implicated: (1) whether S.B. 1503 is unconstitutional poses an urgent question of great public importance, given the Act’s extreme effects and immediate effective date; (2) S.B. 1503 creates an irreconcilable conflict between powers of State government by purporting to dramatically alter executive and judicial powers under the law, including by purporting to strip this and other state courts of jurisdiction to grant any declaratory or injunctive relief barring S.B. 1503 lawsuits; and (3) the Court may assume original jurisdiction pursuant to its superintending control over all inferior courts, authority which includes oversight of state court clerks who are instrumental to the Act’s private

enforcement scheme. Accordingly, the Court should assume original jurisdiction in this case to swiftly protect the interests of all Oklahomans in this matter of significant and statewide public concern.

A. The Imminent Private Enforcement of an Unconstitutional Law is a Matter of Great Public Importance and Urgency.

This Court has repeatedly found that ruling on the constitutionality of legislation that will be imminently enforced presents the rare circumstance in which the Court will exercise its discretion to assume original jurisdiction. *See, e.g., Campbell v. White*, 1993 OK 89, 856 P.2d 255, 258-59 (assuming original jurisdiction and granting relief against statute that violated the single subject rule); *Johnson v. Walters*, 1991 OK 107, 819 P.2d 694, 699 (same). The Court has described its basis for assuming original jurisdiction to rule on the constitutionality of legislative acts as a “general public need for a speedy determination of [a] constitutional question.” *Keating v. Johnson*, 1996 OK 61, 918 P.2d 51, 56.

This case presents such an urgent question of great public importance because (1) S.B. 1503 radically restricts access to safe and legal abortion in Oklahoma, where such access is already limited, and does so in a manner that violates numerous provisions of the Oklahoma constitution; (2) S.B. 1503 will become effective immediately upon the Governor’s signature and will implement a novel private enforcement scheme that will have catastrophic effects on patients, providers, and people who support abortion patients; and (3) the Act purports to curb the State’s authority to implement and oversee the enforcement of its own laws and this Court’s ability to review its constitutionality. *See Hunsucker v. Fallin*, 2017 OK 100, ¶ 7, 408 P.3d 599, 603 (assuming original jurisdiction where controversy was “*publici juris* due to the negative consequences attendant to enforcing *alleged* unconstitutional provisions statewide”); *State ex rel. Blankenship v. Atoka County*, 1969 OK 96, 456 P.2d 537, 539 (assuming original

jurisdiction in part where a dispute over payment of assistant district attorneys threatened to impair the enforcement of criminal laws in the state). Indeed, this Court “possesses discretion to grant standing to private parties to vindicate the public interest in cases presenting issues of great public importance.” *Hunsucker*, 2017 OK 100, ¶ 5, 408 P.3d at 602. This discretion is properly exercised where there are “competing policy considerations” and “lively conflict between antagonistic demands.” *Id.* The Court should assume original jurisdiction to address this patently unconstitutional law in the first instance. To delay consideration risks sanctioning the Act’s extreme provisions and inflicting grave harms on Oklahomans.

Moreover, abortion providers in Oklahoma have had to contend with the influx of patients from Texas as a result of S.B. 8 and have been stretched to the limits of their capacity to provide care. *Wales Aff.* ¶¶ 7, 11; *Braid Aff.* ¶¶ 10-11. Whether S.B. 1503 will be allowed to stand is an urgent question, the answer to which will have cascading effects throughout the state, region, and nation. This Court is uniquely positioned to swiftly decide this urgent matter.

B. S.B. 1503 Creates Irreconcilable Conflict Between Branches of Government by Purporting to Eliminate the Executive’s Enforcement Authority and Stripping State Courts’ Jurisdiction to Hear Constitutional Challenges to the Act.

The Court has also assumed original jurisdiction where a case presents a conflict “between two powers of State government, each imbued with constitutionally vested authority,” particularly when such “an ‘intolerable conflict’ exists with a co-ordinate branch of state government amounting to governmental gridlock.” *Ethics Comm’n*, 1993 OK 37, 850 P.2d at 1072-73. S.B. 1503 creates such a conflict immediately upon the Governor’s signature. It purports to delegate the executive’s traditional enforcement authority entirely to private parties: it prohibits state officials from directly or indirectly enforcing the Act or from taking any steps to intervene, coordinate, or control the direction of private enforcement suits. S.B.

1503 §§ 8, 9. The Act reduces the executive’s enforcement authority to nothing, permitting state officials only to submit amicus briefs. *Id.* § 9(H).

In addition, and unlike Texas S.B. 8, S.B. 1503 provides that “no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief to prevent this state, a political subdivision, any officer or employee of this state or a political subdivision, or any person from enforcing any provision or application of this act, or from filing a civil action under this act.” *Id.* § 12(D). The Act thus purports to insulate itself from judicial review in either the pre-enforcement or defensive posture by stripping from any court in the state, including this Court, jurisdiction to grant declaratory or injunctive relief. And, again, unlike Texas S.B. 8, it also purports to eliminate jurisdiction to hear *any* pre-enforcement suit, even against private enforcers.³

S.B. 1503 creates an irreconcilable conflict between branches of Oklahoma government by attempting to strip the executive and judiciary of their constitutionally vested authority. The Act presents a constitutional crisis that threatens to hamper the workings of state government. *Cf. Dank v. Benson*, 2000 OK 40, ¶¶ 9-10, 5 P.3d 1088, 1091-92 (declining to assume original jurisdiction where claim presented only an intra-branch dispute and was not “of *sufficient immediacy and reality*” because it implicated “neither (a) enrolled legislation carrying the force of law nor (b) an imminent constitutional crisis which threatens governmental operation”).

³ In rejecting plaintiffs’ challenge to S.B. 8 against certain defendants on Eleventh Amendment and Article III grounds not applicable here, *see* Emergency Motion at n.1, the U.S. Supreme Court found significant that 14 pre-enforcement state-court challenges to the law’s constitutionality had been filed and were proceeding. *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 537 & n.5 (2021).

C. The Court has Constitutional Authority to Assume Original Jurisdiction and Grant Relief Against State Court Clerks, Who Are Essential to the Private Enforcement Scheme’s Functioning.

The Oklahoma Constitution provides that the Oklahoma Supreme Court’s original jurisdiction “shall extend to a general superintending control over all inferior courts and all Agencies, Commissions and Boards created by law” and that the Court “shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and other such remedial writs as may be provided by law and may exercise such other and further jurisdiction as may be conferred by statute.” Okla. Const. art. VII, § 4.

This Court has assumed original jurisdiction pursuant to its superintending authority and granted relief against state court clerks. *See, e.g., Fent v. State ex rel. Dep’t of Hum. Servs.*, 2010 OK 2, ¶ 1, 236 P.3d 61, 63 (assessing constitutionality of statute requiring portion of fees paid to clerks to be deposited to the accounts of certain non-judicial programs); *Cotner v. Golden*, 2006 OK 25, ¶¶ 1-2, 136 P.3d 630, 631-32 (granting writ of mandamus to compel court clerk to file *in forma pauperis* affidavit).

The state court clerks are responsible for filing and docketing cases presented to them. Okla. Stat. Ann. tit. 12, § 29. 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.*; *Dowell v. Pletcher*, 2013 OK 39, ¶ 6, 304 P.3d 735, 736 (district court held that under sham legal process statute “the court clerk has the discretion to either accept or refuse to accept for filing”). State court clerks, therefore, have the ability to accept for filing or reject S.B. 1503 lawsuits.⁴ S.B. 1503’s private enforcement scheme is thus undergirded by clerks

⁴ The Oklahoma state court clerks thus play a different role than the Texas clerks, which the United States Supreme Court concluded had no discretion to “pass on the substance of the filings they docket—let alone refuse a party’s complaint based on an assessment of its merits.” 142 S. Ct. 522, 532 (2021).

accepting for filing private enforcement suits. Accordingly, the Court may exercise its discretion to assume original jurisdiction pursuant to its superintending authority over state court clerks and judges and, in so doing, prevent enforcement suits under this patently unconstitutional law.

IV. S.B. 1503 IS FLAGRANTLY UNCONSTITUTIONAL IN MANY WAYS

S.B. 1503 is repugnant to the Oklahoma Constitution in numerous ways, as fully described in Petitioners' Emergency Motion for a Temporary Injunction. As an initial matter, it imposes an unconstitutional previability abortion ban. This Court has consistently interpreted the Oklahoma Constitution to protect a person's ability to access abortion prior to viability, consistent with the U.S. Constitution and U.S. Supreme Court Precedent. Okla. Const. art. II, § 7; *Okla. Coal. For Reprod. Justice v. Cline*, 2019 OK 33, ¶¶ 16, 25, 43, 441 P.3d 1145, 1151, 1153-54, 1160-61. Under this precedent, a 6-week ban is indisputably an unconstitutional previability abortion ban, as the State conceded in another case just last year. *See supra* at 1.

In addition, S.B. 1503 purports to prohibit any individual from seeking declaratory or injunctive relief to prevent its enforcement, either pre-enforcement or as a counterclaim in a defensive posture and regardless of who the defendant is. This squarely contradicts the Oklahoma Constitution's open courts provision, which guarantees a "speedy and certain remedy for every wrong and for every injury to person, property, or reputation." Okla. Const. art. II, § 6. The Legislature may not "completely cut off an existing or vested right," *Lafalier v. Lead-Impacted Cmty. Relocation Assistance Tr.*, 2010 OK 48, ¶ 20, 237 P.3d 181, 190, nor can it implement burdensome technicalities to prevent plaintiffs from bringing meritorious claims, *Wall v. Marouk*, 2013 OK 36, ¶ 23, 302 P.3d 775, 786.

By deputizing private individuals to enforce the law, S.B. 1503 impermissibly delegates the State's police power. *See, e.g., Tenneco Oil Co. v. El Paso Nat. Gas Co.*, 1984 OK 52, 687 P.2d 1049, 1059 n.14 (“the state’s police power . . . is both nondelegable and inalienable”) (emphasis in original).

Moreover, S.B. 1503 violates the Oklahoma Constitution’s categorical prohibition on certain types of “special laws,” including those regarding judicial processes. Okla. Const. art. V, § 46. It singles out abortion providers and those who support abortion patients and subjects them to a particularly burdensome procedure not faced by any other civil litigant, rewriting the rules on venue, fees, collateral estoppel, and retroactive enforcement, among others, *see supra* at Part II. S.B. 1503 is also a special law in violation of Okla. Const. art. V, § 59. It departs from the normal operation of Oklahoma state courts, in which litigation over abortion restrictions has proceeded for decades without such radical procedural deviations, and is furthermore not “reasonably and substantially related” to a valid legislative objective because S.B. 1503’s civil enforcement mechanism is designed to shield a patently unconstitutional law from judicial review. *Reynolds v. Porter*, 1988 OK 88, 760 P.2d 816, 822.

S.B. 1503 is also unconstitutionally vague: it both fails to provide a reasonable opportunity for a person of ordinary intelligence to know what is prohibited and conform their behavior accordingly, and invites arbitrary and discriminatory enforcement. *In re Initiative Petition No. 366*, 2002 OK 21, ¶ 13, 46 P.3d 123, 128; *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). By purporting to impose an unconstitutional 6-week abortion ban and insisting that contemporaneous binding precedent is not a defense to an enforcement suit, S.B. 1503 deprives abortion providers of notice of when their conduct may subject them to liability. Moreover, aiding and abetting is not defined in the law, and individuals may be held liable for

conduct that they do not—and cannot—know violates the law. S.B. 1503 prohibits aiding and abetting an abortion after detection of a “fetal heartbeat”; however, whether such a “heartbeat” is present or detectable will often not be apparent until after the allegedly aiding-and-abetting conduct occurs.

In addition, the private enforcement scheme portends precisely the arbitrary and discriminatory enforcement that due process prohibits. Public officials are prohibited from directly or indirectly enforcing the Act or from taking any action in connection with an enforcement suit apart from filing an amicus brief. The Act’s enforcement is left entirely to the discretion of private individuals to decide when, whether, and how to do so.

In addition, S.B. 1503 purports to make any person liable for violating its terms even under the pendency of an injunction if that injunction is ever lifted, in violation of the Oklahoma Constitution’s prohibition on ex post facto laws. Okla. Const. art. II, § 15.

By imposing liability for aiding and abetting a prohibited abortion, S.B. 1503 impermissibly restricts Oklahomans’ freedom of speech. Okla. Const. art. II, § 22. The Act does not define what conduct aids and abets a prohibited abortion, providing only the illustrative example of paying for or reimbursing the costs of abortion care. S.B. 1503 could be read by hostile potential enforcers to reach sharing information about how to obtain abortion care—or even intending to share such information. This is an unconstitutional content-based restriction on speech. *See Gaylord Ent. Co. v. Thompson*, 1998 OK 30, ¶¶ 13, 15, 958 P.2d 128, 138-39; *Police Dep’t of Chicago v. Mosley*, 408 U.S. 92, 95 (1972).

Finally, in the context of S.B. 1503 enforcement suits, patients’ medical records may be disclosed regardless of their interests or consent, which transgresses Oklahomans’ right to

be “secure in their persons, houses, papers, and effects against unreasonable searches or seizures.” Okla. Const. art. II, § 30.

Where, as here, a statute is “clearly, palpably and plainly inconsistent with the Constitution,” *Lafalier*, 2010 OK 48, ¶ 15, 237 P.3d at 188, it must be invalidated. Because S.B. 1503 violates numerous provisions of the Oklahoma Constitution, this Court’s assumption of original jurisdiction is warranted to bar the implementation of this patently unconstitutional law that threatens the rights of Oklahomans and the powers of the State to review and enforce its own laws.

V. DECLARATORY AND INJUNCTIVE RELIEF AND/OR A WRIT OF PROHIBITION IS WARRANTED

Given that S.B. 1503 is a blatant violation of many Oklahoma Constitutional guarantees, this Court can grant declaratory and injunctive relief sufficient to prevent Respondents from implementing S.B. 1503 in any way, including by docketing lawsuits. *See Inst. for Responsible Alcohol Pol’y v. State ex rel. Alcoholic Beverage L. Enf’t Comm’n*, 2020 OK 5, ¶ 12, 457 P.3d 1050, 1055 (declaring a law unconstitutional in suit brought against the State and the Governor); *Fent v. State ex rel. Dep’t of Hum. Servs.*, 2010 OK 2, ¶ 25, 236 P.3d 61, 70 (declaring a law unconstitutional in suit brought against, among other state officials, all Oklahoma district court clerks); *Fent v. Contingency Rev. Bd.*, 2007 OK 27, ¶¶ 29, 31, 163 P.3d 512, 526 (granting declaratory relief in suit against state agency, Governor, and Oklahoma Speaker of the House and President Pro Tempore of the Senate); *Ethics Comm’n of State of Okla. v. Cullison*, 1993 OK 37, 850 P.2d 1069, 1072 (granting declaratory relief in part in suit against Oklahoma President Pro Tempore and Speaker of the House as representatives of the Oklahoma Legislature); *Oklahoma Ass’n of Mun. Att’ys v. State*, 1978 OK 59, 577 P.2d 1310, 1312 (assuming original jurisdiction in suit against State and Attorney General). It is also

within the discretion of this Court to grant a writ of prohibition to prevent the state court clerks from exercising judicial power “unauthorized by law” that “will result in injury for which there is no other adequate remedy,” such as docketing S.B. 1503 lawsuits. *Maree v. Neuwirth*, 2016 OK 62, ¶ 6, 374 P.3d 750, 752.

VI. CONCLUSION

Original jurisdiction in this Court is warranted given the urgency of the matter, the great public interest in the issues involved, and this Court’s superintending authority over state courts. For the foregoing reasons, Petitioners respectfully request that the Court consider their application and petition on an expedited basis, assume original jurisdiction, declare S.B. 1503 unconstitutional, and grant declaratory and injunctive relief and/or a writ of prohibition sufficient to prevent Respondents from implementing S.B. 1503 in any way, including by docketing lawsuits brought under S.B. 1503, and including as to any future suits for conduct that occurred during the pendency of this injunction or writ. Petitioners have also respectfully requested that this Court issue an emergency temporary injunction to preserve the status quo and prevent enforcement of S.B. 1503 during the pendency of the litigation.

Dated: April 28, 2022

Respectfully Submitted,



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A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long, sweeping horizontal stroke that tapers to the right.

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