IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

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

Petitioners,

v.

THE STATE OF OKLAHOMA, et al.,

Respondents.

CASE NO. PR-120376

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

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I. INTRODUCTION

On May 19, 2022, the Oklahoma Legislature passed House Bill 4327 ("H.B. 4327"), which became effective immediately upon the Governor's signature a few days later. Petitioners file this Brief in Support of their First Supplemental Application to Assume Original Jurisdiction and for Declaratory and Injunctive Relief and/or a Writ of Prohibition. H.B. 4327 is substantially similar to Senate Bill 1503 ("S.B. 1503," together with H.B. 4327, "the Acts"), which has been in effect since May 3 and is already challenged in this case. Like S.B. 1503, H.B. 4327 is modelled after Texas S.B. 8, which for more than eight months has prevented almost all abortions in Texas. Like S.B. 8 and S.B. 1503, H.B. 4327 imposes an abortion ban enforced through private, civil lawsuits. H.B. 4327 is even more extreme than S.B. 8 and S.B. 1503, however, and bans *all abortions in Oklahoma.*

Like S.B. 1503, H.B. 4327 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, both Acts are designed to insulate clearly unconstitutional abortion bans from federal pre-enforcement review; and, unlike S.B. 8, the Acts are *also* designed to foreclose 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 (emphasis in original). Like S.B. 1503, H.B. 4327 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 total ban and 6-week criminal ban currently enjoined by this Court, *see* October 25, 2021 Order Granting Emergency Temporary Injunction, No. IN-119918, H.B.

4327 is indisputably an unconstitutional ban on previability abortion. The State already conceded the unconstitutionality of such bans 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 abortions in violation of Article II, § 7, H.B. 4327 flagrantly violates multiple other provisions of the Oklahoma Constitution, including the Oklahoma Constitution's open courts provision and its prohibition on special laws.

On May 3, 2022, S.B. 1503 halted provision of abortions after approximately six weeks. Now, H.B. 4327 has made Oklahoma the only state in the nation to have a total abortion ban in effect.

Many Oklahomans who have made the decision to have an abortion have already been denied access to care under S.B. 1503. If H.B. 4327 is allowed to remain in effect, abortion will remain wholly inaccessible in Oklahoma, with cascading effects throughout the region. 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 the Acts. 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, *The Latest 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 H.B. 4327, like 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, assume original jurisdiction, declare H.B. 4327 unconstitutional, and grant declaratory and injunctive relief and/or a writ of prohibition sufficient to prevent Respondents from implementing H.B. 4327 in any way, including by docketing lawsuits, and including as to any future suits for conduct that occurred during the pendency of this injunction.

II. THE CHALLENGED LAWS

H.B. 4327 prohibits abortion in Oklahoma. The only exceptions are for abortions "necessary to save the life of a pregnant woman in a medical emergency" or if the "pregnancy is the result of rape, sexual assault, or incest," but only if such a crime has "been reported to law enforcement."[1] H.B. 4327 § 2.

H.B. 4327, like S.B. 1503, creates liability for:

- "[p]erform[ing] or induc[ing] an abortion in violation of" their respective bans. H.B. 4327 § 5(A)(1); S.B. 1503 § 9(A)(1).
- "[k]nowingly engag[ing] in conduct that aids or abets the performance or inducement of an abortion" that violates their respective bans. H.B. 4327 § 5(A)(2); S.B. 1503 § 9(A)(2). Neither Act defines what constitutes aiding or abetting, except that they expressly provide that "paying for or reimbursing the costs of an abortion" is prohibited activity. H.B. 4327 § 5(A)(2); S.B. 1503

[1] The majority of sexual assaults go unreported. In its most recent yearly bulletin on criminal victimization, the Bureau of Justice Statistics of the U.S. Department of Justice reported that in 2019, only 33.9% of rapes and sexual assaults are reported to authorities. Bureau of Justice Statistics, Criminal Victimization, 2019, No. NCJ 255113 (2020), https://bjs.ojp.gov/content/pub/pdf/cv19.pdf.

§ 9(A)(2). The Acts' 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" the Acts. H.B. 4327 § 5(A)(2); S.B. 1503 § 9(A)(2).

- intending to perform a prohibited abortion or aid a prohibited abortion, even if the individual does not actually do so. H.B. 4327 § 5(A)(3); S.B. 1503 § 9(A)(3).

Both Acts expressly preclude 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 their respective bans. H.B. 4327 § 4; S.B. 1503 § 8. Instead, the Acts create 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. H.B. 4327 § 5; S.B. 1503 § 9(A). Suits may not be brought against the patient. H.B. 4327 § 5(K)(1); S.B. 1503 § 9(K). While the Acts prohibit 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," they make no mention of how that limitation works in practice. And, although H.B. 4327 has a limited exception for reported assaults, it is unclear how patients would be able to access care in those circumstances because abortion clinics cannot continue providing services. *See, e.g.*, Supplemental Affidavit of Andrea Gallegos (attached as Ex. 9 to Petitioners' Second Supplemental Appendix) ("Gallegos Supp. Aff.") ¶¶ 2, 11. The statute of limitations under the Acts is six years. H.B. 4327 § 5(D); S.B. 1503 § 9(D).

The Acts impose draconian mandatory penalties. Where a claimant under either Act 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." H.B. 4327 § 5(B); S.B. 1503 § 9(B). The Acts impose no cap on the "statutory damages" and provide 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. H.B. 4327 § 5(I); S.B. 1503 § 9(I).

At every turn, the Acts' rules for their enforcement proceedings sharply diverge from those normally applicable to Oklahoma litigants and make it impossible for those sued to fairly defend themselves: the Acts also allow claimants to file enforcement lawsuits in their home counties and to veto transfer to a more appropriate venue, H.B. 4327 § 7; S.B. 1503 § 11; provide for drastic and unilateral fee-shifting arrangements in favor of claimants, H.B. 4327 § 5; S.B. 1503 §§ 9, 13; purport 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, H.B. 4327 § 5(E); S.B. 1503 § 9(E); and threaten potential defendants with retroactive liability, H.B. 4327 § 5(E)(3); S.B. 1503 § 9(E)(3). And shockingly, the Acts also claim to immunize the state and all state actors from suit in any action challenging them, H.B. 4327 § 8(A); S.B. 1503 § 12(A), and also to bar state courts from hearing any claims for declaratory or injunctive

relief against them, H.B. 4327 § 8; S.B. 1503 § 12(D). This is true 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 the Acts, and regardless of whether the plaintiff is a state actor or a private individual threatening enforcement. H.B. 4327 § 8; S.B. 1503 § 12(D).

The only two substantive differences between H.B. 4327 and S.B. 1503 are that H.B. 4327 is a total ban on abortion, and H.B. 4327 does not include a fee shifting provision affecting all litigation against abortion restrictions like S.B. 1503. *See* S.B. 1503 § 13.

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 H.B. 4327 is unconstitutional poses an urgent question of great public importance, given its extreme effects and immediate

effective date; (2) H.B. 4327 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 lawsuits under H.B. 4327; 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 H.B. 4327's private enforcement scheme. Accordingly, the Court should assume original jurisdiction to swiftly protect the interests of 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) H.B. 4327 eliminates access to safe and legal abortion in Oklahoma, and does so in a manner that violates numerous provisions of the Oklahoma Constitution; (2) H.B. 4327 became effective immediately upon the Governor's signature and implements a novel private enforcement scheme that will have catastrophic effects on patients, providers, and people who support abortion patients; and (3) H.B. 4327 purports to curb the State's authority to implement and

oversee the enforcement of its own laws and this Court's ability to review their 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 H.B. 4327's total abortion ban, which is causing grave harms to Oklahomans.

Moreover, access to abortion in the entire region has been disrupted for months due to the enforcement of Texas S.B. 8, which has banned most abortions in that state for more than eight months, and the enforcement of S.B. 1503 for several weeks, which has banned most abortions in Oklahoma. Patients have been forced to seek care outside of their home states, if they can seek care at all, often undertaking significant hardship, expense, and risk. Supplemental Affidavit of Emily Wales (attached as Ex. 7 to Petitioners' Second Supplemental Appendix) ("Wales Suppl. Aff.") ¶¶ 7-8; Affidavit of Gabriela Cano (attached as Ex. 8 to Petitioners' Second Supplemental Appendix) ¶ 8. Those patients who were able to travel across state lines to access abortion have shared harrowing stories of driving all night with their children to try to get to a health center; being unable to pay their bills because of the expenses

of traveling out of state; and jeopardizing much-needed jobs by missing work. Wales Suppl. Aff. ¶ 7 (quoting patient stories). And clinics in other states have been stretched to the limits of their capacity. Cano Aff. ¶ 9, 11; Gallegos Supp. Aff. ¶ 13. Whether H.B. 4327 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. H.B. 4327, Like 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 Acts.

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. Like S.B. 1503, H.B. 4327 creates such a conflict. The Acts purport to delegate the executive's traditional enforcement authority entirely to private parties: they prohibit state officials from directly or indirectly enforcing the Acts or from taking any steps to intervene, coordinate, or control the direction of private enforcement suits. H.B. 4327 §§ 4, 5; S.B. 1503 §§ 8, 9. State officials are only permitted to file amicus briefs. H.B. 4327 § 5(H); S.B. 1503 § 9(H).

In addition, and unlike Texas S.B. 8, the Acts provide that "no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief" to prevent the state or any of its political subdivisions, officers, or employees, or any other person from enforcing the Acts or from filing a civil action under the Acts. H.B. 4327 § 8; S.B. 1503 § 12(D). The Acts thus purport to insulate themselves 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, they also purport to eliminate jurisdiction to hear *any* pre-enforcement suit, even against private enforcers.[2]

H.B. 4327, like 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 Acts present 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 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").

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,

[2] In rejecting plaintiffs' challenge to S.B. 8 against certain defendants on Eleventh Amendment and Article III grounds not applicable here, *see* Supplemental 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).

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. 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 H.B. 4327 lawsuits.[3] The Acts' private enforcement scheme is thus undergirded by clerks 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.

IV. H.B. 4327, LIKE S.B. 1503, IS FLAGRANTLY UNCONSTITUTIONAL IN MANY WAYS

H.B. 4327 is repugnant to the Oklahoma Constitution in numerous ways, as fully described in Petitioners' Supplemental Emergency Motion for a Temporary Injunction. As an initial matter, H.B. 4327 imposes an unconstitutional total ban on abortion. This Court has

[3] 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).

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.[4] 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 total ban is indisputably an unconstitutional previability abortion ban, as the State has conceded. *See supra* at 1.

In addition, the Acts purport to prohibit any individual from seeking declaratory or injunctive relief to prevent their 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 Cmtys. 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, the Acts also impermissibly delegate 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, the Acts violate the Oklahoma Constitution's categorical prohibition on certain types of "special laws," including those regarding judicial processes. Okla. Const. art.

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[4] As Plaintiffs in *Oklahoma Call for Reproductive Justice*, No. IN-119918, and *Tulsa Women's Reproductive Clinic v. Hunter*, No. SD-118292, articulated in their appellate briefing, Oklahoma's due process guarantee encompasses the fundamental right to make intimate and personal decisions "about one's own health," *see In re K.K.B.*, 1980 OK 7, 609 P.2d 747, 749, 752, which includes the ability to make one's own decisions about whether and when to have children.

V, § 46. They single out abortion providers and those who support abortion patients and subject 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. For these reasons, the Acts are also special laws in violation of Okla. Const. art. V, § 59; *Reynolds v. Porter*, 1988 OK 88, 760 P.2d 816, 822.

The Acts are also unconstitutionally vague: they both fail to provide a reasonable opportunity for a person of ordinary intelligence to know what is prohibited and conform their behavior accordingly, and invite 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 unconstitutional abortion bans and insisting that contemporaneous binding precedent is not a defense to an enforcement suit, the Acts deprive abortion providers of notice of when their conduct may subject them to liability. Moreover, aiding and abetting is not defined in the Acts, and individuals may be held liable for conduct that they do not know violates the law. 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 Acts or from taking any action in connection with an enforcement suit apart from filing an amicus brief. The Acts' enforcement is left entirely to the discretion of private individuals to decide when, whether, and how to do so.

In addition, the Acts purport to make any person liable for violating their 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, the Acts impermissibly restrict Oklahomans' freedom of speech. Okla. Const. art. II, § 22. The Acts do 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. The Acts 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 enforcement suits under the Acts, 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 like S.B. 1503, H.B. 4327 violates numerous provisions of the Oklahoma Constitution, this Court's assumption of original jurisdiction is warranted to bar the implementation of this unconstitutional law.

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

Given that H.B. 4327 is a blatant violation of many Oklahoma Constitutional guarantees, this Court can grant declaratory and injunctive relief sufficient to prevent Respondents from implementing H.B. 4327 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 by docketing H.B. 4327 lawsuits. *Maree v. Neuwirth*, 2016 OK 62, ¶ 6, 374 P.3d 750, 752.

VI. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court consider their application and petition on an expedited basis, assume original jurisdiction, declare H.B. 4327 unconstitutional, and grant declaratory and injunctive relief and/or a writ of prohibition sufficient to prevent Respondents from implementing H.B. 4327 in any way, including by docketing lawsuits, and including as to any future suits for conduct that occurred during the pendency of this injunction or writ.[5]

[5] Petitioners have also respectfully requested that this Court issue an emergency temporary injunction to preserve the status quo during the pendency of the litigation.

Dated: May 16 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 26 day of May, 2022 a true and correct copy of the foregoing was served via hand delivery or Certified U.S. Mail to the following:

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/s/ J. Blake Patton