

ORIGINAL



FILED
SUPREME COURT
STATE OF OKLAHOMA
OCT - 3 2022

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Supreme Court Case No. 120543

JOHN D. HADDEN
CLERK

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE. *et al.*,
Petitioners

v.

JOHN O'CONNOR, in his official capacity as OKLAHOMA ATTORNEY GENERAL, *et al.*,
Respondents.

**BRIEF IN SUPPORT OF
RESPONDENTS' POSITION BY
AMICUS CURIAE PROLIFE CENTER AT THE
UNIVERSITY OF ST. THOMAS (MN)**

Submitted by:

Teresa Stanton Collett, OBA No. 11793
University of St. Thomas School of Law
MSL 400, 1000 LaSalle Avenue.
Minneapolis, MN 55403-2015
651-271-2958
tscollett@stthomas.edu

Counsel for *Amicus Curiae*

October 3, 2022

received: _____
Docketed: 10-3-22
Marsital: [Signature]
COA/OKC: _____
COA/TUL: _____

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Supreme Court Case No. 120543

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE. *et al.*,
Petitioners

v.

JOHN O'CONNOR, in his official capacity as OKLAHOMA ATTORNEY GENERAL, *et al.*,

Respondents.

**BRIEF IN SUPPORT OF
RESPONDENTS' POSITION BY
AMICUS CURIAE PROLIFE CENTER AT THE
UNIVERSITY OF ST. THOMAS (MN)**

Submitted by:

Teresa Stanton Collett, OBA No. 11793
University of St. Thomas School of Law
MSL 400, 1000 LaSalle Avenue
Minneapolis, MN 55403-2015
651-271-2958
tscollett@stthomas.edu

Counsel for *Amicus Curiae*

October 3, 2022

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Supreme Court Case No. 120543

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE. *et al.*,
Petitioners

v.

JOHN O'CONNOR, in his official capacity as OKLAHOMA ATTORNEY GENERAL, *et al.*,

Respondents.

**BRIEF IN SUPPORT OF
RESPONDENTS' POSITION BY
AMICUS CURIAE PROLIFE CENTER AT THE
UNIVERSITY OF ST. THOMAS (MN)**

Submitted by:

Teresa Stanton Collett, OBA No. 11793
University of St. Thomas School of Law
MSL 400, 1000 LaSalle Avenue
Minneapolis, MN 55403-2015
651-271-2958
tscollett@stthomas.edu

Counsel for *Amicus Curiae*

October 3, 2022

TABLE OF CONTENTS AND AUTHORITIES

TABLE OF CONTENTS- AND AUTHORITIES i
INTRODUCTION.....1

Cases

Planned Parenthood of S.E. Penn. v. Casey, 505 U.S. 833 (1992) ((*overruled Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022))1

Roe v. Wade, 410 U.S. 113 (1973) (*overruled Dobbs v. Jackson Women's Health Org.*, — U.S. —, 142 S. Ct. 2228 (2022)).....1

Roe v. Wade, 314 F. Supp. 1217 (N.D. Tex. 1970), *aff'd in part, rev'd in part*, 410 U. S. 113 (1973) (*overruled Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022)).....1

Tagatz v. Marquette Univ., 861 F.2d 1040 (7th Cir. 1988)1

ARGUMENT.....2

- I. Women’s advances in the past half-century resulted from a complex mix of multiple factors2

Secondary Authorities

A Half-Century of Change in the Lives of American Women, 2 RUSSELL SAGE FOUND. J. SOC. SCI. (2016).....2

Martha J. Bailey & Thomas A. DiPrete, *Five Decades of Remarkable but Slowing Change in Women’s Economic and Social Status and Political Participation*, 2 RUSSELL SAGE FOUND. J. SOC. SCI. 1, 3 (2016).....2, 3

- II. Women’s rising participation in the economic and political life in the country is independent of the ratios and rates of abortion.....3

Cases

Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022)3

Planned Parenthood of S.E. Penn. v. Casey, 505 U.S. 833 (1992)8

Secondary Authorities

Amicus Curiae Brief of 240 Women Scholars and Professionals, and Pro-life Feminists Organizations in Support of Petitioners,3

Centers for Disease Control and Prevention, *MMWR Abortion Surveillance Reports* 4

Women’s Bureau, Civilian Labor Force by Sex, Chart: 1948-2016 Annual Averages, U.S. DEPT. LAB.....4, 5

U.S. Bureau Lab. Stat., *A Look at Women’s Education and Earnings Since the 1970s*, Chart: Percent Distribution of Women in the Civilian Labor Force, 25 to 64 Years of Age, by Educational Attainment, Econ. Daily (Dec. 27, 2017).....5

U.S. Bureau Lab. Stat., *A Look at Women’s Education and Earnings Since the 1970s*, Chart: Women’s Earnings as a Percentage of Men’s, Median Usual Weekly Earnings of Full-Time Wage and Salary Workers, Econ. Daily (Dec. 27, 2017) ...5

H.R. COMMITTEE ON SMALL BUSINESS, 100TH CONG., *NEW ECONOMIC REALITIES: THE RISE OF WOMEN ENTREPRENEURS* 1, 2 (1988)6

First Year and Total J.D. Enrollment by Gender 1947 – 2011, AM. BAR ASSOC.6

Assoc. Am. Med. Coll., *Diversity in Medical Education: Facts & Figures 2016, FACTS & FIGURES SERIES* (2016)6

ABA Profile of the Legal Profession 2020, 1, 58 (2020)7

III. Petitioners claimed harms to women from reduced abortion access rely upon fatally flawed studies.....8

Secondary Authorities

Diana Greene Foster, *THE TURNAWAY STUDY: TEN YEARS, A THOUSAND WOMEN, AND THE CONSEQUENCES OF HAVING – OR BEING DENIED – AN ABORTION* (2021).8

Diane G. Foster, *Socioeconomic Outcomes of Women who Receive and Women who are Denied Wanted Abortions*, 108 AMER. J. PUB. HEALTH 407 (2018)8

Sarah Miller et. al., *What happens after an abortion denial? A Review of Results from the Turnaway Study*, 110 AEA PAPERS PROC. 1 (2020).....8

David C. Reardon, *The Embrace of the Proabortion Turnaway Study: Wishful Thinking? Or Willful Deceptions?*, 85 LINACRE Q. 204 (2018)9

Priscilla Coleman, *The Turnaway Study: A Case of Self-Correction in Science Upended by Political Motivation and Unvetted Findings*, Front. Psych. (June, 2022)9

IV. There is evidence that the judicially-created right of abortion disadvantages women9

Secondary Authorities

Helen M. Alvare, *Nearly 50 Years Post-Roe v. Wade and Nearing its End: What is the Evidence that Abortion Advances Women's Health and Equality?*, 34 REGENT U. L. REV. 165 (2022).....9

Erika Bachiochi, *Embodied Equality: Debunking Equal Protection Arguments for Abortion Rights*, 34 HARV. J.L. PUB. POL'Y 889 (2011).....10

Stephanie Bornstein, Joan Williams & Genevieve Painter, *Discrimination against Mothers Is the Strongest Form of Workplace Gender Discrimination: Lessons from U.S. Caregiver Discrimination Law*, 28 INT'L J. COMPAR. LAB. L. INDUS. REL. 45 (2012) 10

Natalie Kitroeff & Jessica Silver-Greenberg, *Pregnancy Discrimination Is Rampant Inside America's Biggest Companies*, N.Y. TIMES (February 8, 2019) 10

CONCLUSION10

CERTIFICATE OF SERVICE12

INTRODUCTION

Petitioners and their amici have repeatedly asserted as fact the myth that “[o]ver 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.” Application for Original Jurisdiction and Petition for Declaratory and Injunctive Relief and/or a Writ of Prohibition at ¶30; Petitioners’ Corrected Brief in Chief, at 1 (“abortion has been essential to pregnant Oklahomans’ ability to participate more equally in the economic and social life of the state” *citing Roe v. Wade*, 410 U.S. 113 (1973) ((*overruled Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022)) and *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833 (1992) (*overruled Dobbs*, 142 S. Ct. 2228, 2242 (2022)); *see also id.* at 8-9 (reiterating claims that denial of abortion results in long-term economic harms to women).¹

Yet national data reported by U.S. government agencies over the 50 plus years intervening since the federal district court ruling in *Roe v. Wade*, 314 F. Supp. 1217 (N.D. Tex. 1970), *aff'd in part, rev'd in part*, 410 U. S. 113 (1973) (*overruled Dobbs*, 142 S. Ct. 2228, 2242 (2022)) fails to show that access to abortion is “essential” to women’s increasing economic and political prowess. Data regarding women’s participation in the labor market and entrepreneurial activities, as well as their educational accomplishments, professional engagement, and political participation, reveals virtually no consistent correlation with abortion rates or ratios. And, certainly, in the absence of correlation, there can be no causation. *See Tagatz v. Marquette Univ.*, 861 F.2d 1040, 1044 (7th Cir. 1988).

¹ These claims are echoed by the Brief in Support of Petitioners’ Position by *Amicus Curiae*, Erika Lucas, Vest Her and Oklahoma Businesses and Business Leaders, Sept. 21, 2022. “The ability of women to participate and succeed in business depends on access to abortion—a crucial component of healthcare that improves women’s control over their education, careers, and lives.” *Id.* at 1.

ARGUMENT

I. **Women's advances in the past half-century resulted from a complex mix of multiple factors.**

Claiming that abortion is “essential” for women’s participation in the economic life of Oklahoma ignores legal, cultural, technological, and other events affecting women over at least the last five decades. A special issue of a leading social sciences journal devoted to the question of women’s social and economic progress illustrates the complexity of factors involved in women’s progress in the 50 years from 1966 to 2016. *A Half-Century of Change in the Lives of American Women*, 2 RUSSELL SAGE FOUND. J. SOC. SCI. (2016). Among the factors that can impact women’s progress, the issue discusses personal and familial factors including educational and occupational choices as well as ability and effort in school; cultural and psychological forces; changes in childbearing, marriage, and family structure; technology (including in manufacturing, domestic technology, contraception, and abortion) and myriad laws and policies. Martha J. Bailey & Thomas A. DiPrete, *Five Decades of Remarkable but Slowing Change in Women’s Economic and Social Status and Political Participation*, 2 RUSSELL SAGE FOUND. J. SOC. SCI. 1, 3 (2016). The introductory article in the series also highlights statistical reasons rendering causation so very difficult to untangle, including: conflicting studies, researchers’ use of different methodologies, the widely varying statistical significance of results, and efforts to gauge the potential importance of selection effects using assumptions it declares “*almost impossible to test.*” *Id.* at 6 (emphasis added).

The authors acknowledge the effects of pre-*Roe* cultural changes elevating women’s social position, writing that it is “likely that more recent developments are the continuation of an evolution that extends back in time to the first wave of feminism of the late nineteenth and early twentieth centuries, as well as women’s empowerment during World War II.” *Id.* at 20.

Likewise, the simultaneity of cultural and technological changes highly complicates attempts to measure the effects of abortion. *Id.* at 15. Respecting abortion and women’s labor force participation they write: “[e]vidence is more limited, however, that changes in abortion access translated into changes in women’s labor-force outcomes.” *Id.* at 14-15.

In the end, attempts to both aggregate and untangle women’s personal stories – reflecting individual values, familial, health, and educational histories, economic and cultural resources, access to opportunities, and the impact of a changing legal and social environment – in order to isolate any effect that access to abortion may have had on women’s participation in the economic and social life of their communities, appear doomed from the start.

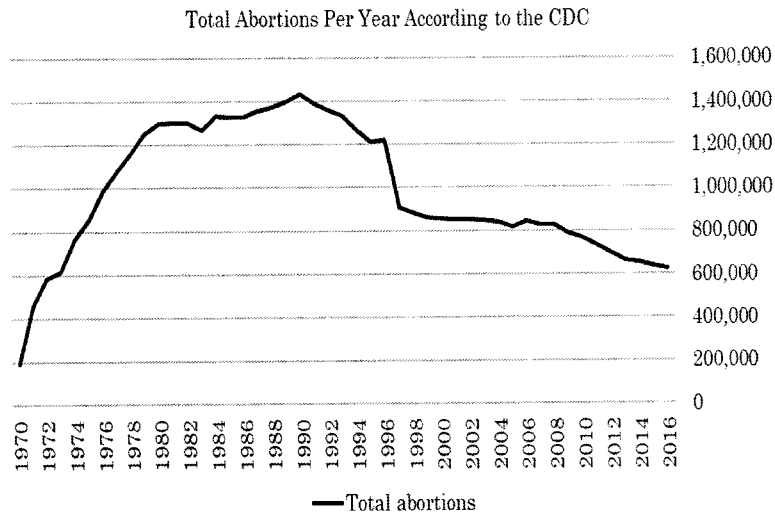
II. Women’s rising participation in the economic and political life in the country is independent of the ratios and rates of abortion.

The reality is that while women made visible social progress in the years immediately after *Roe* – when abortion rates and ratios were climbing – it is also true, that such progress was already underway in the decades before *Roe*, and has continued when abortion rates and ratios have fallen dramatically.

Recognized indicators of women’s economic progress include women’s enrollment in college, women’s earnings compared with men’s, and women’s workforce participation rates. When historical data on these indicators is compared with data on abortion rates and ratios, there is no consistent correlation between changes in the indicators and changes in abortion rates and ratios.²

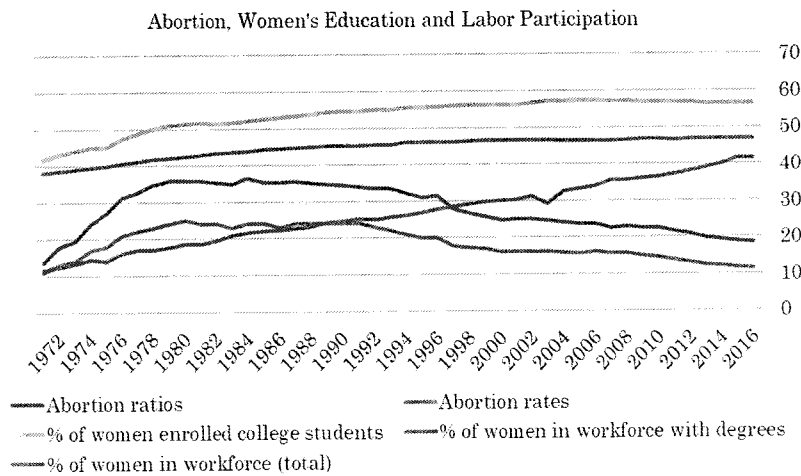
² The relevant data is provided in narrative and chart form in a brief co-authored by counsel for *Amicus ProLife Center* in this case, and referenced by the majority in *Dobbs*, 142 S.Ct. at 2277 (2022). *Amicus Curiae Brief of 240 Women Scholars and Professionals, and ProLife Feminists Organizations in Support of Petitioners*, available at https://www.supremecourt.gov/DocketPDF/19/19-1392/185366/20210804180314919_19-1392%20Brief%20of%20240%20Women%20Scholars%20et%20al%20In%20Support%20of%20Petitioners.pdf.

From 1974 to 1989, rates of abortion per 1000 women of childbearing age moved from 242 to 346, a 43% rise; with abortion ratios per 100 pregnancies moved from 17 to 24, a 41% increase.



3

During that time, there was a rise in the percentage of women in the total civilian workforce, from 39.4% to 45.2%, a 14.7% increase, and an increase in the workforce presence of women with a college degree or more, from 14.6% to 24.3%, a 66% rise.

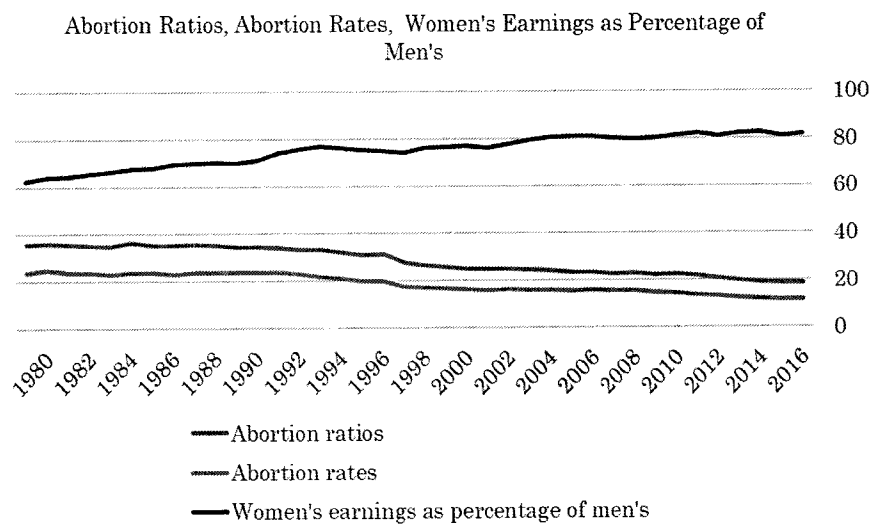


4

³ Data from Centers for Disease Control and Prevention, MMWR Abortion Surveillance Reports, available at https://www.cdc.gov/reproductivehealth/data_stats/index.htm.

⁴ For women in the workforce and women with college degrees, see *Women's Bureau*,

There do not exist reliable measures between 1974 and 1978 for comparing the percentage of men's average income and women's average income. But Bureau of Labor Statistics beginning in 1979 show that from 1979 to 1989 abortion ratios remained steady – 24/100 pregnancies – while abortion rates declined – from 358/1000 to 346/1000 – a 3% decline. Yet there was a 12.5% increase in women's earnings as a percentage of men's. Women moved from earning 62.3 cents on men's dollar, to 70.1 cents.



5

During the period between the early 1970s and about 1988, the growth in women's entrepreneurial activity was characterized by a U.S. House of Representatives committee as

Civilian Labor Force by Sex, Chart: 1948-2016 Annual Averages, U.S. DEPT. LAB., <https://www.dol.gov/agencies/wb/data/facts-over-time/women-in-the-labor-force> (last visited July 22, 2021); U.S. Bureau Lab. Stat., *A Look at Women's Education and Earnings Since the 1970s*, Chart: Percent Distribution of Women in the Civilian Labor Force, 25 to 64 Years of Age, by Educational Attainment, Econ. Daily (Dec. 27, 2017), https://www.bls.gov/opub/ted/2017/a-look-at-womens-education-and-earnings-since-the-1970s.htm?view_full.

⁵ For women's earnings as a percentage of men's see U.S. Bureau Lab. Stat., *A Look at Women's Education and Earnings Since the 1970s*, Chart: Women's Earnings as a Percentage of Men's, Median Usual Weekly Earnings of Full-Time Wage and Salary Workers, Econ. Daily (Dec. 27, 2017), https://www.bls.gov/opub/ted/2017/a-look-at-womens-education-and-earnings-since-the-1970s.htm?view_full.

“exponential.” H.R. COMMITTEE ON SMALL BUSINESS, 100TH CONG., NEW ECONOMIC REALITIES: THE RISE OF WOMEN ENTREPRENEURS 1, 2 (1988). Committee Chair John J. LaFalce’s transmittal letter noted: “From owning less than five percent of the Nation’s businesses prior to the 1970s, women have now [1988] come to own approximately thirty percent of American businesses.” *Id.* at iii.

Looking at women enrolled in college programs from 1974 to 1989, when abortion rates increased 43% and ratios increased by 41%, women’s college enrollment moved from 45% of college students to 54.3%, an increase of nearly 21%. Women’s participation in professional education similarly expanded. Before the 1970s, law schools were almost exclusively male domains. In the academic year of 1973-1974, 84% of all law students were men, and only 16% women. But by the 1989-1990 academic year, men occupied only 57.3% of law school seats, and women the remaining 42.7%. First Year and Total J.D. Enrollment by Gender 1947 – 2011, AM. BAR ASSOC., https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/jd_enrollment_1yr_total_gender.authcheckdam.pdf. The increase in women enrolled in medical school, while smaller, was still impressive. In 1974, women comprised 20.4% of students enrolled in medical school. By 1989, that percentage had increased to 38.4%. Assoc. Am. Med. Coll., Diversity in Medical Education: Facts & Figures 2016, FACTS & FIGURES SERIES (2016), <https://www.aamcdiversityfactsandfigures2016.org/report-section/section-3/#figure-1>.

But women’s progress in each of these areas continued and in some instances accelerated as abortion rates and ratios started to plummet beginning in 1990 and continuing to very recent years for which we have data. From 1990 to 2016, abortion rates declined 46%