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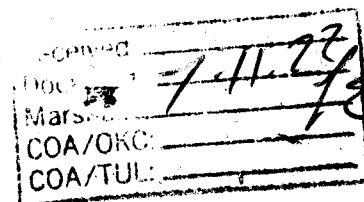
OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE, et al.,

Petitioners,

v.

THE STATE OF OKLAHOMA, et al.

Respondents.



RESPONSE TO PETITIONERS' APPLICATION FOR PERMANENT
INJUNCTION AND/OR WRIT OF PROHIBITION BY RICK WARREN,
OKLAHOMA COUNTY COURT CLERK

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**RESPONSE TO PETITIONERS' APPLICATION FOR PERMANENT
INJUNCTION AND/OR WRIT OF PROHIBITION BY RICK WARREN,
OKLAHOMA COUNTY COURT CLERK**

INTRODUCTION

Petitioners request this Court to order extraordinary relief that compels all 77 Court Clerks in the State of Oklahoma to conduct a pre-filing legal review of all new civil actions presented to them and to refrain from docketing abortion-related enforcement litigation brought pursuant to the statutes now under constitutional challenge – relief that effectively gives to them unprecedented state-wide immunity from suit. Though they were denied such relief as part of a preliminary injunction, they double down on their request and again ask this Court to re-write the statutes and encroach upon the constitutional right of access to the courts for their private benefit and to the detriment of Respondent and the public at large. While this Court has undisputed superintending authority over each of the Court Clerks of the state, it has steadfastly honored the separation of powers enshrined in the Oklahoma Constitution by repeatedly acknowledging that only the Legislature has power to grant immunity from suit

and the power to transform the functions of a Court Clerk from the purely ministerial to the adjudicative as would be necessary to effectuate the relief that Petitioners now seek.

STATEMENT OF THE FACTS

Rick Warren is the duly elected and acting Court Clerk of Oklahoma County. The Oklahoma County Court Clerk's Office operates three offices, the principal office located in Oklahoma City and two satellite offices, one in Edmond and another located at the Oklahoma County Juvenile Justice Center. As Court Clerk, Mr. Warren functions as an arm of the courts to manage the records and dockets of thirty-five district, associate, and special judges in Oklahoma County.

When presented with a new civil action, a Deputy Court Clerk gives the action a case number, collects the statutory filing fees, and assigns it to the docket of a judge of the district court using the Oklahoma Court Information System, the computerized docketing system established by the Supreme Court. 20 O.S.2021, § 91.2; Rule 6(A)(1), *Rules of the Seventh Judicial and Twenty-Sixth Administrative Districts* (2018). Once docketed, the pleading is file-stamped and the original maintained as part of the court record for future use. After this initial docketing and filing, the assigned judge assumes full superintending charge of the case. Rule 6(A)(1), *Rules of the Seventh Judicial and Twenty-Sixth Administrative Districts* (2018). As such, further docketing of subsequent pleadings and motions is within the control of judges who are not parties to the action now before this Court.

Excluding actions filed and assigned to the juvenile division of the district court, in 2021 the Oklahoma County Court Clerk's Office filed 47,741 new civil actions and 37,956 new criminal actions. The 47,741 new civil actions filed consisted of 538,309 pages of documents alone. To perform the crucial functions of receiving, docketing, filing, and maintaining the records of the district court, the Court Clerk's Office currently employs 145 people within a personnel budget of approximately \$10 million for the fiscal year ending June 30, 2022.

Each step of the initial handling and docketing of a new civil action is a purely ministerial function carried out by lay personnel without regard to the legal theories of liability asserted by a plaintiff in the action filed. Any order that would operate to prohibit the Court Clerk from docketing a civil action brought under the civil enforcement provisions of Title 63, Section 1-745.39 *et seq.* and the newly enacted House Bill 4327, the statutes now under challenge, would necessarily require legal review of every civil action tendered for filing in Oklahoma County. At present time, no employee of the Oklahoma County Court Clerk's Office is qualified to make such pre-filing legal determinations.

To alter the manner in which the ministerial functions of the Court Clerk's Office are performed in order to comply with the injunction sought by Petitioners will require Respondent to retain legal counsel to review all new civil actions tendered for filing in order to identify and reject those brought under the civil enforcement provisions of Title 63, Section 1-745.39 *et seq.* or recently enacted House Bill 4327 prior to their initial docketing. To conduct such a review with minimal to no delays resulting to the public, Respondent estimates that a

minimum of five attorneys would be needed at a conservative cost of \$240,000 per month for the duration of the mandatory injunction – an expense which cannot be absorbed into the existing budget of the Court Clerk for the current fiscal year. Operating within budget appropriations, as is required by Article 10, Section 26 of the Oklahoma Constitution, will necessarily delay the filing of all new civil actions in Oklahoma County to the detriment of the public at large.

ARGUMENT AND AUTHORITIES

Petitioners request this Court to redefine the statutory duties of Court Clerks by compelling them to conduct a pre-filing legal assessment of all new civil actions and prohibit them from docketing and filing any abortion-related enforcement action. Despite the audacity of Petitioners' quest for judicially created immunity from suit, the fact of the matter is that it is one that is not justiciable – a point which they tacitly concede by failing to address the issue once raised.

Even apart from the jurisdictional failings of their request for extraordinary relief, Petitioners have wholly failed to meet their burden of demonstrating entitlement to a mandatory injunction where they make no serious effort to show that Respondent's performance of his ministerial duties violates their clear legal rights for which no other remedy may adequately redress. Likewise, Petitioners fail to establish any of the necessary elements for issuance of the writ of prohibition. Not only does Respondent not exercise any quasi-judicial authority when filing and docketing a new civil action but his actions in doing so are expressly required by statute. Moreover, even assuming that the statutes under

challenge are unconstitutional, Petitioners candidly admit that remedies other than the writ of prohibition or injunction are adequate to avert any injury they might suffer. For all these reasons, Respondent requests this Court to deny Petitioners' request for Permanent Injunction and/or Writ of Prohibition as it applies to him in his capacity as Court Clerk.

I. PETITIONERS HAVE NO JUSTICIABLE CLAIM AGAINST RESPONDENT WARREN.

In his response to Petitioners' request for preliminary injunctive relief, Respondent Warren urged that, as to him, the request for relief was not justiciable. This point not only remains true but is unaddressed by Petitioners' request for permanent extraordinary relief.

In its broadest sense, the notion of justiciability encompasses four separate, but related doctrines that provide the foundation for the exercise of a court's subject matter jurisdiction. *Independent Sch. Dist. #52 v. Hofmeister*, 2020 OK 56, ¶ 61 n.91; 473 P.3d 475, 500. These components include: (1) ripeness; (2) mootness; (3) political question; and (4) standing. *Id.* In its narrower sense, "[t]he term 'justiciable' refers to a lively case or controversy between antagonistic demands." *Tulsa Indus. Auth. v. City of Tulsa*, 2011 OK 57, ¶ 13, 270 P.3d 113, 120. A justiciable controversy is one which is definite, concrete, and capable of a decision that gives conclusive relief. *Richardson v. State*, 2017 OK 85, ¶ 5, 406 P.3d 571, 573. Where there are no antagonistic demands or the same are merely speculative, there is no actual controversy, and

a prohibited advisory opinion is being sought. *Tulsa Indus. Auth.*, 2011 OK 57, ¶ 13, 270 P.3d at 120.

Though it is a distinct jurisdictional doctrine, a fundamental component of a judicial controversy is that the plaintiff has standing. “Standing refers to a party’s legal right to seek relief in a judicial forum.” *Fent v. Contingency Review Bd.*, 2007 OK 27, ¶ 7, 163 P.3d 512, 519. “The general, threshold criteria of standing includes: (1) a legally protected interest which must have been injured in fact, *i.e.*, suffered an injury which is actual, concrete and not conjectural in nature, (2) a causal nexus between the injury and the complained-of conduct, and (3) a likelihood, as opposed to mere speculation, that the injury is capable of being redressed by a favorable court decision.” *Id.* Regarding the second element, this Court has said that “***the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.***” *Toxic Waste Impact Group, Inc. v. Leavitt*, 1994 OK 148, ¶ 8, 890 P.2d 906, 910 (emphasis added). “The doctrine of standing ensures a party has a personal stake in the outcome of a case and the parties are truly adverse.” *Fent*, 2007 OK 27, ¶ 7, 163 P.3d at 519.

Petitioners have named as parties to the instant action all 77 Court Clerks in the State of Oklahoma. They have done so for the singular purpose of seeking to enjoin these public officials from docketing abortion-related enforcement lawsuits that may be brought under the newly enacted statutes. To be sure, separated from Petitioners’ desire for immunity from suit, Respondent Court Clerks have no ability to enforce the state’s abortion laws and no standing to

defend the constitutionality of the same. 12 O.S.2021, § 1653(C); 63 O.S.Supp.2022, §§ 1-745.38 - 1-745.39. Simply stated, Respondent Warren has no logical or legal connection to the true controversy over the constitutionality of any abortion statute. The absence of any connection to the subject matter of the instant litigation is key, as it illustrates the fact that there is no actual, lively controversy between Petitioners and Respondent Warren. This complete absence of antagonistic demands deprives this Court of jurisdiction to grant any relief as to Respondent Warren.

These same considerations are present and further illustrate that Petitioners have no standing to bring any claim for relief against Respondent Warren, including one for extraordinary relief. On this point, Petitioners have neither identified any actual and concrete injury associated with an abortion-related enforcement action nor any basis upon which to conclude that Respondent Warren could cause any such injury. To conclude that Petitioners have standing to assert a claim against Respondent would require this Court to adopt two assumptions underlying their request for extraordinary relief. First, this Court would be required to assume that the judicial process is inherently injurious notwithstanding the due process and statutory rights afforded to litigants. Secondly, this Court would be required to adopt the position that a Court Clerk may "cause" a party injury by performing his ministerial duty of docketing and filing a lawsuit in which the party is named as a defendant. Each of these positions is patently absurd.

While Petitioners may have a justiciable claim against the State in pressing their constitutional challenge to the statutes under review, they have made nothing but a thinly veiled effort to manufacture a controversy against Respondent Warren to obtain end run immunity from suit to which they have no legitimate entitlement. In fact, because it is Petitioners' burden to establish the jurisdictional requirements that they have standing to seek relief against Respondent and that there exists an actual case and controversy between the parties, their deliberate refusal to acknowledge these issues which have already once been raised should operate to deem them confessed. Nevertheless, as their claim against Respondent Warren is not justiciable, any request for relief as to him should be denied for want of jurisdiction.

II. PETITIONERS FAIL TO ESTABLISH BOTH THE VIOLATION OF A CLEAR LEGAL RIGHT BY RESPONDENT AND THE EXISTENCE OF EXTREME NECESSITY TO JUSTIFY MANDATORY INJUNCTIVE RELIEF.

As discussed in the preceding section, Respondent submits that there is no justiciable claim against him and, thus, no jurisdiction to grant injunctive relief. For this reason alone, Petitioners' request for a permanent injunction enjoining Respondent from filing civil abortion-related enforcement actions should be denied. Nevertheless, as will be shown, Petitioners have failed to carry their burden of demonstrating entitlement to this extraordinary measure.

"A mandatory injunction is an extraordinary remedial process and seeks relief in the form of commanding the performance of a positive act..." *Farley v. City of Claremore*, 2020 OK 30, ¶ 61, 465 P.3d 1213, 1241. Mandatory injunctions are analyzed in the same manner as prohibitive injunctions. *Owens*

v. Zumwalt, 2022 OK 14, ¶ 8, 503 P.3d 1211, 1214. That is to say, the granting of a mandatory injunction is a matter of equitable cognizance which allows a court discretion to decree such relief as might be fair and just under the facts presented. *Kasner v. Reynolds*, 1954 OK 56, ¶ 20-25, 268 P.2d 864, 867. Unlike a prohibitive injunction, however, “[t]he party seeking a mandatory injunction must show violation of a clear legal right and a case of necessity and great hardship. Even if the right is clear, a mandatory injunction will be issued only in a case of extreme necessity, where the right invaded is material and substantial, and where other adequate redress is not afforded.” *Owens*, 2022 OK 14, ¶ 7, 503 P.3d at 1214 (citations and quotations omitted).

At the outset it cannot go unnoticed that Petitioners make no serious effort to justify their request for mandatory injunctive relief as to the Court Clerk. Naturally, they place much focus on lodging various legal attacks on the newly enacted abortion statutes. In their zeal to challenge these statutes, however, they give short shrift to issues they raise against the majority of the parties in this action – the 77 Court Clerks of the State of Oklahoma. To assume that a victory in invalidating these statutes comes with automatic relief to be granted against the Court Clerk is a fatal error given that Respondent has no right to defend, enforce, or effectuate the abortion laws in any way. 12 O.S.2021, § 1653(C); 63 O.S.Supp.2022, §§ 1-745.38 - 1-745.39. As presented, Petitioners request this Court allow injunctive relief to be ordered against innocent third parties for no other reason than to do so would provide more expeditious relief than enjoining the conduct of an actual wrongdoer. This is not the function of a

court sitting in equity. Rather, to obtain injunctive relief against Respondent, Petitioners bear the burden of establishing their right to such relief based on an analysis of their rights in relation to Respondent's conduct. Stated another way, Respondents must establish something more than a right to provide abortion services. They must establish the existence of a separate right to avoid suit and further establish that some improper conduct of Respondent encroaches upon that right which renders it of absolute necessity that he be compelled to act in a manner to avert harm to Petitioners' right to immunity.

On the relevant inquiry of their entitlement to a mandatory injunction, Petitioners offer no argument or authority that might justify such relief against Respondent. Apart from stating the uncontroversial position that this Court has superintending authority over the Court Clerks of the state and the power to grant relief in the abstract, they make no single argument nor offer any authority to justify granting relief against Respondent in this particular case. Petitioners' Brief in Chief, p. 28-30. Their failure to develop their claim beyond such generalities renders it waived. As aptly stated by this Court,

We need not consider challenges that are not rested on convincing argument firmly supported by legal authority. When the failure of advocacy occurs, its presence distorts the adversarial positions of the parties. There is here only a request for relief without supporting argument or legal authority material. The absence alters the nature of the appellate process by imposing upon the court the burden of researching and testing unsupported legal propositions sought to be pressed for victory. Appellate courts cannot be forced to become an active advocate for the party whose failure to brief or argue has produced a total intellectual vacuum for that party's asserted position. To do so violates the basic common-law tenet that judges must always cast themselves into the role of neutral and detached decisionmakers rather than turning themselves into combatants in a forensic battle.

Fent v. Contingency Review Bd., 2007 OK 27, ¶ 22-23, 163 P.3d 512, 525. Under these circumstances, this Court should decline to consider Petitioners' request for injunctive relief and deem it waived as to Respondent. Even were this Court inclined to consider Petitioners' conclusory assertion of entitlement to relief on its merits, they cannot meet their burden to obtain an injunction.

A. PETITIONERS NEITHER HAVE A CLEAR RIGHT TO IMMUNITY FROM SUIT NOR A RIGHT TO ALTER OR OTHERWISE PREVENT THE PERFORMANCE OF THE STATUTORY DUTIES OF THE COURT CLERK.

Petitioners ask this Court to require Respondent to conduct a pre-filing legal review of all new civil actions presented and refrain from docketing those that present abortion-related enforcement claims. However, Petitioners have no clear legal right to demand rejection of any class of civil actions nor a clear legal right to immunity from suit that would be effectively granted thereby.

In its most narrow sense, Petitioners' request for relief seeks to alter the statutory duties of the Court Clerk. Citing Section 29 of Title 12, Petitioners state that the Court Clerk has the ability to reject for filing any lawsuit presented to them if they have cause to believe the same is a sham. Petitioners' Brief-in-Chief, p. 28. This is patently false. From this false position and without citation to authority, Petitioners urge that any civil abortion-related lawsuit may be categorically deemed a "sham" proceeding such that Respondent may be compelled to reject the same for filing as a means of relieving them of the burden to defend against such suits.

Contrary to Petitioners' assertion, Oklahoma Statutes place a mandatory duty on the Court Clerk to file and docket all civil and criminal actions tendered to them. Specifically, Section 91.2 provides in relevant part, "To facilitate the trial and disposition of cases, actions filed in the district court **shall** be assigned to various dockets by the clerk of the court pursuant to the direction and supervision of the presiding judge of the district. Until changed by order of the Supreme Court, only the following dockets are established: a civil docket, a criminal docket, a traffic docket, a probate docket, a juvenile and family relations docket, a small claims docket, and a business docket for the business court divisions of the court...." 20 O.S.2021, § 91.2(A) (emphasis added). The performance of the mandatory duty of docketing and filing new civil and criminal actions is purely ministerial. In fact, in only one instance, may a Court Clerk refuse to file a document tendered to him.

Section 29 of Title 12 states, "It is the duty of the clerk of each of the courts to file together with and carefully preserve in his office, all papers delivered to him for that purpose, except as provided in subsection B of this section, in every action or special proceeding." 12 O.S.2021, § 29(A). Subsection B provides that, "The court clerk may refuse to file any document presented for filing if the clerk believes that the document constitutes sham legal process as defined by Section 1533 of Title 21 of the Oklahoma Statutes." 12 O.S.2021, § 29(B).

"Sham legal process" means the issuance, display, delivery, distribution, reliance on as lawful authority, or other use of an instrument that is not lawfully issued, whether or not the instrument is produced for inspection or actually exists, and purports to do any of the following: (a) to be a summons, subpoena, judgment, arrest warrant, search warrant, or other order of a court

recognized by the laws of this state, a law enforcement officer commissioned pursuant to state or federal law or the law of a federally recognized Indian tribe, or a legislative, executive, or administrative agency established by state or federal law or the law of a federally recognized Indian tribe; (b) to assert jurisdiction or authority over or determine or adjudicate the legal or equitable status, rights, duties, powers, or privileges of any person or property, and (c) to require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property.

21 O.S.2021, § 1533(H)(1). Succinctly summarized, when read together with Section 1533, Section 29(B) authorizes a Court Clerk to reject any document purporting to be a court or executive order which is facially invalid or fraudulent. Certainly, nowhere in the statute is there reference to a “petition” – the first pleading filed by a plaintiff in a civil action, 12 O.S.2021, § 2003, – nor is there any language that would allow a petition to be declared a sham based on the substance of the pleading. In this light, Petitioners cannot legitimately argue that a Court Clerk has power to reject any new civil action at all, much less reject one based upon the theories of recovery alleged therein.

These statutes illustrate that to grant Petitioners’ request for extraordinary relief, this Court would be required to expand the reach of Section 1533 beyond the breaking point of its plain language. More significantly, such an expansion would fundamentally change the duties of the Court Clerk from a purely ministerial role to a quasi-judicial adjudicative role. *Oklahoma St. Medical Assoc. v. Corbett*, 2021 OK 30 ¶ 2 n.2, 489 P.3d 1005, 1006 (defining quasi-judicial power as that exercised by officers who are empowered to “investigate facts, weigh evidence, draw conclusions as a basis for official actions, and exercise discretion of a judicial nature). Yet only the Legislature is empowered to define

the duties of county officers, *Tulsa Expo. & Fair Corp. v. Bd. of Cnty. Comm'rs*, 1970 OK 67, ¶ 26-27, 468 P.2d 501, 507-08, and as defined, this Court is bound to give effect to the legislative intent as it is expressed through the plain and unambiguous language of a statute. *City of Tulsa v. State*, 1998 OK 92, ¶ 14, 967 P.2d 1214, 1220.

Clearly, Petitioners can make no showing that they have a clear legal right to require a Court Clerk to perform a pre-filing legal review of all new civil actions presented and refrain from docketing those that present abortion-related enforcement claims. Nor can Petitioners establish the existence of a broader right of private immunity from suit. Though not articulated as seeking immunity from suit, Petitioners' desire to avoid the docketing of civil actions is tantamount to a request that this Court create such a privilege. Notwithstanding their disingenuous mischaracterization of a Court Clerk's authority with regard to sham legal process, Petitioners neither identify any statutory or common law source that might justify a finding that they had a right to immunity from suit. Instead, they apparently wish this Court to create a private right exclusively for their benefit. However, this Court has recognized the danger in such judicially made immunities and disavowed them in favor of the Legislature. In *Vanderpool v. State*, 1983 OK 82, 672 P.2d 1153, this Court recounted the origins of sovereign immunity at English common law and its grafting into the common law of the United States. *Vanderpool*, 1983 OK 82, ¶ 8-9, 672 P.2d 1153, 1154-55. Concluding that the judicially created immunity was "no longer supportable by reason" this Court abrogated the same and, instead, found that immunity, if

it should exist at all, should be granted by the Legislature. *Vanderpool*, 1983 OK 82, ¶ 24-26, 672 P.2d 1153, 1155.

In both the narrow sense of altering the duties performed by a Court Clerk and the broader sense of creating private immunity from suit, it is clear that Petitioners ask this Court to grant relief to which they have no clear right. In fact, they ask this Court to grant relief which this Court has repeatedly found to be solely within the province of the Legislature to grant. While a court sitting in equitable cognizance may have much latitude in crafting appropriate remedies, that power is still bounded by the principle of separation of powers. *Edmonson v. Pearce*, 2004 OK 23, ¶ 14-15, 91 P.3d 605, 614 (recognizing that the doctrine of separation of powers underlies certain restrictions on granting injunctive relief because the “judiciary should be reluctant to unnecessarily interfere with the workings of the other two branches of government.”) It is for this reason, that an injunction will not lie to enjoin a public officer from performing any official act that he is required by law to perform. *Payne v. Jones*, 1944 OK 86, ¶ 13, 146 P.2d 113, 118. Nor will it lie to compel a public officer to perform a duty that is within his discretion. *Moore v. Porterfield*, 1925 OK 914, ¶ 14, 241 P. 346, 348. Rather, it lies only in circumstances when the official is acting outside the scope of his lawful powers and such unlawful action has caused irreparable harm to the petitioner. *Id.*; *Farley*, 2020 OK 30, ¶ 64, 465 P.3d 1213, 1242-43.

Here, Section 29 of Title 12 and Section 91.2 of Title 20 are clear and unequivocal in their command that Respondent docket and file all civil and criminal actions presented to him. 12 O.S.2021, § 29(A); 20 O.S.2021, § 91.2(A).

Because Petitioners have failed to carry their burden of demonstrating a clear legal right to private immunity from suit or a clear legal right to alter or otherwise prevent the performance of Respondent's statutory duties, their request for injunctive relief against Respondent Warren must be denied.

B. PETITIONERS CONCEDE INJUNCTIVE RELIEF IS NOT NECESSARY AND THAT OTHER RELIEF MAY BE EFFECTIVE TO PREVENT ANY HARM EXISTING BY THE JUDICIAL PROCESS.

Because Petitioners have failed to establish the existence of a clear legal right underlying their request for injunctive relief, the analysis is at an end and their request for injunctive relief should be denied without further consideration. Nevertheless, it cannot go without mention that Petitioners concede that injunctive relief is not necessary to prevent any harm presented by the threat of existing or future civil abortion-related enforcement actions – to the extent the judicial process could be viewed as inherently injurious in the first instance. Specifically, Petitioners state, “at least three forms of relief that each independently would allow Petitioners to restart providing abortion services.” Petitioners’ Brief in Chief, p. 29. They continue, “A declaration of unconstitutionality would likely prevent prospective plaintiffs from filing harassing and frivolous lawsuits against Petitioners.” Petitioners’ Brief in Chief, p. 30.

Petitioners’ confession that declaratory relief granted in their favor, without more, will be sufficient to avoid any harm to them presented by the abortion statutes now under review effectively removes from them any entitlement to a mandatory injunction. After all, it is their burden to establish

extreme necessity that such relief is granted and further that no other adequate redress is available. *Owens*, 2022 OK 14, ¶ 7, 503 P.3d at 1214. As Petitioners' candid admission vitiates their claim for injunctive relief, the same must be denied.

C. IN A BALANCING OF THE INTERESTS OF PETITIONERS AGAINST THOSE OF RESPONDENT AND THE PUBLIC, EQUITY FAVORS DENIAL OF INJUNCTIVE RELIEF.

Respondent Warren has firmly demonstrated not only that Petitioners' have waived any request for injunctive relief but that they failed to meet their burden of showing by clear and convincing evidence that the same is necessary to protect any clear legal right. While further analysis may only be academic, Respondent's plea to this Court made in his response to Petitioners' request for temporary injunction bears repeating. There, without hyperbole, Respondent demonstrated that any requirement that he conduct a pre-filing legal review of new civil actions tendered to his office to exclude abortion-related enforcement actions prior to docketing and filing would have catastrophic effects on the operations and finances of the Oklahoma County Court Clerk's Office. Nothing has changed in this regard.

It is a well-established principle that a mandatory injunction should not be granted if doing so would promote a wrong or might operate inequitably or oppressively. *Peck v. State*, 1960 OK 89, ¶ 7, 350 P.2d 948, 950; *Kasner v. Reynolds*, 1954 OK 56, ¶ 27, 268 P.2d 864, 867. In the present case, the proposed permanent injunction would operate oppressively as to Respondent,

particularly when contrasted by the lack of benefit its issuance would provide to Petitioners beyond that which they might receive from declaratory relief alone.

As illustrated in Proposition II(A), no statute permits a Court Clerk to undertake an independent assessment of the pleadings tendered for docketing and filing for content, sufficiency, or validity. 12 O.S.2021, § 29; 20 O.S.2021, § 91.2(A). Precisely because no statutory authority exists that allows a Court Clerk to examine the legal theories of liability that may be alleged by a would-be plaintiff's Petition, Respondent Warren has no staff capable of carrying out such a function. When it is considered that in 2021 the Oklahoma County Court Clerk's Office filed 47,741 new civil actions comprising 538,309 pages of documents, Respondent conservatively estimates that it will require him to retain five attorneys working on a full-time basis to perform the necessary legal review to identify and reject for docketing and filing any civil action brought under the abortion-enforcement provisions of the statutes now under challenge. Concomitantly, Respondent will be required to institute new internal procedures for processing new civil actions to facilitate the legal review by counsel. Ex. 1, Affidavit.

Based on phone estimates received for the performance of the contemplated legal services, Respondent estimates that it would cost the Oklahoma County Court Clerk's office approximately \$240,000 per month to comply with Petitioners' proposed injunction and do so without significant delay in the docketing and filing of tendered civil actions. Unfortunately, Respondent's current budget appropriations do not allow for such an extreme and unexpected

expenditure. What's more, should Respondent attempt to utilize fewer attorneys to perform the proposed legal review within his budgetary limitations, Respondent anticipates that there would be inevitable delays in the docketing and filing of new civil actions. Ex. 1, Affidavit.

Though the harm to Respondent cannot be understated, this Court should also consider the harm that may result to the public at large. Anticipated delays in docketing new civil actions present an unreasonable risk of harm that a would-be litigant may be denied their constitutional right of access to the courts. Okla. Const. art. 2, ¶ 6; *Woody v. State*, 1992 OK 45, ¶ 9, 833 P.2d 257, 259-60. Under all these circumstances, the equities balance in favor of denying Petitioners' proposed permanent injunction.

III. PETITIONERS FAIL TO SATISFY EACH OF THE ELEMENTS TO JUSTIFY ISSUANCE OF A WRIT OF PROHIBITION.

In the alternative to injunctive relief, Petitioners ask this Court to issue a writ of prohibition to Respondent directing him to refrain from docketing any litigation brought pursuant to the statutes now under challenge. "Before a writ of prohibition may issue, a petitioner must show: (1) a court, officer, or person has or is about to exercise judicial or quasi-judicial power; (2) the exercise of said power is unauthorized by law; and (3) the exercise of that power will result in injury for which there is no other adequate remedy." *James v. Rogers*, 1987 OK 20, ¶ 5, 734 P.2d 1298, 1299.

In pressing their request for issuance of the writ, Petitioners devote only a single paragraph of their Brief in Chief to the proposition. Petitioners' Brief in Chief, p. 30. As with their claim for permanent injunction, apart from asserting

the indisputable position that this Court has power to issue a writ of prohibition, they offer neither argument nor authority explaining how they might be entitled to such relief against Respondent. However, it is neither the function of Respondent nor this Court to round out Petitioners' arguments for them when they have failed to do so. As such, this Court should decline to consider Petitioners' request for a writ of prohibition and deem it waived. *Fent v. Contingency Review Bd.*, 2007 OK 27, ¶ 22-23, 163 P.3d 512, 525. Even were this Court inclined to consider Petitioners' conclusory assertion of entitlement to relief on its merits, they have failed to meet each of the elements necessary to warrant issuance of the writ.

A. A COURT CLERK DOES NOT EXERCISE JUDICIAL OR QUASI-JUDICIAL POWERS IN FILING AND DOCKETING A CIVIL OR CRIMINAL ACTION.

To establish entitlement to a writ of prohibition, a petitioner must first demonstrate that the respondent has or is about to exercise judicial or quasi-judicial power. *James*, 1987 OK 20, ¶ 5, 734 P.2d at 1299. "Quasi-judicial power' for purposes of the first test has been defined as 'a term applied to administrative boards or officers empowered to investigate facts, weigh evidence, draw conclusions as a basis for official actions, and exercise discretion of a judicial nature.'" *Oklahoma St. Medical Assoc. v. Corbett*, 2021 OK 30 ¶ 2 n.2, 489 P.3d 1005, 1006.

As demonstrated in preceding sections, Respondent's performance of his duties to docket and file all civil and criminal actions presented to him is a non-discretionary, ministerial function. He has no statutory authority to

independently evaluate and make legal determinations regarding the theories of liability that might be pled by a plaintiff. Because he does not exercise any quasi-judicial power in these circumstances, no writ of prohibition may lie against him.

B. A COURT CLERK EXERCISES POWERS EXPRESSLY AUTHORIZED BY LAW IN FILING AND DOCKETING A CIVIL OR CRIMINAL ACTION.

Petitioner's failure to establish the first element required to justify issuance of a writ of prohibition, without more, warrants denial of their request for extraordinary relief. After all, "[i]f a petitioner fails to establish any of the three elements, the writ must be denied." *James*, 1987 OK 20, ¶ 5, 734 P.2d at 1299. Nevertheless, Petitioners cannot establish the second element necessary for issuance of the writ as well. On this point, Petitioners must demonstrate that the actions to be undertaken by the Court Clerk are unauthorized by law. It takes little intellectual energy to conclude that Petitioners cannot meet this standard.

As already noted, the Court Clerk is statutorily mandated to accept and preserve all documents presented to him for filing, save limited exception for fraudulent court and executive orders not applicable here. 12 O.S.2021, § 29; 21 O.S.2021, § 1533(H)(1). In addition, Section 91.2 of Title 20 provides in relevant part, "To facilitate the trial and disposition of cases, actions filed in the district court **shall** be assigned to various dockets by the clerk of the court pursuant to the direction and supervision of the presiding judge of the district. Until changed by order of the Supreme Court, only the following dockets are established: a civil docket, a criminal docket, a traffic docket, a probate docket, a juvenile and family relations docket, a small claims docket, and a business

docket for the business court divisions of the court....” 20 O.S.2021, § 91.2(A) (emphasis added). As there are no circumstances in which Petitioners may urge that the actions of Respondent in filing and docketing all civil actions presented to him, including ones that are abortion-related enforcement actions, is unauthorized by law, their request for a writ of prohibition must be denied.

C. PETITIONERS CONFESS THEY HAVE REMEDIES AVAILABLE TO THEM OTHER THAN THE WRIT OF PROHIBITION TO PREVENT ANY INJURY CAUSED BY THE STATUTES UNDER REVIEW.

The final element Petitioners must establish in order to demonstrate entitlement to a writ of prohibition is that there is no other adequate remedy available to them to prevent injury. *James*, 1987 OK 20, ¶ 5, 734 P.2d at 1299. Petitioners assert that Court Clerks play an integral part in the civil abortion-related enforcement provisions through the performance of their duties to file and docket civil actions. Brief-in-Chief, p. 28. They seek the writ, therefore, as a means of averting application of statutes urged to be unconstitutional. They do not, however, explain how issuance of the writ is the only remedy available to prevent an unconstitutional statute from being applied to them. To the contrary, Petitioners admit that declaratory relief will, without more, be adequate. Specifically, Petitioners state, “at least three forms of relief that each independently would allow Petitioners to restart providing abortion services.” Petitioners’ Brief in Chief, p. 29. They continue, “A declaration of unconstitutionality would likely prevent prospective plaintiffs from filing harassing and frivolous lawsuits against Petitioners.” Petitioners’ Brief in Chief, p. 30.


Petitioners' candid admissions that issuance of a writ of prohibition is unnecessary is further bolstered by the procedural mechanisms available to all litigants by the Code of Civil Procedure. If this Court were to declare the statutes under review to be unconstitutional, Petitioners could seek dismissal of any abortion-related enforcement action on grounds that the same is not justiciable, that venue was improper, or that it fails to state a claim upon which relief may be granted. 12 O.S.2021, § 2012(B). Failing an early dismissal, they could also seek summary judgment asserting these and any other defenses available to them as the facts of the particular case may warrant. 12 O.S.2021, § 2056. They may even seek sanctions against any party who would attempt to bring suit for a frivolous or vexatious purpose. 12 O.S.2021, § 2011(C); *Garnett v. Gov't Employees Ins. Co.*, 2008 OK 43, ¶ 18, 186 P.3d 935, 943.

In the face of the procedural protections afforded to all litigants and their own admission that declaratory relief will alone rectify any potential harm to them, Petitioners have no basis upon which to request this Court to issue a writ of prohibition against Respondent. Having failed to satisfy each of the elements required for extraordinary relief, Petitioners' request for a writ of prohibition should be denied.

CONCLUSION

WHEREFORE, Respondent Rick Warren, Oklahoma County Court Clerk respectfully requests this Honorable Court to deny Petitioners' Application for Permanent Injunction and/or Writ of Prohibition in all respects.

Respectfully submitted,

BY: 
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*Attorney for Rick Warren, Oklahoma County
Court Clerk*

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing document was mailed postage prepaid to the following:

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Patti Barger, and Kimberly Berry, Court Clerks*

A handwritten signature in cursive script, appearing to read "Lisa Hannah", written over a horizontal line.

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

)
)
) ss.

AFFIDAVIT

I, Rick Warren, do hereby affirm and state as follows:

1. I am the duly elected and acting Court Clerk of Oklahoma County and have been since 2016.
2. As Court Clerk of Oklahoma County, I operate three offices. The principal office is located in Oklahoma City. A satellite office is located in Edmond. A second satellite office is located at the Oklahoma County Juvenile Justice Center.
3. As Court Clerk, I manage the records and dockets of 35 district, associate, and special judges in Oklahoma County. To assist me in the performance of my statutory duties, I employ 145 people within a personnel budget of \$10,146,911 for salaries and benefits. The 145 people employed by the Court Clerk's Office are laypeople, untrained in the law.
4. In 2021, excluding actions filed and assigned to the juvenile division of the district court, the Oklahoma County Court Clerk's Office filed 47,741 new civil actions and 37,956 new criminal actions. The 47,741 new civil actions consisted of 538,309 pages of documents.
5. The current procedure followed when a person presents a new civil action to the Oklahoma County Court Clerk's Office is as follows: (1) A Deputy Court Clerk working as Cashier gives the action a case number

and randomly assigns the case to a judge and docket by using the Oklahoma Court Information System (OCIS), a computerized system established by the Supreme Court. By entering the case into OCIS the matter is docketed and a record known as a docket sheet is automatically created. (2) The Deputy Court Clerk working as Cashier collects the required filing fee for the action and issues a receipt to the person presenting the Petition. (3) The person presenting the Petition takes the document along with the receipt showing payment of the filing fees to a counter designated for the filing of items into the court records. There another Deputy Court Clerk file-stamps the original document and any copies. The original document is kept by the Deputy Court Clerk and any copies are returned to the presenter. (4) The original document is sent to the scanning department of the Court Clerk's Office. There another Deputy Court Clerk scans to document for record preservation. (5) After scanning, a file is created and marked with the style of the case and the case number. The original Petition is placed in the file. The file is stored in the Court Clerk's Office and maintained for future use by the court or viewing by the public.

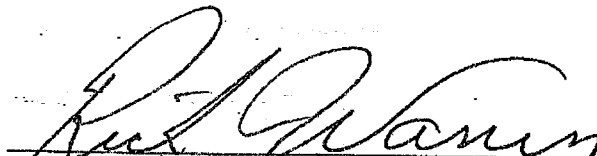
6. At no point in the process of docketing and filing a new civil action does a Deputy Court Clerk review and assess the legal claims contained in the Petition.
7. A Deputy Court Clerk is not permitted to reject a new civil action for docketing or filing based upon the form or content of the Petition.

8. At present time, I have no employees that are trained in the law and capable of assessing the legal substance of a new civil action to determine if the Petition asserts a claim under any abortion laws of the State of Oklahoma.
9. Based upon my experience and knowledge gained as the Oklahoma County Court Clerk, I estimate that it would require a minimum of five (5) attorneys working full time to review every new civil action filed in Oklahoma County prior to docketing and filing in order to comply with Petitioners' proposed temporary injunction.
10. In addition to retaining the services of legal counsel to comply with Petitioners' proposed temporary injunction, significant modifications to the internal processing procedures of the Court Clerk's Office would need to be made to accommodate legal review of all new civil actions prior to docketing and filing.
11. Phone estimates for pre-filing legal review services were sought from a number of attorneys. However, those contacted were hesitant to quote an hourly rate, as it would fluctuate depending on the complexity of the cases reviewed. Based on existing county and public trust contracts for legal services, the cost of an attorney to review new civil actions prior to docketing and filing to exclude from the process any abortion-related enforcement actions range from \$300.00 per hour to \$450.00 per hour. Based upon the lowest hourly rate, a conservative estimate of the cost of five attorneys to perform the required legal review would be

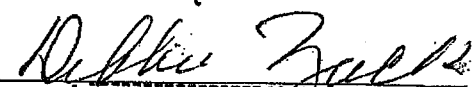

approximately \$240,000.00 per month for the duration of the injunction.

12. Retention of one or more attorneys is not provided for in the existing personnel budget for salaries and benefits of the Oklahoma County Court Clerk's Office for the fiscal year ending June 30, 2022, and current balances are insufficient to absorb a new expense of \$240,000.00 per month.
13. Retention of one or more attorneys is not provided for in the personnel budget of the Oklahoma County Court Clerk's Office for the fiscal year ending June 30, 2023.
14. Based upon my experience and knowledge gained as the Oklahoma County Court Clerk, an attempt to use less than five attorneys working full time to review every new civil action filed in Oklahoma County prior to docketing and filing would create a backlog in the review process that would delay the docketing and filing of new civil actions.

FURTHER AFFIANT SAYETH NOT.


Rick Warren, Court Clerk

Subscribed and sworn to before me this 31st day of May 2022.


Notary Public  **DEBBIE ZUCK**
Comm. No.: _____ Notary Public
Expires: _____ State of Oklahoma
Commission # 10007408 Expires 07/28/22