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SUPREME COURT
STATE OF OKLAHOMA**

NO. 120,376

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE, et al.,

Petitioners,

v.

THE STATE OF OKLAHOMA, et al.

Respondents.

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**RESPONSE TO PETITIONERS' SUPPLEMENTAL EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER OR INJUNCTION BY RICK
WARREN, OKLAHOMA COUNTY COURT CLERK**

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OKLAHOMA COUNTY COURT CLERK**

INTRODUCTION

Cat·a·stroph·ic [kade´sträfik] *adj.*: involving or causing sudden great damage or suffering; involving a sudden and large-scale alteration in state.

Catastrophic. No other word can describe the harm to be caused to the daily operations of the Office of Court Clerk should Petitioners' motion for temporary injunction be granted. Far from seeking to maintain the status quo, Petitioners' request is one seeking drastic mandatory relief that would not only increase the cost of Respondent's operations but would result in the denial of access to the courts for many seeking redress for harms wholly unrelated to the statutes under challenge; such far reaching and perhaps irreparable harm to Respondent and the citizens of Oklahoma County simply cannot be justified by the remote and speculative injury Petitioners' claim will befall them in the absence of temporary injunctive relief.

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 current 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 and which has not been included in the budget for fiscal year 2023.

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 order temporary, mandatory injunctive relief that compels Respondent to refrain from docketing abortion-related enforcement litigation brought pursuant to the statutes now under constitutional challenge. Putting legalese aside, Petitioners ask this Court to do the unprecedented – they ask this Court to grant them state-wide immunity from suit. More egregiously, Petitioners ask this Court to accomplish such judicial legislation by directing all 77 Court Clerks in the State of Oklahoma to refrain from performing their nondiscretionary statutory duties – duties that exist to effectuate the constitutional right of access to the court.

To say that this Court should cast aside the bedrock principle of our entire judicial system so that Petitioners may enjoy a privilege of immunity that no other private person or entity has under the law is bold to say the least. Despite the audacity of the request, the fact of the matter is that it is one that is not justiciable. Even apart from this jurisdictional failing, Petitioners have wholly failed to meet their burden of demonstrating entitlement to the extraordinary measure of injunction. For these reasons, Respondent requests this Court to deny Petitioners' Supplemental Emergency Motion for an Immediate Temporary Restraining Order and/or Temporary Injunction in all respects.

I. PETITIONERS HAVE NO JUSTICIABLE CLAIM AGAINST RESPONDENT WARREN.

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 have 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 include: (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.* (emphasis added). 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. “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 temporary injunctive 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 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. Because they lack standing and any justiciable controversy between themselves and the Court Clerk, any request for relief as to Respondent Warren should be denied for want of jurisdiction.

II. PETITIONERS ARE NOT ENTITLED TO MANDATORY INJUNCTIVE RELIEF THAT DISTURBS THE STATUS QUO.

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 mandatory injunction

should be denied. Nevertheless, as will be shown, Petitioners have failed to carry their burden of demonstrating entitlement to this extraordinary measure.

Generally, the function of a preliminary injunction is to preserve the status quo until a final determination is made in a controversy. *Owens v. Zumwalt*, 2022 OK 14, ¶ 7, 503 P.3d 1211, 1214. “The status quo which will be preserved by preliminary injunction is the last actual, peaceable, noncontested status which preceded the pending controversy.” *Id.* Here, however, the last actual peaceable status between Petitioners and Respondent Warren, required nothing more than Respondent’s performance of his ministerial duty of filing and docketing all civil actions presented to him. Yet, this is the very status Petitioners wish to alter – no, upend – by forcing Respondent to undertake pre-filing legal review of all civil actions to identify and isolate any abortion-related enforcement suits that might be filed against them.

“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 by the same four factors as prohibitive injunctions. That is to say, a party seeking a mandatory injunction must establish: “(1) the likelihood of success on the merits;¹ (2) irreparable harm to the parties seeking

¹ Respondent leaves to the State through the Attorney General to defend the constitutionality of the challenged statutes and the concomitant likelihood of Petitioners’ success on the merits. Accordingly, the first factor is not addressed. Nevertheless, the balancing of the remaining factors clearly weigh in favor of Respondent such that Petitioners’ request for temporary injunctive relief should be denied.

injunctive relief if the injunction is denied; (3) their threatened injuries outweigh the injury the opposing party will suffer under the injunction; and (4) the injunction is in the public interest.” *Owens*, 2022 OK 14, ¶ 8, 503 P.3d at 1214. 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.” *Id.* (citations and quotations omitted).

Ill-conceived and short-sighted, Petitioners’ request for injunctive relief threatens the daily operations of the Court Clerk’s Office at an extreme monetary cost and has the potential of greater harm in denying all would-be litigants access to the courts beyond those who may attempt to avail themselves of the enforcement mechanisms of the statutes under review. These harms to Respondent and the general public outweigh any nominal threat of defending enforcement litigation Petitioners might face should the temporary injunction be denied. More significantly, because they seek mandatory injunctive relief Petitioners can identify no clear right that is threatened, as they have no clear legal right to immunity from suit and no clear right to enjoin the performance of the mandatory, non-discretionary statutory duties of the Court Clerk. As such, Petitioners’ request for mandatory injunctive relief that would compel Respondent to refrain from docketing abortion-related enforcement litigation should be denied.

A. THE RISK OF HARM PRESENTED BY POTENTIAL LITIGATION IS NOT ONLY SPECULATIVE AND REMOTE BUT WILL NOT BE PREVENTED BY THE PROPOSED INJUNCTION.

In order to establish entitlement to injunctive relief, Petitioners must show, by clear and convincing evidence, that they will suffer an injury that is more than nominal, theoretical or speculative. *Revolution Resources, LLC v. Annecy, LLC*, 2020 OK 97, ¶ 12, 477 P.3d 1133, 1140-41. “There must be a reasonable probability that the injury sought to be prevented will be done if no injunction is issued – a mere fear or apprehension of injury will not be sufficient.” *House of Realty, Inc. v. City of Midwest City*, 2004 OK 97, ¶ 11, 109 P.3d 314, 318.

While they broadly assert that the abortion statutes now under challenge will cause irreparable harm to Petitioners and the citizens of Oklahoma who might seek an abortion, the only “injury” Petitioners seek to avoid is defending against private litigation. To this point they do not claim that any private abortion-related lawsuits have been filed against them nor do they assert that they have a basis to believe any such suits are imminent. Rather, they claim only a “grave risk” such litigation may be filed. Supplemental Motion, p. 15. While their assessment may be accurate, the fear of litigation is an insufficient basis upon which to justify the extraordinary measure of injunctive relief.

Setting aside for the moment the fact that there exists no right to immunity from suit for private persons and entities like Petitioners, litigation is not a “harm” as they would like to assert. To the contrary, judicial proceedings will afford them the full panoply of rights to defend against any application of the statutes they now seek to challenge. The only potential for harm resulting from

litigation is that associated with a possible adverse judgment. This risk is not only speculative at this point in time, but it is one that can only come with finality of judgment. In fact, reasonable minds could argue that a direct appeal provides the more appropriate forum to assess the effects of the statutes under review upon the constitutional rights of the parties. In any event, the matter now before this Court will be resolved long before any threat of final adverse judgment will materialize.

Even if it could be assumed, for the purpose of argument alone, that Petitioners could establish some concrete and irreparable harm from existing or threatened litigation, their proposed injunctive remedy is ineffective to prevent any harm attendant to defending private litigation. While an injunction requiring all 77 Court Clerks to conduct pre-filing legal review of all civil actions tendered to them may be effective to block those that seek to enforce the state's abortion statutes *ab initio*, it leaves untouched the ability for a Petition to be amended to include new parties and/or new theories of liability after such review has been completed and the action docketed and filed; such amendments are not only permitted by the Oklahoma Pleading Code but are within the discretion of the trial court to allow. 12 O.S.2021, § 2015. Naturally, Respondent Warren has no power to block the actions of a trial court in this respect. Rule 6(A)(1), *Rules of the Seventh Judicial and Twenty-Sixth Administrative Districts* (2018) (providing that the trial court assumes all superintending authority over a case following initial docketing by the Court Clerk). In this light, it cannot be said that there is

a reasonable probability that the injury contemplated will be prevented if the injunction is issued.

Petitioners have failed to establish the second element necessary to warrant temporary injunctive relief. Petitioners make no effort to establish anything more than the fear of harm to be caused by defending anticipatory litigation. When it is also considered that the proposed injunction against Respondent Warren would not eliminate the very harms they hope to avoid, it is clear that Petitioners have failed to meet their burden of demonstrating the necessity of injunctive relief to prevent concrete and irreparable harm.

B. RESPONDENT WARREN WILL SUFFER IMMEDIATE FINANCIAL LOSS AND SUFFER SIGNIFICANT DISRUPTION IN THE DAILY PERFORMANCE OF HIS STATUTORY DUTIES IF THE REQUEST FOR TEMPORARY INJUNCTIVE RELIEF IS GRANTED.

“In order for a temporary injunction to be proper, the threatened injury to the moving party must also outweigh the injury the opposing party will suffer under the injunction.” *Edwards v. Bd. of Cnty. Commr’s*, 2015 OK 58, ¶ 30, 378 P.3d 54, 63. Evincing either a disrespect for the functions of his office or an ignorance thereof, without argument or explanation Petitioners aver that Respondent will suffer “little harm” if their request to enjoin the docketing of abortion-related civil actions is granted. Supplemental Motion, p. 15. Nothing can be further from the truth.

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, Section 29(B) authorizes a Court Clerk to reject any document purporting to be a court order or judgment which is facially invalid or fraudulent.

Beyond the limited ability to reject sham court process, no statute permits a Court Clerk to undertake an independent assessment of the pleadings tendered for docketing and filing for content, sufficiency or validity. Yet, Petitioners ask this Court to create such an obligation from whole cloth and impose this new duty on Respondent. If ordered to screen and reject for docketing and filing any civil action brought to enforce the newly enacted abortion laws, Respondent will suffer immediate, catastrophic disruption to the operational and fiscal stability of his office.

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 temporary 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. This too comes with new and potentially costly consequences. Should any untimely filing of a petition cause a plaintiff to miss a statute of limitations, not only would the party have been denied their constitutional rights of due process and access to the courts, but Respondent risks potential legal liability therefor. *See e.g., Bosh v. Cherokee Cnty. Bldg. Auth.*, 2013 OK 9, ¶ 23, 305 P.3d 994, 1001, *superseded by statute on other grounds*, *Payne v. Kerns*, 2020 OK 31, ¶ 14, 467 P.3d 659, 665-66 (recognizing a private cause of action may exist for the violation of a state constitutional right); *Lockett v. Evans*, 2014 OK 34, ¶ 13, 330 P.3d 488, 491 (recognizing that a cause of action for denial of access to the courts may exist for one who has been prejudiced in contemplated litigation by the inability to meet a filing deadline); 42 U.S.C. § 1983.

It is beyond legitimate dispute that Petitioners' request for temporary injunction, if granted, would cause immediate and significant disruption to the

operations of the Oklahoma County Court Clerk's Office and significant financial expense to Respondent Warren. Under these circumstances, Petitioners cannot satisfy the third element necessary to demonstrate entitlement to injunctive relief.

C. THE PUBLIC HAS A CONSTITUTIONALLY PROTECTED RIGHT TO ACCESS TO THE COURTS AND A STRONG INTEREST IN A PUBLIC OFFICIAL'S PERFORMANCE OF THE STATUTORY DUTIES IMPOSED UPON HIM THAT WILL BE HARMED BY PETITIONERS' REQUEST FOR TEMPORARY INJUNCTIVE RELIEF.

The fourth element a party seeking injunctive relief must establish requires a court to focus on the public interests affected by the proposed injunction. *Owens*, 2022 OK 14, ¶ 8, 503 P.3d at 1214. Rather than focus on the impact to the public that may result from their proposed injunction as is required, Petitioners urge instead that "enforcement of an unconstitutional law is contrary to the public interest." Supplemental Motion, p. 15. Of course, the enforcement mechanism Petitioners seek to avoid is the judicial process. It is quite an anomalous position to urge that the public has no valid interest in allowing parties to assert their legal rights in a neutral forum before a jury of their peers and with all of the due process that is allowed under the law. Respondent Warren vehemently disagrees with Petitioners' suggestion and submits that the public interest is better served by such a result.

In their quest to obtain immunity from civil suit, Petitioners fail to give due regard to the rights of the people. Over eight hundred years ago it was written in the Magna Carta, "We will not sell, or deny, or delay right or justice to anyone." The 1215 Magna Carta: Clause 40, *The Magna Carta Project*, trans. H.

Summerson et al., <https://magnacartaresearch.org>. (last visited May 28, 2022). Though originally written to guard against a tyrannical king, this noble principle was adopted within Article 2, Section 6 of the Oklahoma Constitution and stands to create a 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. However, as established in Proposition II(B), Petitioners' demand that Respondent Warren conduct a legal review of every civil action tendered to him for filing creates the very real risk that all would-be litigants will have their right of access to the court delayed and possibly denied; for those asserting claims pursuant to the statutes under challenge, Petitioners' request for injunctive relief represents an absolute denial of access to the courts. Surely a right that has been recognized since time immemorial is one that the public has a significant interest in protecting from the very intrusion that would be caused by Petitioners' proposed injunction.

Even beyond the constitutional right of access to the courts, the public has an interest and a right to expect that their public officials will perform their mandatory statutory duties. Long ago this Court said, "courts may not enjoin a public officer from performing any official act that he is by law required to perform." *Payne v. Jones*, 1944 OK 86, ¶ 13, 146 P.2d 113, 118. Here, Section 91.2 of Title 20 is clear and unequivocal in its command that Respondent docket and file all civil and criminal actions presented to him. 20 O.S.2021, § 91.2(A). The law leaves him no room for discretion to refuse to perform this duty and, thus, the public has a right to expect it to be performed.

Despite Petitioners' fear of the judicial process, the public has a compelling interest in protecting the same processes from the harms to be caused by the proposed mandatory injunction. Petitioners have, therefore, failed to satisfy the fourth element necessary to establish entitlement to such extraordinary relief.

D. PETITIONERS HAVE NO RIGHT TO IMMUNITY FROM SUIT AND ADEQUATE MEANS OF REDRESS OF ANY INJURY EXISTS THROUGH THE JUDICIAL PROCESS THEY SEEK TO AVOID.

In the preceding sections, Respondent Warren has unequivocally demonstrated that the elements necessary to establish entitlement to injunctive relief weigh conclusively against Petitioners. However, because they seek mandatory injunctive relief, they also bear the burden of showing that they will suffer a violation of a clear legal right for which no other adequate redress will be afforded in the absence of the injunction. *Owens*, 2022 OK 14, ¶ 8, 503 P.3d at 1214. Here too their claim fails.

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 – even if it is one that would operate only temporarily. 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. By the same token, this Court has recognized that it is the Legislature that is best suited to determine when to create a cause of action. *Barrios v. Haskell Cnty. Pub. Fac. Auth.*, 2018 OK 90, ¶ 16-17, 432 P.3d 233, 240. Underlying each of these decisions is respect for the separation of powers. *Id.*; *Vanderpool*, 1983 OK 82, ¶ 24-26, 672 P.2d 1153, 1155. As aptly stated by this Court, “The question is who should decide whether to provide for a damages remedy, the Legislature or the courts? We agree that the answer most often will be the Legislature because when an issue involves a host of considerations that must be weighed and appraised, it should be committed to those who write the laws rather than those who interpret them.” *Barrios*, 2018 OK 90, ¶ 16-17, 432 P.3d at 240 (internal quotations and alterations omitted).

Though they may fear the judicial process, Petitioners do not have a clear legal right to have this Court create a form of immunity from suit. This is particularly true where to do so this Court would have to retreat from its long-standing authority that injunction will not lie to prevent the performance of a public official’s ministerial duties. *Payne v. Jones*, 1944 OK 86, ¶ 13, 146 P.2d 113, 118. More importantly, it is the very judicial process that Petitioners seek to avoid that can and will provide them with adequate and effective redress for the harms they seek to avoid by the abortion statutes now under challenge. As they have no clear right to immunity from suit and no necessity for mandatory injunctive relief, Petitioners’ Supplemental Emergency Motion for an Immediate Temporary Restraining Order and/or Temporary Injunction must be denied.

CONCLUSION

WHEREFORE, Respondent Rick Warren, Oklahoma County Court Clerk respectfully requests this Honorable Court to deny Petitioners' Supplemental Emergency Motion for an Immediate Temporary Restraining Order and/or Temporary Injunction 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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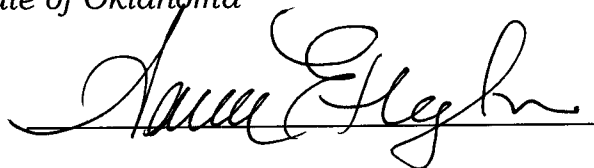
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A handwritten signature in black ink, appearing to read "Anna E. Hegler", written over a horizontal line.

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

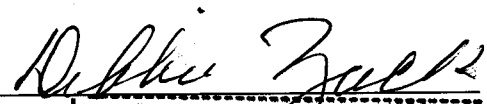

approximately \$240,000.00 per month for the duration of the injunction.

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 # 16007408 Expires 07/25/22