

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE, on behalf of itself and its members; TULSA WOMEN'S REPRODUCTIVE CLINIC, LLC, on behalf of itself, its physicians, its staff, and its patients; ALAN BRAID, M.D., on behalf of himself and his patients; COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, INC., on behalf of itself, its physicians, its staff, and its patients; and PLANNED PARENTHOOD OF ARKANSAS & EASTERN OKLAHOMA, on behalf of itself, its physicians, its staff and its patients,

Petitioners,

v.

JOHN O'CONNOR, in his official capacity as Attorney General for the State of Oklahoma; DAVID PRATER, in his official capacity as District Attorney for Oklahoma County; STEVE KUNZWEILER, in his official capacity as District Attorney for Tulsa County; LYLE KELSEY, in his official capacity as Executive Director of the Oklahoma State Board of Medical Licensure and Supervision; KATIE TEMPLETON, in her official capacity as President of the Oklahoma State Board of Osteopathic Examiners; and KEITH REED, in his official capacity as the Commissioner of the Oklahoma State Board of Health,

Respondents.

FILED
SUPREME COURT
STATE OF OKLAHOMA

JUL - 1 2022

JOHN D. HADDEN
CLERK

#120543

CASE NO. _____

APPLICATION FOR ORIGINAL JURISDICTION AND PETITION FOR
DECLARATORY AND INJUNCTIVE RELIEF AND/OR A WRIT OF PROHIBITION

COME NOW, Oklahoma Call for Reproductive Justice, Tulsa Women's Reproductive Clinic, LLC, Alan Braid, M.D., Comprehensive Health of Planned Parenthood Great Plains, Inc., and Planned Parenthood of Arkansas & Eastern Oklahoma, Petitioners herein, by and through their attorneys, request that this Honorable Court assume original jurisdiction to declare Okla. Stat. tit. 21, § 861 ("the 1910 Ban") and S.B. 612 (the "2022 Ban")

unconstitutional under the Oklahoma Constitution and permanently bar Respondents (the “State”) from enforcing the 1910 and 2022 Bans by injunction or writ of prohibition. In support of these requests, Petitioners allege the following:

RELEVANT FACTS

1. At stake in this case is the ability of pregnant Oklahomans to have control over their own lives and bodies, to have the liberty to achieve their personal hopes and dreams, and to pursue happiness in accordance with their own values.

2. The 1910 Ban is a criminal ban on abortion with a limited exception for an abortion necessary to “preserve” a person’s “life.” The 1910 Ban was first declared unconstitutional in 1973, shortly after the United States Supreme Court handed down *Roe v. Wade*, 410 U.S. 113 (1973). *See Jobe v. State*, 509 P.2d 481 (Okla. Crim. App. 1973); *Henrie v. Derryberry*, 358 F. Supp. 719 (N.D. Okla. 1973). Those cases held that the statute could not be enforced prior to the viability of a fetus because such enforcement violated the right to privacy embodied in the Fourteenth Amendment to the United States Constitution. Since then, the 1910 Ban has not been enforced against Petitioners or any other providers of abortion services in Oklahoma.

3. Since *Roe* was decided, a coordinated campaign has sought to overturn it. That campaign achieved its goal on June 24, 2022, when the United States Supreme Court overturned *Roe* in *Dobbs v. Jackson Women’s Health Org.* (“*Dobbs*”), 597 U.S. ___, 2022 WL 2276808 (June 24, 2022).

4. A significant participant in the campaign against abortion access, over many years the Oklahoma Legislature has passed increasingly radical and often conflicting restrictions on abortion. In 2021, the State enacted a trigger ban, S.B. 918, later amended by

S.B. 1555 in 2022, which permits the revival of the 1910 Ban upon the overturning of *Roe*. In addition, in the last legislative session, the Legislature also passed the 2022 Ban, which is set to take effect on August 27, 2022, and makes providing any abortion a felony, albeit one with different penalties and different exceptions from those in the 1910 Ban. Physicians who provide abortions can face up to ten years in prison (as opposed to five years under the 1910 Ban) and/or a fine of up to \$100,000.

5. After the 2022 Ban, S.B. 1503, a ban on abortion around 6 weeks of pregnancy, enforceable only by private civil lawsuits, was enacted and took effect immediately on May 3, 2022. Next, H.B. 4327 was signed into law on May 25, 2022, and took effect immediately. H.B. 4327 prohibits abortions entirely in Oklahoma and is also enforceable solely through private civil lawsuits. S.B. 1503 and H.B. 4327 are challenged in *Oklahoma Call for Reproductive Justice v. O'Connor*, No. 120376, also pending before this court, although they remain in effect.¹

6. Since the U.S. Supreme Court overturned *Roe*, abortion is rapidly becoming illegal in states all across the South and Midwest. As of June 30, 2022, five states (including Oklahoma) have implemented complete abortion bans, and four have banned abortions performed after six weeks. This ripple effect will continue, forcing patients who are able to travel to access abortion to travel farther and farther to find a provider, and providers in neighboring states will struggle to find ways to meet patients' desperate need for care.

7. The State has repeatedly claimed it has authority under the Oklahoma Constitution to ban abortion entirely as it has done through these overlapping statutes. But

¹ In 2021, the Legislature passed two other bans along with other restrictions, but those laws are currently enjoined by this Court. *Okla. Call for Reproductive Justice, et al., v. O'Connor, et al.*, Case No. CV-2021-2072 (October 25, 2021 Order Granting Emergency Temporary Injunction, No. IN-119918).

forcing people to carry pregnancies to term against their will cannot be squared with the strong protection for individual liberty in the Oklahoma Constitution.

8. Banning abortion as the 1910 and 2022 Bans and the other similar Oklahoma abortion bans do, offends the fundamental guarantees of the Oklahoma Constitution and threatens grave harm to Petitioners and the Oklahomans they represent.

I. Parties

A. Petitioners

9. Each of the Petitioners is committed to preserving access to reproductive healthcare in Oklahoma and has challenged recent legislative enactments purporting to ban some or all abortion services in Oklahoma. *See Oklahoma Call for Reproductive Justice, et al., v. O'Connor, et al.* Case No. CV-2021-2072 (challenging H.B. 1102 and H.B. 2441, among other restrictions); *Oklahoma Call for Reproductive Justice, et al., v. O'Connor, et al.*, Case No. PR-120376 (challenging S.B. 1503 and H.B. 4327).

i. Oklahoma Call for Reproductive Justice (“OCRJ”)

10. OCRJ is a 501(c)(4) nonprofit founded in 2010 to advance reproductive justice and protect access to reproductive healthcare, including abortion, in Oklahoma. OCRJ is dedicated entirely to this cause. OCRJ’s mission is to promote reproductive justice in Oklahoma through education, empowerment, and advocacy.

11. OCRJ’s members are diverse in their party affiliation, economic background, and lived experience, but all believe that pregnant Oklahomans should enjoy the liberty to make decisions about their own healthcare in line with their own values and intentions.

ii. Tulsa Women’s Reproductive Clinic (“Tulsa Women’s”)

12. Tulsa Women’s is an abortion facility licensed by the Oklahoma State Department of Health located in Tulsa, Oklahoma and has been offering abortion services since

1974. Until 2018, Tulsa Women's was operated by a predecessor, Nova Health Systems. Tulsa Women's provides reproductive healthcare services, including contraception and, until recently, medication and procedural abortions.

13. Until May 3, 2022, when S.B. 1503 went into effect, Tulsa Women's provided medication abortion up through 10 weeks, 0 days as measured from the first day of a patient's last menstrual period ("LMP") and procedural abortion up through 18 weeks LMP.² Until that date, people who reside throughout the State of Oklahoma, as well as people from Missouri, Kansas, Arkansas, and Texas, would travel to Tulsa Women's to access high quality abortion services. Tulsa Women's is prepared to resume such services when the 1910 and 2022 Bans and all other statutes preventing it from performing such services are declared unlawful. Tulsa Women's brings claims on behalf of itself, its physicians, its staff, and its patients.

iii. Dr. Alan Braid

14. Alan Braid, M.D. is a board-certified OB/GYN and is the principal owner of Tulsa Women's. He took ownership of the clinic in 2018, after the previous owner retired, in order to ensure that it continued to provide Oklahomans with high quality abortion care. Until May 3, 2022, when S.B. 1503 went into effect, Dr. Braid also provided abortions at Tulsa Women's. Dr. Braid is prepared to resume such services when the 1910 and 2022 Bans and all other statutes preventing him from performing such services are declared unlawful. Dr. Braid sues on behalf of himself and his patients.

² See Caroline Kitchener, *Empty Clinics, No Calls: The Fallout of Oklahoma's Abortion Ban*, THE WASH. POST (June 4, 2022, 6:00 AM), <https://www.washingtonpost.com/nation/2022/06/04/oklahoma-abortion-roe/>. See also Dana Branham, *Oklahoma's Latest Abortion Ban Means Chaos for Patients Seeking Them Out, Advocates Say*, THE OKLAHOMAN (May 14, 2022, 5:02 AM), <https://www.oklahoman.com/story/news/2022/05/14/oklahoma-abortion-ban-texas-law-roe-v-wade-clinics-fear-tighter-limits/9750516002/>.

iv. Comprehensive Health of Planned Parenthood Great Plains (“CHPPGP”)

15. CHPPGP is a not-for-profit corporation organized under the laws of Kansas and registered to do business in Oklahoma. CHPPGP operates one health center in Oklahoma, located in Oklahoma City, which is licensed as an abortion facility by the Oklahoma State Department of Health.

16. CHPPGP provides a wide variety of sexual and reproductive healthcare at its Oklahoma City location, including contraceptives, cancer screenings, pap smears, wellness exams, breast exams, colposcopies, and, until recently, abortions. Until April 2022, several weeks before S.B. 1503 went into effect, CHPPGP’s Oklahoma City location provided medication abortion up through 11 weeks, 0 days LMP, as well as procedural abortion up through 18 weeks LMP.³ CHPPGP is prepared to resume such services when the 1910 and 2022 Bans and all other statutes preventing it from performing such services are declared unlawful. CHPPGP sues on behalf of itself, its physicians, its staff, and its patients.

v. Planned Parenthood of Arkansas & Eastern Oklahoma (“PPAEO”)

17. PPAEO is a not-for-profit corporation organized under the laws of Oklahoma. It operates one health center in Oklahoma, located in Tulsa, which is licensed as an abortion facility by the Oklahoma State Department of Health.

18. PPAEO provides a wide variety of sexual and reproductive healthcare at its Tulsa location, including contraceptives, cancer screenings, pap smears, wellness exams,

³ See Carmen Forman, ‘It’s Horrible.’ Uncertainty Looms as Oklahoma Clinic Braces for Texas-style Abortion Ban, THE OKLAHOMAN (Apr. 29, 2022, 5:00 AM), <https://www.oklahoman.com/story/news/2022/04/29/oklahoma-total-abortion-ban-state-adopts-most-restrictive-law-roe-v-wade/7386266001/>; Shefali Luthra, *At Oklahoma Abortion Clinics, Each Day Could Be the Last for Care as New Laws Loom*, THE 19TH (Apr. 25, 2022, 6:00 AM), <https://19thnews.org/2022/04/oklahoma-abortion-laws-clinics-care/>; Aria Bendix, *Oklahoma Abortion Clinics Turn Patients Away Under New Ban – A Glimpse into a Post-Roe Future*, NBCNEWS.COM (May 7, 2022, 4:30 AM), <https://www.nbcnews.com/health/health-news/oklahoma-abortion-clinics-preveiw-roe-v-wade-rcna27579>.

breast exams, colposcopies, and, until recently, abortions. Until April 2022, several weeks before S.B. 1503 went into effect, PPAEO's Tulsa location provided medication abortion up through 11 weeks, 0 days LMP, as well as procedural abortion up through 17 weeks LMP.⁴ PPAEO is prepared to resume such services when the 1910 and 2022 Bans and all other statutes preventing it from performing such services are declared unlawful. PPAEO sues on behalf of itself, its physicians, its staff, and its patients.

19. Tulsa Women's, Dr. Braid, CHPPGP and PPAEO are the "Provider Petitioners."

B. Respondents

20. The State of Oklahoma is obligated to uphold the Oklahoma Constitution and may not infringe the inherent liberty and other rights recognized by the Oklahoma Constitution. Respondent John O'Connor is the Attorney General of the State of Oklahoma. The Attorney General is the "chief law officer of the state," Okla. Stat. tit. 74, § 18, whose duties include "appear[ing] in any action in which the interests of the state or the people of the state are at issue. . . ." Okla. Stat. tit. 74, § 18b(A)(3). He is sued in his official capacity.

21. Respondent David Prater is the District Attorney for Oklahoma County. Respondent Prater is responsible for prosecuting all criminal matters occurring within Oklahoma County pursuant to Okla. Stat. tit. 19, § 215.4. He is sued in his official capacity.

22. Respondent Steve Kunzweiler is the District Attorney for Tulsa County. Respondent Kunzweiler is responsible for prosecuting all criminal matters occurring within Tulsa County pursuant to Okla. Stat. tit. 19, § 215.4. He is sued in his official capacity.

⁴ See Forman, *supra* note 3.

23. Respondent Lyle Kelsey is the Executive Director of the Oklahoma State Board of Medical Licensure and Supervision. The Medical Board, among other things, issues medical licenses to physicians and has the authority to take disciplinary action against licensees, including by revoking licenses for licensees convicted of violating Oklahoma law. Okla. Stat. tit. 59, §§ 503, 509. He is sued in his official capacity.

24. Respondent Katie Templeton is the President of the Oklahoma State Board of Osteopathic Examiners. The Osteopathy Board, among other things, issues medical licenses to physicians trained in schools of osteopathic medicine and has the authority to take disciplinary action, including by revoking licenses for licensees for, among other things, unprofessional conduct. Okla. Stat. tit. 59, § 637. She is sued in her official capacity.

25. Respondent Keith Reed is the Commissioner of the Oklahoma State Board of Health. He oversees the State Board of Health, which issues licenses to facilities at which abortions are performed and oversees compliance with the regulation of such facilities. Okla. Stat. tit. 63, § 1-706(B)(1); Okla. Admin. Code § 310:600-7-3. He is sued in his official capacity.

III. Abortion in Oklahoma and in the United States

26. Since 1973, when *Roe* was decided, legal abortion has been a common medical procedure performed across the United States.⁵ It is also one of the safest medical procedures performed in the United States and is far safer than carrying a pregnancy to term. Serious complications are exceedingly rare; in the vast majority of studies, they occur in fewer than 1 percent of abortions.⁶

⁵ Nat'l Acad. of Science, Engineering, and Medicine, *The Safety and Quality of Abortion Care in the United States* (2018), <http://nap.edu/24950>. (“NAS, Safety and Quality of Abortion Care”).

⁶ NAS, Safety and Quality of Abortion Care.

27. Approximately one in four women in the United States obtain an abortion in their lifetime.⁷ Three-quarters of abortion patients are low-income or poor,⁸ and most already have one or more children.⁹

28. There is no typical abortion patient. People seek abortions for a variety of deeply personal and often complex reasons, including familial, medical, and financial concerns.¹⁰ Some people have abortions because they conclude that it is not the right time in their lives to have a child or to add to their families. Some decide to end a pregnancy because they want to pursue their education. Some choose abortion because they feel they lack the necessary economic resources, level of partner support, or stability. Three-fourths of abortion patients cite responsibility to other individuals (such as children or elderly parents) as a reason; many also say they cannot afford to become a parent or to add to their families, and that having a baby would interfere with work, school, or the ability to care for dependents.¹¹ Some decide to have an abortion because they do not want children at all. Some decide to have an abortion because of an indication or diagnosis of a fetal medical condition. Some patients experience intimate partner violence and may face additional threats to their safety if their partner becomes

⁷ See Guttmacher Inst., *Abortion is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates* (Oct. 19, 2017), <https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates>.

⁸ See Caitlin Myers, *The Power of Abortion Policy: Re-Examining the Effects of Young Women's Access to Reproductive Control*, 125 THE JOURNAL OF POLITICAL ECONOMY, no. 6, 2017, at 2178-2224; Ted Joyce et al., *Abortion Before & After Roe*, 32 JOURNAL OF HEALTH ECONOMICS, no. 5, 2013, at 804-815.

⁹ Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 AMERICAN JOURNAL OF PUBLIC HEALTH, 2017, at 1904-09.

¹⁰ Stanley K. Henshaw & Kathryn Kost, *Abortion Patients in 1994-1995: Characteristics and Contraceptive Use*, 28(4) Family Planning Perspectives 140-47, 158 (1996), <https://www.guttmacher.org/sites/default/files/pdfs/pubs/journals/2814096.pdf>.

¹¹ Lawrence B. Finer et al., *Reasons U.S. Women Have Abortions: Quantitative and Qualitative Perspectives*, 37(3) Perspectives on Sexual and Reproductive Health 110-18, 117 (Sept. 2005), https://www.guttmacher.org/sites/default/files/article_files/3711005.pdf.

aware of their pregnancy or desire for an abortion; many such patients fear that being forced to carry the pregnancy to term would further tether them to their abusers.

29. Data from the Department of Health likewise shows that, when asked their reason for seeking abortion care, patients most frequently report that having a baby would “dramatically change” their life, that it would interfere with their education or career, or that they cannot afford to have a child.¹²

30. Access to abortion benefits the health and well-being of pregnant people and their families, including people who already have children. Over 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. When people are denied the ability to have an abortion, their lives are irrevocably altered—the State intrudes on their bodily autonomy and their ability to direct their own lives.

31. Carrying a pregnancy to term is far riskier than any method of abortion.¹³ In the short term, women giving birth after being denied an abortion experience more potentially life-threatening complications than those who were able to obtain an abortion.¹⁴ Denial of a wanted abortion therefore exposes patients to substantial increased medical risk.

32. When women¹⁵ are denied wanted abortions, they are also exposed to long-lasting economic hardship. Women who were denied a wanted abortion and went on to give birth experienced an increase in household poverty lasting at least four years relative to those

¹² See Okla. State Dep’t of Health, *Abortion Surveillance in Oklahoma*, 24 (2020).

¹³ See Caitlin Gerds et al., *Side Effects, Physical Health Consequences, and Mortality Associated with Abortion and Birth After an Unwanted Pregnancy*, 261(1) *Women’s Health Issues* 55-59 (Nov. 11, 2015), <https://www.ibisreproductivehealth.org/publications/side-effects-physical-health-consequences-and-mortality-associated-abortion-and-birth>.

¹⁴ See Gerds, *supra* note 13.

¹⁵ While this Petition uses the term “women,” people other than women become pregnant, so this term is intended to include those individuals as well.

who received an abortion.¹⁶ Years after an abortion denial, women were more likely to not have enough money to cover basic living expenses such as food, housing, and transportation.¹⁷ Being denied an abortion lowered a woman's credit score, increased a woman's amount of debt, and increased the number of their negative public financial records, such as bankruptcies and evictions.¹⁸

33. Furthermore, abortion is increasingly concentrated among poor and low-income women. Women living at or below 100 to 200% of the federal poverty level accounted for 75% of abortion patients in 2014, and thus it is poor and low-income women who experience the worst effects of restrictions on access.¹⁹

34. The financial wellbeing and development of children is also negatively impacted when their mothers are denied a wanted abortion. The children that women already have at the time they seek an abortion show worse child development when their mother is denied an abortion compared to the children of women who receive one.²⁰ Children born as a result of being denied a wanted abortion are more likely to live below the federal poverty level than children born from a subsequent pregnancy to women who received an abortion.²¹

¹⁶ See Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions*, 108 AMERICAN JOURNAL OF PUBLIC HEALTH, no. 3, Mar. 2011, at 407-413.

¹⁷ *Id.*

¹⁸ See Sarah Miller et al., *The Economic Consequences of Being Denied an Abortion*, National Bureau of Economic Research Working Paper No. 26662 (Jan. 2020), https://www.nber.org/system/files/working_papers/w26662/w26662.pdf.

¹⁹ See Guttmacher Inst., *supra* note 7.

²⁰ See Diana Greene Foster et al., *Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children*, 205 JOURNAL OF PEDIATRICS, Oct. 2018, at 183-189.

²¹ See Diana Greene Foster et al., *Comparison of Health, Development, Maternal Bonding, And Poverty Among Children Born After Denial of Abortion Vs After Pregnancies Subsequent to an Abortion*, 172 JAMA PEDIATRICS, no. 11, Sept. 2018, at 1053-1060.

35. Women who are unable to access abortion also can also be at increased risk of continued violence from intimate partners as compared to women who were able to obtain an abortion.²²

IV. The Inconsistent and Conflicting Statutory Framework

A. Criminal Enforcement Bans

36. The 1910 Ban prohibits individuals from providing abortions in Oklahoma at any point during a pregnancy. Specifically, the 1910 Ban states that “[e]very person who administers to any woman, or who prescribes for any woman, or advises or procures any woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, unless the same is necessary to preserve her life, shall be guilty of a felony[.]” *Id.* Physicians or any other individuals convicted of violating the 1910 Ban are “punishable by imprisonment in the State Penitentiary for not less than two (2) years nor more than five (5) years.” *Id.*

37. Section 861 has only one narrow exception for abortions “necessary to preserve [the woman’s] life[.]”

38. Following the Supreme Court’s decision in *Roe v. Wade*, 410 U.S. 113 (1973), the 1910 Ban was found unconstitutional by both state and federal courts in Oklahoma, but the Oklahoma Legislature took no action to formally repeal it. *See Jobe v. State*, 509 P.2d 481, 482 (Okla. Crim. App. 1973); *Henrie v. Derryberry*, 358 F. Supp. 719, 721 (N.D. Okla. 1973).

39. The 2022 Ban, which will become effective on August 27, 2022, prohibits individuals from attempting or providing abortions in Oklahoma at any point during a

²² See Sarah C. M. Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12(144) BMC Med. 1-7 (2014), <https://pubmed.ncbi.nlm.nih.gov/25262880/>.

pregnancy for any reason, “except to save the life of a pregnant woman in a medical emergency.”

40. The 2022 Ban defines “[m]edical emergency” as “a condition which cannot be remedied by delivery of the child in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury including a life-endangering physical condition caused by or arising from the pregnancy itself.” S.B. 612, § 1(A)(2). This exception is not the same as the exception in the 1910 Ban.

41. Individuals who provide abortions for any reason other than a medical emergency as defined by the statute face up to ten years in prison and/or a fine of up to \$100,000. S.B. 612, § 1(B)(2).

B. Trigger Ban

42. S.B. 1555, which was signed by the Governor on April 29, 2022, repealed certain provisions of the State’s abortion code (not including the 1910 Ban) when “the Attorney General certifie[d] that...[t]he United States Supreme Court has overruled in whole or in part *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), such that the State of Oklahoma may enforce Section 861 of Title 21 of the Oklahoma Statutes or enact a similar statute prohibiting abortion throughout pregnancy[.]” S.B. 1555 contemplates enforcement either of the 1910 Ban or of a “similar statute prohibiting abortion throughout pregnancy,” but not both. S.B. 1555 amended a previous statute, S.B. 918, signed by Governor Stitt on April 21, 2021, which would have repealed a greater range of provisions in Oklahoma’s regulatory scheme for abortion.

43. Defendant O’Connor issued the certification contemplated by S.B. 1555 on June 24, 2022. That certification states that “[a]s a result of *Dobbs*, the authority of the state of

Oklahoma to prohibit abortion has been confirmed, and the State of Oklahoma may enforce Section 861 of Title 21 of the Oklahoma Statutes or enact a similar statute prohibiting abortion throughout pregnancy.” The certification further directs all state and county officials that Section 861 “shall be immediately enforceable” and states that as the chief law enforcement officer of the State of Oklahoma, he “will begin enforcement efforts immediately.”

44. Defendant O’Connor’s certification did not state that enforcement of the 1910 Ban would cease on August 27, 2022, when the 2022 Ban, which is a “similar statute prohibiting abortion throughout pregnancy,” is currently scheduled to take effect.

C. Private Enforcement Bans

45. In addition to criminal prohibitions on the performance of abortions, the Oklahoma Legislature has also enacted two private enforcement bans, S.B. 1503 and H.B. 4327.

46. S.B. 1503, § 4(A) prohibits physicians from providing an abortion after “detect[ing] a fetal heartbeat” or if the physician “failed to perform a test to detect a fetal heartbeat.” The only exception is for a medical emergency. *Id.* § 5(A). H.B. 4327 prohibits the performance of an abortion at all stages of a pregnancy and contains exceptions only for pregnancies that result from rape, sexual assault or incest that has been reported to law enforcement and where “necessary to save the life of a pregnant woman in a medical emergency.” *Id.* §§ 2(1)–2(2).

47. Both S.B. 1503 and H.B. 4327 are enforceable only through private civil lawsuits for statutory damages. S.B. 1503, § 9(A)(1); H.B. 4327, § 5(A). Such lawsuits may be brought by “any person” (except “the state, its political subdivisions, and any officer or

employee of a state or local governmental entity”) against persons “perform[ing] or induc[ing] an abortion in violation of” the statutes’ respective terms. *Id.*

48. Petitioners’ separate challenge to the constitutionality of S.B. 1503 and H.B. 4327 is pending before this Court in *Oklahoma Call for Reproductive Justice, et al., v. O’Connor, et al.*, Case No. PR-120376.

D. Conflicts Among the Abortion Bans

49. Currently, the State asserts that the 1910 Ban is enforceable. The only exception permitted by that statute is for an abortion to “preserve” a person’s “life.” When the 2022 Ban goes into effect, it will permit abortions only for certain specifically defined “medical emergenc[ies].” H.B. 4327, however, permits abortions to be performed on patients who are victims of rape or incest if reported to law enforcement. And S.B. 1503 permits abortions to be performed up to 6 weeks LMP, and afterwards only for specifically defined “medical emergenc[ies].”²³

50. Provider Petitioners are thus being subject to different and incompatible legal standards where they may be subject to criminal prosecution with varying penalties for performing abortions on victims of rape or incest even though such procedures are legal and not subject to private enforcement actions under H.B. 4327. When the 2022 Ban goes into effect, Provider Petitioners may be subject to differing standards for identifying threats to a pregnant person’s life or health that are sufficient to permit an abortion.

²³ S.B. 2441, enacted in 2021 (but currently enjoined by this Court), permits abortions to be performed up to 6 weeks LMP, and afterwards only where the patient “has a condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.” H.B. 1102, also enacted in 2021 (and also enjoined by this Court), effectively bans abortions by characterizing them as “unprofessional conduct” that exposes physicians to professional sanctions. Excluded are abortions performed “to prevent the death of the mother or to prevent substantial or irreversible physical impairment of the mother that substantially increases the risk of death.”

51. State officials are themselves confused by the spate of overlapping laws. It has been reported that some Oklahoma legislators have expressed “conflicting interpretations about Oklahoma’s post-*Roe* landscape” and “[n]one said they had provided guidance to physicians or prosecutors about what exactly these laws mean, even though these professionals could be expected to grapple with life-or-death situations in a matter of weeks.”²⁴

52. In one expression of the confusion wrought by the frenzy of legislative bans on abortion, Respondent Keith Reed sent Tulsa Women’s a letter on June 24, 2022, in which he erroneously asserted that the Oklahoma Department of Health is no longer authorized to issue licenses to pursuant to Title 63, Sections 1-731, 1-731.2 through 1-737, 1-737.4 of the Oklahoma Code because those statutes were repealed by S.B. 918. However, the cited provisions of S.B. 918 were themselves repealed one year later by S.B. 1555.

E. Previously Enacted Laws

53. In Oklahoma, even before the recent enactment of multiple unconstitutional bans of some or all abortion, the Legislature engaged in a persistent campaign to make abortion difficult to access. Since 2008, the Oklahoma Legislature enacted over 20 bills addressing abortion, imposing a maze of requirements. Currently pending before the Supreme Court of Oklahoma is an appeal from the District Court of Oklahoma County’s decision holding that House Bill 1721 and 1409, which ban certain abortion procedures, are constitutional, in which Tulsa Women’s seeks a declaration that both laws are unconstitutional under the Oklahoma Constitution’s Due Process Clause, Art. II, § 7, and to permanently enjoin their enforcement.

²⁴ Nicole Einbinder & Caroline Haskins, *Oklahoma Lawmakers Passed 5 Contradictory Abortion Bans. No one Knows Which Laws Will be Enforced*, BUSINESS INSIDER (Jun. 24, 2022, 12:38 PM), <https://www.businessinsider.com/oklahoma-abortion-ban-sponsors-dont-know-what-law-might-be-post-roe-2022-5>.

See November 25, 2019 Appeal from the District Court of Oklahoma County, State of Oklahoma, No. CV-2015-1838.

54. In 2021, the Oklahoma Legislature enacted these additional bans and restrictions:

- H.B. 1102, which was set to go into effect on November 1, 2021, would effectively ban abortion entirely by declaring that abortion is unprofessional conduct by physicians that carries a penalty of, at a minimum, suspension of medical licensure for one year.
- H.B. 2441, which was set to go into effect on November 1, 2021, would ban abortion at approximately six weeks in pregnancy, as dated from the first day of a woman's last menstrual period, a point before many people even know they are pregnant. An abortion performed in violation of this statute is considered a homicide.
- H.B. 1904, which was set to go into effect on November 1, 2021, would arbitrarily prohibit licensed physicians from providing abortions unless they are "board-certified in obstetrics and gynecology." H.B. 1904 § 1 (amending Okla. Stat. tit. 63, § 1-731(A)). Providing an abortion in violation of this law is a felony, punishable by one to three years in prison. *Id.*
- S.B. 778, which would have gone into effect on November 1, 2021, would impose numerous restrictions on access to medication abortion by requiring, among other things, that patients have an ultrasound at least 72 hours before a medication abortion; forcing patients to make an additional visit to a provider; and mandating that providers file reports to be designated as "public records," which must include demographic information about patients, abortion providers, and referring physicians and agencies, S.B. 778, §§ 8(B), (H).
- S.B. 779, which also would have gone into effect on November 1, 2021, would similarly impose restrictions on access to medication abortion by imposing a limitation on providing medication abortion beyond 70 days or 10 weeks from a person's last menstrual period; requiring that doctors have hospital admitting privileges or contract with a physician who does; and imposing record keeping and reporting obligations, resulting in the publication of provider, staff, and patient information, S.B. 779, §§ 9(A)(7).

55. H.B. 1102, H.B. 2441, H.B. 1904, S.B. 778, and S.B. 779 were enjoined by this Court in October 2021. See Oct. 25, 2021 Order Granting Emergency Temporary Injunction, No. IN-119918.

VI. Irreparable Harm

A. Impact on Abortion Patients

56. The 1910 and 2022 Bans will permanently destroy the ability of Oklahomans to access constitutionally protected abortion care.

57. For those able to raise the necessary funds, the 1910 and 2022 Bans will force them to travel out of state to access abortion care. But, given the hardships people seeking abortion face, that will not be the reality for many people. Some people denied care will attempt to self-manage their own abortions without medical supervision. And many Oklahomans will have no choice but to continue their pregnancies against their will.

58. Being forced to continue a pregnancy against one's will jeopardizes a person's physical, mental, and emotional health, as well as the stability and well-being of their family, including existing children.

59. Even for someone who is otherwise healthy and has an uncomplicated pregnancy, being forced to carry that pregnancy to term and give birth poses serious medical risks with both short- and long-term consequences for the patient's physical health and mental and emotional well-being. For someone with a medical condition caused or exacerbated by pregnancy, these risks are increased.

60. For people experiencing intimate partner violence, forced pregnancy also often exacerbates the risk of violence and further tethers the pregnant person to their abuser.

61. In addition, forced pregnancy will add to the anguish of patients and their families who receive fetal diagnoses that are incompatible with sustained life after birth—forcing patients to carry doomed pregnancies for months and suffer the physical and emotional pains of labor and delivery, including the medical risks of labor and delivery, knowing all the while that their child will not survive.

62. The 1910 and 2022 Bans are particularly devastating for Oklahomans of color, particularly Black and Indigenous populations, as well as for Oklahomans with low incomes and those living in rural areas—communities that already face heightened barriers to medical care.

63. Low-income populations and people of color seek abortions at a higher rate than wealthier and white populations (both in Oklahoma and nationally) due to inadequate access to contraceptive care, income inequity, and other manifestations of structural racism. These communities will thus necessarily bear an outsized share of the burdens of the 1910 and 2022 Bans.

64. Black and Indigenous Oklahomans will also disproportionately suffer the gravest consequences of forced pregnancy if prosecutions to enforce the 1910 and 2022 Bans are allowed to proceed in light of the significantly higher rates of maternal mortality in their communities. Oklahoma “persistently ranks among the states with the worst rates” of maternal deaths in the United States, and maternal deaths in Oklahoma have “increased in recent years.”²⁵ Specifically, Black women in Oklahoma are currently over one-and-a-half times more likely to die of complications related to birth or pregnancy than white women.²⁶ From 2004 to 2018, Black women in Oklahoma were two-and-a-half times more likely to die of complications related to birth or pregnancy than white women, a statistic the Oklahoma Maternal Mortality Review Committee called an “alarming disparity.”²⁷ Indigenous women in

²⁵ Okla. State Dep’t of Health, Okla. Maternal Mortality Rev. Comm., *Oklahoma Maternal Health, Morbidity and Mortality: Annual Report 2021*, 5-6, 26 (2021), <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/family-health/maternal-and-child-health/maternal-mortality/maternal-morbidity-mortality-annual-report-2021.pdf>.

²⁶ *Id.* at 8.

²⁷ Okla. State Dep’t of Health, Okla. Maternal Mortality Rev. Comm., *Maternal Mortality in Oklahoma 2004-2018*, 4 (2020), <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/family-health/maternal-and-child-health/maternal-mortality/annual-mmrc-report.pdf>.

Oklahoma have also faced increased rates of maternal mortality over the years and at times were more than one-and-a-half times more likely to die than white women during the same time period.²⁸ Moreover, “[f]or every woman who dies, about 70 experience potentially fatal complications” related to birth or pregnancy, according to data obtained from the Oklahoma State Department of Health.²⁹

65. These same communities have experienced oppression for generations, dating back to horrific race- and gender-based violence—from the Tulsa Race Massacre to the forced removal of Indigenous children from their families. And, today, these same communities disproportionately experience poverty and lack of access to healthcare, education, and other services.

66. As Hannibal Johnson, historian and author who studied the Tulsa Race Massacre, has stated, there are “two main casualties of the massacre” that contribute to racial disparities and “affect everyday life—a breach in trust between Black and white communities and the inability to transfer accumulated wealth.”³⁰ The wealth disparities that exist today in Oklahoma ultimately stem from the “inability of Black people to accumulate wealth and transfer it intergenerationally.”³¹ According to the Oklahoma Policy Institute: “[n]ow we see more clearly why households of color in Oklahoma have less wealth on average than [w]hite households: some had ancestors whose wealth was destroyed during the Tulsa Race Riot in the

²⁸ *Id.*

²⁹ Kassie McClung, *Most of Oklahoma’s Maternal Deaths Preventable, State Review Finds*, THE FRONTIER (Aug. 10, 2020), <http://www.readfrontier.org/stories/mostof-oklahomas-maternal-deaths-preventable-state-review-finds>.

³⁰ Randi Richardson, *Tulsa Race Massacre, 100 Years Later: Why It Happened and Why It’s Still Relevant Today*, NBC NEWS (May 28, 2021, 6:00 AM), <https://www.nbcnews.com/news/nbcblk/tulsa-race-massacre-100-years-later-why-it-happened-why-n1268877>.

³¹ *Id.*

1920s, grandparents who were denied a college education or homeownership in the 1940s and 50s, and parents who faced employment discrimination throughout the 1970s and 80s.”³²

67. Government-inflicted traumas, including removal of land and resources, have also hindered Indigenous communities in Oklahoma.³³ Tribes from all over the United States were relocated to reservations in what became the State of Oklahoma through the “Trail of Tears” and other removals. Indigenous families repeatedly suffered the crime of having their children forcibly removed from their care. Unsurprisingly, Indigenous people have the highest rate of poverty of any minority group—25.4%.³⁴

68. In short, although promised as a place of freedom, the State of Oklahoma has repeatedly devastated the ability of Black and Indigenous people to form families, grow their communities, and succeed. While failing to address these persistent disparities, the State continues to pursue policies that disproportionately harm Black and Indigenous people and make it ever more challenging to direct their own lives.

69. Most people who need to access abortion are living in poverty. Nationally, approximately three-fourths of abortion patients are low income—49% living at less than the federal poverty level, and 26% living at 100-199% of the poverty level.³⁵

70. Additionally, low-income patients in Oklahoma face logistical barriers to care. Oklahoma is a rural state, with higher poverty rates in rural and small-town Oklahoma than in

³² Kate Richey, *[Closing The Gap, Part 5] Past is Future: Intergenerational Wealth*, OKLA. POL’Y INST. (Aug. 28, 2013), <https://okpolicy.org/closing-the-gap-part-5-past-is-future-intergenerational-wealth/>.

³³ Dedrick Asante-Muhammad et al., *Racial Wealth Snapshot: Native Americans*, NATIONAL CMTY REINVESTMENT COALITION (Feb. 14, 2022), <https://ncrc.org/racial-wealth-snapshot-native-americans/>.

³⁴ Poverty USA, *The Population of Poverty USA* (2022), <https://www.povertyusa.org/facts>.

³⁵ Jenna Jerman, Rachel K. Jones, & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008*, 7, 11 (“Jerman & Jones”), Guttmacher Inst. (May 2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf.

the major metropolitan areas.³⁶ Traveling in Oklahoma is challenging, especially for those without a car, since there is no meaningful public transportation in the State.

71. In Oklahoma, about two-thirds of abortion patients already have at least one child.³⁷ One in three Oklahomans living in poverty are in single-mother households.³⁸ Thus, many patients struggle to find safe and affordable childcare when they go to a clinic.

72. Further, according to statistics cited by the Department of Health, in Oklahoma, 49% of women have experienced intimate partner violence at some time in their lives.³⁹ These patients also face additional challenges accessing care, including threats to their safety and the safety of their families.

73. Women working low-wage jobs also often have no access to paid time off or sick days. According to the Institute for Women’s Policy Research, 41% of working parents at or below 200% of the poverty line have no access to paid sick leave, vacation days, personal days, or any other form of compensated leave.⁴⁰ In Oklahoma, “[e]ven *unpaid* leave under the federal Family and Medical Leave Act is inaccessible for 64 percent” of working people.⁴¹

74. Research consistently shows that access to abortion care is very sensitive to increases in these logistical burdens—even small increases in travel distance or congestion at

³⁶ See Courtney Cullison, *2016 Oklahoma Poverty Profile* (Dec. 13, 2017), <https://okpolicy.org/2016-oklahoma-poverty-profile/#:~:text=1%20in%203%20Oklahomans%20living,in%20the%20major%20metro%20areas>.

³⁷ See Okla. State Dep’t of Health, *Abortion Surveillance in Oklahoma*, 21 (2020).

³⁸ See Cullison, *supra* note 36.

³⁹ Okla. State Dep’t of Health, *Intimate Partner Violence*, <https://oklahoma.gov/health/health-education/injury-prevention-service/intimate-partner-violence.html>.

⁴⁰ Andrea Lindemann Gilliam, *An Introduction to Paid Time Off Banks*, INSTITUTE FOR WOMEN’S POL’Y RESEARCH (June 20, 2012), <http://www.iwpr.org/blog/2012/06/20/an-introduction-to-paid-time-off-banks>.

⁴¹ Nat’l P’ship for Women & Families, *Paid Leave Means a Stronger Oklahoma* (Feb. 2022), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-oklahoma.pdf>.

abortion facilities due to reduced access can stop people from getting care and force them to carry an unwanted pregnancy to term.⁴²

75. Being pregnant in Oklahoma thus comes with a host of challenges regardless of one's intentions for the pregnancy, and this is especially true for Black and Indigenous people and people living in poverty.

76. The Provider Plaintiffs see their patients attempt to navigate these challenges every day. OCRJ and its members strive to shed light on and expose how restrictions on abortion negatively impact all Oklahomans but have particularly devastating impacts on people of color and low-income people

77. Those who attempt to travel out of state to access care will have to pay for and arrange transportation, childcare, and time off work. Because the majority of abortion patients are poor or have low incomes, these financial and other costs may be insurmountable or require them to forgo other basic needs for themselves and their existing children.

78. Even those able to raise the necessary funds and make arrangements to travel outside Oklahoma for care will be delayed in obtaining an abortion. While abortion is very safe at all stages, the complexity increases as pregnancy advances. Moreover, the cost of an abortion generally increases with gestational age.

79. Even before the Supreme Court overturned *Roe*, abortion access in the region had been decimated. Abortion access in Oklahoma was first strained by the impact of S.B. 8

⁴² Daniel Grossman, *The Use of Public Health Evidence in Whole Woman's Health v Hellerstedt*, 177(2) JAMA INTERN MED., 155-56 (2017); Jason M. Lindo et al., *How Far Is Too Far? New Evidence on Abortion Clinic Closures, Access, and Abortions*, 55(4) JOURNAL OF HUMAN RESOURCES 1137-60 (2017); Troy Quast et al., *Abortion Facility Closings and Abortion Rates in Texas*, 54 INQUIRY 1 (2017); Stefanie Fischer et al., *The Impacts of Reduced Access to Abortion and Family Planning Services on Abortions, Births, and Contraceptive Purchases*, 167 JOURNAL OF PUBLIC ECONOMICS 43-68 (Nov. 2018); Joanna Venator & Jason Fletcher, *Undue Burden Beyond Texas: An Analysis of Abortion Clinic Closures, Births, and Abortions in Wisconsin*, NBER Working Paper 26362 (Oct. 2019).

in Texas, which caused many Texans who would ordinarily be able to seek care in their home state to try to obtain that care in Oklahoma instead. Then S.B. 1503 and H.B. 4327 took effect, forcing providers in Oklahoma to turn away patients, even while *Roe* stood. Now, abortion is rapidly becoming illegal in states all across the South and Midwest, such that denying access to abortion care in Oklahoma means denying abortion access to all but the most privileged Oklahomans with the time and the means to travel great distances.

B. Impact on Provider Petitioners and Their Physicians and Staff

80. Unless enforcement of the 1910 and 2022 Bans is declared unconstitutional and enjoined, the Provider Petitioners will have to lay off staff. Some Provider Petitioners will need to shutter their clinics entirely. And unless enforcement of the 1910 and 2022 Bans and the other statutory abortion bans are enjoined, Provider Petitioners will be unable to resume providing abortions and engaging in activities that assist with abortion provision.

81. In sum, Provider Petitioners will be forced to stop providing abortions permanently. They and their staff will suffer profound harm to their property, business, reputations, and a deprivation of their own constitutional rights. And their patients will be denied access to healthcare that is essential for their personal autonomy and dignity, and will continue to be irreparably injured, unless this Court intervenes.

JURISDICTION AND VENUE

82. Petitioners include citizens of the State of Oklahoma.

83. Jurisdiction and venue are both proper in this court pursuant to this Court's jurisdiction conferred in Okla. Const. art. VII, § 1.

CAUSES OF ACTION

First Cause of Action (Substantive Due Process, Violation of Right to Health, Inherent Rights)

84. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 83.

85. The prohibitions of the 1910 and 2022 Bans violate the inherent right to personal autonomy and bodily integrity in violation of Okla. Const. art. II, § 2.

86. The prohibitions of the 1910 and 2022 Bans violate substantive due process protections and the right to health in violation of Okla. Const. art. II, § 7.

87. In combination, Okla. Const. art. II, § 2 and Okla. Const. art. II, § 7 provide a greater degree of protection for the right to abortion than any found in the U.S. Constitution.

88. The prohibitions of the 1910 and 2022 Bans are inconsistent with each other and with the overlapping prohibitions of S.B. 1503, H.B. 4327, H.B. 2441 and H.B. 1102, and are therefore too vague to provide notice of prohibited conduct in violation of the substantive due process protections of Okla. Const. art. II, § 7.

Second Cause of Action (Substantive Due Process, Vagueness)

89. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 88.

90. The prohibitions of the 1910 and 2022 Bans are inconsistent with each other and with the overlapping prohibitions of S.B. 1503 and H.B. 4327 and are therefore too vague to provide notice of prohibited conduct in violation of the substantive due process protections of Okla. Const. art. II, § 7.

Third Cause of Action
(Declaratory Judgment - Unconstitutional and Void)

91. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 90.

92. Because the 1910 and 2022 Bans violate the Oklahoma Constitution, and a declaratory judgment would terminate the controversy giving rise to this proceeding, Petitioners request a declaration from this Court stating that the 1910 and 2022 Bans are unconstitutional and void. Okla. Stat. Ann. tit. 12, § 1651.

Fourth Cause of Action
(Temporary Injunction - Unconstitutional and Void)

93. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 92.

94. Temporary injunctive relief is warranted because Petitioners, and those whose interests Petitioners represent, will suffer irreparable injury if the 1910 Ban is allowed to remain enforceable and the 2022 Ban is allowed to take effect.

Fifth Cause of Action
(Permanent Injunction - Unconstitutional and Void)

95. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 94.

96. Because the 1910 and 2022 Bans violate the Oklahoma Constitution, warranting a declaratory judgment stating that the 1910 and 2022 Bans are unconstitutional and void, Respondents should be permanently enjoined from enforcing them in any way.

**Sixth Cause of Action
(Writ of Prohibition)**

97. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 96.

98. It is also within the discretion of this Court to grant a writ of prohibition to prevent the State from exercising enforcement power “unauthorized by law” that “will result in injury for which there is no other adequate remedy.” *Maree v. Neuwirth*, 2016 OK 62, 374 P.3d 750, 752.

**Seventh Cause of Action
(Declaratory Judgment: Repeal by Implication)**

99. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 98.

100. In the alternative, should this Court rule that the enactment of the 2022 Ban is consistent with the Oklahoma Constitution, this Court should declare that its enactment effected a repeal by implication of the 1910 Ban. By providing for a certification “that the State of Oklahoma may enforce Section 861 of Title 21 of the Oklahoma Statutes *or* enact a similar statute prohibiting abortion throughout pregnancy,” in S.B. 1555, the Oklahoma Legislature expressed its intent that the 1910 Ban would not be enforced if a similar statute prohibiting abortion throughout pregnancy, such as S.B. 612, were enacted.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court issue declare Section 861 and S.B. 612 unconstitutional under the Oklahoma Constitution and permanently bar Respondents from enforcing these laws by injunction or writ of prohibition