No. 23-0629

STATE OF TEXAS ET AL.,

Defendants-Appellants,

v.

AMANDA ZURAWSKI ET AL.,

Plaintiffs-Appellees.

On Direct Appeal from the
353rd Judicial District Court of Travis County

Brief of Amici Curiae **American College of Obstetricians and Gynecologists, American Medical Association, and Other Medical Organizations**

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Amici curiae are leading medical societies representing physicians, other clinicians who serve patients in Texas and nationwide:

The **American College of Obstetricians and Gynecologists (ACOG)** is the nation's leading group of physicians providing evidence-based obstetric and gynecologic care. With more than 62,000 members, ACOG maintains the highest standards of clinical practice and continuing education of its members; strongly advocates for equitable, exceptional, and respectful care for all women and people in need of obstetric and gynecologic care; promotes patient education; and increases awareness among its members and the public of critical issues facing patients and their families and communities. ACOG has appeared as amicus curiae in courts throughout the country. ACOG's briefs and medical practice guidelines have been cited by numerous authorities, including the U.S. (o)thnumend6eaxx (a)3.5 .2 (th)8 ( )

groups seated in its House of Delegates, substantially all physicians, residents, and medical students in the United States are represented in the AMA's policy-making process. The AMA was founded in 1847 to promote the art and science of medicine and the betterment of public health, and these remain its core purposes. AMA members practice in every medical specialty and in every state. The AMA joins this brief on its own behalf and as a representative of the Litigation Center of the American Medical Association and the State Medical Societies. The Litigation Center is a coalition among the AMA and the medical societies of each state and the District of Columbia. Its purpose is to represent the viewpoint of organized medicine in the courts.

Founded in 1947, the **American Academy of Family Physicians (AAFP)** is one of the largest national medical organizations, representing 129,600 family physicians and medical students nationwide. AAFP seeks to improve the health of patients, families, and communities by advocating for the health of the public and by supporting its members in providing continuous comprehensive health care to all.

Founded in 1974, the **Association of Black Cardiologists (ABC)** is a nonprofit organization dedicated to promoting the prevention and treatment of cardiovascular diseases and achieve health equity for all peoples through the elimination of disparities in patients' outcomes. For almost 50 years, the ABC has championed the fight for health equity such that all people can live long and healthy

lives. As part of these efforts, the ABC has dedicated a term-focus on cardiovascular disease in women and the policies impacting women's health. More recent efforts have included strategies and solutions to address the Black maternal morbidity and mortality crisis through the ABC's signature campaign *"We Are The Faces of Black Maternal Health"* (wearethefaces.abcardio.org). The recent loss of broad protections on reproductive and contraceptive health including medically indicated lifesaving termination of pregnancy will have a real impact on the maternal mortality rate. The ABC will continue to advocate for equitable health care and strongly oppose any efforts that impede access to comprehensive reproductive healthcare for patients or interfere in the relationship between a person and their physicians and/or healthcare professional.

The **American College of Chest Physicians (CHEST)** is a global leader in pulmonary, critical care, and sleep medicine. Established in 1935, CHEST supports

8,000 professionals. ASRM accomplishes its mission through the pursuit of

appropriate treatment options are available for individuals experiencing high-risk pregnancies.

These organizations collectively represent hundreds of thousands of medical practitioners in Texas and across the country, with deep expertise in both medical research and the treatment of patients in real-world settings. Ensuring robust access to evidence-based health care and promoting health care policy that improves patient health are central to Amici's missions. Amici curiae believe that all patients are entitled to prompt, complete, and unbiased health care that is medically and scientifically sound.

INTRODUCTION

The District Court orders should be affirmed to protect the ability of Texas clinicians to provide critical care to pregnant patients in medically complex cases. As Amici describe below, [illegible]

alsothreaten longstanding principles of medical ethics and patient autonomy and
further exacerbate Texas's shortage of medical professionals capable of providing
obstetrics and gynecology ("OB-GYN") care. This will leave countless Texans—
whether or not they ever seek abortions—without access to quality OB-GYN care.
The Texans who are suffering the most are those who experience discrimination due
to race or ethnicity, have low incomes, and/or who live in rural areas—individuals
who already face inequities in the health care system. As a

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including personal circumstance, in cases of rape and incest, in connection with early pregnancy loss, and in the event of a wide range of obstetric complications. Abortion is not only common, but also incredibly safe.[7]

Pregnancy and birth can create significant health risks, which can lead to negative outcomes for pregnant patients.[8] It is essential to the life and health of patients experiencing medical complications during pregnancy that abortion is available as a possible treatment. Because of the complexities inherent in providing care to pregnant patients, including in emergency situations, clinicians must be permitted to use their medical judgment—honed through years or decades of medical education, training, and experience—to provide evidence-based care that is consistent with clinical guidance and responsive to their patients' individualized needs, including abortions

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of Abortion Care in the United States 19 (2018), https://www.ncbi.nlm.nih.gov/books/NBK507236/pdf/Bookshelf_NBK507236.pdf.

[7] See, e.g., id. ("The clinical evidence clearly shows that legal abortions in the United States—whether by medication, aspiration, D&E, or induction—are safe and effective. Serious complications are rare."); see also Eds. of the New Eng. J. of Med. et al., The Dangerous Threat to Roe v. Wade, 381 New Eng. J. Med. 979, 979 (2019), https://www.nejm.org/doi/pdf/10.1056/NEJMe1910174 ("Access to legal and safe pregnancy termination … is essential to the public health of women everywhere."); Am. Coll. of Obstetricians and Gynecologists, Abortion Policy, ACOG (last rev. May 2022), https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2022/abortion-policy; Soc'y for Maternal-Fetal Med., Access to Abortion Services (June 2020), https://s3.amazonaws.com/cdn.smfm.org/media/2418/Access_to_Abortion_Services_(2020).pdf.

[8] Pregnancy is fourteen times more dangerous than abortion. E.g., Am. Coll. of Obstetricians and Gynecologists, Abortion Access Fact Sheet, ACOG, https://www.acog.org/advocacy/abortion-is-essential/come-prepared/abortion-access-fact-sheet.

- **Gestational hypertension and preeclampsia** (high blood pressure), which complicate 2–8% of pregnancies globally and are one of the leading causes of maternal mortality deaths around the world.[14]

- **Placental abruption**, which is when the placenta separates from the inner wall of the uterus, causing serious and potentially uncontrollable bleeding. It is the cause of stillbirth in up to 10% of cases and can result in serious complications for the pregnant person, such as cardiac arrest or kidney failure.[15]

A number of other serious medical conditions can jeopardize a pregnant patient's health. These include, but are not limited to: Alport syndrome (a form of kidney inflammation), valvular heart disease (abnormal leakage or partial closure of a heart valve that can occur in patients with no history of cardiac symptoms), lupus (a connective tissue disorder that may suddenly worsen during pregnancy and lead to blood clots and other serious complications),

pulmonary hypertension (increased pressure within the lung's circulation system that can escalate during pregnancy), and diabetes (which can worsen to the point of causing blindness as a result of pregnancy).[16] Indeed, pregnancy imposes significant physiological changes on a person's body. "These changes can exacerbate underlying or preexisting conditions, like renal or cardiac disease, and can severely compromise health."[17]

Access to abortion is essential to patients experiencing these and other

individualized needs.

Importantly, for pregnant patients who face medical conditions threatening their health or life, timing in accessing treatment is essential.[18] Rapid treatment improves patient outcomes, while delays increase the risk of complications, permanent injury, or death. Approximately four in five pregnancy-related deaths nationwide are preventable,[19] so any deterrent to providing life-saving care promptly could have a dire impact on the patient. For all these reasons, clinicians must be able to use their judgment to provide critical abortions, without delay or threat of criminal or civil prosecution, to patients who need them to preserve their life or health.

II. The Abortion Bans

A. The Bans Deter Clinicians from Providing Medically Necessary Care.

Exposing Texas clinicians to civil and criminal liability under Texas's abortion statutes is chilling the provision of essential health care to Texans. Any physician

As a result, the Bans have created a chilling effect on care in Texas.[20] The testimony in this case, from experts on both sides, makes this clear. For example, Defendants' expert Dr. Ingrid Skop admitted that doctors were "confused" and "frightened," stating "[i]t is the blind leading the blind on the ground."[21] Physician-Plaintiff Dr. Damla Karan worried that "the penalties are extremely severe. They're criminal, not just civil, including up to 99 years in prison, losing my medical license and my livelihood and the career I love, and six-figure fines." (ey)]TJ

[she] possibly can."[23] R

OB-GYNs feel constrained in their ability to provide care for miscarriages and other pregnancy-related medical emergencies since the decision.[27] And over half of clinicians (55%) practicing in states like Texas where abortion is banned say their ability to practice within the standard of care has been hindered.[28]

As a result, clinicians have been forced to rely on "expectant management," otherwise known as the "wait and see" approach, rather than providing an abortion when it is medically indicated. When caring for a patient suffering from a medical condition, clinicians are forced to ignore their judgment and directly contrary to their training

compared with 33% who elected immediate pregnancy interruption under similar clinical circumstances reported in states without such legislation."[30]

Nor are hospitals able to provide the guidance clinicians need to resolve the difficult choices they face every day in trying to treat pregnant patients experiencing complications. According to a recent study by the Physicians for Human Rights ("PHR"), the Oklahoma Call for Reproductive Justice, and the Center for Reproductive Rights, not a single hospital in Oklahoma articulate clear or consistent policy for emergency care under a state abortion ban.[31] Almost 65% of hospitals "were unable to provide information about procedures, policies, or support provided to doctors…when the clinical decision is that it is necessary to terminate a pregnancy."[32] Another recent analysis found the same: public hospitals in states with abortion bans "have failed to provide specific guidance or policies to help doctors navigate high-stakes decisions over how to interpret new abortion bans."[33]

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[30] Id. The study also documented a significant increase in maternal morbidity among patients with preterm labor who would have been promptly offered induction abortions before the law but, due to fear regarding the law, were not offered such treatment until physicians

Defendants' expert Dr. Skop does not disagree. Texas physicians have not been providing abortion in cases where it is medically indicated. She blames the resulting gaps in care not on the Bans, but on physicians and on medical societies like Amici, stating "[t]he law is quite clear. The fault lies with the physicians [who] are not being given guidance by the organizations that usually will give them guidance, the medical societies and the hospital societies."[34] She is wrong—the Bans are at fault here. Clinicians should not have to decide between risking criminal prosecution or their patients' health, nor should they have to guess whether their conduct could put them into legal jeopardy. Texas clinicians, confused by the Bans and trying to understand how Defendants and other state officials will, in retrospect, judge the decisions they make in providing care to patients experiencing pregnancy complications, are not to blame. Nor are the medical societies like Amici at fault—giving legal advice to clinicians is not within the scope of their role, and they cannot change the fact that clinicians are being placed in legal jeopardy when their judgment can be second-guessed by elected officials or even private citizens with no connection to a particular case. Even if the medical societies provided guidance, there is no guarantee state officials would agree with that guidance, leaving clin.023 Tw 15.017 0 T.5 (e)4.1 da wihe30o wians198

potential for life-changing criminal prosecutions and draconian civil penalties, the Bans inevitably and predictably are placing the lives and health of pregnant Texans at risk.

B. The Bans Prevent Patients from Receiving Medically Necessary Care.

Patients are suffering as a result, as the testimony of the Patient-Plaintiffs showed in this case. Lead plaintiff Amanda Zurawski suffered from previable premature rupture of the membranes but because the threat to her life was not sufficiently acute, she was sent home for expectant management.[35] At just 18 weeks, her water broke.[36] Although her doctors knew that the fetus could not survive and that she would inevitably develop a dangerous infection, they believed Texas' law prohibited them from terminating the doomed pregnancy until she was "'sick enough that [her] life was at risk.'"[37] Three days later, "'she went downhill very, very fast[,]'" her fever spiking "'in a matter of maybe five minutes.'"[38] As a result of this delay, she became septic and nearly died from the infection, and her uterus and fallopian tubes were heavily scarred as a result of the infection, permanently

impacting her fertility and making it challenging (if not impossible) for her to become pregnant in the future[39].

Bans remain in effect, Texas patients will continue to suffer from their deterrent effects. The District Court orders should be affirmed so that clinicians can provide, and patients can obtain, necessary health care before they suffer further harm

III. The Bans Are Forcing Clinicians to Make an Impossible Choice Between Upholding Their Ethical Obligations and Following the Law.

Abortion bans, such as the ones

Medical Ethics places on physicians the "ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others."[47]

Laws should not interfere with the ability of clinicians to offer appropriate treatment options to their patients, nor with the ability of patients to obtain the best care for themselves. That should always be the case in medicine, but particularly so when providing care to patients facing complex medical conditions that may require rapid treatment. Yet, interfering with the provision of medical care is precisely what the Bans do. The Bans force clinicians to weigh their patients' need for health-and life-saving care against the threat of criminal prosecution, imprisonment, loss of licensure, and other potential penalties when they are later second-guessed by others. The Bans are therefore interfering in the

that the welfare of the patient forms the basis of all medical decision-making.[49] Obstetricians, gynecologists, and other clinicians caring for patients respect these ethical duties by providing patient-

and the practice of scientific, ethical, high-quality health care, challenges the very core of the Hippocratic Oath: “Do no harm.”

C. The Bans Violates the Ethical Principles of Respect for Patient Autonomy.

Another core principle of medical practice is patient autonomy—the respect for patients’ ultimate control over their bodies and right to a meaningful choice when making medical decisions.[50] Patient autonomy revolves around self

A. The Shortage of OB-GYN in Texas Will Continue to Worsen Without an Influx of Medical Professionals Qualified to Provide OB-GYN Care.

According to the Texas Department of Health and Human Services, Texas already did not have enough OB-GYNs to meet the need for care among Texas residents, even before the Bans took effect.[56] As of 2018 (according to the most recent Department data), there were 3,096 OB-GYNs in Texas—approximately 10 percent fewer than the number needed to meet Texas's demand for OB-GYN care.[57] There is only one OB-GYN for every approximately 5,500 female residents in Texas.[58] Approximately 58 percent of Texas counties—

or barriers to a woman's ability to access that care within counties.[61] In Texas, pregnant patients living in maternity care deserts have to travel 4.5 times farther in comparison to pregnant patients living near full-access maternity care.[62] Greater distance to maternity care can create a greater risk of maternal morbidity and adverse infant outcomes.[63]

The problem is most apparent in Texas' rural communities. More than half of Texas physicians practice in Texas' five most populous counties, even though only 44 percent of Texas' population resides in those counties.[64] Due in large part to the shortage of medical professionals, hospitals in rural Texas are closing at an alarming rate: since 2010, 27 rural hospitals have closed temporarily or permanently, and among the 158 remaining rural hospitals, only 65 offer labor and delivery services.[65]

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Texas, the gaps between supply and demand will widen between 2022 and 2032."[66] With more than 30 percent of Texas' OB-GYNs at or nearing retirement age, recruiting the next generation of Texas OB-GYNs is critical to ensuring the availability of quality OB-GYN care for all Texans.[67] Encouraging prospective OB-GYNs to train in Texas is critical in addressing Texas's OB-GYN shortages as, on average, 57.1 percent of medical residents ultimately practice in the state where they complete their residencies.[68] The Department has estimated that, to meet the demand for OB-GYNs in Texas by 2032, there would need to be an annual increase of 13 new in-state OB-GYN residency positions, or alternatively, an annual increase of 33 graduates from each of Texas's sixteen medical schools.[69]

In short, Texas needs many more clinicians to provide OB-GYN care, not fewer, to ensure that Texans who need that care can lead healthy lives and have healthy pregnancies. Lack of access to OB-GYN health care is devastating to all Texans, not just those seeking abortions.

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[66] Tex. Health and Hum. Servs., Physician Supply and Demand Projections 2022-2032, supra note 53.
[67] Ass'n Am. Med. Colleges, Texas Physician Workforce Profile (2021) https://www.aamc.org/media/58336/download.
[68] Ass'n Am. Med. Colleges, Report on Residencies, Executive Summary 4 (Nov. 2021) https://www.aamc.org/media/57601/download?attachment
[69] Id. at 14, 15.

B. The Bans Discourage Medical Professionals and Students Seeking Careers in Reproductive Health from Practicing in Texas and Deprive Texas-Based Residency Programs of the Ability to Offer Full Scope of Required Training.

The Texas Bans work directly against the state's urgent need for more OB-GYNs by discouraging medical professionals from practicing in Texas and compromising the ability of residency programs to offer full scope, required training in the state. Practicing OB-GYNs are reportedly leaving Texas for states where abortion remains legal.[70] Healthcare staffing firms report that OB-GYN candidates are declining employment opportunities in states with abortion bans, like Texas, where OB-GYN care is already a scarce resource.[71] For example, one recruiter working to fill a single maternal-fetal medicine job in Texas reportedly received rejections from multiple separate candidates, all of whom "expressed fear they could

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[70] See Alice Ollstein, Abortion Doctors' Post-Roe Dilemma: Move, Stay, or Straddle State Lines, Politico (June 29, 2022), https://www.politico.com/news/2022/06/29/abortion-doctors-post-roe-dilemma-move-stay-or-straddle-statelines-00040660; see also Peter Holley, Texas Abortion Doctors Face a Difficult Choice: To Flee or Not to Flee, Tex. Monthly (May 9, 2022), https://www.texasmonthly.com/news-politics/texas-abortion-doctors-choose-flee-or-stay/; Shefali Luthra, "We're Not Going to Win That Fight:" Bans on Abortion and Gender-Affirming Care Are Driving Doctors from Texas, The 19th (June 21, 2023), https://19thnews.org/2023/06/abortion-gender-affirming-care-bans-doctors-leaving-texas/ ("I do want to do the best for my patients, and I need to work in an environment where I can provide patients with at least the standard of care,"); Charlotte Scott, Doctors Could Face Life in Jail, $100,000 Penalty for Providing Abortion Care, Spectrum Local News (Aug. 25, 2022), https://tinyurl.com/yc3up2e2; Grace Benninghoff, OB-GYN Residents are Required to Receive Clinical Abortion Training. They Can't Do That in Texas, Tex. Monthly (May 23, 2023), https://www.texasmonthly.com/news-politics/abortion-training-ob-gyn-medical-residents-leaving-texas/; Mary Tuma, Abortion Providers on Two Years of Texas Ban: 'We're Living in a Devastating Reality', The Guardian (Aug. 31, 2023), https://www.theguardian.com/world/2023/aug/31/texas-abortion-ban-senate-bill-8.

[71] See Tex. Health and Hum. Servs., Physician Supply and Demand Projections 2020-2021, supra note 53, at 2.

decreases in residency applications submitted by medical school graduates.[80] This is in contrast to the previous three application cycles, which saw increases in residency applications.[81] With respect to OB-GYN residencies specifically, the number of applicants in abortion-restricted states like Texas decreased by 10.5 percent, whereas applications in states where abortion is legal decreased by only 5.3 percent.[82] These post-Dobbs decreases in residency applications suggest that applicants "may be selectively reducing their [applications to] . . . states with more-restrictive restrictions on health care."[83] Similarly, a research team at Emory University surveyed 490 third- and fourth-year medical students applying across specialties throughout the country regarding their residency application.[84] According to the study, 75% of those surveyed felt state abortion laws affected where they would apply for residency, with roughly 60% of medical students reporting they would not apply to states with res2.1 (te.3 ( )]TJ -0.01rgynB.5 (ve)5.4 ( )9.1 la)12.1 ((y)]TJ

V. The Bans Are Having Devastating Consequences for Texas Patencet 28e ct

more likely to die from pregnancy-related complications.[89] Maternal mortality, defined by the Centers for Disease Control and Prevention ("CDC") as "the death of a woman during pregnancy, at delivery, or soon after delivery[,]" is "a tragedy for her family and for society as a whole."[90] The United States maternal mortality rate for 2021 was 32.9 deaths per 100,000 live births, a sharp increase from prior years.[91] Data shows that United States has a maternal mortality rate more than three times the rate of most other high-income countries,[92] and the maternal mortality rate in Texas is one of the highest in the United States.[93]

These rates are even higher for Black patients. The most recent Texas Department of :J 0 Tc 0 0 15.675 0eMcb.966 -2.27Tw 0yT7763.6 (a)1yentr.2 (a)12. (n)8

causes.[94] Most of these deaths were preventable.[95] Discrimination contributed to almost 17% of pregnancy-related deaths.[96] Black patients in Texas face inequities even in geographic areas with the lowest overall mortality rates and among patients with higher levels of education.[97] And, as a result of these inequities, Black patients are more likely to face "higher rates of preventable disease and chronic health conditions including diabetes, hypertension, and cardiovascular disease, all of which can contribute to complications during pregnancy.[98]

Many of these patients face challenges when accessing reproductive care. For example, as a result of systemic inequities and barriers, Black patients have limited access to quality contraceptive care and counseling as compared to White patients.[99] A study showed that Black women enrolled in Medicaid were less likely than White

[94] Tex. Health and Hum. Servs., Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022, App. (Dec. 2022, updated Oct. 2023), https://www.dshs.texas.gov/sites/default/files/legislative/Reports/2022-MMMRC-DSHS-Joint-Biennial-Report.pdf.

[95] Tex. Health and Hum. Servs., Addendum: Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022 (Oct. 25, 2023), Addendum-2022-MMMRC-DSHS-Joint-Biennial-Report.pdf (texas.gov)

[96] Id.

[97] Emily E. Petersen et al., Ctrs. for Disease Control & Prevention, Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths – United States, 2007–2016 (Sept. 6, 2019), https://www.cdc.gov/mmwr/volumes/68/wr/mm6835a3.htm; Marian F. MacDorman et al., Racial and Ethnic Disparities in Maternal Mortality in the United States Using Enhanced Vital Records, 2016-2017, 111 Am. J. Pub. Health 1673, 1676–1677 (Sept. 22, 2021), https://ajph.aphapublications.org/doi/10.2105/AJPH.2021.30637.

[98] Nat'l P'ship for Women & Families, Black Women's Maternal Health: A Multifaceted Approach to Addressing Persistent and Dire Health Disparities 1 (Apr. 2018), https://nationalpartnership.org/wp-content/uploads/black-womens-maternal-health-2018.pdf

[99] Id. at 2

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this petition complies with the typeface requirements of TEX. R. APP. P. 9.4(e), because it has been printed in a conventional typeface no smaller than 14-point except for footnotes, which are no smaller than 12-point. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), because it contains less than 15,000 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Clark Richards
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