# Exhibit A

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**AUSTIN DIVISION**

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| FUND TEXAS CHOICE, et al.,<br><br>Plaintiffs,<br>vs.<br><br>JOSÉ GARZA, et al.,<br><br>Defendants. | Civil Action<br>No. 1:22-cv-859-RP |

**BRIEF OF *AMICI CURIAE* AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, AMERICAN MEDICAL ASSOCIATION, ET AL. IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**

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## Cases

*June Medical Services L.L.C. v. Russo*,
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*Stenberg v. Carhart*,
530 U.S. 914 (2000) ....................................................................................2

*Whole Woman's Health v. Hellerstedt*,
136 S. Ct. 2292 (2016) ....................................................................................2

*Zurawski et al. v. State of Texas et al.*,
No. D-1-GN-23-000968 (W.D. Tex. Mar. 6, 2023)........................................9, 11

## Other Authorities

ACGME, *Program Requirements for Graduate Medical Education in Obstetrics and Gynecology: Summary and Impact of Interim Requirement Revisions* (2022),
https://www.acgme.org/globalassets/pfassets/reviewandcomment/220_obstetricsandgynecology_2022-06-24_impact.pdf........................................17

ACOG, *Abortion Policy* (*revised and approved* May 2022),
https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2022/abortion-policy ........................................8

ACOG, *Code of Professional Ethics* (Dec. 2018), https://www.acog.org/-/media/project/acog/acogorg/files/pdfs/acog-policies/code-of-professional-ethics-of-the-american-college-of-obstetricians-and-gynecologists.pdf..............................20

ACOG, Committee Opinion No. 390, *Ethical Decision Making in Obstetrics and Gynecology* (Dec. 2007, *reaff'd* 2019)........................................21

ACOG, Committee Opinion No. 819, *Informed Consent and Shared Decision Making in Obstetrics and Gynecology* (Feb. 2021) ........................................20

ACOG, *FAQs, Abortion Care* (last updated Aug. 2022),
https://www.acog.org/womens-health/faqs/induced-abortion ........................................16

ACOG, *Press Release: More Than 75 Health Care Organizations Release Joint Statement in Opposition to Legislative Interference* (July 7, 2022),
https://www.acog.org/news/news-releases/2022/07/more-than-75-health-care-organizations-release-joint-statement-in-opposition-to-legislative-interference ...................20

ACOG, *Statement of Policy, Legislative Interference with Patient Care, Medical Decisions, and the Patient-Physician Relationship* (May 2013, *amended and reaff'd* Aug. 2021), https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2019/legislative-interference-with-patient-care-medical-decisions-and-the-patient-physician-relationship ............................20-21

AMA, *Code of Medical Ethics*, https://www.ama-assn.org/delivering-care/ethics/code-medical-ethics-overview (visited July 11, 2023) .................................20, 21

American Association of Medical Colleges, *Report on Residencies, Executive Summary* (Nov. 2021), https://www.aamc.org/data-reports/students-residents/data/report-residents/2021/executive-summary ....................................................16

Association of American Medical Colleges, *Texas Physician Workforce Profile* (2021), https://www.aamc.org/media/58336/download .......................................................14

Beauchamp, Tom L. and James F. Childress, *Principles of Biomedical Ethics* (8th ed. 2019) .....................................................................................................................21

Brown, Christopher, *Abortion Ruling Pits State Bans Against OB-GYN Training Rules*, BLOOMBERG LAW (June 27, 2022), https://news.bloomberglaw.com/health-law-and-business/abortion-ruling-pits-state-bans-against-ob-gyn-training-rules ..............................................................16

Centers for Disease Control and Prevention, *Maternal Deaths and Mortality Rates: For Each State, The District of Columbia, United States, 2018-2020* (last visited June 29, 2023), https://www.cdc.gov/nchs/maternal-mortality/mmr-2018-2020-state-data.pdf ..............................................................15

Editors of the *New England Journal of Medicine* et al., *The Dangerous Threat to* Roe v. Wade, 381 NEW ENG. J. MED. 979 (2019).................................................................8

Holley, Peter, *Texas Abortion Doctors Face a Difficult Choice: To Flee or Not to Flee*, TEXAS MONTHLY (May 9, 2022), https://www.texasmonthly.com/news-politics/texas-abortion-doctors-choose-flee-or-stay/..................................................... 11, 15

Hutchinson, Sara, *Post-*Roe*, Some Areas May Lose OB/GYNs If Medical Students Can't Get Training*, THE WASHINGTON POST (Sept. 2, 2022), https://www.washingtonpost.com/education/2022/09/02/abortion-training-rural-areas/ ........................................................................................................ 16, 17

Jones, Rachel K., et al., Guttmacher Institute, *Medication Abortion Now Accounts for More than Half of All US Abortions* (last updated Dec. 1, 2022), https://www.guttmacher.org/article/2022/02/medication-abortion-now-accounts-more-half-all-us-abortions .........................................................................8

Jones, Rachel K. & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 AM. J. PUB. HEALTH 1904 (2017)....8

Klibanoff, Eleanor, *With the End of* Roe*, Texans Will Have to Travel Long Distances for Legal Abortions*, TEXAS TRIBUNE (June 24, 2022), https://www.texastribune.org/2022/06/23/supreme-court-abortion-roe-dobbs-texas/....10, 11

Maddow-Zimet, Isaac et al., Guttmacher Institute, *Even Before* Roe *Was Overturned, Nearly One in 10 People Obtaining an Abortion Traveled Across State Lines for Care* (July 21, 2022), https://www.guttmacher.org/article/2022/07/even-roe-was-overturned-nearly-one-10-people-obtaining-abortion-traveled-across....10

McCullough, Jolie, *At a New Mexico Abortion Clinic, Calls Flood in From Texas and Wait Time for Appointments Grows*, TEXAS TRIBUNE (July 1, 2022), https://www.texastribune.org/2022/07/01/new-mexico-texas-abortion/....11

National Academies of Sciences, Engineering, and Medicine, *The Safety and Quality of Abortion Care in the United States* (2018)....8

North Texas Regional Extension Center, *The Physician Workforce in Texas* (April 2015), https://dfwhcfoundation.org/wp-content/uploads/2015/04/mhaNTREC2015studyfinal.pdf....19

Office of the Governor, Michelle Lujan Grisham, *Press Release, Gov. Lujan Grisham Signs Executive Order Expanding Access to Reproductive Health Care in New Mexico* (Aug. 31, 2022), https://www.governor.state.nm.us/2022/08/31/gov-lujan-grisham-signs-executive-order-expanding-access-to-reproductive-health-care-in-new-mexico/....11

Ollstein, Alice Miranda, *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-state-lines-00040660....12, 15

Orgera, Kendal et al., Ass'n Am. Med. Colleges, *Training Location Preferences of U.S. Medical School Graduates Post* Dobbs v. Jackson Women's Health Organization *Decision* (Apr. 13, 2023), https://www.aamc.org/advocacy-policy/aamc-research-and-action-institute/training-location-preferences....17

Peachman, Rachel Rabkin, *Dobbs Decision Threatens Full Breadth of Ob-Gyn Training*, J. AM. MED. ASS'N (Nov. 1, 2022)....17

Pollard, James, *Medical Students Worry About Where to Train as Several States Enact Abortion Restrictions*, ASSOCIATED PRESS (Oct. 19, 2022),

https://apnews.com/article/abortion-health-business-education-family-medicine-3fbeef4338fbdcaf48f4f133055c9f78 ............................................................ 13, 18

Raymond, Elizabeth G., et al., *First-Trimester Medical Abortion with Mifepristone 200 mg and Misoprostol: A Systematic Review*, 87 CONTRACEPTION 26 (2013)......................................................................................8

Raymond, Elizabeth G. & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215 (2012).......................................................................................9

Rowland, Christopher, *A Challenge for Antiabortion States: Doctors Reluctant to Work There*, THE WASHINGTON POST (Aug. 6, 2022), https://www.washingtonpost.com/business/2022/08/06/abortion-maternity-health-obgyn/ ..............................................................................................15

Society for Maternal-Fetal Medicine, *Access to Abortion Services* (June 2020), https://s3.amazonaws.com/cdn.smfm.org/media/2418/Access_to_Abortion_Services_(2020).pdf .....................................................................................8

Texas Health and Human Services, *Physician Supply and Demand Projections 2021-2032* (May 2022), https://www.dshs.texas.gov/sites/default/files/legislative/2022-Reports/Physician-Supply-and-Demand-Projections-2021-2032.pdf.................. 12, 13, 14, 15

Texas Health and Human Services, *Regional Analysis of Maternal and Infant Health in Texas, Public Health Region 1* (April 2018), https://www.dshs.texas.gov/sites/default/files/mch/epi/docs/01-Regional-Analysis-of-Maternal-and-Infant-Health-in-Texas_PHR-1.pdf ..................................... 14, 19

Texas Health and Human Services, *Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022* (Dec. 2022), https://www.dshs.texas.gov/sites/default/files/legislative/2022-Reports/Joint-Biennial-MMMRC-Report-2022.pdf ......................................................................18

Texas Health and Human Services, *Texas Physician Supply and Demand Projections, 2018-2032* (May 2020), https://www.dshs.texas.gov/sites/default/files/legislative/2020-Reports/TexasPhysicianSupplyDemandProjections-2018-2032.pdf .....................................13

Texas Health and Human Services, *Texas Projections of Supply and Demand for Primary Care Physicians and Psychiatrists, 2017-2030* (July 2018), https://www.dshs.texas.gov/sites/default/files/legislative/2018-Reports/SB-18-Physicians-Workforce-Report-Final.pdf .................................................................16

Texas Health and Human Services, *2020 Induced Terminations of Pregnancy for Texas Residents* (2020), https://www.hhs.texas.gov/sites/default/files/documents/about-hhs/records-statistics/research-statistics/itop/2020/2020-itop-narrative-tx-residents.pdf .................. 8, 9, 10

Texas Health and Human Services, *2021 Induced Terminations of Pregnancy for Texas Residents* (2021), https://www.hhs.texas.gov/sites/default/files/documents/about-hhs/records-statistics/research-statistics/itop/2020/2020-itop-narrative-tx-residents.pdf .................. 8, 9, 10

Texas Health and Human Services Commission, *Reported Complications from Induced Terminations of Pregnancy Procedures Performed in Texas, By Month of Complication: Calendar Year 2020* (Aug. 2021) ....................................................9

Texas Health and Human Services Commission, *Reported Complications from Induced Terminations of Pregnancy Procedures Performed in Texas, By Month of Complication: Calendar Year 2021* (Aug. 2022) ....................................................9

Texas Organization of Rural & Community Hospitals (TORCH), *Ten Things to Know About Texas Rural Hospitals* (last visited June 30, 2023), https://www.torchnet.org/uploads/1/1/9/5/119501126/torch_10_things_fact_sheet.pdf ..........................................................................................................19

Upadhyay, Ushma D., et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 OBSTETRICS & GYNECOLOGY 175 (2015) ........................8

White, Kari, et al., *Complications from First-Trimester Aspiration Abortion: A Systematic Review of the Literature*, 92 CONTRACEPTION 422 (2015) ....................................8

White, Kari, et al., Texas Policy Evaluation Project, *Out-of-State Travel for Abortion Following Implementation of Texas Senate Bill 8* (March 2022), https://sites.utexas.edu/txpep/files/2022/03/TxPEP-out-of-state-SB8.pdf.............................10

Whole Woman's Health, *Press Release, Whole Woman's Health of New Mexico To Open Today* (Mar. 23, 2023), https://www.wholewomanshealth.com/uncategorized/whole-womans-health-of-new-mexico-to-open-today/ .........................................................................11

Yuan, Jada, *The New Mexico Provider Trying to Save Abortion for Texas Women*, THE WASHINGTON POST (May 10, 2022), https://www.washingtonpost.com/magazine/2022/05/10/new-mexico-border-provider/.............................................................................................................12

*Amici Curiae*—the American College of Obstetricians and Gynecologists ("ACOG"), the American Medical Association ("AMA"), the Society for Maternal-Fetal Medicine ("SMFM"), the American Academy of Family Physicians ("AAFP"), the American Academy of Pediatrics ("AAP"), the American College of Nurse-Midwives ("ACNM"), the American Gynecological and Obstetrical Society ("AGOS"), the American Society for Reproductive Medicine ("ASRM"), the North American Society for Pediatric and Adolescent Gynecology ("NASPAG"), the National Association of Nurse Practitioners in Women's Health ("NPWH"), the Society for Academic Specialists in General Obstetrics and Gynecology ("SASGOG"), the Society of Family Planning ("SFP"), the Society of General Internal Medicine ("SGIM"), the Society of Gynecologic Oncology ("SGO"), and the Society of OB/GYN Hospitalists ("SOGH")—respectfully request leave to file the attached proposed Brief of *Amici Curiae* in Support of Plaintiffs' Opposition to Defendants' Motions to Dismiss the Second Amended Complaint.

**INTEREST OF *AMICI CURIAE***

ACOG is the nation's leading group of physicians providing health care for women. With more than 62,000 members, ACOG advocates for quality health care for women, maintains the highest standards of clinical practice and continuing education of its members, promotes patient education, and increases awareness among its members and the public of the changing issues facing women's health care. ACOG is committed to ensuring access to the full spectrum of evidence-based quality reproductive health care, including abortion care. 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 United States Supreme Court, as a leading provider of authoritative scientific data regarding childbirth and abortion.[1]

AMA is the largest professional association of physicians, residents, and medical students in the United States. Through state and specialty medical societies and other physician groups seated in the AMA's House of Delegates, substantially all United States physicians, residents, and medical students are represented in the AMA's policymaking process. The objectives of the AMA are to promote the art and science of medicine and the betterment of public health. AMA members practice in all fields of medical specialization and in every state. AMA's publications and *amicus curiae* briefs have been cited in cases implicating a variety of medical questions in courts across the United States, including the United States Supreme Court. AMA joins this brief on its own behalf and as a representative of the Litigation Center of AMA and the State Medical Societies. The Litigation Center is a coalition among 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.

SMFM was founded in 1977 and is the medical professional society for maternal-fetal medicine subspecialists (obstetricians with additional training in high-risk pregnancies). It represents more than 6,200 members who care for high-risk pregnant people and provides education, promotes research, and engages in advocacy to advance optimal and equitable perinatal outcomes for all people who desire and experience pregnancy. SMFM and its members are dedicated to ensuring that all medically appropriate treatment options are available for individuals experiencing a high-risk pregnancy.

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[1] *See, e.g.*, *June Medical Servs. L.L.C. v. Russo*, 140 S. Ct. 2103, 2132 (2020); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2312 (2016); *Stenberg v. Carhart*, 530 U.S. 914, 932-936 (2000) (quoting ACOG brief extensively and referring to ACOG as among the "significant medical authority" supporting the comparative safety of the abortion procedure at issue).

AAFP was founded in 1947 and 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.

AAP was founded in 1930 and is a national, not-for-profit professional organization dedicated to furthering the interests of child and adolescent health. Since AAP's inception, its membership has grown from 60 physicians to over 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists. Over the past 90 years, AAP has become a powerful voice for child and adolescent health through education, research, advocacy, and the provision of expert advice. Among other things, AAP has worked with the federal and state governments, health care providers, and parents on behalf of America's adolescents to ensure the availability of effective reproductive health care.

ACNM is the professional association representing Certified Nurse-Midwives and Certified Midwives in the United States. ACNM members are primary health care clinicians who provide evidence-based midwifery care for women and gender nonconforming people throughout the lifespan, with an emphasis on pregnancy, childbirth, gynecologic, and reproductive health care.

AGOS is the professional organization of elected OB-GYN academics in leadership positions across the United States.

ASRM is dedicated to the advancement of science and the practice of reproductive medicine. Its members include approximately 8,000 medical professionals.

NASPAG is dedicated to providing multidisciplinary leadership in education, research, and gynecologic care to improve the reproductive health of youth. NASPAG's goal is to serve and be recognized as the lead provider in pediatric and adolescent gynecology ("PAG") education,

research, and clinical care; to conduct and encourage multidisciplinary and inter-professional programs of medical education and research in the field of PAG; and to advocate for the reproductive well-being of children and adolescents and the provision of unrestricted, unbiased, and evidence-based practice of PAG both nationally and internationally.

NPWH is the professional association for Women's Health Nurse Practitioners ("WHNP") and all Advanced Practice Registered Nurses who provide comprehensive and complex women's and gender-related care for patients across their entire lifespan. NPWH offers high-quality continuing education, advocacy, and community for clinicians nationwide, and sets the standards of practice and education for the WHNP profession. WHNPs have the most comprehensive education and preparation to provide healthcare to women throughout their lifespan. WHNPs are the only Nurse Practitioner population who have competencies for high-risk obstetrics and postpartum care. NPWH's mission includes protecting and promoting women's and all individuals' rights to make their own choices regarding their health and well-being within the context of their lived experience and their personal, religious, cultural, and family beliefs.

SASGOG seeks to support academic generalist physicians of all backgrounds throughout the lifespan of their careers by (1) providing evidenced-based and culturally aware education that promotes equitable practice and advances health, (2) fostering excellence in scholarship and research, and (3) promoting inclusive leadership opportunities for its members.

SFP represents more than 1,400 clinicians, scholars, and partners united by a shared interest in advancing the science and clinical care of family planning. The pillars of its strategic plan are: (1) convening a diverse, equitable, inclusive, and multidisciplinary community of all engaged in the science and medicine of abortion and contraception, (2) supporting the production and resourcing of research primed for impact, (3) organizing and leveraging research primed for

impact, (4) ensuring clinical care is evidence-informed and person-centered through guidance, medical education, and other activities, (5) developing and supporting leaders in abortion and contraception to transform healthcare systems, and (6) aligning the organization's governance, operations, and overall resources to be in service of the strategies designed to bring its collective vision to life.

SGIM is a member-based internal medical association of over 3,300 of the world's leading general internists, who are dedicated to improving access to care for all populations, eliminating healthcare disparities, and enhancing medical education. SGIM's mission is to cultivate innovative educators, researchers, and clinicians in general internal medicine, leading the way to better health for everyone. SGIM members advance the practice of medicine through their commitment to providing comprehensive, coordinated, and cost-effective care to adults, educating the next generation of outstanding physicians, and conducting cutting-edge research to improve quality of care and clinical outcomes of all patients.

SGO is the premier medical specialty society for health care professionals trained in the comprehensive management of gynecologic cancers. As a 501(c)(6) organization, SGO contributes to the advancement of women's cancer care by encouraging research, providing education, raising standards of practice, advocating for patients and members, and collaborating with other domestic and international organizations. SGO has more than 2,800 members representing the entire gynecologic oncology team in the United States and abroad. Members include primarily gynecologic oncologists, as well as medical oncologists, pathologists, radiation oncologists, hematologists, surgical oncologists, obstetrician/gynecologists, nurses, physician assistants, social workers, fellows-in-training, residents, and other allied health care professionals interested in the treatment and care of patients with gynecologic cancer. SGO members provide

multidisciplinary cancer treatment including chemotherapy, radiation therapy, surgery, and supportive care. They practice in a variety of settings, including academic institutions and hospitals, major regional cancer centers, and private practice.

SOGH is a rapidly growing group of physicians, midwives, nurses, physician's assistants, and other individuals in the health care field who support the OB-GYN hospitalist model. SOGH is dedicated to improving outcomes for hospitalized women and supporting those who share this mission. SOGH's vision is to shape the future of OB-GYN by establishing the hospitalist model as the care standard. SOGH values excellence, collaboration, leadership, quality, and community.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Abortion is an essential part of comprehensive health care. When abortion is legal, it is safe. *Amici curiae* are leading medical societies representing clinicians who serve patients in Texas and nationwide and whose policies represent the education, training, and experience of the vast majority of clinicians in this country. *Amici's* position is that state laws that criminalize and effectively ban abortion: (1) are not based on any medical or scientific rationale; (2) threaten the health of pregnant patients; (3) disproportionately harm patients of color, patients in rural settings, and patients with low income; and (4) impermissibly interfere with the patient-physician relationship and undermine longstanding principles of medical ethics. These harms are only intensified when states seek to apply their own state laws to events outside of their territorial jurisdiction and prohibit conduct that is perfectly legal in the state in which it occurs.

Texas has a complicated web of abortion statutes that effectively ban all abortions in Texas. As a result, many Texans seek abortions out of state, sometimes relying on Texas organizations that fund travel for out-of-state abortions and Texas-based doctors who cross state lines to provide

abortions. Defendants now seek to reach even further than prohibiting abortions within Texas's borders—they seek to impose liability for abortions legally performed outside of Texas.[2]

As *Amici* describe below, abortion is a safe and essential component of health care; there is no medical or scientific basis for restricting abortions in or out of the state **(Section I)**. Defendants' stated enforcement posture risks exacerbating the state's existing shortage of medical professionals capable of providing obstetrics and gynecology ("OB-GYN") care to Texas residents. This will leave thousands of Texans—whether or not they ever seek abortions—without access to quality OB-GYN care **(Section II)**. This shortage of medical professionals has already had a devastating effect on Texans who are unable to access needed medical care. The Texans who will suffer most as a result of Defendants' position will be those who have low incomes, who experience discrimination due to their racial or ethnic identity, and/or who live in rural areas—individuals who already face inequities in the healthcare system **(Section III)**. This position also threatens longstanding principles of medical ethics and patient autonomy **(Section IV)**.

[2] *See, e.g.*, Pls.' Second Am. Class Action Compl., Dkt. 129, ¶¶ 136, 138, 142, 144-46, 150 (Apr. 20, 2023).

# ARGUMENT

## I. Abortion is a Safe, Common, and Essential Component of Health Care

The medical community recognizes abortion as a common,[3] safe, and essential component of reproductive health care.[4] Complication rates from abortion are extremely low, and most complications are minor and easily treatable.[5] Major complications from abortion are exceptionally rare, occurring in just 0.1 to 0.5 percent of instances across gestational ages and types of abortion methods.[6] Among the abortions performed in Texas in 2020 and in 2021, only

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[3] Nearly one in four American women are expected to have an abortion before the age of forty-five. Jones & Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 AM. J. PUB. HEALTH 1904, 1908 (2017).

[4] *See, e.g.*, National Academies of Sciences, Engineering, and Medicine, *The Safety and Quality of Abortion Care in the United States* 10 (2018) ("NASEM, *Safety and Quality of Abortion Care*") ("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."); Editors of the *New England Journal of Med.* et al., *The Dangerous Threat to* Roe v. Wade, 381 NEW ENG. J. MED. 979, 979 (2019) ("Access to legal and safe pregnancy termination … is essential to the public health of women everywhere."); ACOG, *Abortion Policy* (May 2022); Soc'y for Maternal-Fetal Med., *Access to Abortion Services* (June 2020).

[5] *See, e.g.*, Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 OBSTETRICS & GYNECOLOGY 175, 181 (Jan. 2015) (finding 2.1 percent abortion complication rate and characterizing majority of complications as "minor"); NASEM, *Safety and Quality of Abortion Care*, *supra* note 4, at 55, 60.

[6] White et al., *Complications from First-Trimester Aspiration Abortion: A Systematic Review of the Literature*, 92 CONTRACEPTION 422, 422 (2015). This is also true for medication abortions, which account for more than 50 percent of all abortions in Texas and about half of abortions nationwide. *See* Raymond et al., *First-Trimester Medical Abortion with Mifepristone 200 mg and Misoprostol: A Systematic Review*, 87 CONTRACEPTION 26, 30 (2013) (finding 0.4 percent major complication rate for medication abortion); Jones et al., Guttmacher Inst., *Medication Abortion Now Accounts for More than Half of All US Abortions*, (last updated Dec. 1, 2022) ("Throughout the more than 20 years that it has been used in the United States, medication abortion has been proven to be overwhelmingly safe and effective."); *see also* Texas Health and Human Servs., *2020 Induced Terminations of Pregnancy for Texas Residents*, at 3 (2020) ("Texas Health and Human Servs., *2020 Induced Terminations*") (52 percent of abortions obtained by Texans were medical non-surgical in 2020); Texas Health and Human Servs., *2021 Induced Terminations of Pregnancy for Texas Residents*, at 2-3 (2021) ("Texas Health and Human Servs., *2021 Induced Terminations*") (51 percent of abortions obtained by Texans were medical non-surgical in 2021).

about 0.4 percent involved reported complications.[7] Furthermore, "[t]he risk of death associated with childbirth is approximately 14 times higher" than the risk associated with abortion.[8]

Texas's draconian abortion restrictions routinely force pregnant Texans to travel outside of Texas for essential abortion care, often with great risk to the life and health of the person seeking care. In March 2023, a group of Texas women filed suit against the State of Texas and Texas Attorney General Ken Paxton, among others, alleging that Texas's abortion restrictions deprived them of medically necessary abortion care, forcing them to travel long distances for care while experiencing life-threatening pregnancy complications.[9] One of the plaintiffs alleged that she was refused abortion care after her water broke during her second trimester, even though her physicians acknowledged that the fetus would not survive to birth and that continuing the pregnancy would place her at high risk of developing an infection.[10] As her condition continued to worsen, she was forced to choose between flying two hours to Colorado or driving eleven hours to New Mexico for abortion care.[11] She ultimately chose to fly to Colorado, and during her travel, she endured the risk of going into labor or septic shock while also grieving the loss of a wanted pregnancy.[12] Since

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[7] *Compare* Texas Health and Human Servs., *2020 Induced Terminations*, *supra* note 6, at 2 (55,175 abortions reported in 2020), *and* Texas Health and Human Servs., *2021 Induced Terminations*, *supra* note 6, at 2 (52,495 reported abortions in 2021), *with* Texas Health and Human Servs. Comm'n, *Reported Complications from Induced Terminations of Pregnancy Procedures Performed in Texas, By Month of Complication: Calendar Year 2020* (Aug. 2021) (221 reported complications in 2020), *and* Texas Health and Human Servs. Comm'n, *Reported Complications from Induced Terminations of Pregnancy Procedures Performed in Texas, By Month of Complication: Calendar Year 2021* (Aug. 2022) (226 reported complications in 2021).

[8] Raymond & Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215, 215 (2012).

[9] *See Zurawski et al. v. State of Texas et al.*, No. D-1-GN-23-000968, Dkt. 1 (W.D. Tex. Mar. 6, 2023).

[10] *Id.* ¶¶ 69-73.

[11] *Id.* ¶¶ 74-75.

[12] *Id.* ¶¶ 76-77.

that experience, she suffers from stress and anxiety caused by the trauma of being forced to travel to another state while in the throes of a life-threatening medical emergency.[13]

This experience is not uncommon in abortion-restricted states. In 2020, nine percent of abortions in the United States—about 81,000 in total—were obtained by people traveling outside their state of residence.[14] Following the enactment of S.B. 8, the number of Texas residents traveling to other states for abortion care increased sixfold.[15] In August 2021—the month before S.B. 8 took effect—235 Texas residents received abortion care at 34 facilities located outside of Texas.[16] Data collected by the University of Texas at Austin shows that between September 2021 and December 2021, an average of nearly 1,400 Texans obtained abortions at these same facilities each month, totaling at least 5,500 out-of-state abortions during this three-month period.[17]

Nearly 75 percent of the Texans who received out-of-state abortions in 2021 traveled to Oklahoma, which has since banned abortion with only a few limited exceptions, and New Mexico, now the only state bordering Texas where abortion is legal.[18] Abortion providers in New Mexico

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[13] *Id.* ¶¶ 79.

[14] Maddow-Zimet et al., Guttmacher Inst., *Even Before* Roe *Was Overturned, Nearly One in 10 People Obtaining an Abortion Traveled Across State Lines for Care* (2022).

[15] White et al., Texas Policy Evaluation Project, *Out-of-State Travel for Abortion Following Implementation of Texas Senate Bill 8* (Mar. 2022), at 1 ("White et al., *Out-of-State Travel for Abortion*").

[16] *Id.*

[17] *Id.* Although reporting fewer out-of-state abortions overall, data from the Texas Department of Health and Human Services also reflects an increase in out-of-state abortions obtained by Texans between 2020 and 2021. *Compare* Texas Health and Human Servs., *2020 Induced Terminations*, *supra* note 6, at 2 (1,200 of 55,000 (2.1 percent) obtained out of state), *with* Texas Health and Human Servs., *2021 Induced Terminations*, *supra* note 6, at 2 (1,700 of 52,500 (3.2 percent) obtained out of state).

[18] White et al., *Out-of-State Travel for Abortion*, *supra* note 15, at 2, 7; Klibanoff, *With the End of* Roe*, Texans Will Have to Travel Long Distances for Legal Abortions*, TEXAS TRIBUNE (June 24, 2022) ("Klibanoff, *With the End of* Roe").

report that, in the wake of *Dobbs*, the demand for abortion care among Texans traveling to the state has increased dramatically.[19] One New Mexico clinic estimated that 75 percent of its patients travel from Texas for abortion care, highlighting just how often Texans are forced to travel out of state for needed care.[20] And for Texans in need of emergency care, the journey across rural Texas can be life-threatening.[21] In August 2021, New Mexico Governor Michelle Lujan Grisham signed an executive order pledging $10 million for the construction of an abortion clinic near the Texas-New Mexico border.[22] At least one Texas abortion clinic has relocated to New Mexico.[23]

In addition, *Amici* are aware of reports from Texas medical providers that, following *Dobbs*, patients are seeking advice on interstate abortion travel. One Texas provider reported that, for many patients, "the most she can offer a patient is help developing a plan to travel out of state."[24] Another medical provider likened himself to a travel agent, reporting that he "now spends much of his working hours helping patients figure out how to access out-of-state abortion care."[25] Moreover, many abortion providers in abortion-restricted states are pursuing part-time work in states where abortion is legal, while still providing other services in their communities and

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[19] *See* Klibanoff, *With the End of* Roe, *supra* note 18.

[20] McCullough, *At a New Mexico Abortion Clinic, Calls Flood in From Texas and Wait Time for Appointments Grows*, TEXAS TRIBUNE (July 1, 2022).

[21] *See Zurawski*, No. D-1-GN-23-000968, Dkt. 1 ¶ 76 (recounting plaintiff's concern and discussion with her physician about what would happen "if she went into labor while driving through rural Texas [and] there [were] no hospital where she could access care").

[22] Office of the Governor, Michelle Lujan Grisham, *Press Release, Gov. Lujan Grisham Signs Executive Order Expanding Access to Reproductive Health Care in New Mexico* (Aug. 31, 2022).

[23] Whole Woman's Health, *Press Release, Whole Woman's Health of New Mexico To Open Today* (Mar. 23, 2023).

[24] Holley, *Texas Abortion Doctors Face a Difficult Choice: To Flee or Not to Flee*, TEXAS MONTHLY (May 9, 2022) ("Holley, *Texas Abortion Doctors Face a Difficult Choice*").

[25] *Id.*

maintaining practices in their home states in the event abortion restrictions are one day repealed.[26] And at least one Texas provider has transferred his practice to New Mexico, where he regularly treats Texas residents who have traveled from out of state.[27] Exposing Texas providers like these to civil and criminal liability under Texas's abortion statutes inhibits the provision of essential (and often critical) health care to Texans. And extending the reach of Texas's abortion statutes to care provided in states where abortion is legal—as Defendants have indicated they will do—will only exacerbate the harms endured by Texans forced to travel out of state for care.

## II. Interpreting Texas's Abortion Statutes as Restricting Medical Personnel from Providing Abortion Care in Other States Will Diminish the Availability of OB-GYN Care for All Texas Residents

Texas is *already* experiencing a shortage of OB-GYN care.[28] Absent an influx of qualified medical professionals, this shortage is expected to worsen over time, leaving thousands of Texans without access to OB-GYN care.[29] *Amici* are concerned that Texas's abortion statutes imposing civil and criminal liability on medical professionals dissuade those professionals—including physicians, physician's assistants, nurse practitioners, registered nurses, nursing assistants, midwives, and other professionals who provide OB-GYN care—from practicing in the state. *Amici* are also aware of reports that these statutes discourage students and medical residents from

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[26] Ollstein, *Abortion Doctors' Post-*Roe *Dilemma: Move, Stay or Straddle State Lines*, POLITICO (June 29, 2022) ("Ollstein, *Abortion Doctors' Post-*Roe *Dilemma*").

[27] Yuan, *The New Mexico Provider Trying to Save Abortion for Texas Women*, THE WASHINGTON POST (May 10, 2022).

[28] Texas Health and Human Servs., *Physician Supply and Demand Projections 2021-2032*, at 1-2 (May 2022) ("Texas Health and Human Servs., *Physician Supply and Demand Projections 2021-2032*").

[29] *Id.*

choosing institutions in Texas to study and train for their careers.[30] Construing Texas's abortion statutes in an even more restrictive manner—as Defendants seek to do by prohibiting Texas medical personnel from providing abortion care to Texas residents even *outside* of Texas—may further deter medical professionals and students from practicing and training in Texas. This will harm the Texas medical community as well as Texans by diminishing the availability of quality OB-GYN care in Texas over time.

### A. *The Shortage of OB-GYN Care 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 does not have enough OB-GYNs to meet the need for care among Texas residents.[31] As of 2018 (the last time Texas calculated physician supply and demand), 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.[32] The Texas Department of Health and Human Services estimates that, without an increase in the number of medical students training in Texas, this deficit will continue to worsen over time.[33] The most recent data shows that there is only one OB-GYN for every approximately 5,500

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[30] Pollard, *Medical Students Worry About Where to Train as Several States Enact Abortion Restrictions*, ASSOCIATED PRESS (Oct. 19, 2022) ("Pollard, *Medical Students Worry*").

[31] Texas Health and Human Servs., *Physician Supply and Demand Projections 2021-2032*, *supra* note 28, at 1-2.

[32] Texas Health and Human Servs., *Physician Supply and Demand Projections, 2018-2032*, at 12 (May 2020).

[33] *Id.* at 23.

female residents in Texas.[34] Approximately 58 percent of Texas counties—148 counties total—have no OB-GYN at all, according to the most recent available data.[35]

With more than 30 percent of Texas's 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.[36] In May 2022, the Texas Department of Health and Human Services released a report analyzing the shortage of physicians in Texas and "the ability of Texas's graduate medical education (GME) system to meet the current and future health care needs of Texas."[37] The report concluded that, to meet the demand for OB-GYNs by 2032, Texas's GME system would require an annual increase of 13 new OB-GYN residency positions in Texas, or alternatively, an annual increase of 33 graduates from each of Texas's sixteen medical schools.[38] The report ultimately concluded that, "[w]ithout any action to increase physicians in Texas, the gaps between supply and demand will widen between 2022 and 2032."[39] In short, Texas needs many more OB-GYNs to practice in the State, not fewer. But Texas's abortion restrictions work directly against that urgent need by discouraging medical professionals from practicing in Texas.

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[34] *See* Texas Health and Human Servs., *Regional Analysis of Maternal and Infant Health in Texas, Public Health Region 1*, at 22 (Apr. 2018) ("Texas Health and Human Servs., *Regional Analysis of Maternal and Infant Health*").

[35] *Id.*

[36] Ass'n Am. Med. Colleges, *Texas Physician Workforce Profile* (2021).

[37] Texas Health and Human Servs., *Physician Supply and Demand Projections 2021-2032*, *supra* note 28, at 1.

[38] *Id.* at 14, 15.

[39] *Id.* at 18.

### B. *Texas's Abortion Restrictions Discourage Medical Professionals and Students Seeking Careers in Reproductive Health from Practicing in Texas*

Ensuring the availability of OB-GYN care in Texas is critically important because, between 2018 and 2020, Texas had the highest maternal mortality rate in the United States.[40] However, instead of seeking to attract qualified medical professionals to address this shortage, Texas's abortion restrictions and the threatened extrajudicial enforcement of them are worsening the deficit. Practicing OB-GYNs are reportedly leaving Texas for states where abortion remains legal.[41] *Amici* are also aware of reports from healthcare staffing firms that OB-GYN candidates are declining employment opportunities in states with abortion bans, like Texas, where OB-GYN care is already a scarce resource.[42] For example, one recruiter working to fill a single maternal-fetal medicine job in Texas reportedly received rejections from three separate candidates, all of whom "expressed fear they could be fined or lose their license for doing their jobs."[43] (Quotation omitted.) Another recruiter reported that some prospective OB-GYN candidates "won't even consider opportunities in states with new or pending abortion bans."[44]

Moreover, it is unlikely that Texas will be able to recruit a sufficient number of OB-GYNs from other states to meet the need for care in Texas, according to the Texas Department of Health

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[40] Centers for Disease Control and Prevention, *Maternal Deaths and Mortality Rates: For Each State, The District of Columbia, United States, 2018-2020* (last visited June 29, 2023) (257 deaths per 100,000 live births).

[41] *See* Ollstein, *Abortion Doctors' Post-*Roe *Dilemma*, *supra* note 26; *see also* Holley, *Texas Abortion Doctors Face a Difficult Choice*, *supra* note 24.

[42] *See* Texas Health and Human Servs., *Physician Supply and Demand Projections 2021-2032*, *supra* note 28, at 1-2.

[43] Rowland, *A Challenge for Antiabortion States: Doctors Reluctant to Work There*, THE WASHINGTON POST (Aug. 6, 2022).

[44] *Id.*

and Human Services.[45] Encouraging new OB-GYNs to relocate to Texas is critical in addressing Texas's OB-GYN shortage, particularly because, on average, 57.1 percent of medical residents ultimately practice in the state where they complete their residencies.[46] Texas's abortion statutes make this an exceedingly difficult proposition. In addition to concerns about criminal and civil liability based on the practice of evidence-based medicine, medical students and educators worry that, in states with abortion restrictions, OB-GYN residents will not receive the level of training and experience necessary to provide quality reproductive care to patients.[47]

As medically defined, abortion is a medical intervention provided to individuals who need to end the medical condition of pregnancy.[48] Abortion includes the administration of medication to women already experiencing a miscarriage to complete expulsion of pregnancy tissue, including an embryo or fetus.[49] Abortion includes the removal of an embryo, fetus, and potentially a uterus as the result of infection arising from the preterm premature rupture of membranes.[50] And an abortion is the necessary treatment in the event of uncontrolled bleeding from, for example, placental abruption or an ongoing miscarriage, even when fetal cardiac activity may still be detectable.[51] In these and many similar circumstances, abortion is—and has long been understood

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[45] Texas Health and Human Servs., *Texas Projections of Supply and Demand for Primary Care Physicians and Psychiatrists, 2017-2030*, at 7 (July 2018).

[46] Ass'n Am. Med. Colleges, *Report on Residencies, Executive Summary*, at 4 (Nov. 2021).

[47] *See, e.g.*, Hutchinson, *Post*-Roe*, Some Areas May Lose OB/GYNs If Medical Students Can't Get Training*, THE WASHINGTON POST (Sept. 2, 2022) ("Hutchinson, *Post*-Roe*, Some Areas May Lose*"); Brown, *Abortion Ruling Pits State Bans Against OB-GYN Training Rules*, BLOOMBERG LAW (June 27, 2022).

[48] ACOG, *FAQs, Abortion Care* (last updated Aug. 2022).

[49] *Id.*

[50] *See id.*

[51] *See id.*

as—a standard, essential component of emergency medical care. Such training is necessary to ensure that OB-GYNs have the skills to properly manage miscarriages and other pregnancy complications such as those identified here.[52] Indeed, the Accreditation Council for Graduate Medical Education ("ACGME") *requires* OB-GYN residency programs to provide access to abortion training and, in states that restrict abortion, requires that OB-GYN residents have access to such training in another state.[53] Coordinating out-of-state abortion training is already logistically complicated,[54] and it will become impossible if Defendants are allowed to penalize Texas's medical residents for obtaining this training out of state.

Recent data from the 2022-2023 residency application cycle shows that the total number of residency applications decreased nationwide since the *Dobbs* decision, with states that ban or severely restrict abortion seeing the greatest decreases in residency applications submitted by medical school graduates.[55] This is in contrast to the previous three application cycles, which saw *increases* in residency applications.[56] With respect to OB-GYN residencies specifically, the number of applicants in abortion-restricted states decreased by 10.5 percent, whereas applications in states where abortion is legal decreased by only 5.3 percent.[57] In contrast, the prior year, OB-GYN residency applications *increased* by approximately 4.5 percent across all states.[58] These

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[52] *See* Peachman, *Dobbs Decision Threatens Full Breadth of Ob-Gyn Training*, J. AM. MED. ASS'N (Nov. 1, 2022).

[53] ACGME, *Program Requirements for Graduate Medical Education in Obstetrics and Gynecology: Summary and Impact of Interim Requirement Revisions* (2022).

[54] *Id.*; Hutchinson, *Post-*Roe*, Some Areas May Lose*, *supra* note 47.

[55] Orgera et al., Ass'n Am. Med. Colleges, *Training Location Preferences of U.S. Medical School Graduates Post* Dobbs v. Jackson Women's Health Organization *Decision* (Apr. 13, 2023).

[56] *Id.*

[57] *Id.*

[58] *See id.*

post-*Dobbs* decreases in residency applications suggest that applicants "may be selectively reducing their [applications to] . . . states with more state-imposed restrictions on health care."[59] Similarly, a research team at Emory University surveyed 490 third- and fourth-year medical students throughout the country and across specialties regarding their residency application decisions.[60] The preliminary results showed that, for three-fourths of respondents, abortion access was "likely" or "very likely" to influence their decisions about where to complete their residency.[61] In sum, interpreting Texas's abortion statutes as covering abortion care provided outside of Texas will further discourage medical professionals and students from practicing and training in Texas to the detriment of all Texans in need of OB-GYN care.

## III. <u>The Lack of OB-GYN Care in Texas Hurts Rural, Minority, and Low-Income Texans the Most, Including Those Who Do Not Seek Abortions</u>

The worsening shortage of OB-GYNs in Texas is particularly troubling due to its likely impact on patients who are already experiencing worse pregnancy outcomes or are already disadvantaged by the health care system. For example, a Texas Department of Health and Human Services study found that, between 2018 and 2020, Black Texans were more than twice as likely as white Texans to die from pregnancy-related causes.[62] Maternal morbidity rates (defined by the CDC as "unexpected outcomes of labor and delivery that result in significant short- or long-term consequences to a woman's health") were higher for Texans without private-payer coverage for delivery and for Texans with a high-school education or lower.[63] Further highlighting the impact

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[59] *Id.*

[60] Pollard, *Medical Students Worry*, *supra* note 30.

[61] *Id.*

[62] Texas Health and Human Servs., *Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022*, App. E-1 (Dec. 2022).

[63] *Id.* at 10 n.10.

of the OB-GYN shortage, the report concluded that most of the pregnancy-related deaths of Texas residents included in the study were *preventable*, meaning that "there was at least some chance of averting the death by one or more feasible changes to the circumstances of the patient, provider, facility, systems, or community factors contributing to the death."[64]

The burden of this deficit in OB-GYN care also bears heavily on rural Texans. Fifty-seven percent of Texas physicians practice in Texas's five most populous counties, even though only 44 percent of Texas's population resides in those counties.[65] This trend applies across all medical specialties, including OB-GYNs. For example, the most recent available data demonstrates that OB-GYN density in urban counties (19.4 OB-GYNs per 100,000 female residents) is more than twice as high as that in rural counties (9.1 OB-GYNs per 100,000 female residents).[66] Due in large part to the shortage of medical professionals, hospitals in rural Texas are closing at an alarming rate: since 2010, twenty-seven rural hospitals have closed temporarily or permanently, and among the 158 remaining rural hospitals, only sixty-four offer labor and delivery services.[67]

*Amici* oppose the enforcement of abortion restrictions that will further reduce the availability of quality reproductive health care to already vulnerable populations.

[64] *Id.* at 8.

[65] N. Tex. Regional Extension Ctr., *The Physician Workforce in Texas*, at 3 (Apr. 2015).

[66] Texas Health and Human Servs., *Regional Analysis of Maternal and Infant*, *supra* note 34, at 22.

[67] Texas Organization of Rural & Community Hospitals (TORCH), *Ten Things to Know About Texas Rural Hospitals* (last visited June 30, 2023).

## IV. Applying Texas's Abortion Statutes to Abortions Obtained Outside of Texas Will Force Clinicians Who Treat Texas Patients Out of State to Make an Impossible Choice Between Upholding Their Ethical Obligations and Following the Law

The patient-physician relationship is critical to the provision of safe and quality medical care.[68] At the core of this relationship is the ability to counsel frankly and confidentially about important issues and concerns based on patients' best medical interests.[69] At times, a physician and patient together may conclude that an abortion serves the patient's best medical interests. The Texas abortion statutes intrude upon the patient-physician relationship by displacing the physician's and the patient's judgment in favor of the judgment of elected officials who have no medical training and who are unfamiliar with the specific circumstances of the case, even in states where the care obtained is perfectly legal. Applying Texas's abortion statutes to abortion care legally provided outside of Texas precludes physicians from providing essential care to patients.

A 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.[70] Patient autonomy revolves around self-determination, which, in turn, is safeguarded by the ethical concept of informed consent and its rigorous application to a patient's medical decisions.[71] The Texas abortion statutes deny patients the right to make their own choices about health care if they

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[68] ACOG, *Statement of Policy*, *Legislative Interference with Patient Care, Medical Decisions, and the Patient-Physician Relationship* (*amended and reaff'd* Aug. 2021) ("ACOG, *Legis. Policy Statement*"); ACOG, *Press Release: More Than 75 Health Care Organizations Release Joint Statement in Opposition to Legislative Interference* (July 7, 2022).

[69] *See* AMA, *Code of Medical Ethics Opinion 1.1.3, Patient Rights*.

[70] *See* ACOG, *Code of Professional Ethics*, at 1 (Dec. 2018) ("[R]espect for the right of individual patients to make their own choices about their health care (*autonomy*) is fundamental.").

[71] ACOG, Committee Opinion No. 819, *Informed Consent and Shared Decision Making in Obstetrics and Gynecology* (Feb. 2021); AMA, *Code of Medical Ethics Opinion 2.1.1, Informed Consent*.

decide to seek an abortion in a state where abortion is legal.[72] And they inhibit the ability of physicians to provide care in a manner that respects and safeguards their patients' autonomy.

A key principle of medical ethics is that patient welfare is paramount and must take precedence over a physician's own self-interest.[73] Texas's abortion statutes, and especially the extraterritorial application of such statutes, create an inherent conflict of interest: physicians, including those that provide care outside of Texas, are forced to choose between the patient's welfare and the ethical practice of medicine,[74] on the one hand, and their own self-interest in avoiding criminal prosecution, on the other. Applying Texas's abortion statutes to care provided outside of Texas in states where abortion is legal only deepens this conflict of interest.

Texas's abortion statutes also ask medical professionals to violate the cornerstone ethical principles of beneficence (the obligation to promote the wellbeing of others) and non-maleficence (the obligation to do no harm and cause no injury), which have been the cornerstones of the medical profession for nearly 2,500 years.[75] If a clinician concludes that an abortion is medically advisable, the principles of beneficence and non-maleficence require the physician to recommend that course of treatment. And if a patient decides that an abortion is the best course of action, those principles

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[72] Physician autonomy is paramount as well. Physicians must be free to provide the best possible medical care in accordance with their patients' wellbeing. *See* ACOG, *Code of Professional Ethics*, *supra* note 70, at 2 ("[T]he welfare of the patient must form the basis of all medical judgments.").

[73] *See id.*; AMA, *Code of Medical Ethics Opinion 1.1.1* ("[T]rust … gives rise to physicians' ethical responsibility to place patients' welfare above the physician's own self-interest or obligations to others, to use sound medical judgment on patients' behalf, and to advocate for their patients' welfare."); *see also* ACOG, *Legis. Policy Statement*, *supra* note 68.

[74] *Cf.* AMA, *Code of Medical Ethics Opinion 1.1.3, Patient Rights* ("Patients should be able to expect that their physicians will provide guidance about what they consider the optimal course of action for the patient based on the physician's objective professional judgment.").

[75] *See* Beauchamp & Childress, *Principles of Biomedical Ethics* (8th ed. 2019); ACOG, Committee Opinion No. 390, *Ethical Decision Making in Obstetrics and Gynecology* (Dec. 2007, *reaff'd* 2019).

require the physician to provide, or refer the patient for, that care. But Texas's abortion statutes prohibit physicians from providing that care in-state in all but extremely limited cases and seek to further restrict physicians by dictating what care can be performed across state lines, with often devastating consequences for Texas residents (*see infra* at Section III) and doctors that practice outside of Texas. This dilemma challenges the very core of the Hippocratic Oath: "Do no harm."

## CONCLUSION

For the foregoing reasons, this Court should deny Defendants' motions to dismiss and enjoin extraterritorial enforcement of Texas's abortion statutes.

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Respectfully submitted,

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*Application for Pro Hac Vice Pending

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13th day of July 2023, I electronically filed the foregoing **BRIEF OF *AMICI CURIAE* AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS, AMERICAN MEDICAL ASSOCIATION, ET AL. IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**, which served all counsel of record.

/s/ *Jane Webre*
Jane Webre