

No. 23-0629

In the Supreme Court of Texas

STATE OF TEXAS; KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS; TEXAS MEDICAL BOARD; AND STEPHEN BRINT CARLTON, IN HIS OFFICIAL CAPACITY AS EXECUTIVE DIRECTOR OF THE TEXAS MEDICAL BOARD,

Defendants-Appellants,

v.

AMANDA ZURAWSKI; LAUREN MILLER; LAUREN HALL; ANNA ZARGARIAN; ASHLEY BRANDT; KYLIE BEATON; JESSICA BERNARDO; SAMANTHA CASIANO; AUSTIN DENNARD, D.O.; TAYLOR EDWARDS; KIERSTEN HOGAN; LAUREN VAN VLEET; ELIZABETH WELLER; DAMLA KARSAN, M.D., ON BEHALF OF HERSELF AND HER PATIENTS; AND JUDY LEVISON, M.D., M.P.H., ON BEHALF OF HERSELF AND HER PATIENTS,

Plaintiffs-Appellees.

**On Petition for Review
353rd Judicial District**

BRIEF FOR NATIONAL COUNCIL OF JEWISH WOMEN; NATIONAL COUNCIL OF JEWISH WOMEN AUSTIN SECTION; NATIONAL COUNCIL OF JEWISH WOMEN DALLAS SECTION; NATIONAL COUNCIL OF JEWISH WOMEN HOUSTON SECTION; NATIONAL COUNCIL OF JEWISH WOMEN SAN ANTONIO SECTION; AMEINU; CATHOLICS FOR CHOICE; CENTRAL CONFERENCE OF AMERICAN RABBIS; HINDUS FOR HUMAN RIGHTS; JEWISH COUNCIL FOR PUBLIC AFFAIRS; JEWISH ORTHODOX FEMINIST ALLIANCE; MEN OF REFORM JUDAISM; MUSLIMS FOR PROGRESSIVE VALUES; THE RABBINICAL ASSEMBLY;

RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE; SACRED –
SPIRITUAL ALLIANCE OF COMMUNITIES FOR REPRODUCTIVE
DIGNITY; SADHANA: COALITION OF PROGRESSIVE HINDUS;
TEXAS IMPACT; TRUAH: THE RABBINIC CALL FOR HUMAN
RIGHTS; UNION FOR REFORM JUDAISM; WOMEN OF REFORM
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STATEMENT OF IDENTITY AND INTEREST OF AMICI

Amici curiae are organizations representing diverse religious traditions that affirm a pregnant person’s authority to decide whether to access abortion.¹ The National Council of Jewish Women (“NCJW”) is a grassroots organization of volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, amici NCJW, NCJW Austin Section, NCJW Dallas Section, NCJW Houston Section, and NCJW San Antonio Section strive for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms, including access to safe and legal abortion, medically accurate information, access to contraception, and the elimination of obstacles that limit reproductive freedom. The additional amici are faith-based organizations that espouse a wide range of religious traditions and beliefs:

- Ameinu
- Catholics for Choice

¹ Although NCJW recognizes that the capacity for pregnancy is not unique to women, many religious traditions refer to pregnant people as pregnant women. When addressing the positions of specific religious traditions, this brief does the same.

- Central Conference of American Rabbis
- Hindus for Human Rights
- Jewish Council for Public Affairs
- Jewish Orthodox Feminist Alliance
- Men of Reform Judaism
- Muslims for Progressive Values
- The Rabbinical Assembly
- Religious Coalition for Reproductive Choice
- SACReD – Spiritual Alliance of Communities for Reproductive Dignity
- Sadhana: Coalition of Progressive Hindus
- Texas Impact
- T’ruah: The Rabbinic Call for Human Rights
- Union for Reform Judaism
- Women of Reform Judaism
- Women’s Rabbinic Network

SUMMARY OF ARGUMENT

By denying abortion care to Texans facing pregnancies that threaten their health or lives, Texas law denies people the ability to make personal health decisions consistent with their faith and prevents their physicians from using their best medical judgment in providing care.

While amici's faiths espouse diverse views on when personhood is acquired, they all affirm a pregnant person's moral authority to decide whether and under what circumstances to access abortion. That authority includes the ability to access abortion based on threats to the pregnant person's life or health, including their future fertility, or based on fetal conditions incompatible with life. Religious traditions thus affirmatively support abortion access for pregnant people with medical conditions that threaten their health or lives, as well as physician discretion to determine when such conditions require treatment with abortion care. Legal deprivations of Texans' ability to receive abortion care when their health and religious beliefs require it conflict with the Texas Constitution's guarantees of fundamental and equal rights,

including the rights to religious freedom, life, liberty, and equality under the law.

ARGUMENT

Amici seek to highlight three important religious issues implicated by Texas's abortion laws. *First*, amici's religious beliefs and traditions establish that a pregnant person has the moral right to decide whether to continue a pregnancy that threatens their life or health. *Second*, the denial of medically necessary abortion care under Texas law infringes on the various religious beliefs of amici. *Finally*, amici's faiths emphasize the moral urgency of abortion access for people in marginalized communities, who are disproportionately impacted by denial of medically necessary abortion care.

I. Religious Traditions Affirmatively Support A Pregnant Person's Moral Authority to Access Medically Necessary Abortion Care.

While amici's faiths offer diverse perspectives on when life begins and when personhood is acquired, they all affirm a pregnant person's moral prerogative to determine whether and when to access abortion, in accordance with their faith. Under these religious traditions, abortion is permissible and even required under certain circumstances when

pregnancy poses a threat to the pregnant person’s life or health—including their ability to bear children in future.

A. Religious traditions espouse diverse views on when personhood is acquired.

Religious traditions adopt a range of views on when personhood is acquired. As set forth below, Texas’s statutory scheme around abortion preferences one view of the issue at the expense of all other religious and theological perspectives.

Two abortion bans are in effect in Texas: (1) the Human Life Protection Act, Tex. Health & Safety Code §§ 170A.001–.007 (“HLP A”); and (2) the Texas Heartbeat Act, *id.* §§ 171.201–.212 (“S.B. 8”). HLP A bars any person from “knowingly perform[ing], induc[ing], or attempt[ing] an abortion” at any point in a pregnancy and imposes civil, criminal, and professional penalties for violations. Tex. Health & Safety Code §§ 170A.002(a), 170A.004–007. S.B.8 bars physicians from knowingly “perform[ing]” or “induc[ing]” an abortion after detection of embryonic or fetal cardiac activity, or approximately six weeks, and authorizes enforcement through “private civil actions” requesting a minimum of \$10,000 per abortion in addition to injunctive relief. *Id.* §§

-171.204(a), 171.207–08. The only exception to both bans is an abortion performed by a licensed physician in response to “a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced” (the “Medical Exceptions”). *See id.* §§ - 170A.002(b)(2), 171.002(3), 171.205(a).²

HLPAs and S.B. 8 preference one particular religious view about personhood found in some—but far from all—Christian traditions: the view that conception marks the creation of a second, independent person.³ Both enactments are framed as providing legal protection to “unborn child[ren]” with independent personhood. Tex. Health & Safety Code § 170A.001(3); Tex. Health & Safety Code § 171.201(7).

² The Texas abortion ban at issue in *Roe v. Wade* also contained an exception for abortions performed to save the life of the pregnant person. *See* 410 U.S. 113, 117–18 (1973). The abortion ban was declared unconstitutional in 1973, and the Fifth Circuit later held that the ban had been impliedly repealed. *Id.*; *McCorvey v. Hill*, 385 F.3d 846, 849 (5th Cir. 2004).

³ *See* Jack Jenkins, *Texas abortion law has supporters and opponents among religious groups*, The Washington Post (Sept. 3, 2021), https://www.washingtonpost.com/religion/texas-abortion-religious-reaction/2021/09/03/f51268c2-0cb9-11ec-9781-07796ffb56fe_story.html.

State Senator Bryan Hughes, S.B. 8's author, described the bill as protecting "innocent human life" and stated that when a person becomes pregnant, there are "two human beings. A little baby and the mother."⁴

First, this view is not shared even by all Christian traditions. The Presbyterian Church, Lutheran Church, and United Church of Christ have declined to take a formal position on when personhood is acquired.⁵ Although the Church of Jesus Christ of Latter-Day Saints, or LDS Church, also has declined to take an official stance on the precise timing of the beginning of life, some LDS Church leaders have espoused the view that acquisition of personhood occurs at the moment of first breath, not at conception.⁶ Catholics' view on the timing of the

⁴ CBS 11, *State Sen. Bryan Hughes Defends Texas Abortion Law He Authored As Legal Challenges Mount*, CBS News (Sept. 28, 2021), <https://www.cbsnews.com/texas/news/state-sen-bryan-hughes-texas-abortion-law-authored-legal-challenges/>.

⁵ See Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>; Evangelical Lutheran Church in America, *Social Statement on Abortion* at 1, 3 n.2 (1991), <https://tinyurl.com/mr3yxpxp>; United Church of Christ, *Statement on Reproductive Health and Justice*, <https://tinyurl.com/yy97zyff>.

⁶ Peggy Fletcher-Stack, *Surprise! The LDS Church can be seen as more 'pro-choice' than 'pro-life' on abortion. Here's why*, Salt Lake Tribune (June 1, 2019), <https://www.sltrib.com/religion/2019/06/01/surprise-lds-church-can/>.

acquisition of personhood, traditionally referred to as “ensoulment,” has varied over time and has included: (i) 40 to 80 days after conception; (ii) the point of “quickening,” when the fetus first moves in the womb, which is typically around 18 to 20 weeks; and (iii) at or near the time of childbirth.⁷ Some Catholic thinkers have concluded that there is no defined time of ensoulment at all.⁸

Judaism has an entirely different framework for when personhood is acquired. Consistent with the Jewish view that “we enter life in stages and leave in stages,” Jewish law teaches that the transition from fetus to person occurs in multiple stages culminating in birth, the point at which personhood is acquired.⁹ The Talmud instructs that the fetus is “mere fluid” until “the fortieth day,” modernly understood as 40 days

⁷ Anne Stensvold, *A History of Pregnancy in Christianity: From Original Sin to Contemporary Abortion Debates* at 45–46, 70 (2015); Elissa Strauss, *When Does Life Begin? It’s Not So Simple*, Slate (Apr. 4, 2017), <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html>; St. Thomas Aquinas, *Summa Contra Gentiles* 2.88–89; St. Thomas Aquinas, *Summa Theologiae* 1.118.

⁸ See Strauss, *When Does Life Begin?*, *supra* note 7.

⁹ See *id.* (quoting Rabbi Elliot Dorff, bioethicist and professor of Jewish theology at the American Jewish University in California).

from conception or approximately seven to eight weeks of gestation.¹⁰

After this point, the fetus is considered a physical part of a pregnant woman's body, but not a separate being/life.¹¹ It is not until the onset of labor and childbirth, once the head has emerged and the baby has breathed outside air, that personhood is acquired.¹²

From the Islamic perspective, “there is no universally agreed-upon moment when a fetus becomes a person.”¹³ A predominant view, however, is that a fetus acquires personhood 120 days from conception, or approximately 19 to 20 weeks of gestation.¹⁴

In short, there is no uniform religious perspective on when the acquisition of personhood occurs.

¹⁰ Talmud Yevamot 69b, <https://www.sefaria.org/sheets/234926.8>; Talmud Gittin 23b:9, <https://www.sefaria.org/Gittin.23b.9>.

¹¹ *Id.*

¹² Mishnah Ohalot 7:6, https://www.sefaria.org/Mishnah_Oholot.7.6; National Council of Jewish Women, *Abortion and Jewish Values Toolkit* at 16 (2020), <https://www.ncjw.org/act/action-resources/jewish-values-and-abortion-toolkit>.

¹³ Strauss, *When Does Life Begin?*, *supra* note 7.

¹⁴ *See, e.g.*, Mohammad A. Albar, *Induced Abortion From An Islamic Perspective: Is It Criminal Or Just Elective?*, 8 J. Family & Cmty. Med. 25, 29–32 (2001).

B. Religious traditions affirm a pregnant person’s authority to decide whether and under what circumstances to access abortion care.

A broad range of religious traditions affirm the moral prerogative of a pregnant person to make their own decisions about pregnancy, in accordance with their faith. For many pregnant people, seeking the guidance of their faith or faith leaders in addition to their doctors is a vital part of their decision-making around abortion. And many major religions further affirm that abortion is a moral choice under certain circumstances, including danger to the pregnant person’s life or health, with nearly every faith tradition supporting abortion care when necessary to save a pregnant person’s life.

According to multiple Protestant denominations, every pregnant woman is a moral agent with both the capacity and the authority to choose what reproductive care to obtain. As the Presbyterian Church teaches, “[h]umans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a

pregnancy.”¹⁵ The United Church of Christ believes that “[e]very woman must have the freedom of choice to follow her personal religious and moral convictions concerning the completion or termination of her pregnancy.”¹⁶ The Episcopal Church of America asserts that pregnant people “should be able to access abortion services and birth control with no restriction on movement, autonomy, type, or timing.”¹⁷ In the tradition of the Disciples of Christ, “the place of decision making on abortion [is] not with public legislators, but with the individuals involved with the pregnancy . . . on the basis of ethical and moral grounds.”¹⁸ And the Unitarian Universalist Association takes the position that “the personal right to choose in regard to contraception

¹⁵ Minutes of the 217th General Assembly of the Presbyterian Church (U.S.A.) at 905 (2006), https://www.pcusa.org/site_media/media/uploads/oga/publications/journal2006.pdf.

¹⁶ Thirteenth General Synod of the United Church of Christ, *Resolution on Freedom of Choice*, 81-GS-60 at 10 (1981), <https://www.uccfiles.com/pdf/GS-Resolutions-Freedom-of-Choice.pdf>.

¹⁷ Jeff Walton, *‘No Restriction’ on Abortion, Episcopalians Resolve at General Convention*, Anglican Ink (July 15, 2022), <https://anglican.ink/2022/07/15/no-restriction-on-abortion-episcopalians-resolve-at-general-convention/>.

¹⁸ Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. on Labor and Human Resources, 101st Cong. 237 (1990) (Statement of John O. Humbert, General Minister and President, Christian Church (Disciples of Christ) in the U.S.A. and Canada) (citing General Assembly Resolutions of the Christian Church (Disciples of Christ) Resolution S9854 (1989) and 7524 (1975)).

and abortion” is a critical aspect of the “right of individual conscience” and the “inherent worth and dignity of every person.”¹⁹ Other Protestant denominations embrace similar views.²⁰

Further, Protestant denominations recognize that a variety of circumstances may lead a pregnant person to exercise their prerogative to access abortion, including where pregnancy threatens the person’s life or health. The Presbyterian tradition affirms the morality of abortion care where pregnancy poses a great risk to the pregnant person’s health, as well as in cases of severe fetal anomaly.²¹ The Evangelical Lutheran Church espouses the view that “[a]n abortion is morally responsible in those cases in which continuation of a pregnancy presents a clear threat to the physical life of the woman,” as well as where fetal abnormality will lead to “severe suffering and very early

¹⁹ Unitarian Universalist Association, *General Resolution on the Right to Choose* (1987), <https://www.uua.org/action/statements/right-choose>.

²⁰ *See, e.g.*, The Religious Freedom Restoration Act: Hearing on S. 2969 Before the S. Comm. on the Judiciary, 102nd Cong. 226–27 (1992) (containing the statement of the American Friends Service Committee “supporting a woman’s right to follow her own conscience concerning child-bearing, abortion and sterilization” and the statement of the United Methodist Church, Women’s Division that “all should be free to express and practice their own moral judgment on the matter of abortion”).

²¹ *See* Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, *supra* note 5.

death of an infant.”²² The United Methodist Church similarly affirms its support for the ability of pregnant women to obtain abortion in cases of threats to their lives or of fetal abnormalities.²³ The Episcopal Church has stressed that “pregnancy and childbirth are dangerous undertakings that risk permanent disability and death for those who bear children,” concluding that “access to abortion is a key element in preserving the health, independence, and autonomy of those who can bear children.”²⁴ The Unitarian Universalist Association has spoken out against efforts to limit access to abortion in light of its recognition of the pain, suffering, and loss of life caused when abortion is criminalized or otherwise rendered inaccessible.²⁵ And leaders of the United Church

²² Evangelical Lutheran Church in America, *Social Statement on Abortion*, *supra* note 5, at 7.

²³ United Method Church, *Revised Social Principles* at 28 (2024), <https://www.umcjustice.org/documents/124>.

²⁴ 80th General Convention of the Episcopal Church, Resolution #D083 (2022), <https://2022.vbinder.net/resolutions/326?house>.

²⁵ Unitarian Universalist Association, *General Resolution on the Right to Choose*, *supra* note 19.

of Christ have stated their unequivocal belief that abortion care is healthcare.²⁶

Catholics also have diverse views on the moral propriety of obtaining an abortion and when abortion may be permissible. Although opposition to abortion is the Catholic Church's official stance, most American Catholics believe that deciding to have an abortion can be morally acceptable and that abortion should be legal in all or most circumstances.²⁷ And although the Catholic Church does not condone abortions per se, it has articulated support for treatments that save a pregnant person's life even if such treatments have the effect of ending

²⁶ Renee DeLuca, *Abortion is healthcare, General Synod says*, United Church of Christ (July 10, 2023), <https://www.ucc.org/abortion-is-healthcare-general-synod-says/>.

²⁷ Belden Russonello Strategists, *2016 Survey of Catholic Likely Voters* at 5 (Oct. 2016), <https://www.catholicsforchoice.org/wp-content/uploads/2016/10/2016-Catholic-Voter-Poll.pdf>; Dalia Fahmy, *8 key findings about Catholics and abortion*, Pew Research Center (Oct. 20, 2020), <https://www.pewresearch.org/short-reads/2020/10/20/8-key-findings-about-catholics-and-abortion>.

a pregnancy.²⁸ American Catholics also obtain abortions at roughly the same rate as non-Catholics.²⁹

In the Jewish tradition, a pregnant person’s life and health are the paramount considerations at any stage of pregnancy. Jewish teachings are clear that abortion is not only permitted but also required where the life of a pregnant woman is at risk.³⁰ The Reform, Reconstructionist, and Conservative Jewish movements have stated that healthcare includes abortion care.³¹ They also have denounced

²⁸ Matthew A.C. Newsome, *Abortion and Double Effect*, Catholic Answers Magazine (Sept. 1, 2006), <https://www.catholic.com/magazine/print-edition/abortion-and-double-effect>.

²⁹ Jenna Jerman, Rachel K. Jones & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008* at 1, 6–7, Guttmacher Institute (May 2016), <https://www.guttmacher.org/report/characteristics-us-abortion-patients-2014> at 1, 6–7; *see also* Guttmacher Institute, *Induced Abortion in the United States* (Sept. 2019), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states>.

³⁰ Mishnah Ohalot 7:6, *supra* note 12; National Council of Jewish Women, *Abortion and Jewish Values Toolkit*, *supra* note 12, at 16; Sheila Katz & Danya Ruttenberg, *The Jewish Case for Abortion Rights*, Newsweek (June 29, 2020), <https://www.newsweek.com/abortion-jewish-right-scotus-june-medical-services-louisianaconstitution-1514214>.

³¹ Central Conference of American Rabbis (“CCAR”) (Reform rabbinic leadership organization), *Resolution Adopted by the CCAR On Abortion and the Hyde Amendment at the 95th Annual Convention of the Central Conference of American Rabbis* (1984), <https://www.ccarnet.org/ccar-resolutions/abortion-1984>; Reconstructionist Rabbinical Association, *Resolution on Abortion Rights* (1981), <https://therra.org/resolutions/abortion-rights.pdf>; Rabbinical Assembly

policies with the effect of forcing people to continue pregnancies in the face of threats to their physical and psychological health.³²

In Islam, many scholars believe that abortion is permissible on certain grounds, including health concerns for a pregnant woman or her fetus, up to 120 days from conception, and beyond this point if the woman's life is at risk.³³ Islamic thinkers have connected a person's decision to have an abortion to the Islamic principles of *khilafah*, or individual moral agency; *hurma*, or personal boundaries as reflected in the principle of bodily autonomy; and *ridha*, or choice and consent.³⁴ Consistent with these views, a recent survey confirmed that most American Muslims support legal abortion in most or all cases.³⁵

(Conservative rabbinic leadership organization), *Resolution on Reproductive Freedom* (2007), <https://tinyurl.com/22n7mdyc>.

³² *See id.*

³³ Kalpana Jain, *There is no one Islamic interpretation on ethics of abortion, but the belief in God's mercy and compassion is a crucial part of any consideration*, The Conversation (July 8, 2022), <https://tinyurl.com/yax28vx2>.

³⁴ HEART et al., *Roe v. Wade Statement* at 2 (June 24, 2022), <https://hearttogrow.org/wp-content/uploads/2022/07/Roe-v-Wade-Statement-4.pdf>.

³⁵ Public Religion Research Institute, *The State of Abortion and Contraception Attitudes in All 50 States* (Aug. 13, 2019), <https://www.prri.org/research/legal-in-most-cases-the-impact-of-the-abortion-debate-in-2019-america/>.

Although Buddhists and Hindus hold diverse perspectives on abortion, in the view of the Buddhist Churches of America, “[i]t is the woman carrying the fetus; and no one else, who must in the end make this most difficult decision.”³⁶ The Hindu religion includes a variety of views on abortion, such the belief that the “final decision will be based on a long series of choices made by the woman on her lifestyle, morals, and values,” as well as the belief that abortion is acceptable where it concerns the woman’s life or health.³⁷ Consistent with these views, most Buddhists and most Hindus in the United States believe abortion should be legal in all or most cases.³⁸

Many faith traditions also teach that children are a sacred blessing, promoting and celebrating the choice to have them. Denial of fertility-preserving abortion care deprives people of the ability to have

³⁶ Buddhist Churches of America Social Issues Committee, *A Shin Buddhist Stance on Abortion* at 6, Buddhist Peace Fellowship Newsletter (July 1984).

³⁷ Hinduism Today, *Hindus in America Speak Out On Abortion Issues* (Sept. 1, 1985), <https://tinyurl.com/sxbrz863>.

³⁸ Pew Research Center, *Views About Abortion Among Buddhists* (2014), <https://www.pewresearch.org/religion/religious-landscape-study/religious-tradition/buddhist/views-about-abortion/>; Pew Research Center, *Views About Abortion Among Hindus* (2014), <https://www.pewresearch.org/religion/religious-landscape-study/religious-tradition/hindu/views-about-abortion/>.

children as encouraged—and, according to some religious views, even required—by their religions.³⁹ A common perspective on childbearing in various Christian traditions is found in the position in the Bible that “children are a gift from the Lord; they are a reward from him.”⁴⁰ In both the Christian and Jewish traditions, the directive to be “fruitful and multiply” is a central theme of scripture, and many Jews believe that having children is a fundamental religious obligation.⁴¹ Islamic teachings similarly place a high premium on fertility and the building of families.⁴² Denial of abortion care where necessary to preserve a person’s ability to have children in future bars people from living in accordance with these widely held religious beliefs.

³⁹ See National Council of Jewish Women, *Abortion and Jewish Values Toolkit*, *supra* note 12, at 19; Complaint for Declaratory Relief ¶ 39, *Sobel v. Cameron*, No. 3:22-cv-570 (W.D. Ky. Dec. 13, 2022) (challenge by Jewish plaintiffs unable to have children without in vitro fertilization to Kentucky’s abortion ban on the ground that it limited the plaintiffs’ access to IVF and therefore forced them to abandon their religious belief in having more children).

⁴⁰ Psalm 127:3.

⁴¹ Genesis 1:28, 9:1, 9:7, 35:11; see Rabbi Lori Koffman, *Jewish Perspectives on Reproductive Realities* at 1, National Council of Jewish Women, <https://www.ncjw.org/wp-content/uploads/2018/02/Jewish-Perspective-on-Reproductive-Realities-FORMATTED11.pdf>.

⁴² Mohammed Ali Al-Bar & Hassan Chamsi-Pasha, *Assisted Reproductive Technology: Islamic Perspective*, in *Contemporary Bioethics: Islamic Perspective* 173–74 (2015).

Diverse faith traditions therefore affirm the moral urgency of protecting pregnant people’s autonomy; their lives; and their health, including their fertility, in particular by protecting their access to abortion when medically necessary.

II. The Denial of Medically Necessary Abortion Care Infringes On Individuals’ Right to Live Lives Consistent With Their Religious Beliefs.

Under Texas law, when physicians provide abortion care that the state does not deem medically necessary, physicians risk revocation of their medical licenses, fines of hundreds of thousands of dollars, and up to 99 years in prison. Tex. Health & Safety Code § 170A.004–007; Tex. Penal Code § 12.32. Fearful of such staggering liability and uncertain as to when the medical exceptions apply, some physicians are acting against their best medical judgment and waiting until patients are on “on death’s door” before providing pregnancy-related care involving abortion.⁴³ At the same time as Texas’s statutory scheme puts physicians’ liberty at risk, it ties physicians’ hands and forces them to delay or deny medically necessary abortion care. Texas’s statutory

⁴³ Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans – Texas Senate Bill 8*, 387 N. Engl. J. Med. 388, 388–89 (2022).

scheme therefore threatens pregnant people’s religious freedom; the lives, liberty, and property of pregnant people and physicians; and the equality of pregnant people, in violation of the Texas Constitution.

First, denying pregnant people the ability to receive medical necessary abortions conflicts with the Texas Constitution’s fundamental right to religious freedom. In relevant part, Article I, § 6 provides that “[n]o human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship.” For a pregnant person in medical crisis who looks to their faith in deciding whether to continue her pregnancy, their decision-making squarely is an exercise of their rights of conscience in a matter of religion. Policies that strip Texans of authority over their body, health, fertility, and life by denying abortion care thus infringe on their constitutionally protected religious rights.

Second, Texas’s statutory scheme conflicts with Article I, § 19’s guarantee against deprivations of life, liberty, and property. The abortion bans’ civil, criminal, and professional penalties spell disaster for Texas-based physicians whose good-faith decisions to provide

abortion care are later second-guessed by prosecutors, juries, or disciplinary boards. In turn, these threats to physicians' rights to liberty and property under Article I, § 19 prevent pregnant people from accessing the abortion care that both their medical circumstances and their personal consciences require. By forcing patients facing medical crises to risk their health, fertility, and lives by forgoing abortion, regardless of what their religious beliefs would guide them to do, Texas law violates the fundamental rights assured by Article I, § 19 of the Texas Constitution.

Third, patients whose religious beliefs motivate them to seek abortion care when pregnancy threatens their lives or health are deprived of equality under the law. The Texas Constitution assures “equal rights” under the law and provides that “[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin.” Tex. Const. art. I, §§ 3, 3a. In several faith traditions, views on the morality of abortion care are linked to the value these traditions place on the health and lives of women. In conflict with those religious traditions, Texas’s laws deny medically necessary care only to a “woman known to be pregnant,” while permitting others to access

medically necessary care. In doing so, these laws infringe on individuals' ability to live by their religious beliefs and violate the Texas Constitution's guarantee of equality regardless of sex. To the extent that the laws are rooted in gender stereotypes holding that a woman's "proper" role is to engage in childbirth and motherhood, the laws also infringe on individuals' religious conceptions of women as moral agents with the prerogative to make their own decisions about pregnancy and family formation. Many religious traditions teach that to have a child can be a sacred choice, but that it must be just that: a choice.⁴⁴ Texas law deprives Texans of the ability to rely on their religious beliefs in making deeply personal decisions about whether to continue their pregnancies in the face of medical crisis.

III. Religious Traditions Affirm The Moral Urgency Of Abortion Access For People In Marginalized Communities, Who Are Disproportionately Impacted By Denial of Medically Necessary Abortion Care.

Many religious traditions proclaim the importance of serving and supporting vulnerable and marginalized communities. These traditions

⁴⁴ Pew Research Center, *Pro-Choice Does Not Mean Pro-Abortion: An Argument for Abortion Rights Featuring the Rev. Carlton Veazey* (Sept. 30, 2008), <https://tinyurl.com/35x72ycj>.

teach that people of faith are called to serve, uplift, and advocate on behalf of those who are poor and those who historically have been subject to disenfranchisement and discrimination, including people of color, people with disabilities, those facing intimate partner violence, and LGBTQ+ individuals. And numerous religions affirm that this call to action includes ensuring full and equal access to abortion care for individuals in marginalized groups, who are often more likely to face both pregnancy-related threats to their health and disastrous consequences stemming from policies denying abortion care.

For example, leaders from the Baptist, Methodist, and Episcopal traditions have articulated their support for a “faith-based commitment to sexual and reproductive rights,” including access to abortion, regardless of “sex, gender, color, age, bodily condition, marital status, or sexual orientation.”⁴⁵ The United Church of Christ has adopted resolutions in support of ensuring that “women with limited financial means” can access the “full range of reproductive health services,” emphasizing that “[w]hat is legally available to women must be

⁴⁵ Religious Institute on Sexual Morality, Justice, and Healing, *A Time to Every Purpose* at 7–9 (Dec. 2008), <https://tinyurl.com/4654vtkb>.

accessible to all women.”⁴⁶ The Unitarian Universalist Association stresses the importance of “everyone’s freedom of reproductive choice . . . especially the most vulnerable and marginalized” and denounces attempts “to restrict access to birth control and abortion by overriding individual decisions of conscience,” which “often result in depriving poor women of their right to medical care.”⁴⁷

Many Catholics believe that protecting the ability of poor and vulnerable women to choose whether to end their pregnancies is a natural and necessary application of Catholic social justice principles.⁴⁸ Similarly, many Jews expressly link the command from the Torah, *Tzedek, Tzedek tirdof*—or *Justice, justice you shall pursue*—to a religious obligation to advocate for reproductive care access for *all*

⁴⁶ United Church of Christ, *Statement on Reproductive Health and Justice*, *supra* note 5; *see also* Connecticut Conference of the United Church of Christ, *Resolution: Freedom of Choice Concerning Abortion* (1971), <https://tinyurl.com/yywkertp> (stating that laws that “severely limit[] access to safe abortions . . . have the effect of discriminating against the poor” and are therefore “neither just nor enforceable”).

⁴⁷ Unitarian Universalist Association, *General Resolution on the Right to Choose*, *supra* note 19.

⁴⁸ *See* Catholics for Choice, *Social Justice*, <https://www.catholicsforchoice.org/issues/social-justice/>; Catholics for Choice, *Reproductive Equity*, <https://www.catholicsforchoice.org/issues/reproductive-choice/>.

women.⁴⁹ And many Muslims believe that the religious obligation “to defend and uplift the rights of those among us who are most oppressed” includes the obligation to champion access to reproductive care for members of marginalized communities, including “Black people, indigenous people, Latinx people, disabled people, queer people, and people with low socioeconomic status as a result of economic and political disenfranchisement.”

Members of these vulnerable communities who hold amici’s religious beliefs must have the freedom to act on their beliefs in making their healthcare decisions. But Texas’s statutory scheme around abortion has exacted a devastating toll on people from precisely these communities, curtailing their ability to seek abortion care in consultation with their faiths. Today, pregnant Americans are fifty percent likelier than their mothers to die in childbirth, but this burden is not evenly distributed.⁵⁰ As maternal morbidity and mortality rates

⁴⁹ Rabbi Alex Kress, *Tzedek Tzedek Tirdof in Context*, Sefaria, <https://www.sefaria.org/sheets/76024>; National Council of Jewish Women, *Abortion and Jewish Values Toolkit*, *supra* note 12, at 5.

⁵⁰ National Council of Jewish Women, *Abortion and Jewish Values Toolkit*, *supra* note 12, at 36.

continue to rise in Texas, where a staggering nine out of ten documented pregnancy-related deaths are preventable, Black women have borne the brunt of the maternal health crisis.⁵¹ Non-Hispanic Black women are considerably more likely than non-Hispanic white women to suffer from preexisting conditions that pregnancy may exacerbate and obstetric complications resulting from pregnancy.⁵² They are also twice as likely as white women and four times as likely as Hispanic women to die from pregnancy-related causes.⁵³

The poverty rate in Texas also is substantially higher than the national average, with Black women again disproportionately impacted.⁵⁴ And because most abortion patients are poor or low-income—75% are low-income, and 49% live below the federal poverty line—many cannot afford to pay for out-of-state travel and childcare, or

⁵¹ Texas Department of State Health Services, *Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022* at 8 (Dec. 2022), <https://tinyurl.com/3fmxantu>.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ United States Census Bureau, *QuickFacts: Texas* (2022), <https://www.census.gov/quickfacts/fact/table/TX/RHI125222>; United States Census Bureau, *Gender and Poverty in Texas* (2022), <https://data.census.gov/table?q=gender+poverty+in+texas>.

to miss out on workdays and lost wages, when abortion care in their home state becomes inaccessible.⁵⁵ Where people living on low incomes face medical conditions requiring prompt abortion care, the consequences of state limitations on access to that care are especially profound. Texas's statutory scheme restricting abortion access thus disproportionately impacts the most vulnerable Texans' ability to make reproductive health determinations according to their religious beliefs.

⁵⁵ Selena Simmons-Duffin & Shelly Cheng, *How many miles do you have to travel to get abortion care? One professor maps it*, NPR (June 21, 2023), <https://www.npr.org/sections/health-shots/2023/06/21/1183248911/abortion-access-distance-to-care-travel-miles>; Guttmacher Institute, *Abortion patients are disproportionately poor and low income* (May 19, 2016), <https://www.guttmacher.org/infographic/2016/abortion-patients-are-disproportionately-poor-and-low-income>.

CONCLUSION

The denial of medically necessary abortion care robs Texans of the ability to make deeply personal decisions about their health according to their religious convictions. This Court should affirm the trial court's order.

Dated: November 21, 2023

Respectfully submitted,

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I hereby certify that a true and correct copy of the foregoing instrument was forwarded to all counsel of record by electronic filing in accordance with the Texas Rules of Appellate Procedure on November 21, 2023.

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