



ORIGINAL

FILED
SUPREME COURT
STATE OF OKLAHOMA

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

MAY 26 2022

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE,
on behalf of itself and its members, et al.,

Petitioners,

v.

THE STATE OF OKLAHOMA, et al.,

Respondents.

JOHN D. HADDEN
CLERK

CASE NO. PR-120376

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

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COME NOW, Oklahoma Call for Reproductive Justice, Tulsa Women's Reproductive Clinic, LLC, Alan Braid, M.D., Comprehensive Health of Planned Parenthood Great Plains, Inc., and Planned Parenthood of Arkansas & Eastern Oklahoma, Petitioners herein, by and through their attorneys, and request that this Honorable Court assume original jurisdiction to issue declaratory and injunctive relief and/or a writ of prohibition barring Respondents from taking any action to implement Oklahoma House Bill 4327, Reg. Sess. (2022) ("H.B. 4327") in any way, including by preventing the state court clerks from docketing lawsuits brought under H.B. 4327 (attached as Ex. 6 in Petitioners' Second Supplemental Appendix).¹ Petitioners file this First Supplemental Application because H.B. 4327 is largely similar to Senate Bill 1503 ("S.B. 1503") already challenged in this case, and to provide facts regarding events that have taken place since Petitioners filed their original Application on April 28, 2022. Petitioners incorporate by reference the entirety of their original Application. In support of these requests, Petitioners allege the following:

RELEVANT FACTS

1. On May 19, 2022, the Oklahoma Legislature passed H.B. 4327. It became effective immediately when it was signed by the Governor. H.B. 4327 has completely halted abortion services in Oklahoma. As a total ban, H.B. 4327 makes Oklahoma the first state in the United States to ban abortion entirely even while *Roe v. Wade* stands.

2. H.B. 4327 is substantially similar to S.B. 1503. Like S.B. 1503, H.B. 4327 is modeled after Texas Senate Bill 8, 87th Leg., Reg. Sess. (Tex. 2021) ("S.B. 8"), which for more than 8 months has prevented almost all abortions in Texas. Like S.B. 1503, H.B. 4327 is

¹ All Respondents have received notice of this proceeding. Sup. Ct. Rule 1.191(e).

a ban on abortion enforced through private, civil lawsuits. Unlike S.B. 1503, however, H.B. 4327 bans *all abortion in Oklahoma*.

3. Like S.B. 1503, H.B. 4327 attempts to bar the state courts from granting *any declaratory or injunctive remedy* against not only the State itself but also all its subdivisions, employees, and officers, as well as all would-be enforcers.

4. The only two substantive differences between H.B. 4327 and S.B. 1503 are that H.B. 4327 is a total ban on abortion, and H.B. 4327 does not include a fee shifting provision affecting all litigation against abortion restrictions like S.B. 1503. *See* S.B. 1503 § 13.

5. H.B. 4327 offends numerous guarantees of the Oklahoma Constitution and threatens grave harm to Petitioners and the Oklahomans they represent.

I. Parties

A. Petitioners

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

7. Tulsa Women's is an abortion facility licensed by the Oklahoma State Department of Health located in Tulsa, Oklahoma and has been offering abortion services since 1974. Tulsa Women's brings claims on behalf of itself, its physicians, its staff, and its patients. Alan Braid, M.D. is a board-certified OB/GYN and is the principal owner of Tulsa Women's. He took ownership of the clinic in 2018 after the previous owner retired to ensure that it continued to provide Oklahomans with high quality abortion care. Dr. Braid also provides abortions at Tulsa Women's. Dr. Braid sues on behalf of himself and his patients.

8. Comprehensive Health of Planned Parenthood Great Plains (“CHPPGP”) is a not-for-profit corporation organized under the laws of Kansas and registered to do business in Oklahoma. CHPPGP operates one health center in Oklahoma, located in Oklahoma City, which is licensed as an abortion facility by the Oklahoma State Department of Health. CHPPGP sues on behalf of itself, its physicians, its staff, and its patients.

9. Planned Parenthood of Arkansas & Eastern Oklahoma (“PPAEO”) is a not-for-profit corporation organized under the laws of Oklahoma. It operates one health center in Oklahoma, located in Tulsa, which is licensed as an abortion facility by the Oklahoma State Department of Health. PPAEO sues on behalf of itself, its physicians, its staff, and its patients.

10. For greater detail on Petitioners and the provision of abortion care in Oklahoma and in the United States, please see paragraphs 4 through 14 of Petitioners’ April 28, 2022 Application for Original Jurisdiction and Petition for Declaratory and Injunctive Relief and/or a Writ of Prohibition, incorporated by reference.

B. Respondents

11. The State of Oklahoma is obligated to uphold the Oklahoma Constitution.

12. The remaining 77 Respondents are all state court clerks in the State of Oklahoma who are each responsible for filing and docketing cases presented to them. Okla. Stat. Ann. tit. 12, § 29(A). In discharging their duties, clerks “may refuse to file any document presented for filing if the clerk believes that the document constitutes sham legal process” *Id.* § 29(B).

IV. Statutory Framework of H.B. 4327

13. H.B. 4327 effectively prohibits all abortion in Oklahoma except in exceedingly narrow circumstances. H.B. 4327 § 2. Such a law is clearly unconstitutional.

14. H.B. 4327 contains exceptions only for medical emergencies and for pregnancies that result from rape, sexual assault, or incest, but only if such a crime has “been reported to law enforcement.”² H.B. 4327 § 2. A medical emergency under H.B. 4327 is narrowly defined as a “condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by physical” conditions. *Id.* § 1(3).

15. H.B. 4327 creates liability for “perform[ing] or induc[ing] an abortion in violation of” the total ban. H.B. 4327 § 5(A)(1).

16. H.B. 4327 also creates liability for “[k]nowingly engag[ing] in conduct that aids or abets the performance or inducement of an abortion” that violates it. H.B. 4327 § 5(A)(2). Although H.B. 4327 does not define what constitutes aiding or abetting, it expressly provides that “paying for or reimbursing the costs of an abortion” is prohibited activity. *Id.* H.B. 4327’s aiding-and-abetting liability would apply “regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of” the law. *Id.*

17. Even if someone does not actually perform a prohibited abortion or aid and abet a prohibited abortion, H.B. 4327 provides that they can still be sued if they merely intend to do so. H.B. 4327 § 5(A)(3).

18. H.B. 4327 expressly precludes the State or any political subdivision, as well as officers or employees of a state or local government entity in Oklahoma, from directly enforcing the abortion ban. H.B. 4327 § 5(A). Instead, H.B. 4327 creates a private, civil enforcement mechanism: “[a]ny person, other than the state, its political subdivisions, and any officer or employee of a state or local governmental entity in this state, may bring a civil action

² The majority of sexual assaults go unreported. In its most recent yearly bulletin on criminal victimization, the Bureau of Justice Statistics of the U.S. Department of Justice reported that in 2019, only 33.9% of rapes and sexual assaults were reported to authorities. Bureau of Justice Statistics, Criminal Victimization, 2019, No. NCJ 255113 (2020), <https://bjs.ojp.gov/content/pub/pdf/cv19.pdf>.

against any person” who performs a prohibited abortion, aids or abets a prohibited abortion, or intends to engage in these activities. *Id.*

19. Besides government officials, the only people not permitted to initiate an H.B. 4327 enforcement action are those “who impregnated a woman seeking an abortion through an act of rape, sexual assault, incest,” or certain other crimes. H.B. 4327 § 5(K)(4).

20. H.B. 4327 does not permit suits against abortion patients. H.B. 4327 § 5(K)(1). But it provides a ready tool for abusive and manipulative partners or family members to try to block a patient’s abortion decision. Under H.B. 4327, if such individuals know about a patient’s plan to obtain an abortion, they could sue the patient’s abortion provider, or anyone else who “intends” to assist with that abortion, to try to prevent the patient from accessing care. *Id.* § 5(A)(3).

21. H.B. 4327 imposes mandatory draconian penalties. Where an H.B. 4327 claimant prevails, “the court *shall* award”: (1) “[i]njunctive relief sufficient to prevent” future violations or conduct that aids or abets violations; (2) “[s]tatutory damages” to the claimant “in an amount of *not less than* Ten Thousand Dollars (\$10,000.00) for each abortion” that was provided or aided and abetted; (3) “[n]ominal and compensatory damages” if the claimant “suffered harm . . . including but not limited to loss of consortium and emotional distress”; and (4) the claimant’s “costs and attorney fees.” H.B. 4327 § 5(B) (emphases added). H.B. 4327 imposes no cap on the “statutory damages” and provides no room for discretion (or standards to guide the discretion) of judges or juries in determining what amount of damages to award.

22. H.B. 4327 allows “[a]ny person” to bring a claim alleging violation of H.B. 4327’s prohibitions. H.B. 4327 § 5(A). H.B. 4327 incentivizes the public at large, including

politically or economically motivated strangers, to interfere in the personal health decisions of Oklahomans across the state.

23. At every turn, H.B. 4327's rules for its enforcement proceedings sharply diverge from those normally applicable to Oklahoma litigants and make it impossible for those sued to fairly defend themselves.

24. *Statewide venue:* H.B. 4327 allows claimants to file enforcement lawsuits in their home counties and then veto transfer to a more appropriate venue. As a result, because there is effectively no limit on private parties bringing H.B. 4327 suits, abortion providers and alleged aiders and abettors could be forced to defend themselves in multiple, simultaneous enforcement proceedings in far-flung courts across the state. H.B. 4327 § 7(A)(4) (permitting suit in the claimant's county of residence "if the claimant is a natural person residing in" Oklahoma); *id.* § 7(B) (providing that an H.B. 4327 "action shall not be transferred to a different venue without the written consent of all parties"). In contrast, venue in Oklahoma is generally limited to where the events giving rise to a claim took place or where the defendant resides, *see* Okla. Stat. Ann. tit. 12, §§ 133, 139, and an Oklahoma state court may generally transfer venue "in the interest of justice and for the convenience of the parties," *id.* § 140.3.

25. *Draconian fee-shifting in favor of H.B. 4327 claimants:* H.B. 4327 provides that, in enforcement proceedings, anyone who brings an H.B. 4327 claim and prevails is entitled to recover costs and attorney's fees. H.B. 4327 § 5(B)(4). Meanwhile, abortion providers and other people sued under H.B. 4327 cannot be awarded costs or attorney's fees if they prevail, no matter how many times they are sued or the number of courts in which they must defend themselves, irrespective of whether the claims against them on their face make

out an H.B. 4327 violation, and irrespective of the fact that every H.B. 4327 claim is barred by binding federal law. *Id.* § 5(I).

26. ***Elimination of defenses:*** H.B. 4327 purports to bar people who are sued under it from raising seven defenses, including that they believed the law was unconstitutional or that the patient consented to the abortion. H.B. 4327 § 5(E). H.B. 4327 also states that people who are sued may not rely on non-mutual issue or claim preclusion or rely as a defense on any other “state or federal court decision that is not binding on the court in which the action” was brought. *Id.* The clear import of these provisions is to cast a pall on constitutionally protected activity, to force abortion providers and others who assist abortion patients to defend themselves over and over again, and to hamstring that defense. Further, H.B. 4327 § 5(J) purports to eliminate for those sued under it the protections of the Oklahoma Religious Freedom Restoration Act and the Oklahoma Citizens Participation Act.

27. H.B. 4327 also purports to override binding federal law when applied in state-court enforcement proceedings. As one example, H.B. 4327 directs Oklahoma judges to ignore judgments and injunctions issued by federal courts by telling Oklahoma courts to refuse to apply non-mutual collateral estoppel based on such judgments and by mandating that they ignore whether a federal injunction expressly permitted activity by an abortion provider or other person sued in H.B. 4327 proceedings. H.B. 4327 §§ 5(E)(4)-(5).

28. ***Threat of retroactive liability:*** H.B. 4327 also threatens potential defendants with retroactive liability under a 6-year statute of limitations. H.B. 4327 § 5(D). It expressly states that defendants may not rely for their defense on court decisions that are later overruled, “even if that court decision had not been overruled when the defendant engaged in conduct” challenged under H.B. 4327. *Id.* § 5(E)(3) (emphasis added).

29. *Purported jurisdiction stripping for declaratory and injunctive relief:* H.B. 4327 also claims to bar state courts from hearing any claims for declaratory or injunctive relief against H.B. 4327. This jurisdiction-stripping provision purports to categorically prohibit Oklahoma courts from considering any “action, claim, or counterclaim that seeks declaratory or injunctive relief” to prevent enforcement of the Act, and as against the state, any of its political subdivisions, officers, or employees, or any other person. H.B. 4327 § 8(D). Therefore, not only would this provision eliminate any opportunity to seek pre-enforcement review of H.B. 4327 as permitted by the Oklahoma Uniform Declaratory Judgment Act, but it also would bar counterclaims for declaratory or injunctive relief in an H.B. 4327 suit itself.

30. *Purported unfettered sovereign immunity:* In addition to stripping Oklahoma courts of the ability to issue declaratory or injunctive relief as to any defendant, whether public or private, H.B. 4327 also purports to immunize from suit not only the State itself, but also all political subdivisions, each officer and employee of this state in “any type of legal or equitable action that challenges the validity of any provision or application of this act, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this act.” H.B. 4327 § 8(A). The obvious intent of these provisions is to deny potential H.B. 4327 defendants their day in court to challenge the flagrantly unconstitutional nature of the statutory regime.

V. Texas S.B. 8 Litigation and S.B. 1503

31. Like S.B. 1503, H.B. 4327 is modeled after Texas S.B. 8, which for more than 8 months has prevented almost all abortions in Texas.

32. Like S.B. 8, H.B. 4327 and S.B. 1503 are previability bans on abortion enforced through private, civil lawsuits that can be brought by “[a]ny person,” with no requirement to demonstrate injury, damages, or any connection to an abortion. S.B. 1503 § 9(A); Tex. Health & Safety Code § 171.208(a). This mechanism was designed to insulate S.B. 8’s blatantly unconstitutional 6-week ban from federal pre-enforcement review—a goal Texas achieved.³ Indeed, the U.S. Supreme Court held that the state actors sued by Texas abortion providers in federal court were not proper defendants under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which provides a limited exception to the Eleventh Amendment for suits alleging that state actors are violating federal law. *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522, 532 (2021). The *Whole Woman’s Health* opinion, therefore, hinged on Eleventh Amendment immunity for state actors sued in federal court, as well as Article III standing, neither of which are issues presented in this state court case.

33. Unlike S.B. 8, H.B. 4327 goes even further prohibits effectively all abortions in Oklahoma.

34. And also, like S.B. 1503, H.B. 4327 purports to strip jurisdiction from the state courts to grant declaratory or injunctive relief to prevent enforcement of either of the Acts or

³ Although federal pre-enforcement review has been foreclosed, Planned Parenthood entities and one of their providers have filed suit in Texas state court seeking declaratory and injunctive relief against S.B. 8 under the Texas Constitution. *See* Pls.’ Orig. Pet. & Req. for Declaratory J. & Appl. for TRO &/or Anti-Suit Inj., *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Tex. Right to Life*, No. D-1-GN-21-004632 (Tex. Dist. Ct. Sept. 2, 2021). That case has been transferred to a multidistrict litigation court along with a number of other cases seeking declaratory judgments that S.B. 8 is unconstitutional, and the multidistrict litigation court has found that S.B. 8 is unconstitutional as a violation of Texas’s constitutional separation of powers and due process protections. Order Declaring Certain Civil Procedures Unconstitutional & Issuing Declaratory J., *Van Stean v. Tex. Right to Life*, No. D-1-GN-21-004179, slip. op. at 47 (Tex. Dist. Ct. Dec. 9, 2021), *appeal filed*, No. 03-21-00650-CV (Tex. App. Dec. 9, 2021). The case in the district court is currently stayed pending resolution of the private would-be enforcer defendants’ motion to dismiss under the Texas Citizens Participation Act. Br. of the Planned Parenthood Plaintiffs-Appellees, at xiv, *Tex. Right to Life v. Van Stean*, No. 03-21-00650-CV, 2022 WL 672468, at *xiv (Tex. App. Feb. 28, 2022).

the filing of a civil enforcement suit, in either a defensive or offensive posture and as against any defendant. H.B. 4327 § 8; S.B. 1503 § 12(D). In short, unlike S.B. 8, H.B. 4327 and S.B. 1503 are designed to foreclose *both* federal and state court proceedings regarding their ultimate constitutionality.

35. Abortion providers in Oklahoma have seen the devastating effects of Texas S.B. 8 in treating Texas patients seeking care out of state.

36. Since S.B. 1503 took effect in Oklahoma, they have seen these effects compounded, throwing the lives of people seeking abortion across the region into chaos. Patients in Texas and Oklahoma have been blocked from accessing abortions in their state, and not all patients are able to travel out of state to seek abortions. Even those who are able to travel have been delayed in accessing care, given the increased demand on out-of-state providers, and that delay can increase the complexity of their abortions and may subject patients to increased medical risks.

37. The compounded harms of S.B. 8, S.B. 1503, and now, H.B. 4327, will cause grave irreparable harm to thousands of people across the region.

VI. Irreparable Harm

A. Impact on Abortion Patients

38. H.B. 4327 restricts the ability of Oklahomans to access effectively all constitutionally protected abortions, with exceedingly narrow exceptions.

39. For those able to scrape together the necessary funds, H.B. 4327 is forcing patients to travel out of state to access abortions. Others will attempt to self-manage their own abortions without medical supervision. And many Oklahomans will have no choice but to continue their pregnancies against their will.

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

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

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

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

44. H.B. 4327 is particularly devastating for Oklahomans of color, particularly Black and Indigenous populations, as well as for Oklahomans with low incomes and those living in rural areas—communities that already face heightened barriers to medical care.

45. Low-income populations and people of color seek abortions at a higher rate than wealthier and white populations (both in Oklahoma and nationally) due to inadequate access to contraceptive care, income inequity, and other facets of structural racism. These communities will thus necessarily bear an outsized share of H.B. 4327's burdens.

46. Black and Indigenous Oklahomans will also disproportionately suffer the gravest consequences of forced pregnancy if litigations enforcing H.B. 4327 are allowed to

proceed in light of the significantly higher rates of maternal mortality in their communities. Oklahoma “persistently ranks among the states with the worst rates” of maternal deaths in the United States, and maternal deaths in Oklahoma have “increased in recent years.”⁴ Specifically, Black women in Oklahoma are currently over one-and-a-half times more likely to die of complications related to birth or pregnancy than white women.⁵ From 2004 to 2018, Black women in Oklahoma were two-and-a-half times more likely to die of complications related to birth or pregnancy than white women, a statistic the Oklahoma Maternal Mortality Review Committee called an “alarming disparity.”⁶ Indigenous women in Oklahoma have also faced increased rates of maternal mortality over the years and at times were more than one-and-a-half times more likely to die than white women during the same time period.⁷ Moreover, “[f]or every woman who dies, about 70 experience potentially fatal complications” related to birth or pregnancy, according to data obtained from the Oklahoma State Department of Health.⁸

47. Those who attempt to travel out of state to access care will have to pay for and arrange transportation, childcare, and time off work. Because the majority of abortion patients

⁴ Okla. State Dep’t of Health, Okla. Maternal Mortality Rev. Comm., *Oklahoma Maternal Health, Morbidity and Mortality: Annual Report 2021*, at 5-6, 26 (2021), <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/family-health/maternal-and-child-health/maternal-mortality/maternal-morbidity-mortality-annual-report-2021.pdf>.

⁵ *Id.* at 8.

⁶ Okla. State Dep’t of Health, Okla. Maternal Mortality Rev. Comm., *Maternal Mortality in Oklahoma 2004-2018*, at 4 (2020), <https://oklahoma.gov/content/dam/ok/en/health/health2/aem-documents/family-health/maternal-and-child-health/maternal-mortality/annual-mmrc-report.pdf>.

⁷ *Id.*

⁸ Kassie McClung, *Most of Oklahoma’s Maternal Deaths Preventable, State Review Finds*, The Frontier (Aug. 10, 2020), <http://www.readfrontier.org/stories/mostof-oklahomas-maternal-deaths-preventable-state-review-finds>.

are poor or have low incomes, these financial and other costs may be insurmountable or require them to forgo other basic needs for themselves and their existing families.

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

49. Additionally, by targeting individuals who provide financial, practical, or emotional support for abortion access, H.B. 4327 is decimating the support system on which Oklahomans with low incomes rely to access abortion. By imposing aiding-and-abetting liability “regardless of whether the person knew or should have known that the abortion would be performed or induced in violation” of H.B. 4327, *id.* § 5(A)(2), the Act chills support even for those limited abortions that remain permissible under H.B. 4327.

50. Abortion access in Oklahoma has already been strained by the devastating impact of S.B. 8 in Texas and S.B. 1503 in Oklahoma. If providers in Oklahoma are forced to start turning away all patients, this domino effect will continue, as patients who are able to travel to try to access abortion will be forced to travel farther and farther to find a provider, and as providers in neighboring states will struggle to find ways to meet patients’ desperate need for care.

B. Impact on Petitioners and Their Physicians and Staff

51. H.B. 4327 has forced Petitioners to stop providing abortions and engaging in activities that assist with abortion provision, except in cases of medical emergency and pregnancy that is the result of rape, sexual assault, or incest that has been reported to law enforcement.

52. But even full compliance with H.B. 4327 does not protect Petitioners from frivolous and harassing H.B. 4327 suits, a possibility all the more likely given the bounty offered by H.B. 4327 and its one-sided enforcement scheme.

53. If H.B. 4327 remains in effect, Petitioners may lose or lay off staff.

54. In sum, Petitioners have been forced to stop providing abortions. They and their staff are suffering profound harm to their property, business, reputations, and a deprivation of their own constitutional rights. And their patients are denied access to constitutionally protected healthcare, and will continue to be irreparably injured, unless this Court intervenes.

VII. JURISDICTION AND VENUE

55. Petitioners include citizens of the State of Oklahoma.

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

VIII. CAUSES OF ACTION

First Cause of Action **(Substantive Due Process)**

57. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

58. H.B. 4327's prohibition violates women's fundamental rights to choose to terminate a pregnancy and to bodily integrity in violation of Okla. Const. art. II, § 7.

Second Cause of Action
(Substantive Due Process - Violation of the Right to Health)

59. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

60. H.B. 4327's prohibition violates the right to health in violation of Okla. Const. art. II, § 7.

Third Cause of Action
(Equal Protection)

61. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

62. H.B. 4327's prohibition violates the guarantee of equal protection of the laws contained in Okla. Const. art. II, § 7.

Fourth Cause of Action
(Open Courts)

63. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

64. H.B. 4327 violates Petitioners' rights under Okla. Const. art. II, § 6 to seek relief from Oklahoma courts by purporting to categorically prohibit Oklahoma courts from considering any "action, claim, or counterclaim that seeks declaratory or injunctive relief" to prevent enforcement of the Act. H.B. 4327 § 8(D).

65. H.B. 4327 also violates Petitioners' rights under Okla. Const. art. II, § 6 by purporting to shield from suit—including suits for declaratory and injunctive relief—the State, all its subdivisions, and all employees or officers of the State and its subdivisions.

66. H.B. 4327's harsh penalties, coupled with the fee-shifting provisions, serve to stifle any defense of those sued under the Act. As a result, H.B. 4327 penalizes use of Oklahoma courts for the redress of grievances, in violation of Okla. Const. art. II, § 6.

67. Further, H.B. 4327's immediate effective date has forced Petitioners to bring a challenge on extremely short notice.

Fifth Cause of Action
(Unlawful Delegation of Police Power)

68. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

69. "[T]he state's police power is inalienable" and cannot be given to private individuals to enforce as they choose. *Tenneco Oil Co. v. El Paso Nat. Gas Co.*, 1984 OK 52, 687 P.3d 1049, 1059 n.14. H.B. 4327 improperly delegates the State's police power to private citizens in violation of the Oklahoma Constitution.

Sixth Cause of Action
(Special Law)

70. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

71. H.B. 4327 creates an unconstitutional special law relating to a topic on which Okla. Const. art. V, § 46 categorically prohibits special laws.

72. H.B. 4327 further violates Okla. Const. art. V, § 59 and creates a special law where general laws could be made applicable by, among other things, establishing onerous and unique procedural requirements applicable only to H.B. 4327 enforcement proceedings.

Seventh Cause of Action
(Void for Vagueness)

73. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

74. H.B. 4327 fails to adequately inform regulated parties and those charged with the law's enforcement of what conduct is prohibited and/or leads to penalties. H.B. 4327 deprives Petitioners of notice as to what actions violate the law by prohibiting H.B. 4327 defendants from relying on precedent or court decisions in place at the time that they engage in conduct prohibited by H.B. 4327. Specifically, with regard to alleged "aiders and abettors," H.B. 4327's aiding-and-abetting liability may attach "regardless of whether [a] person knew or should have known that the abortion" they aided "would be performed or induced in violation" of the Act. H.B. 4327 § 5(A)(2). Such uncertainty and vagueness violates Okla. Const. art. II, § 7.

Eighth Cause of Action
(Ex Post Facto Law)

75. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

76. H.B. 4327 eliminates defenses to liability in H.B. 4327 § 5, including that defendants may not rely for their defense on court decisions that are later overruled, "even if that court decision had not been overruled when the defendant engaged in conduct" challenged under H.B. 4327. H.B. 4327 § 5(E)(3). Retroactive statutes such as H.B. 4327 violate Okla. Const. art. II, § 15.

Ninth Cause of Action
(Freedom of Speech)

77. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

78. H.B. 4327's broad prohibition on activity that "aids or abets" a prohibited abortion, and on an intent to engage in such activity even without corresponding action, burdens Petitioners' speech and expressive conduct, in violation of Okla. Const. art. II, § 22.

Tenth Cause of Action
(Unreasonable Access to Patient Medical Records)

79. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

80. The Oklahoma Constitution protects the right "of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others." *Alva State Bank & Tr. Co. v. Dayton*, 1988 OK 44, 755 P.2d 635, 639 (Kauger, J., specially concurring). That is, "[t]he guarantee of security found in [Okla. Const.] art. 2, § 30 of the right of the people to be secure in their papers encompasses the people's right to preserve confidentiality in their personal papers. This security, which must be strictly construed, is a fundamental, constitutional right applicable to both civil and criminal actions." *Id.*

81. H.B. 4327 violates this right by granting to H.B. 4327 claimants an entitlement to put at issue in court litigation Petitioners' patients' private healthcare decisions, irrespective of their wishes or consent. In so doing, H.B. 4327 incentivizes the invasion of patient privacy by individuals with no connection to the patient. It also intrudes on the right to privacy held by patients who become pregnant from sexual assault or incest by putting private information

about the circumstances of a patient's pregnancy at issue in litigation with respect to whether an H.B. 4327 claimant may recover under the statute.

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

82. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

83. Because H.B. 4327 violates the Oklahoma Constitution, and a declaratory judgment would terminate the controversy giving rise to this proceeding, Petitioners request a declaration from this Court stating that H.B. 4327 is unconstitutional and void. Okla. Stat. Ann. tit. 12, § 1651.

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

84. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

85. Temporary injunctive relief is warranted because Petitioners, and those whose interests Petitioners represent, will suffer irreparable injury if H.B. 4327 is allowed to take effect.

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

86. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

87. Because H.B. 4327 violates the Oklahoma Constitution, warranting a declaratory judgment stating that H.B. 4327 is unconstitutional and void, Respondents should be permanently enjoined from implementing it in any way, including by docketing H.B. 4327 lawsuits.

Fourteenth Cause of Action
(Writ of Prohibition)

88. Petitioners reallege and incorporate by reference the allegations contained in paragraphs 1 through 56.

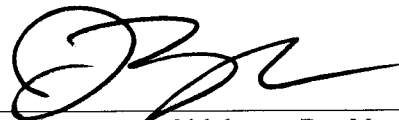
89. It is also within the discretion of this Court to grant a writ of prohibition to prevent the State and its clerks from exercising judicial power “unauthorized by law” that “will result in injury for which there is no other adequate remedy.” *Maree v. Neuwirth*, 2016 OK 62, ¶ 6, 374 P.3d 750, 752.

IX. PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court issue declaratory and injunctive relief and/or a writ of prohibition to prevent Respondents from implementing H.B. 4327 in any way, including by enjoining the state court clerks from docketing H.B. 4327 lawsuits, and including as to any future suits for conduct that occurred during the pendency of this injunction.

Dated: May 16 2022

Respectfully Submitted,



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**Motions to Associate Granted

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 16 day of May, 2022 a true and correct copy of the foregoing Petition was served via hand delivery or Certified U.S. Mail to the following:

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