United States Court of Appeals

for the

Fifth Circuit

Case No. 17-51060

WHOLE WOMAN'S HEALTH, On Behalf of Itself, Its Staff, Physicians and Patients; PLANNED PARENTHOOD CENTER FOR CHOICE, On Behalf of Itself, Its Staff, Physicians, and Patients; PLANNED PARENTHOOD OF GREATER TEXAS SURGICAL HEALTH SERVICES, On Behalf of Itself, Its Staff, Physicians, and Patients; PLANNED PARENTHOOD SOUTH TEXAS SURGICAL CENTER, On Behalf of Itself, Its Staff, Physicians, and Patients; ALAMO CITY SURGERY CENTER, P.L.L.C., On Behalf of Itself, Its Staff, Physicians, and Patients, doing business as Alamo Women's Reproductive Services; SOUTHWESTERN WOMEN'S SURGERY CENTER, On Behalf of Itself, Its Staff, Physicians, and Patients;

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN

BRIEF OF AMICI CURIAE INTERNATIONAL AND COMPARATIVE LAW SCHOLARS IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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Plaintiffs-Appellees,

– v. –

KEN PAXTON, Attorney General of Texas, In His Official Capacity; FAITH JOHNSON, District Attorney for Dallas County, In Her Official Capacity; SHAREN WILSON, Criminal District Attorney for Tarrant County, In Her Official Capacity; ABELINO REYNA, Criminal District Attorney for McLennan County, In His Official Capacity,

Defendants-Appellants.

No. 1:17-CV-00690-LY

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

WHOLE WOMAN'S HEALTH, *et al.*,
Plaintiffs-Appellees,

v.

KEN PAXTON, *et al.*,
Defendants-Appellants.

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

The list below is in addition to the persons and entities listed in appellants', appellees', and other amici curiae's briefs.

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I. INTEREST OF AMICI[1]

Amici are academics in the field of international and comparative law and submit this brief concerning international perspectives on abortion law as amici curiae in support of Plaintiffs-Appellees.[2]

International human rights law requires states to enable access to safe and legal abortion services. Consistent with this international norm, the global trend in the laws of individual nations is towards liberalization of abortion access. This reflects a growing understanding of the close links between abortion access, gender equality, and women's health. Rather than acknowledge this international consensus, Texas cites a misleading analysis of foreign law, rife with error, that was prepared by its so-called expert witness as support for Texas's interest in passing a law that curtails access to safe abortion care. Amici, as international and comparative law scholars, have an interest in correcting this improper view of international law and Texas's deeply flawed comparative law analysis.

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[1] Amici received consent from all parties to file this brief. No party or party's counsel authored this brief in whole or in part and no party, party's counsel, or other person, other than amici and their counsel, contributed money that was intended to fund preparing or submitting this brief.

[2] A brief description of each amicus is set forth in Appendix A.

II. SUMMARY OF THE ARGUMENT

International law protects access to safe and legal abortion as central to women's autonomy and reproductive health. This international norm is reinforced by the consensus among countries with legal traditions similar to those of the U.S. In banning the safest, most common method of second-trimester abortions after approximately 15 weeks with the enactment of Senate Bill 8 ("SB8"), Texas rebuffs the norms recognized in international law and departs from the laws of our sister democracies.

Assaying a new narrative advanced by supporters of the most recent wave of abortion regulations, Texas relies on the opinion of bioethics professor O. Carter Snead to argue that SB8 is in line with "92% of the countries in the world [that] already outright ban second-trimester abortions." Appellants' Br. at 24. This representation is deeply flawed, from both an international law and a comparative law perspective. Professor Snead's unnuanced approach blindly tallied the laws on the books in various countries—disregarding the context surrounding the laws or how they operate in practice, treating equally those countries with similar legal traditions and those with vastly different legal traditions, and blatantly disregarding treaties and conventions that reflect international agreement about the importance of access to safe abortion care. His methodology was faulty, and his conclusions are inaccurate.

Contrary to Professor Snead's assertions, proper international law analysis reflects an international agreement supporting safe and legal abortion and a global acknowledgement of the role that abortion plays in women's autonomy and reproductive healthcare. Likewise, a methodologically sound comparative law analysis—which would focus on countries that share the U.S.'s legal traditions and the full legal and social system in which comparable laws operate—also undercuts Professor Snead's methodology and conclusions. Professor Snead failed to distinguish at all between countries or to account for how the laws are applied in practice; he therefore ignored the critical fact that countries with legal traditions and democratic values most similar to those of the U.S., such as Canada and Great Britain, tend to promote women's health rather than targeting and restricting abortion through regulatory regimes, including SB8.

Proper international law and comparative law analyses are often complex and demand unique expertise. Therefore, amici join to explain how proper international and comparative law analyses both reject Professor Snead's reductive approach and reflect the impropriety of SB8.

III. ARGUMENT

Over the last 40 years, international law has evolved to overwhelmingly support increasing access to legal abortion around the globe. Flouting this emergent international norm, with the passage of SB8, Texas moved

in the opposite direction and prohibited the safest, most common method of abortion used starting in the early second trimester of pregnancy, and the most common method after approximately 15 weeks: dilatation and evacuation ("D&E"). Enactment of SB8 imposes an additional medical procedure to the safe and common D&E procedure, and therefore would force many women seeking abortions in their second trimester to undergo a procedure that carries a greater risk to their own health. Relying on the testimony of Professor Snead and an analysis he prepared in connection with this litigation that completely ignored international legal norms, Texas has attempted to justify this restriction by a simple tally of other nations that purportedly ban abortion in the second trimester outright. Appellants' Br. at 23–24. Professor Snead's analysis and the conclusions drawn from it are deeply flawed.

A. International and Comparative Law in Domestic Cases

American courts often look to law outside our borders when considering the dimensions and demarcations of fundamental rights. As the Supreme Court has explained, "the express affirmation of certain fundamental rights by other nations and peoples . . . underscores the centrality of those same rights within our own heritage of freedom." *Roper* v. *Simmons*, 543 U.S. 551, 578 (2005) (citing the "overwhelming weight of international opinion against the juvenile death penalty"); *see also Lawrence* v. *Texas*, 539 U.S. 558, 572–73 (2003)

(looking at the U.K. and at the European Court of Human Rights ("ECtHR") to examine changes in the legal treatment of homosexuality).[3] Questions of fundamental and human rights can be uniquely illuminated by international and comparative law, as they can implicate shared values. *See, e.g.*, Sarah H. Cleveland, *Our International Constitution*, 31 Yale J. Int'l L. 1, 90 (2006) (noting that "[c]oncepts such as 'liberty' and 'cruel and unusual' punishment . . . reasonably invite consideration of fundamental values of the international community"); *Graham* v. *Florida*, 560 U.S. 48, 80 (2010) ("The Court has looked beyond our Nation's borders for support for its independent conclusion that a particular punishment is cruel and unusual."). Indeed, Texas's reliance on Professor Snead's analysis—albeit supremely flawed—reflects the importance of looking outside U.S. borders to assess the demarcations of a woman's fundamental right to access abortion.

To ascertain international law, courts identify prevailing legal norms by looking at treaties and general principles of international or public law. *See* Restatement (Third) of Foreign Relations Law § 102; Peter E. Quint, *International*

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[3] *See also Washington* v. *Glucksberg*, 521 U.S. 702, 718 n.16 (1997) (noting that Canada, Great Britain, and New Zealand also prohibit assisted suicide); *Miranda* v. *Arizona*, 384 U.S. 436, 487–88 (1966) (referencing custodial interrogation practices of England, Scotland, and India); *Trop* v. *Dulles*, 356 U.S. 86, 102 (1958) (noting that "[t]he civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime").

Human Rights: The Convergence of Comparative and International Law, 36 Tex. Int'l L.J. 605, 605 (2001).[4] When affirmative international agreements and legal norms articulate standards that reflect transnational consensus, U.S. jurisprudence accords special weight to those indicia of international law. *See, e.g.*, *Roper*, 543 U.S. at 576 (consulting the Convention on the Rights of the Child ("CRC")); *Graham*, 560 U.S. at 81 (same); *see also Grutter* v. *Bollinger*, 539 U.S. 306, 344 (Ginsburg, J., concurring) (citing the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of all Forms of Racial Discrimination in support of affirmative action and race-conscious admissions policies).

In addition to examining international law, courts may engage in comparative law analysis wherein they examine the differences and similarities that exist in the internal legal regimes of different countries.[5] For example, in

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[4] International law obliges the United States to avoid undermining treaties it has signed, even if it has not ratified the instruments. The United States is "obliged to refrain from acts which would defeat the object and purpose of a treaty when . . . [i]t has signed the treaty . . . until it shall have made its intention clear not to become a party to the treaty[.]" Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331 ("Vienna Convention"). *See also* Restatement (Third) of the Foreign Relations Law of the United States § 312(3); *Chubb & Son, Inc.* v. *Asiana Airlines*, 214 F.3d 301, 308 (2d Cir. 2000) (citing the Vienna Convention as an "authoritative codification of customary international law").

[5] Since the founding of the Republic, U.S. courts "regularly took judicial notice of both international law and foreign law," which is "the law and practice of

Lawrence, 539 U.S. at 576, the Supreme Court observed that "[o]ther nations . . . have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct." A comparative law analysis is distinct from an examination of international law; the former may illuminate a range of national practices, while the latter necessarily constitutes a consensus statement of the international community.

Both international and comparative law can have persuasive force, and the normative statements of international law that reflect an international or regional consensus carry particular weight. Courts, including the Supreme Court, look to international trends and the international law that sustains them (particularly those reflected in U.N. conventions) in evaluating the U.S.'s own constitutional jurisprudence. *See, e.g.*, *Lawrence*, 539 U.S. at 572–73 (emphasizing the ECtHR's holding that laws targeting homosexuals for prosecution were invalid under the European Convention on Human Rights); *Kiobel* v. *Royal Dutch Petroleum Co.*, 621 F.3d 111, 169 (2d Cir. 2010), *aff'd*, 569 U.S. 108 (2013) (noting the "worldwide practice to impose civil liability on corporations" and consulting an optional protocol to the CRC and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions); *Graham*, 560 U.S. at 80–81 (continuing the "longstanding practice"

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other nations," *i.e.*, comparative law. Harold Koh, *International Law as Part of Our Law*, 98 Am. J. Int'l L. 43, 45 (2004).

of examining "global consensus" in striking down life-without-parole sentences for non-homicidal juvenile offenders in light of the CRC, ratified by all nations but the U.S.); *see also Roper*, 543 U.S. at 576 (consulting the CRC, the International Covenant on Civil and Political Rights ("ICCPR") (a treaty ratified by the U.S.), the American Convention on Human Rights: Pact of San José, Costa Rica, and the African Charter on the Rights and Welfare of the Child in holding that the execution of individuals who were minors at time of their capital crimes is prohibited by the Eighth and Fourteenth Amendments). Even "where a foreign or international law norm is not itself legally binding on the United States, [] the consensus of states regarding shared common values [] gives the norm its persuasive force" in U.S. courts. Cleveland, *supra*, at 11.

B. International Law Does Not Support Texas's Restriction on D&E Procedures and, Instead, Supports *Liberalization* of Abortion Access

Using international law analysis as a meaningful reference point for fundamental rights in the U.S. requires an understanding of what international bodies and treaties stand for, and to what extent treaties and statements by international bodies represent an international consensus. The unmistakable, prevailing international legal trend is toward liberalization of abortion, as international legal norms have increasingly identified access to safe and legal abortion as essential to protect women's human rights and achieve gender equality.

See Rachel Rebouché, *Abortion Rights as Human Rights*, 25 Soc. & Legal Stud. 765, 766 (2016) ("Various international human rights bodies have supported the legalization of abortion as essential to the protection of women's rights to equality, nondiscrimination, health, autonomy, and freedom from violence.").[6] As the U.N. Committee on Economic, Cultural and Social Rights ("CECSR") recently explained:

> The right to sexual and reproductive health is . . . indivisible from and interdependent with other human rights. It is intimately linked to civil and political rights underpinning the physical and mental integrity of individuals and their autonomy, such as the rights to life; liberty and security of person; freedom from torture and other cruel, inhuman or degrading treatment; privacy and respect for family life; and non-discrimination and equality. For example, lack of emergency obstetric care services or denial of abortion often leads to maternal mortality and morbidity, which in turn constitutes a violation of the right to life or security, and in certain circumstances can amount to torture or cruel, inhuman or degrading treatment.

CESCR, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (under article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 10, U.N. Doc. E/C.12/GC/22 (May 2, 2016). CECSR then

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[6] *See also* International Conference on Population and Development, Cairo, Egypt, Sept. 5–13, 1994, Report of the International Conference on Population and Development, ¶¶ 7.5–7.6, 8.25, U.N. Doc. A/CONF.171/13 (Oct. 18, 1994) [hereinafter "Cairo Report"] (recognizing importance of assuring access to safe abortion care); *L.C.* v. *Peru*, CEDAW Committee, Commc'n No. 22/2009, para. 9(b), U.N. Doc. CEDAW/C/50/D/22/2009 (2011) (urging that abortion must be legal and accessible when a woman's life or health is at risk, when there is a severe or fatal fetal impairment, or in cases of rape or incest).

called on nation states to "*liberalize* restrictive abortion laws." *Id.* ¶ 28 (emphasis added).

The Platform for Action of the Fourth World Conference on Women (the "Beijing Platform"), adopted by 187 U.N. Member States, pushed governments to reform laws that criminalize women for obtaining abortions. Fourth World Conference on Women, *Report of the Fourth World Conference on Women, Beijing, 4-15 Sept. 1995*, ¶ 106(k), U.N. Doc. A/CONF.177/20, annex II (Oct. 17, 1995) [hereinafter "Beijing Platform"]; Andrew Christoffel, *Choice as Political Opinion: Women's Reproductive Healthcare as a Viable Ground for Asylum Protection*, 14 Cardozo Pub. L. Pol'y & Ethics J. 161, 170 (2015). The Beijing Platform defined "reproductive health" as a "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes." Beijing Platform for Action, ¶ 94. The report explicitly connected international human rights to reproductive freedom:

> [R]eproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. ***It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence***, as expressed in human rights documents.

Id. (emphasis added). This statement underscores the growing global consensus that ensuring reproductive health and safety is of the utmost importance under international law. Christoffel, *supra*, at 170.

The international consensus around the norm of abortion access and recognition of abortion as an aspect of women's autonomy is also evident from the 1979 Convention on the Elimination of Discrimination Against Women ("CEDAW"). CEDAW, Annex to G.A. Res. 34/180, 34 U.N. GAOR, 34th Sess., Res. Supp. (No. 46), p. 194, U.N. Doc. A/34/46 (1979) (signed by the U.S. on July 11, 1980). Article 12 of CEDAW requires that women receive the "appropriate services in conne[ct]ion with pregnancy" and calls on states to modify or abolish laws that constitute "discrimination against women." *Id*. art. 12. The CEDAW Committee, relying on these and other provisions, recognizes that abortion must be legal and accessible, at a minimum, when a woman's life or health is at risk or in cases of rape and incest, and in cases of severe or fatal fetal impairments. *See, e.g.*, *L.C.* v. *Peru*, *supra* ¶ 9(b); *see also* CEDAW Comm., Concluding Observations on Argentina, ¶ 33(d), U.N. Doc. CEDAW/C/ARG/CO/7 (Nov. 25, 2016) (urging Argentina to increase legal access to abortion in cases of rape, risk to life or health of mother, incest, and where there is a risk of severe fatal impairment). Similarly, the Maputo Protocol, ratified by 15 nations of the African Union, calls on state parties to "protect the reproductive rights of women by [authorizing] medical

abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the [fetus]." Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa [hereinafter "Maputo Protocol"], July 11, 2003, OAU Doc. CAB/LEG/66.6.

U.N. bodies charged with interpreting and monitoring implementation of human rights treaties have emphasized that abortions are often necessary to preserve not just the life or physical health of the mother but also her mental health, and that abortion laws that stand in the way of such protection violate international treaties. For example, in 2005, the U.N. Human Rights Committee ("UNHRC"), which monitors the implementation of the ICCPR, held that Peru's denial of abortion to a teenager who was carrying a fetus with anencephaly[7] violated the country's ICCPR treaty obligations. *K.L.* v. *Peru*, UNHRC, Commc'n No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005) (reasoning that Article 7 of the ICCPR, which prohibits cruel, inhuman, or degrading treatment, includes mental suffering and psychological mistreatment). In a more recent case, the UNHRC found that Ireland's strict abortion ban violated, among other provisions, the ICCPR's prohibition against cruel, inhuman, or degrading treatment. *Mellet* v.

[7] A severe birth defect that is fatal to the child in all cases and endangers the life of the mother.

Ireland, UNHRC, Commc'n No. 2324/2013, ¶¶ 7.5–7.8, U.N. Doc. CCPR/C/116/D/2324 (2016).

These declarations also underscore the proposition that, where abortion is legal, the state must ensure that it is genuinely available and accessible *in practice*. In *L.M.R.* v. *Argentina*, the UNHRC determined that the ICCPR was violated when a woman was denied access to a legal abortion—and was forced to arrange an illegal abortion—due to the refusal of hospital staff to perform the procedure. *L.M.R.* v. *Argentina*, UNHRC, Commc'n No. 1608/2007, ¶¶ 9.2–9.4, U.N. Doc. CCPR/C/101/D/1608/2007 (2011). Likewise, the ECtHR has condemned Poland for erecting "significant barriers" to reproductive health services "in practice"—even when the wording of the statute at issue provided for a broad array of those services. *P. & S.* v. *Poland*, No. 57375/08, Eur. Ct. H.R. (2012). Treaty bodies have also condemned procedural barriers to abortion services, including mandatory waiting periods, biased counseling, and requirements that a third party, such as a male guardian, authorize the abortion. CEDAW Comm., *Concluding Observations on Kuwait*, ¶ 43(b), U.N. Doc. CEDAW/C/KWT/CO/3-2 (Nov. 8, 2011); CEDAW Comm., *Concluding Observations on Hungary*, ¶¶ 30–31, U.N. Doc. CEDAW/C/HUN/CO/7-8 (Mar. 26, 2013); CECSR, *General Comment No. 22, The Right to Sexual and Reproductive Health*, ¶ 41, U.N. Doc. E/C.12/GC/22 (2016). These same treaty

bodies have also encouraged states to provide financial support for abortion services. CEDAW Comm., *Concluding Observations on Austria*, ¶¶ 38–39, U.N. Doc. CEDAW/C/AUT/CO/7-8 (Mar. 1, 2013).[8] The legal principles that these treaty-monitoring bodies have articulated were echoed by the U.N. Special Rapporteur on the right to health, who noted that laws criminalizing abortion result in *more*, not fewer, maternal deaths and adverse mental and physical health outcomes, while "infring[ing upon] women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health." Anand Grover (Special Rapporteur of the UNHRC), *Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health*, ¶ 21, U.N. Doc. A/66/254 (2011).

The international community also agrees that, where abortion is legal, it is important to assure access to safe abortion care. *See, e.g.*, Cairo Report ¶¶ 7.5–7.6, 8.25. The 1994 Cairo Conference committed the global community to preventing unsafe abortions. *See id*. The Cairo Report, adopted by 184 U.N. Member States, stressed that "where abortion is not against the law, such abortion should be safe," and emphasized that "[i]n all cases, women should have access to

[8] States are further encouraged by international treaty bodies to guarantee that skilled healthcare providers are available to offer safe abortion procedures. CEDAW Comm., Concluding Observations on Slovakia, ¶¶ 30–31, U.N. Doc. CEDAW/C/SVK/CO/5-6 (Nov. 25, 2015); CECSR, General Comment No. 22, ¶¶ 13, 21, 28.

quality services for the management of complications arising from abortion." *Id.* ¶ 8.25. Similarly, the African Commission on Human and Peoples' Rights has recognized that violations to the rights to privacy, confidentiality, freedom from discrimination, and freedom from cruel, inhuman, or degrading treatment can result where the accessibility of safe abortion and post-abortion care is inadequate. *See generally* African Comm'n on Human and Peoples' Rights, General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Maputo Protocol (2014), http://www.achpr.org/files/instruments/general-comments-rights-women/achpr_instr_general_comment2_rights_of_women_in_africa_eng.pdf.

These international treaties, agreements, and court decisions reflect an international norm of expanding access to abortion and ensuring access to safe abortion care, and should be accorded special weight in U.S. jurisprudence. Texas's ban on the safest, most common method of abortion used starting in the early second trimester of pregnancy, and the most common method after approximately 15 weeks, violates these norms. Professor Snead ignored international legal norms with his "checklist approach" to foreign legal practices. Amici urge this Court to reject Texas's efforts to ignore international law and instead misuse comparative law to support SB8.

C. Comparative Law Supports Expanded Abortion Access, But Professor Snead's Analysis Misused Comparative Methodology

When done correctly, comparative analysis can inform U.S. courts about alternative approaches to common legal issues, placing the issues in a broader context to enable better understanding of causes and potential solutions. *See generally* Ruth Bader Ginsburg, *Looking Beyond Our Borders: The Value of a Comparative Perspective in Constitutional Adjudication*, 40 Idaho L. Rev. 1 (2003); Sandra Day O'Connor, *Broadening Our Horizons: Why American Lawyers Must Learn About Foreign Law*, 45 Fed. Law. 20 (1998); Kai Schadbach, *The Benefits of Comparative Law: A Continental European View*, 16 B.U. Int'l L.J. 331 (1998). However, comparative analysis only provides useful insight when it incorporates an understanding of the broader legal and social system in which those laws operate.

Professor Snead's relegation of countries' abortion laws to a line-item of gestational age is misleading, and erroneously treats all countries as relevant to the U.S. constitutional law analysis in this case. *See* R.O.A. 2514–15 (testifying that his opinion was based on review and classification of abortion-related statutes in 194 nations "based on gestational age limits," and limited to "[r]eviewing the text of the laws"). Professor Snead ignored the context in which the laws operate, or the way the statutes are applied in practice—core elements of a comparative approach. Finally, much like its complete and misleading exclusion of

international law trends, Professor Snead's opinion failed to recognize the trends in many countries' domestic abortion laws toward liberalizing access.

As a result of these omissions, Professor Snead's testimony cannot provide insight into the purposes or aims of any other country's abortion law, let alone speak to an "ethical consensus" on abortion globally. Professor Snead's opinion does not illuminate the way various countries treat abortion access because it fails to consider essential elements of their laws (including healthcare access and prevalence of exceptions). It therefore adds no insight into an ethical opinion, let alone an "ethical consensus," of any of the cited countries.

1. Texas's Representation About Abortion Bans in Other Countries is Misleading

Appellants' brief relies on Professor Snead's assessment to support the argument that "92% of the world's countries—the overwhelming international consensus—ban abortion outright after the first trimester (12 weeks), with some exceptions." Appellants' Br. at 23. This summary, and the testimony on which it is based, is grossly misleading.

First, Professor Snead's assessment treats all nations as "juridically equal," without assessing relevant differences in legal or social traditions. *See* Eric A. Posner & Cass R. Sunstein, *The Law of Other States*, 59 Stan. L. Rev. 131, 148 (2006) (observing that "foreign law provides relevant information . . . only if the foreign country is sufficiently similar in the right way to the United States"); Rex

D. Glensy, *Which Countries Count?: Lawrence v. Texas and the Selection of Foreign Persuasive Authority*, 45 Va. J. Int'l L. 357, 361, 412–33 (2005) (noting that all nations are not "juridically equal"; factors such as democratic governance and societal character and cultures affect the relevance of their practices to American courts). But courts have not treated the lessons of all countries equally; they give greatest consideration to the experiences of countries with traditions most similar to ours. *See, e.g.*, *Roper*, 543 U.S. at 577 (referring to U.K. law and noting "the historic ties between our countries"); *Thompson* v. *Oklahoma*, 487 U.S. 815, 830 (1988) (referring to the legal approaches taken "by other nations that share our Anglo-American heritage, and by the leading members of the Western European community"); *see also Knight* v. *Florida*, 528 U.S. 990, 995–96 (1999) (Breyer, J., dissenting) ("[T]his Court has long considered as relevant and informative the way in which foreign courts have applied standards roughly comparable to our own constitutional standards in roughly comparable circumstances.").

Second, many of the countries that form the basis of Professor Snead's assessment have dramatically different legal traditions than those of the U.S. concerning, among other things, gender equality and the role of religion in the law. Although Texas argues that "92% of the world's countries—the overwhelming international consensus—ban abortion outright after the first trimester (12 weeks)," Appellants' Br. at 23, Professor Snead himself

acknowledges that the majority of these countries "ban abortion outright, at all gestational stages," R.O.A. 2495. Many countries do so entirely on religious grounds. This legal approach is fundamentally inconsistent with the American constitutional imperative against the entanglement of church and state; as such, these countries' treatment of abortion is of no instructive value to American courts.

Somalia, for example, operates under a mix of civil, Shari'ah, and traditional law (Xeer), and its Provisional Constitution enshrines Islam as the state religion. *The World Factbook: Somalia*, Central Intelligence Agency, https://www.cia.gov/library/publications/the-world-factbook/geos/so.html (last visited Apr. 17, 2018); Somalia (Provisional) Const., 2012, art. 2, *translation at* http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_233457.pdf (banning laws that are "not compliant with the general principles and objectives of Shari'ah"). It is based on a conservative interpretation of Shari'ah law that Somalia bans abortion (subject only to a "necessity" exception to save the mother's life). *Id.* art. 15. Similar religious-based bans to abortion are followed in Saudi Arabia, Yemen, Afghanistan, El Salvador, and Malaysia, among others. *Abortion Policies: A Global Review*, U.N. Population Division, http://www.un.org/esa/population/publications/abortion/profiles.htm (last visited Apr. 17, 2018); Afg. Penal Code art. 402–06 (Afg.); Malaysia Const. I.3, *translation at*

http://www.agc.gov.my/agcportal/uploads/files/Publications/FC/Federal%20Consti%20(BI%20text).pdf; Código Penal (Criminal Code) art. 133–37 (El Sal.). These examples highlight the perils of Professor Snead's attempt to identify a supposed foreign ethical consensus, let alone to glean information that can inform American jurisprudence on this constitutional question.

In contrast, many countries with which the U.S. shares legal and cultural traditions ensure their citizens have access to reproductive healthcare that includes abortion care. For instance, women in Great Britain may obtain abortions until 24 weeks.[9] Abortion Act, 1967, 1(1)(a) (U.K.). This is offered as part of the National Health Service's broader reproductive healthcare coverage, which also includes the provision of comprehensive contraceptive access. National Health Service Act 1977, § 5(1)(b) (U.K.).

In Canada, another Commonwealth country with a legal tradition very similar to ours, abortion has been decriminalized since 1988. *R* v. *Morgantaler*, [1988] 1 SCR 30 (Can.); Vicki Jackson, Constitutional Engagement in a

[9] In Great Britain, women may obtain abortions until 24 weeks if continuation of the pregnancy "would involve risk, greater than if the pregnancy were terminated, of injury to the physical or mental health of the pregnant women or any existing children of her family." Abortion Act, 1967, 1(1)(a) (U.K.); Human Fertilisation and Embryology Act, 1990, 3(5) (U.K.). The overwhelming majority of these abortions are performed on the basis of a risk to the woman's mental health. U.K. Dep't. of Health, Abortion Statistics, England and Wales: 2016 8 (2018), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/679028/Abortions_stats_England_Wales_2016.pdf.

Transnational Era 211 (2013). Moreover, abortion care is largely covered under Canada's publicly financed and administered healthcare system. Canada Health Care Act, R.S.C., 1985, c. C-6 (Can.); Health Canada, Canada Health Act Annual Report 2016–17 22 (2018), https://www.canada.ca/content/dam/hc-sc/documents/services/publications/health-system-services/canada-health-act-annual-report-2016-2017/canada-health-act-annual-report-2016-2017-eng.pdf.[10] Under a proper comparative law analysis, U.S. law would gravitate more toward these legal systems than the legal systems of Somalia, Saudi Arabia, and Afghanistan.

2. Professor Snead Did Not Analyze How Any Country's Abortion Law Actually Operates

Even if Professor Snead had accurately identified the laws of other countries—he did not—comparative analysis also requires understanding of how the relevant laws operate. *See* John Kozyris, *Comparative Law for the Twenty-First Century: New Horizons and New Technologies*, 69 Tul. L. Rev. 165, 168 (1994) ("It is necessary to get to know what is behind the texts and also, even more important, how they function. . . . Laws cannot be grasped in an idealized form outside the context of the society that created them."); *see also Graham*, 560 U.S.

[10] *See also* Lag om abort [Abortlagen] (Svensk Författningssamling [SFS] 1974:595) (Swed.) (allowing abortion regardless of reason through 18 weeks' gestation, and for special reasons until viability).

at 62–64 (finding a tally of state laws regarding juvenile life-without-parole to be "incomplete and unavailing" because they did not reflect "actual sentencing practices"). Disregarding comparative law methods, Professor Snead simply looked at gestational limits, without placing them in the context of the legal systems in which they operate. *See* R.O.A. 2515 (testifying that he did not consult with legal experts in other countries, but merely "review[ed] the text of the laws [him]self"). As a result, his reduction of abortion laws to gestational age limits provides no meaningful insight into abortion access in these jurisdictions, let alone any insight into *why* particular restrictions on abortion may be in place (for ethical reasons or otherwise).

Despite acknowledging that many countries' laws have exceptions to gestational limits, R.O.A. 2516–17, Professor Snead failed to consider how any of those exceptions may expand overall access to abortion. Many laws imposing gestation limit restrictions simultaneously allow for broad exceptions later in pregnancy. Exceptions for social or economic circumstances allow women in many countries to access abortion later than the gestation period indicated by the text of the law would suggest. *See, e.g.*, *Lovitidende for Kongeriget Danmark*, Part A, 6 July 1973, No. 32, pp. 993–95 (Den.), *translation at* https://cyber.harvard.edu/population/abortion/Denmark.abo.htm; Penal Law 5737-1977 § 316(a)(2) 5 ISL 98 (2005) (Isr.); Choice on Termination of Pregnancy Act

92 of 1996 (S. Afr.). Exceptions for health or mental health allow women to access abortion care in many more countries (including the vast majority of European countries), despite nominal gestation limits. *See, e.g.*, Code de la Santé Publique art. L2213-1 (Fr.); Schweizerisches Strafgesetzbuch [StGB] [Criminal Code] art. 119 (Switz.); Medical Termination of Pregnancy Act, No. 34 of 1971, India Code (1993), vol. 33 (Ind.); Termination of Pregnancy Act, Cap. 304 (1994) § 3(1)(a)(ii) (Zam.).

Moreover, whereas an appropriate comparative law analysis that examined access to abortion in a particular jurisdiction would take into account the broader context of overall access to reproductive care from access to preventative medical care—including (i) contraception, (ii) maternal healthcare, (iii) access to medical information, and (iv) availability of early abortions (both in terms of cost and access to providers)—Professor Snead considered gestational limits in a vacuum, entirely disregarding countries' broader healthcare infrastructure. *See generally* Jackson, *supra*, at 217–18 ("In social welfare states that provide support, as a matter of right, for the health care needs of pregnant women and their children . . . the effects of more restrictive time periods, or of limited reasons for abortion, might be less harmful to women's equality.").

For example, under Professor Snead's analysis, Germany appears to be among the "supermajority of nations" with a less "permissive" approach to

abortion than the U.S. R.O.A. 2498. Yet many aspects of Germany's reproductive health laws provide more support for women to avoid and terminate unintended pregnancies. Unlike the U.S., Germany offers its citizens universal health insurance, and subsidizes contraception for women under 20 years of age. Sozialgesetzbuch V Gesetzliche Krankenversicherung [SGB V] [Social Health Insurance Code] § 24a(2) (Ger.). For many women, that health insurance covers abortion care as well: more than 80% of abortions in Germany are publicly funded. Mary Anne Case, *Perfectionism and Fundamentalism in the Application of the German Abortion Laws*, 11 Fla. Int'l U. L. Rev. 149, 157 (2015). State-regulated abortion counseling centers are required to provide sex education, including information about the use of contraceptives. Case, *supra*, at 162. German laws also reduce burdens on parenting women, providing mothers with vocational training and publicly supported day care for children, starting at 12 months of age. *Id.* at 153; Friederike Heine, *Germany Promises Daycare for All*, Der Spiegel (Aug. 1, 2013).

In contrast to Germany, Texas has made a concerted effort to reduce access to both abortion and the services that could prevent or mitigate the effects of unintended pregnancy. More than 4.3 million Texans lack health insurance. *The Uninsured in Texas*, Texas Medical Association (2018), https://www.texmed.org/uninsured_in_texas/. With narrow exceptions, public

health insurance through state Medicaid does not cover abortions,[11] and Texas recently passed a law preventing private insurers from covering abortion care unless it is offered under a separate premium and signed for separately. Tex. Hum. Res. Code Ann. § 32.024(c-1); Tex. Ins. Code Ann. § 1218.004–06. Texas's other efforts to regulate abortion providers have also rendered abortion care difficult to access. *See, e.g.*, *Whole Woman's Health* v. *Hellerstedt*, 136 S. Ct. 2292 (2016). This reduced access has forced some women to obtain abortions later in pregnancy than they would otherwise wish. Daniel Grossman et al., *Change in Abortion Services After Implementation of a Restrictive Law in Texas*, 90 Contraception 496, 498–99 & tbl. 1 (2014) (finding a decrease in provision of early-term medical abortions and an increase in the proportion of abortions performed in the second trimester after Texas's restrictive H.B.2 abortion law went into effect). At the same time, one-quarter of Texas public schools do not include sex education in their curricula. Cassandra Pollock, *Study: A Quarter of Texas Public Schools No Longer Teach Sex Ed*, Texas Tribune (Feb. 14, 2017), https://www.texastribune.org/2017/02/14/texas-public-schools-largely-teach-abstinence-only-sex-education-repor/. Access to contraception has been further

[11] Texas Medicaid will cover only abortions that result from rape or incest, or that threaten the life of the mother. Texas Medicaid & Healthcare Partnership, Texas Medicaid Provider Procedures Manual 30 (2018), http://www.tmhp.com/Manuals_PDF/TMPPM/TMPPM_Living_Manual_Current/2_Gyne_and_ Repro_Health_Srvs.pdf.

curtailed by Texas's exclusion of Planned Parenthood centers from receiving public funds for family planning services. Amanda J. Stevenson et al., *Effect of Removal of Planned Parenthood from the Texas Women's Health Program*, 374 New Eng. J. Med. 853 (2016).

Moreover, Professor Snead did not claim that any of the countries he reviewed ban a particular abortion procedure, as is Texas's aim with SB8. *See* R.O.A. 2516 (testifying that he could not point "to a single nation that has ever banned a specific method of abortion"); *see also id.* at 2520 (testifying that he was not aware of any country banning the D&E procedure). In fact, the World Health Organization has published technical and policy guidance for countries' implementation of safe abortion access, which recommends that providers employ the very procedure at issue here as a method of abortion for pregnancies over 12 to 14 weeks in gestation age. World Health Org., Safe Abortion: Technical and Policy Guidance for Health Systems 4, 31–32 (2012), http://apps.who.int/iris/bitstream/10665/70914/1/9789241548434_eng.pdf.

Viewing the effort to ban a safe, common abortion procedure in the context of Texas's broader effort to curtail reproductive healthcare access, it stretches credulity to argue that Texas's abortion law is "more permissive" than that of similar countries like Germany. R.O.A. 2495.

3. A Methodologically Sound Comparative Analysis Should Include Assessment of Legal Trends

Reviewing global legal trends is an essential component of comparative analysis. *Cf. Roper*, 543 U.S. at 577–78 (observing that, during "the 56 years that have passed since the United Kingdom abolished the juvenile death penalty, the weight of authority against it there, and in the international community, has become well established"); *Lawrence*, 539 U.S. at 576–77 (analyzing changes in the legal treatment of homosexuality in the U.K. and at the ECtHR). The global trend toward liberalization of abortion laws supplies important context omitted from Professor Snead's testimony.

Since 1996, "legal grounds for abortion have expanded in a growing number of countries in both developing and developed regions," and "between 1996 and 2013, 56 countries . . . increased the number of legal grounds for abortion," while only eight reduced the number of legal grounds. U.N. Dep't. of Econ. & Soc. Affairs Population Div., Abortion Policies and Reproductive Health Around the World 1 (2014), http://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf; *see also* Ctr. for Reprod. Rights, Abortion Worldwide: 20 Years of Reform (2014), https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/20Years_Reform_Report.pdf (describing how, since 1994, more than 30 countries

expanded the grounds under which women can access abortion services legally); Louise Finer and Johanna Fine, *Abortion Law Around the World: Progress and Pushback*, 103 Am. J. Pub. Health 585 (2013).

This trend toward liberalization is apparent across the global community, among different cultural traditions and on multiple continents. *See, e.g.*, Crimes (Abolition of Offence of Abortion) Act 2002 (Aust. Cap. Terr.) (removing abortion from the criminal code in the Australian Capital Territory); Corte Constitucional [C.C.] [Constitutional Court], mayo 10, 2006, Sentencia C-355/06 (Colom.) (finding, by Colombia's Constitutional Court, that the country's absolute prohibition on abortion is unconstitutional); Ley Orgánica 2/2010 de Salud Sexual y Reproductiva y de la Interrupción Voluntaria del Embarazo (B.O.E. 2010, 3514) (Spain) (amending Spain's prior abortion ban to a law permitting abortion within the first 14 weeks of gestation regardless of reason, and later in the case of fetal anomaly or risk to the mother's health or life).[12] The trend has been particularly pronounced in Europe, where the vast majority of countries now permit abortion on-demand during the first trimester, and under a broad range of circumstances thereafter. *See generally* Mark Levels et al., *A Review of Abortion*

[12] Recent efforts to liberalize abortion laws in Ireland also suggest that this trend has not abated. *See* Ed O'Loughlin, *Ireland to Hold Abortion Referendum by End of May*, New York Times (Jan. 29, 2018), https://www.nytimes.com/2018/01/29/world/europe/ireland-abortion-referendum.html.

Laws in Western-European Countries. A Cross-National Comparison of Legal Developments Between 1960 and 2010, 118 Health Policy 95 (2014).

Professor Snead disregarded these developments, and acknowledged that his opinion did not cover "whether abortion laws are becoming more or less restrictive over time." R.O.A. 2515–16. As a result, the value of Professor Snead's testimony is as limited as its approach—a point-in-time snapshot of one subsection of domestic abortion laws, not a comparative analysis from which to draw legally persuasive conclusions.

IV. CONCLUSION

For the reasons stated above, Appellants' reliance on Professor Snead's testimony is misplaced. Amici join Appellees in urging the Court to affirm the district court's decision.

Dated: April 18, 2018

Respectfully submitted,

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 6479 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using the 2016 version of Microsoft Word in 14-point Times New Roman type style.

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/s/ Jane B. O'Brien
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Dated: April 18, 2018

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APPENDIX A

Aziza Ahmed, Professor at Northeastern University School of Law. Professor Ahmed is an internationally renowned expert in health law and human rights. Her scholarship examines the legal, regulatory, and political environments regarding health in international law, as well as U.S. domestic law and U.S. foreign policy. Professor Ahmed has consulted with and served as an expert for various United Nations agencies including the U.N. Development Programme, the U.N. International Children's Fund, and U.N. Women, as well as domestic non-governmental organizations. Professor Ahmed is currently a fellow with the Program in Law and Public Affairs at Princeton University for 2017–18.

Sujit Choudhry, I. Michael Heyman Professor of Law at the University of California, Berkeley. Professor Choudhry is an internationally recognized authority on comparative constitutional law, and has written about the use of comparative law by the American courts in cases involving the juvenile death penalty and same sex rights. He founded and serves as Director of the Center for Constitutional Transitions, which mobilizes knowledge in support of constitution-building by assembling international networks of leading experts to produce evidence-based policy options for decision-makers, and conduct agenda-setting research in partnership with a global network of multilateral organizations, think tanks, and non-governmental organizations, working with over 50 experts from more than 25 countries.

Rebecca J. Cook, **Professor Emerita in the Faculty of Law, the Faculty of Medicine and the Joint Centre for Bioethics, University of Toronto**. Professor Cook is also the Co-Director of the University of Toronto's International Reproductive and Sexual Health Law Program. Professor Cook has over 200 publications, including her most recent book, Abortion Law in Transnational Perspective: Cases and Controversies (Cook et al. eds., 2014), co-edited with Joanna Erdman and Bernard Dickens. Professor Cook has served on various advisory boards, including for the World Health Organization, and the editorial advisory board of the Human Rights Quarterly. She is also the ethical and legal issues co-editor of the International Journal of Gynecology and Obstetrics. Professor Cook received the Jus Memorial Human Rights Prize and the Certificate of Recognition for Outstanding Contribution to Women's Health by the International Federation of Gynecology and Obstetrics. She is a member of the Order of Canada and a Fellow of the Royal Society of Canada.

Bernard Dickens, Professor Emeritus of Health Law and Policy in the Faculty of Law, Faculty of Medicine and the Joint Centre for Bioethics at the University of Toronto. Professor Dickens has authored over 450 publications, including books, chapters in books and encyclopedias, journal articles, and reports, mainly in medical and health law and medical ethics, including co-editing the recent publication, Abortion Law in Transnational Perspective: Cases and Controversies, *supra*, with Rebecca Cook and Joanna Erdman. Professor Dickens is on editorial boards of scholarly journals, including serving as co-editor of ethical and legal issues for the International Journal of Gynecology and Obstetrics. Professor Dickens has been a consultant to the World Health Organization and Council for International Organizations of Medical Sciences, and is a member and immediate past chair of the Ethics Committee of the International Federation of Gynecology and Obstetrics, which embraces over 180 national associations of obstetrics and gynecology. Professor Dickins is a member of the Order of Canada and an Officer of the Royal Society of Canada.

Joanna N. Erdman, Associate Professor and MacBain Chair in Health Law and Policy in the Schulich School of Law at Dalhousie University. Professor Erdman is the immediate past chair of the Gender and Rights Panel of the World Health Organization's Department of Reproductive Health and Research (2012–17). Professor Erdman is an internationally recognized expert in transnational reproductive health and human rights law, and has acted as a third-party expert in constitutional and human rights cases before domestic, regional, and international tribunals. She has published widely on comparative and international abortion law, co-editing the recent publication, Abortion Law in Transnational Perspective: Cases and Controversies, *supra*, with Rebecca Cook and Bernard Dickens.

Erika R. George, Samuel D. Thurman Professor of Law at the University of Utah S.J. Quinney College of Law. Professor George's work focuses on human rights research and advocacy, and her regional areas of experience include Africa, Asia, and Latin America, where she studies the human rights of women and children. Professor George teaches international human rights law, constitutional law, and civil procedure. She has written extensively on gender equality. Professor George has testified before international human rights treaty bodies and foreign governments, and has briefed the international media on international human rights law, racial discrimination, and gender violence. In addition to other positions, Professor George served on the Executive Committee of the U.S. Department of State Public-Private Partnership for Justice Reform in Afghanistan, as a co-chair of the Africa Interest Group of the American Society of International Law, and as a founding Advisory Board Member of the University of Utah's

Tanner Center for Nonviolent Human Rights Advocacy. She is also an editor for the blog globaljusticeblog.com. Before entering the academy, she practiced law at Jenner & Block in Chicago and monitored women's rights for Human Rights Watch. In connection with her work with Human Rights Watch, Professor George conducted investigations in South Africa that resulted in a book-length report, Scared at School: Sexual Violence Against Girls in South African Schools.

Lawrence O. Gostin, Founding Linda D. & Timothy J. O'Neill Professor of Global Health Law and University Professor at Georgetown University Law Center. Professor Gostin is also Faculty Director of the O'Neill Institute for National & Global Health Law, Director of the World Health Organization Collaborating Center on Public Health Law & Human Rights, Professor of Medicine at Georgetown University, and Professor of Public Health at the Johns Hopkins University. Professor Gostin has worked with the World Health Organization ("WHO") in various capacities, including serving at the appointment of the WHO Director-General on the International Health Regulations Roster of Experts and on WHO's Blue Ribbon Panel on global health equity. He has served on two global commissions on the 2015 Ebola epidemic, and was senior advisor to the U.N. Secretary General's post-Ebola Commission. He served on the drafting committee for the 2016 G-7 Summit agenda in Tokyo on global health security and Universal Health Coverage. Professor Gostin holds international professorial appointments, including at Oxford University, the University of Witwatersrand (South Africa), and Melbourne University, and multiple international honorary degrees. He is the Legal and Global Health Editor for the Journal of the American Medical Association and he co-chairs the Lancet Commission of Global Health Law. Professor Gostin's publications include Global Health Law (2014) (also translated into Chinese and Spanish), Public Health Law: Power, Duty, Restraint (3d ed. 2016), and Human Rights in Global Health: Rights-based Governance for a Globalizing World (2018). He serves on the National Academy of Medicine's Global Health Board.

Ivana Isailovic, Visiting Scholar at Harvard University's Center for European Studies and Lecturer in Comparative Family Law at Northeastern University School of Law. Dr. Isailovic's published research sits at the intersection of comparative, human rights, and family law with an emphasis on equality issues. Dr. Isailovic studied the intersections between transnational law and issues of marginalization and equality at New York University, created and taught the Social Diversity and Law seminar at McGill Faculty of Law, and helped start a human rights clinic at the Université libre de Bruxelles in Belgium, where she worked on reproductive rights issues. Dr. Isailovic's dissertation examined the interplay

between private international law, human rights, and the processes of identity formation and marginalization, and she continues to publish research and give talks on the regulation of abortion in international human rights law.

Sital Kalantry, Clinical Professor, Director of the International Human Rights Policy Advocacy Clinic, and Co-Director of the Migration and Human Rights Program at Cornell Law School. Professor Kalantry's scholarly work focuses on, among other topics, women's rights, and particularly reproductive rights from a comparative and international perspective. Her writings have been published in top peer-reviewed and American and international journals, including the Human Rights Quarterly, the National Law Journal, and the Stanford Journal of International Law, and the Nordic Journal of Human Rights. Professor Kalantry's recent book, Women's Human Rights and Migration: Sex-Selective Abortion Bans in the United States and India (Penn. 2017), is an empirical and contextual examination of reason-based bans on abortion in the United States and India.

Alice M. Miller, Co-Director, Global Health Justice Partnership at Yale University and Assistant Clinical Professor at the Yale School of Public Health. Professor Miller is also Associate Professor (Adjunct) of Law and a Lecturer in Global Affairs at the Jackson Institute for Global Affairs at Yale. Professor Miller's work focuses on critical engagement with the theory and practice of rights claims around gender, sexuality, and reproduction in the context of health and law, including human rights, humanitarianism, and the interplay of domestic and international law in developing new rights norms. She has taught policy, law, and public health at Columbia University, the University of California, Berkeley, and Yale University; she has also taught independent sexuality and rights institutes in the Mexico, the Netherlands, Turkey, and India. Professor Miller's experience encompasses not only scholarship but more than two decades of advocacy and training with non-governmental organizations in the United States and globally, as well as with U.N. and other inter-governmental agencies.

Cynthia Soohoo, **Professor and Co-Director of the Human Rights and Gender Justice Clinic at the City University of New York School of Law**. Professor Soohoo specializes in reproductive justice, women's human rights, and human rights. Prior to joining the CUNY Law School faculty, she was the Director of the Bringing Human Rights Home Project at the Human Rights Institute at Columbia Law School, and a supervising attorney for the law school's Human Rights Clinic. She has worked on U.S. human rights issues before U.N. human rights bodies, the Inter-American Commission for Human Rights, and in domestic courts. Professor Soohoo has authored submissions to the U.S. Supreme Court, appellate courts and

international forums on access to abortion, forced sterilization, and criminalization of women's reproductive choices. She is a co-editor of the book Bringing Human Rights Home (2009) and the Reproductive Rights Prof Blog. Other publications include *Who is a Human Rights Defender? An Essay on Sexual and Reproductive Rights Defenders*, 65 U. Miami L. Rev. 981 (2011), *Bringing Theories of Human Rights Change Home*, 77 Fordham L. Rev. 459 (2008), and *Close to Home: Social Justice Activism and Human Rights*, 40 Colum. Hum. Rts. L. Rev. 7 (2008).

Barbara Stark, Professor of Law and Hofstra Research Fellow at the Maurice A. Deane School of Law at Hofstra University. A leading authority on international and comparative family law, Professor Stark has authored, co-authored, or edited dozens of articles and seven books on international law, family law, and human rights, including Family Law in the World Community (Blair et al. eds., 3rd ed. 2015), International Law and Its Discontents: Confronting Crisis (2015), *Transnational Surrogacy and International Human Rights*, 18 ILSA J. 369 (2012), Global Issues in Family Law (2007), and International Family Law (2005). She has presented at law schools and professional meetings throughout the world, including delivering the Blaine Sloan Lecture in International Law at Pace University School of Law. Professor Stark has chaired the International Law Association Committee on International Family Law and the Association of American Law Schools Family Law Committee, and has served on the Executive Council of the American Society of International Law.

United States Court of Appeals

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April 19, 2018

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No. 17-51060 Whole Woman's Health, et al v. Ken Paxton, et al
USDC No. 1:17-CV-690

Dear Ms. O'Brien,

The following pertains to your brief electronically filed on April 18, 2018.

You must submit the 7 paper copies of your brief required by 5TH CIR. R. 31.1 within 5 days of the date of this notice pursuant to 5th Cir. ECF Filing Standard E.1.

Sincerely,

LYLE W. CAYCE, Clerk

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