



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

OKLAHOMA CALL FOR REPRODUCTIVE
JUSTICE, *et al.*,

Plaintiffs,

v.

GENTNER DRUMMOND, in his official capacity
as Attorney General for the State of Oklahoma, *et*
al.,

Defendants.

**FILED IN DISTRICT COURT
OKLAHOMA COUNTY**

MAR 25 2024

**RICK WARREN
COURT CLERK**

108 _____

CASE NO. CV-2021-2072

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' MARCH 8, 2024
MOTION TO DISMISS

The State is incorrect that this case is moot. In fact, intervening legal changes since this case was filed have only strengthened Plaintiffs' claims that the laws challenged in this case violate Oklahomans' fundamental rights. In March of 2023, the Oklahoma Supreme Court held for the first time that Oklahomans have a fundamental right to life-preserving abortions subject to strict scrutiny. The Oklahoma Supreme Court has now reaffirmed this precedent multiple times, *including in the recent appeal in this case*. The precedent is clear: whether an outright ban or a restriction, any law lacking an exception to ensure patients needing life-preserving abortions can access that care is facially unconstitutional. *Okla. Call for Reproductive Justice v. Drummond (OCRJ I)*, 2023 OK 24, ¶ 12, 526 P.3d 1123, 1131; *Okla. Call for Reproductive Justice v. State (OCRJ II)*, 2023 OK 60, ¶ 7, 531 P.3d 117, 123; *Okla. Call for Reproductive Justice v. Drummond (OCRJ III)*, 2023 OK 111, ¶ 5, 531 P.3d 110, 114-15. In particular, "medical emergency" exceptions that require doctors to wait until patients face imminent harm are unconstitutional. *OCRJ I*, 2023 OK 24, ¶ 12.

As Plaintiffs will argue on the merits in this case, none of the laws' exceptions are broad enough to withstand this exacting constitutional scrutiny. The challenged laws are: H.B. 1904 (bar on family medicine doctors providing abortions) and S.B. 779 (dramatic restrictions on "abortion-inducing medication"), which have no exceptions, and S.B. 778 (dramatic restrictions on "abortion-inducing medication," including a 72-hour delay), H.B. 1102 (a total abortion ban), and H.B. 2441 (a 6-week abortion ban), which have medical emergency, but not life-preserving exceptions (the "Challenged Laws"). *See* Verified Pet. Exs. A (H.B. 1102), B (H.B. 2441), C (H.B. 1904), D (S.B. 778), E (S.B. 779). The State seeks to side-step the Oklahoma Supreme Court's clear precedent by baselessly asserting that the Challenged Laws do not affect any life-preserving care. But, the Oklahoma Supreme Court just rejected this very argument, holding that at least three

of the Challenged Laws *do not* implicate *only* what the State calls “elective abortions” because they are likely to obstruct care to some patients who need abortions to *preserve their lives*. *OCRJ III*, 2023 OK 111, ¶¶ 8-12, 543 P.3d at 116. The Supreme Court then directed this Court to enter a preliminary injunction blocking these three laws to “further the public interest of protecting a woman’s right to terminate a pregnancy in order to preserve her life.” *Id.* ¶ 12. This case thus presents very live, justiciable claims that implicate a matter of extreme public concern—whether Oklahoma can interfere with patients’ access to abortion in life-threatening situations.

This case is not moot for at least three reasons. **First**, there is clearly a live case or controversy as to whether the Challenged Laws violate Oklahomans’ fundamental rights, including the fundamental right to life-preserving abortions that the Court articulated in *OCRJ I*. **Second**, only one plaintiff needs standing for this case to proceed. Regardless of the fact that the provider plaintiffs no longer perform abortions in Oklahoma,¹ lead plaintiff Oklahoma Call for Reproductive Justice (“OCRJ”) continues to advance reproductive justice in Oklahoma, including on behalf of patients needing abortions for serious health risks. **Third**, the provider plaintiffs can still represent the interests of Oklahomans seeking abortion, including patients facing serious health risks, which is apparent in the Oklahoma Supreme Court’s issuance of the decisions in *OCRJ I*, *OCRJ II*, and this case. Indeed, all of these decisions were released *after* the provider plaintiffs ceased providing abortions in Oklahoma, and the State did not seek rehearing on the basis of mootness in either *OCRJ I* or *OCRJ II*. **Finally**, even assuming the State is correct that this case is moot, both exceptions to the mootness doctrine apply because (i) the case “presents a

¹ Two plaintiffs voluntarily dismissed their claims without prejudice on March 18th—Tulsa Women’s Reproductive Clinic, LLC and Planned Parenthood of Arkansas and Eastern Oklahoma. Tulsa Women’s Reproductive Clinic voluntarily dismissed its claims in this case due to a decision in *Tulsa Women’s Reproductive Clinic, LLC v. Drummond*, where Tulsa Women’s was the only plaintiff. No. 118,292 (March 11, 2024). This dismissal does not affect the remaining plaintiffs’ ability to litigate this case.

question of broad public interest,” and (ii) the “challenged event” is “capable of repetition, yet evading review.” *State ex rel. Okla. Firefighters Pension & Ret. Sys. v. City of Spencer*, 2009 OK 73, ¶ 4, 237 P.3d 125, 129 (internal citation and quotation marks omitted). What could be a matter of greater public importance than whether pregnant Oklahomans facing threats to their lives can timely and effectively access necessary medical care?

I. This case is not moot, especially as to patients needing life-preserving abortions.

None of the Challenged Laws are consistent with the fundamental right the Oklahoma Supreme Court articulated in *OCRJ I* because they either lack exceptions entirely or their medical exceptions are too narrow to protect patients needing life-preserving abortions. Any patient whose life is threatened by the continuation of a pregnancy has a constitutionally protected right to abortion. *OCRJ I*, 2023 OK 24, ¶ 9. Laws that have medical exceptions insufficient to protect access to care for any such patients are facially unconstitutional. *Id.* at ¶ 12. This can include both restrictions and bans. *See OCRJ III*, 2023 OK 111, ¶ 8. It thus very much remains a live issue whether the Challenged Laws are facially unconstitutional because they lack exceptions sufficient to protect patients facing life-threatening risks.

The Oklahoma Supreme Court has already held that at least three of the five laws at issue in this case—H.B. 1904, S.B. 778, and S.B. 779—likely violate the fundamental right to life-preserving abortions because they interfere with access to abortion for some patients facing life-threatening risks. *OCRJ III*, 2023 OK ¶ 5, 531 P.3d at 114-15. In *OCRJ III*, the Oklahoma Supreme Court held that H.B. 1904, which requires abortion providers to be board-certified OB/GYNs, would “greatly reduce access to patients where such a specialty is not readily available or timely available once the patient’s medical team has made a determination that the procedure is necessary to preserve the life of the mother.” 2023 OK 111, ¶ 8. S.B. 778 would force patients seeking an abortion to make two trips separated by at least 72 hours, among other requirements, and S.B. 779

would impose a baseless and unnecessary admitting privileges requirement. “*Any* additional delay in access to the procedure once the necessity has been determined is clearly detrimental to the health of the patient and her constitutionally protected right to terminate the pregnancy to preserve her life.” *Id.* ¶¶ 9-10 (emphasis added). Likewise, any requirement or restriction on abortion that “would increase the risk of harm” to the patient after such a determination has been made would interfere with the patient’s constitutionally protected right. *Id.* ¶ 10.

H.B. 1904 and S.B. 779 have no exceptions, *not even for life-preserving abortions*. Pet. Exs. C (H.B. 1904), E (S.B. 779). The remaining three bills have exceptions that are too narrow to protect patients needing life-preserving abortions because they limit care for patients who are not in an active medical emergency. S.B. 778 only contains a narrow exception for abortions where compliance with the law “would pose a greater risk of: 1. The death of the pregnant woman; or 2. The substantial and irreversible physical impairment of a major bodily function not including psychological or emotional conditions, of the pregnant woman.” Pet. Ex. D (S.B. 778) § 6(B). H.B. 1102 only exempts abortions “necessary to prevent the death of the mother or to prevent substantial or irreversible physical impairment of the mother that substantially increases the risk of death.” *See* Pet. Ex. A (H.B. 1102) §§ 1(20), 2(14). And H.B. 2441 only exempts abortions where the patient has a “condition that so complicates her medical condition that it necessitates the abortion of her pregnancy to avert her death or to avert serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions.” Pet. Ex. B (H.B. 2441) § 1(A). This similar language across S.B. 779, H.B. 1102, and H.B. 2441 is generally understood to be a “medical emergency” exception under Oklahoma law. *See, e.g.*, 63 O.S. § 1-738.1A(5) (using virtually identical language and describing it as a “medical emergency”

exception).² Nowhere do the Oklahoma statutes further define the term “serious risk of substantial and irreversible physical impairment of a major bodily function.” Nor does this terminology have a readily understood meaning within the medical profession. The Oklahoma Supreme Court emphasized that doctors cannot be required to wait until an active medical emergency to provide life-preserving care. *OCRJI*, 2023 OK 24, ¶ 12. These medical emergency exceptions are plainly at odds with the fundamental right announced in *OCRJ I* because they fail to provide any meaningful protection for those patients who need a life-preserving abortion but are not on death’s door. As the provider plaintiffs and medical experts have attested, abortion is extremely time sensitive. Aff. of Ushma Upadhyay, M.P.H., Ph.D., in Supp. of Pls.’ Mot. for Temp. Inj. ¶¶ 38-41; Aff. of Alan Braid, M.D., in Supp. of Pls.’ Mot. for Temp. Inj. ¶¶ 39, 72-76, 91, 98; Aff. of Joshua Yap, M.D., M.P.H., AAHIVS in Supp. of Pls.’ Mot. for Temp. Inj. ¶¶ 16, 62-65. For patients already facing life-threatening risks, requiring them to wait “until there is a medical emergency” would “further endanger” their lives. *OCRJI*, 2023 OK 24, ¶ 12, 526 P.3d at 1131.

The State’s arguments regarding the availability of abortion in Oklahoma beyond life-preserving circumstances are thus irrelevant here. “[M]ootness exists when circumstances occur such that the court is unable to grant effective relief and any opinion in the controversy would possess characteristics of an advisory or hypothetical opinion.” *Beach v. Okla. Dep’t of Pub.*

² See also 63 O.S. § 1-738.7(4) (defining medical emergency exception to mandatory counseling law for abortions beyond 20 weeks); 63 O.S. § 1-738.4 (describing requirement that physician inform patient of the medical indications supporting the physician’s judgment that a medical emergency exists); 63 O.S. § 1-738.12 (same); 63 O.S. § 1-746.5 (same); 63 O.S. § 1-740.1(2) (defining medical emergency exception to parental notification requirement); 63 O.S. § 1-744.1 (same); 63 O.S. § 1-756 (same); 63 O.S. § 1-745.2(5) (defining medical emergency exception to requirement that physician determine gestational age); 63 O.S. § 1-745.13(4) (defining medical emergency exception to requirement that physician offer opportunity to hear embryonic or fetal heart tones); (describing medical emergency exception to requirement that patients seeking abortion after diagnosis of fetal anomaly incompatible with life be informed of certain state-mandated information); 63 O.S. § 1-756(2) (defining medical emergency exception to medication abortion signage requirement).

Safety, 2017 OK 40, ¶ 16, 398 P.3d 1, 7. But there is nothing advisory or hypothetical about whether patients who need life-preserving abortions will be harmed by the Challenged Laws because their exceptions are nonexistent or too narrow. An order preventing the Challenged Laws from taking effect will advance the mission of OCRJ to protect reproductive justice in the State, and it will protect all Oklahoma patients whose interests are currently represented by the remaining provider plaintiffs. Plaintiffs have always sought to protect the rights of every Oklahoman to access abortion, including those who do so to preserve their lives. Plaintiffs' substantive rights claims are thus not moot.

Moreover, Plaintiffs brought other claims that are not based in substantive rights: special law claims against each of the Challenged Laws and single subject claims against S.B. 778 and S.B. 779. *See* Pet. ¶¶ 161-64. The State fails to address why these claims are now moot. And, as the State acknowledges, the Oklahoma Supreme Court has not yet ruled on whether abortions beyond those that are life-preserving are protected under the State constitution, a question raised in this case as well that remains live.

II. OCRJ unequivocally has standing, and that is all that is required for a continued case or controversy.

The State also argues that Plaintiffs now lack standing, but that argument conflates standing and mootness. Standing is assessed at the beginning of a case. *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1154 (10th Cir. 2005) (holding that standing is determined as of the time the action is brought). If a party at some point during the litigation no longer experiences a redressable injury, their claims become moot. "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Baca v. Colo. Dep't of State*, 935 F.3d 887, 922 (10th Cir. 2019) (internal quotation marks and citation omitted); *Okla. Firefighters*,

2009 OK 73, ¶ 4, 237 P.3d at 129 (“Where, as here, after an appeal has been commenced, conditions arise which preclude an appellate decision from affording any effective relief, the appeal will be dismissed for mootness.”). As described above, Plaintiffs’ claims are not moot under the applicable legal standard. Plaintiffs have nevertheless also analyzed whether Plaintiffs could assert standing if they filed their case today, which they would undoubtedly be able to do.

In this and many other cases challenging abortion bans and restrictions in Oklahoma, OCRJ has asserted organizational standing. Contrary to the Defendants’ false assertion, *see* State’s Mot. at 12, from the beginning of this case, OCRJ has asserted claims on behalf of itself, *see* Pet. ¶ 19. That OCRJ has never provided abortions is irrelevant. Nonprofit organizations can and do raise claims on their own behalf where they are aggrieved by state action. *See, e.g., Citizens Against Taxpayer Abuse, Inc. v. City of Okla. City*, 2003 OK 65, ¶ 9, 73 P.3d 871, 874. They do not need to show any kind of associational standing if they experience their own injury, such as a diversion of resources. This is the case here.

Although the circumstances may be limited, a plaintiff can have standing where the “asserted injury arises from the government’s allegedly unlawful regulation (or lack of regulation) of *someone else*.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992) (emphasis in original). For example, under this line of cases, “environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, 528 U.S. 167, 183 (2000). A clear example of one such circumstance is where a plaintiff organization makes specific and particular allegations about how the government action has forced it to *divert resources*, as articulated by the U.S. Supreme Court in *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982).

The State's Motion contains several gross mischaracterizations of the relevant law. Contrary to the State's assertions, OCRJ does not need to be a directly regulated party when it has made specific allegations about a "concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources," which is "far more than simply a setback to the organization's abstract social interests." *Id.* at 379. OCRJ's standing is thus not comparable to that asserted in *Colorado Outfitters Association v. Hickenlooper*, where the plaintiffs raised a threat of prosecution, which requires a showing of credible threat in order to demonstrate imminency. 823 F.3d 537, 545 (10th Cir. 2016); State's Mot. at 13. Nor is it comparable to the standing asserted in *Clapper v. Amnesty International USA*, where the plaintiffs asserted "fears of hypothetical future harm." 133 S.Ct. 1138, 1151, 568 U.S. 398, 416 (2013); State's Mot. at 13. And OCRJ's allegations are also unlike those in the cases cited by State where courts found plaintiffs had asserted nothing more than "mere interest" in a problem. State's Mot. at 14.

Rather, this case is like *Havens* or *Florida State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153 (11th Cir. 2008). OCRJ, like the plaintiffs in *Havens* and *Browning*, has alleged current diversion of resources and "reasonably anticipate[s] that [it] will have to divert personnel and time to" advancing the interests of Oklahomans in accessing abortion, including those facing life-threatening risks, should the Challenged Laws take effect. 522 F.3d at 1165–66. OCRJ alleges that its educational and practical efforts are and will continue to be deeply impacted by abortion bans and restrictions, which is not just an abstract effect on its mission. First Supp. Aff. of Priya Desai attached as Ex. A ("Desai Supp. Aff.") ¶¶ 8-18; Pet. ¶¶ 15-19. As OCRJ attests, those activities, including their education campaigns and fact-finding efforts will have to shift dramatically if these laws take effect, especially as to patients needing life-preserving care, which

has been a focus of their recent work. Desai Supp. Aff. ¶¶ 3-6, 18. Indeed, since the overturning of *Roe*, OCRJ has specifically pursued research to examine the treatment of obstetrical emergencies in hospitals³—fact-finding to which OCRJ devoted around 25% of its 2023 yearly budget of approximately \$125,000. *Id.* ¶¶ 6, 16-18. OCRJ has connected with thousands of Oklahomans about Oklahoma’s abortion bans, include people who needed abortions due to life-threatening risks, to raise awareness of the fundamental right to life-preserving abortions. *Id.* ¶¶ 3, 4, 16. OCRJ devoted around 65% of its 2023 yearly budget to these educational efforts. *Id.* This work will only increase if patients facing serious health risks suddenly have to wait 72 hours before they can receive care, or are obstructed because the only doctor available is a family medicine specialist and not an OB/GYN. *Id.* ¶¶ 16, 17. Should the Challenged Laws take effect, OCRJ would have to spend around another \$100,000, most of its yearly budget, simply to replicate the same efforts geared now toward the collective impact of the Challenged Laws’ restrictions on life-preserving care. *Id.* ¶ 16; Pet. ¶ 18. OCRJ’s mission relates to all pregnant Oklahomans who need abortion care, including those seeking care for serious health risks. These are not “abstract social interests,” but very real threats imposed by the Challenged Laws to OCRJ’s “actual ability to conduct specific projects.” *Browning*, 522 F.3d at 1166. That some of this injury is “anticipated rather than completed” does not lessen its “immediacy and likelihood.” *Id.*

The State has *no* real argument that OCRJ lacks organizational standing due to its diversion of resources despite its conclusory mischaracterization of OCRJ’s injuries as mere interest, and it fails to meaningfully grapple with the specific injuries OCRJ asserts. If these allegations are now

³ Oklahoma Call for Reproductive Justice, *Press Release—No One Could Say: Accessing Emergency Obstetrics Information as a Prospective Prenatal Patient in Post-Roe Oklahoma* (Apr. 25, 2023) (“Our new report paints an alarming picture of pregnant Oklahomans’ inability to receive clear information on how they will be treated at hospitals if they experience dangerous pregnancy complications.”), <https://ocrj.org/noonecouldsay/>.

insufficient to confer organizational standing on OCRJ, it is remarkable that the State has never chosen to raise its standing concerns in any of the prior cases brought by OCRJ challenging abortion bans and restrictions. *See, e.g., Okla. Coal. for Reproductive Justice v. Cline*, 2019 OK 33, ¶ 1, 441 P.3d 1145, 1147; *OCRJ I*, 2023 OK 24, 526 P.3d at 1126; *OCRJ II*, 2023 OK 60, 531 P.3d at 122. Not all plaintiffs need to show standing for a case to proceed, and OCRJ’s standing alone is sufficient for a live case or controversy as to each claim. *Davis v. Fieker*, 1997 OK 156, ¶ 9, 952 P.2d 505, 508 (“We need not address the standing of the plaintiffs which are members of the Oklahoma Legislature since we find that the other two plaintiffs have standing.”); Chris Conrad, *Judicial Power in the Laboratory: State Court Treatment of the One Good Plaintiff Rule*, 108 Geo. L.J. 767, 795 (2020) (noting that Oklahoma is among a large group of jurisdictions that “grant additional plaintiffs virtually unfettered access to their courts when an original plaintiff demonstrates standing”).

III. The remaining provider plaintiffs still have standing on behalf of patients facing serious health risks even if they can no longer provide abortions in Oklahoma.

Abortion providers have long been able to vindicate the rights of abortion patients even if they are not currently able to provide care. The most recent examples of this are *OCRJ I*, *OCRJ II*, and *OCRJ III*. The Oklahoma Supreme Court ruled in these cases even though the provider plaintiffs were already unable to provide abortions. And the State did not move for rehearing in either *OCRJ I* or *OCRJ II*. When it did file for rehearing in *OCRJ III*, raising the same arguments they do here, its petition was quickly denied. The provider plaintiffs remaining in this case, Dr. Braid and PPGP (who were also parties in *OCRJ I* and *OCRJ II*) have consistently represented all Oklahomans who need abortions, including the patients who seek abortions to preserve their lives. Dr. Braid regularly sees Oklahomans who must travel to New Mexico to receive care. *See* State’s Mot. at 5 (noting that Dr. Braid continues to see Oklahoma patients in New Mexico). And PPGP

still operates healthcare facilities in Oklahoma, which could see patients who ultimately need to go to a hospital to receive life-preserving care. That is more than sufficient to establish standing.

IV. Even if this case were moot, exceptions to mootness apply.

Oklahoma law recognizes two exceptions to the mootness doctrine: (1) when a case presents a question of broad public interest and (2) when the challenged event is “capable of repetition, yet evading review.” *Okla. Firefighters*, 2009 OK 73, ¶ 4, 237 P.3d at 129. This case falls squarely into both categories.

First, although the State asserts that this case is about non-life-preserving abortions and less-restrictive regulations, the Oklahoma Supreme Court has clearly held that at least three of the Challenged Laws threaten care for people who need life-preserving abortions. *OCRJ III*. And the same is true for the two bans also at issue in this case. Indeed, Plaintiffs seek to vindicate the rights of all people to access abortion, and that includes those who need life-preserving care. Nowhere does the State show that it has a compelling interest in enforcing the Challenged laws when an abortion is needed to preserve the pregnant patient’s life. It is hard to imagine a greater question of “broad public interest” than whether the State can impose laws that are so restrictive they endanger pregnant Oklahomans who are facing life-threatening health risks. The dangers associated with delaying or denying care for these patients are not hypothetical; nor are these “rare and improbable scenario[s].” State’s Mot. at 11.⁴

⁴ See Selena Simmons-Duffin, *In Oklahoma, a Woman Was Told to Wait Until She’s ‘Crashing’ for Abortion Care*, NPR (Apr. 25, 2023, 10:10 AM EST), <https://www.npr.org/sections/health-shots/2023/04/25/1171851775/oklahoma-woman-abortion-ban-study-shows-confusion-at-hospitals> (reporting on Oklahoma patient Jaci Statton, who was turned away from her local hospital despite having a molar pregnancy, and told to return only if “your blood pressure goes so high that you are fixing to have a heart attack”); Whitney Bryen, *Oklahoma Mother Forced to Travel 600 Miles for Life-Saving Care Due to Confusing Abortion Laws*, Oklahoma Watch (Sept. 20, 2023, 11:26 AM CT), <https://www.oklahoman.com/story/news/2023/09/20/abortions-in-oklahoma-restrictions-woman-forced-travel-care/70909444007/> (“Assuming no other complications arose, Hoffman would spend the next four

Second, if this case is not permitted to continue, these injuries will persist and are “capable of repetition yet evading review.” If neither provider plaintiffs nor OCRJ can seek relief, other doctors who are providing care to patients experiencing life-threatening risks will have to bring an identical suit and likely under emergent circumstances.⁵ That would directly injure an Oklahoman who needs a life-preserving abortion in the interim. Oklahomans will continue to need life-preserving care, and those patients will continue to be endangered by laws that restrict access to that care.

* * *

For the foregoing reasons, the Court should deny the State’s Motion to Dismiss.

Respectfully submitted this 25th day of March, 2024,



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months in bed or with highly restricted movement, attempt a life-threatening delivery and watch her daughter die.”); Caroline Kitchener & Dan Diamond, *Faced with Abortion Bans, Doctors Beg Hospitals for Help with Key Decisions*, Wash. Post (November 1, 2023, 4:44 PM EST), <https://www.washingtonpost.com/politics/2023/10/28/abortion-bans-medical-exceptions/>.

⁵ Kate Cox, of Texas, was blocked from receiving an abortion in December 2023. At 20 weeks, Kate’s pregnancy was diagnosed with a fatal fetal condition, and she was experiencing several complications to her pregnancy resulting in visits to four separate emergency rooms. Cox ultimately had to file a lawsuit seeking court approval to receive an abortion under Texas’s medical emergency exception. Verified Pet., *Cox v. Texas*, No. D-1-GN23-008611 (Travis Cnty. Dist. Ct. Dec. 5, 2023).

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CERTIFICATE OF SERVICE

I certify that on this 25th day of March, a true and correct copy of the foregoing was served on counsel for all Defendants by first class mail.

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J. Blake Johnson

EXHIBIT A

**IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA**

OKLAHOMA CALL FOR REPRODUCTIVE
JUSTICE, *et al.*,

Plaintiffs,

v.

GENTNER DRUMMOND, in his official capacity
as Attorney General for the State of Oklahoma, *et al.*,

Defendants.

CASE NO. 2021-2072

**FIRST SUPPLEMENTAL AFFIDAVIT OF PRIYA DESAI IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANTS'
MARCH 8, 2024 MOTION TO DISMISS**

Priya Desai declares and states the following:

1. I am a Board Member of Oklahoma Call for Reproductive Justice ("OCRJ"), the lead Plaintiff in this case. 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 exclusively dedicated to this cause. I have been involved with OCRJ since its founding and served as a Co-Chair of OCRJ from August 2016 to August 2020.

2. I understand that the Defendants in this case are asserting that OCRJ and its mission do not face injury at the hands of the laws challenged in this case and that the impact the laws will have is "speculative." Since our founding in 2010, OCRJ has sought to vindicate the rights of Oklahomans over half a dozen times through the Oklahoma courts, and the State has never before this year asserted that OCRJ doesn't have standing. In any event, I write this affidavit in further support of how the challenged laws injure OCRJ and our mission, and to demonstrate how these injuries loom even larger today than when this case was filed.

3. OCRJ was the lead plaintiff in the lawsuit where the Oklahoma Supreme Court first announced a fundamental right to “life-preserving abortions.”

4. Since then, we have expanded our efforts to inform Oklahomans of this fundamental right through social media, public presentations, and outreach, and by regularly responding to questions from members of the community.

5. We have connected with approximately 2000 Oklahomans about Oklahoma’s abortion bans, including some people who experienced serious health risks associated with their pregnancy whose stories we have collected. We have spoken at every Oklahoma abortion rights rally since the overturning of *Roe v. Wade* and attended over a dozen smaller events with groups across the state to raise awareness about the harms of abortion bans and their impact on Oklahomans.

6. Due to what we were hearing anecdotally about patients being denied care even in life-threatening situations, we were the lead author on a study to examine hospital policies and practices regarding obstetrical emergencies. That report has helped shine a light on the challenges Oklahomans face specifically in accessing life-preserving care. That study examined almost all hospitals in Oklahoma with labor and delivery capacity and found that not a single one could share concrete information about how patients’ lives would be prioritized in obstetrical emergencies.¹

7. Since the Supreme Court announced the fundamental right to life-preserving abortions, the Oklahoma legislature continues its assault on pregnant Oklahomans. This session

¹ Oklahoma Call for Reproductive Justice, *Press Release—No One Could Say: Accessing Emergency Obstetrics Information As a Prospective Prenatal Patient in Post-Roe Oklahoma* (April 25, 2023) (“Our new report paints an alarming picture of pregnant Oklahomans’ inability to receive clear information on how they will be treated at hospitals if they experience dangerous pregnancy complications.”), <https://ocrj.org/noonecouldsay/>.

alone, we have lobbied against 21 restrictions, including one that would have narrowed access to care in life-threatening situations.

8. As we reported when this case was filed, the challenged laws will frustrate our mission and ability to advance reproductive justice for all Oklahomans. This has only become more true as we strive to help educate Oklahomans about their fundamental right to life-preserving abortions and help make sure it is a reality for people. We cannot imagine all of the ways that these laws will impact providers and patients should even one go into effect, but we understand that if the laws are not blocked, they will, at a minimum, restrict or prevent access to life-preserving abortions because they apply in some life-threatening situations. And our state's highest court has already said that at least three of these laws threaten patients who need life-preserving care.

9. The State has tried to minimize the impact of these laws, but they are each extreme and their exceptions nonexistent or dangerously narrow.

10. Two of these laws have *no exceptions whatsoever*. H.B. 1904 has no exception and will bar family medicine doctors and other skilled physicians from providing abortions simply because they are not board-certified OB/GYNs. There are already dangerously few doctors in Oklahoma providing life-preserving abortion care—a large reduction in the number of physicians providing care in the state will dramatically affect patients trying to access constitutionally-guaranteed life-preserving care. The Oklahoma Supreme Court specifically said that this law likely violated patients' fundamental right to life-preserving care.

11. S.B. 779 has no exception and requires various agencies to impose complex requirements for manufacturers, distributors, and providers of abortion medication. The law applies to any "abortion-inducing drug," which could include even medications like misoprostol,

which is often used to help dilate a patient's cervix at later gestational ages, and even methotrexate, which is often used to manage ectopic pregnancies. As just one example of this law's many provisions, the bill includes a requirement that providers of "abortion-inducing" medication have admitting privileges or contract with a physician who does. The Oklahoma Supreme Court just said that this law would likely violate patients' fundamental right to life-preserving abortions.

12. We understand that S.B. 778 has a narrow medical emergency exception and imposes a severely burdensome, medically unnecessary scheme solely on doctors providing "abortion-inducing medication"—defined as broadly as in S.B. 779. This scheme's many requirements even include a mandatory ultrasound, which must be obtained at least 72 hours in advance. As the Oklahoma Supreme Court held, forcing patients who need life-preserving abortions to wait 72 hours before getting care because they are not in an active medical emergency is clearly a violation of the fundamental right to life-preserving abortions.

13. H.B. 1102 also has what is understood to be a medical emergency exception and *bans abortion entirely* by declaring that providing abortion, including some life-preserving care—constitutionally-protected healthcare—is unprofessional conduct by physicians requiring, at a minimum, suspension of licensure for one year.

14. Finally, H.B. 2441 also has what is understood to be a medical emergency exception and bans abortion at approximately six weeks in pregnancy, before the vast majority of people (and especially patients who will face life-threatening risks) even know they are pregnant.

15. Each of these bills when applied to patients needing life-preserving care—and each *will* affect some of those patients—is unconscionable.

16. OCRJ's yearly budget for the years following the overturning of *Roe* has been around \$125,000. 25% of our 2023 budget was devoted to our research into care for obstetrical emergencies. Approximately 65% percent of our 2023 budget funded our public education work to help Oklahomans understand their rights. If OCRJ has to pursue additional fact-finding about the impact of the laws challenged in this case or has to support even more people seeking guidance, we would thus need to expend, at a minimum, an additional \$100,000—nearly all of our budget—simply to replicate the work we did in 2023 to address the effects of the challenged laws.

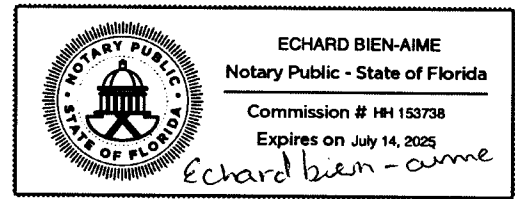
17. If there are fewer physicians to provide life-preserving abortions in this state, or if patients needing life-preserving care have to wait 72 hours, we will have to ramp up our efforts to document the harms and educate Oklahomans. If the two bans challenged in this case go into effect, patients who have a fundamental right to life-preserving abortions but are not yet experiencing an active medical emergency will have to wait until they are near death or get out of state for care. We will do what we must to address these harms.

18. In short, if the Challenged Laws take effect, *all of our work and activities* will be impacted, from providing information and education to documenting the harms happening to people who need abortions.

DATED: 03/22/2024

Priya Mukund Desai
Priya Desai

NOTARY



Notarized remotely online using communication technology via Proof.