

No. 23-0629

In The Supreme Court of Texas

State of Texas; Ken Paxton, in his official capacity
as Attorney General of Texas; Texas Medical Board;
and Stephen Brint Carlton, in his official capacity as
Executive Director of the Texas Medical Board,

Appellants,

v.

Amanda Zurawski; Lauren Miller; Lauren Hall; Anna Zargarian;
Ashley Brandt; Kylie Beaton; Jessica Bernardo; Samantha Casiano;
Austin Dennard, D.O.; Taylor Edwards; Kiersten Hogan; Lauren Van Vleet;
Elizabeth Weller; Damla Karsan, M.D., on behalf of herself and her patients;
and Judy Levison, M.D., M.P.H., on behalf of herself and her patients,

Appellees.

On Direct Appeal from the
353rd Judicial District Court, Travis County

**BRIEF OF AMICI CURIAE TEXAS WOMEN ATHLETES, THE WOMEN'S
NATIONAL BASKETBALL PLAYERS ASSOCIATION, NATIONAL
WOMEN'S SOCCER LEAGUE PLAYERS ASSOCIATION, WOMEN'S
SPORTS FOUNDATION, AND ATHLETES FOR IMPACT, WHO HAVE
RELIED ON AND SUPPORT CLEAR LAWS ALLOWING MEDICALLY
NECESSARY PREGNANCY CARE IN SUPPORT OF APPELLEES**

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IDENTITY AND INTERESTS OF PARTIES AND COUNSEL

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STATEMENT OF INTEREST OF *AMICI CURIAE*¹

Amici are current and former women Olympic, professional, collegiate, and high school athletes who have lived, played, or trained in Texas,² as well as sports organizations including:

- Women's National Basketball Players Association, which is the players' union for the WNBA
- National Women's Soccer League Players Association, which is the players' union for the National Women's Soccer League
- Women's Sports Foundation, an organization established in 1974 for the advancement of women and girls through sports and physical activity
- Athletes for Impact, an inclusive, nonpartisan global network of athletes committed to change

¹ Pursuant to Texas Rule of Appellate Procedure 11(c), no fee was or will be paid for preparing this brief.

² The individual Athletes who are appearing as Amici in this action are identified in the Appendix, which includes the highest level at which they played their sport and the athlete's connection to Texas. The individual Amici submit this brief solely in their capacities as private citizens. To the extent an Amicus's employer, institution or association is named, it is solely for descriptive purposes and does not constitute endorsement by the employer, institution, or association of the brief or any portion of its content.

All of the Amici have exercised, relied on the availability of, or support the right to clear laws regarding medical care during pregnancy in order to meet the demands of their sport and reach their full potential as athletes and human beings. Amici are united in their deeply-held belief that women’s athletics could not have reached its remarkable level of participation and success in Texas without protections for women’s right to obtain medically necessary treatment during pregnancy. Amici believe that, like themselves, the next generation of women athletes must be guaranteed bodily integrity and decisional autonomy in order to fully and equally participate in sports.

SUMMARY OF ARGUMENT

Athletics “have become part of the fabric of America.” *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141, 2168 (2021) (Kavanaugh, J., concurring). Perhaps no state exemplifies this maxim better than Texas. Sports are integral to Texas’ culture and economy, and Texas has long fostered the athletic potential and success of men and women alike.

Women’s ability to “participate equally in the economic and social life” of Texas—including through high school, collegiate, Olympic, and professional sports—“has been facilitated by their ability to control their

reproductive lives.” *Planned Parenthood of S.E. Pa. v. Casey*, 505 U.S. 833, 856 (1992) (plurality opinion). Absent access to safe and comprehensive reproductive health services, women’s sports would not have achieved the remarkable success they enjoy today in Texas.

Indeed, women depend on the right to control their bodies and reproductive lives to meet the demands of their sport. All athletes—men and women—have a narrow window of time to achieve their greatest athletic potential. For women athletes, this reality is magnified because childbearing age coincides with their competitive peak in athletics. Without the certainty that they can obtain life- and health-preserving medical care during pregnancy in deciding whether and when to dedicate their bodies to athletics, pregnancy, or both, women would lose the ability to participate fully and equally in athletics and Texas life. In turn, women and girls would be deprived of the multitude of benefits that result from athletic participation, including greater educational access and success, career advancement and earnings, enhanced self-esteem, and improved health.

As Amicus Sedona Prince, a basketball player for Texas Christian University from Liberty Hill, member of junior United States national teams, and outspoken advocate for equal facilities for women’s and men’s

NCAA Final Four teams, commented:

I know firsthand the all-consuming dedication, persistence, and sacrifice that it takes for elite athletes to play at the top of our game. We push our bodies to extremes, and to succeed in our sport, we must be able to control our own bodies and depend on comprehensive reproductive medical care. Autonomy over our reproductive health is not just one piece of our ability to excel in our chosen sport—it is fundamental. I have been able to use my sport as my gateway to higher education, my source of income, and my platform to advocate for gender equality and social change. My body is my business, and without the freedom to make my own healthcare decisions, I would not have been able to live out my dreams. The next generation of athletes—from every gender, race, sexuality, and background—deserves the same chance to pursue athletic excellence without fear that they will be denied medical treatment necessary to preserve life and health.³

Abortion laws that compromise doctors' ability to provide safe, comprehensive healthcare not only threaten the health and success of Texas women athletes, but they also jeopardize Texas' legacy as a leader in women's sports. Laws that prevent appropriate care during pregnancy because of uncertainty over "medical exceptions" inevitably make Texas an undesirable place for female athletes to train, compete, and relocate.

³ This brief relies upon published statements by athletes, as well as individual personal statements and stories contributed by athlete Amici who are submitting this brief. All statements shared by individual athlete Amici are attested to by the individual, and each individual Amicus has given authorization to communicate her story here, in some cases, anonymously. Some statements have been edited for length and spelling.

As Amicus Holley Mangold, a Team USA Olympic weightlifter who competed in the 2015 world championships in Houston, explained:

I have a right to bodily autonomy, including the right to access medical procedures that I might need to compete or coach to the level in which I am capable. An athlete's career is extremely short, and a woman's decision regarding her body and reproductive life should be between her and her health care professionals.

I will not coach or compete in the state of Texas. To the extent that women athletes come to me seeking advice regarding opportunities to compete or coach in Texas, I would encourage them to not do so for fear of their safety.

The absence of clear exceptions for medically necessary reproductive healthcare services would derail women's athletic careers, academic futures, and economic livelihoods at a large scale. Such a fundamental restriction on bodily integrity and personal autonomy would never be imposed on a male athlete, though he would be equally responsible for a pregnancy. Clarifying that Texas law protects necessary reproductive healthcare will ensure that Texas remains a hub for women's athletic excellence, and that women athletes in Texas continue to thrive.

ARGUMENT

I. Women's Participation in Athletics Benefits Them and Benefits Texas

A. **Women's Participation and Success in Sports Bring Vast Personal and Societal Benefits**

Participation in sports generates a myriad of benefits for girls, women, and Texas at large. As Governor Greg Abbott cogently observed just weeks ago, “Women have thrived under college sports. They have mastered discipline, spurred drive, and cast visions inspired by a work ethic to achieve greatness. They have learned to triumph with grace and how to gracefully accept failure. They have learned how to hone skills and then translate them into successful careers and families.”⁴

Athletic participation is associated with positive educational outcomes including better attendance, higher grades, increased advanced placement enrollment, higher high school and college graduation rates, and greater college attendance.⁵ Girls who participate in sports are more

⁴ Office of the Texas Governor, Greg Abbott, *Governor Abbott Protects Fair Competition With Save Women's Sports Act* (Aug. 7, 2023), <https://gov.texas.gov/news/post/governor-abbott-protects-fair-competition-with-save-womens-sports-act>.

⁵ See Women's Sports Foundation, *Chasing Equity: The Triumphs, Challenges, and Opportunities in Sports for Girls and Women* (Jan. 2020), at 28–29, <https://www.womenssportsfoundation.org/wp-content/uploads/2020/01/Chasing-Equity-Full-Report-Web.pdf>.

confident, have greater psychological well-being, and have higher self-esteem and better body image.⁶ These trends are “especially striking among girls from minority groups, who appear to experience greater social and economic mobility, more confidence, and even more personal safety if they have participated in sports.”⁷

An overwhelming majority of women who achieve senior management positions later in life had experience participating in organized athletics. For example, 94% of women in the C-suite played a sport, with 52% having played at college level.⁸ As two-time Olympic gold medalist and two-time women’s World Cup winner, Mia Hamm, who was raised and played soccer in Wichita Falls, explained:

⁶ National Coalition for Women and Girls in Education, *Title IX at 50* (June 2022) at 34, <https://www.ncwge.org/TitleIX50/NCWGE%20Title%20IX%20At%2050%20-%206.2.22%20vF.pdf>.

⁷ Barbara Kotschwar, *Women, Sports, and Development: Does It Pay to Let Girls Play?*, PETERSON INSTITUTE FOR INTERNATIONAL ECONOMICS (Mar. 2014) at 1, <https://www.piie.com/sites/default/files/publications/pb/pb14-8.pdf>; see also Women’s Sports Foundation, *Chasing Equity: The Triumphs, Challenges, and Opportunities in Sports for Girls and Women* (Jan. 2020), at 29, <https://www.womenssportsfoundation.org/wp-content/uploads/2020/01/Chasing-Equity-Full-Report-Web.pdf> (“While White female athletes outpaced White female undergraduates by 6% (78% to 72%), Black female athletes graduated at rates that were 19% higher than Black female students (70% to 51%)”).

⁸ Ernst & Young & espnW, *Where Will You Find Your Next Leader? EY and espnW Explore How Sport Advances Women at Every Level* (Sept. 23, 2020) at 6, https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/elite-athlete-program/ey-where-will-you-find-your-next-leader.pdf?download.

You just look at women in high-powered positions in top 500 companies and a lot of them will attribute their time in organized sports as something that really made a difference and had an impact in their lives. And I see the confidence it has built in my daughters when they work really hard at something, let's say it's soccer. They're working really hard on passing or shooting or a certain move, and then all of the sudden it just clicks, and you just see this big smile come on their face. And to see that confidence grow in a young girl is so important because I think boys are naturally encouraged to do those things, and the opportunities to do it for our daughters is so important.⁹

Women executives credit sports participation with preparing them for professional success, including being more disciplined than others (86%); having leadership skills (69%); being able to deal with failure (68%); and having a competitive edge (59%).¹⁰ Women in the C-suite reported that a sports background can help accelerate a woman's career (74%) and that women who played sports make good employees (77%).¹¹ Olympic swimming champion Donna de Varona emphasized: "Competition—celebrating wins, surviving losses, requiring teamwork,

⁹ Eliana Dockterman, *Mia Hamm on Why Girls Playing Sports Is So Important*, TIME (Sept. 11, 2014), <https://time.com/3319338/mia-hamm-soccer-fifa-sports-girls/>.

¹⁰ Women's Sports Foundation, *Her Life Depends On It III & Women, Sport, and Executive Leadership* (Sept. 22, 2016) at 1, <https://www.womenssportsfoundation.org/wp-content/uploads/2016/11/her-life-depends-on-it-leadership-brief-fullreferences-final.pdf>.

¹¹ Ernst & Young & espnW, *supra* note 8, at 6, 9.

rewarding persistence, resilience and discipline, these are the experiences we need in leaders and these are the experiences women gain in sport.”¹²

B. Women’s Athletics Are Integral to Texas Culture and History

Texas is a national leader in women’s sports at all levels, and women’s athletics have become essential to the fabric of Texas’ culture and community. Texas has long been a mecca for women athletes, providing unlimited opportunities to grow and compete.

Among many other extraordinary Texas athletes of the last century, Ladies Pro Golf Association (“LPGA”) founder Babe Didrikson Zaharias of Beaumont was not only a multi-medal Olympian in track and field in 1932, but won ten LPGA golf titles thereafter.¹³ Women’s professional tennis was launched for the first time in Houston in 1970.¹⁴

¹² Donna de Varona, *Amazing Things Happen When You Give Female Athletes the Same Funding as Men*, WORLD ECONOMIC FORUM (Aug. 25, 2016), <https://www.weforum.org/agenda/2016/08/sustaining-the-olympic-legacy-women-sports-and-public-policy/>.

¹³ Debra Michals, *Mildred “Babe” Didrikson Zaharias*, NATIONAL WOMEN’S HISTORY MUSEUM (2015), <https://www.womenshistory.org/education-resources/biographies/mildred-zaharias>.

¹⁴ Jessica Luther, *The “Battle of the Sexes” Sparked 50 Years of Sports Progress*, TEXAS MONTHLY (Sept. 20, 2023), <https://www.texasmonthly.com/arts-entertainment/battle-of-the-sexes-fifty-year-anniversary/>.

Beginning in 1949, the Texas Cowgirls Basketball Team—often considered the Harlem Globetrotters of women’s professional basketball—provided opportunities for talented young women from all over the country to play basketball under a Texas jersey.¹⁵ For these young women, “[b]asketball gave them opportunity and a common ground. Texas gave them a name with which to promote themselves.”¹⁶

Texas’ leadership in women’s sports continues through the present. As of 2022, for example, 330,712 girls played high school sports in Texas, representing the second highest level of girls’ participation in high school sports in the nation.¹⁷ At the University of Texas (“UT”), 46% of Division I athletes are female,¹⁸ as are 43% of Division I athletes at Texas A&M.¹⁹ Texas women’s overwhelming participation in sports creates network

¹⁵ Jarrett Van Meter, *The Pioneering, Barnstorming Women’s Basketball Stars of the Texas Cowgirls*, TEXAS MONTHLY (Nov. 14, 2023), <https://www.texasmonthly.com/arts-entertainment/texas-cowgirls-womens-basketball-history/>.

¹⁶ *Id.*

¹⁷ National Federation of State High School Associations, *High School Athletics Participation Survey* (Sept. 8, 2023) at 57, https://www.nfhs.org/media/7212351/2022-23_participation_survey.pdf.

¹⁸ U.S. Dep’t of Educ., *Equity in Athletics Data Analysis* (last visited Nov. 21, 2023), <https://ope.ed.gov/athletics/#/institution/details>.

¹⁹ *Id.*

effects at all levels of athletic competition. More women competing means more women pushing each other forward and raising the bar for athletic achievement and beyond.

Not only do Texas women participate in sports at remarkable levels—Texas women also excel in athletic competitions. In the 2021 Tokyo Olympics, fifteen members of Team USA were women from Texas, including the most decorated gymnast in history, Simone Biles, who grew up in Spring.²⁰ Texas' WNBA team, the Dallas Wings, has reached the league playoffs 14 times, including the 2023 WNBA semi-finals.²¹ UT's women's teams have won 33 National Championships,²² which is over half of UT's 64 total team championships.²³ UT women have also achieved a total of 26 NCAA runner-up finishes, 223 conference titles,

²⁰ Emily Martin, *Meet the Texas Women Looking to Bring Home the Gold in Tokyo Olympics*, KSAT (July 13, 2021), <https://www.ksat.com/news/local/2021/07/13/meet-the-texas-women-looking-to-bring-home-the-gold-in-tokyo-olympics/>.

²¹ WNBA, *WNBA Playoffs '23* (last visited Nov. 21, 2023), <https://www.wnba.com/playoffs/2023>.

²² Hornraiser, *Texas Athletics – Title IX 50th Anniversary* (June 23, 2022), <https://hornraiser.utexas.edu/project/32274>; see also University of Texas at Austin, *National Championships* (last visited Nov. 21, 2023), https://texassports.com/sports/2013/7/29/GEN_0729130655.aspx.

²³ University of Texas at Austin, *National Championships* (last visited Nov. 21, 2023), https://texassports.com/sports/2013/7/29/GEN_0729130655.aspx.

148 NCAA Tournament appearances, and 205 NCAA Championship top-10 finishes.²⁴

Enthusiasm for Texas women's sports extends far beyond the athletes themselves. Attending and watching sports is part of Texas' rich culture. A particularly memorable event was the so-called "Battle of the Sexes" in 1973 between tennis players Billie Jean King and Bobby Riggs, which sold out the Astrodome and had 90 million viewers globally, including 40 million in the United States.²⁵ King's victory over Riggs, watched by nearly a fifth of the country's population, cemented the place of women's sports in Texas' rich history.

Enthusiasm for women's sports in Texas continues unabated. The final game of the 2022 Women's College World Series between UT and University of Oklahoma attracted 2.1 million viewers, which exceeded the most-watched game in the men's final.²⁶ In the 2022-2023 season, UT's women's basketball team had the 11th highest attendance (104,288)

²⁴ Hornraiser, *supra* note 22.

²⁵ Luther, *supra* note 14.

²⁶ The Athletic Staff, *Women's College World Series Final Outgains Men's Final, Averages 1.7 Million Viewers*, THE ATHLETIC (June 29, 2022), <https://theathletic.com/4169889/2022/06/29/womens-college-world-series-final-outgains-mens-final-averages-1-7-million-viewers/>.

among all 366 Division I teams.²⁷ Texas Tech and Baylor University were not far behind, achieving 12th place and 22nd place, respectively.²⁸ Similarly, Texas A&M's softball team had the 5th highest attendance, and UT's softball team was 16th.²⁹ In June 2022, two UT softball games attracted the first and second largest crowds in NCAA Division I softball history.³⁰

Texas women's success in national and international competitions inspires more Texas girls to get involved in sports, thereby immeasurably strengthening Texas communities. As Texan Simone Biles explained, "When you see a team where everyone has a different ethnicity and you're the little girl watching on TV and you say 'I look like her,' it makes you feel like you can do it too. Believing that they can do it is what opens up

²⁷ NCAA Statistics, *Attendance Report Through Games 3/29/2023*, NCAA (Mar. 30, 2023), https://stats.ncaa.org/rankings/conference_trends.

²⁸ *Id.*

²⁹ NCAA Statistics, *Attendance Report Through Games 6/09/2023*, NCAA (July 3, 2023), https://stats.ncaa.org/rankings/conference_trends.

³⁰ NCAA, *Softball Attendance Records* (last visited Nov. 21, 2023), at 6, http://fs.ncaa.org/Docs/stats/SB_Records/2023/Attendance.pdf.

more kids to the sport.”³¹

C. Women’s Athletics Provide Substantial Economic Benefits

Not only is support for women’s sports associated with women who achieve more in every aspect of life—it is also associated with stronger economies. Research from the Peterson Institute has found that “investment in girls and sport has significant development payoffs and contributes to economic growth overall” and “if we were to empower women in our economies, according to McKinsey research, we could add an astounding \$12trn to the global economy.”³²

Indeed, athletics are a large driver of Texas’ business and tourism. For example, UT has the second most profitable sports program in all of college sports.³³ A decade ago, UT sports were estimated to generate \$728 million for the Texas economy and provide 7,333 jobs in Texas.³⁴ In

³¹ Corinne Sullivan, *Simone Biles’s 20 Most Empowering Quotes Show Why She’s Truly the Greatest of All Time*, POPSUGAR (July 8, 2021), <https://www.popsugar.com/fitness/simone-biles-most-empowering-quotes-48395218>.

³² de Varona, *supra* note 12.

³³ USA Today, *NCAA Finances: Revenue and Expenses by School* (June 13, 2023), <https://sports.usatoday.com/ncaa/finances>.

³⁴ Angelou Economics, *Impact of the University of Texas Athletic Department* (Sept. 8, 2015), at 11,

March 2002, the NCAA women’s basketball Final Four Championship game in San Antonio set an attendance record of 29,619 that was only broken in 2023 by a charity game in Iowa’s football stadium.³⁵ In terms of broadcast viewing, the April 2023 NCAA Championship game in Dallas averaged nearly 10 million viewers, the most watched women’s college basketball game in history.³⁶ And in February 2023, the last doubleheader of the SheBelieves cup—an international soccer tournament that is part of Team USA’s preparation for the Women’s World Cup—brought 17,784 fans to Frisco.³⁷

Further, athletics provide a powerful opportunity for Texas women

[https://texassports.com/documents/2015/9/8//Texas Athletics Economic Impact 9 8 15.pdf?id=4401](https://texassports.com/documents/2015/9/8//Texas_Athletics_Economic_Impact_9_8_15.pdf?id=4401).

³⁵ NCAA, *NCAA Women’s Basketball Attendance Records Through 2021-22* (last visited Nov. 21, 2023), http://fs.ncaa.org/Docs/stats/w_basketball_RB/2023/Attend.pdf; Maya Ellison, *History from Kinnick! Iowa’s Sets Women’s Basketball Attendance Record at 55,646*, NCAA (Oct. 16, 2023), ([internet](#)).

³⁶ Brad Adgate, *March Madness Finals Ratings Set a Record High for Women, Record Low for Men*, FORBES (Apr. 5, 2023), <https://www.forbes.com/sites/bradadgate/2023/04/05/ratings-for-the-march-madness-finals-games-sets-a-record-high-women-and-a-record-low-men/?sh=2c18fff96837>.

³⁷ FC Dallas, *Toyota Stadium to Host 2023 SheBelieves Cup Final Doubleheader Featuring United States vs. Brazil, Canada vs. Japan* (Dec. 9, 2022), <https://www.fcdallas.com/news/toyota-stadium-to-host-2023-shebelieves-cup-final-doubleheader-featuring-united->

to attain professional fulfillment and economic success. For instance, the NCAA's adoption of newly-amended rules in 2021 permitting student-athletes to license rights to their names, images, and likenesses ("NIL") for the first time gave college athletes the opportunity to earn substantial income without jeopardizing their amateur status. In addition to the other benefits of sports participation, student-athletes now may pursue financial security and entrepreneurial opportunities, including lending their image to business, advertising, and social causes.³⁸

With adoption of the NIL rules, college sports are rapidly changing, and female student-athletes in Texas stand at the forefront of this evolution. As the CEO of a marketing platform which connects student athletes with NIL opportunities commented: "Texas Athletics will be a powerhouse in the NIL era" with "student-athletes . . . poised to benefit in a big way."³⁹

Women athletes are capitalizing on new NIL opportunities. Female

³⁸ Dean Golembeski, *NIL Enriches, Empowers Women College Athletes*, BEST COLLEGES (Apr. 4, 2022), <https://www.bestcolleges.com/news/2022/03/31/ncaa-nil-womens-college-sports-sedona-prince/>.

³⁹ Texas Sports, *Texas Athletics Further Enhancing Access to Student-Athletes for NIL Opportunities* (Apr. 4, 2022), <https://texassports.com/news/2022/4/4/name-image-and-likeness-texas-athletics-further-enhancing-access-to-student-athletes-for-nil-opportunities.aspx>.

student-athletes at Texas A&M earned over \$230,000 during the first two years of NIL deals.⁴⁰ Following this year’s enactment of H.B. 2804, which authorizes universities to “identify, create, facilitate, or otherwise assist with opportunities for a currently enrolled student athlete to earn [NIL] compensation,”⁴¹ Texas A&M’s athletic director pledged to “showcase” and “facilitate” increased NIL earnings for female athletes.⁴² In “one of the largest teamwide NIL agreements in collegiate women’s sports,” each player on Texas Tech University’s women’s basketball team is being paid \$25,000 in an NIL deal.⁴³

NIL deals can also provide student-athletes with more than financial gain. Amicus Sedona Prince, Texas Christian University basketball star, noted: “So now I have that freedom where I can just live the life that I want and invest my money correctly, doing well and get

⁴⁰ Travis L. Brown, *In First Two Years of NIL Compensation, Texas A&M Athletes Have Earned More than \$10M*, THE EAGLE (June 30, 2023), https://theeagle.com/sports/college/aggiesports/aggie-athletes-double-nil-compensation/article_5bb00c16-1798-11ee-9ca1-9b24ed2fbc06.html.

⁴¹ H.B. 2804, 88th Leg., 2023 Reg. Sess. (Tex. 2023) (eff. July 1, 2023).

⁴² Brown, *supra* note 40.

⁴³ Mechelle Voepel, *Texas Tech Women’s Basketball Players to Receive \$25K NIL Deals*, ESPN (July 26, 2022), https://www.espn.com/womens-college-basketball/story/_/id/34314841/texas-tech-women-basketball-players-receive-25k-nil-deals.

money to put to the future. It is incredible.”⁴⁴ Female student-athletes are also leveraging their NIL deals to “volunteer, mentor, and fight for social change.”⁴⁵

II. Texas’ Lack of Clear Medical Exceptions Threatens the Future of Texas Women’s Athletics

A. Laws that Threaten Women’s Ability to Safely Carry a Pregnancy to Term Will Undermine Women’s Participation and Success in Texas Sports

Women athletes have a unique interest in clear laws that provide medical exceptions to abortion bans and do not compromise physicians’ medical judgment by forcing them to make high-stakes medical decisions under the threat of career-ending penalties. Absent the ability to rely on clear medical exceptions for conditions that may arise during pregnancy, Texas women’s remarkable participation and success in athletics—and their concomitant ability to enjoy the physical, financial, social, and emotional benefits of sports—is gravely threatened. *See Casey*, 505 U.S. at 856 (plurality opinion) (“The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their

⁴⁴ Dean Golembeski, *NIL Enriches, Empowers Women College Athletes*, BEST COLLEGES (Apr. 4, 2022), <https://www.bestcolleges.com/news/2022/03/31/ncaa-nil-womens-college-sports-sedona-prince/>.

⁴⁵ *Id.*

ability to control their reproductive lives.”). Women athletes rely upon their rights to bodily integrity and decisional autonomy to participate in athletics and push their sports forward.

One Amicus, a Division I track & field athlete and former cheerleader who grew up traveling to Texas for national competitions, stated:

Sports taught me about sacrifice, determination, self-reliance, and how to contribute to something larger than myself. Sports helped me carve out my identity, what is important to me and what I want out of life. Moreover, my sports scholarship allowed me educational opportunities and socialization that I may have never otherwise experienced. As an elite athlete, honing your craft commands your time and energy. Having full control over your body and reproductive life is required to excel at high school and collegiate sports. In my experience, excellence in sports was absolutely essential to maintaining my self-esteem, dignity and confidence. All of this would have been derailed if I needed reproductive health services as a young woman and I wasn't able to access them.

The demands of athletics and pregnancy are physically and emotionally intense. Without the guarantee of life- and health-preserving medical care during pregnancy, women athletes are placed at substantial risk of sustaining a lifelong injury that would prevent competitive sports participation.

A woman's body undergoes vast transformation throughout and

following pregnancy. Bodily changes during and after pregnancy are particularly acute for athletes, whose ability to compete depends on their physical condition. The most minute physical variances can affect athletic performance and opportunity—including the grant or denial of a scholarship or endorsement—and pregnancy imposes enormous changes on a woman’s body. For example, pregnancy “affects virtually all hormones in the body” and loosens a woman’s joints and ligaments, putting her at greater risk of injury.⁴⁶ Athletes already push their bodies to extremes, and a pregnant woman’s “heart must work harder” because her blood volume increases almost 50% during pregnancy.⁴⁷ For instance, after Kara Goucher—an Olympic and professional runner who won the 2015 San Antonio half-marathon—gave birth, her doctor “told her she must choose: run 120 miles each week or breastfeed her son. Her body couldn’t do both.”⁴⁸ And she “has suffered from chronic hip injuries ever

⁴⁶ Raul Artal-Mittelmark, MD, *Physical Changes During Pregnancy*, MERCK MANUAL (May 2021), <https://www.merckmanuals.com/home/women-s-health-issues/normal-pregnancy/physical-changes-during-pregnancy?redirectid=197>.

⁴⁷ *Id.*

⁴⁸ Alysia Montaña, *Nike Told Me to Dream Crazy, Until I Wanted a Baby*, N.Y. TIMES (May 12, 2019), <https://www.nytimes.com/2019/05/12/opinion/nike-maternity-leave.html>.

since she raced the Boston Marathon seven months after childbirth.”⁴⁹

The physical realities of pregnancy inevitably affect women’s ability to participate and excel in athletics for a minimum of nine months during pregnancy, as well as the additional weeks and months thereafter to recover from giving birth and to breastfeed, for those who choose to do so.⁵⁰ Without the assurance of reliable medical exceptions during pregnancy, many women athletes would be forced to sacrifice their athletic pursuits, at enormous cost to themselves, their teammates and communities, and to the national commitment to gender equality in sports that is embodied in Title IX.

As the trial record shows in this case, Texas’ abortion laws currently are forcing physicians to refuse medically necessary care during pregnancy. For athletes, the existence of such risks threatens the

⁴⁹ *Id.*

⁵⁰ See, e.g., Brigid Schulte, et al., *Paid Family Leave: How Much Time Is Enough?*, NEW AMERICA FOUNDATION (June 16, 2017), <https://www.newamerica.org/better-life-lab/reports/paid-family-leave-how-much-time-enough/> (“Although state, employer, and private temporary disability insurance typically cover up to six weeks for a woman to recover from a vaginal birth and eight weeks from a Cesarean section (C-sections make up about one-third of all U.S. births), a Minnesota study following more than 400 mothers for 12 months after childbirth found that women had a number of physical symptoms and illnesses that persisted long after six weeks, including respiratory symptoms, dizziness, hot flashes, hemorrhoids, constipation, fatigue, sexual concerns, and hair loss.”).

development and success of their careers, possibly just as they are reaching the highest levels. For example, Serena Williams, perhaps the greatest tennis player of all time and in peak physical condition, nearly lost her life due to a “slew of health complications” in childbirth, reflecting: “I almost died after giving birth to my daughter, Olympia.”⁵¹ When Tara Lipinski—an Olympic champion figure skater who grew up training in Houston—became pregnant, her fetus did not have a heartbeat.⁵² She later required a D&C (dilation and curettage) after experiencing a miscarriage.⁵³ As this example shows, Texas athletes like Ms. Lipinski, despite being exceptionally healthy and physically fit, may still suffer pregnancy complications that threaten their lives or that of the fetus. They have a unique interest in comprehensive medical care before, during, and after pregnancy, and without the guarantee of this

⁵¹ Serena Williams, *Serena Williams: What My Life-threatening Experience Taught Me about Giving Birth*, CNN OPINION (Feb. 20, 2018), <https://www.cnn.com/2018/02/20/opinions/protect-mother-pregnancy-williams-opinion/index.html>.

⁵² Hannah Sacks, *Tara Lipinski Recalls Moment She Found Out Her Baby Didn't Have Heartbeat: 'I Just Knew,'* PEOPLE (Sept. 6, 2023), <https://people.com/tara-lipinski-recalls-moment-baby-didnt-have-heartbeat-7966071>.

⁵³ Hannah Sacks, *Tara Lipinski Recalls Feeling in 'Awful Limbo' When Scheduling DNC After Miscarriage: 'I Wanted Closure,'* PEOPLE (Sept. 8, 2023), <https://people.com/tara-lipinski-recalls-feeling-awful-limbo-scheduling-dnc-after-miscarriage-7967209>.

care, may face impossible decisions about how they can both have families and meet the demands of their sport.

Because pregnancy and parenthood both require tremendous dedication, it is critical for athletes to have full access to comprehensive medical care during pregnancy to ensure their greatest chance of success at both endeavors. Sheryl Swoopes—an Olympic gold medalist and three-time WNBA MVP from Texas—has explained:

Female athletes have a far different experience when it comes to parenthood than their male counterparts. I was a mom playing ball, so I know first hand — from taking maternity leave, to dealing with the mental part of being a mom, to physically taking care of a child, to coming back from pregnancy. There are so many different layers to being a mom and a professional athlete, that I don't even think people truly understand.

All of these layers can conspire to keep truly talented athletes out of the game or prevent them from reaching their peak potential. . . . When I became a mom, my mindset immediately went from being this great athlete and competing on the court to determining: how do I become a great mom? How do I take care of my family? When is it time to come back and be that athlete again? Finding balance and the right support system was not easy.

Several weeks after I gave birth, I was back out on the court. But that's because I was determined to be. Even with my innate motivation, there were many struggles. I didn't know how to balance motherhood and being an athlete. I felt guilty for leaving my child. I had gained 50 to 60 pounds. I wasn't even sure if I would be able to come back from it.

I was watching the NBA playoffs recently, and the announcer noted that one of the players was absent to be at the birth of his child. He was expected to return the next game. For many women, the birth of a child is a career killer. But, it doesn't have to be that way.⁵⁴

Had Sheryl Swoopes not had the care and resources she needed to safely carry her pregnancy to term, she would not have been able to return to her sport after giving birth and continued to excel as an athlete and role model to girls across Texas and the nation.

In short, elite athletes must dedicate extraordinary time and physical and emotional energy to their sport. The rigor of elite athletic competition, requiring constant training, with athletes pushing their bodies to new limits daily, is an all-consuming physical, mental, and emotional task. A lack of access to comprehensive medical care during pregnancy threatens to upend Texas women's athletic careers. Without the assurance of safe, comprehensive reproductive healthcare services, women's ability to participate and excel in athletics would inevitably decline and women's outstanding participation in Texas sports at all levels would reverse course.

⁵⁴ Sheryl Swoopes, *Swoopes: Building on the Vision of Title IX*, ATHLETES UNLIMITED (June 30, 2022), <https://auprosports.com/read/sheryl-swoopes-building-on-the-vision-of-title-ix/>.

B. By Preventing Doctors from Providing Comprehensive Reproductive Healthcare Due to Unclear Medical Exceptions, Texas' Future as a Leader in Women's Sports Is Threatened

Abortion laws that compromise doctors' ability to provide safe, comprehensive healthcare based on their medical training and experience will inevitably make Texas an undesirable place for female athletes to train, compete, and relocate. Athletes rely on and take special care of their bodies, and knowing they could suffer lifelong injury or death during pregnancy will deter them from competing in Texas and moving to Texas.

One Amicus, a record-breaking swimmer who grew up playing and training in Texas, explained:

Growing up in Texas, swimming was foundational to my health, friendships, and self-esteem. I was training 9 times a week—both for a club and my high school team—and I aspired to swim in college. Like all athletes, I knew how important it was to take care of my health and body to pursue those dreams. I took great comfort knowing that if any reproductive health issues ever put those dreams in jeopardy, I had access to the full spectrum of healthcare options to get me back on track.

I have since moved away from Texas to pursue education and career opportunities, but I have long planned to return to Texas to be close to my family. With Texas' new abortion law, however, I am seriously reconsidering that plan. Texas is no longer a state where I would feel safe becoming pregnant, because it is not clear to me under what circumstances I could

obtain a medically necessary abortion if I needed one. Nor is Texas a state where I would feel comfortable raising a daughter because I want my daughter to have all the same opportunities I had as a young woman, including the opportunity to pursue athletics if she so chooses. It wouldn't be in my best interests, or in the best interests of my child, to live in a state that does not prioritize women's health and autonomy.

Similarly, another Amicus, who was a Division I collegiate athlete, commented:

My partner plays professional football in Texas, so we relocated there earlier this year. He, too, knows the commitment that is all consuming when it comes to playing sports at an elite level. We are intent on starting a family soon, but we will not consider starting our family in Texas under the current law. My partner and I share the same strong opinions about the need for access to reproductive health services. I know that Texas' abortion law provides an exception for the life of the mother, but does that mean if you're pregnant you have to be on the verge of death before a doctor can intervene and provide lifesaving care? Those are not conditions under which I would feel safe carrying a pregnancy to term, nor would this be an environment my partner and I would want to raise our own young daughter. Especially a daughter who may want to follow in her parent's footsteps and pursue sports.

The inability of Texas physicians, in their sound medical judgment, to provide pregnancy care based on their training and experience, as found by the court below, means that student-athletes will risk compromising their health if they were to become pregnant. Without doubt, this is a matter of serious consideration when those athletes are

choosing a college. Indeed, according to an April 2023 Gallup poll, 72% of currently enrolled college students consider “the reproductive health laws in the state where their college is located . . . at least somewhat important to their decision to stay enrolled.”⁵⁵ Similarly, 81% of students “would prefer to attend a university in a state with greater access to reproductive health services.”⁵⁶

Current athletes have expressed this sentiment. For example, Ella Harris, a Division II runner, said: “I believe the NCAA has an obligation to consider access to reproductive health care when choosing championship cities.”⁵⁷ Molly Dreher, a runner at Saint Mary’s College in California said: “I cringe at the thought of having to fly to Austin,” which was the site of the June 2023 NCAA Division I outdoor track and field championships.⁵⁸

⁵⁵ Stephanie Marken & Zach Hrynowski, *Reproductive Health Laws Factor Into Many College Decisions*, GALLUP (Apr. 20, 2023), <https://news.gallup.com/poll/474365/reproductive-health-laws-factor-college-decisions.aspx>.

⁵⁶ *Id.*

⁵⁷ Nancy Armour, et al., *States With Laws Hostile to Women’s Rights After Roe Overturned See No Barrier to Get Sports Events*, USA TODAY (Jan. 19, 2023), <https://www.usatoday.com/story/sports/2023/01/19/roe-v-wade-overturned-states-hostile-laws-women-get-sports/11034745002/>.

⁵⁸ *Id.*

On the professional level, female players are “not going to want to choose to go to places where they don’t have rights to their own bodies,” according to WNBA All-Star Breanna Stewart.⁵⁹ Other female professional athletes, who regularly travel or have traveled to Texas to compete, have echoed this sentiment, with Portland Thorns soccer player Crystal Dunn saying that playing in a state with highly restrictive abortion laws was “out of the question.”⁶⁰ Professional players, such as former WNBA star Sue Bird, have questioned whether players will “want to go to the Dallas’ and Atlantas of the world, thereby impact[ing] free agency.”⁶¹

Prominent women in athletics also have voiced concern about sending their daughters to college in states that restrict reproductive healthcare. For example, Umme Salim-Beasley, the women’s gymnastics coach at Rutgers University, stated that both her daughters eliminated

⁵⁹ Lindsay Schnell, et al., *Women’s Professional Sports Grapple With Eroding Rights*, USA TODAY (Sept. 14, 2022), <https://www.usatoday.com/in-depth/sports/2022/09/14/womens-professional-sports-grapple-eroding-abortion-rights/8024518001/>.

⁶⁰ *Id.*

⁶¹ *Id.*

colleges in states where abortion is illegal from consideration.⁶² WNBA star A'ja Wilson said that she “would not allow” her child to attend the University of South Carolina, her alma mater, because of the state’s restrictions on abortion.⁶³

Sporting organizations also have expressed serious concerns about state abortion policies. For example, in August 2022, USA Gymnastics president Li Li Leung said there was “no question” that U.S. Gymnastics will consider abortion laws when deciding whether a state is chosen to host events like the U.S. National Championships. “We want to be able to align with cities and locations that are also aligned with our value system.” She continued, “We are about empowerment. We are about choice. We are about agency.”⁶⁴

By effectively preventing appropriate care during pregnancy because of uncertainty over “medical exceptions,” Texas is threatening

⁶² Will Graves, *Female Athletes Are Rethinking College Choices Due to Abortion Laws in Some States*, NBC CONN. (Mar. 13, 2023), <https://www.nbcconnecticut.com/news/national-international/female-athletes-are-rethinking-college-choices-due-to-abortion-laws-in-some-states/2993111/>.

⁶³ Schnell, *supra* note 59.

⁶⁴ Associated Press, Tampa, *USA Gymnastics: Abortion Laws To Play Role in Site Selection* (Aug. 18, 2022), <https://baynews9.com/fl/tampa/news/2022/08/18/usa-gymnastics--abortion-laws-to-play-role-in-site-selection>.

not only the physical health and safety of women athletes, but also the enormous personal, financial, and reputational advantages that both the athletes and the State and its communities gain through women's participation in sports and from hosting women's sporting events. The inability of physicians to provide necessary reproductive health services based on sound medical advice will inevitably jeopardize Texas' proud history as a leader in women's sports.

CONCLUSION

Texas women's participation and success in sports has been propelled to remarkable heights by women's reliance on safe and comprehensive reproductive healthcare as determined by the sound medical advice of their physicians. Continued access to, and reliance on, those rights, including clear medical exceptions, will empower the next generation of Texas girls and women to continue to excel in athletics and beyond, strengthening all Texans and their communities. If Texas women were to be deprived of needed medical care during pregnancy, the consequences for Texas women athletes—and for Texas as a whole—would be devastating.

Dated: November 21, 2023

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface and length requirements of Texas Rule of Appellate Procedure 9.4 and 11 because it contains 6,208 words, excluding the parts of the brief exempted by Rule 9.4(i)(1).

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been sent to all counsel of record in accordance with the Texas Rules of Civil Procedure on this 21st day of November, 2023.

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APPENDIX

LIST OF *AMICI CURIAE* TEXAS WOMEN ATHLETES AND ORGANIZATIONS WHO HAVE RELIED ON AND SUPPORT CLEAR LAWS ALLOWING MEDICALLY NECESSARY PREGNANCY CARE⁶⁵

Lakareber Abe

*Golf, Professional
Grew up in Texas*

Tezira Abe

*Golf, International
University of Texas at Austin*

Alexis Akins

*Soccer, Division I
Lives, played club soccer in
Houston*

Athletes for Impact

All Sports, All Levels

Amanda Beare

*Swimming, High School
Greenhill High School, Addison*

Kristen Blomstrom

*Equestrian, International
Grew up in Texas*

Ashanti Carey

*Soccer, Division I
Baylor University*

Sydney Colson

*Basketball, Professional
San Antonio Stars, Texas A&M
University*

Karletha Cook

*Track & Field, Division I
Texas Tech University*

JayCee Cooper

*Powerlifting, Professional
Competed in Texas*

Rachel Daniel

*Basketball, Club
Grew up in Texas*

Abby Dunkin

*Wheelchair Basketball, Olympic
Team USA
University of Texas at Arlington*

Haley Eazor

*Lacrosse, Swimming, High School
Greenhill High School, Addison*

⁶⁵ Amici submit this brief solely in their capacities as private citizens. To the extent an Amicus's employer, institution, or association is named, it is solely for descriptive purposes and does not constitute endorsement by the employer, institution, or association of the brief or any portion of its content.

Agnes Emma-Nnoku
Basketball, International
Texas Christian University

Kylie Farrell
Track & Field, Division I
Competed in Texas

Kelsey Gomez
Soccer, Division I
Seven Lakes High School, Katy

Melissa Guerrier
Tennis, Division I
Prairie View A&M University

Alexis Hanks
Soccer, Division I
Highland Park High School,
University Park

Kristi Harville
Soccer, Division I
Seven Lakes High School, Katy

Amy Jah
Soccer, Division I
Dallas Sting Royal Soccer Club

Marcella Jimenez
Softball, High School
Greenhill High School, Addison

Lindsay Kagawa Colas
Volleyball, Division I
Competed in Texas

Lori Lindsey
Soccer, Professional
Competed in Texas

Holley Mangold
Weightlifting, Olympic
Team USA
Competed in Texas

Haley Mills
Golf, Professional
University of Texas at Austin

**National Women's Soccer
League Players Association**
Soccer, Professional

Dana Nielsen
Softball, Division I
Competed in Texas

Delainey Peterson
Golf, Division I
University of Texas at Austin

Whitney Prange
Soccer, Club
Grew up in Texas

Sedona Prince
Basketball, Division I
Texas Christian University

Lauren Rosales
Softball, Division III
LBJ High School, Austin

Suzy Sanchez
Weightlifting, International
Grew up in Houston

Greta Voelker
Golf, Professional
University of Texas at Austin

Carrie West
Soccer, Division II
Grew up in Texas

Janine Williams
Volleyball, Division I
Competed in Texas

**Women's National Basketball
Players Association**
Basketball, Professional

Women's Sports Foundation
All Sports, All Levels

Mallory Yacullo
Soccer, Division I
Texas Tech University

Maya Zein
Tennis, International
University of Texas at Austin

Marlee Zein-El-Abdin
Tennis, International
University of Texas at Austin

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Case Contacts

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Associated Case Party: National Network of Abortion Funds

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Associated Case Party: State of Texas

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Associated Case Party: Women's and Children's Advocacy Project

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Associated Case Party: Women's and Children's Advocacy Project

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Smith		court filing@letsgotocourt.com	11/21/2023 8:33:22 PM	SENT
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Associated Case Party: Equal Means Equal

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Smith		court filing@letsgotocourt.com	11/21/2023 8:33:22 PM	SENT
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Associated Case Party: Elizabeth Cady Stanton Trust

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Associated Case Party: Zilker Properties

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: National Council of Jewish Women

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Associated Case Party: National Council of Jewish Women

Name	BarNumber	Email	TimestampSubmitted	Status
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Debbie L.Berman		dberman@jenner.com	11/21/2023 8:33:22 PM	SENT
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Associated Case Party: Bumble Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	11/21/2023 8:33:22 PM	SENT
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Associated Case Party: Amalgamated Bank

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT
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Associated Case Party: Argent

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
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James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT

Associated Case Party: ATX TV Festival

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Associated Case Party: ATX TV Festival

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: Biscuit Home

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	11/21/2023 8:33:22 PM	SENT
James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT

Associated Case Party: Blue Sky Partners

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	11/21/2023 8:33:22 PM	SENT

Associated Case Party: Brentwood Social House

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	11/21/2023 8:33:22 PM	SENT
James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT

Associated Case Party: Central Ceremonies

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Associated Case Party: Central Ceremonies

Name	BarNumber	Email	TimestampSubmitted	Status
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James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT
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Associated Case Party: CHA Law Group, PC

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	11/21/2023 8:33:22 PM	SENT
James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT

Associated Case Party: Civitech

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT
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Associated Case Party: Cybele Diamondopoulos

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	11/21/2023 8:33:22 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	11/21/2023 8:33:22 PM	SENT
James C. Martin		jcmartin@reedsmith.com	11/21/2023 8:33:22 PM	SENT

Associated Case Party: Doctors for Fertility

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Associated Case Party: Doctors for Fertility

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: Eco-Stylist

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Associated Case Party: Elevate Bartending

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Associated Case Party: Central Presbyterian Church

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Associated Case Party: Good Work Austin

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Associated Case Party: Good Work Austin

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Associated Case Party: Texas Civil Rights Project

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Associated Case Party: Disability Rights Education & Defense

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Associated Case Party: Women Enabled International

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