

No. 23-0629

IN THE SUPREME COURT OF TEXAS

STATE OF TEXAS; ATTORNEY GENERAL OF TEXAS; ANGELA COLMENERO, in her official capacity as Provisional 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 of Travis County, Texas

UNOPPOSED MOTION FOR LEAVE TO FILE AMENDED BRIEF OF AMICI CURIAE BUMBLE INC. AND OTHER BUSINESSES AND BUSINESS PEOPLE TO ADD ADDITIONAL AMICI IN SUPPORT OF APPELLEES

Emily Harbison
(Texas Bar No. 24059892)
REED SMITH LLP
1221 McKinney Street, Suite 2100
Houston, TX 77010
Tel: (713) 469-3800
Fax: (713) 469-3899
eharbison@reedsmith.com

Sarah Cummings Stewart
(Texas Bar No. 24094609)
REED SMITH LLP
2850 N. Harwood Street, Suite 1500
Dallas, TX 75201
Tel: (469) 680-4200
Fax: (469) 680-4299
sarah.stewart@reedsmith.com

James C. Martin*
Lead Counsel
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
Tel: (412) 288-3131
Fax: (412) 288-3063
jcmartin@reedsmith.com

Sarah B. Johansen*
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA, 94105
Tel: (415) 543-8700
Fax: (415) 391-8269
sjohansen@reedsmith.com

*Admitted pro hac vice

Counsel for Amici Curiae

Movants Bumble Inc. and other organizations and business leaders (“Amici”) respectfully seek leave to file the accompanying amended brief in support of Appellees in the *Zurawski v. Texas* matter (No. 23-0629). This motion is unopposed and does not change the contents of the brief. It seeks to add additional signers. In support, Amici allege as follows:

1. On November 20, 2023, Amici filed their Brief for Amici Curiae Bumble Inc. and Other Businesses and Businesspeople in Support of Appellees (the “Amicus Brief”). On November 28, 2023, this Court held argument on the merits in the *Zurawski v. Texas* matter. Following argument, additional organizations and business leaders who have read the Amicus Brief and are aware of the issues have requested to be identified as amici in support. The existing Amici accordingly seek to file an amended brief on behalf of Bumble Inc. and Other Businesses and Businesspeople in Support of Appellees, including the additional signatories. The amended brief is attached as Exhibit A.

2. The sole purpose of this amendment is to identify eleven additional Amici; **no substantive changes will be made to the content of the arguments offered in the Amicus Brief.**

3. Counsel for Appellees and Appellants have been informed Amici's intent to seek leave to file the amended brief, and they are aware that no substantive changes will be made to the content of the brief except for the inclusion of additional

signers. Counsel for both Appellants and Appellees indicated they are unopposed to this motion.

4. The organizations and individuals who would be added to the amended brief either learned of the Amicus Brief after it was filed or were unable to meet the original deadline for signing before filing.

5. The eleven additional proposed Amici organizations and individuals are as follows:

- a. **United States Women’s Chamber of Commerce (USWCC)** is the leading advocate for women on economic and leadership issues creating opportunities, driving progress, advancing legislation, and providing tools and solutions to support the economic growth of women across America. The USWCC is a 501(c)6 not-for-profit organization founded in 2001; its headquarters are located in Washington, D.C.
- b. **Alyssa Dadoly** has worked in the Austin, Texas venture capital industry for 15 years. Ms. Dadoly is CFO and Partner at Silverton Partners, the most active venture firm in the state.
- c. **Anderson Diaz PLLC** is a law firm certified by the City of Houston as a Minority & Women’s Business Enterprise, providing legal assistance regarding real estate and tax matters in

the greater Houston, Texas area.

- d. **Bespoke Luxury Designs** offers design services including floral designs, home décor and accessories, interior design, and an interactive class room. Bespoke employs a team of designers and has a shop in Friendswood, Texas.
- e. **Buenos Diaz Landscaping** is a company providing a range of landscaping services in Texas.
- f. **Comeka Anderson Diaz** has been a realtor in the Houston, Texas area for five years.
- g. **Emmer and Rye Hospitality Group** seeks to create spaces where people come together and share thoughtful food, curated beverages, and warm hospitality. Our goal is for these spaces to provide high quality opportunities for hospitality professionals to grow within their careers and showcase pathways towards sustainable practices. Our restaurants include Emmer and Rye, Hestia, Kalimotxo, Ezov and Canje in Austin, Texas and Ladino and Henbit Burgers in San Antonio, Texas.
- h. **Jen Grogono** is an executive who has been entrenched in the Austin, Texas technology industry for over 20 years. Most recently, Ms. Grogono is the founder and CEO of uStudio, a

software company in Austin, Texas, that provides streaming applications to global enterprises for the delivery of audio and video content to teams around the world on any device in a modern, mobile-first experience.

- i. **Lush Cosmetics** invents, manufactures, and retails fresh handmade cosmetics. A beauty company with a campaigning heart, Lush operates a strict policy against animal testing and is leading the cosmetic industry in combating over-packaging by developing products that can be sold “naked” to the consumer. Lush operates 17 shops in Texas, with approximately 170 staff.
- j. **Mio** is a technology company based in Austin, Texas. Mio unifies enterprise collaboration platforms, making it easy for teams to seamlessly communicate.
- k. **Preacher** is an award-winning global creative agency based in Austin, Texas. Founded in 2014, Preacher partners with major consumer brands that they believe in, and tell their stories with conviction, craft, and plenty of soul.

6. These organizations and individuals have read the as-filed Amicus Brief and support fully the arguments that the brief advanced. They accordingly wish to be added to an Amended Brief (Exhibit A) and have that brief accepted for filing

by this Court.

Amici respectfully request that this Court grant Amici's Unopposed Motion for Leave to File the Amended Brief of Amici Curiae (Exhibit A) to identify additional organizations and business leaders in support of their original arguments and that the Court thereafter accept the brief, as amended, for filing.

Dated: December 14, 2023

Emily Harbison
(Texas Bar No. 24059892)
REED SMITH LLP
1221 McKinney Street, Ste. 2100
Houston, TX 77010
Tel: (713) 469-3800
Fax: (713) 469-3899
eharbison@reedsmith.com

By: /s/ Sarah Cummings Stewart

Sarah Cummings Stewart
(Texas Bar No. 24094609)
REED SMITH LLP
2850 N. Harwood Street, Ste. 1500
Dallas, TX 75201
Tel: (469) 680-4200
Fax: (469) 680-4299
sarah.stewart@reedsmith.com

Respectfully submitted,

James C. Martin*
Lead Counsel
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
Tel: (412) 288-3131
Fax: (412) 288-3063
jcmartin@reedsmith.com

Sarah Johansen*
REED SMITH LLP
101 Second Street, Ste. 1800
San Francisco, CA, 94105
Tel: (415) 543-8700
Fax: (415) 391-8269
sjohansen@reedsmith.com

*Admitted pro hac vice

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded to all counsel of record by electronic filing in accordance with the Texas Rules of Civil Procedure on December 14, 2023.

/s/ Sarah Cummings Stewart
Sarah Cummings Stewart

EXHIBIT A

IN THE SUPREME COURT OF TEXAS

STATE OF TEXAS; ATTORNEY GENERAL OF TEXAS; ANGELA COLMENERO, in her official capacity as Provisional Attorney General of Texas; TEXAS MEDICAL BOARD; and STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board,

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Emily Harbison
(Texas Bar No. 24059892)
REED SMITH LLP
1221 McKinney Street, Suite 2100
Houston, TX 77010
Tel: (713) 469-3800
Fax: (713) 469-3899
eharbison@reedsmith.com

Sarah Cummings Stewart
(Texas Bar No. 24094609)
REED SMITH LLP
2850 N. Harwood Street, Suite 1500
Dallas, TX 75201
Tel: (469) 680-4200
Fax: (469) 680-4299
sarah.stewart@reedsmith.com

James C. Martin*
Lead Counsel
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
Tel: (412) 288-3131
Fax: (412) 288-3063
jcmartin@reedsmith.com

Sarah B. Johansen*
REED SMITH LLP
101 Second Street, Suite 1800
San Francisco, CA, 94105
Tel: (415) 543-8700
Fax: (415) 391-8269
sjohansen@reedsmith.com

*Pro hac vice admission forthcoming

Counsel for Amici Curiae

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I. STATEMENT OF INTEREST OF AMICI CURIAE

Amici file this supplemental amicus brief to identify eight additional organizations and three additional individuals in support of the arguments made herein, including the United States Women’s Chamber of Commerce, Anderson Diaz PLLC, Bespoke Luxury Designs, Buenos Diaz Landscaping, Comeka Anderson Diaz, Lush Cosmetics, Message.IO, Inc., Preacher LLC, Jen Grogono, Emmer and Rye Hospitality Group, and Alyssa Dadoly.

A. Interest of Amici Curiae

This proceeding involves a dispute over the construction and application of the medical exceptions in three laws regulating access to reproductive health care in Texas. At first blush, this might seem an atypical instance for a group of Amici representing Texas’s business sectors to appear and raise concerns over the State’s economic well-being. But as this Statement and the accompanying brief reveal, the collateral effects of the lack of clarity in the medical exceptions raise profound issues and serious concerns for the State’s businesses and healthcare providers that directly affect its economy and citizens.

Hundreds of bipartisan businesses agree that legal restrictions on reproductive health care, like Texas’s, are “bad for business,” “impair[] our ability to build diverse and inclusive workforce pipelines, recruit top talent across states, and protect the well-being of all the people who keep our business thriving day in and out,” and

ultimately “threaten[] the health, independence, and economic stability of our workers and customers.”¹ This is not hyperbole. The confusing medical exceptions are increasing the cost of business in Texas, driving away top talent, risking potential future business coming to the State, and threatening a diverse workforce. In an attempt to retain talent, businesses must spend resources developing and offering additional healthcare benefits and policies. And when employees cannot access high quality, comprehensive healthcare because many medical practitioners are leaving, that further pushes away business and workers.

In starkest terms, Texas’s confusing, restrictive laws governing reproductive health care are driving women of reproductive age, and their partners, from Texas. There are innumerable examples. To start:

- Hayley Hollands, an attorney and native Texan, and her husband, Steve Beaman, an oil worker, reportedly recently moved from Texas to Colorado amid concerns regarding Texas’s restrictive reproductive health care landscape.² Mr. Beaman “le[ft] behind a more than decade-long career in oil and gas”³ in Texas, and he and his wife are not alone in choosing to forego careers in Texas for these reasons.

¹ Don’t Ban Equality, <https://dontbanequality.com/dont-ban-equality-national-campaign/>.

² Liz Hampton, Sabrina Valle, *How Texas’ Abortion Ban Hurts Big Oil’s Effort to Transform its Workforce*, REUTERS (Sept. 23, 2022), <https://www.reuters.com/business/energy/how-texas-abortion-ban-hurts-big-oils-effort-transform-its-workforce-2022-09-23/>.

³ *Id.*

- A California-based Chevron engineer, who is planning to have a child, told his boss that he could not relocate to Houston because he and his wife “find it medically unsafe to carry a pregnancy in Texas[.]”⁴ According to an interview, he specifically cited the so-called medical exceptions in the event of immediate danger to the mother’s life, saying “that is too close to call for me.”⁵
- Damien Peters, the owner of a real estate firm in Maryland, had always dreamed of moving to Austin, Texas, where he spent his early tech career. Now that he is expecting a newborn daughter, he told CNBC, “Austin is off the table for the time being.”⁶ Regarding Texas’s restrictive reproductive health laws, Mr. Peters says, “It’s not to say that this only impacts women — it impacts everyone[.]”⁷
- Per *Reuters*, “Trevor Best, chief executive of Syzygy Plasmonics, a Houston-based startup whose chemical reactors run on renewable electricity, recently had a woman job candidate from out-of-state say she would not consider relocating to Texas.”⁸

⁴ *Id.*

⁵ *Id.*

⁶ Jennifer Liu, *Turning Down a \$300k Job, Deferring Dreams of Austin: How Roe’s End is Changing Millennials’ Career Plans—and Lives*, CNBC (Aug. 18, 2022), <https://www.cnbc.com/2022/08/18/how-roes-end-is-changing-millennials-career-plans-and-lives.html>.

⁷ *Id.*

⁸ Hampton, et al., *supra* note 2.

- CNBC reported that Fortune 500 company Salesforce offered to relocate any of its Texas employees out of the State in the wake of Texas’s passage of S.B. 8, which restricts reproductive healthcare and establishes a vigilante-style private enforcement regime.⁹
- Alireza Shamshirsaz, a maternal-fetal medicine specialist, lived and practiced in Texas for a decade when *Roe* was overturned.¹⁰ After Texas laws prevented him from treating a pregnant woman who suffered irreparable health consequences after being forced to carry twins with fatal diagnoses, he left the State of Texas and moved to Boston, according to an interview.¹¹
- Danielle Mathisen, one of the newly named plaintiffs in the underlying suit, comes from a family of Texas physicians and “always wanted to practice medicine in Texas like the rest of her family[.]”¹² But after she experienced dangerous pregnancy complications and was being forced to travel out-of-

⁹ Jordan Novet, *Salesforce Offers to Relocate Employees and Their Families After Texas Abortion Law Goes Into Effect*, CNBC (Sept. 10, 2021), <https://www.cnbc.com/2021/09/10/salesforce-offers-to-relocate-employees-from-texas-after-abortion-bill.html#:~:text=On%20its%20website%2C%20Salesforce%20lists,has%20over%2056%2C000%20employees%20worldwide.>

¹⁰ Shefali Luthra, *‘We’re Not Going to Win That Fight’: Bans on Abortion and Gender-Affirming Care are Driving Doctors From Texas* (June 21, 2023), <https://19thnews.org/2023/06/abortion-gender-affirming-care-bans-doctors-leaving-texas/>.

¹¹ *Id.*

¹² Eleanor Klibanoff, *More Women Join Lawsuit Challenging Texas’ Abortion Laws*, THE TEXAS TRIBUNE (Nov. 14, 2023), <https://www.texastribune.org/2023/11/14/texas-abortion-laws-lawsuit/#:~:text=%E2%80%9CIt%27s%20dehumanizing%20%E2%80%A6%20and%20it%20shoulndn,like%20this%20for%20health%20care.%E2%80%9D&text=On%20Tuesday%2C%20Manzano%20and%20six,to%2022%2C%20including%20two%20doctors.>

state to obtain health care that physicians in Texas were unwilling to provide because of the current narrow and ambiguous statutory exceptions, Ms. Mathisen ultimately chose to accept a residency program in Hawaii rather than returning home to practice in Texas.

- After his pregnant wife was forced to travel to San Diego to obtain health care due to a diagnosis of fetal anencephaly, Jacob Lopez doubted his family’s decision to move to Texas, questioning “why did we come here?”¹³

These stories are not anomalies. Recent surveys have shown job-seekers strongly consider the reproductive legal landscape when deciding where to work. Roughly one-third of job-seekers say they will apply for jobs only where comprehensive reproductive healthcare is not restricted, and just under one-third of job-seekers already living in restricted states will apply for jobs only in states where comprehensive reproductive health care is and likely will remain available.¹⁴

The costs to businesses go beyond recruiting and retention. Dozens of companies, many with Texas connections, publicly announced benefits and policies covering travel expenses for employees who need to travel out of state to access reproductive health care services unavailable in their home state, including Bumble

¹³ *Id.*

¹⁴ *One-Third of Job-Seekers Won’t Consider Working in States With Abortion Bans*, RESUME BUILDER (Jan. 19, 2023), <https://www.resumebuilder.com/one-third-of-job-seekers-wont-work-in-states-with-abortion-bans/>.

Inc., Starbucks, Tesla, Yelp, Airbnb, Microsoft, Netflix, Patagonia, DoorDash, JPMorgan Chase, Levi Strauss, PayPal, Amazon, Reddit, Walt Disney Company, Meta, Dick's Sporting Goods, Condé Nast, Warner Brothers, Bank of America, Inuit, Zillow, Box, Lyft, Uber, BuzzFeed, H&M, Vox Media, Adobe, Google, Impossible Foods, Accenture, Expedia, URBN, Estée Lauder Companies, Chobani, Yahoo, The Body Shop, Discord, Rivian, Bloomberg L.P., Ralph Lauren, Sephora, Neiman Marcus Group, Vanguard, IBM, Douglas Elliman, Nike, Nordstrom, OpenSea, PricewaterhouseCoopers, Wells Fargo, Proctor & Gamble, Amazon, Danone North America, Deloitte U.S., Ford Motor, Boston Consulting Group, Vimeo, KPMG U.S., UnitedHealth Group, Target, the New York Times, and Walmart.¹⁵ Such policies increase the cost of doing business and may be difficult to maintain. Under any circumstances, extra resources must be invested.

Other costs are less direct but equally impactful. Out-of-state residents are declining to attend events in Texas, such as business meetings and conferences, because of the State's restrictive reproductive health care laws, leading to a loss of revenue and downstream economic impact. Kristina, a 33-year-old resident of Massachusetts, reportedly canceled a recent business trip to Dallas during which she

¹⁵ Emma Goldberg, *These Companies Will Cover Travel Expenses for Employee Abortions*, THE NEW YORK TIMES (Aug. 19, 2022), <https://www.nytimes.com/article/abortion-companies-travel-expenses.html>.

was planning to hold a leadership development workshop for a client.¹⁶ Kristina was 19 weeks pregnant and “feared that abortion restrictions in Texas would prevent her from getting the care she needed should an emergency occur.”¹⁷

Regrettably, she is not alone. For example, “[s]ome California members of the Society of Women Engineers (SWE) have declined to attend the group’s conference in Houston in October [2023] because of the state’s anti-abortion law,”¹⁸ according to reporting. Furthermore, SWE, an organization comprised of over 40,000 collegiate and professional members, said they “will not sign any new contracts to host its conferences” in Texas or any other state “where there are limits to reproductive . . . healthcare.”¹⁹ In response to feedback from its members criticizing the organization for holding its 2023 and 2024 conferences in states that restrict access to reproductive and other health care, the Society for Integrative and Comparative Biology (SICB) reportedly decided to limit the states for consideration for its 2026 meeting, which will now be held in Portland, OR.²⁰

¹⁶ Felice J. Freyer, ‘A Truly Surreal Experience’: Reversal of Roe Leaves Some Hesitant to Travel Outside of Mass. While Pregnant, BOSTON GLOBE (June 21, 2023), <https://www.bostonglobe.com/2023/06/21/metro/state-abortion-restrictions/> (Kristina withheld her last name from the article).

¹⁷ *Id.*

¹⁸ Hampton, et al., *supra* note 2.

¹⁹ Society of Women Engineers, *SWE’s Statement on U.S. Supreme Court Ruling on Dobbs v. Jackson Women’s Health, Which Overturns the 1973 Roe v. Wade Decision*, SWE, <https://swe.org/swes-statement-on-u-s-supreme-court-ruling-on-dobbs-v-jackson-womens-health-which-overturns-the-1973-roe-v-wade-decision/> (emphasis in original).

²⁰ Amanda Heidt, *How Scientific Conferences Are Responding to Abortion Bans and Anti-LGBTQ+ Laws*, SCIENCE (June 20, 2023), <https://www.science.org/content/article/how->

Other organizations hold the same view. The Journal of Urology recently published a statement calling on all professional organizations to seriously consider “deci[ding] to host professional meetings in states without unimpeded access to reproductive health care” and “[p]rioritiz[e] states that uphold reproductive rights and provide access to comprehensive reproductive health care,” citing “the duty that meeting organizers have to reasonably ensure female urologists can safely attend without the threat of catastrophic health consequences.”²¹

This is not an idle concern, either. Conferences and conventions represent a significant economy; in 2017, according to a study by Oxford Economics, the business event industry contributed \$184 billion to the U.S. economy and employed nearly 2.5 million people.²² As more and more organizations express their desire to move future meetings elsewhere, business in the State will suffer.

A thriving and sustainable business environment, no matter what the economic sector, depends to a significant degree on the ability to recruit and retain talented and qualified individuals who can perform roles necessary in the particular line of commerce. That said, as noted above, potential recruits and existing

scientific-conferences-are-responding-abortion-bans-and-anti-lgbtq-laws; The Society for Integrative & Comparative Biology, *Upcoming Meetings*, <https://sicb.org/events/upcoming-events/>.

²¹ Diana E. Magee, Laura Bukavina, & Andres Correa, *Taking a Stand: No Conferences in Anti-abortion States*, 210 THE JOURNAL OF UROLOGY, 729 (Nov. 2023).

²² Events Industry Council & Oxford Economics, *The Global Economic Significance of Business Events*, 13 (Nov. 2018) <https://insights.eventscouncil.org/Portals/0/OE-EIC%20Global%20Meetings%20Significance%20%28FINAL%29%202018-11-09-2018.pdf>.

employees evaluate many factors in selecting where to work and whether to stay with a company or in a particular place. Decisions are made based on job satisfaction, the potential for advancement, personal goals and aspirations, and quality of life.

Without doubt, family planning is a pivotal part of this decision-making process for many individuals. Will individuals who hold jobs or who are considering employment be influenced by whether family or reproductive medical care is readily available or realistically unavailable? The answer from Amici's perspective is "yes" — these issues are often top-of-mind in career and family planning decision-making. Where it is best to start or to raise a family, and when these decisions are made, involve multiple, very personal considerations for both men and women. But one thing remains true: those planning to have a family now or in the future, and women with pregnancy conditions or who are anticipating a pregnancy now or in the future, necessarily must consider and evaluate access to medical care and treatment.

Finally, pertinent to the issues raised in this case, the present statutory law governing access to reproductive care in Texas, and specifically the construction, implementation, and application of any applicable medical exceptions, has a material impact on these career and family planning decisions. The lack of availability of care causes present and prospective employees to think twice about whether to live, work, and raise a family in Texas. That chilling impact, in turn, ripples to every sector of

the State's economy, making it more difficult to recruit and retain individuals who are needed to help Texas's businesses, and its educational and healthcare institutions, to innovate and grow.

For companies, their employees and prospective recruits, these undesirable ripple effects are compounded, and materially so, when the application of these statutes is unpredictable. In this instance, this lawsuit provides an opportunity to lend some clarity to one significant aspect of pregnancy-related medical healthcare and, correspondingly, an added measure of predictability for career and family planning decisions that will directly benefit those who do business in Texas or who are contemplating doing business there.

In this brief, Amici seek to provide the Court with some practical ramifications resulting from this statutory regime in Texas and explain why providing clarity on the application of the medical exceptions will help those doing business in Texas and its economy in the long run.

B. Description of Amici Curiae

Amici represent a diverse array of interests from the healthcare, hospitality, restaurant, banking, investment, real estate, consulting, advertising, legal, entertainment, technology, horticulture, faith, fashion, and beauty industries and communities in Texas, and include the following 51 companies and individuals.²³

²³ No fee was or will be paid for preparing this brief.

Bumble Inc. is serving as lead amicus and is the parent company of the following apps: Bumble, Bumble for Friends, Badoo, Fruitz, and Official. The Bumble platform enables people to build healthy and equitable relationships through Kind Connections. Founded by CEO Whitney Wolfe Herd in 2014, Bumble App was one of the first dating apps built with women at the center. Bumble Inc. has received Comparably Awards for “Best CEOs for Women,” “Best Company Compensation,” and “Best Company Outlook.” Whitney Wolfe Herd was also inducted into the Texas Business Hall of Fame in 2022. Bumble Inc. is headquartered in Austin, Texas, and has approximately 1,000 employees globally and 100 employees in Texas.

Alyssa Dadoly has worked in the Austin, Texas venture capital industry for 15 years. Ms. Dadoly is CFO and Partner at Silverton Partners, the most active venture firm in the state.

Amalgamated Bank is a full-service national financial institution providing banking, lending, and investment management for consumers, nonprofit organizations, and commercial entities. Founded 100 years ago by a union of low wage immigrant workers, Amalgamated has clients in all 50 states, including Texas.

Anderson Diaz PLLC is a law firm certified by the City of Houston as a Minority & Women’s Business Enterprise, providing legal assistance regarding real estate and tax matters in the greater Houston, Texas area.

Argent is a luxury modern women's workwear brand with retail and professional customers throughout Texas. Argent has recently considered expanding its brick-and-mortar presence to Texas.

ATX TV Festival is an annual event held in Austin, Texas, that celebrates television through screenings, panels, and events, bringing together top TV industry leaders and consumers. The event hosts over 4,000 people and is 70% female in attendance. Taking place over four days in multiple venues, the festival brings in out-of-state residents, industry professionals, and brands resulting in economic impact on the city and state through hotels, restaurants, local vendors, and individual hires, as well as hosting television decision makers interested in Texas for potential film/television productions.

Bespoke Luxury Designs offers design services including floral designs, home décor and accessories, interior design, and an interactive class room. Bespoke employs a team of designers and has a shop in Friendswood, Texas.

Biscuit Home is a home-goods brand offering luxury bedding, home accessories, and gifts. Biscuit was founded by Bailey McCarthy, a native Houstonian, and its storefront is located in Houston, Texas.

Blue Sky Partners is a national consulting firm based in Austin, Texas. In the last six years, Blue Sky Partners has worked with nonprofits, governments, small businesses, and enterprise departments to launch and scale more than 100

departments, initiatives, projects, and products.

Brentwood Social House is located in the Brentwood neighborhood in Austin, Texas. Brentwood Social House is a woman-owned, community coffee shop with the root belief that the world needs more places to experience connection and love. It seeks to commune, connect, and nourish by serving superb coffee and teas, house-made European baked goods, and savory meals to those seeking a quiet spot for meetings, a relaxing cup of coffee with a friend, or fun neighborhood events in a family-friendly, welcoming gathering space.

Buenos Diaz Landscaping is a company providing a range of landscaping services in Texas.

Central Ceremonies has been creating and providing weddings, memorials, family, and home ceremonies for religious, spiritual, and non-spiritual clients in Texas for over 20 years. Central Ceremonies believes in meeting people exactly where they are to create rituals essential to mark time and space. By doing so, Central Ceremonies' work not only cultivates meaning in a chaotic world, but also builds and rebuilds community for a world yearning for connection. Rooted in Central Texas, their calling takes them all over the State of Texas.

Central Presbyterian Church is a “deliberately diverse and fully inclusive” congregation that has served Downtown Austin, Texas, for almost 185 years. Located at the corner of 8th and Brazos Streets, the sanctuary sits between the Texas

State Capitol to the north, and service providers for the homeless to the south. Therefore, people from all walks of life worship and serve together. Guided by scripture and the Reformed tradition, members actively work for peace, justice, and spiritual growth to glorify God and proclaim the good news of Jesus Christ.

CHA Law Group, PC is an Austin, Texas, law office specializing in assisted reproduction, surrogacy, and adoptions. The founder and Managing Attorney, Christine Henry Andresen, is a Fellow in Assisted Reproductive Technology of the Academy of Adoption and Assisted Reproduction Attorneys (AAAA), a 2019–2023 Family Law Super Lawyer, and Travis County Women Lawyers’ Association Pathfinder’s Award Winner.

Civitech, based in Austin, Texas, builds tools and platforms that make our democracy more accessible, equitable, and fair. Since their founding in 2019, they have worked with over 500 candidates, nonprofits, and party committees across the United States.

Comeka Anderson Diaz has been a realtor in the Houston, Texas area for five years.

Cybele Diamandopoulos is a businesswoman in Austin, Texas. Ms. Diamandopoulos is the Vice President of Brand & Corporate Communications at ActivTrak, a workforce productivity and analytics software company headquartered in Austin, Texas. She is also the founder of FOLIO Communications Group, LLC,

a boutique PR and marketing communications firm in Austin that provides consulting services to emerging and established technology companies.

Doctors for Fertility is a nonprofit organization dedicated to protecting access to assisted reproductive technology for the treatment of infertility. Its President, Dr. Natalie Crawford, owns and operates a fertility practice in Austin, Texas. Many other members of Doctors for Fertility's leadership and board members also operate medical practices throughout Texas.

Eco-Stylist is an organization headquartered in Austin, Texas, dedicated to promoting sustainable fashion by hosting a directory and marketplace of sustainable brands for men and women.

Elevate Bartending was founded in 2017 and provides bartending catering services for weddings, corporate celebrations, and private parties covering the greater Austin area. They contract approximately 60 bartending and hospitality professionals annually.

Emmer and Rye Hospitality Group seeks to create spaces where people come together and share thoughtful food, curated beverages, and warm hospitality. Our goal is for these spaces to provide high quality opportunities for hospitality professionals to grow within their careers and showcase pathways towards sustainable practices. Our restaurants include Emmer and Rye, Hestia, Kalimotxo, Ezov and Canje in Austin, Texas and Ladino and Henbit Burgers in San Antonio,

Texas.

Good Work Austin is a co-founded association of over 200 locally owned, independent restaurants, bars, coffee shops, and artisan food and drink producers in Austin, Texas, working together to advocate for a sustainable and equitable hospitality industry and helping bars and restaurants support their employees and pay restaurants to provide meals to Austin's food insecure communities. Good Work Austin has partnered with the City of Austin, Austin Public Health, Travis County, and dozens of other non-profits to advance their mission, including working with World Central Kitchen to provide more than 100,000 meals during the winter storms of 2021 and 2022. Good Work Austin sources over 75% of their products from Texas producers.

Goodnight Hospitality is a hospitality group based in Houston, Texas, owned by Bailey and Peter McCarthy. Goodnight Hospitality cultivates the creative landscape for unique intersections of people and place that celebrate mastery and honor authenticity and imagines places where purpose and passion elevate the guest experience. It currently has four restaurants located in Houston, Texas.

GSD&M is a global advertising agency headquartered in Austin, Texas, founded in 1971. Their partners and clients include some of the most popular and recognizable banks, airlines, entertainment, food, and clothing companies in the United States.

HarbourView Equity Partners is a global investment firm founded by Sherrese Clarke Soares focused on the entertainment and media markets. The firm seeks businesses or assets powered by IP and investment opportunities that aim to build enduring value and returns. HarbourView has been extremely active since launching in 2021, acquiring over 45 music catalogs to date. In addition to its distinctly diverse music portfolio, HarbourView is focused on opportunities to support premium content across the entertainment, sports, and media sectors.

Jen Grogono is an executive who has been entrenched in the Austin, Texas technology industry for over 20 years. Most recently, Ms. Grogono is the founder and CEO of uStudio, a software company in Austin, Texas, that provides streaming applications to global enterprises for the delivery of audio and video content to teams around the world on any device in a modern, mobile-first experience.

KraveBeauty, a pioneering skincare company, is dedicated to forging a more sustainable and equitable world. Founded by a female entrepreneur Liah Yoo, the brand seeks to revolutionize conventional business practices that fuel hyper consumerism. Notably, Texas stands as the third largest state within KraveBeauty's customer base, with a majority—over 80%—identifying as female.

L'Oca D'Oro is an Italian-inspired neighborhood restaurant in Austin, Texas, and was named “Best Restaurant in Austin” by the *Austin American-Statesman* in 2022.

Layfield Law Practice is a business law practice located in Austin, Texas. Founding lawyer Monica Emilienburg Layfield is an accomplished attorney with over 15 years of legal experience, exclusively in business law matters. She has completed the Leadership Austin Emerge Program, Class of 2010, and currently is a member of the following organizations: Governing Board, Planned Parenthood of Greater Texas; Board of Directors, Girls Empowerment Network (GEN); Advisor, UT Law Entrepreneurship and Community Development Clinic; Member, Texas Exes Hispanic Alumni Steering Committee.

Lush Cosmetics invents, manufactures and retails fresh handmade cosmetics. A beauty company with a campaigning heart, Lush operates a strict policy against animal testing and is leading the cosmetic industry in combating over-packaging by developing products that can be sold “naked” to the consumer. Lush operates 17 shops in Texas, with approximately 170 staff.

MaieB Hospitality is a restaurant group in Austin, Texas, that operates numerous restaurants, including Olamaie, Maie Day, Little Ola’s Biscuits, and Gimme Burger with more coming soon.

Match Group, LLC (“Match Group”) is headquartered in Dallas, Texas. Match Group owns and operates the online dating brands Match and Tinder and has employees in Texas.

Mio is a technology company based in Austin, Texas. Mio unifies enterprise

collaboration platforms, making it easy for teams to seamlessly communicate.

Natalie Crawford, M.D. is board certified in both Obstetrics and Gynecology and Reproductive Endocrinology and Infertility. She is a Clinical Assistant Professor of Women's Health at the University of Texas Dell Medical School; co-founder of Fora Fertility, a fertility practice in Austin, Texas; co-founder of Pinnacle Conference, a leadership conference for women in medicine hosted every year in Texas; President of Doctors for Fertility; and host of a podcast on health and fertility produced in Austin, Texas.

Pershing is a social club, coffee shop, and music hall in Austin, Texas, devoted to keeping Austin's creative fires burning. Our members are a diverse cross-section of thinkers, doers, and artists shaping the culture and future of our city.

Plant Cowboy is a nursery located in Austin, Texas, focusing on locally grown plants, shrubs, and trees.

Preacher is an award-winning global creative agency based in Austin, Texas. Founded in 2014, Preacher partners with major consumer brands that they believe in, and tell their stories with conviction, craft, and plenty of soul.

Present Tense Hospitality is a Hospitality Management Company in Austin, Texas, founded by Ben Runkle, Natalie Davis, and Joseph Ritchie. The organization seeks out projects that engage the community and activate unique spaces while developing more than a transactional relationship with their customers and partners.

They team with culinary professionals to develop high integrity brands with the goal of creating equitable opportunities for their people.

Schoox, Inc. is a software company headquartered in Austin, Texas. Schoox makes workplace learning software that powers people-focused learning experiences for organizations around the world, including Subway, Celebrity Cruises, Phillips 66, and Sonesta Hotels.

Schwartz Immigration Law PLLC is a law firm located in Houston, Texas, representing individuals and families looking to achieve the American Dream. It has proudly served thousands of Texans for over 15 years and its employees are located solely in Texas.

Shannon M. Clark, MD, is double board-certified tenured Professor in Obstetrics and Gynecology and Maternal-Fetal Medicine in Houston, Texas. She works at a large academic center where she cares for individuals with high-risk pregnancies due to maternal and/or fetal complications and is involved in ObGyn resident training as an assistant ObGyn Residency Program Director. She is also heavily involved in the Texas Levels of Maternal Care Program.

Small Business Majority fosters a network of small business owners nationally, including in Texas, and partners with other business groups, organizations, and experts throughout all 50 states to advance economic policy goals for entrepreneurs.

South by Southwest (“SXSW”) is an internationally recognized conference and festival celebrating the convergence of tech, film, music, education, and culture held annually in Austin, Texas. SXSW was founded in 1987 and brings hundreds of thousands of people — including some of the biggest names in entertainment and tech — to Austin each year.

Stephanie Adamson King, Esq. is an attorney who has served in various roles at global technology companies, including as Chief Legal Officer. She is also the mother of teenage children who she is strongly counseling not to apply to colleges in Texas due to the dangerous ambiguities in Texas’s laws regulating access to reproductive health care for pregnant women facing medical complications.

Storable is the leading technology company for the self-storage and marine industries, serving more than 45,000 physical locations. Headquartered in Austin, Texas, Storable has 675 total employees with more than 120 based in Texas.

Texas Prestige Landscape Co. is a full-service landscaping and irrigation design and build firm emphasizing native and adapted plants in Central Texas. Texas Prestige Landscape Co. is located in Austin, Texas.

The Draper Law Firm, PC is a family law firm with twelve employees, all currently women. Its attorneys handle family law litigation in all Dallas-Fort Worth-area counties and family law appeals statewide. Holly Draper, the founder of the firm, was born and raised in Texas.

The Goodkind Co. is a leading formulator and manufacturing partner to Clean Beauty brands and creators, and a certified B Corporation, based in Austin, Texas.

The Riveter started as a network of community and coworking spaces built by women, offering innovative spaces, learning, and development programming across industries. Today, The Riveter is an award-winning modern union and community of professional women with members located throughout Texas.

United States Women’s Chamber of Commerce (USWCC) is the leading advocate for women on economic and leadership issues creating opportunities, driving progress, advancing legislation, and providing tools and solutions to support the economic growth of women across America. The USWCC is a 501(c)6 not-for-profit organization founded in 2001; its headquarters are located in Washington, D.C.

Zilker Properties is a real estate company operating in Austin, Texas, since 1985. Today, they provide both buying and selling real estate services and vacation rental offerings throughout Austin.

II. INTRODUCTION

The predictability issue at the heart of the underlying lawsuit, and at the core of Amici’s brief, starts with the various statutes that apply to reproductive health care in Texas. Regardless of one’s views on the wisdom of the statutes, when career

and family planning decisions are made, the effect of those statutes enters the calculus as a prime consideration. Several Texas laws are intended to regulate access to reproductive health care. But each one contains unclear medical “exceptions” that do not use medical terminology and are confusing, conflicting, and ambiguous.

Foremost among Texas’s relevant statutes, and the harbinger for ambiguity, is the so-called “Trigger Ban,” which became effective in August 2022 (30 days after the United States Supreme Court issued a judgment overturning *Roe v. Wade*). It provides that “[a] person may not knowingly perform, induce, or attempt an abortion.” Tex. Health & Safety Code § 170A.002(a). The penalties for violating the Trigger Ban include first- or -second-degree felony charges (punishable by between two- and 99-years imprisonment, *see* Tex. Penal Code §§ 12.32 – 12.33), revocation of the health care professional’s license, permit, registration, certificate, or other authority, and a civil penalty of at least \$100,000, as well as attorney’s fees and costs associated with bringing the action to recover the civil penalty, *see* Tex. Health & Safety Code §§ 170A.004 – 170A.007. The only exception to the Trigger Ban applies if the pregnant person “has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced.” *See* Tex. Health & Safety Code § 170A.002(b)(2).

Side-by-side with the Trigger Ban, there is the so-called “Pre-*Roe* Ban.” In *Roe*, the United States Supreme Court held unconstitutional a 1925 Texas law regulating access to reproductive health care. Although the statute was subsequently removed from the Texas Penal Code and Texas Civil Code, and the Fifth Circuit has since held that it was impliedly repealed, *McCorvey v. Hill*, 385 F.3d 846 (5th Cir. 2004), the Texas Attorney General has taken the position that this law became enforceable immediately after *Roe* was overturned. This “Pre-*Roe* Ban” makes the provision of certain health care a criminal offense punishable by between two- and ten-years imprisonment. *See* 1925 Tex. Crim. Stat. 1191. It also provides an exception for such prohibited health care when performed “by medical advice for the purpose of saving the life of the mother.” 1925 Tex. Crim. Stat. 1196.

Finally, Senate Bill 8 (S.B. 8), which became effective in September 2021, prohibits physicians from providing certain reproductive health care if the embryo or fetus has detectable cardiac activity. *See* Tex. Health & Safety Code §§ 171.201 – 171.203. S.B. 8 is enforceable through “private civil actions” that subject physicians (and others) to a civil enforcement scheme that allows “any person” to seek “statutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed” and “injunctive relief sufficient to prevent the defendant from violating” S.B. 8 again. *See* Tex. Health & Safety Code §§ 171.207-211. The only stated exception to S.B. 8’s ban applies “if a physician believes a medical

emergency exists that prevents compliance with” S.B. 8. *See* Tex. Health & Safety Code § 171.205. All procedures performed under this exception must be documented in detail by the treating physician, Tex. Health & Safety Code §§ 171.008, 171.205, and reported to the state. Tex. Health & Safety Code §§ 245.011(c)(10), (11).

The practical problems presented by the overlapping statutes are plain enough given their independent terms, and, more particularly, the inconsistency in the stated exceptions permitting the otherwise prohibited procedures. Taken together, these statutes directly impact and severely curtail those instances in which reproductive health care interventions can be provided when a pregnant person is facing dangerous complications, such as preterm pre-labor rupture of membranes (PPROM), medical conditions that make pregnancy extremely dangerous such as end-stage renal disease, or fatal fetal diagnoses like trisomy 18, anencephaly, or alobar holoprosencephaly. Indeed, these were conditions faced by many of the plaintiffs in the underlying suit.²⁴ But going one step further, these statutes create uncertainty around those instances in which the relevant treatment can be provided to a pregnant person facing dangerous complications so that criminal or civil liability might be avoided.

The adverse consequences of this uncertainty on the availability and delivery

²⁴ *See Zurawski, et al. v. State of Texas, et al.*, Cause No. D-1-GN-23-000968 (Nov. 14, 2023) (Second Am. Verified Petition), *available at* <https://reproductiverights.org/wp-content/uploads/2023/11/Second-Amended-Verified-Petition.pdf>.

of family healthcare in Texas is well-documented, including by other Amici in this proceeding. That alone is a reason for this Court to bring clarity to the issue of when such treatment can be provided by medical practitioners who face emergencies and complications like the ones presented in this case. But a further compulsion for clarity — perhaps less apparent but no less real — comes from those who do business in Texas and who depend on individuals, many of whom are making career and family decisions, to drive their business success.

In analyzing and dealing with their workforce issues, businesses, like Amici, must communicate with, advise, and address their employees' concerns on these critical healthcare issues. Their ability to do so depends, in turn, on the legal principles and regulatory guidelines that will be applied. As of now, however, the ability to address these relevant healthcare issues is complicated by uncertainty in the relevant reproductive health care laws generally, and in the medical exceptions in particular. For the reasons developed below, clear guidance on the application of exceptions will help businesses in their efforts to address the issues generated by these statutes.

III. ARGUMENT

A. The Impact of Reproductive Health Care Restrictions on Career and Family Planning Decisions is Well-Documented and Profound.

Now, more than ever, access to reproductive healthcare is a business issue. Specifically, “[a]ccess to reproductive healthcare is a core business issue because it impacts operations, benefits, culture, workforce health and safety, and competitiveness for talent—and it is backed by bipartisan public opinion.”²⁵ A group of nearly 1,000 businesses in nearly every industry formed a coalition called Don’t Ban Equality to “acknowledge how restricting reproductive rights is bad for business.”²⁶ Simply put, restrictions on reproductive care “impair [businesses’] ability to build diverse and inclusive workforce pipelines, recruit top talent across states, and protect the well-being of all the people who keep our businesses thriving day in and out.”²⁷

And, as the above Statement of Interest shows, individuals *are* looking closely at Texas’s restrictive reproductive health care laws when deciding whether to remain in Texas, move to Texas, or even travel to the State. Because of that, businesses have greater difficulty recruiting and retaining employees in Texas or persuading their

²⁵ Don’t Ban Equality, *supra* note 1.

²⁶ Amy Shoenthal, *The Business Impact of Dobbs A Year Later*, FORBES (June 23, 2023), <https://www.forbes.com/sites/amyshoenthal/2023/06/23/the-business-impact-of-dobbs-a-year-later/?sh=7c8be0f475cc>; *see also* Don’t Ban Equality, *supra* note 1.

²⁷ Don’t Ban Equality, *supra* note 1.

employees in other states to come here. Relatedly, and just as significantly, the inability to recruit and retain top talent also impacts a business's ability to create a diverse workforce, which studies demonstrate improve the bottom line.²⁸

The uncertainty around the import and application of Texas statutes, along with the added costs generated by their implementation and enforcement, has impacted, and will continue to impact, companies doing business in Texas, companies thinking about doing business in Texas, employees living in or traveling to Texas, and individuals considering relocating to Texas. Whether access to reproductive healthcare is available, and the extent of such healthcare, is a material issue for pregnant women, women who want to get pregnant, women who do not want to get pregnant, and their partners and families. Access to family healthcare is just as material for those who will have children and need ongoing care. If individuals believe they or their families will not have access to necessary reproductive or family healthcare in Texas, they may leave the State or choose not to move here. Moreover, because of those undeniable realities, businesses are now forced to confront this issue head on — not for moral or legal reasons — but to keep the lights on and people working, making money. No sector of the Texas economy

²⁸ See Sundiatu Dixon-Fyle, Kevin Dolan, Dame Vivian Hunt, & Sara Prince, *Diversity Wins: How Inclusion Matters* (May 19, 2020) MCKINSEY & COMPANY, <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>.

is immune.

“Women’s participation and advancement in the workforce is key to creating a positive business environment and spurring economic growth.”²⁹ But as it stands in Texas, the confusing and restrictive statutory scheme limiting reproductive health care is having, and will continue to have, detrimental impacts on the State’s economy, its businesses, and the diversity of its workforce.³⁰

It should come as no surprise that when women and families have access to comprehensive healthcare, including reproductive health care, they are able to pursue higher education and join the workforce, thereby contributing to the state economy. In this respect, the economic impact of restrictions on reproductive health care is often overlooked. But “[a]bortion access is an economic issue because access to, and inversely, denial of, abortion services directly impacts labor market experiences and economic outcomes.”³¹

²⁹ Institute for Women’s Policy Research (“IWPR”), *The Costs of Reproductive Health Restrictions: An Economic Case for Ending Harmful State Policies*, 2 (May 2021), https://iwpr.org/wp-content/uploads/2023/11/Costs-of-Reproductive-Health-Restrictions_Research-SummaryRev11092349.pdf.

³⁰ Erin Weber, *Texas Abortion Ban and Other Restrictions Cost the State Economy Almost \$15 Billion Per Year*, IWPR (2021), <https://iwpr.org/texas-abortion-ban-and-other-restrictions-cost-the-state-economy-almost-15-billion-per-year/>.

³¹ Asha Banerjee, *The Economics of Abortion Bans*, ECONOMIC POLICY INSTITUTE 1 (Jan. 18, 2023), <https://files.epi.org/uploads/Economics-of-Abortion-Restrictions-Final.pdf>. Nationwide, “if all state-level abortion restrictions were eliminated, an additional 505,000 more women aged 15-44 would enter the labor force and earn about \$3.0 billion dollars annually[,]” an amount that could go back into the state’s economy. *See The Costs of Reproductive Health Restrictions*, *supra* note 29 at 3. In Texas, more than 80,000 women between 15-44 years old could enter the workforce absent state restrictions. *See Weber, supra* note 30.

In that regard, individuals must now make decisions about whether to join, stay, or leave a company based on the benefits offered — especially healthcare — including whether the employer offers to help pay for out-of-state travel to access healthcare for themselves and their families. In particular, LeanIn.org reported that “34% of women and men under 40 are considering switching jobs to work for a company that offers more generous reproductive health care benefits or takes a public stance in support of abortion.”³² As a result, “[e]conomic policymakers must prioritize this issue as widespread abortion bans will contribute to a loss in economic security and independence for millions in the current and future generations.”³³

Further, a poll conducted three months after the *Dobbs* decision “found that more than half of young women are making plans about where they are willing to live and work” based on whether access to comprehensive reproductive health care is protected or banned in those states, and “44 percent have either considered moving or are making plans to move” to a state where comprehensive reproductive health care is protected, and “10 percent have already declined a job in a state where” reproductive health care is restricted and certain procedures are banned.³⁴ Even

³² Morgan Smith, *34% of Younger Workers are Thinking of Switching Jobs Due to Company’s Stance on Abortion, Post Roe*, CNBC (Aug. 12, 2022), <https://www.cnbc.com/2022/08/12/34percent-of-younger-workers-considering-switching-jobs-after-roe-ruling.html>.

³³ Banerjee, *supra* note 31 at 2.

³⁴ Lynda Burstyn, *Employers, Take Note—Young Women Are Planning Their Lives Around State Abortion Laws*, MS. MAGAZINE (Jan. 23, 2023), <https://msmagazine.com/2023/01/23/employer-benefits-state-abortion-laws-young-women-employees/>.

before the *Dobbs* decision, almost 65% of college-educated workers say that they would be discouraged from taking a job in a state where politicians are trying to restrict access to reproductive care.³⁵

Restrictions on reproductive health care also tend to have a “disproportionate impact on women of color and lower-wage workers. Compared to their white and/or higher-wage counterparts, women of color and lower-wage workers are more likely to rely on public health care such as Medicaid, lack paid sick or medical leave, and have little or no job security or flexibility”³⁶ According to analysts with the Economic Policy Institute, however, states with restrictions or total bans on reproductive health care “have on average lower minimum wages . . . unionization levels half as high as those in the abortion-protected states[,]” fewer “unemployed people receiving unemployment insurance . . .[,] lower rates of Medicaid expansion [and] an incarceration rate 1.5 times” higher compared to states that protect access to comprehensive reproductive health care.³⁷

³⁵ Perry Udem, *How “Top Talent” Views Politics and Social Issues in their Workplace*, 6 (Oct. 4, 2021), <https://perryudem.com/wp-content/uploads/2022/03/PerryUdem-Tara-Health-Report.pdf>.

³⁶ C. Nicole Mason, Ph.D, Kate Ryan, M.P.A., Olivia Storz, M.Sc., Georgia Poyatzis, M.A., & Ariane Hegewisch, M. Phil, *Reproductive Rights Index: A State-by-State Analysis and Ranking*, IWPR 7 (July 2022), https://iwpr.org/wp-content/uploads/2022/07/Reproductive-Rights-Index-2022_FINAL_website.pdf.

³⁷ Banerjee, *supra* note 31 at 1; *see also* Mariel Padilla, *States With Abortion Bans are Also ‘Economically Disempowering’ People, Report Says* (Jan. 18, 2023), <https://19thnews.org/2023/01/abortion-bans-states-economy-report/#:~:text=States%20with%20abortion%20bans%20are,and%20rates%20of%20Medicaid%20expansion.>

Studies similarly show that “about half of all abortion patients had a family income at or below the federal poverty level.”³⁸ It follows that the “negative economic consequences of abortion denial [include] . . . prolonged financial distress to being trapped in lower paying occupations.”³⁹ As these commentaries reveal, laws restricting access to comprehensive reproductive health care serve to perpetuate racial and economic disparities, in the end doing a disservice to the economic well-being of an entire state.⁴⁰

On the other hand, women living in states with the most protections for reproductive rights are “more likely to have higher levels of educational attainment than women in lower-ranked states.”⁴¹ This means more women are able to enter the workforce, advance, and become higher earners—bringing more money into state economies.⁴² Women who can “delay motherhood through legal access to abortion [are] much more likely to finish college, pursue higher degrees, spend longer in the

³⁸ Banerjee, *supra* note 31 at 6.

³⁹ *Id.*

⁴⁰ States with abortion bans “have some of the worst economic outcomes for women and families.” See Lauren Hoffman, Osub Ahmed & Isabela Salas-Betsch, *State Abortion Bans Will Harm Women and Families’ Economic Security Across the U.S.* (Aug. 25, 2022), <https://www.americanprogress.org/article/state-abortion-bans-will-harm-women-and-families-economic-security-across-the-us/>.

⁴¹ Mason, et al., *supra* note 36 at 2.

⁴² See, e.g., Asha Banerjee, *Abortion Rights are Economic Rights*, ECONOMIC POLICY INSTITUTE (May 18, 2022), <https://www.epi.org/blog/abortion-rights/>; Alan Rappeport, *Loss of Access to Legal Abortion Would ‘Set Women Back Decades,’ Yellen Says*, THE NEW YORK TIMES (May 10, 2022), <https://www.nytimes.com/2022/05/10/business/treasury-janet-yellen-abortion-rights.html> (“[Ms. Yellen] said that legalization of abortion helped lead to increased labor force participation among women, allowing more to finish school and increase their earning potential, and she pointed to economic research that supports that argument.”); Hoffman, et al., *supra* note 40.

labor force, and enter higher-paying occupations[.]”⁴³

To be clear, this is not just a women’s issue. Lack of access to needed reproductive or family healthcare can impact a significant other’s decision on where to work and live. Their career and family planning decisions can be influenced accordingly. And, by the same token, when women are given the opportunity to succeed and to advance because of access to reproductive healthcare, their partners, families, and children succeed, too.

B. Restricted Access to Reproductive and Family Healthcare Has Well-Documented and Profound Impacts on All Economic Sectors.

For those companies thinking about establishing operations in Texas or expanding operations in this State, reproductive and family healthcare decision-making creates unique challenges and corollary difficulties. For the reasons noted above, employees who are pregnant or want to get pregnant, who reside elsewhere but must travel to Texas for work, express concerns about access to care (including emergency care) and often refuse to travel to Texas for that reason. When employees do travel, companies must consider access to emergency care for those employees. Those who do business in Texas thus often must try to find other ways to provide their employees with access to reproductive care, including treatment for PPROM,

⁴³ Sheelah Kolhatkar, *The Devastating Economic Impacts of an Abortion Ban*, THE NEW YORKER (May 11, 2022), <https://www.newyorker.com/business/currency/the-devastating-economic-impacts-of-an-abortion-ban>.

fatal fetal diagnoses, and other dangerous and potentially life-threatening complications of pregnancy. Those efforts are costly and create particular difficulties for hourly employees and contractors who must travel out of state. And those efforts, while beneficial, carry legal risks from state and local criminal prosecutions to civil exposure.

The challenges and difficulties generated by Texas’s statutes restricting reproductive health care are not going away any time soon. Legal uncertainty abounds, and medical providers are leaving the State because they cannot practice under Texas’s current statutory scheme. In fact, even would-be healthcare providers are avoiding Texas altogether. The number of students applying to residencies in states with restrictive reproductive health care laws has decreased since *Dobbs*. “In Texas, the drop is particularly sizeable.”⁴⁴ The number of students applying to Texas-based OB/GYN residencies fell by 10.4%, while across the country the number of applicants increased.⁴⁵

Plainly, “Texas is restricting its own economic growth in its quest to restrict women’s freedom.”⁴⁶ Research already shows that Texas’s legal restrictions on reproductive health care cause economic loss to women and the state economy to

⁴⁴ Luthra, *supra* note 10.

⁴⁵ *Id.*

⁴⁶ Weber, *supra* note 30.

the tune of ***\$14.5 billion dollars annually***.⁴⁷ This causal relationship is not novel or specific to Texas: research shows that reproductive health care restrictions nationwide cost state economies approximately \$105 billion dollars per year due to a reduction in labor force participation, earning level, and simultaneously increasing time taken off work among women ages 15-44 years old.⁴⁸ It just so happens that Texas, “home to one of the most restrictive abortion bans in the country,” stands to lose the most.⁴⁹

When women and families cannot access critical and necessary healthcare; when they are fearful to travel to or reside in Texas; when businesses get pushed out because they cannot recruit top talent — they will leave. They are leaving. And with them goes the economic benefits. “For businesses, restrictions on access to reproductive health care are not only at odds with stated corporate values, such as equity and inclusion, they also affect the ability of companies to deliver on their value propositions.”⁵⁰ Putting it all together, bans on reproductive health care, like Texas’s, stifle innovation and “undermine critical areas of research, innovation, and

⁴⁷ *Id.*; see also Mason et al., *supra* note 36 at 7.

⁴⁸ Weber, *supra* note 30.

⁴⁹ Mason, et al., *supra* note 36 at 2 (“In the bottom five ranked states [for reproductive rights], the economic loss of abortion restrictions is approximately \$8.5 billion ranging from \$5.4 billion in Missouri to \$362.9 million in South Dakota[.]” compared with the \$14.5 billion loss in Texas).

⁵⁰ *The Costs of Reproductive Health Restrictions*, *supra* note 29 at 1.

progress toward more equitable health care outcomes.”⁵¹

Against that backdrop, Texas businesses will have greater difficulty attracting top talent, further impacting its bottom line and “pos[ing] an existential threat to Texas’[s] overall sustainability.”⁵² Despite U.S. Census Bureau data that “Texas gained almost 4 million residents between 2012 and 2022,” the data also show that an “increasing number of young, educated professionals are either not considering [moving to Texas] or are leaving the state in search of better opportunities and more inclusive environments.”⁵³ In a recent survey, 66% of respondents who did not live in Texas said S.B. 8 would discourage them from taking a job there; 63% said they would not even apply for a job in a state that banned reproductive health care; and 49% responded that they would consider moving out of the state if a similar law passed in their state.⁵⁴

This brings us back to the issue at the heart of this lawsuit. One perceptible problem in determining the availability of reproductive healthcare relates to when certain medical interventions can be performed in Texas, such as the provision of

⁵¹ Krys Mroczkowski, Colleen Ammerman & Rembrandt Konig, *How Abortion Bans Will Stifle Health Care Innovation*, HARVARD BUSINESS REVIEW (Aug. 8, 2022), <https://hbr.org/2022/08/how-abortion-bans-will-stifle-health-care-innovation>.

⁵² Louis A. Bedford, *Brain Drain in Texas is Real and it Can Endanger Our Prosperity*, THE DALLAS MORNING NEWS (Sept. 20, 2023), <https://www.dallasnews.com/opinion/commentary/2023/09/20/brain-drain-in-texas-is-real-and-it-can-endanger-our-prosperity/>.

⁵³ *Id.*

⁵⁴ Perry Udem, *supra* note 35 at 14.

medication or surgical intervention to treat, for example, PPRM. At present, the ability of businesses to advise on that availability issue is hamstrung by the ambiguity in the various statutes and the uncertainty in their application. Delivering clarity on that issue will let individuals and companies know one thing for certain about the availability of reproductive care. Even a small step on this life-defining issue is important because it will help all those affected — individuals and businesses alike — in making evaluations pivotal to their futures.

IV. CONCLUSION AND PRAYER

For the foregoing reasons, this Court should provide clarity on when health care providers are permitted to intervene consistent with Texas's statutes governing reproductive health care, and should affirm the district court's ruling.

Dated: December 14, 2023

Emily Harbison
(Texas Bar No. 24059892)
REED SMITH LLP
1221 McKinney Street, Ste. 2100
Houston, TX 77010
Tel: (713) 469-3800
Fax: (713) 469-3899
eharbison@reedsmith.com

By: /s/ Sarah Cummings Stewart

Sarah Cummings Stewart
(Texas Bar No. 24094609)
REED SMITH LLP
2850 N. Harwood Street, Ste. 1500
Dallas, TX 75201
Tel: (469) 680-4200
Fax: (469) 680-4299
sarah.stewart@reedsmith.com

Respectfully submitted,

James C. Martin*
Lead Counsel
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
Tel: (412) 288-3131
Fax: (412) 288-3063
jcmartin@reedsmith.com

Sarah Johansen*
REED SMITH LLP
101 Second Street, Ste. 1800
San Francisco, CA, 94105
Tel: (415) 543-8700
Fax: (415) 391-8269
sjohansen@reedsmith.com

*Pro hac vice admission granted

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was forwarded to all counsel of record by electronic filing in accordance with the Texas Rules of Civil Procedure on December 14, 2023.

/s/ Sarah Cummings Stewart
Sarah Cummings Stewart

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/s/ Sarah Cummings Stewart
Sarah Cummings Stewart

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Sarah Cummings
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SCummings@reedsmith.com
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Status as of 12/14/2023 10:04 AM CST

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Beth Klusmann		beth.klusmann@oag.texas.gov	12/14/2023 9:52:59 AM	SENT
Lanora Pettit		lanora.pettit@oag.texas.gov	12/14/2023 9:52:59 AM	SENT
Sara Baumgardner		sara.baumgardner@oag.texas.gov	12/14/2023 9:52:59 AM	SENT

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

Name	BarNumber	Email	TimestampSubmitted	Status
Wendy JMurphy		wmurphy@nesl.edu	12/14/2023 9:52:59 AM	SENT
Jason Smith		courtfilling@letsgotocourt.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Equal Means Equal

Name	BarNumber	Email	TimestampSubmitted	Status
Wendy JMurphy		wmurphy@nesl.edu	12/14/2023 9:52:59 AM	SENT
Jason Smith		courtfilling@letsgotocourt.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Elizabeth Cady Stanton Trust

Name	BarNumber	Email	TimestampSubmitted	Status
Wendy JMurphy		wmurphy@nesl.edu	12/14/2023 9:52:59 AM	SENT
Jason Smith		courtfilling@letsgotocourt.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: National Network of Abortion Funds

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Associated Case Party: National Network of Abortion Funds

Name	BarNumber	Email	TimestampSubmitted	Status
Drew Padley		dpadley@skv.com	12/14/2023 9:52:59 AM	SENT
Kristin Adler		kadler@skv.com	12/14/2023 9:52:59 AM	SENT
Alex Wolf		awolf@skv.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: National Council of Jewish Women

Name	BarNumber	Email	TimestampSubmitted	Status
Debbie L.Berman		dberman@jenner.com	12/14/2023 9:52:59 AM	SENT
Michelle SKallen		mkallen@jenner.com	12/14/2023 9:52:59 AM	SENT
James (Jim) R.Dunnam		jimdunnam@dunnamlaw.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Bumble Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Amalgamated Bank

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT

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Associated Case Party: Argent

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: ATX TV Festival

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Biscuit Home

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Blue Sky Partners

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT

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Associated Case Party: Brentwood Social House

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Central Ceremonies

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: CHA Law Group, PC

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Civitech

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT

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Associated Case Party: Cybele Diamondopoulos

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Doctors for Fertility

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Central Presbyterian Church

Name	BarNumber	Email	TimestampSubmitted	Status
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Eco-Stylist

Name	BarNumber	Email	TimestampSubmitted	Status
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Elevate Bartending

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Associated Case Party: Elevate Bartending

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/14/2023 9:52:59 AM	SENT
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Good Work Austin

Name	BarNumber	Email	TimestampSubmitted	Status
James C. Martin		jcmartin@reedsmith.com	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Texas Civil Rights Project

Name	BarNumber	Email	TimestampSubmitted	Status
Dustin WRynders		dustin@texascivilrightsproject.org	12/14/2023 9:52:59 AM	SENT
Rochelle MGarza		rochelle@texascivilrightsproject.org	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Disability Rights Education & Defense

Name	BarNumber	Email	TimestampSubmitted	Status
Claudia Center		ccenter@dredf.org	12/14/2023 9:52:59 AM	SENT

Associated Case Party: Women Enabled International

Name	BarNumber	Email	TimestampSubmitted	Status
Suzannah Phillips		s.phillips@womenenabled.org	12/14/2023 9:52:59 AM	SENT

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Clark Richards		crichards@rrsfirm.com	12/14/2023 9:52:59 AM	SENT
Austin HKaplan		akaplan@kaplanlawatx.com	12/14/2023 9:52:59 AM	SENT
Colleen Zavitsky		czavitsky@reedsmith.com	12/14/2023 9:52:59 AM	SENT
Allison Hartry		ahartry@themoralesfirm.com	12/14/2023 9:52:59 AM	SENT
Maria Williamson		maria.williamson@oag.texas.gov	12/14/2023 9:52:59 AM	SENT
Austin Kaplan	24072176	akaplan@kaplanlawatx.com	12/14/2023 9:52:59 AM	SENT
Karina Esparza		kesparza@rrsfirm.com	12/14/2023 9:52:59 AM	SENT
Christie Coffey		ccoffey@kaplanlawatx.com	12/14/2023 9:52:59 AM	SENT
Matthew BHenneman		mhenneman@hrkslaw.com	12/14/2023 9:52:59 AM	SENT
Rehan Chaudhuri		rchaudhuri@reprorights.org	12/14/2023 9:52:59 AM	SENT
Jamie Levitt		jlevitt@mofo.com	12/14/2023 9:52:59 AM	SENT
J. Alexander Lawrence		alawrence@mofo.com	12/14/2023 9:52:59 AM	SENT
Claire Abrahamson		cabrahamson@mofo.com	12/14/2023 9:52:59 AM	SENT
Adi Kamdar		akamdar@mofo.com	12/14/2023 9:52:59 AM	SENT
Susan Tice		stice@mofo.com	12/14/2023 9:52:59 AM	SENT
Miranda Willborg		mwillborg@txrtl.com	12/14/2023 9:52:59 AM	SENT
Ashley Solano		asolano@txrtl.com	12/14/2023 9:52:59 AM	SENT
Nancy Villarreal		nancy.villarreal@oag.texas.gov	12/14/2023 9:52:59 AM	SENT
Lauren Goldman		LGoldman@BSFLLP.com	12/14/2023 9:52:59 AM	SENT
David Barrett		dbarrett@BSFLLP.com	12/14/2023 9:52:59 AM	SENT
Lindsey Ruff		LRuff@BSFLLP.com	12/14/2023 9:52:59 AM	SENT
Stefanie Burns		sburns@hrkslaw.com	12/14/2023 9:52:59 AM	SENT

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Add Additional Amici in Support of Appellees

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Case Contacts

Stefanie Burns		sburns@hrkslaw.com	12/14/2023 9:52:59 AM	SENT
Valeria Alcocer		valeria.alcocer@oag.texas.gov	12/14/2023 9:52:59 AM	SENT
Molly Duane		mduane@reprorights.org	12/14/2023 9:52:59 AM	SENT
Nicolas Kabat		nkabat@reprorights.org	12/14/2023 9:52:59 AM	SENT
Astrid MariselaAckerman		aackerman@reprorights.org	12/14/2023 9:52:59 AM	SENT
Allison Kempf		akempf@milbank.com	12/14/2023 9:52:59 AM	SENT
Carmit Patrone		cpatrone@milbank.com	12/14/2023 9:52:59 AM	SENT
James Cavoli		jcavoli@milbank.com	12/14/2023 9:52:59 AM	SENT
Carrie Flaxman		cflaxman@democracyforward.org	12/14/2023 9:52:59 AM	SENT
Maher Mahmood		mmahood@democracyforward.org	12/14/2023 9:52:59 AM	ERROR
Molly Meegan		mmeegan@acog.org	12/14/2023 9:52:59 AM	SENT