

No. 19-1392

IN THE

Supreme Court of the United States

THOMAS E. DOBBS, M.D., M.P.H., in his Official Capacity as State
Health Officer of the Mississippi Department of Health, et al.,

Petitioners,

—v.—

JACKSON WOMEN'S HEALTH ORGANIZATION,
on behalf of itself and its patients, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

**BRIEF OF *AMICI CURIAE* CATHOLICS FOR CHOICE,
NATIONAL COUNCIL OF JEWISH WOMEN, RELIGIOUS
COALITION FOR REPRODUCTIVE CHOICE, MUSLIM
ADVOCATES, PRESBYTERIANS AFFIRMING
REPRODUCTIVE OPTIONS, JEWISH WOMEN
INTERNATIONAL, AUBURN THEOLOGICAL SEMINARY,
MUSLIMS FOR PROGRESSIVE VALUES, AFRICAN
AMERICAN MINISTERS IN ACTION, AND 45 OTHER FAITH-
BASED ORGANIZATIONS, IN SUPPORT OF RESPONDENTS**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATEMENT OF INTEREST 1

SUMMARY OF ARGUMENT 1

ARGUMENT 3

 I. RELIGIOUS TRADITIONS DO NOT
 SHARE A UNIFORM VIEW OF WHEN
 LIFE BEGINS..... 3

 II. RELIGIOUS TRADITIONS AFFIRM
 WOMEN’S MORAL RIGHT TO
 DECIDE WHETHER AND UNDER
 WHAT CIRCUMSTANCES TO
 TERMINATE A PREGNANCY..... 9

 III. RELIGIOUS TRADITIONS AFFIRM
 THE IMPORTANCE OF ENSURING
 REPRODUCTIVE CHOICE FOR
 WOMEN IN MARGINALIZED
 COMMUNITIES WHO ARE
 DISPROPORTIONATELY HARMED BY
 THE BAN 20

CONCLUSION 25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 505 U.S. 833 (1992)	8-9, 17, 20, 26
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Miss. Code. Ann. § 41-41-191	2, 9, 18
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 Fellowship Newsletter (1984)..... 17
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STATEMENT OF INTEREST

Amici curiae are organizations from a broad range of religious traditions and faiths that are dedicated to protecting a woman's moral authority to terminate a pregnancy in consultation with her faith, values, and conscience, and to safeguarding the Constitution's guarantee of religious liberty.¹

A list of *amici* appears in Appendix A.

SUMMARY OF ARGUMENT

Religious traditions espouse myriad views on when a human life begins and the process through which that occurs. Numerous religious traditions posit that life begins at some point during pregnancy or even after a child has been born, while others embrace the view that life begins at the moment of conception. Still other faiths expressly decline to identify a precise moment when life begins.

Consistent with these diverse beliefs, numerous religions teach that the decision to terminate a pregnancy is a woman's moral prerogative, and that abortion is morally permissible or even required under certain circumstances. Accordingly, these religious

¹ Pursuant to Supreme Court Rule 37.3, all parties have given blanket consent to the filing of this and all other *amicus curiae* briefs. Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no persons or entities other than *amici*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief.

traditions recognize and support the moral right of each woman to make her own decisions about her pregnancy in accordance with her faith, beliefs, and individual conscience, regardless of her income, social status, or other resources.

Mississippi's Gestational Age Act (the "Ban"), Miss. Code. Ann. § 41-41-191—which prevents any woman from obtaining an abortion after 15 weeks gestation, with only extremely narrow exceptions, *id.* § 41-41-191(3)(h),(j); *id.* § 41-41-191(4)—runs counter to these beliefs. The Ban expressly adopts the view that human life begins at the moment of conception by defining "human being" as "an individual member of the species *Homo sapiens*, *from and after the point of conception*." Miss. Code Ann. § 41-41-191(3)(g) (emphasis added). And Mississippi has justified this measure, in part, based on its stated purpose of protecting "unborn human being[s]." *See* Miss. Code Ann. § 41-41-191(2)(b); *see also* Petrs. Br. at 37 (discussing justification for the Ban as Mississippi's interest in "sav[ing] unborn lives"); Pet. for Cert. at 20 (asserting Mississippi's interest in "safeguarding unborn babies and promoting respect for innocent and vulnerable life").

The view adopted by the Ban is based on neither scientific research nor religious consensus. It is consonant with the view of elements of certain religious traditions, but ignores and contradicts the views of many other religious traditions and individuals of faith, including those of *amici*. The Ban implicates free exercise rights by imposing the view of certain faiths upon all women in the State, including women whose religious faith supports an approach to

the beginning of human life and the termination of pregnancy that is at odds with the approach reflected in the Ban.

The Ban is of significant concern to *amici* because it fails to account for the diversity of views within and across religious traditions regarding when and how life begins, the moral implications of terminating a pregnancy, and who is properly empowered to make such determinations. The Ban imposes a particular view of when life begins on all Mississippi women, and deprives women of the right to make decisions about their pregnancies according to the dictates of their own faith and beliefs.

For these and the reasons set forth below, *amici* urge the Court to preserve a woman's right to terminate her pregnancy in accordance with her own personal conscience or religious beliefs and to reject the Ban's encroachment on religious freedom.

ARGUMENT

I. Religious Traditions Do Not Share a Uniform View of When Life Begins

There is a diversity of views both within and across religions concerning the nature and timing of the beginning of life. Numerous faith traditions embrace the concept of "ensoulment," or the acquisition of personhood, but have divergent views on when and how this pivotal transformation occurs.

For example, contemporary Catholic pronouncements on abortion acknowledge the Catholic

Church's lack of consistent teaching on this question.² In early Catholic thought, St. Augustine drew a distinction between an embryo *inanimatus*, not yet endowed with a soul, and an embryo *animatus*, but concluded that it was impossible to pinpoint the moment during fetal development when this transition takes place.³ Some Medieval Catholic texts endorsed Aristotle's view that human ensoulment takes place 40 days after conception for males and 80 days after conception for females.⁴ Other Catholic theologians followed the teaching of St. Thomas Aquinas, who believed that human life does not begin until at or near the time of childbirth, following earlier stages in which the fetus initially had a "nutritive" soul (similar to plant life), and later a "sensitive" soul (similar to animals), only acquiring an "intellectual" human soul infused by God near the final stages of gestation.⁵ In

² See Vatican Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion*, at n.19 (Nov. 18, 1974), available at https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html.

³ See *Roe v. Wade*, 410 U.S. 113, 134 n.22 (1973) (citing Augustine, *De Origine Animae* 4.4).

⁴ See Anne Stensvold, *A History of Pregnancy in Christianity: From Original Sin to Contemporary Abortion Debates* 45-46 (2015). Using the modern obstetric methodology of counting, this translates to approximately 7-8 weeks gestation for males and 13-14 weeks gestation for females.

⁵ See St. Thomas Aquinas, *Summa Contra Gentiles* 2.88-89 (explaining that "the manifestation of the soul's operations goes hand in hand with the development in shape and size of the members of the body, the operation of the nutritive soul appearing first, and afterwards, that of the sensitive soul, and

the sixteenth century, the Catholic Church's position varied between viewing life as beginning at conception and viewing it as happening later, at the time of "quickening," when the fetus first moves in a woman's womb, which typically occurs around 18-20 weeks.⁶ In the view of some contemporary Catholic scholars, the Catholic Church has *never* defined the moment when life begins, and therefore, as a matter of Catholic dogma, "[t]here is no defined moment of ensoulment."⁷

Many Protestant denominations likewise acknowledge and reflect diverse understandings of when life begins. In articulating their religious views on abortion, the Presbyterian Church, Lutheran Church, and the United Church of Christ have

lastly, *when the bodily development is complete*, the operation of the intellective soul" (emphasis added); *id.* ("Thus, the vegetative soul, which is present first (when the embryo lives the life of a plant), perishes, and is succeeded by a more perfect soul, both nutritive and sensitive in character, and then the embryo lives an animal life; and when this passes away it is succeeded by the rational soul introduced from without[.]"); Aquinas, *Summa Theologiae* 1.118 (concluding that "the intellectual soul is created by God *at the end of human generation*" (emphasis added)); see also Gary Wills, *Abortion Isn't a Religious Issue*, *The Los Angeles Times* (November 4, 2007).

⁶ Anne Stensvold, *A History of Pregnancy in Christianity: From Original Sin to Contemporary Abortion Debates* 70 (2015); Frank K. Flinn, *Encyclopedia of Catholicism* 4 (2007); see also Elissa Strauss, *When Does Life Begin? It's Not So Simple*, *Slate* (April 4, 2017), available at <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html> (hereinafter "Strauss, *When Does Life Begin?*").

⁷ Strauss, *When Does Life Begin?* (quoting Daniel Sulmasy, Catholic bioethicist and director of the Program on Medicine and Religion at the University of Chicago).

expressly noted the range of views on this question and have declined to identify a particular moment as the beginning of life.⁸

Similarly, the Church of Jesus Christ of Latter-Day Saints (the “LDS Church”) has never taken an official position on when a fetus acquires personhood.⁹ Some LDS Church scholars embrace the view that the spirit does not enter the body until the moment of first breath, while others believe that it happens when the woman first feels the fetus move.¹⁰ Other scholars note

⁸ See, e.g., Presbyterian Church (U.S.A.), *Abortion/ Reproductive Choice Issues* (“We may not know exactly when human life begins[.]”), available at <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>; United Church of Christ, *Statement on Reproductive Health and Justice* (noting the “many religious and theological perspectives on when life and personhood begin”), available at https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf?1418423872; Evangelical Lutheran Church in America, *Social Statement on Abortion* at 1, 3 n.2 (1991) (explaining that embryology provides insight into the “complex mystery of God’s creative activity” but that individual interpretation of the scientific information leads to various understandings of when life begins), available at <http://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf>.

⁹ Peggy Fletcher-Stack, *Surprise! The LDS Church can be seen as more ‘pro-choice’ than ‘pro-life’ on abortion. Here’s why*, The Salt Lake Tribune (June 1, 2019), available at <https://www.sltrib.com/religion/2019/06/01/surprise-lds-church-can/>.

¹⁰ *Id.*; see also *The Latter-day Saints Tradition: Religious Beliefs and Healthcare Decisions* (Deborah Abbott, ed.) at 10 (2002), available at

that whereas neonatal deaths are recorded in LDS Church records, stillbirths and miscarriages typically are not, suggesting that the body does not become infused with the spirit until after a live birth.¹¹

In the Jewish tradition, the creation of a human life is generally viewed as something that happens gradually over time.¹² The majority of Jews do not believe that life begins at the moment of conception; rather, Jewish “tradition holds that we enter life in stages and leave in stages,” according to Rabbi Elliot Dorff, bioethicist and professor of Jewish theology at the American Jewish University.¹³ The Talmud teaches that the fetus is “mere fluid” up to the point of 40 days gestation, *see* Yevamot 69b,¹⁴ and following this period, the fetus is considered a physical part of the pregnant woman’s body, *see* Gittin 23b, not yet

https://www.advocatehealth.com/assets/documents/faith/latter-day_saints_tradition.pdf.

¹¹ Lester E. Bush, *Ethical Issues in Reproductive Medicine: A Mormon Perspective*, *Dialogue: a Journal of Mormon Thought* at 51 (1985), available at <https://www.dialoguejournal.com/articles/ethical-issues-in-reproductive-medicine-a-mormon-perspective/>.

¹² Strauss, *When Does Life Begin?*

¹³ *Id.*; *see also* National Council of Jewish Women, *Abortion and Jewish Values Toolkit* at 16 (2020), available at https://www.ncjw.org/wp-content/uploads/2020/05/NCJW_ReproductiveGuide_Final.pdf (hereinafter, “NCJW, *Abortion and Jewish Values*”).

¹⁴ Available at <https://www.sefaria.org/sheets/234926.8?lang=bi>. Note that this is understood as 40 days from *conception*, or approximately 7-8 weeks gestation.

having a life of its own or independent rights.¹⁵ It is not until the moment of birth when the head has emerged and the baby has breathed outside air that it is considered a living being, *see* Mishnah Ohalot 7:6.¹⁶

Similarly, among Muslims “there is no universally agreed-upon moment when a fetus becomes a person.”¹⁷ However, the predominant view is that a fetus acquires personhood 120 days from conception (approximately 19-20 weeks gestation).¹⁸

The Supreme Court has previously recognized the “wide divergence of thinking” about this issue, and expressly declined to resolve “the difficult question of when life begins,” where “those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus.” *Roe v. Wade*, 410 U.S. 113, 159, 160 (1970). The diversity of views on this question, and the importance of allowing individuals to answer it for themselves, underlies this Court’s jurisprudence affirming the right to obtain abortions pre-viability. As this Court explained in *Planned Parenthood of Southeastern*

¹⁵ *See id.*; *see also* Strauss, *When Does Life Begin?* NCJW, *Abortion and Jewish Values* at 16; Mark Cherry, *Religious Perspectives on Bioethics* 166-67 (2004).

¹⁶ *See* NCJW, *Abortion and Jewish Values* at 16; Strauss, *When Does Life Begin?*; Rashi on Sanhedrin 72b:14, available at <https://www.sefaria.org/sheets/234926.8?lang=bi>.

¹⁷ Strauss, *When Does Life Begin?*

¹⁸ Mark Cherry, *Religious Perspective on Bioethics* 196-97 (2004); Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Applications* 134-35, 140-41 (2009); Dariusch Atighetchi, *Islamic Bioethics: Problems and Perspectives* 94 (2006); *see also* Strauss, *When Does Life Begin?*

Pennsylvania v. Casey, “[t]hese matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. *At the heart of liberty is the right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.*” 505 U.S. 833, 851 (1992) (emphasis added).

The Ban is at odds with the views of the diverse religious traditions that are discussed above. The Ban adopts the view—endorsed by some, but not all, religious traditions—that human life begins at the moment of conception. *See* Miss. Code. Ann. § 41-41-191(3)(g). Indeed, the stated rationale for the Ban is Mississippi’s asserted interest in protecting “unborn life” from that moment. *See id.* § (2)(b). By taking this approach, the Ban fails to account for—and indeed, disrespects—the diverse religious views of its many citizens whose religious faith leads them to take a very different view of when human life begins.

As this Court has previously held, a state may not “by adopting one theory of life . . . override the rights of the pregnant woman that are at stake.” *Roe*, 410 U.S. at 162. Mississippi should not be permitted to do so here.

II. Religious Traditions Affirm Women’s Moral Right to Decide Whether and Under What Circumstances to Terminate a Pregnancy

A broad range of religious traditions recognize and support the moral right of each woman to make her own decisions about her pregnancy in accordance

with her faith and her conscience, regardless of the stage of pregnancy.

Numerous Protestant denominations expressly affirm that every woman is a moral agent with both the capacity and the ultimate right to determine whether an abortion is justified in her specific circumstances, consistent with her faith. For instance, the Presbyterian Church asserts that “[h]umans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a pregnancy.”¹⁹ Similarly, the United Church of Christ embraces the view that “[e]very woman must have the freedom of choice to follow her personal religious and moral convictions concerning the completion or termination of her pregnancy.”²⁰ The Episcopal Church of America has adopted the position that the “decision to terminate a pregnancy . . . properly belongs to the couple, in consultation with their physician and the Church.”²¹ Likewise, the Disciples of Christ has resolved that “the place of decision making on abortion [is] not with public legislators, but with the individuals involved with the pregnancy . . . on the basis of ethical and moral

¹⁹ Minutes of the 217th General Assembly of the Presbyterian Church (U.S.A.) at 905 (2006).

²⁰ Thirteenth General Synod of the United Church of Christ, *Resolution on Freedom of Choice*, 81-GS-60 (1981) at 10, available at <https://www.uccfiles.com/pdf/GS-Resolutions-Freedom-of-Choice.pdf>.

²¹ Episcopal Church, *Standing Commission on Human Affairs and Health*, Resolution #A087 at 153 (1988) available at https://www.episcopalarchives.org/e-archives/gc_reports/reports/1988/bb_1988-R016.pdf.

grounds.”²² And the Unitarian Universalist Association asserts that “the personal right to choose in regard to contraception and abortion” is an important aspect of the “right of individual conscience” and the “inherent worth and dignity of every person.”²³ Many other Protestant denominations embrace similar views.²⁴

In addition, a number of Protestant denominations teach that the decision to terminate a

²² Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. on Labor and Human Resources, 101st Cong. 237 (1990) (testimony of John O. Humbert, General Minister and President, Christian Church (Disciples of Christ) in the USA and Canada) (citing General Assembly Resolutions of the Christian Church (Disciples of Christ) Resolution S9854 (1989) and 7524 (1975)).

²³ Unitarian Universalist Association, *General Resolution on the Right to Choose* (1987), available at <https://www.uua.org/action/statements/right-choose>.

²⁴ See, e.g., American Baptist Association, *Resolution Concerning Abortion and Ministry in the Local Church* (1987), available at <http://www.abc-usa.org/wp-content/uploads/2012/06/Abortion-and-Ministry-in-the-Local-Church.pdf>; Brief of Amici Curiae Religious Coalition for Reproductive Choice, et al., in Support of Respondent, *Stenberg v. Carhart*, No. 99-380 (Mar. 29, 2000) (describing views of American Friends Service Committee affirming “a woman’s right to follow her own conscience concerning child-bearing, abortion, and sterilization”); Metropolitan Community Churches, *Statement of Faith on Women’s Reproductive Health, Rights, and Justice* (March 20, 2013) (affirming “that all people are entitled to the rights and resources that equip them to make their own decisions about their bodies . . . and their well-being, including the inalienable right of women to control their bodies”), available at <https://www.mccchurch.org/statement-of-faith-on-womens-reproductive-health-rights-and-justice/>.

pregnancy is a morally permissible choice consistent with Christian ethics, at least in certain circumstances, and that the law should not preclude a woman from making the ultimate determination to obtain an abortion according to her own faith and conscience. For instance, the Presbyterian Church affirms that “[t]he considered decision of a woman to terminate a pregnancy can be morally acceptable,” and “therefore should not be restricted by law.”²⁵ Similarly, the Episcopal Church of America recognizes “the moral option for termination of [a] pregnancy in specific instances” and expresses a “deep conviction” that any legislation surrounding abortion “must take special care to see that individual conscience is respected,”²⁶ and must not “abridge[] the right of a woman to reach an informed decision about the termination of pregnancy” or limit her access “to safe means of acting on her decision.”²⁷ And the Evangelical Lutheran Church in America affirms that

²⁵ Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, available at <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>.

²⁶ Episcopal Church, *Standing Commission on Human Affairs and Health*, Resolution #A087 at 153 (1988) available at https://www.episcopalarchives.org/e-archives/gc_reports/reports/1988/bb_1988-R016.pdf.

²⁷ General Convention, *Journal of the General Convention of...The Episcopal Church*, Indianapolis, 1994 (New York: General Convention, 1995), pp. 323-25 (expressing “unequivocal opposition to any legislative, executive or judicial action . . . that abridges the right of a woman to reach an informed decision about the termination of pregnancy or that would limit the access of a woman to safe means of acting on her decision”), available at https://www.episcopalarchives.org/cgi-bin/acts/acts_generate_pdf.pl?resolution=1994-A054.

“there can be sound reasons for ending a pregnancy through induced abortion,” and that there are situations where obtaining an abortion may be a “morally responsible” choice.²⁸ The Lutheran Church has therefore asserted its opposition to “laws that deny access to safe and affordable services for morally justifiable abortions.”²⁹ Other Protestant denominations, including the United Church of Christ, the Alliance of Baptists, and the Disciples of Christ espouse similar views.³⁰

²⁸ Evangelical Lutheran Church in America, *Social Statement on Abortion* (1991), at 6-7, 9-10, available at https://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf?_ga=2.126669897.557303659.1627007329-314140115.1627007329.

²⁹ *Id.*

³⁰ See Thirteenth General Synod of the United Church of Christ, *Resolution on Freedom of Choice* 81-GS-60 (1981), available at <https://www.uccfiles.com/pdf/GS-Resolutions-Freedom-of-Choice.pdf>; Alliance of Baptists, *A Statement on Lifelong Sexual Education, Sexual & Reproductive Rights, and Opposing Sexual Justice and Violence* (2012), available at <http://www.sitemason.com/files/kuGj7y/StatementonLifelongSexualEducation.pdf>; Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. On Labor and Human Resources, 101st Cong. 237 (1990) (testimony of John O. Humbert, General Minister and President, Christian Church (Disciples of Christ) in the USA and Canada) (citing General Assembly Resolutions of the Christian Church (Disciples of Christ) Resolution S9854 (1989) and 7524 (1975)).

The LDS Church likewise “ultimately defers to [the] moral agency” of the pregnant woman in making this decision.³¹

There are also diverse views within the Catholic Church on the moral propriety of obtaining an abortion. While the official stance of the Catholic Church is that abortion is impermissible,³² the majority of American Catholics believe that abortion can be a morally acceptable choice,³³ that abortion

³¹ Peggy Fletcher-Stack, *Surprise! The LDS Church can be seen as more ‘pro-choice’ than ‘pro-life’ on abortion. Here’s why*, The Salt Lake Tribune (June 1, 2019) (citing the work of Courtney Campbell, a Mormon professor of religion and culture at Oregon State University) available at <https://www.sltrib.com/religion/2019/06/01/surprise-lds-church-can/>; see also *The Latter-day Saints Tradition: Religious Beliefs and Healthcare Decisions* (Deborah Abbott, ed.) at 10-11 (2002) (affirming the “right of a woman to make her own decision” in the matter of whether to have an abortion), available at <https://www.advocatehealth.com/assets/documents/faith/latter-day-saints-tradition.pdf>.

³² Vatican Congregation for the Doctrine of the Faith, *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation*, available at https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html.

³³ Belden Russonello Strategists, *2016 Survey of Catholic Likely Voters*, at 5 (October 2016) (“Sixty percent of Catholic likely voters overall say that ‘deciding to have an abortion can be a morally acceptable position.’”), available at <http://www.rifuture.org/wp-content/uploads/2016-Catholic-Voter-Poll.pdf>.

should be legal in all or most cases,³⁴ and that *Roe v. Wade* should not be overturned.³⁵ Moreover, Catholic women in this country have abortions at approximately the same rate as do women of other (or no) faith traditions.³⁶

Traditional Jewish teachings view abortion as permissible and even as required when abortion is necessary to safeguard the well-being of the mother, at

³⁴ Dalia Fahmy, *8 Key Findings about Catholics and Abortion*, Pew Research Center (October 20, 2020) (56% of Catholics believe abortions should be legal in all or most circumstances), available at <https://www.pewresearch.org/fact-tank/2020/10/20/8-key-findings-about-catholics-and-abortion/>; see also Pew Research Center, *2019 Report on Abortion*, available at <https://www.pewresearch.org/politics/2019/08/29/u-s-public-continues-to-favor-legal-abortion-oppose-overturning-roe-v-wade/>.

³⁵ Dalia Fahmy, *8 Key Findings about Catholics and Abortion*, Pew Research Center (October 20, 2020) (68% of Catholics say they do not want the Supreme Court to overturn *Roe v. Wade*), available at <https://www.pewresearch.org/fact-tank/2020/10/20/8-key-findings-about-catholics-and-abortion/>; see also Pew Research Center, *2019 Report on Abortion*, available at <https://www.pewresearch.org/politics/2019/08/29/u-s-public-continues-to-favor-legal-abortion-oppose-overturning-roe-v-wade/>.

³⁶ Guttmacher Institute, *Characteristics of U.S. Abortion Patients in 2014 and Changes since 2008*, at 1, 6-7 (May 2016), available at https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf; see also Guttmacher Institute, *Fact Sheet: Induced Abortion in the United States*, at 1 (2019), available at https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf.

any stage of pregnancy. *See* Mishnah Ohalot 7:6.³⁷ Reform, Reconstructionist, and Conservative Judaism all adopt the view that “women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion.”³⁸ Moreover, hundreds of Jewish leaders have recently reaffirmed the importance of ensuring women’s access to reproductive healthcare, including abortion, as an essential matter of religious freedom.³⁹

Other major religions likewise teach that abortion is both permissible and moral under certain circumstances and embrace the ultimate authority of a woman to make the decision whether to terminate a pregnancy, consistent with her faith and values. For instance, many schools of Islamic thought permit abortion, under certain circumstances, at any point up to 120 days from conception, or approximately 19-20 weeks gestation.⁴⁰ The Buddhist Churches of America assert that “it is the woman carrying the fetus; and no one else, who must in the end make this most difficult

³⁷ *See* Strauss, *When Does Life Begin?*, NCJW, *Abortion and Jewish Values* at 16; Rashi on Sanhedrin 72b:14, available at <https://www.sefaria.org/sheets/234926.8?lang=bi>.

³⁸ 144 Cong. Rec. S10491 (daily ed. Sept. 17, 1998) (quoting Letter of 729 Rabbis in Support of President Clinton’s Veto of H.R. 1122 (Sept. 10, 1998)).

³⁹ Letter of Jewish Clergy Leaders to the Senate Committee on the Judiciary, dated July 16, 2021, available at <https://www.ncjw.org/wp-content/uploads/2021/07/06-16-2021-Jewish-Clergy-Leaders-WHPA-Letter-FINAL-1.pdf>.

⁴⁰ Mohammad A. Albar, *Induced Abortion From An Islamic Perspective: Is It Criminal Or Just Elective*, 8 J. Fam. Cmty. Med. 25, 29-32 (2001); *see also* Strauss, *When Does Life Begin?*

decision.”⁴¹ And while there are various views within Hinduism on the propriety of abortion, many Hindus adopt the position that “each case [of abortion] requires unique consideration” and that the “final decision will be based on a long series of choices made by the woman on her lifestyle, morals, and values.”⁴² Consistent with this view, the majority of Hindus in the United States believe that abortion should be legal.⁴³

The Constitutional protection for abortion respects this diversity of religious views by ensuring that before the point of viability, every woman has ultimate moral agency over the decision to end her pregnancy and should be able to make that decision based on her own spiritual and religious convictions. As this Court explained in *Casey*, “[t]he destiny of the woman must be shaped to a large extent on *her own conception of her spiritual imperatives* and her place in society.” 505 U.S. at 852 (emphasis added). But the Ban prevents women from doing so, and instead resolves “these philosophic questions in such a definitive way that a woman lacks all choice in the matter.” *Id.* at 850.

⁴¹ Buddhist Churches of America Social Issues Committee, *A Shin Buddhist Stance on Abortion* at 6, Buddhist Peace Fellowship Newsletter 6 (1984).

⁴² *Hindus in America Speak Out On Abortion Issues*, Hinduism Today, (Sept. 1985), available at <https://www.hinduismtoday.com/magazine/september-1985/1985-09-hindus-in-america-speak-out-on-abortion-issues/>.

⁴³ Pew Research Center, *2014 Religious Landscape Study* at 110, available at <https://www.pewforum.org/about-the-religious-landscape-study/>.

While the view adopted by the Ban—that life begins from the moment of conception, *see* Miss. Code Ann. § 41-41-191(3)(c),(g)—reflects the stance of certain religious traditions, it is at odds with the teachings of other faiths, as discussed above. The Ban then uses this distinct, faith-based view as the predicate for its sweeping prohibition on pre-viability abortion after 15 weeks. In doing so, the Ban disregards the diversity of religious viewpoints on when life begins. It divests women of their capacity to make personal decisions about abortion according to their own consciences and moral and religious beliefs. By elevating a particular religious viewpoint and restricting the ability of women to act according to their own faith traditions and beliefs, the Ban threatens the freedom of all religious communities.

The Ban offends the values of religious pluralism and religious freedom, which are enshrined in the U.S. Constitution and embraced by *amici* and the numerous faith traditions they represent. *See, e.g.*, Statement of Catholics for Choice (affirming that “As Catholics, . . . [we] value religious pluralism” and believe that “[e]veryone has the right to live according to their own beliefs and consciences, and they also have the right to live free from having the religious beliefs of others imposed on them”)⁴⁴; Religious Coalition for Reproductive Choice Mission Statement (“RCRC values and promotes religious liberty which upholds the human and constitutional rights of all people to exercise their conscience to make their own reproductive health decisions without shame and

⁴⁴ Catholics for Choice, *Religious Freedom*, available at <https://www.catholicsforchoice.org/issues/religious-freedom/>.

stigma”)⁴⁵; National Council of Jewish Women (affirming belief that “[r]eligious liberty . . . must be protected” and that “protecting an individual’s ability to make their own health care decisions in accordance with their needs and personal beliefs is tied to religious freedom”).⁴⁶ As several of the *amici* recently stated in reaffirming that “[r]eligious freedom is an essential shared principle undergirding [their] support of policies that ensure equitable access to abortion”:

The United States is home to people of many different faiths as well as people with no religious affiliation. We cannot limit an individual’s religious liberty by enshrining one set of beliefs into law and restricting their ability to make personal decisions about their pregnancy, health, and family according to their own religious or moral beliefs and conscience. No government committed to human rights and democracy can privilege one religion over another.⁴⁷

⁴⁵ Religious Coalition for Reproductive Choice, *Mission Statement*, available at <https://rcrc.org/mission-statement/>.

⁴⁶ National Council of Jewish Women, *Proposed 2020-2023 Resolutions* at 1, available at <http://www.ncjw.org/wp-content/uploads/2020/05/FINAL-2020-2023-NCJW-RESOLUTIONS.pdf>; National Council of Jewish Women, *Vision for America* at 5, available at https://www.ncjw.org/wp-content/uploads/2018/11/Vision-for-America_ONLINE.pdf.

⁴⁷ Sheila Katz, Sara Hutchinson Ratcliffe & Rev. Katey Zeh, *Denying Abortion Coverage Is Not a Religious Value*, Rewire News Group (Aug. 17, 2020), available at

This Court should not countenance Mississippi's elevation of one set of religious beliefs into law at the expense of others. At the core of religious and personal liberty is the "right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." *Casey*, 505 U.S. at 851. As this Court has previously recognized, it is each woman's prerogative to form her own views about these subjects in accordance with her own religious beliefs without interference from the state. *Id.* (explaining that "[b]eliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State"). But the Ban prevents women from doing precisely this by imposing upon them one particular religious view concerning the beginning of life.

III. Religious Traditions Affirm the Importance of Ensuring Reproductive Choice for Women in Marginalized Communities Who Are Disproportionately Harmed by the Ban

A broad array of religions embrace as a central tenet of their faith the importance of serving and supporting vulnerable and marginalized communities. Many of these traditions teach that people of faith have a moral obligation to protect, succor, uplift, and advocate on behalf of those who are poor and low-income and those who have historically been disenfranchised and discriminated against, including people of color, people with disabilities, immigrants, and LGBTQ individuals. And numerous religions

<https://rewirenewsgroup.com/article/2020/08/17/denying-abortion-coverage-is-not-a-religious-value/>.

expressly affirm that this charge includes ensuring that individuals from these communities have the same access to health care and the same freedom to make decisions concerning their reproductive health, including the right to abortion.

For example, the Alliance of Baptists has called for a “faith-based commitment to sexual and reproductive rights, including access to voluntary contraception and abortion,” consistent with their mission to “side with those who are poor” and “[p]ursue justice with and for those who are oppressed,” regardless of “sex, gender, color, age, bodily condition, marital status or sexual orientation.”⁴⁸ Similarly, the United Church of Christ has adopted resolutions supporting measures to ensure that “women with limited financial means” are able to “exercise [their] legal right to the full range of reproductive health services,” and affirming that “[w]hat is legally available to women must be accessible to all women.”⁴⁹

⁴⁸ Alliance of Baptists, *A Statement on Lifelong Sexual Education, Sexual & Reproductive Rights, and Opposing Sexual Justice and Violence* (2012), available at <http://www.sitemason.com/files/kuGj7y/StatementonLifelongSexualEducation.pdf>.

⁴⁹ United Church of Christ, *Statement on Reproductive Health and Justice*, available at https://d3n8a8pro7vhm.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf?1418423872; see also Connecticut Conference of the United Church of Christ, *Resolution: Freedom of Choice Concerning Abortion* (1971), available at http://www.ctucc.org/files/tables/content/7726678/fields/files/327cad155b9c43dd8a95e03e4179fbe8/1971_freedom_of_choice.pdf (affirming that laws that “severely limit[] access to safe abortions

And the Unitarian Universalist Association has affirmed its support for the reproductive justice movement as an extension of its core theological teachings, acknowledging the ways that an individual's right to make reproductive choices is shaped by "social and political systems as well as by factors such as racial/cultural identity, economic status, immigration/citizenship status, relationship with the justice system, health status, and ability."⁵⁰ Consistent with these teachings, the Unitarian Universalist Association seeks to ensure "control of personal reproductive decisions" for people of "all genders, sexual orientations, abilities, gender identities, ages, classes, and cultural and racial identities," and "especially the most vulnerable and marginalized,"⁵¹ and has condemned attempts "to restrict access to birth control and abortion by overriding individual decisions of conscience" which "often result in depriving poor women of their right to medical care."⁵²

In addition, many Catholics believe that protecting the right of poor and vulnerable women to choose whether to end their pregnancies is a natural and necessary outgrowth of core principles of Catholic

. . . have the effect of discriminating against the poor" and are therefore "neither just nor enforceable").

⁵⁰ Unitarian Universalist Association, *Statement of Conscience on Reproductive Justice*, available at <https://www.uua.org/action/statements/reproductive-justice>.

⁵¹ *Id.*

⁵² Unitarian Universalist Association, *General Resolution on the Right to Choose* (1987), available at <https://www.uua.org/action/statements/right-choose>.

social justice.⁵³ Similarly, many believers from the Jewish tradition expressly link the Jewish teaching of *tzedek tzedek tirdof*—i.e., to pursue justice for all—to the obligation to advocate for the reproductive rights of *all* persons as a matter integral to religious liberty, so that each individual can make their own moral or faith-based decisions about their body, health, and family.⁵⁴

The Ban will have a devastating impact on women from precisely these vulnerable communities. *See generally, e.g.*, Br. of *Amici Curiae* The Lawyers Committee for Civil Rights Under Law, the Leadership Conference on Civil and Human Rights and other Civil Rights Organizations (discussing the impact of the Ban on low-income and Black women in Mississippi); Br. of *Amici Curiae* Organizations Dedicated to the Fight for Reproductive Justice (discussing barriers in accessing reproductive healthcare faced by people of color, low-income people, people with disabilities, immigrants and indigenous persons, and LGBTQ individuals, and the impact the Ban will have on these marginalized groups). As the District Court observed in this case, the Ban would “disproportionately impact poor women.” Petition Appendix (“Pet. App.”) 49a. The majority of abortion patients nationwide are either poor or low-income,⁵⁵ and Mississippi “has a greater

⁵³ *See* Catholics for Choice, *Social Justice*, available at <https://www.catholicsforchoice.org/issues/social-justice/>; Catholics for Choice, *Reproductive Equity*, available at <https://www.catholicsforchoice.org/issues/reproductive-choice/>.

⁵⁴ *See* NCJW, *Abortion and Jewish Values* at 13-14.

⁵⁵ *See* Guttmacher Institute, *Fact Sheet: Induced Abortion in the United States*, at 1 (2019), available at

population of poor women than any other state in the country.” Pet. App. 49a. Mississippi is also the state with the “most medical challenges for women, infants, and children,” Pet. App. 46a, and has among the highest rates of infant and maternal mortality in the country—rates that are disproportionately higher among women of color.⁵⁶ Moreover, poor women are “less likely to be able to leave the state to obtain the care they need,” Pet. App. 49a, meaning that the Ban would leave them with little recourse if they seek to terminate a pregnancy beyond 15 weeks, increasing the chances women will attempt unsafe methods of self-induced abortion, or be forced to take on the risks of continued pregnancy, regardless of their religious convictions or personal circumstances.

By placing a disproportionate burden on the most vulnerable women, and effectively denying them the freedom to make determinations about their reproductive health and family formation in accordance with their own beliefs, the Ban further undermines religious liberty.

https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf.

⁵⁶ See *Pregnancy-Related Maternal Mortality, Mississippi, 2011-2012*, available at <http://msdh.ms.gov/msdhsite/static/resources/5631.pdf>; *Mississippi Maternal Mortality Report, 2013-2016*, at 12 (April 2019), available at https://msdh.ms.gov/msdhsite/index.cfm/31,8127,299,pdf/Maternal_Mortality_2019_amended.pdf; Mississippi State Department of Health, *Infant Mortality Report, 2018*, at 2, available at <https://msdh.ms.gov/msdhsite/static/resources/8015.pdf>.

CONCLUSION

Being forced to carry a pregnancy to term against her wishes is an affront to a woman's moral authority to make decisions about her own life and body in keeping with her religious faith and values. As the Fifth Circuit observed in the decision below, "[u]ntil viability, it is for the woman, not the state . . . to consider [her] personal values and beliefs in deciding whether to have an abortion." Pet. App. 13a (citing *Casey*, 505 U.S. at 879). By prohibiting abortions beyond 15 weeks gestation, the Ban precludes women from making that choice in accordance with their own moral, spiritual, and religious beliefs, which this Court has recognized as a constitutional right. *See Casey*, 505 U.S. at 879 (holding that "a State may not prohibit any woman from making the ultimately decision to terminate her pregnancy before viability").

This Court should affirm the Fifth Circuit's decision.

Respectfully submitted,

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APPENDIX A: LIST OF *AMICI CURIAE*

Catholics for Choice

National Council of Jewish Women

Religious Coalition for Reproductive Choice

Muslim Advocates

African American Ministers In Action

Ameinu

American Jewish Congress

Auburn Theological Seminary (Auburn)

Avodah

Call To Action

DFW Muslim Bar Association

DignityUSA

Florida Interfaith Coalition for Reproductive Health
and Justice

Habonim Dror North America

HEART Women & Girls

Interfaith Alliance of Colorado

2a

Jewish Alliance for Law and Social Action

Jewish Orthodox Feminist Alliance

Jewish Women International (JWI)

Jewish Women's Foundation of New York

Judson Memorial Church

KARAMAH: Muslim Women Lawyers for Human Rights

Keshet

Metropolitan Community Churches, Global Justice Institute

Moving Traditions

MASGD (Muslim Alliance for Sexual and Gender Diversity)

Muslim Bar Association of New York

Muslims for Progressive Values

National Council of Jewish Women, Austin Section

National Council of Jewish Women, Greater Dallas Section

National Council of Jewish Women, Greater Houston Section

National Council of Jewish Women, Greater New Orleans Section

National Council of Jewish Women, San Antonio Section

Nebraska Religious Council for Reproductive Freedom (NE-RCRF)

New Jersey Muslim Lawyers Association

New York Jewish Agenda

NM Religious Coalition for Reproductive Choice

Ohio Religious Coalition for Reproductive Choice

PA Religious Coalition for Reproductive Justice

Partnership to End Gendered Islamophobia

Presbyterians Affirming Reproductive Options (PARO)

Quixote Center

Rabbinical Assembly

Reconstructionist Rabbinical Association

Religious Coalition for Reproductive Choice California

Rhode Island Religious Coalition for Reproductive Freedom

Sikh Coalition

Society for Humanistic Judaism

Student Coalition for Reproductive Justice

T'ruah: The Rabbinical Call for Human Rights

Teen JUST·US

Unitarian Universalist Association

Unitarian Universalist Women's Federation

Women's Alliance For Theology, Ethics, And Ritual
(WATER)