FILED
02-22-2024
CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN
NO. _____

PLANNED PARENTHOOD OF WISCONSIN,
on behalf of itself, its employees, and its patients,

KATHY KING, M.D.,

and

ALLISON LINTON, M.D., M.P.H.,
on behalf of themselves and their patients,

and

MARIA L.,

JENNIFER S.,

LESLIE K.,

and

ANAIS L.,

Petitioners,

v.

JOEL URMANSKI, in his official capacity as District Attorney
for Sheboygan County, Wisconsin,
615 North 6th Street, First Floor
Sheboygan, Wisconsin 53081

ISMAEL R. OZANNE, in his official capacity as District Attorney
for Dane County, Wisconsin,
215 South Hamilton Street, #3000
Madison, Wisconsin 53703

and,

JOHN T. CHISHOLM, in his official capacity as District Attorney
for Milwaukee County, Wisconsin,
821 West State Street, Room 405
Milwaukee, Wisconsin 53233

Respondents, as Class Representatives for
all Wisconsin District Attorneys.

PETITION TO THE WISCONSIN SUPREME COURT TO TAKE JURISDICTION OF AN ORIGINAL ACTION

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ISSUES PRESENTED

1. Whether Wisconsin Statute § 940.04, if interpreted to prevent a person from obtaining an abortion in all circumstances except "to save the life of the mother," violates the person's inherent right to life and liberty guaranteed by Article I, Section 1 of the Wisconsin Constitution, by unconstitutionally interfering with the person's right to bodily integrity, autonomy, and self-determination—including the decision of whether and when to have a child.

2. Whether Wisconsin Statute § 940.04, if interpreted to prevent a person from obtaining an abortion in all circumstances except "to save the life of the mother," violates the person's right to equal protection guaranteed by Article I, Section 1 of the Wisconsin Constitution, by treating people, including those who seek abortion services, differently than people who seek comparable healthcare services, without an adequate state interest.

3. Whether Wisconsin Statute § 940.04, if interpreted to prevent physicians from performing an abortion in all circumstances except "to save the life of the mother," violates the physicians' rights to equal protection guaranteed by Article I, Section 1 of the Wisconsin Constitution, by treating physicians providing abortion services differently than those providing comparable healthcare services, without an adequate state interest.

4. Whether Wisconsin Statute § 940.04, if interpreted to prevent physicians from performing an abortion in all circumstances except "to save the life of the mother," infringes on the physicians' fundamental right to liberty guaranteed by Article I, Section 1 of the Wisconsin Constitution, by preventing them from practicing their chosen profession and treating their patients to the full extent of the physicians' education, training, and ability, consistent with the patients' needs.

INTRODUCTION

In 1848, the people of Wisconsin adopted their first and only state constitution, opening with the declaration:

> All men are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

Wis. Const. art. I, § 1. The word "men" was amended to "people" in 1982. 1981 Wis. S.J. Res. 29, vote Nov. 1982.

"Too much dignity cannot well be given to that declaration." *State v. Redmon*, 134 Wis. 89, 114 N.W. 137, 138 (1907). The rights of life, liberty, and the pursuit of happiness inherent to all people are natural, pre-dating the constitution itself. "An inherent right to liberty means all people are born with it; the government does not bestow it upon us and it may not infringe it." *Porter v. State*, 2018 WI 79, ¶ 52, 382 Wis. 2d 697, 913 N.W.2d 842 (Grassl Bradley, J., and Kelly, J., dissenting) (emphasis in original). "Doubtless the fathers of the Constitution foresaw the likelihood and danger of the security of personal rights, which the fundamental law was intended to firmly entrench with the judiciary as its efficient defender." *Redmon*, 114 N.W. at 139.

Integral to inherent rights is that they belong to "all people [] born equally." Wis. Const. art. I, § 1. As this Court has recognized, through the constitution's opening declaration, it was "the prerogative of the State of Wisconsin to afford greater protection to the liberties of persons within its boundaries under the Wisconsin Constitution than is mandated by the United States Supreme Court…" *State v. Knapp*, 2005 WI 127, ¶59, 285 Wis. 2d 86, 700 N.W.2d 899 (quoting *State v. Doe*, 78 Wis.2d 161, 171, 254 N.W.2d 210 (1977)). Wisconsin's forefathers further mandated "firm adherence to justice, moderation, temperance, frugality and virtue," and "frequent recurrence to [its] fundamental principles." Wis. Const. art. I, § 22.

At the sacred core of the inherent right to life and liberty lies the right to determine what one does with one's own body, including whether and when to have a child. All people in Wisconsin share that right equally.

Abortion is a safe and common medical treatment. Abortions are performed across Wisconsin every day for many reasons, including when continuing a pregnancy endangers the health or life of the pregnant woman,[1] when a fetus suffers from a medical condition making it incompatible with life outside the womb, when the pregnant woman is the victim of rape or incest, or when the pregnant woman does not believe that she will be able to care for a child. More so than perhaps any other decision, choosing to end or continue a pregnancy carries profound implications for one's physical, mental, and emotional health; one's means; and one's life path.

Life and liberty also require the right to pursue one's lawful profession. A healthy society depends on a skilled and knowledgeable medical community. Physicians across Wisconsin enjoy a fundamental right to care for the life and health of their patients by providing desired and medically indicated health care services in accordance with accepted medical standards and ethics. Physicians who perform abortions are no different than their peers who do not.

Section 940.04, as it appears on the statute books today, makes it a felony to "intentionally destroy[] the life of an unborn child" unless "necessary[] to save the life of the mother." Wis. Stat. §§ 940.04(1), (5)b. It was enacted in 1849 and substantially took its current form in 1858, before women had the right to vote and before the advent of modern medicine.

No Wisconsin court has considered the constitutionality of s. 940.04 under Article I, Section 1 of the Wisconsin Constitution, although more than fifty years ago, a federal court concluded that section 940.04 violated an individual's federal right to privacy. *See Babbitz v. McCann*, 310 F. Supp. 293 (E.D. Wis. 1970). Further examination was not needed after the *Babbitz* decision or once the U.S Supreme Court recognized a federal constitutional right to abortion in 1973. *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179 (1973). In the intervening decades—until 2022—Wisconsinites could access safe and effective abortions within the parameters of

[1] The law traditionally uses "women" to refer to people who can become pregnant. Here, Petitioners will use "women" to maintain consistency and clarity with existing law, though the Petitioners recognize that people across the gender spectrum can become pregnant.

Wisconsin's many more recently enacted abortion laws.[2] These laws provide for a woman to choose whether to continue or terminate a pregnancy in more than just the dire, near-death circumstances permitted under section 940.04.

The federal landscape changed on June 24, 2022, when the U.S. Supreme Court reversed *Roe* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022). At that time, some Wisconsin district attorneys and legal commentators opined that *Dobbs* spontaneously revived section 940.04, causing it to become an enforceable ban on abortion in Wisconsin despite its obvious conflict with Wisconsin's more modern abortion laws. That question has now come before this Court in *Kaul v. Urmanski*, in which the Attorney General, on behalf of himself and other state officials, and three physicians argue the statute is unenforceable—primarily on statutory interpretation grounds.

Either before this Court considers *Kaul*, or contemporaneously, the Court should decide whether section 940.04, if interpreted to prevent a woman from obtaining an abortion in all circumstances except to save the life of the mother, violates the fundamental rights declared in Article I, Section 1 of the Wisconsin Constitution of persons who may become pregnant and of the physicians who provide care to them. Even if *Kaul v. Urmanski* could be decided on statutory interpretation, the constitutional issue is likely to recur. With ongoing legislative efforts to enact a new abortion ban, the constitutional question should not be avoided. The Court should determine, once and for all, that the fundamental rights to life, liberty, and equal protection held by all people in Wisconsin include the right to choose whether or when to have a child, and the right of physicians to exercise their judgment in providing abortion care.

PARTIES

1. Petitioner Planned Parenthood of Wisconsin ("PPWI") is a non-profit corporation incorporated in Wisconsin that operates 21 health centers around the state; three of which provide abortion services. Its principal office is 302 N. Jackson Street, Milwaukee, WI 53202.

[2] *See, e.g.*, Wis. Stat. §§ 940.15, 253.10, 253.105, 940.16, 940.13, and 253.107.

2. Petitioner Dr. Kathy King, M.D., is a licensed physician and the Medical Director of PPWI, 302 N. Jackson Street, Milwaukee, WI 53202. She provides a wide range of health care services to PPWI patients, including abortion care. (King Aff., ¶¶ 2-3, 5.)

3. Petitioner Dr. Allison Linton, M.D., M.P.H., is a licensed physician and the Chief Medical Officer for PPWI, 302 N. Jackson Street, Milwaukee, WI 53202. She provides a wide range of health care services to PPWI patients, including abortion care. (Linton Aff., ¶¶ 2-3, 6.)

4. Maria L. is a pseudonym for an adult female residing in the State of Wisconsin. Maria L. is of child-bearing years and received an abortion for an unintended pregnancy in 2014. (Maria L. Aff., ¶¶ 1-2, 4-5.)[3]

5. Jennifer S. is a pseudonym for an adult female residing in the State of Wisconsin. Jennifer S. is of child-bearing years and received an abortion for an unintended pregnancy in 2008. (Jennifer S. Aff., ¶¶ 1-2, 4-5.)

6. Leslie K. is a pseudonym for an adult female residing in the State of Wisconsin. Leslie K. is of child-bearing years and received an abortion for an unintended pregnancy in 2016. (Leslie K. Aff., ¶¶ 1-2, 4-5.)

7. Anais L. is a pseudonym for an adult female residing in the State of Wisconsin. Anais L. is of child-bearing years and received an abortion for an unintended pregnancy in 2016. (Anais L. Aff., ¶¶ 1-2, 4-5.)

8. Defendant Joel Urmanski is sued in his official capacity as the District Attorney for Sheboygan County, Wisconsin, a county where PPWI provides abortion services. As a district attorney, Urmanski is the locally elected county official with authority to prosecute criminal actions within Sheboygan County. Wis. Stat. § 978.05(1). He

[3] A motion to use pseudonyms is filed herewith.

has publicly reported that he will enforce Wis. Stat § 940.04 as a near-total ban on abortion.[4]

9. DA Urmanski maintains that section 940.04 operates as a near-total ban on abortion. *See Kaul v. Urmanski*, Case No. 23AP2362, Petition to Bypass at 9 (2/20/24). DA Urmanski or a successor in his office may seek to enforce section 940.04 as an abortion ban, and so he is a proper official-capacity defendant. *See Koschkee v. Evers*, 2018 WI 82, ¶ 39, 382 Wis. 2d 666, 913 N.W.2d 878 (Grassl Bradley, J., concurring) ("[A] suit against a state official in his or her official capacity is not a suit against the official but rather a suit against the official's office." (citation omitted)). For such official capacity claims, his address is 615 North 6th Street, Sheboygan, WI 53081.

10. Defendant Ismael Ozanne is sued in his official capacity as the District Attorney for Dane County, Wisconsin, which is a county where PPWI provides abortion services. As a district attorney, Ozanne is the locally elected county official with authority to prosecute criminal actions within Dane County. Wis. Stat. § 978.05(1). DA Ozanne or a successor in his office may wish to enforce section 940.04 as an abortion ban, and so he is a proper official-capacity defendant. For such official capacity claims, his address is 215 South Hamilton Street #3000, Madison, WI 53703.

11. Defendant John T. Chisholm is sued in his official capacity as the District Attorney for Milwaukee County, Wisconsin, which is a county where PPWI provides abortion services. As a district attorney, Chisholm is the locally elected county official with authority to prosecute criminal actions within Milwaukee County. Wis. Stat. § 978.05(1). He has recently announced that he does not intend to seek reelection in April 2024. Regardless, DA Chisholm or a successor in his office may wish to enforce section 940.04 as an abortion ban, and so he is a proper official-capacity defendant. For such official capacity claims, his address is 821 West State Street, Room 405, Milwaukee, WI 53233.

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[4] *Sheboygan County D.A. says he'll prosecute providers accused of performing abortions in violation of state law*, WTMJ-TV News Report (June 28, 2022). (Affidavit of Counsel, filed herewith, **Exhibit U**.)

12. District Attorneys Urmanski, Ozanne, and Chisholm are sued as class representatives of all 71 locally elected district attorneys in Wisconsin, acting in their official capacities, pursuant to Wis. Stat. § 803.08. Class representation is proper because joinder of all 71 district attorneys is impracticable, the questions of law or fact are common to all members of the class, the defenses of District Attorneys Urmanski, Ozanne, and Chisholm will be typical of the class, and they will fairly and adequately protect the interests of the class.

STATEMENT OF FACTS

Pregnancy is a unique condition with significant personal, legal, and medical consequences.

13. The decision whether and when to have a child is one of the most transformative decisions a person will ever make, with far-reaching implications for nearly every aspect of her life.

14. The many factors a person may consider when deciding whether to have a child include her ability to financially and emotionally support the child; whether caring for the child would prevent her from working or obtaining an education; whether she has a partner who will share in care of the child; and whether having another child will jeopardize care for her current children. These factors are dynamic, highly personal, and unique to each individual.

15. All of those factors, however, may be preceded by the individual's decision of whether to subject her body to pregnancy, a unique and demanding medical condition that necessarily entails risk to her physical, emotional, and mental health.

16. Nationwide, maternal mortality is on the rise. Since the U.S. Centers for Disease Control and Prevention ("CDC") began tracking maternal mortality in 1987, the number of maternal deaths has increased from 7.2 to 17.6 per 100,000 live births.[5]

[5] Ctr. for Disease Control and Prevention, *Trends in Pregnancy-Related Deaths*, Pregnancy Mortality Surveillance System, https://www.cdc.gov/reproductivehealth/maternal-mortality/pregnancy-mortality-surveillance-system.htm (last visited Feb. 21, 2024).

17. There is no single, common experience of pregnancy across all pregnant women. Instead, pregnancy varies widely, and has profound health implications both during and after its nine-month duration.

18. Expected and unexpected health complications can arise during pregnancy. One study of more than 10 million U.S. birth records from 2011 through 2013 found that at least one unexpected complication arose for 46% of all pregnancies, 29% of low-risk pregnancies, and 57% of high-risk pregnancies.[6]

19. The CDC, which collects and describes pregnancy data nationwide, lists some common complications arising during pregnancy as hypertensive disorders, gestational diabetes, anemia, hyperemesis gravidarum, and preeclampsia.[7]

20. Some pregnancy complications threaten the life of the pregnant woman. Chorioamnionitis with sepsis, previable preterm premature rupture of membranes (PPROM), abruption with hemorrhaging, early onset HELLP syndrome are all life-threatening pregnancy complications. (King Aff., ¶ 13; Linton Aff., ¶ 14.)

21. At times, prenatal diagnostic testing reveals that the fetus suffers a lethal or severely life-threatening fetal anomaly, rendering it incompatible with life outside the uterus. Anencephaly/acrania, bilateral renal agenesis, osteogenesis imperfecta type II, and body stalk anomaly with ectopia cordis are some of these anomalies. (King Aff., ¶ 14; Linton Aff., ¶ 15.)

22. Some pregnancy complications negatively affect the ability to become or stay pregnant again in the future. One of these is placenta

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[6] Valery A, Danilack et al., *Unexpected complications of low-risk pregnancies in the United States*, 212 Am. J. Obstetrics & Gynecology 809 (2015). (Affidavit of Counsel, **Exhibit A**.)

[7] Ctr. for Disease Control and Prevention, *Pregnancy Complications – Common Complications*, Reproductive Health, https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-complications.html#Common%20Pregnancy%20Complications (last visited Feb. 21, 2024).

accreta spectrum, a range of conditions affecting placental anchoring to the uterine wall. (*See* King Aff., ¶ 15; Linton Aff., ¶ 16.) Research shows that a pregnancy following a previous occurrence of placenta accreta carries an increased risk of adverse outcomes affecting future fertility such as uterine rupture and peripartum hysterectomy.[8]

23. An ectopic pregnancy within a fallopian tube is one type of pregnancy complication that can never result in live birth, but which carries significant risk to health and future pregnancies. If continued, an ectopic pregnancy may rupture the fallopian tube and even trigger catastrophic hemorrhaging. (*See* King Aff., ¶ 15; Linton Aff., ¶ 16.) Ectopic pregnancies are the leading cause of first trimester maternal death.[9]

24. Physical health implications of pregnancy may last far beyond the pregnancy itself, even when the risks of the pregnancy are over. For example, women who experience common pregnancy complications such as pre-term delivery, hypertensive disorders, gestational diabetes, or impaired glucose tolerance have been shown to have an increased risk for mortality in the 50 years following pregnancy. Research suggests that this risk is greater for some racial groups than others.[10]

25. Health implications from pregnancy also extend beyond the physical, and into mental health. Common mental health issues associated with pregnancy include postpartum depression and

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[8] Tamar Eshkoli et al., *Placenta Accreta: Risk Factors, Perinatal Outcomes, and Consequences for Subsequent Births*, 208 Am. J. Obstet. Gynecol. 1 (2013). (Affidavit of Counsel, **Exhibit B.)**

[9] Kellie Mullany et al., *Overview of Ectopic Pregnancy Diagnosis, Management, and Innovation*, Women's Health, Mar. 2023, at 1, *available at* https://journals.sagepub.com/doi/10.1177/17455057231160349. (Affidavit of Counsel, **Exhibit C.)**

[10] *See* Stephanie Hinkle, et. al, *Pregnancy Complications and Long-Term Mortality in a Diverse Cohort*, 147 Circulation 1014 (2023), https://www.ahajournals.org/doi/epub/10.1161/CIRCULATIONAHA.122.062177. (Affidavit of Counsel, **Exhibit D**.)

anxiety.[11] (*See* King Aff., ¶ 16; Linton Aff., ¶ 17.) Recent research by the U.S. Centers for Disease Control and Prevention found 10.5% of Wisconsin women experience postpartum depressive symptoms following live birth.[12]

26. The culmination of pregnancy—childbirth itself—also poses steep risks, both during labor and delivery, and immediately after. These outcomes are described as severe maternal morbidity.[13] Severe maternal morbidity rates for delivery and postpartum hospitalizations increased from 146.8 to 179.8 per 10,000 discharges from 2008 to 2021.[14]

27. Even childbirth following a healthy, full-term pregnancy can quickly become dangerous or even deadly. Some conditions like sudden amniotic fluid embolism (which causes catastrophic cardiovascular collapse); catastrophic postpartum hemorrhaging; disseminated intravascular coagulation; intracranial hemorrhage; or sepsis due to infection can develop quickly and suddenly and may prove fatal. (King Aff., ¶ 18; Linton Aff., ¶ 19.)

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[11] Ctr. for Disease Control and Prevention, *Pregnancy Complications – Common Complications*, Reproductive Health, https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pregnancy-complications.html#Common%20Pregnancy%20Complications (last visited Feb. 21, 2024).

[12] Brenda L. Bauman, et. al, *Vital Signs: Postpartum Depressive Symptoms and Provider Discussions about Perinatal Depression – United States, 2018*, 69 Ctr. For Disease Control and Prevention Morbidity and Mortality Weekly Report 575 (2020), https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6919a2-H.pdf.

[13] Ctr. for Disease Control and Prevention, *How Does CDC Identify Severe Maternal Morbidity?*, https://www.cdc.gov/reproductivehealth/maternalinfanthealth/smm/severe-morbidity-ICD.htm (last visited Feb. 21, 2024).

[14] Dorothy A. Fink et al, *Trends in Maternal Mortality and Severe Maternal Morbidity During Delivery-Related Hospitalizations in the United States, 2008 to 2021*, JAMA Network Open (June 22, 2023), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2806478. (Affidavit of Counsel, **Exhibit E**.)

28. Following childbirth, parents are legally responsible to care for their newborn, which includes exercising significant responsibility for the daily supervision, education, protection, and care of the child. Wis. Stat. § 48.415(6). They must provide financial support to raise the child, in addition to their obligations to support their other existing children. Wis. Stat. § 767.501 *et seq*. They must have the child attend school regularly and for the full period and hours that school is in session. Wis. Stat. § 118.15(1)(a).

29. The implications of having a child reach beyond the tangible—one's mental, emotional, and spiritual life are all profoundly affected as well. In short, almost nothing in a person's life remains untouched.

Abortion is a safe, effective, and common form of health care.

30. Consensual medical abortion is a common medical treatment and one of the safest modern medical services provided to patients. As stated by one authority, "[t]he clinical evidence makes clear that legal abortions in the United States—whether by medication, aspiration, D&E, or induction—are safe and effective."[15] (*See* King Aff., ¶ 22; Linton Aff., ¶ 23.)

31. Abortion is safer than carrying a pregnancy to term. The risk of death associated with childbirth is approximately fourteen times higher than that associated with first-trimester abortion, and every pregnancy-related complication is more common among women having live births than among those having abortions.[16]

32. Numerous types of Wisconsin physicians perform abortions including, for example, emergency room physicians, maternal fetal health specialists, and obstetrician-gynecologists.[17]

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[15] Nat'l Acads. of Scis., Eng'g, and Med. ("NASEM"), *The Safety and Quality of Abortion Care in the United States* 77 (2018). (Affidavit of Counsel, **Exhibit F**.)

[16] Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 OBSTETRICS & GYNECOLOGY 215, 215 (2012). (Affidavit of Counsel, **Exhibit G**.)

[17] *See Kaul v. Urmanski*, No. 2022CV001594 (Wis. Cir. Ct. Dane Cnty. June. 28, 2022), at Dkt. 165 (Aff. Dr. Christopher Ford) ¶ 12 (Affidavit of Counsel, **Exhibit H**); 166 (Aff. Dr.

33. A physician may perform an abortion by prescribing medication or using either of two minimally-invasive medical procedures—aspiration or dilation and evacuation (D&E).[18]

34. A Wisconsin physician may also perform an abortion by prescribing two medications to be taken in succession, mifepristone and misoprostol. The process requires no anesthesia or sedation. As for all medications, physicians screen patients beforehand for eligibility criteria and contraindications.[19] The medical risks associated with medication abortion are similar to those of taking commonly prescribed and over-the-counter medications like antibiotics and non-steroidal anti-inflammatory drugs like aspirin and ibuprofen.[20]

35. Physicians and other health care providers also prescribe the mifepristone and misoprostol regimen to patients for other, non-abortion purposes like miscarriage management. It is the most effective regiment for miscarriage management by medication.[21]

36. An aspiration performed for the purpose of abortion is the same procedure a physician performs for miscarriage management to remove retained tissue from a woman's uterus following miscarriage.[22]

37. Both methods of abortion fall within the practice of medicine and surgery which a licensed Wisconsin physician may perform, as

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Jennifer Jury McIntosh) ¶ 7 (Affidavit of Counsel, **Exhibit I**); 164 (Aff. Dr. Kristin Lyerly) ¶ 9 (Affidavit of Counsel, **Exhibit J**).

[18] NASEM, *supra* n.15, at 100-102. Aspiration is sometimes also referred to as surgical or vacuum abortion, although no incision is made. *Id.* at 59 & n.6.

[19] *Id.* at 100.

[20] *Id*. at 79.

[21] Honor MacNaughton et al., *Mifepristone and Misoprostol for Early Pregnancy Loss and Medication Abortion*, 103 Am. Fam. Physician 473, 475 (2021). (Affidavit of Counsel, **Exhibit K.)**

[22] NASEM, *supra* n. 15, at 59, 101.

defined by state law. *See* Wis. Stat. §§ 448.04(1), .03(1)(a), .01(9); *see also* Wis. Admin. Code Med § 1.02 (Jan. 2024).

38. The most widely accepted professional medical education standards in the nation, issued by the Accreditation Council for Graduate Medical Education, require all obstetrician-gynecologists to obtain clinical experience in the provision of abortion, as well as comprehensive experience in the management of miscarriage, medication, uterine evacuation, complication management, and post-pregnancy loss care.[23]

39. Not only are physicians licensed and trained to provide abortion care services, but doing so aligns with widely accepted modern medical ethics. These require a physician to, among other things, "regard responsibility to the patient as paramount."[24] Underpinning the medical code of ethics are four core principles: beneficence, nonmaleficence, autonomy, and justice. Beneficence includes "the obligation of [the] physician to act for the benefit of the patient," to "prevent harm," and to "remove conditions that will cause harm."[25]

Women have abortions for many reasons.

40. Residents in nearly every county of Wisconsin receive abortions each year.[26] Nationally, one in four women will have an abortion by the age of 45.[27]

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[23] *See* Accreditation Council for Graduate Medical Education, *ACGME Program Requirements for Graduate Medical Education in Obstetrics and Gynecology* 28-29 (2023), https://www.acgme.org/globalassets/pfassets/programrequirements/220_obstetricsandgynecology_2023.pdf.

[24] Am. Medical Ass'n, *AMA Principles of Medical Ethics*, https://code-medical-ethics.ama-assn.org/principles (last visited Feb. 21, 2024). (Affidavit of Counsel, **Exhibit L**.)

[25] Basil Varkey, *Principles of Clinical Ethics and Their Application to Practice*, 30 Med. Principles & Prac. 17, 18 (2021) (citing TL Beauchamp & JF Childress, *Principles of Bioethics* (7th ed. 2013)). (Affidavit of Counsel, **Exhibit M**.)

[26] Wis. Dep't of Health Servs., Div. of Pub. Health, *Reported Induced Abortions in Wisconsin, 2021* 1, 18 (June 2022).

41. According to the most recent data from the Wisconsin Pregnancy Risk Assessment Monitoring System, an annual population-based survey conducted jointly with the CDC, 23% of pregnancies in Wisconsin are unintended.[28]

42. Women seek abortions for a variety of reasons. Some seek an abortion when they learn from their health care provider that continuing their pregnancy will jeopardize their health or their lives due to a new or existing medical condition.

43. Other women choose an abortion because complications of their current pregnancy threaten their ability to have healthy children in the future. One such case recently received national attention when a Texas mother petitioned her state's supreme court for an abortion because pregnancy complications made her unlikely to deliver a healthy child, and continuing the pregnancy put her at high risk for severe complications threatening her life and future fertility, including uterine rupture and hysterectomy.[29]

44. Some women seek abortions upon learning that their fetuses suffer from a lethal fetal anomaly that will render them unable to survive outside the uterus.

45. Still other women, including minors, seek abortions because they have been victims of rape or incest. Every year Wisconsin minors, who cannot legally consent to sexual intercourse, receive abortions.[30]

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[27] Rachel Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States*, 2008–2014, 107 AM. J. PUB. HEALTH 1904, 1904 (2017). (Affidavit of Counsel, **Exhibit N**.)

[28] Wis. Dep't of Health Servs., *Wisconsin PRAMS: 2018-2019 Surveillance Report* 4 (2022), https://www.dhs.wisconsin.gov/publications/p02500-2019.pdf.

[29] Pls.' Original Verified Pet. Decl. J. and Appl. TRO and Permanent Inj., *Cox v. Texas*, No. D-1-GN-008611 (Dist. Court of Travis Cnty., Texas 2023). (Affidavit of Counsel, **Exhibit O**.)

[30] Wis. Dep't. of Health Servs., Div. of Pub. Health, *Reported Induced Abortions in Wisconsin, 2021* 7-8 (June 2022).

46. Research shows that teenage parenthood reduces the probability of receiving a high school diploma by 5 to 10 percent, reduces annual income as a young adult by $1,000 to $2,400, and may increase the probability of receiving cash assistance and decrease the years of schooling received.[31]

47. Some women choose abortion for other reasons, too, including poverty, causing a financial inability to meet a child's needs; their own or their partners' struggles with substance abuse; because they have an abusive partner with whom they do not wish to have children; or because they believe continuing the pregnancy is not in their own best interest or the best interest of their fetuses.

48. For example, one study reported that the existing children of pregnant women who were denied an abortion are more likely to live in a household below the federal poverty line; more likely to receive assistance from the Women, Infants, and Children (WIC) program; and more likely to live in a household in which the mother reported not having enough money to pay for food, housing, or transportation, compared with children of women who received an abortion.[32]

49. Financially supporting her existing three-year-old son was a major consideration for Petitioner Maria L. when she obtained an abortion in 2014. Maria L. was working two part-time jobs in order to save for cosmetology school at the time she became pregnant. She had an unsupportive partner and knew she would have to raise the child as a single parent if she continued the pregnancy. Her limited income would not have been enough to support two children and attend school. (Maria L. Aff., ¶¶ 6-9.)

50. Following her abortion, Maria L. successfully completed her cosmetology program and is now a small business owner. She and her husband raise her now 13-year-old son, do not wish to have

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[31] Jason M. Fletcher & Barbara L. Wolfe, *Education and Labor Market Consequences of Teenage Childbearing*, 44 J. Human Resources 303 (2009). (Affidavit of Counsel, **Exhibit P**.)

[32] Diane Green Foster et al., *Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children*. 205 J. Pediatrics 183 (2019). (Affidavit of Counsel, **Exhibit Q**.)

more children, and are taking affirmative steps to prevent pregnancy. She is confident that she could not have achieved this success had she continued her pregnancy. (Maria L. Aff., ¶¶ 11-12.)

51. Education can also be an important consideration. Petitioner Jennifer S. obtained an abortion in order to pursue her dream of becoming a nurse practitioner. A registered nurse in an intensive care unit at the time, Jennifer S. became pregnant unintentionally in 2008 as a relationship was ending. She did not wish to have children with her former partner. (Jennifer S. Aff., ¶¶ 6-7.)

52. Jennifer S. simultaneously learned that she had been accepted into a rigorous Master's degree program to become a nurse practitioner. Jennifer S. knew she would not be able to work full-time as an R.N., complete the graduate program, and have a child. Following her abortion, Jennifer S. became a nurse practitioner—one of only a handful in the rural county where she now practices. She and her now-husband have raised several children from his previous marriage, do not wish to have further children of their own, and are taking affirmative measures to prevent pregnancy. (Jennifer S., Aff., ¶¶ 8-13.)

53. Petitioner Anais L. unintentionally became pregnant in 2016 while attending school and working a low-wage, part-time job. At the time, she believed she could not become pregnant without fertility treatment due to her polycystic ovary syndrome diagnosis. Anais L. knew that she could not continue working and studying with a child, nor could she financially support a child. Her partner at the time was unsupportive of the pregnancy. (Anais L. Aff., ¶¶ 7-10.)

54. Following her abortion, Anais L. completed her bachelor's degree and has gone on to a successful professional career. She is confident she could not have finished her education and undertaken her career had she had a child. She does not wish to have any children in the future and is taking affirmative measures to prevent pregnancy. (Anais L. Aff., ¶¶ 12-13.)

55. Petitioner Leslie K. became pregnant unintentionally in 2016 when her intrauterine device (IUD), which she had been using to prevent pregnancy, failed. Leslie K. was working extremely long hours at the

time and traveled extensively for her job. She believed continuing her pregnancy would negatively impact career advancement in her field, healthcare information technology. Neither Leslie K. nor her then-fiancé wished to have a child. (Leslie K. Aff., ¶¶ 6-8.)

56. Leslie K. and her now-husband still do not wish to have children and have taken affirmative measures to prevent pregnancy. (Leslie K. Aff., ¶ 10.)

57. Maria L., Jennifer S., Anais L., and Leslie K. ("Women Petitioners") all believe abortion was the right decision for them, and would consider an abortion in the future if they were to become pregnant again. (Maria L. Aff., ¶¶ 10, 13; Jennifer S. Aff. ¶¶ 10, 14; Anais L. Aff., ¶¶ 11, 14; Leslie K. Aff., ¶¶ 9-11.)

58. Because the interpretation of Wis. Stat. § 940.04 advanced by District Attorney Urmanski prohibits consensual abortions, it jeopardizes the rights of the Women Petitioners to obtain necessary healthcare and make decisions about their lives.

59. The interpretation of Wis. Stat. § 940.04 advanced by District Attorney Urmanski also presents a barrier to physicians, including Drs. King and Linton ("the Physicians"). It impedes the care and treatment they are able to provide to patients by prohibiting them from administering safe, effective, and desired medical care under all appropriate circumstances, not just life-threatening circumstances. (King Aff., ¶ 20; Linton Aff. ¶ 21.)

60. For similar reasons, the interpretation of Wis. Stat. § 940.04 advanced by District Attorney Urmanski, is a barrier to Planned Parenthood of Wisconsin fully accomplishing its mission of providing affordable, quality, and confidential reproductive health care. (King Aff., ¶ 21; Linton Aff., ¶ 22.)

Wisconsin holds a deep tradition of individual liberty and equal protection.

61. The first words of the Wisconsin Constitution declare:

> Equality; inherent rights. SECTION 1. All people are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted, deriving their just powers from the consent of the governed.

62. "Life, liberty, and the pursuit of happiness" is not just lofty language. Like statutes, "constitutional provisions[] should be construed to give effect to each and every word, clause and sentence." *Wagner v. Milwaukee Cnty. Election Comm'n*, 2003 WI 103, ¶ 33, 263 Wis. 2d 709, 666 N.W.2d 816 (internal quotations omitted).

63. The phrase, first adopted in the 1776 Virginia Declaration of Rights and later in the Declaration of Independence, is rooted in the philosophy of John Locke, that "all men retain some of their natural rights after subscribing to the social compact." Steven G. Calabresi & Sofia M. Vickery, *On Liberty and the Fourteenth Amendment: The Original Understanding of the Lockean Natural Rights Guarantees*, 93 Tex. L. Rev. 1299, 1317 (2015). Members of this Court have endorsed this meaning when interpreting Article I, Section 1 of the Wisconsin Constitution. *Porter v. State*, 2018 WI 79, ¶ 52, 382 Wis. 2d 697, 913 N.W.2d 842 (Grassl Bradley, J., and Kelly, J., dissenting) ("An inherent right to liberty means all people are born with it; the government does not bestow it upon us and it may not infringe it.") (emphasis in original).

64. "No right is held more sacred, or is more carefully guarded… than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law." *Matter of Guardianship of L.W.*, 167 Wis. 2d 53, 68, 482 N.W.2d 60 (1992) (quoting *Union Pacific Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891)); *see also Schreiber by Krueger v. Physicians Ins. Co. of Wisconsin*, 217 Wis. 2d 94, 104, 579 N.W.2d 730, 734 (Ct. App. 1998) ("[E]very human being of adult years and sound mind has a right to determine what shall be done with his [or her] own body.") (internal quotation marks and citation omitted), aff'd and remanded sub nom. *Schreiber v. Physicians Ins. Co. of Wisconsin*, 223 Wis. 2d 417, 588 N.W.2d 26 (1999).

65. A woman does not lose the right to the possession and control of her own person, free from all restraint or interference of others when she becomes pregnant.

66. The right to bodily integrity, autonomy, and self-determination—including the right to make one's own childbearing decisions and to seek medical care from a chosen health care provider free of government interference—is necessarily contained in the state's constitutional guarantee of liberty.

67. Around the time Wisconsin voters ratified the state's Constitution, women in Wisconsin had access to abortion through the purchase of known abortifacient medicines and medical manuals promoting them.[33]

68. Likewise, women in Wisconsin had access to abortion at the time Wisconsin voters, including women, amended Article I, Section 1 of the state constitution in 1982 to declare that "all people," not just men, "are born equally free and independent, and have certain inherent rights" including life and liberty.

69. Abortion care falls within the constitutional rights to life and liberty. Indeed, if the guarantee of liberty did not prevent government from imposing itself into individual medical decisions in favor of birth in nearly all circumstances, then other unfathomable restrictions would be permissible, too. For example, the guarantee of liberty necessarily would not prevent government from imposing a limit on the number of children a woman or couple may have.

70. Other states with deeply rooted traditions of individual liberty similar to Wisconsin's have found that a fundamental right to decide whether and when to have a child is enshrined in their state

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[33] *See, e.g.*, R.M. Wesselhoff, *New and Improved Edition of that Most Extraordinary Work: The Married Woman's Private Medical Companion*, Wis. Express, Jan. 9, 1849, at 4 (Affidavit of Counsel, **Exhibit R**.); S. Johnson, *Wholesale and Retail Dealer in Drugs, Medicinds, Paints, Oils, Dye Stufs, Glass, Putty. Sash*, Wis. Standard, July 7, 1849, at 4. (Affidavit of Counsel, **Exhibit S**.) For a comprehensive discussion of these and other common abortifacient medicines, *see The Composition of Certain Secret Remedies: VIII. "Female Medicines,"* 2449 Brit. Med. J. 1653, 1653-1658 (1907). (Affidavit of Counsel, **Exhibit T**.)

constitutions, even prior to *Dobbs*. These include Kansas, Montana, Alaska, Florida, California, Illinois, Massachusetts, Minnesota, and New Jersey.[34] Wisconsin looks to other states for guidance when

[34] *See,* Kansas, Kan. Const. Bill of Rts. § 1 (1861) ("All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness."); *Hodes & Nauser, MDsS, P.A. v. Schmidt*, 440 P.3d 461, 502 (Kan. 2019) ("We hold today that section 1 of the Kansas Constitution Bill of Rights protects all Kansans' natural right of personal autonomy, which includes the right to control one's own body, to assert bodily integrity, and to exercise self-determination. This right allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy."); Montana, Mont. Const., Art. II, § 10 (1972) ("The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest."); *Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364, 373-74 (Mont. 1999); Alaska, Alaska Const. art. I, § 22 (1972) ("The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section."); *Planned Parenthood of The Great Nw. v. State*, 375 P.3d 1122,1129 (Alaska 2016) ("In 1997 we examined this express privacy provision in the context of pregnancy-related decisions and held that a woman's fundamental privacy right to reproductive choice is more broadly protected by the Alaska Constitution than the United States Constitution."); California, Cal. Const. Art. I, § 1 (1974) ("All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."); *Comm. to Defend Reprod. Rights v. Myers*, 625 P.2d 779 (Cal. 1981) (finding that all women possess a fundamental constitutional right to choose abortion under the California constitutional privacy provision); Florida, Fla. Const. art. I, § 23 (1998) ("Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein."); *Gainesville Woman Care v. State*, 210 So. 3d 1243, 1254 (Fla. 2017) ("Florida's constitutional right of privacy encompasses a woman's right to choose to end her pregnancy."); Illinois, Ill. Const. art. I, § 2 (1970) ("No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."); *Hope Clinic for Women, Ltd. v. Flores*, 991 N.E.2d 745, 760 (Ill. 2013) ("we find no state grounds for deviating from the United States Supreme Court's interpretation that the federal due process clause protects a woman's right to an abortion. Therefore, at this time, we interpret our state due process clause to provide protections, with respect to abortion, equivalent to those provided by the federal due process clause."); Massachusetts, Mass. Const. Pt. 1, art. X (1780) ("Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws."); *Moe v. Sec'y of Admin. & Fin.*, 382 Mass. 629, 645-648, 417 N.E.2d 387, 397-99 (Mass. 1981); *Planned Parenthood League of Mass. v. Attorney General*, 677 N.E.2d 101, 103-04, 107-08 (Mass. 1997); Minnesota, Minn. Const. art. I, §§ 2, 7, 10 (1974) ("No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." "No person shall…be deprived of life, liberty or property without due process of

interpreting similar Constitutional provisions. *See, e.g., State v. Cole*, 2003 WI 112, ¶ 39, 264 Wis. 2d 520, 665 N.W.2d 328; *City of Milwaukee Post No. 2874 Veterans of Foreign Wars of U.S. v. Redevelopment Auth. of City of Milwaukee*, 2009 WI 84, ¶ 35, 319 Wis. 2d 553, 768 N.W.2d 749.

71. The constitutional guarantee of liberty also includes the fundamental right to practice one's chosen lawful profession. *See Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 572 (1972) ("While this court has not attempted to define with exactness the liberty . . . guaranteed (by the Fourteenth Amendment), the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint **but also the right of the individual to** contract, **to engage in any of the common occupations of life**, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.") (quoting *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923) (internal punctuation omitted; emphasis added)).[35]

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law." ""The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized."); *Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17, 27 (Minn. 1995) ("We therefore conclude that the right of privacy under the Minnesota Constitution encompasses a woman's right to decide to terminate her pregnancy."); New Jersey, N.J. Const. art. I, ¶ 1 (1947) ("All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."); *Right to Choose v. Byrne*, 91 N.J. 287, 306, 301, 450 A.2d 925, 934-37 (1982) (striking restriction of Medicaid funding for medically necessary abortions based on a recognized right to privacy).

[35] *See also* Tex. Const. art. I, § 19 (1876) ("No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."); *Patel v. Texas Dep't of Licensing & Regul.*, 469 S.W.3d 69, 122–23 (Tex. 2015) (Williams, J., concurring) ("Economic liberty is 'deeply rooted in this Nation's history and tradition,' and the right to engage in productive enterprise is as central to individual freedom as the right to worship as one chooses."); Ga. Const. art. I, § 1, ¶ I-II (1976) ("No person shall be deprived of life, liberty, or property except by due process of law… Protection to person and property is the

72. For physicians, the practice of medicine requires they use their medical knowledge, training, and ability to protect their patients' health and honor their medical decisions first and foremost.[36]

73. Along with the inherent guarantees of "life, liberty, and the pursuit of happiness," the Article I, Section 1 "Declaration of Rights" also contains the state's equal protection clause:

> **All people are born equally free and independent**, and have certain inherent rights; among these are life, liberty and the pursuit of happiness…

(emphasis added).

74. It is no accident that the framers wove these two powerful rights into the same elegant sentence. Central to individual life and liberty is the assurance that the laws will apply equally to "all people." *Id*. Here, equal protection necessarily requires that all people have an equal opportunity to self-determination in making medical decisions and seeking medical care that will determine the course of their health, means, and life path.

75. The scope of the federal Equal Protection Clause does not limit Wisconsin's own. Wisconsin's equal protection clause predates the federal equal protection clause found in the Fourteenth Amendment of the U.S. Constitution by two decades. Indeed, this Court has long recognized it is

> the prerogative of the State of Wisconsin to afford greater protection to the liberties of persons within its boundaries under the Wisconsin Constitution than is mandated by the United States Supreme Court… [T]his court will not be bound by the minimums which are imposed by the Supreme Court of the United States if it is the judgment of this court that the Constitution of Wisconsin

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paramount duty of government and shall be impartial and complete. No person shall be denied the equal protection of the laws."); *Jackson v. Raffensperger*, 308 Ga. 736, 737, 843 S.E.2d 576, 578 (2020) ("We have long interpreted the Georgia Constitution as protecting a right to work in one's chosen profession free from unreasonable government interference.").

[36] Am. Medical Ass'n, *supra* n. 24.

> and the laws of this state require that greater protection of citizens' liberties ought to be afforded.

State v. Knapp, 2005 WI 127, ¶ 59, 285 Wis. 2d 86, 700 N.W.2d 899 (quoting *State v. Doe*, 78 Wis.2d 161, 171-172, 254 N.W.2d 210 (1977) (internal quotations omitted)).

76. Wisconsin courts apply strict scrutiny to review legislation when it "impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *State v. Annala*, 168 Wis. 2d 453, 468, 484 N.W.2d 138 (1992).

77. The right to life and liberty, including the right to make one's own decisions about whether or not to give birth and medical decisions related to pregnancy or abortion care from a chosen health care provider, is fundamental. So, too, is a physician's right to practice medicine, her chosen profession, and fulfill her ethical obligations of the practice of medicine.

78. Section 940.04, interpreted to prohibit abortion in nearly all circumstances, harms anyone who can become pregnant and uniquely disadvantages women as a class. People who cannot become pregnant face no comparable barriers to making their own life and medical decisions or their ability to seek safe and effective medically-indicated care from a chosen health care provider free of government interference.

The Court should recognize the state constitutional right to abortion now.

79. Wisconsin statute section 940.04 was first enacted in 1849 and prohibited only the intentional destruction of a "quickened" fetus, an antiquated term for when the pregnant woman can detect movement of the fetus. Wis. R.S. 1849 ch. 133 §§ 10, 11. The original statute reflected common law that abortion was not a crime prior to quickening. *Babbitz v. McCann*, 310 F. Supp. 293, 301 (E.D.Wis. 1970).

80. Section 940.04 was revised to substantially its present form in 1858. Wis. Stat. ch. 164 §§ 10, 11 (1858). At the time of enactment, it banned the intentional destruction of a fetus at any stage of pregnancy unless "necessary to preserve the life of [the] mother." *Id.* It contains

no other exceptions—not if the woman's health is endangered, not if the fetus suffers from an anomaly certain to be fatal, and not if the pregnancy came about through rape or incest.

81. At the time the statute that would later be codified as section 940.04 was enacted, women would not have the right to vote for another 60 years, and modern medicine did not yet exist. Even germ theory did not emerge until decades later.

82. No Wisconsin court has considered whether section 940.04 violates the Wisconsin Constitution's inherent rights to liberty and equal protection under Article I, Section 1. In 1970, however, the Eastern District of Wisconsin considered the statute and declared it an unconstitutional invasion of a woman's right to privacy under the U.S. Constitution. *Babbitz*, 310 F. Supp. at 299-301.[37] Section 940.04 has not been enforced against consensual medical abortion since 1968. *See State v. Mac Gresens*, 40 Wis. 2d 179, 161 N.W.2d 245 (1968).[38]

83. In 1973, the U.S. Supreme Court decided *Roe v. Wade* and *Doe v. Bolton*, which held a constitutional right to abortion was contained under the federal Due Process Clause's right to privacy. 410 U.S. 113 (1973); 410 U.S. 179 (1973).

84. The modern Wisconsin Legislature has enacted a robust scheme of additional statutes and regulations that establish how, when, where, and by whom abortions may be lawfully performed. *See, e.g.,* Wis.

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[37] Said the court:

> Obviously, there is no topic more closely interwoven with the intimacy of the home and marriage than that which relates to the conception and bearing of progeny… [T]hat a mother has the right to determine whether to carry or reject an embryo that has not quickened is a return to the common law definition of abortion; this is not a position without well-established precedent in the common law.

Babbitz v. McCann, 310 F. Supp. 293, 299-301 (E.D. Wis. 1970).

[38] Petitioners are aware of just one attempted enforcement after 1968, in 1971, which was enjoined. *See Kennan v. Warren*, 328 F. Supp. 525 (W.D. Wis. 1971).

Stat. §§ 940.15, 253.105, 253.10, 253.107, and 48.375. None of these laws ban abortion in almost all circumstances, like District Attorney Urmanski interprets section 940.04 to do. To the contrary, section 940.15 establishes that a person may obtain an abortion for any reason before viability or post-viability to save her life or health.

85. None of Wisconsin's abortion laws reference or rely on *Roe* or its progeny. However, when the U.S. Supreme Court overturned *Roe* on June 24, 2022, with its decision in *Dobbs*, some Wisconsin prosecutors threatened to begin enforcing section 940.04 as a total ban on abortion in Wisconsin, except when necessary to save the life of the mother.[39]

86. Wisconsin is unique. At the time of *Dobbs*, it was one of just four states with both pre- and post-*Roe* abortion prohibitions on the books without any express language stating which law would be in effect without *Roe*.[40]

87. The threat of prosecution placed women and their physicians in a precarious position, with life-or-death consequences for pregnant women and the risk of criminal conviction, imprisonment, and loss of licensure for physicians.

88. The Wisconsin Attorney General and other state officials sued several Wisconsin prosecutors, arguing on statutory interpretation grounds that section 940.04 has been impliedly repealed and superseded by Wisconsin's modern scheme of abortion laws and regulations, making it unenforceable. *Kaul v. Urmanski*, No. 2022CV001594 (Wis. Cir. Ct. Dane Cnty. June. 28, 2022). Three physicians intervened. The physicians also argued that enforcement

[39] *Sheboygan County D.A. says he'll prosecute providers accused of performing abortions in violation of state law*, WTMJ-TV News Report (June 28, 2022), *available at* www.tmj4.com/news/local-news/sheboygan-county-d-a-says-hell-prosecute-providers-accused-of-performing-abortions-in-violation-of-state-law. (Affidavit of Counsel, **Exhibit U**.)

[40] Alabama, Ala. Code § 13A-13-7; Arizona, Ariz. Rev. Stat. § 13-3603; and, Michigan, Mich. Comp. Laws Serv. § 750.14.

of the statute would violate their right to fair notice of criminally prohibited behavior under the Due Process Clause.[41]

89. The circuit court recently declared section 940.04 unenforceable against physicians who provide abortions, finding the statute proscribes feticide only.[42]

90. District Attorney Urmanski has appealed that case and on February 20, 2024, he petitioned this Court to hear that appeal on bypass, meaning this Court has been asked to consider whether section 940.04 may be applied to abortion. *See Kaul v. Urmanski*, Case No. 23AP2362.

91. Before the statutory interpretation question in *Kaul* is answered, this Court should first establish the limits the Wisconsin Constitution places on the reach of section 940.04 into abortion, to ensure that any statutory construction in *Kaul* does not run afoul of those constitutional limits. It is an extraordinary opportunity for this Court to consider what it has never done before: examine the extent of Wisconsin's own Constitution and the powerful individual liberties and equal protection it defends, here, as those provisions relate to abortion.

92. Even if the Court would accept bypass in *Kaul* and affirm the circuit court's decision, Petitioners' constitutional question regarding section 940.04 is likely to recur. Legislative efforts to restrict abortion continue. Even as *Kaul* has been pending, members of the Assembly and the Senate have introduced legislation that would amend the abortion ban in 940.04, with some clarifications on the exception for abortions performed "to save the life of the mother." 2023 Senate Bill 299; 2023 Assembly Bill 175. On January 25, 2023, the Wisconsin Assembly passed a bill that would put a referendum question before voters on April 2, 2024 that would ban abortion after 14 weeks of

[41] *Kaul v. Urmanski*, No. 2022CV001594 (Wis. Cir. Ct. Dane Cnty. June. 28, 2022), Dkt. 4 (Compl.). (Affidavit of Counsel, **Exhibit V**.)

[42] *Kaul v. Urmanski*, No. 2022CV001594 (Wis. Cir. Ct. Dane Cnty. June. 28, 2022), at Dkt. 183 (Dec. 5, 2023 Decision and Order). (Affidavit of Counsel, **Exhibit W**.)

pregnancy. *See* 2023 Assembly Bill 975. The bill is currently pending in the Senate.

93. Such legislative efforts are likely to continue, without constitutional clarity from this Court. Declaring what the Wisconsin Constitution protects would guide the Legislature should it consider amending current statutes or passing new statutes governing abortion.

94. Although the Court generally follows the doctrine of constitutional avoidance, declining to decide constitutional questions if a case can be resolved on other grounds, constitutional avoidance is "a matter of judicial prudence" and does not apply where the constitutionality of a statute is "essential to the determination of the case." *Gabler v. Crime Victims Rts. Bd.*, 2017 WI 67, ¶ 52, 376 Wis. 2d 147, 897 N.W.2d 384 (citing *Kollasch v. Adamany,* 104 Wis.2d 552, 561, 313 N.W.2d 47 (1981)). Like other state and federal courts around the country, this Court has also chosen to answer constitutional questions of great public importance.

95. Abortion is a matter of significant public importance that affects millions of people across the state. Until this Court provides a definitive answer to the constitutional question, women and physicians in Wisconsin will continue to suffer, with women carrying pregnancies against their will and physicians being unable to provide their patients with safe, effective, and desired medical care.

CAUSES OF ACTION

COUNT I

Interpreted as an abortion ban, Wisconsin statute 940.04 violates the inherent right to life and liberty guaranteed under Article I, Section 1 of the Wisconsin Constitution, which includes the rights of all people who are or may become pregnant to choose whether and when to have a child and whether or when to seek safe, effective, and desired medical care.

96. Petitioners re-allege all previous paragraphs as if set forth fully herein.

97. As argued by DA Urmanski, section 940.04 imposes a criminal felony on any individual, other than the pregnant patient, who "intentionally destroys the life of an unborn child" unless "necessary, or is advised by 2 other physicians as necessary, to save the life of the mother." *Kaul,* Case No. 23AP2362, Petition to Bypass at 8-9 (citing Wis. Stat. §§ 940.04 (1), (5)).

98. Article I, Section 1 of the Wisconsin Constitution declares "[a]ll people are born equally free and independent, and have certain inherent rights; among these are life, liberty, and the pursuit of happiness…" All Wisconsin residents, including the Women Petitioners and the Physicians' patients, have inherent rights to choose whether and when to have a child, and whether or when to seek medical care.

99. A ban on abortion in all circumstances but to "save the life of the mother," violates the inherent right to liberty guaranteed under Article I, Section 1 by depriving them of bodily integrity, autonomy, and self-determination, including the fundamental right to make their own family planning decisions and decisions to seek appropriate medical care from a chosen health care provider, free of government interference.

100. No compelling state interest exists that would justify the deprivation of those rights for Wisconsin people who are pregnant or who may become pregnant.

COUNT II

As an abortion ban, Wisconsin statute 940.04 violates the Wisconsin Constitution's Article I, Section 1 guarantee of equal protection to people who seek or may seek abortion services while exercising their fundamental rights to choose whether and when to have children, and whether and when to seek safe, effective and desired medical care.

101. Petitioners re-allege all previous paragraphs as if set forth fully herein.

102. As argued by DA Urmanski, section 940.04 imposes a criminal felony on any individual, other than the pregnant patient, who "intentionally destroys the life of an unborn child" unless "necessary, or is advised by 2 other physicians as necessary, to save the life of the mother." *Kaul,* Case No. 23AP2362, Petition to Bypass at 8-9 (citing Wis. Stat. §§ 940.04 (1), (5)).

103. An abortion ban would operate to prevent the Women Petitioners and Physicians' patients from obtaining abortion services when such services are sought to fulfill their family planning decisions or to save their lives or their health.

104. The statute impermissibly and arbitrarily interferes with the exercise of fundamental rights and creates a class of people—women—who are prevented from making their own family planning decisions and medical decisions, putting them at a peculiar disadvantage. No other classification of people suffers a comparable deprivation.

105. Moreover, the statute impermissibly and arbitrarily interferes with the exercise of fundamental rights, codifies sex stereotypes, and subordinates women as a class by preventing people from determining for themselves whether to remain pregnant, with all the physical, social, and personal consequences that pregnancy, childbirth, and parenting entails.

106. No compelling state interest exists to justify preventing an entire class of Wisconsin residents from fulfilling their family planning decisions or obtaining safe, effective, and desired medical care and, even if one did, a near-total ban on abortion would not be the least restrictive means to achieve that state interest.

COUNT III

As an abortion ban, Wisconsin statute 940.04 violates the Wisconsin Constitution's Article I, Section 1 guarantee of equal protection to Wisconsin physicians who provide abortion services by impermissibly and arbitrarily preventing them from providing safe, effective, and desired medical care to their patients solely when it is provided for the purpose of abortion.

107. Petitioners re-allege all previous paragraphs as if set forth fully herein.

108. District Attorney Urmanski argues that section 940.04 imposes a criminal felony on any individual, other than the pregnant patient, who "intentionally destroys the life of an unborn child" except if "necessary, or is advised by 2 other physicians as necessary, to save the life of the mother." Wis. Stat. §§ 940.04(1), (5).

109. A ban on abortion in Wisconsin in all circumstances except to "save the life of the mother," violates the equal protection rights of physicians, including Dr. King and Dr. Linton, guaranteed by Article I, Section 1 of the Wisconsin Constitution by treating them differently—i.e. preventing them—when they provide safe, effective, and desired medical care to their patients for the purpose of abortion. Physicians who do not provide abortion services face no comparable barriers to the practice of medicine.

110. A ban on abortion in Wisconsin in all circumstances except to "save the life of the mother" also impairs the ability of Planned Parenthood of Wisconsin as an institution to achieve its mission to provide affordable, quality, and confidential reproductive health care.

111. The statute impermissibly and arbitrarily interferes with the exercise of fundamental rights and creates a class of people—physicians who provide abortion services—who are prevented from providing their patients with safe, effective, and desired medical care, putting them at a peculiar disadvantage. No other physicians suffer a comparable deprivation.

112. No compelling state interest exists that would justify preventing an entire class of Wisconsin physicians from practicing medicine to the full extent of their education, training, and ability, in order to provide desired and medically indicated care to their patients and, even if one did, a near-total ban on abortion would not be the least restrictive means to achieve that state interest.

COUNT IV

As an abortion ban, Wisconsin statute 940.04 violates the inherent right to liberty guaranteed under Article I, Section 1 of the Wisconsin Constitution to licensed Wisconsin physicians who provide abortion services, including the right to provide safe, effective, and desired medical care to their patients.

113. Petitioners re-allege all previous paragraphs as if set forth fully herein.

114. Article I, Section 1 of the Wisconsin Constitution declares "[a]ll people are born equally free and independent, and have certain inherent rights; among these are life, liberty, and the pursuit of happiness…" For Physicians, these rights include the right to practice medicine to the full extent of their education, training, and ability, in order to provide desired and medically indicated care to their patients.

115. A ban on abortion in Wisconsin in all circumstances but to "save the life of the mother," violates the inherent right to liberty guaranteed to the Physicians under Article I, Section 1 of the Wisconsin Constitution by preventing them from practicing their chosen profession solely when they perform abortion services.

116. No compelling state interest exists that would justify the deprivation of that right for Physicians in Wisconsin simply because they perform abortion services.

STATEMENT OF RELIEF SOUGHT

If the Court grants the Petition, Petitioners will ask the Court to:

(1) Declare that Article I, Section 1 of the Wisconsin Constitution's guarantee of the inherent rights to life and liberty includes a person's right to make one's own decisions about whether or when to have a child and a physician's right to provide appropriate abortion care;

(2) Declare Wisconsin Statute § 940.04, as an abortion ban, violates Article I, Section 1 of the Wisconsin Constitution's guarantee of the inherent rights to life and liberty as to Women Petitioners and Physicians.

(3) Declare that the right to equal protection guaranteed by Article I, Section 1 of the Wisconsin Constitution encompasses the right to make one's own decisions about reproductive health care, including whether or not to carry a pregnancy to term and a physician's right to provide appropriate abortion care;

(4) Declare Wisconsin Statute Section 940.04, as an abortion ban, violates the right to equal protection guaranteed by Article I, Section 1 of the Wisconsin Constitution, as to Women Petitioners and Physicians, and

(5) Permanently enjoin Defendants from enforcing Section 940.04 against abortions.

STATEMENT OF REASONS WHY THIS COURT SHOULD TAKE ORIGINAL JURISDICTION

The Wisconsin Constitution authorizes this Court to "hear original actions and proceedings." Wis. Const. art. VII, § 3(2). The purpose of the provision is to make this Court "a court of first resort on all judicial questions affecting the sovereignty of the state, its franchises or prerogatives, or the liberties of its people." *Petition of Heil*, 230 Wis. 428, 284 N.W. 42, 45 (1938). Whether to accept an original action is left ultimately to the Court's "judgment and discretion." *Id.* at 49.

The Court traditionally has exercised original jurisdiction where the question presented is *publici juris* and "requires a prompt and authoritative determination by this court in the first instance." *State* ex rel. *La Follette v. Stitt*, 114 Wis. 2d 358, 362, 338 N.W.2d 684 (1983); *see also Petition of Heil,* 284 N.W. at 49 (original actions limited to "cases so importantly affecting the rights and liberties of the people of this state as to warrant such intervention"), *Wis. Pro. Police Ass'n, Inc. v. Lightbourn*, 2001 WI 59, ¶ 4, 243 Wis. 2d 512, 627 N.W.2d 807 (original actions limited to "exceptional cases in which a judgment by the court significantly affects the community at large."). This case meets that high bar.

I. The question raised is *publici juris* and significantly affects the community at large.

"Matters which are *publici juris* are matters which by definition are assumed to be of paramount importance." *State* ex rel. *Swan v. Elections Bd.*, 133 Wis. 2d 87, 94, 394 N.W.2d 732 (1986). Abortion, a safe and common form of reproductive health care, is a matter of paramount importance that affects citizens in every corner of the state.

In Wisconsin, more than 1.1 million females were of reproductive age in 2022.[43] That means at least 1 of every 6 people in the state may become pregnant, intentionally or unintentionally, each year. Although many pregnancies lead to healthy, stable outcomes for both the parents and the born child, many others encounter unanticipated medical complications, face insurmountable socioeconomic obstacles, or originate in rape or incest. Abortion may be necessary or desired in those circumstances.

That the question of abortion is important and common to the community at large is also borne out by statistics compiled by the Wisconsin Department of Health Services. In 2021, 6,579 abortions were performed across Wisconsin.[44] These were performed for pregnant women of all kinds: married and unmarried, with advanced degrees or little formal education, and of every recorded race and ethnicity.[45] In the past

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[43] Wisconsin Dept. of Health Services, Division of Public Health, Office of Health Informatics, *Wisconsin Interactive Statistics on Health (WISH) data query system - Population Module*, https://www.dhs.wisconsin.gov/wish/index.htm (last visited 11/22/2023). (Affidavit of Counsel, **Exhibit X**); Reproductive age is considered to be ages 15 through 44 by the U.S. Center for Disease Control. *See* CDC, *Mental Health Among Women of Reproductive Age* (March, 31, 2016) https://www.cdc.gov/ccindex/pdf/mentalhealthamongwomenofreproductiveage_vb.pdf.

[44] Wis. Dep't. of Health Servs., Div. of Pub. Health, *Reported Induced Abortions in Wisconsin, 2021* at 10 (June 2022), https://www.dhs.wisconsin.gov/publications/p45360-21.pdf.

[45] *Id.* at 14. The Wisconsin DHS records the following race and ethnicities of patients receiving abortions: white, Black, American Indian, Laotian or Hmong, Other Asian or Pacific Islander, and Hispanic, with additional categories for "other" and "multiple" races and ethnicities.

five years, an abortion has been performed for residents in nearly all of Wisconsin's 72 counties, even those with the smallest populations.[46]

The public importance of the questions presented is also apparent by the prompt attempts at legislation following *Dobbs* in June of 2022. Governor Evers twice ordered the Legislature into special session on the issue, and legislators have proposed at least six bills that would affect abortion access since *Dobbs*.[47] There can be little doubt that abortion will continue to occupy a place of importance to Wisconsin citizens and their representatives. Abortion is a classic example of a *publici juris* matter, and the Court should take original jurisdiction of this case.

II. The question presented requires a "prompt and authoritative" determination by this Court.

Do Wisconsinites have a state constitutional right to choose whether and when to have children, and do physicians have a constitutional right to provide abortion care? A prompt and authoritative answer from this Court is necessary to protect the health and lives of those who are pregnant, and to dispel fear and uncertainty from the minds of practicing physicians that impact their ability to provide crucial medical care to their pregnant patients.

First, the simple magnitude of the number of people affected by abortion access speaks to the need for a swift and final decision. More than 1.1 million Wisconsinites are people who may become pregnant, and millions more are their partners, family members, friends, and neighbors.[48]

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[46] The single exception is Douglas County. *Id.* at 20-21, https://www.dhs.wisconsin.gov/publications/p45360-21.pdf.

[47] Exec. Order No. 168 (June 8, 2022), https://docs.legis.wisconsin.gov/code/executive_orders/2019_tony_evers/2022-168.pdf; Exec. Order No. 175 (Sept. 21, 2022), https://docs.legis.wisconsin.gov/code/register/2022/801B/register/executive_orders/eo_175/eo_175. 2023Assembly Bill 175; 2023 Assembly Bill 344; 2023 Senate Bill 300; 2023 Senate Bill 345; 2023 Senate Bill 299; 2023 Senate Bill 61.

[48] Wisconsin Dept. of Health Services, Division of Public Health, Office of Health Informatics, *Wisconsin Interactive Statistics on Health (WISH) data query system - Population Module*, https://www.dhs.wisconsin.gov/wish/index.htm (last visited 11/22/2023). (Affidavit of Counsel, **Exhibit X.)**

Likewise, there are currently 17,432 licensed and active physicians practicing around the state.[49] Although some of these practice in areas of medicine that might not encounter situations calling for abortion, many others do. These include medical practices beyond traditional obstetrics and gynecology, such as emergency medicine and oncology.

Second, Wisconsinites require a prompt and authoritative determination by this Court because the most recent data available shows that they are being denied abortion care. While an average of 6,132 abortions were performed in Wisconsin per year between 2017 and 2021, that number plummeted to just 3,333 in 2022—with not a single abortion performed after June 2022, when Wisconsin district attorneys began threatening to enforce section 940.04 as an abortion ban following *Dobbs*.[50] In other words, access to basic, crucial reproductive health care for women has fallen off a cliff. A final decision from this Court will ensure against future whiplashes in care.

Third, an answer to the abortion question is urgently required because pregnancy, though not a permanent condition, is risky. It lasts only nine months but carries profound potential consequences for the pregnant woman's life and health. For example, complications that arise during pregnancy are associated with higher risks of health complications later in life.[51] Carrying a pregnancy to term and delivering a baby is significantly riskier than abortion, with the risk of maternal morbidity

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[49] Wis. Dep't. of Safety and Pro. Servs., *License Counts* (Jan. 31, 2024), https://dsps.wi.gov/Credentialing/General/LicenseCounts.pdf (totaling the active licenses labeled "Medicine and Surgery"). (Affidavit of Counsel, **Exhibit Y.)**

[50] Wis. Dep't. of Health Servs., Div. of Pub. Health, *Reported Induced Abortions in Wisconsin*, 2022 at 4 (Jan. 2024), https://www.dhs.wisconsin.gov/publications/p45360-22.pdf.

[51] Am. Coll. Obstetricians and Gynecologists, *Interpregnancy Care*, 133 Obstetric Care Consensus e51 (Jan. 2019) ("For women who become pregnant, pregnancy is recognized as a window to future health because complications during pregnancy, such as gestational diabetes mellitus, gestational hypertension, preeclampsia, and fetal growth restriction, are associated with risk of health complications later in life."), *available at* https://www.acog.org/clinical/clinical-guidance/obstetric-care-consensus/articles/2019/01/interpregnancy-care. (Affidavit of Counsel, **Exhibit Z**.)

associated with live birth 14 times higher than that associated with abortion.[52] Many types of medical complications arise early in pregnancy, meaning women may be faced with life- or health-threatening consequences—and the question of whether or not to continue the pregnancy—within weeks of learning they are pregnant. There is no room for legal uncertainty in such a short but consequential window.

The implications of pregnancy, of course, reach far beyond nine months. Whether and when to bear a child is one of the most consequential decisions a person can make, affecting not only health but financial means and one's very path in life. For example, research shows that when and whether to bear a child impacts the parent's ultimate educational level, income level, and even particular social characteristics.[53]

For physicians, a speedy and authoritative answer is needed as well. The yoke of legal uncertainty hangs heavy for those who care for pregnant patients daily, like obstetrician-gynecologists and maternal fetal health specialists, and for those who may unexpectedly do so at any moment, like emergency room physicians. In these practices, barriers to medical decision-making—like uncertainty about the right to perform an abortion in a given situation—can impact the physician's ability to provide necessary and appropriate care to her patients.[54] Physicians have borne the uncertainty around abortion in their practice for more than 17 months since *Dobbs*. No longer is that uncertainty acceptable, which carries the

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[52] Raymond & Grimes, *supra* n. 16 at 215.

[53] *See, e.g.,* Boyan Zheng, Qiongshi Lu & Jason Fletcher, Estimating Causal Effects of Fertility on Life Course Outcomes: Evidence Using A Dyadic Genetic Instrumental Variable Approach (National Bureau of Economic Research, Working Paper No. 30955, 2023) (finding "an additional child leads to reduced lifetime work length for females by five years" and that "fertility causally decreases older females' extraversion") (Affidavit of Counsel, **Exhibit AA**); Jason Fletcher & Norma Padrón, *The Effect of Teenage Childbearing on Adult Soft Skills Development*, 29 J. Popular Econ. 883, 884 (2016) (finding that "teenage childbearing has a negative effect on some measures of personality in adulthood… [including] lower openness to experience…and greater impulsivity than women who did not have a child as a teenager"). (Affidavit of Counsel, **Exhibit BB**.)

[54] *See Kaul v. Urmanski*, No. 2022CV001594 (Wis. Cir. Ct. Dane Cnty. June. 28, 2022), at Dkt. 165 (Aff. Dr. Christopher Ford) ¶ 23 (Affidavit of Counsel, **Exhibit H**); 166 (Aff. Dr. Jennifer Jury McIntosh) ¶ 23 (Affidavit of Counsel, **Exhibit I**)

stress of potential criminal prosecution and imprisonment if Section 940.04 is interpreted as a near-total ban on abortion. The Court should provide a final answer on the constitutional question for physicians so they can provide health care to their patients in the same confident manner as their peers who do not provide abortions.

Finally, the abortion question requires a speedy and authoritative answer because although the statute challenged here is not new, the legal landscape is. Never before in U.S. history has an established federal right evaporated overnight, as the federal Due Process Clause right to abortion did with the *Dobbs* decision last June. Rescinding the right, the *Dobbs* court declared it time to "return the issue of abortion to the people's elected representatives." 597 U.S. 215, 232 (2022). Here in Wisconsin, elected representatives have declined to rise to the occasion thus far. Legislators have twice gaveled in and out of special sessions ordered by Governor Evers, with no legislative action, and no new legislation has been otherwise enacted.[55]

While other potential abortion bills are being contemplated which will infringe on the state constitutional rights of the people of Wisconsin, now is the time for this Court declare the state constitutional right to determine whether or when to have children, including the right to choose an abortion.

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[55] One special session occurred in June 2022. *see* June 2022 Special Session, *State of Wis. S.J.*, June 22, 2022, https://docs.legis.wisconsin.gov/2021/related/journals/senate/20220622jn2; June 2022 Special Session, *State of Wis. Assemb. J.*, June 22, 2022, https://docs.legis.wisconsin.gov/2021/related/journals/assembly/20220622jn2; *see also* Ben Baker, *Republican Lawmakers Reject Special Session Evers Called to end 1849 Abortion Law*, Milwaukee J. Sentinel (June 22, 2022, 4:24 PM), https://www.jsonline.com/story/news/politics/2022/06/22/wisconsin-republicans-gavel-out-tony-evers-special-session-abortion-laws/7691460001/. (Affidavit of Counsel, **Exhibit CC**.)
The other special session occurred in October 2022. *See* October 2022 Special Session, State of Wis. S.J., Oct. 4, 2022, https://docs.legis.wisconsin.gov/2021/related/journals/senate/20221004oc2; October 2022 Special Session, State of Wis. Assemb. J., Oct. 4, 2022, https://docs.legis.wisconsin.gov/2021/related/journals/assembly/20221004oc2.

III. No fact finding is necessary, because this matter presents a constitutional question of law.

Petitioners here claim section 940.04, interpreted as a near-total ban on abortion, infringes on their Article I, Section 1 life, liberty, and equal protection rights that are enshrined in the Wisconsin Constitution. If the Court accepts the Petition, it need only answer whether an abortion ban allowing abortion only to save the life of the mother infringes on those constitutional rights. The question is purely a question of law, requiring the Court to analyze the contours of the constitutional provision and apply them against the language of the challenged statute.

Because the claims concern fundamental rights, the Court must examine them with strict scrutiny. "Strict scrutiny requires that the statute must be the least restrictive way of achieving a compelling governmental interest." *State v. Martin*, 191 Wis. 2d 646, 654, 530 N.W.2d 420, 424 (Ct. App. 1995). Thus, in analyzing each claim, the Court will have to discern whether there is a "compelling governmental interest" embodied in section 940.04, and whether a near-total ban on abortion is the "least restrictive" means to achieving it.

This matter concerns only the parameters of the Wisconsin Constitution and a single statute that would, according to District Attorney Urmanski, prohibit abortion in almost all circumstances. Should the Court find itself in need of fact development, however, it has the power to make factual determinations, *Wurtz v. Fleischman*, 97 Wis. 2d 100, 107 n. 3, 293 N.W.2d 155, 159 (1980), and may refer those issues to a circuit court or referee, which it has done before. Wis. Stat. § 751.09; *see also* Wis. Stat. § 805.06, *Wis. Pro. Police Ass'n, Inc. v. Lightbourn*, Wis. 2d 512, ¶ 6.

CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Court grant this petition for original action.

Respectfully submitted this 22nd day of February 2024.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in sections 809.70 and 809.81. The length of this brief is 12,591 words.

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