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No. 24AP330-OA

In the Supreme Court of Wisconsin

PLANNED PARENTHOOD OF WISCONSIN, on behalf of itself, its employees, and its patients, KATHY KING, M.D., ALLISON LINTON, M.D., M.P.H., on behalf of themselves and their patients, MARIA L., JENNIFER S., LESLIE K., and ANAIS L., PETITIONERS,

v.

JOEL URMANSKI, in his official capacity as District Attorney for Sheboygan County, Wisconsin, ISMAEL R. OZANNE, in his official capacity as District Attorney for Dane County, Wisconsin and JOHN T. CHISHOLM, in his official capacity as District Attorney for Milwaukee County, Wisconsin, RESPONDENTS.

PROPOSED RESPONSE, OR, IN THE ALTERNATIVE, AMICUS BRIEF, IN OPPOSITION TO PETITION FOR ORIGINAL ACTION

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TABLE OF CONTENTS

INTRODUCTION 3

STATEMENT OF THE CASE 4

ARGUMENT 4

I. Granting the Petition to Constitutionalize Abortion Would Flout the Doctrine of Constitutional Avoidance. 5

II. The Petition Raises Fact-Intensive Issues Inappropriate for an Original Action. 6

III. Petitioners' Assertion of a Constitutional Right to Abortion is Meritless on Its Face. 8

IV. Constitutionalizing Abortion Would Raise a Host of Questions This Court Would Have to Answer, With No Legal Foundation to Guide the Answers. 12

V. Constitutionalizing Abortion in Wisconsin Would Politicize the Court and Judicial Elections for Years to Come. 15

CONCLUSION 17

INTRODUCTION

This petition for an original action is both unnecessary and procedurally improper. Petitioners invite this Court to create a constitutional right to abortion through judicial fiat, and then to apply that previously undiscovered right to strike down a statute that has already been held not to apply to abortion—the exact opposite of constitutional avoidance. Their petition is also heavily fact-laden, with 95 paragraphs of alleged facts, and they add seven affidavits, including one with 29 exhibits and 429 pages. An original action is not the proper vehicle to adjudicate Petitioners' many disputable factual assertions.

Even setting those issues aside, Petitioners' claim that there is a constitutional right to abortion in Wisconsin is meritless on its face. Abortion was prohibited in Wisconsin both before and when the Constitution was adopted, as well as by the earliest statutes, and it has been prohibited ever since (but for *Roe v. Wade* and *State v. Black*'s gloss on Wis. Stat. § 940.04). Nothing in the Constitution's text or Wisconsin's history suggests that there is a secret and unwritten right to abortion that Wisconsin law has been violating for 176 years.

Constitutionalizing abortion would also embroil this Court in the same mess of policy questions that *Roe* spawned—how far the right goes, what sorts of regulations of abortion are permissible, etc.—with collateral consequences on numerous other statutes and regulations of abortion supported by majorities of Wisconsin voters. And, like *Roe* did at the federal level, it will politicize the Court and judicial elections for decades to come.

None of this is necessary, given that Wis. Stat. § 940.04, the sole target of the Petition, has already been held not to prohibit abortion. For all of these reasons, the Petition should be denied.

STATEMENT OF THE CASE

On February 22, 2024, Planned Parenthood of Wisconsin, two physicians, and four adult female Wisconsin residents filed a Petition for Original Action asking this Court to declare Wis. Stat. § 940.04 unconstitutional and create a constitutional "right" to abortion in the process. The Petition contains 23 pages and 95 numbered paragraphs of "facts" that it asks this Court to accept without the fact-finding process that typically occurs at the trial court. Petitioners also submitted seven affidavits, including one from counsel that contains 29 factual exhibits, totaling over 400 pages of factual materials. These alleged facts cover, among other things, allegations about the Petitioners and their standing to bring this action, Pet. ¶¶ 4–7, 49–57, the alleged incidence of various pregnancy complications, Pet. ¶¶ 13–29, allegations about the safety of various abortion procedures, Pet. ¶¶ 30–39, alleged statistics and demographic facts about who has abortions and why, Pet. ¶¶ 40–48, and alleged historical facts about the availability of abortion medications at the time of Wisconsin's founding, Pet. ¶¶ 67–68.

In their legal claims, Petitioners focus exclusively on Wis. Stat. § 940.04, a statute that has been held in a separate action not to apply to abortion at all. *See* Pet. ¶¶ 96–116. The appeal in that case is currently before this Court on a petition to bypass. *Kaul v. Urmanski*, No. 23AP2362.

On April 16, 2024, this Court ordered the named Respondents and any interested non-parties to respond to this Petition by April 26. Proposed Intervenor-Respondents Wisconsin Right to Life, Wisconsin Family Action, and Pro-Life Wisconsin file the following Response.

ARGUMENT

This Court should deny the Petition. The Petition is premised on numerous disputed facts and seeks incredibly broad relief which, if

granted, would create a brand-new constitutional right in Wisconsin and unsettle the legislature's longstanding ability to regulate abortion at the state level. And, given that § 940.04 has already been held not to prohibit abortion, this Petition is completely unnecessary.

I. Granting the Petition to Constitutionalize Abortion Would Flout the Doctrine of Constitutional Avoidance.

This Court has repeatedly stated that it "should not decide the constitutionality of a statute unless it is essential to the determination of the case before it," and it is hard to see how consideration of the constitutionality of Wis. Stat. § 940.04 is necessary at this time. *Kollasch v. Adamany*, 104 Wis. 2d 552, 561, 313 N.W.2d 47 (1981).

The Dane County Circuit Court has already held that Wis. Stat. § 940.04 does not apply to abortion, relying on a binding holding from this Court to that effect. *State v. Black*, 188 Wis. 2d 639, 646 (1994) (holding that § 940.04(2)(a) is "not an abortion statute," but instead "a feticide statute only."). As this Court is aware, that case is currently up on appeal, with a pending bypass petition to this Court. *Kaul v. Urmanski*, No. 23AP2362. If this Court or the Court of Appeals affirms the Circuit Court's ruling, then there will be no need whatsoever to reach Petitioners' constitutional claims, because the statute currently does not, and will not, operate to prohibit abortion, and Petitioners' claims focus *exclusively* on Wis. Stat. § 940.04. Pet. ¶¶ 96–116.

Taking this Petition to declare a statute unconstitutional that has already been held not to apply to abortion would not only contradict the doctrine of constitutional avoidance, it would make a mockery of it. This Court would be going out of its way to decide one of the most significant and controversial constitutional questions in Wisconsin history, without any good reason to do so. It would "barrel[ ] its way to a constitutional challenge no longer in play"—something that several members of this

Court have consistently decried. *James v. Heinrich*, 2021 WI 58, ¶87, 397 Wis. 2d 517, 960 N.W.2d 350 (Dallet, J., dissenting). What Petitioners ask this Court to do is the "antithesis of judicial restraint," *id*., and this Court should deny the Petition for that reason alone.

II. The Petition Raises Fact-Intensive Issues Inappropriate for an Original Action.

This Court exercises original action jurisdiction "with the greatest reluctance … especially where questions of fact are involved." *In re Exercise of Original Jurisdiction of Sup. Ct.*, 201 Wis. 123, 229 N.W. 643, 645 (1930). As Wisconsin's law-developing court, not a fact-finding court, *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997), this Court "generally will not exercise its original jurisdiction in matters involving contested issues of fact." Sup. Ct. Internal Operating Procedures (IOP) III.B.3. Indeed, this Court has recognized that "[t]he circuit court is much better equipped for the trial and disposition of questions of fact …" and that cases involving questions of fact "should first be presented" to the circuit court. *Id*. (citing *State ex rel. Hartung v. City of Milwaukee*, 102 Wis. 509, 78 N.W. 756 (1899)); *see also State ex rel. Klecza v. Conta*, 82 Wis. 2d 679, 683, 264 N.W.2d 539 (1978) (concluding that original action jurisdiction was appropriate because "the material facts [were] agreed to by the parties, and no fact-finding procedure [was] necessary.").

Despite what Petitioners claim, the Petition they present to this Court contains numerous factual assertions that will require the very kind of fact-finding that this Court is ill-suited to undertake. *See In re Exercise of Original Jurisdiction of Sup. Ct.*, 229 N.W. at 645. Indeed, the Petition contains 95 paragraphs of alleged "facts," spanning 23 pages, as well as a 429-page affidavit with 29 exhibits attached to it.

Many of these factual claims would be hotly disputed in a case properly brought before a trial court. For example, Proposed Intervenors do not agree that abortion is a "safe [and] effective" "form of health care." Pet. ¶¶ 30–39. Indeed, one of the major issues in a case currently before the United States Supreme Court—which appropriately started in a trial court—is whether the abortion pill is truly as safe as its proponents claim it is. *See* Brief of Respondents at 26, *Food and Drug Administration v. Alliance for Hippocratic Medicine*, No. 23-235 (argued Mar. 26, 2024) (emphasizing that "between 2.9 and 4.6 percent of women who use the [abortion pill] go to the emergency room," and complications include "sepsis, hospitalization, or a blood transfusion").[1] Petitioners clearly believe these factual assertions are relevant to their constitutional claims—otherwise they wouldn't have included them. The other side in the litigation must have an opportunity to test and oppose their factual assertions.

Proposed Intervenors also do not concede that any of the Petitioners have standing. "[A] party has standing to raise constitutional issues only when his or her own rights are affected. He or she may not vindicate the constitutional rights of a third party." *Mast v. Olsen*, 89 Wis. 2d 12, 16, 278 N.W.2d 205 (1988). This rule exists because "a court should not adjudicate constitutional rights unnecessarily and because a court should determine legal rights only when the most effective advocate of the rights, namely the party with a personal stake, is before it." *Id.* Thus, Planned Parenthood and the doctor petitioners cannot raise a right that would belong to their clients (if there were such a right).

As for the four adult female Petitioners, none of them claim to be pregnant or seeking an abortion in the near future. They claim to have had abortions in the past, but the most recent was at least seven years

[1] Available at https://www.supremecourt.gov/DocketPDF/23/23-235/301142/20240222125412317_23-235%20%2023-236%20Brief%20for%20the%20Respondents.pdf

ago. And they all indicate that they currently take affirmative measures to prevent future pregnancy. *See* Pet. at ¶¶ 4–7; 50, 52, 54, 56. Because these women are not pregnant and are actively preventing pregnancy, they have no claim of current or imminent injury if abortion is not constitutionalized in Wisconsin: there is simply no "injury" present. At the very least, the other side in the litigation should have an opportunity to test Petitioners' factual assertions to support their standing to bring this case.

Even setting those points aside, it is hard to see how any of the Petitioners could have standing when § 940.04 has already been held not to apply to abortion. And it is not currently preventing or prohibiting abortions in Wisconsin.

Proposed Intervenors also do not accept the assertions of historical facts included in the Petition, *e.g.*, Pet. ¶¶ 67–68, as discussed in more detail below, *infra* Part III. And they dispute that "Wisconsin holds a deep tradition of individual liberty and equal protection" that somehow translates into a constitutional right to abortion. Pet. at 20.

Petitioners' claims should be heard in a court that is well-equipped to adjudicate the many fact-based allegations presented in this action. *Mast,* 89 Wis. 2d at 16.

III. Petitioners' Assertion of a Constitutional Right to Abortion is Meritless on Its Face.

The idea that Wisconsin's Constitution contains an unwritten, and heretofore undiscovered "right" to abortion is meritless on its face. Abortion has been illegal under Wisconsin law for its entire 176 years of statehood (setting aside *Roe v. Wade* and *State v. Black*'s reinterpretation of Wis. Stat. § 940.04 in light of *Roe*). It was even illegal in the territory *before* statehood, and when the Constitution was adopted. If the drafters had intended to create a "right" to abortion—one

that would have been immediately violated as soon as they adopted it—they surely would have spelled that out in the text. They did not, for the obvious reason that there is no such right.

This court's "solemn duty in constitutional interpretation is to faithfully discern and apply the constitution as it is written." *Wis. Just. Initiative, Inc. v. Wis. Elections Comm'n*, 2023 WI 38, ¶28, 407 Wis. 2d 87, 990 N.W.2d 122. To do so, the Court looks to "'the plain meaning of the words in the context used; the constitutional debates and the practices in existence at the time of the writing of the constitution; and the earliest interpretation of the provision by the legislature as manifested in the first law [ ] following adoption.'" *Id.* ¶22 (quoting *Thompson v. Craney*, 199 Wis. 2d 674, 680, 546 N.W.2d 123 (1996)).

While the text of Article I, Section I, and the debates during its ratification make no reference to abortion, Wisconsin's early statutes do. And, as is well-established, early statutes are a primary source of constitutional interpretation. *Id.* ¶21–23 (citing cases); *id* ¶117 (Dallet, J., concurring); *see also Becker v. Dane County,* 2022 WI 63, ¶42, 403 Wis. 2d 424, 977 N.W.2d 390; *id.* ¶48–50 (Hagedorn, J., concurring).

Wisconsin's early statutes irrefutably prohibited abortion. In 1849, shortly after statehood, Wisconsin's first Legislature passed the following statutes:

> Sec. 10. The wilful killing of an unborn quick child, by any injury to the mother of such child, which would be murder if it resulted in the death of such mother, shall be deemed manslaughter in the first degree.
>
> Sec. 11. Every person who shall administer to any woman pregnant with a quick child, any medicine, drug, or substance whatever, or shall use or employ such an instrument or other

> means, with intent thereby to destroy such child, unless the same shall have been necessary to preserve the life of such mother, or shall have been advised by two physicians to be necessary for such purpose, shall, in case the death of such child or of such mother be thereby produced, be deemed guilty of manslaughter in the second degree.

Wis. Stat. c. 133, §§ 10, 11 (1849).[2]

The text of these laws appears to have been copied directly from Michigan laws, which applied in Wisconsin even before the Constitution was adopted, while Wisconsin was still a territory. *See* Organic Act of 1836, Section 12 ("the existing laws of the territory of Michigan shall be extended over said territory [Wisconsin])"; Michigan Rev. Stats. of 1846, ch. 153, §§ 32, 33 (containing nearly identical language); Legislative Reference Bureau, *A Brief History of Abortion Laws in Wisconsin* (Aug. 25, 2022). In other words, if there is a secret right to abortion in Wisconsin's Constitution, it was *immediately* violated the moment the *drafters* adopted it. If that's what the drafters intended, they surely would have said so.

Even more, abortion has never *not* been illegal under Wisconsin law (again, setting aside *Roe* and *Black*). Although there have been various statutory changes, Wisconsin has consistently prohibited abortion throughout its history. *See e.g.*, Wis. Stat. § 340.16 (1925); Wis.

[2] There is debate among legal scholars about the historical meaning of the phrase "a quick child," with some arguing that it "meant simply a 'live' child, and under the era's outdated knowledge of embryology, a fetus was thought to become 'quick' at around the sixth week of pregnancy." *Dobbs v. Jackson Women's Health Org.,* 597 U.S. 215, 242 n.24 (2022). Regardless, the Wisconsin Legislature removed the word "quick" early in Wisconsin's history, in 1858. Wis. Stat. ch. 164, §§ 10, 11 (1858).

Stat. § 940.04 (1955); *see generally*, LRB, *A Brief History of Abortion Laws in Wisconsin*, *supra*.

Nothing Petitioners point to contradicts these historical facts, and the arguments they make in support of a constitutional right to abortion are meritless. Petitioners assert, for example, that Wisconsin's history supports a constitutional right to abortion because "women in Wisconsin had access to abortion through the purchase of known abortifacient medicines and medical manuals promoting them" around the time Wisconsin's constitution was ratified. Pet. ¶67. In support of this claim, Petitioners reference a list of for-sale medications that allegedly includes well-known abortifacients but, notably, do not explain *which* of those medications were known to cause abortion or provide any evidence indicating that such medications were indeed used for that purpose. *Id.*, n.33. In fact, one of the documents referenced by Petitioners—from 1907—explains that "female medicines" were used for "relief and cure of painful or deficient menstruation," as well as "averting unwelcome pregnancy." *See* Aff. of Counsel, Exhibit T, at 234; *see*, *e.g., id.* at 236 (A pamphlet described "Dumas' French Remedy" as "a wonderful secret invention, for use by married ladies, for the prevention of conception," and "Dumas' Paris Pills" were distributed with a label stating they were "not to be taken in cases of pregnancy."); *id.*, at 239 (The label on a medication called "Irristum" stated that the medication "[c]ontains no abortifacient properties.").

This strongly suggests that the "female medicines" referenced by Petitioners were used *not* as abortifacients, but as early forms of contraception, especially given the terminology used to describe them. (i.e., "averting" or "prevent[ing]" pregnancy, rather than "terminating" a pregnancy). *See id.* Exhibits R and T at 229, 234. In any event, what some pharmacists advertised is irrelevant to whether abortion was *legal* at the time of statehood. To the extent it is relevant, this discrepancy

represents just one of the many factual disputes that make this case inappropriate for original action jurisdiction.

Petitioners also contend that the individual "right" to an abortion is rooted in a broader right to liberty, but they fail to identify anything showing that the "right" to abortion "ha[s] a sound basis in precedent," history, or anything else for that matter. *See Dobbs,* 597 U.S. 215 at 256 (2022); Pet. ¶¶ 64–66. Similarly, Petitioners argue that there is a constitutional right to abortion on equal-protection grounds, but again, Wisconsin's history contradicts this claim. Pet. ¶¶ 73–78. In addition, the U.S. Supreme Court has "squarely foreclosed" any equal-protection-based theory to support a right to abortion, *Dobbs*, 597 U.S. at 236, and because this Court has long interpreted Article I, Section 1 "as providing the same equal protection and due process rights afforded by the Fourteenth Amendment to the United States Constitution," there is simply no equal protection right to an abortion in Wisconsin. *Mayo v. Wis. Injured Patients & Fams. Comp. Fund*, 2018 WI 78, ¶35, 383 Wis. 2d 1, 914 N.W.2d 678.

The "inescapable conclusion" here "is that a right to abortion is not deeply rooted in [Wisconsin's] history and traditions." *Dobbs,* 597 U.S. at 250. Petitioners "have no persuasive answer" to the historical evidence above, *id*., and "[a] state court does not have the power to write into its state constitution additional protection that is not supported by its text or historical meaning." *State v. Roberson*, 2019 WI 102, ¶56, 389 Wis. 2d 190, 935 N.W.2d 813. Abortion has been illegal in Wisconsin since 1846 and it is not (nor has it ever been) a constitutional right.

IV. Constitutionalizing Abortion Would Raise a Host of Questions This Court Would Have to Answer, With No Legal Foundation to Guide the Answers.

If this Court were to create a constitutional right to abortion in Wisconsin, it would call into question numerous abortion-related

statutes and ultimately force this Court to decide whether any of these also violate this newfound right. Petitioners recognize that constitutionalizing abortion will produce this result, hinting that the ability to challenge any and all other abortion regulations is *precisely* the goal of this lawsuit. Pet. ¶¶ 92–93. Therefore, the effect of constitutionalizing abortion in Wisconsin would be far from trivial.

For example, if abortion is constitutionalized, would the prohibitions on abortions after viability, Wis. Stat. § 940.15, or after the unborn child can experience pain (defined in the statute as 20 weeks), Wis. Stat. § 253.107, also be unconstitutional? How about partial-birth abortions, an especially gruesome procedure that a majority of Americans consistently oppose[3]? *Id.* § 940.16. None of those prohibitions are challenged in this case, but if this Court constitutionalizes abortion, it will have to answer these questions sooner or later.

And if the Court's answer is that any of these are constitutional, where does it draw the line and how does it justify that line? Does it reimpose *Roe*'s now-jettisoned "viability" line, which "has not found much support among philosophers and ethicists," which "other countries almost uniformly eschew," and which raises a host of other questions, such as what "probability of survival" counts as "viable"? *Dobbs*, 597 U.S. at 274–78. Or does this Court impose some other arbitrary line, and if so, what line? A fetal heartbeat (weeks 5–6)? Brain activity (weeks 6–7)? Movement in the womb (8 weeks)? Organ function (week 10)? Facial expressions (weeks 10–12)? The ability to experience pain[4]? First

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[3] *See*, *e.g.*, Abortion, Gallup (last checked Mar. 6, 2024), https://news.gallup.com/poll/1576/abortion.aspx.

[4] When unborn children can experience pain is still unknown and debated among researchers. Wis. Stat. § 253.107 sets 20-weeks as the threshold, but some believe unborn children can experience pain much earlier, at 12-weeks, or even possibly at 7–8 weeks. *See*, *e.g.*, Bridget Thill, *Fetal Pain in the First Trimester*, 89(1) Linacre Q 73–100 (Feb. 2022), https://doi.org/10.1177%2F00243639211059245.

trimester? Second trimester? *See generally*, *Dobbs*, 597 U.S. at 233. This Court will have no legal foundation upon which to answer any of these questions, because, again, nothing in Wisconsin's Constitution or history provides a right to abortion. *Supra,* Part III. As in *Roe,* the answers will depend entirely on judicial fiat, with all that that entails.

Or what of the many ancillary regulations of abortion in Wisconsin? Various Wisconsin laws contain, among other things: an ultrasound requirement, Wis. Stat. § 253.10(3g); a 24-hour waiting period, *id.* § 253.10(3)(c)1; information that must be provided to women seeking abortions, *id.* § 253.10(3)(c)1–2, (d); parental consent requirements for minors seeking an abortion, *id.* § 48.375; an admitting-privileges requirement, *id.* § 253.095; limiting abortion procedures to physicians, Wis. Stat. 940.15(5); and a requirement that abortions after 12 weeks must be performed in hospitals, Wis. Admin Code MED § 11.05. Wisconsin law also prohibits government funding of abortion and certain abortion-related activities. *E.g.*, Wis. Stat. §§ 20.927, 20.9275, 66.0601(b)–(c).

Would any of these violate whatever right this Court would create? And what test would this Court apply to decide whether these violate that right? Would this Court resurrect, from its recent death, *Casey*'s undue-burden "test," which, to put it mildly, has "scored poorly on the workability scale," *Dobbs*, 597 U.S. at 280–86, generating decades of contentious litigation and circuit splits over all sorts of abortion regulations, *id.* at 284–85 (listing examples)? Or would it make up something new, *ex nihilo*, just like the right itself?

Further, the Supreme Court's ill-fated foray into a purported right to abortion under the federal Constitution was never constrained to mere abortion rights. As the Supreme Court recognized, its own abortion cases "led to the distortion of many important but unrelated legal doctrines." *Id.* at 286. If this Court identified a right to abortion under the

Wisconsin constitution, would it too be forced to relitigate precedent on facial constitutional challenges, standing, *res judicata*, severability, constitutional avoidance, and the First Amendment? *Id.* at 286–87.

V. Constitutionalizing Abortion in Wisconsin Would Politicize the Court and Judicial Elections for Years to Come.

Roe v. Wade politicized the United States Supreme Court more than any other decision of that Court, and it generated an intense backlash that lasted for decades. This has been documented by numerous writers and Court-observers on both sides of the political aisle. *See*, *e.g.*, Ruth Bader Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. Rev. 375, 385–86 (1985) ("Heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved, conflict."); Dahlia Lithwick, *Foreword: Roe v. Wade at Forty*, 74 Ohio St. L.J. 5, 8 (2013) ("The notion that *Roe* created an almost irreversible political 'backlash' that led to the creation of the powerful modern conservative legal movement is almost an article of faith among legal academics.").

To give just two examples, it is well-recognized that *Roe v. Wade* has dominated the judicial nomination process for the last 40 years. *Dobbs*, 597 U.S. at 269 ("Roe fanned into life an issue that has inflamed our national politics in general, and has obscured with its smoke the selection of Justices to this Court in particular, ever since.") (quoting *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. at 995–96 (Scalia, J., concurring in part)). As one writer summarized, "perhaps no modern decision has generated as much controversy or nominee questioning as *Roe v. Wade*. Clarence Thomas faced more than seventy questions regarding Roe in his hearings, and many believe that Robert Bork's nomination was derailed in part based upon his strident criticism of a constitutional right to privacy. … Moreover, so many of the questions asked of Alito and Roberts during their recent hearings were aimed at

eliciting their views on abortion that it is difficult to underestimate the issue's importance to senators and the public." David R. Stras, *Understanding the New Politics of Judicial Appointments*, 86 Tex. L. Rev. 1033, 1070 (2008); Benjamin Wittes, *Confirmation Wars: Preserving Independent Courts in Angry Times* at 95 (2006) ("*Roe v. Wade* … has formed a big part of the heart and soul of every nomination hearing since Bork's.").

Second, *Roe* redirected all of the energy and attention that could and should have been focused on the political process to the Court instead. "Day after day, week after week, and year after year, regardless of the case being argued and the case being handed down, the issue that brings protesters to the plaza of the Supreme Court building is abortion." *Lithwick*, 74 Ohio St. L.J. at 11. If this Court constitutionalizes the abortion issue—even though Wisconsin's Constitution says nothing at all about abortion—it will bring that same level of acrimony and divisiveness to this Court and to judicial elections for years to come.

* * * * *

Dobbs rightfully put the abortion issue back where it should have been all along—in the halls of state legislatures. Addressing the issue will take hard work and may require some difficult compromises for both sides of the issue. But in Wisconsin, as elsewhere, that work is only just beginning. This Court should not prematurely cut off that process—especially now, when the Legislature is about to dramatically change due to the new maps recently adopted by the Legislature and the Governor in the wake of this Court's decision in *Clarke v. WEC*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370. Scott Bauer, *Wisconsin's Democratic governor signs his new legislative maps into law after Republicans pass them*, Associated Press (Feb. 20, 2024), https://apnews.com/article/wisconsin-redistricting-republican-democrat-9c2677a09e48152df323fbf5c55611ef.

CONCLUSION

This Court should reject Petitioners' attempt to create a constitutional right to abortion in Wisconsin.

Dated: April 25, 2024.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.81 for a brief produced with a proportional serif font. The length of this brief is 4,356 words.

Dated: April 25, 2024.

Electronically Signed by Luke N. Berg

LUKE N. BERG