

Nos. 23-726, 23-727

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In The  
**Supreme Court of the United States**

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MIKE MOYLE, SPEAKER OF THE IDAHO  
HOUSE OF REPRESENTATIVES, ET AL.,

*Petitioners,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

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STATE OF IDAHO,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA,

*Respondent.*

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*ON WRITS OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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**BRIEF OF AMANDA ZURAWSKI AND  
SIXTEEN OTHER WOMEN WHO WERE  
DENIED OR DELAYED IN RECEIVING  
LIFESAVING OR HEALTH-PRESERVING  
ABORTION CARE, AS AMICI CURIAE  
IN SUPPORT OF RESPONDENT**

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MARCH 28, 2024

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## **INTEREST OF AMICI CURIAE**

Amici are seventeen women who each experienced an obstetrical emergency while pregnant in a State with a near-total abortion ban.<sup>1</sup>

Each Amicus presented to an emergency department—some multiple times—and was denied or delayed in receiving lifesaving and health-preserving abortion care because their States have imposed severe criminal, civil, and licensure penalties for providing a prohibited abortion. Various Amici are involved in pending litigation challenging these provisions under state law.

Amici submit this brief because the real-world experiences of women living in States with abortion bans are glaringly absent from Petitioners' briefs.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

EMTALA is more critical than ever to protect the lives, health, and fertility of pregnant patients, especially where state law now severely restricts abortion.

Twenty-two States have state-law bans against abortion either outright or several weeks before fetal viability. These bans threaten years of imprisonment, massive civil fines, and loss of medical licenses. Although each ban ostensibly has a medical exception, the exceptions are so vague that they do not clearly delineate when physicians can provide abortion care. Physicians are terrified that providing standard-of-

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<sup>1</sup> No party or counsel for any party authored any part of this brief or made a monetary contribution intended to fund the preparation or submission of this brief.

care treatment will nonetheless lead to felony convictions if that care means providing an abortion.

As a result, hospitals are engaging in patient dumping—exactly what EMTALA is supposed to prohibit—rather than providing stabilizing abortion care. Amici’s horrific experiences show that emergency rooms are discharging pregnant patients in medical emergencies, telling them to wait elsewhere until their health deteriorates. Hospitals are also encouraging patients to seek out-of-state care.

This is occurring even for pregnant patients at risk of developing life-threatening sepsis and where fetal demise is inevitable. The stabilizing care these pregnant patients need—and which EMTALA requires be offered—is an abortion. But they are being denied this care on account of state abortion bans.

As the sworn and verified testimony of the various individual Amici here and the experiences of nearly fifty other women discussed in this brief show, EMTALA’s protections are critical to ensure that women with obstetrical emergencies receive necessary lifesaving and health-preserving abortion care. Amici are living proof of the inadequacy of state law, which endangered rather than protected their lives. Without EMTALA’s nationwide protections, Amici fear that their horror stories will become even more commonplace and lead to fatalities.

## **ARGUMENT**

### **I. EMTALA PROVIDES A CRITICAL RIGHT TO STABILIZING CARE FOR PREGNANT PATIENTS**

EMTALA is a critical law requiring hospitals to provide stabilizing care for pregnant patients experiencing obstetrical emergencies. In States with

criminal abortion bans that are being invoked to violate EMTALA, the adverse impact on pregnant patients threatens their lives and health.

Fourteen States now ban abortion. Eight more ban abortion at six, twelve, fifteen, or eighteen weeks' pregnancy, before many emergency medical issues in pregnancy commonly arise. See Center for Reproductive Rights, *After Roe Fell: Abortion Laws by State*.<sup>2</sup> Some States have multiple, overlapping abortion bans. For example, Idaho and Texas each have both (1) a total ban with criminal penalties and (2) a six-week ban enforceable through private civil lawsuits for monetary penalties. Idaho Code §§ 18-622, 18-8804, 18-8807; Tex. Health & Safety Code §§ 170A.002(a), 171.204(a), 171.208.

Medical professionals face draconian criminal, civil, and licensure penalties for providing a prohibited abortion. That includes physicians practicing in hospital emergency departments. In Idaho, for example, a person who violates the State's total abortion ban faces at least two years, and up to five years, in prison and loss of their license. Idaho Code § 18-622(1). In Texas, providing an abortion that violates the total ban is a first-degree felony punishable by five years to life in prison. Tex. Health & Safety Code §§ 170A.004; Tex. Penal Code § 12.32. Penalties also include license revocation and a \$100,000-minimum civil penalty. Tex. Health & Safety Code §§ 170A.005–170A.007.

Each ban includes an exception purporting to allow physicians to provide abortion necessary to prevent a pregnant patient's death. *E.g.*, Idaho Code § 18-

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<sup>2</sup> <https://reproductiverights.org/maps/abortion-laws-by-state/>, last visited March 26, 2024.

622(2)(a)(i). Some States also have an exception ostensibly allowing abortion to prevent certain health risks short of death. For example, Tennessee allows abortion necessary “to prevent serious risk of substantial and irreversible impairment of a major bodily function.” Tenn. Code Ann. § 39-15-213(c)(1)(A). Texas’s exception requires “a life-threatening physical condition” that “poses a serious risk of substantial impairment of a major bodily function.” Tex. Health & Safety Code § 170A.002(b)(2). Petitioner State of Idaho’s total ban has no health exception, and the same is true for the bans in Arkansas, Mississippi, South Dakota, and West Virginia.

These medical exceptions have turned out to be exceptions in name only. Amici were unable to obtain abortions in their States notwithstanding severe pregnancy complications. They had to flee their States for care elsewhere, delay abortion care until they had sepsis requiring intensive-care-unit treatment, or continue their pregnancy to a stillborn delivery.

The purported medical exceptions fail to use recognizable medical terminology. Physicians and hospitals have struggled to attempt to create actionable clinical guidelines to give meaning to the exceptions’ vague language. *See* Michele Heisler et al., *US Abortion Bans Violate Patients’ Right to Information and to Health*, *Lancet* (Apr. 25, 2023);<sup>3</sup> Physicians for Human Rights, et al., *No One Could Say: Assessing Emergency Obstetrics Information as a*

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<sup>3</sup> [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(23\)00808-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)00808-5/fulltext).

*Prospective Prenatal Patient in Post-Roe Oklahoma* (Apr. 2023).<sup>4</sup>

The purported medical exceptions do not provide, for example, whether “a patient with pulmonary hypertension, for whom we cite a 30-to-50% chance of dying with ongoing pregnancy,” is sufficiently at risk to permit abortion. Lisa H. Harris, *Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of Roe v. Wade*, 386 N. Engl. J. Med. 2061, 2061 (Jun. 2, 2022). The purported exceptions do not identify where the line is between a substantial versus insubstantial impairment of a major bodily function, which bodily functions are major versus minor, and what constitutes a sufficient risk of death. In States like Idaho with multiple abortion bans, purported exceptions to each ban may conflict with each other. *Compare* Idaho Code § 18-622(2)(a)(i) (total ban’s exception, with subjective good-faith standard but no health-preserving exception) *with id.* § 18-8801(5) (six-week ban’s exception, with objective reasonableness standard and substantial-and-irreversible-impairment exception).

The medical exceptions are so vague, and the penalties so extreme, that they are delaying critical care for miscarriages and ectopic pregnancies. Treatment of both is technically allowed under state law. *E.g.*, Idaho Code § 18-604(1); Tex. Health & Safety Code §§ 170A.001(1), 245.002(1). But because early pregnancy is difficult to visualize even when an ultrasound is prompted by symptoms, treatment is being delayed for days or weeks for fear of violating abortion bans. *See infra* Part II.C; Physicians for

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<sup>4</sup> <https://phr.org/wp-content/uploads/2023/04/Oklahoma-Abortion-Ban-Report-2023.pdf>.

Human Rights, et al., *Criminalized Care: How Louisiana's Abortion Bans Endanger Patients and Clinicians* (Mar. 2024).<sup>5</sup>

In most States, whether an abortion is covered by a medical exception depends on an after-the-fact objective-reasonableness assessment, regardless of the physician's good-faith, best medical judgment. Petitioners note that the purported exception in Idaho's total abortion ban has a subjective good-faith standard, but they fail to acknowledge that Idaho's overlapping, privately enforced six-week ban has an "objective 'reasonable medical judgment' requirement for judging when there is a 'medical emergency,'" and that "is not as broad as the subjective 'good faith' standard under the Total Abortion Ban." *Planned Parenthood Great Nw. v. Idaho*, 522 P.3d 1132, 1207-08 (Idaho 2023).

Concerns about physicians' medical judgment being second-guessed played out exactly as feared in Texas. The Texas Attorney General officially threatened multiple hospitals at which Amicus Kate Cox's physician practiced—even after the physician obtained a state-trial-court order allowing her to provide abortion care under Texas's purported medical exception. The Attorney General made these threats before obtaining appellate relief from the order. Ken Paxton (@TXAG), Twitter (Dec. 7, 2023, 2:49 PM).<sup>6</sup>

The abortion bans are having a disastrous impact on pregnant patients. Because of the bans' extreme penalties and the exceptions' vagueness, hospitals and physicians are denying necessary lifesaving and

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<sup>5</sup> <https://phr.org/our-work/resources/louisiana-abortion-bans/>.

<sup>6</sup> <https://twitter.com/TXAG/status/1732849903154450622>.

health-preserving abortion care. Or they are delaying such care until the pregnant patient is at the brink of death. Numerous accounts have been reported of pregnant patients whose lives and health were endangered when they were denied care. *E.g.*, Diane Sawyer & Rachel Scott, *IMPACT x Nightline: On the Brink*, ABC News (Jan. 5, 2024).<sup>7</sup> Some of these patients suffered permanent adverse health consequences, including lost or compromised future fertility.

A study conducted at two large Dallas, Texas, hospitals after Texas's six-week abortion ban took effect documented a significant increase in maternal morbidity among patients with preterm labor. These pregnant patients would have been promptly offered induction abortions before the existence of the six-week ban, but they were denied such treatment until their physicians determined there was an immediate threat to the pregnant patient's life. Out of 28 patients in the study, 12 experienced infection or hemorrhage, and one required a hysterectomy. Other maternal morbidities included ICU admissions, blood transfusions, and postpartum readmission. Anjali Nambiar, et al., *Maternal Morbidity and Fetal Outcomes Among Pregnant Women at 22 Weeks' Gestation or Less with Complications in Two Texas Hospitals After Legislation on Abortion*, 227 *Am. J. Obstetrics & Gynecology* 648 (2022).<sup>8</sup> A separate, ongoing study's preliminary findings showed horrifying outcomes for patients with emergency medical conditions who were denied or delayed

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<sup>7</sup> <https://abc.com/movies-and-specials/impact-x-nightline-on-the-brink>.

<sup>8</sup> <https://doi.org/10.1016/j.ajog.2022.06.060>.

abortion care due to the exceptions' vagueness. Daniel Grossman et al., *Preliminary Findings: Care Post-Roe: Documenting Cases of Poor-Quality Care Since the Dobbs Decision*, *Advancing New Standards in Reproductive Health* (May 2023).<sup>9</sup>

Significantly, although medical exceptions to State abortion bans supposedly *allow* physicians to provide abortions in certain circumstances, none of these laws, even with their inadequate notice, suggest that they *require* physicians to provide abortion care to save the life of the pregnant patient. Because EMTALA affirmatively requires covered hospitals to provide stabilizing care for emergency medical conditions, that statute provides a critical right to care for pregnant patients experiencing medical emergencies. If EMTALA were misconstrued to not require stabilizing abortion care, harms like those detailed by Amici below will become even more widespread and increase the risk of fatalities.

## **II. UNREBUTTED EVIDENCE FROM AMICI ON THEIR MEDICAL EXPERIENCES AS PREGNANT PATIENTS ILLUSTRATES THE NEED FOR STABILIZING ABORTION CARE UNDER EMTALA**

Amici describe below their harrowing medical experiences as pregnant patients in States with abortion bans. Their testimony illustrates at least three important points.

*First*, it rebuts Petitioners' suggestions that the ostensible medical exceptions to abortion bans adequately protect pregnant patients. *See* Pet. Br. at 31, No. 23-727; Pet. Br. at 13-18, No. 23-726. Amici's

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<sup>9</sup> <https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf>.

unrefuted testimony demonstrates that many pregnant patients are not receiving timely, necessary abortion care despite clear risks to their lives, health, and fertility.

*Second*, although Petitioners emphasize that certain provisions of EMTALA refer to an “unborn child,” Amici’s experiences illustrate there are many cases in which fetal demise is virtually certain. Nothing in EMTALA suggests that hospitals may deny or delay stabilizing abortion care for the pregnant patient in such circumstances.

*Third*, Petitioners focus on EMTALA’s anti-patient-dumping purpose but disregard the circumstances of Amici that illustrate how state abortion bans are causing hospitals to engage in widespread dumping of pregnant patients in medical emergencies. Although abortion is the necessary treatment to stabilize certain pregnant patients, hospitals (1) forced Amici’s health to materially deteriorate before providing them abortion care or (2) effectively dumped them on out-of-state medical providers.

#### **A. Amanda Zurawski**

Amicus Amanda Zurawski lives in Austin, Texas. Amanda has repeatedly documented her near death at the hands of Texas’s abortion bans. She is the lead plaintiff in a lawsuit challenging Texas’s abortion bans as applied to patients with severe obstetrical complications, *Zurawski v. Texas*, No. D-1-GN-23-000968 (Travis Cnty. Dist. Ct.). She also testified before Congress about her experience. *The Assault on Reproductive Rights in a Post-Dobbs America*,

Committee on the Judiciary, U.S. Senate (Apr. 26, 2023).<sup>10</sup>

In the summer of 2022, after a year and a half of fertility treatments, Amanda and her husband were thrilled to be pregnant. When Amanda was nearly 18 weeks pregnant, however, she started leaking fluid and felt her pelvis widening. Amanda’s obstetrician told Amanda to come in immediately. Her obstetrician diagnosed Amanda as likely having an “incompetent cervix”—weakening of the cervical tissue that causes premature cervical dilation—and sent her to the hospital for a second opinion. Transcript of Temporary Injunction Hearing at 38-41, *Zurawski* (Jul. 19, 2023).

At the hospital emergency room, a maternal-fetal-medicine specialist confirmed the diagnosis and told Amanda she would lose the pregnancy “with complete certainty.” The specialist explained Amanda was not a candidate for cerclage (stitching the cervix closed to prevent preterm birth). And because there were still fetal heart tones, inducing labor was an unlawful abortion under Texas’s six-week ban unless she was sick enough that her life was at risk. Devastated, and with no options but to wait to get sicker, Amanda was discharged. *Id.* at 41-42, 63.

Amanda returned to the emergency room that evening after her water broke. She was diagnosed with preterm, prelabor rupture of membranes. Amanda was at risk of developing a life-threatening infection, among other serious risks, as long as she remained pregnant. Absent Texas’s abortion ban, a patient in Amanda’s situation would have been offered an abortion or transferred to a facility that could offer

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<sup>10</sup> <https://www.judiciary.senate.gov/imo/media/doc/2023-04-26%20-%20Testimony%20-%20Zurawski.pdf>

one. But Amanda's hospital was concerned that providing an abortion without signs of acute infection would violate Texas law. So she was kept overnight in hopes she would go into labor on her own. In the morning, however, Amanda had not gone into labor, there were still fetal heart tones, and there were not yet signs of acute infection. Amanda was discharged. *Id.* at 42-44.

Amanda spent the next three days at home, grieving her inevitable loss and monitoring herself for signs of infection. She briefly considered out-of-state travel, but the closest abortion provider was an 11-hour drive away, and hospital staff had urged her to stay within 15 minutes of the hospital in case her health deteriorated quickly. *Id.* at 44-45.

On Thursday, August 25, 2022, Texas's total abortion ban took effect, adding additional penalties for physicians on top of the pre-existing six-week ban.

The next morning, Amanda saw her obstetrician, and there were not yet signs of infection. But on the drive home, Amanda started shivering. By the time she got home, she had a 101° fever and was not responding to her husband's questions—signs of sepsis. *Id.* at 45-46.

Amanda's husband drove her to the hospital emergency room a third time. Her fever was 102° and peaked at 103.2°. Amanda's medical team confirmed she was in septic shock and gave her antibiotics. The hospital finally agreed she was sick enough that inducing labor would clearly not violate Texas's abortion bans. Amanda delivered, and fetal death occurred. *Id.* at 47-48.

That night, Amanda's blood pressure and platelet levels remained abnormally low. Amanda was told

that although her first infection had cleared, she had developed a secondary infection, chorioamnionitis, and septic shock. This bout of sepsis landed her in the intensive-care unit for three days. Amanda's family flew to Austin from across the country, fearing it may be the last time they would see her alive. *Id.* at 49-50.

Amanda eventually recovered, but the infections had caused severe scar tissue to develop in her uterus and on her fallopian tubes. She underwent multiple procedures to reconstruct her uterus and attempt to remove scar tissue, but one fallopian tube remains permanently closed. Subsequent in vitro fertilization ("IVF") treatments have been unsuccessful. *Id.* at 50-52.

### **B. Anya Cook**

Amicus Anya Cook lives in the Fort Lauderdale, Florida, area. Anya has spoken publicly about almost losing her life after being denied abortion care, including before the First Lady at the White House. Sawyer & Scott, *supra* at 7 (at 12:00); *First Lady Jill Biden on the Impact of Supreme Court Abortion Decision*, C-SPAN (Jun. 20, 2023).<sup>11</sup> Recently, Anya was formally informed that the U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services (CMS) found that her treatment in the hospital violated EMTALA and that the hospital is developing a plan of correction with CMS.

Anya has spent years struggling with fertility challenges and has lost more than a dozen pregnancies. After starting IVF treatments, she and

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<sup>11</sup> <https://www.c-span.org/video/?528863-1/lady-jill-biden-impact-supreme-court-abortion-decision>.

her husband were thrilled when her pregnancy progressed to the second trimester. But on December 14, 2022, when Anya was nearly sixteen weeks pregnant, she felt a gush of fluid leave her body. A nurse friend urged her to go to the hospital immediately. Caroline Kitchener, *Two Friends Were Denied Care After Florida Banned Abortion. One Almost Died*, Washington Post (Apr. 10, 2023).<sup>12</sup>

After arriving at the hospital, with fluid soaking her clothes and the hospital floor, Anya was wheeled into the emergency room. Anya was told her membranes had ruptured and all her amniotic fluid was gone. The diagnosis was preterm, prelabor rupture of membranes. The prognosis was devastating: due to the lack of amniotic fluid, her pregnancy would not survive. *Ibid.*

Hospital staff informed Anya that until she delivered, she was at significant risk of infection or hemorrhaging and that the standard of care was to induce labor. But Anya was told that legally, because there were still fetal heart tones, the hospital could not treat her or even admit her. Anya, her husband, and her mother were shocked. Something clicked in Anya's mind: was she being turned away because *Roe v. Wade* had been overturned? The hospital staff confirmed they could not treat her under Florida's fifteen-week abortion ban. Without other options, Anya was discharged. *Ibid.*

Anya returned home terrified, convinced she would not survive the pregnancy. She spent most of the night researching her diagnosis and understood the grim outlook. She had a prescheduled hair appointment the

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<sup>12</sup> <https://www.washingtonpost.com/politics/2023/04/10/pprom-florida-abortion-ban/>.

next day that she kept, believing if she died in the next few days, her mother at least would not need to get Anya's hair done before her funeral. *Ibid.*

During this hair appointment, Anya suddenly felt the need to push. Anya delivered her daughter stillborn in the beauty salon's bathroom. She immediately called her husband who was waiting outside. She struggled to deliver her placenta, and her husband managed to call 911 before Anya hemorrhaged so much blood that she passed out. *Ibid.*

Anya was rushed back to the hospital in an ambulance and put on life support. While an emergency hysterectomy was the best chance to save Anya's life, her husband pleaded with the doctors to save both her and her uterus, knowing how badly she wanted children. Anya ultimately lost over half the blood in her body, was hospitalized for six days, and required multiple surgeries. She is lucky to have survived with her fertility intact. *Ibid.*

Anya continued IVF treatments. After two failed embryo transfers, Anya had procedures to remove retained placental tissue from her prior pregnancy. After a third embryo transfer, Anya became pregnant, is currently at 21 weeks, but is terrified every day because the medical condition that caused her water to break in her prior pregnancy is likely to recur in subsequent pregnancies.

### **C. Kyleigh Thurman**

Amicus Kyleigh Thurman lives in Burnet, a town in central Texas. This is the first time she has publicly discussed being denied emergency care for her ectopic pregnancy. Although removing an ectopic pregnancy is clearly lawful in Texas (as it is in Idaho), Kyleigh's experience shows it is hardly straightforward to

distinguish between treating an ectopic pregnancy and providing an unlawful abortion. And because of Texas law's severe felony sanctions for providing an unlawful abortion, some physicians err on the side of not treating suspected-but-unconfirmed ectopic pregnancies.

Kyleigh had never been pregnant before when, in January 2023, she suspected something was wrong with her body. Kyleigh's period that month had been irregular, and she was experiencing intermittent cramping and dizziness. She had been bleeding continuously for nearly a month. When her symptoms worsened, she sought medical care.

On February 17, 2023, Kyleigh contacted her OB/GYN who instructed her to take a pregnancy test. It was positive. Based on her symptoms, her OB/GYN already suspected an ectopic pregnancy. Because her OB/GYN's office was an hour away and had no remaining appointments that day, Kyleigh's OB/GYN advised her to go to her hometown emergency room.

In the emergency room, a blood test confirmed Kyleigh was pregnant. But hospital staff were unable to locate an intrauterine pregnancy and noted the possibility of an ectopic pregnancy. The hospital sent her home with instructions to return two days later.

Kyleigh returned to her hometown emergency room on February 19. A blood test showed her levels of the pregnancy hormone hCG were essentially unchanged, indicating ectopic pregnancy. In a healthy pregnancy, hCG should double every two days at early gestations, while in a miscarriage hCG generally decreases precipitously. Kyleigh was again sent home and told to return in two days.

Kyleigh's OB/GYN reviewed the blood test and ultrasound results and advised Kyleigh by phone that her pregnancy was likely ectopic and that Kyleigh needed an injection of methotrexate to terminate the pregnancy. Kyleigh's OB/GYN did not have methotrexate in her office and told Kyleigh to go to an emergency room for the medication. Kyleigh's hometown hospital did not appear to stock methotrexate either, so Kyleigh drove an hour away to a larger hospital.

On February 21, Kyleigh went to an emergency room in Round Rock. Kyleigh's OB/GYN contacted the on-call physician and advised that Kyleigh had an ectopic pregnancy and needed methotrexate immediately. An ultrasound showed no intrauterine pregnancy and revealed a "rounded structure" on her right fallopian tube. Yet the hospital denied Kyleigh methotrexate or any other treatment for ectopic pregnancy. She was again sent home with instructions to return in two days.

Over the next several days, Kyleigh returned to her hometown hospital as instructed for repeat blood testing. Her hCG numbers barely decreased, again indicating ectopic pregnancy. Kyleigh kept in touch with her OB/GYN, who encouraged her to return to the Round Rock emergency room.

On February 24, Kyleigh drove again to the Round Rock emergency room and explained again that her OB/GYN had diagnosed her with an ectopic pregnancy. But as before, hospital staff did not offer Kyleigh treatment. Kyleigh called her OB/GYN's office for advice. Infuriated, Kyleigh's OB/GYN came to the emergency room and pleaded with the medical staff until they finally gave Kyleigh methotrexate.

The methotrexate injection was too late. Several days later, Kyleigh experienced sudden, blinding pain on her right side, began bleeding, and almost passed out. The ectopic pregnancy was rupturing—a life-threatening condition.

Kyleigh returned to her hometown emergency room, but they did not have the staff or resources to treat such a serious condition. Kyleigh was transferred to the Round Rock hospital where she was told she was bleeding out. Her right fallopian tube was removed to save her life. Kyleigh survived, but the impact on her fertility is unknown.

#### **D. Kiersten Hogan**

Amicus Kiersten Hogan lives in the Dallas-Fort Worth, Texas, area. Kiersten is a plaintiff in *Zurawski v. Texas*, in which she verified the complaint and submitted an affidavit. Affidavit of Kiersten Hogan in Support of Temporary Injunction, *Zurawski v. Texas*, No. D-1-GN-23-000968 (Travis Cnty. Dist. Ct. May 22, 2023). She also testified before the Inter-American Commission on Human Rights. *United States: Abortion access*, Inter-Am. Comm. on Human Rights (188th Sess., Nov. 8, 2023) (beginning at 26:14);<sup>13</sup> see also Sawyer & Scott, *supra* at 7.

In June 2021, Kiersten was living in Oklahoma when she learned she was pregnant. She had previously been diagnosed with polycystic ovary syndrome, had a history of miscarriages, and had been told she could not have children. So, after she missed her period and got a positive pregnancy test, she was surprised but excited. Hogan Aff. at 1.

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<sup>13</sup> <https://www.oas.org/en/iachr/sessions/?S=188>.

Kiersten first visited an emergency room near her home in Oklahoma when she experienced bleeding early in pregnancy, but Kiersten was told everything looked normal and she should rest. *Ibid.*

Kiersten lived with an abusive boyfriend, who, upon learning of her pregnancy, became violent and told her they would leave the State for an abortion. Kiersten did not want an abortion. So when her boyfriend was traveling for work, she packed her things and left. *Ibid.* After staying with family briefly, Kiersten moved to Waco, Texas, to stay with a friend.

In August 2021, at around thirteen weeks' pregnancy, Kiersten went to an emergency room because she was bleeding again, this time passing large clots. Although she explained her history of miscarriages, the hospital told her everything looked normal and that she should go home and rest. *Ibid.*

On September 30, 2021, just weeks after Texas's six-week abortion ban took effect, she thought her water broke. She was around 19 weeks pregnant. *Ibid.*

Kiersten called an ambulance and was rushed to the hospital. Kiersten arrived in the obstetrical emergency room and learned her amniotic sac was protruding out of her cervix. The diagnosis was cervical insufficiency. While she would likely lose the pregnancy, there was a small chance the sac would recede. She remained in the hospital for monitoring. *Ibid.*

Kiersten was also told that if cervical insufficiency had been diagnosed earlier, she could have had a cerclage procedure to prevent her cervix from dilating prematurely—but by then it was too late. *Ibid.*

Kiersten's water broke a few hours after arriving at the hospital. Kiersten was told that because there were fetal heart tones, she had no options under Texas law. She would need to stay in the hospital until she went into labor or got sick enough for the hospital to offer her an abortion. She was told that if she tried to leave the hospital, it would be used as evidence she was trying to kill her baby; and if she tried to do anything to end her pregnancy, criminal charges could be brought against her. *Id.* at 2-3.

Kiersten was terrified and felt trapped in the hospital. She was afraid if she went to the bathroom she would cause herself to go into labor and be arrested. Four days later, Kiersten went into labor in the hospital bathroom and delivered her son stillborn. *Ibid.*

#### **E. Cristina Nuñez**

Amicus Cristina Nuñez lives in El Paso, Texas. Cristina is a plaintiff in *Zurawski v. Texas* and verified the complaint through an affidavit. Second Amended Verified Petition ¶¶347-70, *Zurawski v. Texas*, No. D-1-GN-23-000968 (Travis Cnty. Dist. Ct. May 22, 2023).

Since a young age, Cristina has had to deal with several medical conditions. In childhood, she was diagnosed with diabetes and hypertension. Later, Cristina developed other cardiovascular issues, anemia, and vision loss. Cristina currently has end-stage renal disease, diabetic chronic kidney disease, renal failure, and is waiting for a kidney transplant. She has been undergoing dialysis several times per week since August 2021. *Id.* ¶348.

Because of her medical history, Cristina's doctors advised her not to get pregnant. But in May 2023,

Cristina was shocked and scared to learn she was pregnant. Cristina always thought pregnancy was beautiful, but she was apprehensive due to her medical history. *Id.* ¶¶349-50.

Cristina informed her doctors at the dialysis center about her pregnancy, and they referred her to an OB/GYN. She was only six weeks pregnant. The OB/GYN explained that her pregnancy was “very high risk,” and continuing the pregnancy would require care from six types of doctors. Her OB/GYN also explained that even if the pregnancy progressed, she would need to be induced at around five months because of risks to her health and that, in all likelihood, either she, the baby, or both, would die. *Id.* ¶351.

Cristina requested an abortion. Her OB/GYN said abortion was prohibited in Texas except when a patient’s life was at risk, so the OB/GYN would present Cristina’s case to the hospital administration to determine if she qualified under the medical exception. Cristina never heard back from the OB/GYN. *Id.* ¶¶352-53.

Over the next couple of weeks, Cristina’s health rapidly deteriorated. Her blood pressure and diabetes worsened. She had to increase her dialysis to six hours daily. The dialysis became more painful because her blood was constantly clotting. Cristina felt like she was slowly dying. *Id.* ¶354.

Cristina reached out to a second OB/GYN. She explained her medical history and that she wanted an abortion. Cristina speaks only Spanish, and because her doctor did not speak Spanish, the doctor’s assistant translated. The assistant explained to Cristina that they could not provide her an abortion

due to Texas's laws, and that she needed to figure out how to get an abortion in New Mexico. *Id.* ¶355.

Knowing she needed an abortion to save her life, Cristina tried to make an appointment in New Mexico. She was told she was ineligible for medication abortion because of her medical conditions, and she was too early in pregnancy for a surgical abortion. The medical staff in New Mexico told her that due to her medical conditions, getting an abortion in a hospital would be the safest route. *Id.* ¶356.

Cristina's symptoms continued worsening. Dialysis became so painful that she considered stopping it, but doctors were afraid she would die if she did. *Id.* ¶357.

At eight weeks' pregnancy, Cristina had to receive emergency surgery for the blood clots. She was told that because she was pregnant, she could not receive anesthesia. The doctors inserted a catheter in her chest without pain medication. *Id.* ¶358.

At nine weeks, the clots in Cristina's arm worsened. Her arm turned from red to purple, and the pain was so intense she couldn't move her arm. Cristina had been trained as a nurse and realized she was developing thrombosis. *Id.* ¶360.

On June 12, 2023, Cristina went to the emergency room. Cristina's arm had turned from purple to black. Doctors confirmed she had a deep vein thrombosis and discovered she had also developed eclampsia and an embolism. She was admitted to the hospital and given antibiotics. *Id.* ¶361.

Cristina told the doctors she wanted an abortion. Cristina's current OB/GYN wrote a letter explaining that Cristina needed an abortion due to "threat to

maternal life and health.” Still, the hospital resisted approving the abortion and tried to convince Cristina to voluntarily discharge herself to travel to New Mexico for an abortion. Cristina refused to leave, afraid the thrombosis would worsen while traveling and that she would die. *Id.* ¶362.

Days passed, yet the hospital would not agree to provide an abortion. The blood clots started moving to her lungs, and she started feeling strong chest pain. Cristina was at risk of losing her arm and developing pulmonary embolism. Cristina was shocked by how fearful the doctors were of going to prison if they provided her lifesaving medical care. She was afraid they would let her die. *Id.* ¶¶363-64.

Finally, on June 15, the hospital CEO approved Cristina’s abortion, but medical staff were unable to find an anesthesiologist willing to participate in the procedure. More days passed. The hospital found a willing anesthesiologist at a different campus, but no beds were available. It took several more days before the hospital identified an anesthesiologist at a campus with beds to perform the abortion. *Id.* ¶¶365-66.

After eleven days’ waiting, Cristina received an abortion on June 23. Cristina was hospitalized for five more days. She still has blood clots and had surgery to treat them. *Id.* ¶¶367-68.

#### **F. Kristen Anaya**

Amicus Kristen Anaya lives in the Dallas-Fort Worth, Texas, area. Kristen is a plaintiff in *Zurawski v. Texas* and verified the complaint through an affidavit. *Id.* ¶¶242-62. Kristen has also spoken publicly about how a hospital forced her to wait until she became septic before providing her emergency

abortion care. *E.g.*, Sawyer & Scott, *supra* at 7 (at 2:40).

Kristen was thrilled when IVF resulted in a successful pregnancy. But in April 2023, when she was 16-1/2 weeks pregnant, Kristen's water broke. Kristen immediately called her OB/GYN, who told her to go to the hospital. On the way, Kristen started experiencing severe cramping. ¶¶244-46.

Once in the hospital, Kristen spiked a fever and began shaking so much that her nurse had trouble placing an IV. Kristen had already lost nearly all her amniotic fluid. Later, Kristen would learn these symptoms are all early signs of sepsis. *Id.* ¶247.

Her doctor told Kristen and her husband that, without amniotic fluid, her pregnancy could not continue. Kristen's doctor also told them that to stop the infection, they would need to perform an induction abortion. But because there were still fetal heart tones, her doctor had to allow her medical condition to deteriorate to "build a case that her life was in great danger to persuade the hospital to approve her abortion." Kristen's doctor was frustrated, saying she wanted to do what was best for Kristen, but she had no choice. Kristen and her husband were shocked. *Id.* ¶¶248-49.

Kristen spent the next day in the hospital waiting to become sick enough for the medical treatment she required. Hospital staff monitored Kristen's white blood count, lactic acid levels, and the fetal heartbeat. Several times, Kristen's doctor presented her case to hospital administration, who said Kristen was not yet sick enough for an abortion. *Id.* ¶250.

As the hours ticked by, Kristen's fever climbed. Staff covered her in ice packs. She was freezing,

shaking uncontrollably, and vomiting constantly. Kristen and her husband were terrified. They asked for help, but it was clear the doctors' and nurses' hands were tied. *Id.* ¶251.

About 22 hours after her admission, the hospital approved the abortion. Because it was Sunday and the hospital was understaffed, Kristen had to wait another hour until paperwork was uploaded to the hospital's internal system before the induction could begin. *Id.* ¶252.

At the same time doctors began Kristen's induction abortion, they also began the sepsis protocol to treat her infection. Kristen was told she could not have an epidural because her infection was too developed. After several hours of contractions and passing blood clots, Kristen delivered. Her daughter was stillborn. Immediately, Kristen's fever subsided, and her vomiting stopped. *Id.* ¶253.

Hospital staff tried to deliver Kristen's placenta three times, but because it was infected, the placenta shredded apart. Her doctor had to perform a dilation & curettage (D&C) procedure to remove the placenta. *Id.* ¶254.

Kristen spent five days in the hospital. She had two blood transfusions because her hematocrit and hemoglobin levels were so low. Slowly, she recovered from the sepsis and returned home. *Id.* ¶255.

Kristen continued having abdominal pain and was passing blood clots and placental tissue. She returned to the hospital for another procedure to remove additional placental tissue. *Id.* ¶256.

### **G. Additional Amici Denied or Delayed Emergency Abortion Care**

Amicus **Elizabeth Weller** of Texas was denied emergency abortion care in May 2022 when her water broke at 19 weeks. Although she was at serious risk of developing a life-threatening infection, a hospital emergency room sent her home to wait for signs of infection. Elizabeth returned to the emergency room three days later with yellow, foul-smelling vaginal discharge. Only then was her labor induced, and fetal death occurred. Affidavit of Elizabeth Weller in Support of Temporary Injunction, *Zurawski v. Texas*, No. D-1-GN-23-000968 (Travis Cnty. Dist. Ct. May 22, 2023).

Amicus **Kate Cox** of Texas was blocked from receiving an abortion in December 2023 during litigation against the Texas Attorney General. At 20 weeks, Kate's pregnancy was diagnosed with a fatal fetal condition, and she was experiencing several pregnancy complications resulting in visits to four separate emergency rooms between November 15 and December 6 for severe cramping, diarrhea, leaking fluid, and elevated vital signs. Kate's fourth emergency-room visit occurred the day after she filed a lawsuit seeking court approval to receive an abortion under Texas's medical-emergency exception. The next day, a trial court granted a temporary restraining order (TRO) allowing Kate to receive the abortion, but the ruling was halted by the Texas Attorney General's emergency appeals to reverse the TRO because of his disagreement with the trial court that the medical exception applied. Kate eventually traveled out of State for abortion care. Verified Petition, *Cox v. Texas*, No. D-1-GN23-008611 (Travis Cnty. Dist. Ct. Dec. 5, 2023); Kate Cox on her legal

fight for an abortion in Texas, CBS Sunday Morning (January 14, 2024).<sup>14</sup>

Amicus **Anna Zargarian** of Texas was denied emergency abortion care in 2021, after Texas's six-week abortion ban took effect, when her water broke at 19-1/2 weeks. A hospital emergency room refused to provide an abortion until her life was in imminent danger, so she traveled to a nearby state for abortion care. By the time she arrived for her appointment in Colorado, she had signs of infection. Affidavit of Anna Zargarian in Support of Temporary Injunction, *Zurawski v. Texas*, No. D-1-GN-23-000968 (Travis Cnty. Dist. Ct. May 22, 2023).

Amicus **Lauren Miller** of Texas was denied a selective-fetal-reduction abortion when, while pregnant with twins, she learned one of her twins had a fatal fetal condition and that continuing both pregnancies would risk her life and the other twin's life. Lauren was also suffering from hyperemesis gravidarum, a severe form of nausea and vomiting. She went to the emergency room twice for life-threatening complications before being forced to travel out of State for the abortion that saved her life and her son's life. Affidavit of Lauren Miller in Support of Temporary Injunction, *Zurawski v. Texas*, No. D-1-GN-23-000968 (Travis Cnty. Dist. Ct. May 22, 2023); *Field Hearing on Access to Health Care in America: Ensuring Resilient Emergency Medical Care*,

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<sup>14</sup> <https://www.cbs.com/shows/video/vcJ8ZYluYKzRCBw9KT4PBQCbGLlJrYeB/>.

Committee on Ways and Means, U.S. House of Representatives (March 18, 2024) (at 1:02:14).<sup>15</sup>

Amicus **Kelsie Norris-De La Cruz** of Texas was denied timely care for an ectopic pregnancy in an emergency room. Two OB/GYNs at the hospital refused to give Kelsie either methotrexate or surgical treatment, and she was discharged with instructions to return two days later, despite being told that tubal rupture was possible in that 48-hour window. Kelsie ultimately found another doctor who performed emergency surgery to remove her ectopic pregnancy. Because of the size of the mass, Kelsie lost most of her right fallopian tube and some of her ovary, which could affect her future fertility. Caroline Kitchener, *An Ectopic Pregnancy Put Her Life at Risk. A Texas Hospital Refused to Treat Her*, Washington Post (Feb. 23, 2024).<sup>16</sup>

Amicus **Nicole Blackmon** of Tennessee was denied an abortion after her fetus was diagnosed with a fatal condition at 15 weeks. Care was denied even though Nicole had several conditions that put her own health at high risk, including vision loss, if the pregnancy were to continue. In mid-November 2022, she sought medical treatment at the hospital for severe headaches and increased blood pressure—warning signs of preeclampsia—but still was not provided abortion care. In late December 2022, Nicole gave birth to a stillborn at 31 weeks. She continues to experience vision problems caused by the forced

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<sup>15</sup> <https://waysandmeans.house.gov/event/field-hearing-on-access-to-health-care-in-america-ensuring-resilient-emergency-medical-care/>.

<sup>16</sup> <https://www.washingtonpost.com/politics/2024/02/23/texas-woman-ectopic-pregnancy-abortion/>

continuation of her pregnancy. Affidavit of Nicole Blackmon in Support of Temporary Injunction, *Blackmon v. Tennessee*, No. CV01-23-14744 (Davidson Cnty. Chancery Ct. Jan. 8, 2024).

Amicus **Katy Dulong** of Tennessee sought medical treatment at the hospital at 16 weeks after experiencing severe cramping and blood loss. There, she was diagnosed with cervical insufficiency and told her pregnancy would not survive. Although she was at risk of serious infection, hospital staff refused to give Katy medication to induce an abortion and instead sent her home with absorbent pads. Ten days after the diagnosis, she returned to the hospital for medical care. At that time, hospital personnel determined that Katy had foul-smelling vaginal discharge and finally administered abortion medication to end the pregnancy. When the placenta was expelled, it showed signs of severe infection. Affidavit of Katy Dulong in Support of Temporary Injunction, *Blackmon v. Tennessee*, No. CV01-23-14744 (Davidson Cnty. Chancery Ct. Jan. 8, 2024).

Amicus **Rebecca Milner** of Tennessee was 20 weeks pregnant when she learned her water had broken, possibly as much as a month earlier, and that nothing could be done to save the pregnancy. Unable to receive abortion care in Tennessee, Rebecca traveled to Virginia for medical care the following week. When she returned home to Tennessee, she developed a high fever and went to the hospital, where she was diagnosed with sepsis resulting from the delay in her receiving abortion care. Rebecca was hospitalized for two days for treatment. Affidavit of Rebecca Milner in Support of Temporary Injunction, *Blackmon v. Tennessee*, No. CV01-23-14744 (Davidson Cnty. Chancery Ct. Jan. 8, 2024).

Amici **Jennifer Adkins** of Idaho, **Jessica Bernardo** of Texas, and **Rachel Fulton** of Tennessee are each suing their States because they were denied abortions for pregnancies where they were at high risk of developing Mirror syndrome, a serious condition in which the pregnant person and fetus both experience severe fluid retention that can lead to both fetal and maternal demise. In each of their cases, they were diagnosed with fatal fetal conditions, meaning that, even if they survived their pregnancies, their pregnancies would not end with healthy children. Complaint ¶¶21-39, *Adkins v. Idaho*, No. CV01-23-14744 (Ada Cnty. Dist. Ct. Sept. 12, 2023); Affidavit of Jessica Bernardo in Support of Temporary Injunction, *Zurawski v. Texas*, No. D-1-GN-23-000968 (Travis Cnty. Dist. Ct. May 22, 2023); Affidavit of Rachel Fulton in Support of Temporary Injunction, *Blackmon v. Tennessee*, No. CV01-23-14744 (Davidson Cnty. Chancery Ct. Jan. 8, 2024).

### III. COUNTLESS OTHERS HAVE BEEN DENIED LIFESAVING OR HEALTH-PRESERVING ABORTION CARE IN STATES WITH ABORTION BANS

Amici's harrowing medical experiences due to denial or delay of emergency abortion care represent only the tip of the iceberg. Many others across the country have come forward to disclose similarly heart-wrenching accounts of being denied lifesaving and health-preserving abortion care in States where state law bans abortion.

#### ***Idaho:***

- **Kayla Smith.** Complaint, *Adkins v. Idaho*, No. CV01-23-14744 (Ada Cnty. Dist. Ct. Sept. 12, 2023)
- **Jillaine St.Michel.** *Ibid.*

- **Rebecca Vincen-Brown.** *Ibid.*
- **Carmen Broesder.** Mary Kekatos, *Idaho Woman Shares 19-Day Miscarriage on TikTok, Says State's Abortion Laws Prevented Her from Getting Care*, ABC News (Jan. 21, 2023).<sup>17</sup>

**Texas:**

- **Lauren Hall.** 2d Am. Verified Pet., *Zurawski v. Texas*, No. D-1-GN-23-000968 (Travis Cnty. Dist. Ct. May 22, 2023).
- **Ashley Brandt.** *Ibid.*
- **Kylie Beaton.** *Ibid.*
- **Samantha Casiano.** *Ibid.*
- **Austin Dennard.** *Ibid.*
- **Taylor Edwards.** *Ibid.*
- **Lauren Van Vleet.** *Ibid.*
- **Amy Coronado.** *Ibid.*
- **Kaitlyn Kash.** *Ibid.*
- **D. Aylene.** *Ibid.*
- **Kimberly Manzano.** *Ibid.*
- **Danielle Mathisen.** *Ibid.*
- **Kristina Cruickshank.** Julian Gill, *Texas' Abortion Laws Led to 3-Day Delay for Houston Woman's Pregnancy Loss Treatment, Doctor Says*, Houston Chronicle (Sept. 7, 2022).<sup>18</sup>
- **Blair Nelson.** Sawyer & Scott, *supra* at 7 (at 24:30).
- **Kailee DeSpain.** Elizabeth Cohen & Danielle Herman, *Why a Woman's Doctor Warned Her*

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<sup>17</sup> <https://abcnews.go.com/Health/idaho-woman-shares-19-day-miscarriage-tiktok-states/story?id=96363578>.

<sup>18</sup> <https://www.houstonchronicle.com/news/houston-texas/health/article/Waiting-in-vain-Texas-abortion-laws-stymie-17424262.php>.

*Not to Get Pregnant in Texas*, CNN (Sept. 10, 2022).<sup>19</sup>

- **Miranda Michel.** Eleanor Klibanoff, *She was Told Her Twin Sons Wouldn't Survive. Texas Law Made her Give Birth Anyway*, Texas Tribune (Oct. 11, 2023).<sup>20</sup>
- **Yeniffer Alvarez-Estrada Glick.** Stephania Taladrid, *Did An Abortion Ban Cost a Young Texas Woman Her Life?*, The New Yorker (Jan. 8, 2024).<sup>21</sup>
- **Olivia Harvey.** Leah Sherrell, *A woman fled to NC when another state's abortion ban prevented her from receiving life-saving care*, Cardinal & Pipeline (Mar. 13, 2024).<sup>22</sup>

#### **Alabama:**

- **Alyssa Gonzales.** Alyssa Gonzales, *I Live in Alabama. Our Cruel New Abortion Law Has Made My Life Absolute Hell*, Huffpost Personal (Oct. 21, 2022).<sup>23</sup>
- **Kelly Shannon.** Nadine El-Bawab, *Alabama Mother Denied Abortion Despite Fetus'*

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<sup>19</sup> <https://www.cnn.com/2022/09/09/health/abortion-restrictions-texas/index.html>.

<sup>20</sup> <https://www.texastribune.org/2023/10/11/texas-abortion-law-texas-abortion-ban-nonviable-pregnancies/>.

<sup>21</sup> <https://www.newyorker.com/magazine/2024/01/15/abortion-high-risk-pregnancy-yeni-glick>.

<sup>22</sup> <https://cardinalpine.com/2024/03/13/a-woman-fled-to-nc-when-another-states-abortion-ban-prevented-her-from-receiving-life-saving-care/>.

<sup>23</sup> [https://www.huffpost.com/entry/supreme-court-roe-v-wade-alabama\\_n\\_63486af5e4b0b7f89f546712](https://www.huffpost.com/entry/supreme-court-roe-v-wade-alabama_n_63486af5e4b0b7f89f546712).

*'Negligible' Chance of Survival*, ABC News (May 2, 2023).<sup>24</sup>

**Arizona:**

- **Chloe Partridge.** El-Bawab et al., *supra* at 7

**Arkansas:**

- **Chelsea Stovall.** Sarah Horbacewicz, *"Our Baby Was Wanted and Loved." Complications of Arkansas's Abortion Ban*, THV11 (Sept. 22, 2022).<sup>25</sup>

**Florida:**

- **Shanae Smith Cunningham.** Kitchener, *supra* at 13.<sup>26</sup>
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## CONCLUSION

EMTALA serves a critical role for pregnant patients in emergency medical circumstances when States fail to protect their lives and health. Amici respectfully urge affirmance.

	Respectfully submitted,
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