IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
AUSTIN DIVISION

PLANNED PARENTHOOD OF GREATER TEXAS SURGICAL HEALTH SERVICES, *et al.*, Plaintiffs, v. GREGORY ABBOTT, ATTORNEY GENERAL OF TEXAS, *et al.*, Defendants.	Civil Action 1:13-cv-00862-LY

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS URGING DENIAL OF INTERIM RELIEF BY *AMICI CURIAE* LT. GOV. DAVID DEWHURST, TEXAS EAGLE FORUM, TEXAS REPRESENTATIVES JODIE LAUBENBERG, CHARLES "DOC" ANDERSON, CECIL BELL, JR., DWAYNE BOHAC, DENNIS BONNEN, GREG BONNEN, M.D., GIOVANNI CAPRIGLIONI, TONY DALE, JOHN E. DAVIS, GARY ELKINS, PAT FALLON, DAN FLYNN, JAMES FRANK, CRAIG GOLDMAN, LINDA HARPER-BROWN, BRYAN HUGHES, JASON ISAAC, PHIL KING, STEPHANIE KLICK, MATT KRAUSE, GEORGE LAVENDER, JEFF LEACH, RICK MILLER, JIM MURPHY, JOHN OTTO, CHRIS PADDIE, TAN PARKER, CHARLES PERRY, LARRY PHILLIPS, JIM PITTS, SCOTT SANFORD, MATT SCHAEFER, RON SIMMONS, DAVID SIMPSON, JOHN T. SMITHEE, DREW SPRINGER, JONATHAN STICKLAND, VAN TAYLOR, ED THOMPSON, STEVE TOTH, SCOTT TURNER, JAMES WHITE, PAUL WORKMAN, AND BILL ZEDLER, TEXAS SENATORS GLENN HEGAR, JR., BRIAN BIRDWELL, JOHN CARONA, BOB DEUELL, CRAIG ESTES, TROY FRASER, KELLY HANCOCK, EDDIE LUCIO, JR., ROBERT NICHOLS, KEN PAXTON, AND LARRY TAYLOR, TEXAS RIGHT TO LIFE, AND EAGLE FORUM EDUCATION & LEGAL DEFENSE FUND

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INTRODUCTION

Several abortion clinics and doctors (collectively, hereinafter "Providers") sue officers of Texas' Executive Branch and several county district attorneys (collectively, hereinafter "Texas") to enjoin two requirements that Texas House Bill 2, Act of July 18, 2013, 83rd Leg., 2nd C.S., ch. 1, Tex. Gen. Laws ("HB2"), places on abortion providers: (a) requiring abortion doctors to have admitting privileges at a local hospital, and (b) restricting the use of abortion-inducing drugs to the label uses approved by the federal Food & Drug Administration ("FDA"). In summary, Providers claim that HB2 violates the undue-burden test of *Planned Parenthood of Southeastern Penn. v. Casey*, 505 U.S. 833, 876 (1992), and thus unconstitutionally limits the abortion right found in *Roe v. Wade*, 410 U.S. 113 (1974). This Court must deny Providers' requested relief because they lack standing to raise their future patients' *Roe-Casey* rights and HB2 does not exceed the state authority recognized in *Casey*. The *amici curiae* ("*Amici*") joining this brief are set forth in Exhibit 1 and in the accompanying motion for leave to file this brief.

I. PROVIDERS LACK STANDING TO ASSERT "UNDUE-BURDEN" RIGHTS

In addition to the four-part test that they acknowledge, Pls.' Memo. at 2, Providers also must establish their standing for interim relief. *City of Los Angeles v. Lyons*, 461 U.S. 95, 103 (1983). Standing has both a constitutional element under Article III – *i.e.*, cognizable injury to the plaintiffs, caused by the challenged conduct, and redressable by a court, *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992) – and prudential elements, including the need for those seeking to assert absent third parties' rights to have Article III standing and a close relationship with absent parties, whom a sufficient "hindrance" keeps from asserting their own rights. *Kowalski v. Tesmer*, 543 U.S. 125, 128-30 (2004). Here, Providers lack third-party standing to assert future patients' *Roe-Casey* rights. To the extent that Providers have standing at all, they must proceed under their own rights, which implicate a more deferential standard of review.

A. Prudential Limits on Third-Party Standing Bar Providers from Asserting Patients' Rights under *Roe-Casey*

While *Amici* do not dispute that practicing physicians have close relationships with their regular patients, the same is simply not true for hypothetical relationships between Providers and their *future* patients who may seek abortions at Providers' clinics: an *"existing* attorney-client relationship is, of course, quite distinct from the *hypothetical* attorney-client relationship posited here.*"* *Kowalski,* 543 U.S. at 131 (emphasis in original). Before *Kowalski* was decided in 2004, "the general state of third party standing law" was "not entirely clear," *Am. Immigration Lawyers Ass'n v. Reno,* 199 F.3d 1352, 1362 (D.C. Cir. 2000), and "in need of what may charitably be called clarification." *Miller v. Albright,* 523 U.S. 420, 455 n.1 (1998) (Scalia, J., concurring). Since *Kowalski* was decided in 2004, however, hypothetical future relationships can no longer support third-party standing. As such, Providers lack third-party standing to assert *Roe-Casey* rights. Providers' invocation of third-party standing also fails for two reasons beyond *Kowalski.*[2]

First, Providers' challenge to HB2 seeks to undermine legislation that Texas enacted to protect women from Providers' practices, a conflict of interest that strains the closeness of the relationship. Third-party standing is even less appropriate when – far from an "identity of interests"[3] – the putative third-party plaintiff's interests are *adverse* or even *potentially adverse* to the third-party rights holder's interests. *Elk Grove Unified Sch. Dist. v. Newdow,* 542 U.S. 1,

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[2] Abortion providers often cite *Singleton v. Wulff*, 428 U.S. 106, 118 (1976) (plurality) for third-party standing, but the fifth vote sets a holding, *Marks v. U.S.*, 430 U.S. 188, 193 (1977), which rejected third-party standing. *Wulff*, 428 U.S. at 121-22 (Stevens, J., concurring in part).

[3] *See, e.g., Lepelletier v. FDIC,* 164 F.3d 37, 44 (D.C. Cir. 1999) ("there must be an identity of interests between the parties such that the plaintiff will act as an effective advocate of the third party's interests"); *Pa. Psychiatric Soc'y v. Green Spring Health Servs.*, 280 F.3d 278, 288 (3d Cir. 2002) (asking whether "the third party … shares an identity of interests with the plaintiff"); *Region 8 Forest Serv. Timber Purchasers Council v. Alcock,* 993 F.2d 800, 810 (11th Cir. 1993) ("relationship between the party asserting the right and the third party has been characterized by a strong identity of interests").

15 (2004) (rejecting third-party standing where interests "are not parallel and, indeed, are potentially in conflict"). In such cases, courts should avoid "the adjudication of rights which [the rights holders] not before the Court may not wish to assert." *Newdow*, 542 U.S. at 15 n.7. Under *Newdow*, Providers cannot ground their standing on the third-party rights of their hypothetical future potential women patients, when the goal of Providers' lawsuit is to enjoin Texas from protecting those very same women from Providers' substandard care.

Second, the instances where courts have found standing for abortion doctors typically involve laws that apply equally to *all abortions* and to *all abortion doctors*, so that the required "identity of interests" was present between the women patients who would receive the abortions and the physicians who would perform the abortions.[4] Here, by contrast, Texas regulates in the interest of pregnant women who contemplate abortions and imposes no pertinent restrictions either on hospital-based abortions or on abortion doctors who already have (or are willing to obtain) admitting privileges. When a state relies on its interest in unborn life to insert itself into the doctor-patient relationship by regulating all abortions, the doctors and the patients may have the identical interest. Here, by contrast, all abortion doctors do not share the same interests as future abortion patients. Indeed, the Providers do not even share the same interests as all abortion doctors. Without an identity of interests between Providers and future abortion patients, the doctor-patient relationship is not close enough for third-party standing.

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[4] Prior Supreme Court and Circuit decisions that found abortion doctors to have standing without expressly addressing third-party standing are inapposite for two reasons. First, decisions that considered only Article III standing without considering prudential third-party limits are not binding precedents on the unaddressed third-party issues. *Cooper Indus., Inc. v. Aviall Serv., Inc.*, 543 U.S. 157, 170 (2004). As such, those "drive-by jurisdictional rulings" have "no precedential effect" on third-party standing. *Steel Co. v. Citizens for a Better Env't.,* 523 U.S. 83, 91 (1998). Second, because this Circuit recognizes that prudential limits on standing can be waived by failing to raise them, *Bd. of Miss. Levee Comm'rs v. EPA*, 674 F.3d 409, 417-18 (5th Cir. 2012), a decision cannot be read to reject an argument *sub silentio* that a defendant *waived* by failing to raise it.

B. To the Extent that They Can Establish *Their Own* Article III Standing, Providers Must Proceed under the Rational-Basis Test

When a party – like Providers here – does not possess the right to litigate under an elevated scrutiny such as the *Casey* undue-burden test, that party potentially may assert its own rights, albeit without the elevated scrutiny that applies to the absent third parties' rights:

> Clearly MHDC has met the constitutional requirements, and it therefore has standing to assert its own rights. Foremost among them is MHDC's right to be free of arbitrary or irrational zoning actions. But the heart of this litigation has never been the claim that the Village's decision fails the generous *Euclid* test, recently reaffirmed in *Belle Terre.* Instead it has been the claim that the Village's refusal to rezone discriminates against racial minorities in violation of the Fourteenth Amendment. As a corporation, MHDC has no racial identity and cannot be the direct target of the petitioners' alleged discrimination. In the ordinary case, a party is denied standing to assert the rights of third persons.

Village of Arlington Heights v. Metro. Housing Dev. Corp., 429 U.S. 252, 263 (1977) (citations omitted); *City of Akron v. Akron Ctr. for Reprod. Health,* 462 U.S. 416, 438 (1983) ("lines drawn … must be reasonable"). As shown in Section II.C, *infra*, Providers cannot meet this test.

II. PROVIDERS CANNOT PREVAIL ON THE MERITS

This section demonstrates that Providers are unlikely to prevail on the merits. Although this is the only criterion of the four-prong preliminary-injunction test that this memorandum addresses, *Amici* support Texas' arguments on the other three criteria. Because Providers cannot make the showing required for the "extraordinary and drastic remedy" they seek, *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997), this Court should deny interim relief.

A. Even If *Casey* Applied, HB2 Would Not Trigger Undue-Burden Review

The *Casey* undue-burden test would not apply here, even if Providers had standing. In their cramped reading of *Casey*, Providers restrict states' latitude to protect the health and safety of women who seek abortions, which conflicts with federalism and establishes unsound policy.

Under that reading, *Casey* weakened Texas's police power to protect its citizens in an area of traditional state and local concern (namely, public health) where the federal government lacks a corresponding police power. That leaves only the judiciary and abortion providers to protect the public from abortion providers, which is to say no one who is both qualified *and* disinterested to protect public health. *Amici* respectfully submit that that is not – and cannot be – the law.

"Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens," which "are 'primarily, and historically, ... matter[s] of local concern.'" *Medtronic, Inc. v. Lohr,* 518 U.S. 470, 475 (1996) (*quoting Hillsborough County v. Automated Med. Labs., Inc.,* 471 U.S. 707, 719 (1985)) (second and third alterations in *Medtronic*). For their part, the federal Executive and Congress lack a corresponding police power to take up the slack: "we always have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power." *U.S. v. Morrison,* 529 U.S. 598, 618-19 (2000). As indicated, if states cannot regulate the abortion industry's excesses, and the federal government cannot, that leaves only the judiciary and the abortion industry itself.

The judiciary, of course, is ill-suited by training to determine or second-guess what medical procedures are safe or necessary. *Cf. Parents Involved in Community Schools v. Seattle School Dist. No. 1,* 551 U.S. 701, 766 (2007) (federal courts "are not social engineers") (Thomas, J., concurring). Indeed, judges are even less qualified to practice medicine than they are to practice social engineering. Because the judiciary is not a credible regulator, Providers' narrow reading of states' flexibility under *Casey* essentially makes abortion a self-regulated industry.

While some might argue that the public and the states should be able to trust abortion providers, that approach would be extremely naïve. Perhaps because of the politicization of this issue in the United States – caused in great part by the unprecedented *Roe* decision – abortion

providers appear to regard themselves more as civil-rights warriors than as medical providers. Many abortion providers simply cannot disclose anything negative about their abortion mission:

> Political considerations have impeded research and reporting about the complications of legal abortions. The highly significant discrepancies in complications reported in European and Oceanic [j]ournals compared with North American journals could signal underreporting bias in North America.

Jane M. Orient, M.D., *Sapira's Art and Science of Bedside Diagnosis,* ch. 3, p. 62 (Lippincott, Williams & Wilkins, 4th ed. 2009) (citations omitted). The industry's lack of transparency calls out for heightened regulation, vis-à-vis other, less-politicized medical practices.

Certainly, the abortion industry throws great public-relations and advocacy efforts into fighting disclosure of correlated health effects that other medical disciplines readily would disclose. *See, e.g., Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds,* 686 F.3d 889, 898 (8th Cir. 2012) (*en banc*) (opposing South Dakota's requiring disclosure of abortion's correlation with suicide ideation); *K.P. v. LeBlanc,* __ F.3d __, 2013 U.S. App. LEXIS 18423 (5th Cir. Sept. 4, 2013) (No. 12-30456) (opposing Louisiana's tying limitation on liability to only those medical risks expressly disclosed in an informed-consent waiver). Claims that states target the abortion industry for *unwarranted* scrutiny have it precisely backwards.

Texas has regulated an industry that cuts corners and hides information by requiring that that industry integrate itself – through its physicians' admitting privileges – into the larger medical community. Texas thus has acted appropriately in seeking to increase the standard of care and to minimize unnecessary death and injury. Put another way, Texas has required "medically competent personnel under conditions insuring maximum safety for the woman." *Connecticut v. Menillo,* 423 U.S. 9, 10-11 (1975); *Mazurek,* 520 U.S. at 971; *Roe,* 410 U.S. at 150. Under the circumstances, "legislatures [have] wide discretion to pass legislation in areas where there is medical … uncertainty," and "medical uncertainty … provides a sufficient basis to

conclude in [a] facial attack that the Act *does not* impose an undue burden." *Gonzales v. Carhart,* 550 U.S. 124, 164 (2007) (emphasis added). Significantly, the Constitution does "not give abortion doctors unfettered choice in the course of their medical practice, nor should it elevate their status above other physicians in the medical community." *Gonzales,* 550 U.S. at 163. That holding from *Gonzales* applies even more so here.

Indeed, as *Amici* read *Casey,* that is precisely what the Supreme Court intended in adopting the *Casey* framework, which balances competing state and individual interests. Significantly, *Roe* concerned states' ability to *prohibit* abortions in the interest of the *infant* and the state's interest in that new life. By contrast, this litigation concerns the states' ability to *regulate* abortions in the interest of *pregnant women* who contemplate and receive abortions. On the application of the police power to protecting the *pregnant woman's* health, the Supreme Court never has ruled that the right to a particular abortion method trumps the states' interest in public health. As *Amici* understand *Casey*, the undue-burden test does not arise for "necessary" regulation of abortion procedures to protect women seeking an abortion. *See Casey,* 505 U.S. at 878 (only *unnecessary* regulations of women's health trigger further inquiry under *Casey*).

Specifically, following *Roe*, *Menillo,* and *Mazurek*, *Casey* allows that states "may enact regulations to further the health or safety of a woman seeking an abortion," "[a]s with any medical procedure." *Casey,* 505 U.S. at 878. The only prohibition in the *Casey* prong applicable to pregnant women is that "*[u]nnecessary* health regulations that have the purpose or effect of presenting a substantial obstacle to a woman seeking an abortion impose an undue burden on the right." *Id.* (emphasis added). To unpack this language to its constituent parts, an undue-burden violation for woman-focused state regulation requires that the plaintiff establish both of two elements: (1) a woman-based health regulation is *unnecessary;* and (2) that regulation has either

the purpose or effect of presenting a *substantial* obstacle. If the regulation is necessary (*i.e.*, not "unnecessary"), however, that ends the analysis: there is no *Casey-Roe* violation.

B. HB2 Does Not Impose an Undue Burden on *Roe-Casey* Rights

Although this Court lacks jurisdiction to reach the *Casey* merits at all, *see* Section I.A, *supra*, and the *Casey* undue-burden analysis does not even arise when states adopt *necessary* protections for pregnant women who seek abortions, *see* Section II.A, *supra*, HB2 would not impose an undue burden under *Casey*, even if that test applied to this litigation.

1. The Admitting-Privilege Requirement Is Not an Undue Burden

Providers do not question the value of having admitting privileges; instead, they argue that local privileges will not help in all circumstances and that 25 Tex. Admin. Code §139.56 already accomplishes much of HB2's benefits. Pls.' Memo. at 3-4. In strict-scrutiny cases, the availability of lesser restrictions might be relevant, but this Court reviews legislative choices more deferentially here, *Gonzales*, 550 U.S. at 164, and Providers' druthers are not the test. *Id.* at 163. Providers also cite the negative impact that HB2 might have on access to abortion services within parts of Texas. Pls.' Memo. at 1. The appellate courts that have considered this issue have determined that *Casey* allows states to require abortion doctors to have admitting privileges at a local hospital both as a legal matter and – to the extent that HB2 indeed causes some abortion facilities to close – as a factual matter from increased travel distances to reach the facilities that remain open in-state or in neighboring states. *Greenville Women's Clinic v. Comm'r*, 317 F.3d 357, 363 (4th Cir. 2002); *Women's Medical Prof'l Corp. v. Baird*, 438 F.3d 595, 598 (6th Cir. 2006); *Women's Health Ctr. of West Cnty., Inc. v. Webster*, 871 F.2d 1377, 1382 (8th Cir. 1989); *Tuscon Woman's Clinic v. Eden*, 379 F.3d 531, 547 (9th Cir. 2004). When a state "law … serves a valid purpose" (as HB2 does) and "has the incidental effect of making it more difficult or more expensive to procure an abortion," the added difficulty or expense "cannot be enough to

invalidate it." *Casey*, 505 U.S. at 874. *Casey* requires more than Providers have alleged.

2. Restricting Abortions to FDA Labeling Is Not an Undue Burden

Providers' cramped reading of *Casey* is especially pernicious with respect to abortion-inducing drugs such as "RU-486." That reading restricts state police power to protect citizens in an area of traditional state concern (namely, public health) where the federal government not only lacks a corresponding police power, Section II.A, *supra*, but also *expressly declined* to exercise its commerce power (namely, *off-label* uses of FDA-approved drugs).[5] This Court simply cannot second guess the legislative finding that self-administered second-trimester medication abortions pose risks to women's health. As *Menillo* recognized contemporaneously with *Roe*, states may require that "abortion [be] performed by *medically competent personnel under conditions insuring maximum safety* for the woman." *Id.* (emphasis added); *Mazurek*, 520 U.S. at 971 (states may limit abortion procedures to physicians). The Sixth Circuit recognized as much, holding that banning abortion methods such as off-label uses of RU-486 is not the same as banning abortion itself. *Planned Parenthood Sw. Ohio Region v. DeWine*, 696 F.3d 490, 514-15 (6th Cir. 2012). There is no right to self-administer the RU-486 drug's second dose at home.

For women within the gestational limits on the FDA-approved label, of course, the label uses and surgical abortions remain available alternatives. But even women outside the FDA-approved labeling could continue to obtain surgical abortions. The Supreme Court has never suggested, much less held, that "the right to choose abortion encompasses the right to choose a

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[5] FDA approved RU-486 under "Subpart H" for accelerated approval for drugs for serious or life-threatening illnesses such as cancer, 21 C.F.R. §§314.500-.560, notwithstanding that pregnancy is not a "serious or life-threatening illness[]" as required by Subpart H. *Id.* §314.500. Under Subpart H, "FDA will require such postmarketing restrictions *as are needed* to assure safe use" because "FDA concludes that a drug product shown to be effective can be safely used *only if distribution or use is restricted.*" *Id.* §314.520(a) (emphasis added). FDA granted the approval on September 28, 2000, *see* 73 Fed. Reg. 16,313 (2008), late in President Clinton's second term.

particular abortion method." *Id.* Given the elevated risk posed by second-trimester medication abortions and the absence of any other governmental body to regulate abortion providers, *Amici* respectfully submit that this Court cannot hold Texas' regulation of abortion providers as either being "unnecessary" or posing an "undue burden" under *Casey.*

C. HB2 Does Not Violate the Rational-Basis Test

To the extent that they have standing to challenge HB2 *without* relying on future patients' rights under *Casey,* Providers must proceed under the rational basis test: "It is enough … that it *might be* thought that the particular legislative measure was a rational way to correct it." *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 488 (1955) (emphasis added). Here, virtually every business day,[6] Texas women flow into the Texas hospital system due to abortion-related complications, many of them life-threatening. To overturn Texas' legislative response under the rational-basis test, Providers must do more than marshal "impressive supporting evidence … [on] the probable consequences of the [statute]" vis-à-vis the legislative purpose; they instead must negate "the *theoretical* connection" between the two. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463-64 (1981) (emphasis in original); *F.C.C. v. Beach Comm., Inc.*, 508 U.S. 307, 315 (1993) ("legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data"). Even if that were possible – and *Amici* doubt that it is – Providers certainly have not made the showing with respect either to physicians' admitting privileges or FDA-compliant medication abortions.

CONCLUSION

This Court should deny Providers' motion for a preliminary injunction.

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[6] In the last year for which data are available (2010), Pls.' Memo. at 16 n.10, there were 251 business days and 77,592 induced abortions in Texas, Texas Dep't of State Health Serv., Induced Terminations of Pregnancy Narrative (June 28, 2012), and thus 233 hospitalizations at the 0.3% rate cited by Providers. *See* Pls.' Memo. at 4; Decl. of Dr. Paul M. Fine, ¶ 16.

Dated: October 11, 2013

Respectfully submitted,

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Texas Eagle Forum, Lt. Gov. David Dewhurst, Texas Representatives Jodie Laubenberg, Charles "Doc" Anderson, Cecil Bell, Jr., Dwayne Bohac, Dennis Bonnen, Greg Bonnen, M.D., Giovanni Capriglioni, Tony Dale, John E. Davis, Gary Elkins, Pat Fallon, Dan Flynn, James Frank, Craig Goldman, Linda Harper-Brown, Bryan Hughes, Jason Isaac, Phil King, Stephanie Klick, Matt Krause, George Lavender, Jeff Leach, Rick Miller, Jim Murphy, John Otto, Chris Paddie, Tan Parker, Charles Perry, Larry Phillips, Jim Pitts, Scott Sanford, Matt Schaefer, Ron Simmons, David Simpson, John T. Smithee, Drew Springer, Jonathan Stickland, Van Taylor, Ed Thompson, Steve Toth, Scott Turner, James White, Paul Workman, and Bill Zedler, Texas Senators Glenn Hegar, Jr., Brian Birdwell, John Carona, Bob Deuell, Craig Estes, Troy Fraser, Kelly Hancock, Eddie Lucio, Jr., Robert Nichols, Ken Paxton, and Larry Taylor, and Eagle Forum Education & Legal Defense Fund (collectively, "*Amici*" and each an "*Amicus*") assert the following interests in this action to enjoin operation of Texas House Bill 2, Act of July 18, 2013, 83rd Leg., 2nd C.S., ch. 1, Tex. Gen. Laws ("HB2").

Amicus Dewhurst is the Lieutenant Governor of the State of Texas. *Amici* Sen. Hegar (District 18) and Rep. Laubenberg (District 89) were HB2's sponsors in the Texas Senate and House of Representatives, respectively. *Amici* Reps. Anderson (District 56), Bell (District 3), Bohac (District 138), Dennis Bonnen (District 25), Greg Bonnen (District 24), Capriglioni (District 98), Dale (District 136), Davis (District 129), Elkins (District 135), Fallon (District 106), Flynn (District 2), Frank (District 69), Goldman (District 97), Harper-Brown (District 105), Hughes (District 5), Isaac (District 45), King (District 61), Klick (District 91), Krause (District 93), Lavender (District 1), Leach (District 67), Miller (District 26), Murphy (District 133), Otto (District 18), Paddie (District 9), Parker (District 63), Perry (District 83), Phillips (District 62), Pitts (District 10), Sanford (District 70), Schaefer (District 6), Simmons (District 65), Simpson

(District 7), Smithee (District 86), Springer (District 68), Stickland (District 92), Taylor (District 66), Thompson (District 29), Toth (District 15), Turner (District 33), White (District 19), Workman (District 47), and Zedler (District 96) supported HB2 in the Texas House of Representatives. *Amici* Sens. Birdwell (District 22), Carona (District 16), Deuell (District 2), Estes (District 30), Fraser (District 24), Hancock (District 9), Lucio (District 27), Nichols (District 3), Paxton (District 8), and Taylor (District 11) supported HB2 in the Texas Senate.

Amicus Texas Eagle Forum is a nonprofit corporation founded in 1975, incorporated in 1989, and headquartered in Dallas, Texas. Texas Eagle Forum's mission is to enable conservative and pro-family Texans to participate in the process of self-government and public policy-making so that America will continue to be a land of individual liberty, respect for family integrity, public and private virtue, and private enterprise.

Amicus Texas Right to Life is a non-profit organization headquartered in Houston, Texas. Texas Right to Life is a non-sectarian and non-partisan organization that seeks to articulate and to protect the right to life of defenseless human beings, born and unborn, through legal, peaceful, and prayerful means.

Amicus Eagle Forum Education & Legal Defense Fund ("Eagle Forum ELDF") is a nonprofit corporation founded in 1981 and headquartered in Saint Louis, Missouri. For more than thirty years, Eagle Forum ELDF has defended federalism and supported states' autonomy from federal intrusion in areas – like public health – that are of traditionally local concern. Further, Eagle Forum ELDF has a longstanding interest in protecting unborn life and in adherence to the Constitution as written. Finally, Eagle Forum ELDF consistently has argued for judicial restraint under both Article III and separation-of-powers principles.