Supreme Court of Kentucky

No. 2022-SC-0329

DANIEL CAMERON in his official capacity as Attorney General of the Commonwealth of Kentucky — *Appellant*

v.

Court of Appeals, No. 2022-CA-0906;
Jefferson Circuit Court, No. 22-CI-03225

EMW WOMEN'S SURGICAL CENTER, P.S.C., On behalf of itself, its staff, and its patients, *et al.* — *Appellees*

AMICUS BRIEF OF AMICUS AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF APPELLANT DANIEL CAMERON

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INTEREST OF AMICUS CURIAE

The American Center for Law & Justice (ACLJ), *amicus curiae*, is an organization dedicated to the defense of constitutional liberties secured by law, including the defense of the sanctity of human life. The ACLJ regularly represents parties, and submits *amicus curiae* briefs, in litigation involving abortion and constitutional law. *See, e.g.*, *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022); *June Med. Servs. v. Russo*, 140 S. Ct. 2103 (2020); *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016); *Gonzales v. Carhart*, 550 U.S. 124 (2007); *Whitmer v. Linderman*, 973 N.W.2d 618 (Mich. 2022); *Oklahoma Call for Reprod. Just. v. O'Connor*, No. 120543 (Okla. 2022).

The ACLJ submits this brief on behalf of itself and over 127,000 of its supporters (including more than 1,700 in Kentucky) who promote the sanctity of life and have an interest in the provisions of the Kentucky Constitution being followed.

The ACLJ's important decades-long role in precedential cases involving abortion is perhaps best illustrated by the *Dobbs* Court's citation and reliance upon two cases argued by the ACLJ at the United States Supreme Court: *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993), and *Hill v. Colorado*, 530 U.S. 703 (2000). The *Dobbs* majority cited *Bray* in support of its pivotal finding that the "goal of preventing abortion" does not constitute "'invidiously discriminatory animus' against women," *Dobbs*, 142 S. Ct. at 2246 (quoting *Bray*, 506 U.S. at 273–74), and *Hill*, as just one of a host of cases demonstrating how the Court's abortion jurisprudence led to the distortion of numerous background legal principles in other areas of the law, including those involving the First Amendment. *Id.* at 2276.

INTRODUCTION

For the nearly 50 years following the legalization of abortion in *Roe v. Wade*, 410 U.S. 113 (1973), the Justices of the Supreme Court of the United States were bedeviled by the

impossible task of trying to serve as the equivalent of "the country's '*ex officio* medical board with powers to approve or disapprove medical and operative practices and standards throughout the United States.'" *Webster v. Reprod. Health Servs.*, 492 U.S. 490, 518–19 (1989) (plurality) (citation omitted). Members of the Court, as well as judges of lower federal courts, regularly lamented the unsought and constitutionally inappropriate position *Roe* (and later *Planned Parenthood v. Casey*, 505 U.S. 833 (1992)) placed them in: serving as arbiters of, not only complex medical matters in which they had no background or expertise, but also profound philosophical, moral, and ethical issues involving life and death about which human beings have argued for centuries; and all this arising from a charter of governance—the United States Constitution—which nowhere even remotely mentions or alludes to abortion. With its decision in *Dobbs*, the U.S. Supreme Court, with an almost palpable sense of relief, at long last stepped out of an arena the majority concluded the Court had no reason to ever enter in the first place:

> Abortion presents a profound moral question. The Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion. *Roe* and *Casey* arrogated that authority. We now overrule those decisions and return that authority to the people and their elected representatives.

Dobbs, 142 S. Ct. at 2284.

In the case at bar, Kentucky's only two abortion clinics now ask this Court to step in and assume the role of Kentucky's "ex officio medical board," reviewing medical practices and standards enacted by the Legislature in the same kind of seemingly unending stream of litigation that characterized the *Roe*/*Casey* regime in the federal system. More than that, Plaintiffs would have this Court arrogate to itself the ultimate authority in the Commonwealth to decide profound philosophical and ethical questions that divide Kentuckians of good faith as surely—and passionately—as they do Americans in general. As in the case of the federal

experience under *Roe* and *Casey,* Plaintiffs attempt this purportedly based on a charter of governance—the Kentucky Constitution—that is utterly silent on the matter of abortion.

This brief will focus on but one aspect of the *Roe*/*Casey* regime that Plaintiffs seek to foist upon Kentucky: its corrosive effect on other areas of the law besides abortion regulation. A long line of Supreme Court Justices, beginning with Justice Sandra Day O'Connor, decried what they saw as the Court's post-*Roe* abortion jurisprudence's "ad hoc nullification" of numerous important but unrelated legal principles and doctrines usually viewed as essential to the Rule of Law itself. *Thornburgh v. Am. Coll. of Obstetricians & Gynecologists*, 476 U.S. 747, 814 (1986) (O'Connor, J., dissenting) (characterizing the Court's "constitutionalizing the regulation of abortion" as having an "institutionally debilitating effect"). As explained herein, the *Dobbs* Court counted this "institutionally debilitating effect" as one of the five factors it considered in deciding to overrule *Roe* and *Casey*. *Dobbs*, 142 S. Ct. at 2264, 2276.

Plaintiffs now invite this Court to drag from its well-deserved resting place in the Supreme Court's post-*Dobbs* constitutional junkyard what Justice Scalia criticized as the "'ad hoc nullification machine' which is our abortion jurisprudence" and turn it loose in the Commonwealth. *Janklow v. Planned Parenthood, Sioux Falls Clinic*, 517 U.S. 1174, 116 S. Ct. 1582, 1585 (1996) (Scalia, J., dissenting from denial of certiorari) (citation omitted). This Court should decline the invitation.

ARGUMENT

I. This Court Should Be Wary of Constitutionalizing Matters Better Suited for the People's Representatives.

Plaintiffs ask this Court to adopt as its own the circuit court's discovery of a heretofore undiscovered state constitutional right to abortion, and to do so on the basis of a single case concerning practices readily distinguishable from what is undisputedly the termination of

human life.[1] Whether that right is alleged to derive from the "right to privacy," or some other source buried deep between the lines of the Kentucky Constitution, this "constitutionalizing" of issues best suited for resolution by the Legislature is an enterprise fraught with danger as attested to by numerous federal and state authorities presented with similar requests. This is so because every judge-made or judge-expanded right shifts power away from the political branches, thereby diminishing the right of the people to exercise their voting power to decide or influence important policy questions. Courts "should be extremely reluctant to breathe still further substantive content" into constitutional provisions "so as to strike down legislation adopted by a State or city to promote its welfare. Whenever the Judiciary does so, it unavoidably pre-empts for itself another part of the governance of the country without express constitutional authority." *Michael H. v. Gerald D.*, 491 U.S. 110, 122 (1989) (citation omitted). *See also Thornburgh*, 476 U.S. at 787 (White, J., dissenting) ("[D]ecisions that find in the Constitution principles or values that cannot fairly be read into that document usurp the people's authority, for such decisions represent choices that the people have never made and that they cannot disavow through corrective legislation.").

This Court must proceed with great caution where, as here, a purported fundamental liberty that greatly restricts legislative authority is claimed to exist, "lest it open itself to the accusation that, in the name of identifying constitutional principles to which the people have consented in framing their Constitution, the Court has done nothing more than impose its own controversial choices of value upon the people." *Thornburgh*, 476 U.S. at 790 (White, J., dissenting); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) ("By extending constitutional

[1] The absurdity of locating a right to abortion in the Kentucky Constitution premised largely on the single case of *Commonwealth. v. Wasson*, 842 S.W. 2d 487 (Ky. 1992), is persuasively argued in Appellant's Brief, at 20–25.

protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative action. We must therefore 'exercise the utmost care whenever we are asked to break new ground in this field,' . . . lest the [law] be subtly transformed into the policy preferences of the members of this Court."). The United States Supreme Court's admonishment (in a case that did not involve abortion) applies with full force here:

> The respondents in this case insist that a difficult question of public policy must be taken from the reach of the voters, and thus removed from the realm of public discussion, dialogue, and debate in an election campaign. . . . [This] is inconsistent with the underlying premises of a responsible, functioning democracy. It is demeaning to the democratic process to presume that the voters are not capable of deciding an issue of this sensitivity on decent and rational grounds.

Schuette v. BAMN, 572 U.S. 291, 312–13 (2014) (plurality).

A central theme of the *Dobbs* decision—also applicable here—was the significant harm that *Roe* and *Casey* and their progeny had done to federalism, the separation of powers, and the public's voting rights, which are concerns that go well beyond the issue of abortion policy. The Court acknowledged that *Roe* "represented the 'exercise of raw judicial power'" and "abruptly ended" the state legislatures' process of reviewing and modifying abortion laws. *Dobbs*, 142 S. Ct. at 2241. While the *Roe* Court undertook a role more appropriately left to legislative bodies, the Court recognized in *Dobbs* that it "has neither the authority nor the expertise to adjudicate" disputes over the pros and cons of abortion-related policies. *Id.* at 2277.[2]

[2] *See also id.* at 2307 (Kavanaugh, J., concurring) ("By taking sides on a difficult and contentious issue on which the Constitution is neutral, *Roe* overreached and exceeded this Court's constitutional authority [and] gravely distorted the Nation's understanding of this Court's proper constitutional role.").

The *Dobbs* Court noted that its decision restored abortion policymaking authority *to the state legislatures*:

> [T]he people of the various States may evaluate those interests differently. In some States, voters may believe that the abortion right should be even more extensive than the right that *Roe* and *Casey* recognized. Voters in other States may wish to impose tight restrictions based on their belief that abortion destroys an "unborn human being." . . . Our Nation's historical understanding of ordered liberty does not prevent **the people's elected representatives** from deciding how abortion should be regulated. . . .
>
> [T]he authority to regulate abortion must be returned **to the people and their elected representatives**.

Id. at 2257, 2279 (majority opinion) (emphasis added).

Prior to *Dobbs*, numerous opinions of individual Supreme Court Justices and other courts and judges raised similar concerns about the improper usurpation of legislative authority.[3] It would be a significant defeat for the separation of powers and the Rule of Law if, shortly after the state legislatures had their authority to determine abortion policy rightly restored to them after a half-century federal judicial interference, state courts usurped that authority.

[3] *See, e.g., Casey*, 505 U.S. at 965–66 (Rehnquist, C.J., concurring in part and dissenting in part) ("The joint opinion . . . [makes] a policy judgment. . . . This may or may not be a correct judgment, but it is quintessentially a legislative one. . . . Under the guise of the Constitution, this Court will still impart its own preferences on the States. . . ."); *id.* at 979, 989–90 (Scalia, J., concurring in part and dissenting in part) ("The permissibility of abortion, and the limitations upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting. . . . [T]he joint opinion's verbal shell game will conceal raw judicial policy choices concerning what is 'appropriate' abortion legislation."); *Jackson Women's Health Org. v. Dobbs*, 945 F.3d 265, 286 (5th Cir. 2019) (Ho, J., concurring), *rev'd by Dobbs* ("Replacing the Rule of Law with a regime of Judges Know Better is one that neither the Founders of our country nor the Framers of our Constitution would recognize."); *id.* at 285 n.7 (no judge "who respect[s] the proper role of the judiciary" would "confuse[] the role of the courts with that of the legislative branch" by imposing abortion policy from the bench); *Edwards v. Beck*, 786 F.3d 1113, 1119 (8th Cir. 2015) ("To substitute its own preference to that of the legislature in this area [of abortion regulation] is *not* the proper role of a court.").

The wariness expressed by so many members of the United States Supreme Court and other federal courts finds an echo in the cautionary words of Justice Reed, late of this Court: "Although it is much cheaper to ask a court to order the social change wanted rather than to go through the time-consuming, expensive and inconvenient process of persuading voters or legislators, the fact remains that the proper forum to accomplish a change [to Kentucky's abortion laws] is a policy process to be consigned to the legislature." *Sasaki v. Commonwealth,* 497 S.W.2d 713, 715 (Ky. 1973) (Reed, J., joined by Palmore, C.J., concurring).

II. No Valid Purpose Would Be Served by a Kentucky Version of the Abortion "Ad Hoc Nullification Machine."

Aside from the general inappropriateness of courts taking sides on issues where a state constitution is neutral—"replacing the Rule of Law with a regime of Judges Know Better"—the U.S. Supreme Court's experience of the corrosive effect of abortion jurisprudence on other areas of the law provides a cautionary tale for state courts, including this Court, in the post-*Dobbs* era. As noted above, the *Dobbs* majority listed this "distortion of many important but unrelated legal doctrines" as one of the factors supporting overruling *Roe* and *Casey*. *Dobbs*, 142 S. Ct. at 2275–76.

The *Dobbs* majority listed the following distortions of the law springing from *Roe/Casey*: (1) the standard for facial constitutional challenges; (2) third-party standing doctrine; (3) res judicata principles; (4) rules on severability of unconstitutional provisions; (5) rule that statutes should be read to avoid unconstitutionality; and (6) First Amendment doctrines. *Id.* The list is apparently not exhaustive. One member of the Sixth Circuit recently listed "statutory interpretation, the rules of civil procedure, the standards for appellate review of legislative factfinding and the First Amendment to name a few" as legal rules and principles that "have suffered at the hands of abortion jurisprudence" and observed: "the examples only multiply in the lower courts where abortion often goes hand-in-hand with acrimony." *Memphis*

Ctr. For Reprod. Health v. Slatery, 14 F.4th 409, 451 (6th Cir. 2021) (Thapar, J., concurring in judgment in part and dissenting in part).

The *Dobbs* Court's recapitulation of the corruption of the Rule of Law wrought by *Roe* and *Casey* comes at the end of a long line of judicial descriptions of the phenomenon of "ad hoc nullification" in abortion cases that begins with Justice Sandra Day O'Connor's description in *Thornburgh*:

> This Court's abortion decisions have already worked a major distortion in the Court's constitutional jurisprudence. Today's decision goes further, and makes it painfully clear **that no legal rule or doctrine is safe from ad hoc nullification by this Court when an occasion for its application arises in a case involving state regulation of abortion**. The permissible scope of abortion regulation is not the only issue on which this Court is divided, but—except when it comes to abortion—the Court has generally refused to let such disagreements, however longstanding or deeply felt, prevent it from evenhandedly applying uncontroversial legal doctrines to cases that come before it.

476 U.S. at 814 (O'Connor, J., dissenting) (internal citation omitted) (emphasis added).

This anomaly was later dubbed "the ad hoc nullification machine" by Justice Scalia in *Madsen v. Women's Health Center, Inc.* 512 U.S. 753, 785 (1994) (Scalia, J., concurring in judgment in part and dissenting in part) ("Today the ad hoc nullification machine claims its latest, greatest, and most surprising victim: the First Amendment."). In subsequent abortion cases, more than one Justice called out the Court's resort to the machine to steamroll longstanding principles in abortion cases. *Hill*, 530 U.S. at 741 (Scalia, J., dissenting) ("What is before us, after all, is a speech regulation directed against the opponents of abortion, and it therefore enjoys the benefit of the "ad hoc nullification machine" that the Court has set in motion to push aside whatever doctrines of constitutional law stand in the way of that highly favored practice."); *Stenberg v. Carhart*, 530 U.S. 914, 1020 (2000) (Thomas, J., joined by the Chief Justice and Scalia, J., dissenting) ("More medically sophisticated minds than ours have searched and failed to identify a single circumstance (let alone a large fraction) in which partial-birth abortion

is required. But no matter. The "ad hoc nullification" machine is back at full throttle."); *June Med. Servs. v. Russo*, 140 S. Ct. 2103, 2153 (2020) (Alito, J., dissenting) (The "right" to abortion has been used "like a bulldozer to flatten" other legal rules that "stand in the way.").

The *Dobbs* decision effectively consigned the abortion ad hoc nullification machine to the scrap heap. But since Plaintiffs seek to have this Court endorse the circuit court's imposition on the Commonwealth of a Kentucky version of *Roe* and *Casey*, it might be useful to examine the extent of the machine's destruction of the Rule of Law and what that forebodes for this state's jurisprudence should it unearth a heretofore unknown right to abortion in the Kentucky Constitution.

• Facial constitutional challenges standard. In *United States v. Salerno*, 481 U.S. 739 (1987), the Court held that, in a facial challenge to a statute, the challenger must establish that no set of circumstances exists under which the statute would be valid. But in *Casey*, the Court ignored this requirement, all in an effort to reach the merits of the case and invent a new nationwide standard by which abortion cases should be adjudicated. *See Casey*, 505 U.S. at 973 ("Because they are making a facial challenge to the provision, [plaintiffs] must 'show that no set of circumstances exists under which the [provision] would be valid.' This they have failed to do.") (Rehnquist, C.J., concurring in judgment in part and dissenting in part) (citation omitted).

• Third party standing. To establish standing to sue, a plaintiff usually must allege an injury to his or her own interests, not those of another person. *See Warth v. Seldin*, 422 U.S. 490 (1975), and *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004). But in *June Medical*, the Court permitted suit to be brought by "abortion providers . . . [who] seek only to assert the constitutional rights of an undefined, unnamed, indeed unknown, group of women who they hope will be their patients in the future." 140 S. Ct. at 2173–74 (Gorsuch, J., dissenting). Justice

Gorsuch noted that "[n]o one even attempts to suggest this usual prerequisite [an actually injured plaintiff] is satisfied here." *Id.* at 2173 (Gorsuch, J. dissenting).

• Res judicata. In *Whole Woman's Health*, the Court allowed abortion clinics to relitigate the same claims in a second lawsuit, prompting Justice Alito to observe: "Under the rules that apply in regular cases, petitioners could not relitigate the exact same claim in a second lawsuit. . . In this abortion case, however, that rule is disregarded." 579 U.S. at 645–666 (Alito, J. dissenting). Justice Alito warned of the likely consequence of this repeated use of ad hoc nullification in abortion cases: "[T]he Court's patent refusal to apply well-established law in a neutral way is indefensible and will undermine public confidence in the Court as a fair and neutral arbiter." *Id.* at 645.

• Severability of unconstitutional provisions. Also in *Whole Woman's Health*, the Court disregarded its longstanding rule that when a statute expressly provides that its provisions are severable, then the valid sections survive a finding of unconstitutionality of a challenged provision. *Id.* Despite the presence in the challenged law of "what must surely be the most emphatic severability clause ever written," *id.*, the Court struck down the law in its entirety. "Provisions that are indisputably constitutional—for example, provisions that require facilities performing abortions to follow basic fire safety measures—are stricken from the books. There is no possible justification for this collateral damage." *Id.*

• Reading statutes to avoid unconstitutionality. Few principles of statutory construction are as well settled as the canon that directs courts to construe statutes so as to avoid a finding of unconstitutionality. *See, e.g.*, *Erznoznik* v. *Jacksonville,* 422 U.S. 205, 216, (1975) ("[A] state statute should not be deemed facially invalid unless it is not readily subject to a narrowing construction by the state courts"); *Frisby* v. *Schultz,* 487 U.S. 474, 482 (1988) ("The precise scope of the ban is not further described within the text of the ordinance, but

in our view the ordinance is readily subject to a narrowing construction that avoids constitutional difficulties").

Yet, in *Stenberg*, a case involving a challenge to a Nebraska statute criminalizing partial-birth abortions, the majority ignored the rule. Justice Kennedy, dissenting from the Court's decision to strike down the statute, wrote that "[s]trained statutory constructions in abortion cases are not new, for Justice O'Connor identified years ago 'an unprecedented canon of construction under which in cases involving abortion, a permissible reading of a statute is to be avoided at all costs.'" 530 U.S. at 977 (Kennedy, J., dissenting) (citation omitted). Under the mistaken impression that *Casey* had done away with the ad hoc nullification machine (it clearly did not), Justice Kennedy complained: "*Casey* banished this doctrine from our jurisprudence; yet the Court today reinvigorates it and, in the process, ignores its obligation to interpret the law in a manner to validate it, not render it void." *Id.*

• <u>Distortion of First Amendment doctrines</u>. In *Madsen*, a case involving an injunction barring a group of demonstrators from demonstrating in certain places and in various ways outside an abortion clinic, Justice Scalia wrote that, "[t]oday the ad hoc nullification machine claims its latest, greatest, and most surprising victim: the First Amendment." 512 U.S. at 785 (Scalia, J., dissenting). He returned to this theme in *Hill*, where the U.S. Supreme Court upheld a no-speech bubble zone around persons entering health facilities. In what Justice Scalia described as "a speech regulation directed against the opponents of abortion," he noted that "it therefore enjoys the benefit of the 'ad hoc nullification machine' that the Court has set in motion to push aside whatever doctrines of constitutional law stand in the way of that highly favored practice." 530 U.S. 741–742 (Scalia, J., dissenting). Scalia's view was echoed by Justice Kennedy, a member of *Casey*'s plurality decision, who warned that "[t]he Court's holding

contradicts more than a half century of well-established First Amendment principles." *Id.* at 765 (Kennedy, J., dissenting).

So egregious was the Court's willingness to resort to the ad hoc nullification machine in *Hill* that both Justices Scalia and Kennedy felt compelled to warn of the dire consequences that would flow from the Court's continued departure from well settled and noncontroversial legal principles when confronted with cases dealing with abortion. Scalia went so far as to suggest that those citizens who expected the Court to evenhandedly apply its own settled rules and holdings—even when dealing with abortion—were justified in being disillusioned:

> Does the deck seem stacked? You bet . . . [T]oday's decision is not an isolated distortion of our traditional constitutional principles, but is one of many aggressively proabortion novelties announced by the Court in recent years. Today's distortions, however, are particularly blatant. Restrictive views of the First Amendment that have been in dissent since the 1930's suddenly find themselves in the majority. "Uninhibited, robust, and wide open" debate is replaced by the power of the state to protect an unheard-of "right to be let alone" on the public streets. I dissent.

Id. at 764–65 (internal citations omitted) (Scalia, J., dissenting).

In short, as the *Dobbs* Court correctly recognized, "[t]he Court's abortion cases . . . have distorted First Amendment doctrines." 142 S. Ct. at 2276.

This survey of just some of the ways the Supreme Court's abortion jurisprudence had a corrosive effect on the Rule of Law is more than just a look at mere technical miscues easily avoided and, perhaps, of secondary importance. As Justice Gorsuch explained in *June Medical*:

> The judicial power is constrained by an array of rules. Rules about the deference due the legislative process, the standing of the parties before us, the use of facial challenges to invalidate democratically enacted statutes, and the award of prospective relief. Still more rules seek to ensure that any legal tests judges may devise are capable of neutral and principled administration. Individually, these rules may seem prosaic. But, collectively, they help keep us in our constitutionally assigned lane, sure that we are in the business of saying what the law is, not what we wish it to be.

140 S. Ct. at 2171 (Gorsuch, J., dissenting).

Staying in one's lane, constitutional or otherwise, is obviously important for the orderly conduct of the law. As the U.S. Supreme Court's experience with the ad hoc nullification machine shows, when courts take on an "expansive role" for which they are unsuited, they risk the all too predictable institutionally debilitating effects that come with departing from strict adherence to the Rule of Law. *See Thornburgh*, 476 U.S. at 814–15 (O'Connor, J., dissenting) ("That the Court's unworkable scheme for constitutionalizing the regulation of abortion has had this institutionally debilitating effect should not be surprising, however, since the Court is not suited for the expansive role it has claimed for itself in the series of cases that began with *Roe v. Wade*."). Expanding the meaning of the Kentucky Constitution to incorporate a right to abortion—despite nothing in the text or the history of its adoption suggesting such a right—will necessarily (and improperly) expand the role of courts in the Commonwealth well beyond their constitutional boundaries.

At the conclusion of his dissent in *Casey*, Justice Scalia addressed what he called the "anguish" felt by members of the public and, indeed, by members of the Court itself, caused by the seemingly endless strife engendered by the recurring efforts of both sides of the abortion debate to push the Court to their particular side. As Scalia saw it, the Court had no one to blame but itself for this:

> by foreclosing all democratic outlet for the deep passions this issue arouses, by banishing the issue from the political forum that gives all participants, even the losers, the satisfaction of a fair hearing and an honest fight, by continuing the imposition of a rigid national rule instead of allowing for regional differences, the Court merely prolongs and intensifies the anguish.
>
> We should get out of this area, where we have no right to be, and where we do neither ourselves nor the country any good by remaining.

Casey, 505 U.S. at 1002 (Scalia, J., dissenting).

The experience of the past fifty years of judicial intervention in this area at the federal level, has given this Court the benefit of observing the debilitating effects, both institutional

and societal, of the kind of court-imposed regime of abortion on demand sought by Plaintiffs. The Court should stay in its constitutional lane and permit the citizens of Kentucky to resolve this issue through their democratically elected representatives.

CONCLUSION

This Court should dissolve the temporary injunction issued in this case.

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