

17-50154

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IN THE  
**United States Court of Appeals**  
FOR THE FIFTH CIRCUIT

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WHOLE WOMAN’S HEALTH; BROOKSIDE WOMEN’S MEDICAL CENTER, P.A.,  
doing business as Brookside Women’s Health Center and Austin Women’s Health  
Center; LENDOL L. DAVIS, M.D.; ALAMO CITY SURGERY CENTER, P.L.L.C.,  
doing business as Alamo Women’s Reproductive Services; NOVA HEALTH  
SYSTEMS, INCORPORATED, doing business as Reproductive Services,

*Plaintiffs-Appellees,*

—v.—

DOCTOR JOHN HELLERSTEDT, M.D.,

*Defendant-Appellant.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN  
CASE NO. 1:16-CV-1300-SS

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**BRIEF OF *AMICI CURIAE* CATHOLICS FOR CHOICE, CENTRAL  
CONFERENCE OF AMERICAN RABBIS, GENERAL SYNOD OF  
THE UNITED CHURCH OF CHRIST, JUST TEXAS: FAITH VOICES  
FOR REPRODUCTIVE JUSTICE, METHODIST FEDERATION  
FOR SOCIAL ACTION, MUSLIMS FOR PROGRESSIVE VALUES,  
RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE,  
RELIGIOUS INSTITUTE, UNION FOR REFORM JUDAISM,  
UNITARIAN UNIVERSALIST ASSOCIATION, AND WOMEN OF  
REFORM JUDAISM IN SUPPORT OF PLAINTIFFS-APPELLEES**

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**SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES**

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1, in addition to those already listed in the parties' briefs, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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Central Conference of American Rabbis  
General Synod of the United Church of Christ  
Just Texas: Faith Voices for Reproductive Justice  
Methodist Federation for Social Action  
Muslims for Progressive Values  
Religious Coalition for Reproductive Choice  
Religious Institute  
Union for Reform Judaism  
Unitarian Universalist Association  
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*/s/ Saul B. Shapiro*  
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## STATEMENT OF INTEREST

*Amici curiae*<sup>1</sup> are religious leaders from a broad range of traditions who acknowledge the diversity of views regarding when life begins, and accordingly support the right of women to decide, in accordance with their beliefs, how to dispose of fetal tissue following the loss or termination of a pregnancy.

## SUMMARY OF ARGUMENT

The recently-enacted 41 Tex. Reg. 9732 (the “Amendments”) provide that, after the loss or termination of *any* pregnancy, the embryonic or fetal tissue must be treated in the same manner as human remains, *i.e.*, either cremated or buried. ROA at 55. The Texas Department of State Health Services (the “Department”) has now indicated that the purpose of this requirement—which applies regardless of the woman’s circumstances and preferences—is to “protect the sanctity of life” and reflect a general “respect for life.”<sup>2</sup>

Many religious traditions, however, do not share the Department’s apparent view that “life” begins at the moment of conception. These traditions do not require, or even countenance, the understanding that termination of a pregnancy is akin to a death, mandating funeral rites such as cremation and burial. Moreover, because not all religious traditions embrace a clear view on the precise moment

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<sup>1</sup> Pursuant to FRAP 29(a)(2), *amici* file this brief with the consent of all parties.

<sup>2</sup> Previously, the Department took the position that the purpose of the Amendments was to protect women’s health and safety.

when life begins, many traditions view elective termination of a pregnancy as a woman's moral prerogative.

The one-size-fits-all approach of the Amendments fails to account for this diversity of views across religious traditions regarding when and how life begins; how, if at all, the termination of a pregnancy should be observed; and the moral implications of choosing to terminate a pregnancy. This forces the Department's views about personhood onto all Texas women, needlessly adding to the emotional burdens of losing or terminating a pregnancy. *Amici* oppose this encroachment on religious freedom.

#### **I. RELIGIOUS TRADITIONS DO NOT SHARE A UNIFORM VIEW OF WHEN LIFE BEGINS**

Burial and cremation are rituals that draw from religious tradition and that respond to and commemorate the end of human life. By imposing these rituals on the disposition of embryonic or fetal tissue, the Amendments effectively require all Texas women to treat embryonic or fetal tissue as tantamount to a human life, and to treat the moment of conception as the beginning of life. In promulgating the Amendments, the Department has thus ignored, and disrespected, the wide variety of religious perspectives on the profound question of when and how life begins.

As the Supreme Court has held, there is "wide divergence of thinking" about this question, with many traditions expressing "strong support for the view that life does not begin until live birth." *Roe v. Wade*, 410 U.S. 113, 160 (1973). Adding



to the complexity of this issue is the fact that, under numerous religious traditions, “ensoulment,” or the acquisition of personhood, is understood to occur at some point *between* conception and birth. The Evangelical Lutheran Church, for example, believes that “[e]mbryology provides insight into the complex mystery of God’s creative activity” and that individual interpretation and evaluation of embryology leads to various understandings of when life begins.<sup>3</sup> The predominant Islamic belief, by contrast, is that a fetus acquires personhood 120 days from conception—though there are also minority views within Islam holding that ensoulment occurs 40 days, 42 nights, or 45 nights after conception.<sup>4</sup> And in the Orthodox Jewish tradition, until 30 days of gestation, a fetus is considered “mere fluid” and is not accorded any status as a person.<sup>5</sup>

This variety of perspectives on the beginning of life and personhood has led to concomitant diversity in views on the moral implications of choosing to terminate a pregnancy. For example, while some in Episcopal and Anglican

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<sup>3</sup> Evangelical Lutheran Church in America, *Social Statement on Abortion* at 1, 3 n.2, available at <http://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf>,

<sup>4</sup> Mark Cherry, *Religious Perspective on Bioethics* 196-97 (2004); Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Applications* 134-35, 140-41 (2009); Dariusch Atighetchi, *Islamic Bioethics: Problems and Perspectives* 94 (2006).

<sup>5</sup> Cherry, *supra* note 4, at 166-67; Susan Hollins, *Religions, Culture and Healthcare: Practice Handbook for Use in Healthcare Environments* 90 (2009).

traditions would accord the same protection to a newly fertilized egg as to a born human being,<sup>6</sup> the Episcopal Church has taken the ultimate position that the choice of whether to terminate a pregnancy is a question of “individual conscience.”<sup>7</sup> Unitarian Universalists similarly “do not agree on the precise moment in which life begins” but are united in their affirmation for the well-being of women and others, and the principle that women “are moral agents who possess dignity, freedom of conscience, and the capacity to make decisions.”<sup>8</sup> Unitarian Universalists also believe that “coercion, particularly over the most precious and intimate circumstances of our lives, is not only wrong, but breeds hatred and bitterness.”<sup>9</sup>

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<sup>6</sup> Cherry, *supra* note 4 at 58-60 (noting that the Episcopal Church *generally* views the decision about abortion as a matter of individual conscience).

<sup>7</sup> Episcopal Church, *Standing Commission on Human Affairs and Health* at 153 (1988), available at [https://www.episcopalarchives.org/e-archives/gc\\_reports/reports/1988/bb\\_1988-R016.pdf](https://www.episcopalarchives.org/e-archives/gc_reports/reports/1988/bb_1988-R016.pdf)

<sup>8</sup> Unitarian Universalist Association, *Unitarian Universalist Theology on Reproductive Justice* at 1-2, available at <http://www.uua.org/sites/live-new.uua.org/files/documents/washingtonoffice/reproductivejustice/curriculum/1-2.pdf>; *see also* Unitarian Universalist Association, *General Resolution on the Right to Choose* (1987), available at <http://www.uua.org/action/statements/right-choose> (“Unitarian Universalists believe that the inherent worth and dignity of every person, the right for individual *conscience*, and respect for human life are inalienable rights due every person; and that the personal right to choose in regard to contraception and abortion is an important aspect of these rights.” (emphasis added)).

<sup>9</sup> Unitarian Universalist Association, *Unitarian Universalist Theology on Reproductive Justice* at 2, available at <http://www.uua.org/sites/live->

The General Synod of the United Church of Christ likewise recognized in 1971 that “[t]he theological and scientific views on when human life begins are so numerous and varied that one particular view should not be forced on society through its legal system.”<sup>10</sup> Further, the United Church of Christ’s Statement on Reproductive Health and Justice also affirmed that “there are many religious and theological perspectives on when life and personhood begin” and that “public policy must honor this rich religious diversity.”<sup>11</sup>

In the same vein, the Presbyterian Church (U.S.A.) concedes that it “may not know exactly when human life begins” and recognizes the choice of whether to terminate a pregnancy as an “intensely personal” decision.<sup>12</sup> Accordingly, it holds that “human beings are moral agents” and “termination of a pregnancy is a matter of careful ethical decision of a patient . . . and therefore should not be restricted

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[new.uua.org/files/documents/washingtonoffice/reproductivejustice/curriculum/1-2.pdf](http://new.uua.org/files/documents/washingtonoffice/reproductivejustice/curriculum/1-2.pdf).

<sup>10</sup> General Synod of the United Church of Christ, *Freedom of Choice Concerning Abortion*, 17-GS-58 (1971), available at [http://www.ctucc.org/files/tables/content/7726678/fields/files/327cad155b9c43dd8a95e03e4179fbe8/1971\\_freedom\\_of\\_choice.pdf](http://www.ctucc.org/files/tables/content/7726678/fields/files/327cad155b9c43dd8a95e03e4179fbe8/1971_freedom_of_choice.pdf)

<sup>11</sup> General Synod of the United Church of Christ, *Statement on Reproductive Health and Justice*, available at [http://d3n8a8pro7vhm.cloudfront.net/unitedchurchofchrist/legacy\\_url/455/reproductive-health-and-justice.pdf?1418423872](http://d3n8a8pro7vhm.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf?1418423872)

<sup>12</sup> Presbyterian Church (U.S.A.), *Abortion Issues*, available at <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>

by law.”<sup>13</sup> Additionally, liberal Jewish traditions respect the ability of a woman to reach her own decision regarding the termination of pregnancy, provided it is otherwise morally justified under Jewish law.<sup>14</sup>

Finally, the difficulty inherent in answering the question of “when life begins” is evident in the historical underpinnings of the Catholic tradition. Throughout the Catholic tradition, from its earliest times to today, scholars, theologians, and ordinary Catholics have had differing beliefs about when personhood begins. Though the institutional Catholic Church currently opposes abortion from the moment of conception, the Church experienced a long period of disagreement regarding the status of a fetus.<sup>15</sup> Medieval texts embraced the Aristotelian view that human “ensoulment” takes place 40 days after conception

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<sup>13</sup> *Id.*

<sup>14</sup> Cherry, *supra* note 4, at 165-66.

<sup>15</sup> Vatican Congregation for the Doctrine of the Faith, *Instruction on Respect For Human Life in its Origin and on the Dignity of Procreation—Replies to Certain Questions of the Day*, available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html); Vatican Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion* at n.19 (“This declaration expressly leaves aside the question of the moment when the spiritual soul is infused. There is not a unanimous tradition on this point and authors are as yet in disagreement.”), available at [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19741118\\_declaration-abortion\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html)

for males and 80 days after conception for females.<sup>16</sup> In the sixteenth century, the Catholic hierarchy's formal position changed at various points, oscillating between recognizing life as beginning upon conception or at the time of quickening, when the fetus first moved in a woman's womb.<sup>17</sup> This lack of consensus continues today: notwithstanding the institutional position of the Catholic Church, a majority of Catholic voters view abortion as a moral choice<sup>18</sup> and Catholic women today have abortions at approximately the same rate as other women.<sup>19</sup>

Thus, the world's major religions are far from united on the question of when, if ever, an embryo or fetus *in utero* becomes endowed with the "sanctity of life," such that the termination of a pregnancy should be marked with end-of-life rituals. The exact question of when life begins has been the topic of much

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<sup>16</sup> Anne Stenvold, *A History of Pregnancy in Christianity: From Original Sin to Contemporary* 45-46 (2015).

<sup>17</sup> *Id.* at 70 (noting that Catholic law recommended a quickening test to establish whether or not ensoulment had taken place); Frank K. Flinn, *Encyclopedia of Catholicism* 4 (2007).

<sup>18</sup> Belden Russonello Strategists, *2016 Survey of Catholic Likely Voters*, at 5 (October 2016), available at <http://www.catholicsforchoice.org/wp-content/uploads/2016/10/2016-Catholic-Voter-Poll.pdf> ("Sixty percent of Catholic likely voters overall say that "deciding to have an abortion can be a morally acceptable position.").

<sup>19</sup> Guttmacher Institute, *Characteristics of U.S. Abortion Patients in 2014 and Changes since 2008*, at 1, 6-7 (May 2016), available at [https://www.guttmacher.org/sites/default/files/report\\_pdf/characteristics-us-abortion-patients-2014.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf)

controversy and deliberation for centuries. The positions across the spectrum coalesce, however, on the importance of individual conscience and deliberation in grappling with the mysteries of life. The question of personhood implicates fundamental questions about individual moral judgment and faith. It is not a question that the Department of State Health Services is equipped to answer for the millions of men and women of Texas of different faiths and creeds—many of which espouse beliefs that contradict the edict set forth by the Amendments.

## **II. THERE IS A DIVERSITY OF RELIGIOUS TRADITIONS REGARDING BURIAL RITES, FUNERALS, AND MOURNING**

The Amendments also encroach on religious freedom by requiring cremation or burial, to the exclusion of any other choice. This disrespects the wide variety of religious and philosophical views regarding observance of the end of pregnancy, and robs women and their families of their ability to approach pregnancy loss in a manner consistent with their own faiths.

Religious traditions take disparate approaches to funeral rites and grief, but most religions do *not* mandate—and some even proscribe—the burial or cremation of fetal issue after a miscarriage or abortion. Across Protestant religions, responses to a terminated pregnancy are determined based on factual circumstances specific to each terminated pregnancy and the needs of the family. For example, in the Presbyterian tradition, when a stillbirth occurs, a minister discusses the parents' beliefs as to whether they considered the stillborn child to have been a person at

death to determine the type of service that is appropriate.<sup>20</sup> For miscarriages, a healing service may be more appropriate, rather than the graveside service that is common in the case of a stillbirth or infant death.<sup>21</sup> Burial of a fetus is also rare in the tradition of Unitarian Universalists.<sup>22</sup>

Of the religions that do have specific practices for addressing a terminated pregnancy, few provide for a formal burial or ceremony. Indeed, in the Orthodox Jewish tradition, tissue collection and burial, and a period of formal mourning, are traditional only if a fetus has reached at least 40 days' gestation.<sup>23</sup> In Reform Judaism, attitudes toward miscarriage and stillbirth vary; funerals are uncommon, but a rabbi may conduct a simple service and parents might acknowledge loss by holding a funeral and with a shortened period of mourning.<sup>24</sup> Similarly, in the Muslim faith, burial rites vary depending on whether there is a miscarriage or stillbirth. Burial of a fetus is rare, and prior to a gestational age of 130 days, fetal tissue may be treated like other discarded tissue.<sup>25</sup>

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<sup>20</sup> Perry Biddle, *A Funeral Manual* 21 (1994).

<sup>21</sup> *Id.*

<sup>22</sup> Margaret M. Andrews & Joyceen S. Boyle, *Transcultural Concepts in Nursing Care* 401 (2008).

<sup>23</sup> Hollins, *supra* note 5, at 90.

<sup>24</sup> *Id.*

<sup>25</sup> Andrews & Boyle, *supra* note 22, at 390; Hollins, *supra* note 5, at 73; Sachedina, *supra* note 4, at 135.

Thus, as with the question of when life begins, the question of whether and how to commemorate a lost pregnancy varies widely across religious traditions. Yet the Amendments seek to suppress this variety of practices, by requiring that all women observe the termination or loss of any pregnancy with burial or cremation, regardless of religious background.

### **III. THE AMENDMENTS WILL HARM WOMEN SPIRITUALLY AND EMOTIONALLY**

#### **A. The Amendments Will Cause Women Emotional Harm By Forcing Them to Observe Religious and Personal Rituals Inconsistent With Their Beliefs**

The State's usurpation of critical decisions surrounding pregnancy termination is likely to take a significant emotional toll on women. As the district court record establishes, many women who have either chosen to terminate a pregnancy, or experienced the loss of a wanted pregnancy, report that they would have found these experiences more upsetting had they been accompanied by a State mandate to observe rituals associated with the death of a human being. For example, Dr. Valerie Peterson, who elected to terminate a wanted pregnancy after learning that the pregnancy was not viable, attested that "[b]eing told the only two choices [were] burial or cremation" would have "hurt [her] emotionally and psychologically." *See* ROA at 244, Peterson Decl. (ECF No. 6-5) ¶ 10. Similarly, Reverend Debra Haffner, who suffered a second-trimester miscarriage herself, averred that "[h]ad the [Amendments] governed my miscarriage, it would have felt



like a tremendous and unwelcome intrusion into my deep and personal loss.” *See* ROA at 230-31, Haffner Decl. (ECF No. 6-4) ¶ 20.

Dr. Peterson and Reverend Haffner are not alone in this sentiment. Plaintiffs and other health care providers who testified at the preliminary injunction hearing affirmed that although burial and cremations have long been available as means to dispose of embryonic or fetal tissue, historically, most women do *not* choose those options after terminating a pregnancy. *See* ROA at 144-45, Miller Decl. (ECF No. 6-1) ¶ 17 (explaining that among the patients at her medical clinic, “almost no one” elects to dispose of embryonic or fetal tissue via a burial, cremation, or other funeral ritual); ROA at 157, Davis Decl. (ECF No. 6-2) ¶ 23 (“Of the thousands of patients we see each year, less than half a dozen request burial or cremation” of the tissue from a miscarriage or abortion). And Rev. Debra Haffner, a Unitarian Universalist Minister who has counseled “thousands of women making the decision whether or not to continue a pregnancy,” reports that even in that context, “[w]omen do not usually raise the issue of disposition of embryonic or fetal tissue,” except occasionally in cases of a very late miscarriage or abortion. *See* ROA at 228, Haffner Decl. (ECF No. 6-4) ¶¶ 3, 13. Even in those unusual cases, she has been asked about the possibility of a burial “only once.” *Id.* at ¶ 13.

As this record makes clear, the funeral-like ritual that the Amendments impose on women experiencing pregnancy loss or termination does not comport

with most women’s religious and personal beliefs. Women may not seek burial or cremation of embryonic or fetal tissue for any number of reasons: because they, consistent with many religious traditions, do not view embryonic or fetal tissue as tantamount to a human being; because, relatedly, they do not view the end of the pregnancy as akin to a death; or because the pregnancy ends too early for burial or cremation to be an appropriate option for them. *See generally* ROA at 225-27, Haffner Decl. (ECF No. 6-4) at ¶¶ 10-12. As the Supreme Court has recognized, it is each woman’s prerogative to form her views about these personal subjects without interference from the State. *See Planned Parenthood v. Casey*, 505 U.S. 833, 851 (1992) (recognizing a constitutional “right to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life,” and noting that “[b]eliefs about these matters could not form the attributes of personhood were they formed under compulsion of the State.”). Yet under the Amendments, these women would be forced to observe pregnancy loss or termination with funeral procedures that do not comport with their beliefs—an imposition that would only add stress and emotional burdens to the loss or termination of a pregnancy.

The imposition of this needless emotional burden on women is particularly egregious in view of the State’s putative justification for the Amendments, *i.e.*, the promotion of “respect for the life and dignity of the unborn.” *See* ROA at 32, 41

Tex. Reg. 9709 (2016).<sup>26</sup> The Amendments purportedly honor “the life and dignity of the unborn” at the expense of the “life and dignity” of the women whose religious freedom it curtails. If the State truly wished to honor “life and dignity,” it would permit women to either mark the loss or termination of pregnancy, or choose not to do so, in a manner consistent with their personal and/or religious beliefs.

The imposition of a gratuitous emotional burden on women experiencing pregnancy loss is not only cruel in and of itself, but may also expose women to physical danger by deterring them from seeking appropriate medical care. In the district court, Texas health-care providers expressed concern that, rather than submit to the requirements of the Amendments—which apply only to fetal or embryonic tissue extracted by health-care providers—some women would choose to attempt pregnancy termination or experience miscarriage symptoms at home. *See* Hearing Tr. Vol. 2 at 22:19-21 (testimony of Dr. Karen Swenson, explaining that in her experience some patients delay or avoid seeking medical care if the

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<sup>26</sup> This rationale also belies the State’s disingenuous assertion that the Amendments do not require the loss or termination of a pregnancy to be treated as tantamount to a death. The plain language of the Amendments requires that fetal tissue be disposed of using methods—cremation and/ or burial—that are associated with *human remains*, regardless of gestational age. This, combined with the State’s purported aim of protecting the “life and dignity of the unborn,” makes clear that the aim of the Amendments is to ensure that the end of a pregnancy is treated as the death of a human being, irrespective of the views and wishes of the pregnant woman.

medical center's policy for disposing of fetal remains is inconsistent with their religious beliefs); ROA at 230-31, Haffner Decl. ¶ 20 (affirmation of Rev. Haffner, predicting, based on her experience counseling women, that the Amendments will drive some women to choose to either do medical abortions at home or "miscarry at home"). The fact that the Amendments force women to choose between observing their religious beliefs and seeking needed medical care is, again, inimical to the protection of "life and dignity."

*Amici*, as practitioners of diverse religious traditions, are troubled by the introduction of unnecessary emotional turmoil into what is a personal and sometimes difficult occasion; subordinates the "life and dignity" of women to that of extracted embryonic tissue; and discourages women from seeking appropriate medical care. Although, as noted above, *amici* subscribe to disparate views on the complex question of when personhood begins, all believe in the fundamental moral principle that people should be treated with compassion and humanity. *Amici* therefore oppose the State's cruel and inhumane efforts to force unwanted religious practices on women following the loss or termination of a pregnancy.

**B. The "Solution" Proposed By The Texas Catholic Conference of Bishops Exacerbates This Problem**

The district court record reflects that, in an apparent effort to assuage concerns about the costs the Amendments impose on Texas health care providers, the Texas Catholic Conference of Bishops has offered to collect health-care

providers' fetal remains, inter them at Catholic cemeteries, and permit Catholic prayer services to be performed over them. *Amici* oppose this proposal.

The Catholic Conference's proposed "solution" to the Amendments' logistical problems not only exacerbates the imposition of religious practices on women, but denies all women the ability to follow their conscience for options following the loss or termination of pregnancy. Many Catholic women believe individual conscience should be the final arbiter for decisions about pregnancy.<sup>27</sup> These women, as well as women who practice a faith other than Catholicism or no faith at all, are likely to be offended and upset by the suggestion that all embryonic and fetal remains be indiscriminately buried in Catholic cemeteries and subject to unbidden religious rituals. For people of other or no faith, this is particularly true because, as explained *supra* at 7-8, the idea of burying embryonic or fetal tissue in *any* cemetery is at odds with many religious belief systems. A *de facto* state policy forcing women to not only treat fetal tissue as tantamount to a human requiring burial, but also submit the tissue to *a particular religion's burial rites*—regardless of their own faith—is a gross intrusion on women's religious freedom, and is likely to compound the emotional burdens imposed by the Amendments.

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<sup>27</sup> See Belden Russonello Strategists, *supra* note 18, at 5.

#### **IV. THE AMENDMENTS REPRESENT AN INAPPROPRIATE INTRUSION BY THE STATE INTO WOMEN'S RELIGIOUS PRACTICE**

As set forth above, the proposed Amendments enshrine as law the religious viewpoint that embryonic or fetal tissue constitutes a human being, and accordingly should be cremated or buried. In so doing, the Amendments disregard the diversity of religious viewpoints regarding the genesis of personhood, divest women of their capacity to make personal decisions surrounding the loss or termination of pregnancy, and create cruel and unnecessary emotional burdens. This threatens the freedom of all religious communities.

*Amici*, as religious leaders, cherish the freedom that the U.S. Constitution guarantees to all persons to practice their religions free of state intrusion. “When the government puts its *imprimatur* on a particular religion, it conveys a message of exclusion to all those who do not adhere to the favored beliefs.” *Lee v. Weisman*, 505 U.S. 577, 606 (1992) (Blackmun, *J.*, concurring). *Amici* appreciate that persons of different faiths, or within the same faith, may disagree on the point at which “personhood” takes shape, and they respect the right of all individuals to form, and act in accordance with, their own beliefs on these issues. Conversely, they oppose any effort to imbue any particular belief on these matters with the force of law, as the proposed Amendments do. They urge the Court not to

countenance this intrusion on Texas religious communities' freedom to develop and practice their own beliefs.

### CONCLUSION

For the reasons set forth above, *amici* support Appellees in urging the Court to affirm the judgment of the District Court.

Respectfully submitted,

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July 12, 2017

## CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 3,799 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and the Rules of this Court.

2. This brief complies with the typeface requirements of Fed R. App. P. 32(a)(5), the type-style requirements of Fed. R. App. 32(a)(6) and Fifth Circuit Rule 32.1 because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman.

    /s/ Saul B. Shapiro  
Saul B. Shapiro



## **CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2017, I electronically filed a true and correct copy of this brief with the Clerk of the Court by using the appellate CM/ECF system, which will send notification of such filing to all registered users of the CM/ECF system.

*/s/ Saul B. Shapiro*  
Saul B. Shapiro