

COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
CASE NO. 2022-SC-0329-TG

DANIEL CAMERON, in his official capacity as  
Attorney General of the Commonwealth of Kentucky

*Appellant*

v. Transfer Granted from Court of Appeals Case No. 2022-CA-0906  
On Appeal from Jefferson Circuit Court No. 22-CI-3225

EMW WOMEN'S SURGICAL CENTER, P.S.C.,  
on behalf of itself, its staff, and its patients, ET AL.

*Appellees*

**BRIEF OF *AMICI CURIAE* KENTUCKY RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE; CATHOLICS FOR CHOICE; NATIONAL COUNCIL OF JEWISH WOMEN; METROPOLITAN COMMUNITY CHURCHES; MUSLIMS FOR PROGRESSIVE VALUES; RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE (RCRC); RECONSTRUCTIONIST RABBINICAL ASSOCIATION; SOCIETY FOR HUMANISTIC JUDAISM; THE FELLOWSHIP OF AFFIRMING MINISTRIES; T'RUAH: THE RABBINIC CALL FOR HUMAN RIGHTS; KESHET; WOMEN'S RABBINIC NETWORK; JEWISH WOMEN INTERNATIONAL (JWI); KARAMAH: MUSLIM WOMEN LAWYERS FOR HUMAN RIGHTS; ALEPH: ALLIANCE FOR JEWISH RENEWAL; AMEINU; JEWISH EMERGENT NETWORK; JEWISH ORTHODOX FEMINIST ALLIANCE; ANTI-DEFAMATION LEAGUE (ADL); WOMEN'S ALLIANCE FOR THEOLOGY, ETHICS, AND RITUAL (WATER); RABBINICAL ASSEMBLY; JEWS FOR A SECULAR DEMOCRACY; SACRED (SPIRITUAL ALLIANCE OF COMMUNITIES FOR REPRODUCTIVE DIGNITY); AUBURN SEMINARY; THE SHALOM CENTER; ZIONESS; JEWISH COUNCIL FOR PUBLIC AFFAIRS; WOMEN OF REFORM JUDAISM; AND HADASSAH, THE WOMEN'S ZIONIST ORGANIZATION OF AMERICA, INC.**

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## **STATEMENT OF INTEREST**

*Amici curiae* are faith-based organizations representing a diverse array of religious traditions that affirm an individual's authority to terminate a pregnancy in consultation with their conscience, faith, and values, consistent with the rights to privacy, self-determination, and religious freedom protected by the Kentucky Constitution.

*Amici* are the following organizations: Kentucky Religious Coalition for Reproductive Choice; Catholics for Choice; National Council of Jewish Women; Metropolitan Community Churches; Muslims for Progressive Values; Religious Coalition for Reproductive Choice (RCRC); Reconstructionist Rabbinical Association; Society for Humanistic Judaism; The Fellowship of Affirming Ministries; T'ruah: The Rabbinic Call for Human Rights; Keshet; Women's Rabbinic Network; Jewish Women International (JWI); KARAMAH: Muslim Women Lawyers for Human Rights; ALEPH: Alliance for Jewish Renewal; Ameinu; Jewish Emergent Network; Jewish Orthodox Feminist Alliance; Anti-Defamation League (ADL); Women's Alliance for Theology, Ethics, and Ritual (WATER); Rabbinical Assembly; Jews for a Secular Democracy; SACReD (Spiritual Alliance of Communities for Reproductive Dignity); Auburn Seminary; The Shalom Center; Zioness; Jewish Council for Public Affairs; Women of Reform Judaism; and Hadassah, The Women's Zionist Organization of America, Inc.

## **ARGUMENT**

The Kentucky Constitution provides that “[n]o human authority shall, in any case whatever, control or interfere with the rights of conscience.” Ky. Const. § 5. Consistent with this and other provisions in the Commonwealth's Constitution, Kentucky has “a rich and compelling tradition of recognizing and protecting individual rights from state

intrusion.” *Commonwealth v. Wasson*, 842 S.W.2d 487, 492 (Ky. 1992), *overruled on other grounds by Calloway Cnty. Sheriff’s Dep’t. v. Woodall*, 607 S.W.3d 557 (Ky. 2020). Indeed, Kentucky “has been in the forefront in recognizing the right of privacy,” *id.* at 496, and the Commonwealth’s constitutional “guarantees of individual liberty . . . offer greater protection of the right of privacy than provided by the Federal Constitution as interpreted by the United States Supreme Court,” *id.* at 491.

As the Circuit Court correctly found, the statutes at issue in this case—KRS § 311.7701 *et seq.* (the “Six-Week Ban”) and KRS § 311.772 (the “Trigger Ban”) (collectively, the “Bans”)—present serious questions that implicate the rights protected by Section 5 of the Kentucky Constitution. *See* Opinion & Order Granting Temporary Injunction at 15-16 (hereinafter “TI Order”). The Bans “interfere with the rights of conscience,” Ky. Const. § 5, by eliminating the ability of Kentuckians to make deeply personal decisions about whether and under what circumstances to terminate a pregnancy consistent with their conscience and faith. *See* TI Order at 15-16.

The Bans expressly adopt a view espoused by certain religious traditions—that human life begins at fertilization.<sup>1</sup> That view, however, ignores and contradicts the teachings of many other religious traditions—including those of *amici*—that espouse a wide range of views on when a human life begins. Numerous religious traditions teach that human life begins during pregnancy at some point after conception; other faiths teach

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<sup>1</sup> *See* KRS § 311.772(c) (defining “unborn human being” to mean “an individual living member of the species homo sapiens throughout the entire embryonic and fetal stages of the unborn child from fertilization to full gestation and childbirth”); KRS § 311.7701(16) (adopting the definition of “unborn child” in KRS § 311.781, which defines “unborn child” to mean “an individual organism of the species homo sapiens from fertilization until live birth”).

that human life does not begin until after a child is born; and still other faiths decline to identify a precise moment when human life begins. Consistent with these beliefs, many religions teach that terminating a pregnancy is morally permissible or even required under certain circumstances, and that individuals have the moral right to make this decision consistent with their own religious beliefs and conscience.

The Bans fail to account for the diversity of religious teachings on when life begins, and on whether and under what circumstances an individual may decide to terminate a pregnancy. By eliminating individuals' abilities to follow their conscience and faith in making such decisions, the Bans thus "interfere with the rights of conscience." Ky. Const. § 5. Consistent with the rights guaranteed by the Kentucky Constitution, individuals should be able to follow their own conscience and faith in making such deeply personal healthcare decisions.

#### **I. Religious Traditions Do Not Share a Uniform View of When Life Begins**

There is a diversity of views within and across religious traditions and faiths on when a human life begins. The United Church of Christ recognized this when it stated that "there are many religious and theological perspectives on when life and personhood begin," and "public policy must honor this rich religious diversity."<sup>2</sup>

As the Circuit Court observed in this case, the Bans adopt the "distinctly Christian and Catholic belief" that life begins at conception. TI Order at 15. The Circuit Court also correctly recognized, however, that not all Christian traditions uniformly share the view adopted by the Bans. *See id.* at 16 n.11. For example, the Presbyterian Church, the

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<sup>2</sup> *See* United Church of Christ, *Statement on Reproductive Health and Justice*, [https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy\\_url/455/reproductive-health-and-justice.pdf](https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacy_url/455/reproductive-health-and-justice.pdf).

Lutheran Church, and the United Church of Christ have all noted the diverse range of religious views on this question in declining to take a position on when human life begins.<sup>3</sup>

The Church of Jesus Christ of Latter-Day Saints (the “LDS Church”) also has never taken an official position on when a fetus becomes a person.<sup>4</sup>

Catholic teachings on this question have also varied dramatically.<sup>5</sup> At various points in time, Catholic scholars and the Catholic Church have espoused the view that “ensoulment” occurs 40 to 80 days after conception<sup>6</sup>; at the time of quickening, *i.e.*, when the fetus first moves inside the womb, usually around 18 weeks of gestation<sup>7</sup>; at or near the

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<sup>3</sup> See Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>; Evangelical Lutheran Church in America, *Social Statement on Abortion* at 1, 3 n.2 (1991), <http://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf>; United Church of Christ, *Statement on Reproductive Health and Justice*, *supra* note 2.

<sup>4</sup> Peggy Fletcher-Stack, *Surprise! The LDS Church can be seen as more ‘pro-choice’ than ‘pro-life’ on abortion. Here’s why*, SALT LAKE TRIB. (June 1, 2019), <https://www.sltrib.com/religion/2019/06/01/surprise-lds-church-can/>; see also Park Ridge Ctr., *The Latter-day Saints Tradition: Religious Beliefs and Healthcare Decisions* at 10 (Deborah Abbott ed., 2002), [https://www.advocatehealth.com/assets/documents/faith/latter-day\\_saints\\_tradition.pdf](https://www.advocatehealth.com/assets/documents/faith/latter-day_saints_tradition.pdf).

<sup>5</sup> See Vatican Sacred Congregation for the Doctrine of the Faith, *Declaration on Procured Abortion*, at n.19 (Nov. 18, 1974), [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19741118\\_declaration-abortion\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html).

<sup>6</sup> See Anne Stensvold, *A History of Pregnancy in Christianity: From Original Sin to Contemporary Abortion Debates* 45-46 (2015) (hereinafter “Stensvold, *A History of Pregnancy in Christianity*”).

<sup>7</sup> *Id.* at 70; Frank K. Flinn, *Encyclopedia of Catholicism* 4-5 (2007); Elissa Strauss, *When Does Life Begin? It’s Not So Simple*, Slate (Apr. 4, 2017), <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html> (hereinafter “Strauss, *When Does Life Begin?*”).

time of childbirth<sup>8</sup>; or at some moment during fetal development that is impossible to pinpoint.<sup>9</sup>

In the Jewish tradition, the creation of a human life is generally viewed as something that happens gradually over time.<sup>10</sup> Jewish “tradition holds that we enter life in stages and leave in stages.”<sup>11</sup> The Talmud teaches that the fetus is “mere fluid” up to the point of 40 days of gestation, *see* Talmud Yevamot 69b,<sup>12</sup> and “[f]ollowing this period, the fetus is considered a physical part of the pregnant individual’s body,” *see* Talmud Gittin 23b, “not yet having a life of its own or independent rights.”<sup>13</sup> It is not until the moment of birth when the head has emerged and the baby has breathed outside air that it is considered a living being, *see* Mishnah Ohalot 7:6.<sup>14</sup>

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<sup>8</sup> St. Thomas Aquinas, *Summa Contra Gentiles* 2.88-89; St. Thomas Aquinas, *Summa Theologiae* 1.118; *see also* Garry Wills, *Abortion Isn’t a Religious Issue*, L.A. Times (Nov. 4, 2007), <https://www.latimes.com/la-op-wills4nov04-story.html>.

<sup>9</sup> Strauss, *When Does Life Begin?* (“[T]he Catholic Church has never dogmatically defined when life begins,” but rather, “there is a recognition that there is unfolding developmental potential in embryo, from unification between sperm and egg to birth. There is no defined moment of ensoulment.” (quoting Daniel Sulmasy, a Catholic bioethicist and director of the Program on Medicine and Religion at the University of Chicago)); *see also* *Roe v. Wade*, 410 U.S. 113, 133 n.22 (1973) (citing Augustine, *De Origine Animae* 4.4, discussing history of theological debates over the beginning of human life), *overruled by Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

<sup>10</sup> *See* Strauss, *When Does Life Begin?*.

<sup>11</sup> *See id.* (quoting Rabbi Elliot Dorff, bioethicist and professor of Jewish theology at the American Jewish University in California); *see also* Nat’l Council of Jewish Women, *Abortion and Jewish Values Toolkit* at 16 (2020), [https://www.ncjw.org/wp-content/uploads/2020/05/NCJW\\_ReproductiveGuide\\_Final.pdf](https://www.ncjw.org/wp-content/uploads/2020/05/NCJW_ReproductiveGuide_Final.pdf) (hereinafter, “NCJW, *Abortion and Jewish Values*”).

<sup>12</sup> Rabbi Danya Ruttenberg, *The Torah of Reproductive Justice*, <https://www.sefaria.org/sheets/234926.8?lang=bi> (hereinafter “*Torah of Reproductive Justice*”). Note that this is understood as 40 days from *conception*, or approximately 7-8 weeks’ gestation. *Id.*

<sup>13</sup> NCJW, *Abortion and Jewish Values* at 16; *see also* *Torah of Reproductive Justice*.

<sup>14</sup> *See* NCJW, *Abortion and Jewish Values* at 16; Strauss, *When Does Life Begin?*; *Torah of Reproductive Justice* (quoting Rashi on Sanhedrin 72b:14).

Other faiths similarly vary in their views on when life begins. For example, “[a]mong Muslims, there is no universally agreed-upon moment when a fetus becomes a person.”<sup>15</sup> The predominant Islamic view is that a fetus acquires personhood 120 days from conception, *i.e.*, at approximately 19-20 weeks of gestation.<sup>16</sup>

The Bans are at odds with, and fail to account for, the wide range of religious views and traditions on when human life begins. The Bans instead adopt a view endorsed by some, but certainly not all, religious traditions, that life begins at conception. As the Circuit Court observed in this case, the “General Assembly is not permitted to single out and endorse the doctrine of a favored faith for preferred treatment.” TI Order at 16. But the Bans do precisely that. Forcing Kentuckians to carry pregnancies to term in contravention of their own sincerely held religious beliefs violates fundamental liberty interests—including freedom from “control or interfere[nce] with the rights of conscience”—that are guaranteed by the Kentucky Constitution. Ky. Const. § 5.

## **II. Religious Traditions Affirm Individuals’ Moral Rights to Decide Whether and Under What Circumstances to Terminate a Pregnancy**

A broad range of religious traditions recognize the moral right of individuals to make their own decisions about pregnancy in accordance with their conscience and faith.

Numerous Protestant denominations expressly affirm that every pregnant person is a moral agent with both the capacity and the ultimate right to determine whether an abortion is justified. For instance, the United Church of Christ embraces the view that “[e]very

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<sup>15</sup> Strauss, *When Does Life Begin?*

<sup>16</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); *see also* Strauss, *When Does Life Begin?*

woman must have the freedom of choice to follow her personal religious and moral convictions concerning the completion or termination of her pregnancy.”<sup>17</sup> Similarly, the Presbyterian Church asserts that “[h]umans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a pregnancy.”<sup>18</sup> The Episcopal Church of America has adopted the position that the “decision to terminate a pregnancy . . . properly belongs to the couple, in consultation with their physician and the Church.”<sup>19</sup> The Disciples of Christ has resolved that “the place of decision making on abortion [is] not with public legislators, but with the individuals involved with the pregnancy . . . on the basis of ethical and moral grounds.”<sup>20</sup> And the Unitarian Universalist Association asserts that “the personal right to choose in regard to contraception and abortion” is an important aspect of the “right of individual conscience” and the “inherent worth and dignity of every person.”<sup>21</sup> Many other denominations embrace similar views.<sup>22</sup>

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<sup>17</sup> Thirteenth General Synod of the United Church of Christ, *Resolution on Freedom of Choice*, 81-GS-60 (1981) at 10, available at <https://www.uccfiles.com/pdf/GS-Resolutions-Freedom-of-Choice.pdf>.

<sup>18</sup> Minutes of the 217th General Assembly of the Presbyterian Church (U.S.A.) at 905 (2006).

<sup>19</sup> Episcopal Church, *Standing Commission on Human Affairs and Health*, Resolution #A087 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>20</sup> Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. on Labor and Human Resources, 101st Cong. 237 (1990) (testimony of John O. Humbert, General Minister and President, Christian Church (Disciples of Christ) in the USA and Canada) (citing General Assembly Resolutions of the Christian Church (Disciples of Christ) Resolution 8954 (1989) and 7524 (1975)).

<sup>21</sup> Unitarian Universalist Ass’n, *General Resolution on the Right to Choose* (1987), available at <https://www.uua.org/action/statements/right-choose>.

<sup>22</sup> See, e.g., Am. Baptist Ass’n, *Resolution Concerning Abortion and Ministry in the Local Church* (1987), available at <http://www.abc-usa.org/wp-content/uploads/2012/06/Abortion-and-Ministry-in-the-Local-Church.pdf>; Brief of Amici Curiae Religious Coalition for Reproductive Choice, et al., in Support of Respondent, *Stenberg v. Carhart*, No. 99-380 (Mar. 29, 2000) (describing views of American Friends Service Committee affirming “a woman’s right to follow her own conscience concerning

In addition, a number of Protestant denominations teach that the decision to terminate a pregnancy can be a morally permissible choice consistent with Christian ethics, and that the law should not preclude a pregnant person from making the ultimate determination to obtain an abortion in accordance with their faith. For instance, the Presbyterian Church affirms that “[t]he considered decision of a woman to terminate a pregnancy can be morally acceptable,” and “therefore should not be restricted by law.”<sup>23</sup> The Evangelical Lutheran Church in America affirms that “there can be sound reasons for ending a pregnancy through induced abortion,” and that there are situations where obtaining an abortion may be a “morally responsible” choice.<sup>24</sup> The General Board of American Baptist Churches recognizes that many American Baptists believe that abortion “can be a morally acceptable action,” and “advocate for and support . . . legalized abortion as in the best interest of women in particular and society in general.”<sup>25</sup> The Episcopal Church of America recognizes “the moral option for termination of [a] pregnancy in specific instances” and expresses a “deep conviction” that any legislation surrounding abortion

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child-bearing, abortion, and sterilization”); Metro. Cmty. Churches, *Statement of Faith on Women’s Reproductive Health, Rights, and Justice* (Mar. 20, 2013), available at <https://web.archive.org/web/20210505115505/https://www.mcccchurch.org/statement-of-faith-on-womens-reproductive-health-rights-and-justice/> (affirming “that all people are entitled to the rights and resources that equip them to make their own decisions about their bodies . . . and their well-being, including the inalienable right of women to control their bodies”).

<sup>23</sup> Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, *supra* note 3.

<sup>24</sup> Evangelical Lutheran Church in America, *Social Statement on Abortion*, *supra* note 3, at 6-7.

<sup>25</sup> Am. Baptist Ass’n, *Resolution Concerning Abortion and Ministry in the Local Church*, *supra* note 22, at 1; *see also* Alliance of Baptists, *A Statement on Lifelong Sexual Education, Sexual & Reproductive Rights, and Opposing Sexual Justice and Violence* (2012), available at

<https://web.archive.org/web/20210115142453/https://allianceofbaptists.org/assets/uploads/congregations/LifelongSexualEducation2012.pdf>.



“must take special care to see that individual conscience is respected,”<sup>26</sup> and must not “abridge[] the right of a woman to reach an informed decision about the termination of pregnancy” or limit her access “to safe means of acting on her decision.”<sup>27</sup> Other Protestant denominations espouse similar views.<sup>28</sup>

There are also diverse views within the Catholic Church on the moral propriety of obtaining an abortion. While the official stance of the Catholic Church is that abortion is impermissible,<sup>29</sup> the majority of American Catholics believe that abortion can be a morally acceptable choice,<sup>30</sup> and that abortion should be legal in all or most cases.<sup>31</sup>

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<sup>26</sup> Episcopal Church, *Standing Commission on Human Affairs and Health*, *supra* note 19, at 153.

<sup>27</sup> General Convention, *Journal of the General Convention of...The Episcopal Church*, Indianapolis, 1994 (New York: General Convention, 1995), pp. 323-25, available at [https://www.episcopalarchives.org/cgi-bin/acts/acts\\_generate\\_pdf.pl?resolution=1994-A054](https://www.episcopalarchives.org/cgi-bin/acts/acts_generate_pdf.pl?resolution=1994-A054).

<sup>28</sup> See Thirteenth General Synod of the United Church of Christ, *Resolution on Freedom of Choice*, *supra* note 17; Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. On Labor and Human Resources, 101st Cong. 237, *supra* note 20.

<sup>29</sup> Vatican Congregation for the Doctrine of the Faith, *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation*, available at [https://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_19870222\\_respect-for-human-life\\_en.html](https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19870222_respect-for-human-life_en.html).

<sup>30</sup> Belden Russonello Strategists, *2016 Survey of Catholic Likely Voters*, at 5 (Oct. 2016), available at <https://web.archive.org/web/20220121203457/http://www.rifuture.org/wp-content/uploads/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>31</sup> Dalia Fahmy, *8 Key Findings about Catholics and Abortion*, Pew Research Ctr. (Oct. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/10/20/8-key-findings-about-catholics-and-abortion/> (finding 56% of Catholics believe abortions should be legal in all or most circumstances), *see also* Pew Research Ctr., *U.S. Public Continues to Favor Legal Abortion, Oppose Overturning Roe v. Wade* (Aug. 29, 2019), <https://www.pewresearch.org/politics/2019/08/29/u-s-public-continues-to-favor-legal-abortion-oppose-overturning-roe-v-wade/>.

Traditional Jewish teachings view abortion as permissible and even required when necessary to safeguard the well-being of the pregnant person. *See* Mishnah Ohalot 7:6.<sup>32</sup> Reform, Reconstructionist, and Conservative Judaism all adopt the view that “women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion.”<sup>33</sup> Moreover, hundreds of Jewish leaders have reaffirmed the importance of ensuring access to reproductive healthcare, including abortion, as an essential matter of religious freedom.<sup>34</sup>

Other major religions likewise teach that abortion is both permissible and moral under certain circumstances, and affirm that it is an individual’s decision whether to terminate a pregnancy, consistent with their faith and values.<sup>35</sup> For instance, many schools of Islamic thought permit abortion, under certain circumstances, at any point up to 120 days

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<sup>32</sup> *See* Strauss, *When Does Life Begin?*; NCJW, *Abortion and Jewish Values* at 16; *Torah of Reproductive Justice* (Rashi on Sanhedrin 72b:14).

<sup>33</sup> 144 Cong. Rec. S10491 (daily ed. Sept. 17, 1998) (quoting Letter of 729 Rabbis in Support of President Clinton’s Veto of H.R. 1122 (Sept. 10, 1998)); *see also* Religious Action Ctr. of Reform Judaism, *Reproductive Health and Rights*, <https://rac.org/issues/reproductive-health-and-rights> (“The Reform Movement’s positions on reproductive rights are grounded in the core belief that each person should have agency and autonomy over their own bodies.”).

<sup>34</sup> Letter of Jewish Clergy Leaders to the Senate Committee on the Judiciary, dated July 16, 2021, available at <https://www.ncjw.org/wp-content/uploads/2021/07/06-16-2021-Jewish-Clergy-Leaders-WHPA-Letter-FINAL-1.pdf>.

<sup>35</sup> *See, e.g.*, Mohammad A. Albar, *Induced Abortion From An Islamic Perspective: Is It Criminal Or Just Elective*, 8 J. FAM. CMTY. MED. 25, 29-32 (2001); Strauss, *When Does Life Begin?*; Buddhist Churches of America Social Issues Committee, *A Shin Buddhist Stance on Abortion* at 6, *Buddhist Peace Fellowship Newsletter* 6 (1984); *Hindus in America Speak Out On Abortion Issues*, *Hinduism Today*, (Sept. 1985), <https://www.hinduismtoday.com/magazine/september-1985/1985-09-hindus-in-america-speak-out-on-abortion-issues/>.

from conception, or approximately 19-20 weeks of gestation.<sup>36</sup> And majorities of Buddhists and Hindus in the United States believe that abortion should be legal in all or most cases.<sup>37</sup>

The view adopted by the Bans—that human life begins at fertilization—is consonant with certain religious traditions. But as the Circuit Court recognized, that view is at odds with the teachings of many other faiths. *See* TI Order at 15-16. By using a particular, faith-based view as the predicate for a sweeping prohibition on virtually all abortions, the Bans effectively impose one set of religious beliefs on all Kentuckians. The Bans trample on other faiths’ teachings on when life begins, and they curtail the ability of Kentuckians to follow their own conscience and faith in deciding whether to terminate a pregnancy. In doing so, the Bans offend the values of religious pluralism and religious freedom that are enshrined in the Kentucky Constitution, Ky. Const. §§ 1, 5, and embraced by the faith traditions that *amici* represent.<sup>38</sup>

### **III. Religious Traditions Affirm the Importance of Ensuring Reproductive Choice for Pregnant Persons in Marginalized Communities**

Many religious traditions embrace the importance of serving and supporting vulnerable and marginalized communities. Many of these traditions teach that people of

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<sup>36</sup> Albar, *supra* note 35; *see also* Strauss, *When Does Life Begin?*.

<sup>37</sup> Pew Research Ctr., *2014 Religious Landscape Study* at 110, 197, available at <https://www.pewresearch.org/religion/about-the-religious-landscape-study/>.

<sup>38</sup> *See, e.g.*, Catholics for Choice, *Religious Freedom*, available at <https://www.catholicsforchoice.org/issues/religious-freedom/> (“As Catholics, we respect the separation of church and state and value religious pluralism.”); Religious Coal. for Reproductive Choice, *Mission Statement*, available at <https://rerc.org/mission-statement/> (Religious Coalition for Reproductive Choice “values and promotes religious liberty which upholds the . . . rights of all people to exercise their conscience to make their own reproductive health decisions without shame and stigma.”); Nat’l Council of Jewish Women, *Vision for America* at 5 (2018) available at [https://www.ncjw.org/wp-content/uploads/2018/11/Vision-for-America\\_ONLINE.pdf](https://www.ncjw.org/wp-content/uploads/2018/11/Vision-for-America_ONLINE.pdf) (“For NCJW, protecting an individual’s ability to make their own health care decisions in accordance with their needs and personal beliefs is tied to religious freedom.”).

faith have a moral obligation to protect, succor, uplift, and advocate on behalf of poor and low-income persons and those who have historically been disenfranchised or have been victims of discrimination. And numerous religions expressly affirm that this charge includes ensuring that individuals from these communities have access to healthcare, including abortion, and the freedom to make decisions concerning their reproductive health.

For example, the United Church of Christ has adopted resolutions supporting measures to ensure that “women with limited financial means” are able to “exercise [their] legal right to the full range of reproductive health services.”<sup>39</sup> Similarly, the Unitarian Universalist Association has affirmed the importance of supporting “everyone’s freedom of reproductive choice . . . especially the most vulnerable and marginalized,”<sup>40</sup> and has condemned attempts “to restrict access to birth control and abortion by overriding individual decisions of conscience” which “often result in depriving poor women of their right to medical care.”<sup>41</sup> In addition, some Catholics believe that protecting the rights of poor and vulnerable individuals to end their pregnancies is a natural and necessary outgrowth of core principles of Catholic social justice.<sup>42</sup> And many believers from the Jewish tradition expressly link the Jewish teaching of *tzedek tzedek tirdof*—*i.e.*, to pursue

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<sup>39</sup> United Church of Christ, *Statement on Reproductive Health and Justice*, *supra* note 2.

<sup>40</sup> Unitarian Universalist Ass’n, *Reproductive Justice 2015 Statement of Conscience*, <https://www.uua.org/action/statements/reproductive-justice>.

<sup>41</sup> Unitarian Universalist Ass’n, *General Resolution on the Right to Choose* (1987), *supra* note 21.

<sup>42</sup> Catholics for Choice, *Social Justice*, <https://www.catholicsforchoice.org/issues/social-justice/> (“Catholic social justice doctrine teaches that caring for the poor and marginalized should be our first priority. Ideological battles about abortion and contraception access always inflict disproportionate harm on the economically disadvantaged, the powerless, and people of color.”).

justice for all—to the obligation to advocate for the reproductive rights of *all* persons as a matter integral to religious liberty, so that individuals may make their own moral or faith-based decisions about their bodies, health, families, and futures.<sup>43</sup>

If the Bans were to remain in effect, they would have a particularly devastating impact on vulnerable and low-income communities. The majority of abortion patients nationwide are either poor or low-income,<sup>44</sup> and Kentucky has one of the highest poverty rates in the country.<sup>45</sup> Moreover, Kentucky’s maternal mortality rate “is significantly higher than the national rate,”<sup>46</sup> and “[w]hile Black individuals comprise only 8% of the total population of the state, they are disproportionately impacted by maternal mortality with a rate more than double that of White Kentuckians.”<sup>47</sup> In addition, the Bans leave poorer Kentuckians seeking abortion care with little recourse if their only option is to travel to another state when they cannot afford to do so.<sup>48</sup> The Bans thus place a disproportionate burden on the most vulnerable Kentuckians, and effectively deny them the freedom to make decisions about their reproductive health and family formation in accordance with their own religious and spiritual beliefs.

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<sup>43</sup> See NCJW, *Abortion and Jewish Values* at 13-14.

<sup>44</sup> See Guttmacher Inst., *Fact Sheet: Induced Abortion in the United States*, at 1 (2019), [https://www.guttmacher.org/sites/default/files/factsheet/fb\\_induced\\_abortion.pdf](https://www.guttmacher.org/sites/default/files/factsheet/fb_induced_abortion.pdf).

<sup>45</sup> Andrew DePietro, *U.S. Poverty Rate By State In 2021*, FORBES (Nov. 4, 2021), <https://www.forbes.com/sites/andrewdepietro/2021/11/04/us-poverty-rate-by-state-in-2021/?sh=7817ea271b38>.

<sup>46</sup> Melissa Eggen, Noemi Stanev, & Liza Creel, *Issue Brief: Maternal Mortality in Kentucky*, Commonwealth Inst. of Ky. Univ. of Louisville, at 3 (Feb. 2022), <https://louisville.edu/sphis/departments/cik/docs-and-pdfs-1/Maternal%20Mortality%20in%20KY%20Issue%20Brief%20CIK>.

<sup>47</sup> *Id.* at 4.

<sup>48</sup> See Ashley Spalding & Dustin Pugel, *The Economic Implications of an Abortion Ban in Kentucky*, Ky. Ctr. for Econ. Policy (July 6, 2022), <https://kypolicy.org/the-economic-implications-of-an-abortion-ban-in-kentucky/>.

**CONCLUSION**

The Bans are an affront to Kentuckians’ ability to make deeply personal decisions about pregnancy and reproductive health consistent with their conscience and religious faiths. This Court should affirm the Circuit Court’s temporary injunction and vacate the Court of Appeals’ stay of that injunction.

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Respectfully submitted,

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