

No. 19-1392

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

Thomas E. Dobbs, State Health Officer of the
Mississippi DEPARTMENT OF Health, et Al., Petitioners

THOMAS E. DOBBS, STAT
V.
JACKSON WOMEN'S HEALTH ORGANIZATION, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

**MOTION FOR LEAVE TO FILE BRIEF FOR
ERA-NC ALLIANCE AS AMICI CURIAE IN
SUPPORT OF RESPONDENTS**

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A statewide North Carolina 501(c)(4) corporation, the purpose of which includes advocating for the ratification of the federal Equal Rights Amendment by North Carolina, and to reach that goal it collaborates and has been involved nationally with issues regarding the ERA, ERA-NC Alliance respectfully moves pursuant to SUP. CT. R. 37.2(a) for leave to file a brief as *amicus curiae* in support of the Respondents and for the Court to call for ERA-NC Alliance to file an *amicus curiae* brief in response to the extraordinary circumstances which have arisen. Since the deadlines for filing for briefs have passed, ERA-NC Alliance, has concurrently filed an Amended Motion for Extension of Time to File its Brief as *Amicus Curiae*, pursuant to SUP. CT. R. 30.4 (2019), with the Clerk and incorporates it herein by reference, (copy attached as Exhibit A). The ERA-NC Alliance has not attached its brief as it awaits for the Court to grant such an extension and to call for a response by way of its *amicus curiae* brief.

Per SUP. CT. R. 37.3(a), both Petitioners and Respondents have consented to the filing of any *amicus curiae* brief in support

of either party or of neither party, and the Petitioner added “at any stage of the proceedings.”

There are extraordinary circumstances that should compel this Honorable Court to grant leave to and to invite the ERA-NC Alliance to file their *amicus curiae* brief, and to allow thirty days after said invitation for the *amicus curiae* brief to be filed. Said circumstances are as follows:

SUP. CT. R. 37.1 states: “An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court.”

The deadlines for filing briefs have passed and oral arguments were held December 1, 2021, but the Equal Rights Amendment (“ERA”)¹ was not effective before that date. Per U.S. CONST. art. V, the ERA legally became the 28th

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The Equal Rights Amendment states:
"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
"SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
"SEC. 3. **This amendment shall take effect two years after the date of ratification.**" [Emphasis supplied].

Amendment (aka “ERA”) to the U.S. Constitution, U.S. CONST. AMEND, XXVIII, on January 27, 2020 (“Date of Ratification”) when the last necessary state, the Commonwealth of Virginia, ratified the ERA. *Dillon v. Gloss*, 256 U.S. 368, 376 (1921). Yet by its own terms, U.S. CONST. amend. XXVIII, § 3, the ERA did not take effect until two years after the Date of Ratification; thus, it was not effective until January 27, 2022.²

The proposed majority opinion by Justice Samuel Alito was leaked and released to the public on May 2, 2022, in which the Justice Alito wrote that *Roe v. Wade*, 410 U. S. 113 (1973) and *Planned Parenthood v. Casey*, 505 U. S. 833 (1992) were overruled because, “... no such right to abortion is implicitly protected by any constitutional provision...” *Thomas E. Dobbs, et al., v. Jackson Women’s Health Organization, et al.*,

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See Generally, Michele Honora Thorne, *A New Era for the ERA? Our 28th Amendment to the U.S. Constitution*, 36 CBA Rec. 31 (May-June 2022) (explains why the ERA’s deadline is unconstitutional, hence void *ab initio*, and by the alleged rescissions from certain states are ineffective and not constitutionally permissible).

___ U.S.___, (20__) (leaked draft majority opinion, at 5, February 10, 2022) (“Leaked Opinion”).

This Leaked Opinion put ERA-NC Alliance on notice that, since the ERA is the 28th Amendment and became effective on January 27, 2022, that statement is in error. However, ERA-NC Alliance has not had sufficient time to prepare a brief to accompany this Motion because it has only known about the Leaked Opinion for thirteen (13) days.

Upon information and belief, neither the parties, nor the *amici curiae*, fully briefed the issues in the instant case, as they are effected by the ERA. Consideration of the ERA is critical to a proper outcome in the instant case.

Justice Alito and approximately four other Justices of the Supreme Court are “textualists.” In U.S. CONST. amend. XXVIII, §1. (unpublished), the ERA’s text states: **“Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.”** The Mississippi law’s 15-week ban on abortion is a violation of the actual text of the ERA, because Mississippi has discriminated

against women and girls on account of, ie., the basis of, sex because, it is axiomatic that the ability to get pregnant is a sex-based trait, and because Mississippi does not regulate the equivalent axiomatic sex-based trait of men and boys, the ability to emit sperm. There is no Mississippi law mandating vasectomies for men or boys, which would be regulating their reproductive choices.

Further, the ERA does implicitly protect women's Reproductive Choices, which include, but are not limited to, abortion. The ERA moreover provides a **fundamental right** for women's Reproductive Choices because, the ability of a woman to control her reproduction is a necessary element of her ability to be a full and equal citizen, which is the intent and the requirement of the ERA. The Supreme Court has ruled that "What is reasonably implied is as much a part of [the Constitution] as what is expressed." *Dillon*, at 373 (internal citations omitted).

Further, the reasons why the ERA is a textual basis for a Fundamental Right to Reproductive Rights, is historically

women have been discriminated against because only women can become pregnant and give birth — that ability to become pregnant is a sex-based trait. “The ability to decide whether and when to have children is a fundamental aspect of being treated as an equal, respected, and participating member of our democracy. Women must be free to exercise this fundamental freedom on equal terms...,” which was well-stated in the BRIEF FOR LGBTQ ORGANIZATIONS AND ADVOCATES AS AMICI CURIAE IN SUPPORT OF RESPONDENTS, at 19, filed in the instant case.³ The Supreme Court recognized this fact in *Planned Parenthood v. Casey*, “The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.” *Id.* at 30 (citing *Casey*, 505 U.S. 833, 856 (1992)).

Also, in oral argument, the attorney for Respondents referred the Supreme Court to the BRIEF OF AMICI CURIAE

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https://www.supremecourt.gov/docketpdf/19/19-1392/193042/20210920162554202_petition.pdf (accessed 05/15/2022).

ECONOMISTS IN SUPPORT OF RESPONDENTS,⁴ filed in the instant case, in which they cited statistical studies showing causal links between legalized abortion and women moving more towards equality in multiple spheres. “[A]bortion legalization has had a significant [positive] impact on women’s wages and educational attainment....” *Id.* at 11. It increased the likelihood that girls who had accessed abortion, were more likely to graduate from high school and from college, and that they entered professional occupations. *Id.* at 3, 11, and 13. It also reduced teen motherhood by 34% and teen marriage by 20%. *Id.* at 3. Even with the greater availability of contraception, legalized abortion is still “necessary to women’s equal and full participation in society.” *Id.* at 16.

Thus, the proposed majority opinion is in error, and the Court must consider the entire Constitution, which legally includes the 28th Amendment, the ERA, which has been effective since January 27, 2022. U.S. CONST. amend. XXVIII.

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https://www.supremecourt.gov/docketpdf/19/19-1392/193084/20210920175559884_19-1392bsaceconomists.pdf (accessed 05-15-2022).

Based on the foregoing, ERA-NC Alliance respectfully prays for this Honorable Court to call for a response, by way of an *amicus curiae* brief, and grant it leave to submit an *Amicus Curiae* brief in support of Respondents.

Respectfully submitted,



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Dated: May 16, 2022

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record by the ECF filing system.

Dated: May 16, 2022



Arlaine Rockey, Esq.
Counsel of Record for Proposed Amicus Curiae

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing **MOTION FOR LEAVE TO FILE BRIEF FOR ERA-NC ALLIANCE AS AMICI CURIAE IN SUPPORT OF RESPONDENTS** complies with the type-volume limitation, and according to the word-processing system used, the word count is 1450.



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EXHIBIT A



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16 May 2022

By Electronic Filing

Honorable Scott S. Harris
Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, D.C. 20543

RE: ***Thomas E. Dobbs, et al., v. Jackson Women's Health Organization, et al.***
No. 19-1392

**AMENDED MOTION FOR EXTENSION OF TIME AND MOTION FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF WITH REFERENCE TO THE
28TH AMENDMENT, THE EQUAL RIGHTS AMENDMENT, AS A
TEXTUAL BASIS FOR REPRODUCTIVE RIGHTS AND TO PROVE
SEX-BASED DISCRIMINATION, IN SUPPORT OF RESPONDENTS**

Dear Mr. Harris:

Attorney Gina Collias, Esq. and I represent the proposed *Amicus Curiae*, ERA-NC Alliance, in the above-captioned case. I write to respectfully move for and request an extension of time, for preferably thirty (30) days from the date of an order granting such extension, and, in addition to a Motion for Leave to File an *Amicus Curiae* Brief, incorporated herein as if fully set forth, state the reasons why this requested Extension and also the Motion for Leave to File an *Amicus Curiae* Brief should be granted considering the extraordinary circumstances set forth.

ERA-NC Alliance is a statewide North Carolina 501(c)(4) corporation, located in Winston-Salem, North Carolina, the purpose of which includes includes advocating for the ratification of the federal Equal Rights Amendment by North Carolina, and to reach that goal it collaborates and has been involved nationally with issues regarding the ERA.

Per SUP. CT. R. 37.3(a), both the Petitioners and the Respondents have consented to the filing of any amicus curiae brief in support of either party or of neither party and the Petitioner

added “at any stage of the proceedings.”

The proposed Amicus Curiae provide the following reasons for its request to be allowed an extension of time, pursuant to SUP. CT. R. 30.4 (2019), and include the Motion for Leave to File *Amicus Curiae* Brief filed separately, which is incorporated herein as if fully set forth. In short, the reason for the extension is necessary and appropriate is:

1. The deadlines for filing the briefs have passed and the oral arguments were held on December 1, 2021, but the Equal Rights Amendment (“ERA”) was not effective before that date. Per U.S. CONST. art. V, the ERA legally became the 28th Amendment (aka “ERA”) to the U.S. Constitution, U.S. CONST. AMEND, XXVIII, on January 27, 2020 (“Ratification Date”) when the last necessary state, the Commonwealth of Virginia, ratified the ERA. *Dillon v. Gloss*, 256 U.S. 368, 376 (1921). Yet by its own terms, U.S. CONST. amend. XXVIII, § 3, the ERA did not take effect until two years after the Ratification Date, meaning that it was not able to be used until January 27, 2022;
2. The proposed majority opinion by Justice Samuel Alito was leaked and released to the public on or about May 2, 2022, in which the Justice Alito wrote that *Roe* and *Casey* were wrongly decided and were overruled because, “... no such right to abortion is implicitly protected by any constitutional provision...” *Thomas E. Dobbs, et al., v. Jackson Women’s Health Organization, et al.*, ___ U.S. ___, (20 __) (leaked draft majority opinion, at 5, February 10, 2022) (“leaked opinion”).
 - a. This leaked opinion put the ERA-NC Alliance on notice that since the ERA is the 28th Amendment and became effective on January 27, 2022, that statement is in error;
 - b. Upon information and belief, neither the parties, nor the amicus briefs, fully briefed the issues in the instant case, as they are effected by the ERA. The ERA is critical to a proper outcome in the instant case;
 - c. In SUP. CT. R. 37.1 (2019), it states: “**An amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court.**” [Emphasis supplied];
3. Upon information and belief, Justice Alito and approximately four other Justices of the Supreme Court are “textualists.” In U.S. CONST. amend. XXVIII, §1. (unpublished), the ERA’s text states: “**Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.**”

- a. The Mississippi law’s 15-week ban on abortion is a violation of the actual text of the ERA, because Mississippi has discriminated against women and girls on the basis of sex because, it is axiomatic that the ability to get pregnant is a sex-based trait, and because Mississippi does not regulate the equivalent axiomatic sex-based trait of men and boys, the ability to emit sperm. There is no Mississippi law mandating vasectomies men or boys, which would be regulating their reproductive choices, yet the Mississippi law does regulate the reproductive choices of women and girls.
- b. Further, the ERA does implicitly protect women’s Reproductive Choices, which includes, but is not limited to, abortion and contraception. The ERA moreover provides a fundamental right for women’s Reproductive Choice, in short because, the ability of a woman to control her reproduction is a necessary element of her ability to be an equal citizen, which is the intent and the requirement of the ERA. The Supreme Court has ruled that “What is reasonably implied is as much a part of [the Constitution] as what is expressed.” *Dillon*, at 373 (internal citations set out at footnote 2a omitted) (“What is reasonably implied is as much a part of [the Constitution] as what is expressed.” More will be said about the ERA as a basis for this fundamental right in the Motion for Leave to File an Amicus Brief.

3. Thus, the proposed majority opinion is in error, and the Court must consider the entire Constitution, which legally includes the 28th Amendment, the ERA, as it is has been effective as of January 27, 2022. U.S. CONST. amend. XXVIII.

Wherefore, the ERA-NC Alliance respectfully seeks an extension of time to file an *Amicus Curiae* brief in support of the Respondents.

Thank you for your consideration.

Respectfully submitted,



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Dated: May 16, 2022



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