No. 24-437

IN THE

Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF OF AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS & GYNECOLOGISTS, CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS, CATHOLIC MEDICAL ASSOCIATION, NATIONAL ASSOCIATION OF CATHOLIC NURSES USA, AND HUMAN COALITION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

JOHN J. BURSCH
ERIN M. HAWLEY
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001
(202) 393-8690

CHRISTOPHER P. SCHANDEVEL
Counsel of Record
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
cschandevel@ADFlegal.org

Counsel for Amici Curiae

[additional counsel listed on inside cover]

CHLOE K. JONES
ALLIANCE DEFENDING
FREEDOM
1000 Hurricane Shoals Rd. NE
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

INTEREST OF AMICI CURIAE[1]

The American Association of Pro-Life Obstetricians & Gynecologists (AAPLOG) is a nonprofit professional medical organization with over 7,000 members who are experts in reproductive healthcare. AAPLOG strives to ensure pregnant women receive quality care and are informed of induced abortion's potential long-term consequences on a woman's health. AAPLOG offers medical professionals and the public an evidence-based understanding of abortion-related health risks, including depression, substance abuse, suicide, and subsequent preterm birth.

The Christian Medical & Dental Associations (CMDA) is a professional association of physicians, dentists, and other healthcare professionals that educates, encourages, and equips Christian healthcare professionals to glorify God by following Christ, serving with excellence and compassion, caring for all people, and advancing biblical principles of healthcare within the Church and throughout the world. CMDA has close to 13,000 members and 365 chapters at medical, dental, optometry, physician-assistant, and undergraduate schools across the country. CMDA also has 871 members in the state of Oklahoma.

The Catholic Medical Association (CMA) is the largest Catholic association of people in healthcare. Its membership includes more than 2,400 physicians, nurses, and physician assistants, including two member guilds and 23 active members in Oklahoma.

---

[1] No counsel for a party authored this brief in whole or in part, and no person other than Amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. Counsel for both parties were timely notified of this brief as required by Supreme Court Rule 37.2.

CMA's mission is to inform, organize, and inspire its members to uphold the Catholic faith in the science and practice of medicine. CMA opposes direct abortion because it violates the Catholic Church's teaching and tradition, respect for the sanctity of life, Judeo-Christian medical ethics, and the best interest of patients. CMA's members are committed to the sanctity of human life, and it would violate their consciences to participate in or refer for direct abortions.[2]

CMA has actively sought conscience protections for its members and other healthcare professionals who might be forced by laws, regulations, or their employers to provide, counsel, or refer for abortions. Many CMA members work at healthcare facilities that receive Title X funds. These members face a substantial risk of harm from the 2021 Rule's strict enforcement. And they face further risk of harm from the Department of Health and Human Services' decision to terminate Oklahoma's Title X funding.

The National Association of Catholic Nurses, USA (NACN-USA) is the national professional organization for Catholic nurses. A nonprofit association of hundreds of nurses with different clinical expertise, NACN-USA focuses on promoting patient advocacy, human dignity, and professional and spiritual development in the integration of faith and health within the Catholic context in nursing.

---

[2] CMA uses the phrase "direct abortions" to exclude medically necessary procedures—like removing the fallopian tube for an ectopic pregnancy—that, while they may unintentionally cause the embryo's death, are not direct attacks on the unborn child but are aimed instead at treating a serious condition that would otherwise be fatal for the woman.

NACN-USA supports the protection of human life from conception to natural death. And it opposes any involvement in direct abortion of any kind. Any such involvement would contradict Roman Catholic teaching and values, including respect for the sanctity of life and the well-being of members' patients.

Human Coalition is a Texas nonprofit 501(c)(3) corporation that serves as a comprehensive care network reaching women facing unexpected pregnancies, rescuing innocent children from abortion, and restoring families to stability. Partnering with state grant programs and private funding, Human Coalition operates specialized women's care clinics and virtual clinics in major cities across the country and employs licensed professional doctors, nurses, and social workers.

Human Coalition has a strong interest in protecting women and their children from abortion while maintaining their employees' conscience rights to serve families in accord with their beliefs that human life begins at conception and deserves protection from abortion.

Together, AAPLOG, CMDA, CMA, NACN-USA, and Human Coalition have a keen interest in ensuring that states and the federal government respect Congress's refusal to use taxpayer dollars to facilitate abortions. And they have the same strong interest in opposing HHS's recent efforts to force Title X recipients to refer for abortions, actions which threaten to strip funding from pro-life healthcare entities and professionals.

SUMMARY OF THE ARGUMENT

The U.S. Department of Health & Human Services stripped Oklahoma of millions of dollars in critical federal funding because the Oklahoma State Department of Health refused to refer patients for abortions. That funding rescission and the 2021 HHS Rule it was based on violate the Weldon Amendment, a critical federal conscience-rights law that prohibits agencies like HHS from discriminating against grantees for refusing to refer for abortions.

The 2021 Rule is also contrary to law because it violates Section 1008 of the Public Health Service Act, which prohibits Title X funds from flowing to programs that treat abortion as a method of family planning. The Tenth Circuit misread this Court's recent decision in *Loper Bright* and erroneously deferred to HHS's interpretation of Section 1008 rather than conduct its own judicial review of the statute's meaning. The best reading of Section 1008 precludes an abortion-referral requirement, and so the Rule must be set aside.

The 2021 Rule and rescindment decision have unlawfully stripped clinics of critical federal funding. And that result discriminates against pro-life entities and providers by denying them millions of dollars in healthcare funding because they cannot in good conscience refer patients for abortions. As a result of HHS's illegal actions, vulnerable Oklahomans risk being deprived of the medical services they need.

This Court should grant Oklahoma's petition to protect Oklahoma and its healthcare professionals from unlawful discrimination and to ensure that all Oklahomans have access to care.

ARGUMENT

I. The Tenth Circuit erroneously concluded that the Weldon Amendment does not apply to HHS's rescindment decision.

A bipartisan Congress first passed the Weldon Amendment as an appropriations rider in 2004 to better protect healthcare providers from government coercion to participate in abortions. Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. F, tit. V, § 508(d)(1), 118 Stat. 2809. Included in every appropriations bill since, the Amendment prohibits funds from the Departments of Health, Labor, and Education from flowing to a government or program that discriminates against "any institutional or individual health care entity" based on the entity's refusal to "provide, pay for, provide coverage of, or refer for abortions." See, *e.g.*, Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. H, tit. V, § 507(d)(1), 136 Stat. 4459, 4908.

Contradicting the Weldon Amendment's clear protections for healthcare providers, HHS issued a final rule in 2021 imposing a universal requirement that grantees receiving Title X federal funding must provide information, counseling, and referrals for abortion. Ensuring Access to Equitable, Affordable, Client-Centered, Quality Family Planning Services, 86 Fed. Reg. 56144–01, 56178–79 (Oct. 7, 2021).

HHS is aware of its obligations under the Weldon Amendment: it conceded in its 2021 Rule that "Congress has passed several laws protecting the conscience rights of providers, particularly in the area of abortion," and that "[u]nder these statutes, objecting providers or Title X grantees are not required to counsel or refer for abortions." *Id.* at 56153.

But despite that concession, the 2021 Rule fails to safeguard federal conscience rights on the front end, stating instead in a footnote that "[p]roviders may separately be covered by federal statutes protecting conscience and/or civil rights." *Id.* at 56178 n.2. And rather than protect those rights in the Rule itself, the preamble says that "providers may avail themselves of existing conscience protections and file complaints with OCR, which will be evaluated on a case-by-case basis as is done with other complaints." *Id.* at 56156. So HHS claims that healthcare professionals *may* be able to obtain some relief—but only after their rights have been violated. The Rule thus gives short shrift to the reality that referring for abortions makes conscientious healthcare professionals complicit in what they view as a gravely immoral procedure.

Courts must "hold unlawful and set aside" any agency action that is "not in accordance with [the] law." 5 U.S.C. 706(2)(A). Indeed, as the 2021 Rule recognizes, "a valid statute always prevails over a conflicting regulation." 86 Fed. Reg. at 56153 (quoting *Nat'l Fam. Plan. & Reprod. Health Ass'n, Inc.* v. *Gonzales*, 468 F.3d 826, 829 (D.C. Cir. 2006)). The 2021 Rule must be set aside because it violates the Weldon Amendment by sanctioning discrimination against grantees like the Oklahoma State Department of Health, "institutional... health care entit[ies]" under the Weldon Amendment, based on their refusal to counsel and refer for abortions. Consolidated Appropriations Act 2022, Pub. L. No. 117-103, div. H, tit. V, § 507(d)(1), 136 Stat. 49, 496. And HHS's rescindment decision violates the Weldon Amendment for the same reason. Oklahoma has shown that it is likely to succeed on the merits of this claim.

A. HHS discriminated against the Oklahoma State Department of Health for its refusal to refer for abortions.

HHS violated the Weldon Amendment when it rescinded Oklahoma's Title X funding. The Weldon Amendment is triggered when a Title X grantee 1) is an "institutional or individual health care entity," and 2) is "subject[ed]" to "discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions." § 507(d)(1), 136 Stat. at 496. Because Oklahoma has shown both, HHS violated the Amendment when it rescinded OSDH's funding.

First, as a threshold matter, OSDH satisfies the Weldon Amendment's definition of a healthcare entity. Congress designed that statutory definition to be broad and inclusive: not only does the Amendment protect "a hospital, a provider-sponsored organization, a health maintenance organization, [or] a health insurance plan," it also protects the catchall category of "*any* other kind of health care facility, organization, or plan." *Id.* at § 507(d)(2) (emphasis added). What's more, the 2021 Rule recognizes the breadth of Congress's chosen definition, stating that the Amendment protects "objecting providers *or* Title X grantees" from being "required to counsel or refer for abortions." 86 Fed. Reg. at 56153 (emphasis added). OSDH is thus doubly protected as both an "objecting provider[]" and a "Title X grantee[]," as HHS itself has conceded. *Ibid.* See App.132a (labeling OSDH a grantee).

The Amendment's broad definition protects state-run health departments like OSDH that depend on Title X funding to offer family-planning health services to under-served Oklahomans. As the State's

petition explains, OSDH distributes Title X funds through its county health departments, which employ medically trained providers such as nurses. Pet. for Cert. 24–25. Those staff members "engage[] in direct patient care at OSDH clinics" where they "see patients and administer health care." App.48a. Thus, OSDH qualifies as "an organization that provides health care, and is an institutional plan with individual medical professionals who provide health care." App.49a. That conclusion is so obvious that the Tenth Circuit saw no need to address it.

Next, HHS discriminated against OSDH because OSDH refused to refer pregnant women for abortions. HHS has repeatedly admitted that the reason it rescinded Oklahoma's funding was its refusal to provide abortion referrals. See, *e.g.*, Br. for Appellees at 1–2, *Oklahoma* v. *HHS*, 107 F.4th 1209 (10th Cir. 2024) (No. 24-6063), 2024 WL 2262266, at *1–2. Despite those admissions, the Tenth Circuit held that the Weldon Amendment did not apply because its "statutory focus" is (allegedly) "on the referring entity's purpose" and referring a pregnant woman interested in abortion to a privately operated national hotline that would provide her information about how to obtain an abortion likely would not be regarded "as a referral for an abortion." App.24a & n.13, App.25a. For the reasons explained below, all of that is wrong.

B. Referring patients to a national hotline is an abortion referral.

For three reasons, the Tenth Circuit wrongly concluded, sua sponte, that referring a pregnant woman to a private national hotline where she can learn where and how to obtain an abortion somehow does not qualify as an abortion referral.

First, the majority redefined what qualifies as an abortion referral. According to the court, whether the call-in number is an abortion referral "depend[s] on the pregnant woman's decision after getting the [] information." App.25a. That is, if she gets an abortion, it would be "a referral for" an abortion, but if she decides not to, it's a referral "against an abortion." *Ibid.* (emphasis omitted). That can't be right. Whether a provider's information to a patient is a referral doesn't depend on the client's after-the-fact decision to obtain the procedure. The information given to the patient—at the time it is given—is still a referral. A healthcare provider doesn't need to wait to check whether the procedure is obtained to know that she referred her patient to another provider.

Second, there is nothing in the Amendment's text to suggest "the statutory focus" is "on the referring entity's purpose rather than" the pregnant woman's. App.24a & n.13. The Amendment simply states that "[n]one of the funds made available in this Act may be made available to a Federal agency or program" if the agency "subjects" an institutional healthcare entity to "discrimination on the basis of" its refusing to "refer for abortions." § 507(d)(1), 136 Stat. at 496. As the dissent below explains, the Amendment's text "says nothing, not even a hint, about the referring entity's purpose." App.51a. Rather, its "focus is on the agency that controls the funds, not the entity that is applying to receive them." *Ibid.* The Amendment's text makes that focus clear: whether the agency has violated the Amendment turns on "the basis of" the agency's discrimination, *not* a "detailed probe as to why an entity does not refer for abortions." App.52a.

Third, HHS itself describes the national hotline as an abortion referral. The Rule states that a referral "may consist of relevant factual information such as a provider's name, address, and telephone number." App.38a (cleaned up). So as HHS explained below, the Rule requires Title X recipients to provide patients "factual information about where" an abortion "can be obtained if the patient wishes." Br. for Appellees at 1, *Oklahoma* v. *HHS*, 107 F.4th 1209 (10th Cir. 2024) (No. 24-6063), 2024 WL 2262266. HHS argued that OSDH could "comply with its counseling and referral obligations by providing nondirective counseling on all pregnancy options by its staff or through the hotline." *Id.* at 9–10 (cleaned up). So when OSDH stopped referring patients to the hotline, HHS informed the State that it was not in compliance "with the Title X regulatory requirements," implying that OSDH *had* been complying with the referral requirement when it previously provided the hotline number to its patients. *Id.* at 10.

By contrast, the majority incorrectly described the hotline as providing only "neutral information," thus disqualifying it from being a "referral for an abortion." App.23a (emphasis omitted). There is nothing neutral about providing a pregnant woman seeking an abortion with information "about abortion and, if [she] requests, where an abortion can be obtained." Br. for Appellees at 19, *Oklahoma* v. *HHS*, 107 F.4th 1209 (10th Cir. 2024) (No. 24-6063), 2024 WL 2262266. Indeed, there is a world of difference between telling a patient what an abortion is and providing her with information about where to go to obtain one. Facilitating an abortion's procural is not merely providing "neutral information."

C. Referring patients to a national hotline violates Amici's conscience rights.

The 2021 Rule ignores the reality that a health-care provider's referral for abortion is formal cooperation with, and facilitation of, the taking of human life. Medical professionals who cannot in good conscience provide abortion referrals seek to honor their Hippocratic Oath, which states that a doctor will not deliberately end a life by abortion or euthanasia and will never even "make a suggestion to this effect." Ludwig Edelstein, *The Hippocratic Oath: Text, Translation, and Interpretation* 3 (1943). Under that Oath, assisting a pregnant woman in her next step in finding and obtaining an abortion would result in a serious conscience violation.

Amici and their members—many of whom provide services in Oklahoma—cannot in good conscience refer patients to the national hotline. Their publicly stated views reflect their moral opposition to being forced to participate in such referrals.

AAPLOG's members "share the view that human life begins at fertilization and that the lives of pre-born children should be protected." *Mission & Vision*, AAPLOG, perma.cc/8JTP-2QE8. Because AAPLOG members believe "the willful destruction of innocent human lives has no place in the practice of medicine," it would conflict with their sincerely held beliefs to refer a patient to the national hotline. *Ibid.*

As practicing Christians, CMDA members cannot be complicit in "anything immoral or wrong based on Biblical principles," and that includes "referral for or assisting in abortion." *Moral Complicity With Evil Position Statement*, CMDA, available for download at cmda.org/policy-issues-home/position-statements/.

CMDA members believe "refer[ring] for a medication or surgical abortion ... is complicit in the act of abortion," which contradicts Biblical teachings on the sanctity of life. *Abortion Position Statement*, CMDA, available for download at cmda.org/policy-issues-home/position-statements/. And referring women to the hotline would qualify as complicity in abortion.

CMA holds that Catholic teaching "demands the reverence and care for all human life, no matter its temporal stage of development." Angela Lanfranchi, *What Catholic Social Teaching Says About the Status of Embryos Part Two*, THE PULSE OF CATHOLIC MED. (July 15, 2024), perma.cc/5YC6-6D5V. So its members would object to referring a pregnant woman to the hotline to obtain information about abortion because doing so would fail to revere life at every stage.

NACN-USA believes that "healthcare professionals must be free to practice their professions in accordance with their professional judgment and ethical beliefs," including "refusing to perform, facilitate, or refer for procedures that they believe will violate their professional judgment and the best interest of their patients." *Fighting for Religious Freedom, Conscience Rights*, NAT'L ASSOC. OF CATHOLIC NURSES USA (Mar. 8, 2023), perma.cc/M3HW-74CX. Because NACN-USA promotes the integration of Roman Catholic doctrine in nursing, it would violate their members' deeply held beliefs to refer patients to the hotline. *About NACN-USA*, NAT'L ASSOC. OF CATHOLIC NURSES USA, perma.cc/H4BV-UK2X.

Finally, Human Coalition "serve[s] the abortion-determined community" by "building a pro-life, holistic, comprehensive care network to help rescue

these women and their children from abortion." *What We Do*, HUMAN COALITION, perma.cc/Y4GR-BMWZ. For that reason, referring for abortions would violate Human Coalition's mission and core beliefs, and its staff inform patients they do not refer for abortions. 5,042, HUMAN COALITION, perma.cc/MMB4-D87Y.

Amici strongly oppose both performing an abortion and being complicit in the facilitation of an evil act. Referring patients to HHS's hotline would severely violate the consciences of Amici and their members by facilitating the taking of human life—life they are morally obligated to respect at all stages.

II. The Tenth Circuit failed to interpret Section 1008, conflicting with *Loper Bright*.

The 2021 Rule is also contrary to law because it conflicts with Title X's text, which provides federal funding "to assist in the establishment and operation of voluntary family planning projects" that "offer a broad range of acceptable and effective family planning methods and services." 42 U.S.C. 300(a). Those funds enable healthcare professionals, like those in Oklahoma, to serve vulnerable populations needing care. And Section 1008 of the Act limits the healthcare projects that can receive funding, specifying that funds may not be "used in programs where abortion is a method of family planning." 42 U.S.C. 300a-6.

The Tenth Circuit erred in deferring to HHS's misreading of Section 1008. Under this Court's recent decision in *Loper Bright*, an agency's regulation must follow the *best* reading of a statute—not merely a permissible one. And far from mandating that Title X grantees refer patients for abortions, the best reading of Section 1008 is that it precludes abortion referrals.

A. The Tenth Circuit misread this Court's directive in *Loper Bright*.

The Tenth Circuit erroneously deferred to HHS's reading of Section 1008, relying solely on *Ohio* v. *Becerra*, 87 F.4th 759, 772 (6th Cir. 2023). There, the Sixth Circuit held that HHS's reading of Section 1008's application to abortion referrals was permissible under *Chevron* step two. App.28a–29a. As the Tenth Circuit recognized, though, that holding rested on *Rust* v. *Sullivan*, 500 U.S. 173 (1991). And in that case, this Court, applying *Chevron*, held that Section 1008 is ambiguous on abortion referrals, so the Court deferred to HHS's reading of the statute. *Id.* at 184. *Rust* was thus "a *Chevron* case down to its bones." *Tennessee* v. *Becerra*, 117 F.4th 348, 370 (6th Cir. 2024) (Kethledge, J., dissenting).

But after this Court's decision in *Loper Bright Enterprises* v. *Raimondo*, 144 S. Ct. 2244 (2024), *Rust* no longer justifies showing deference to HHS's view that Section 1008 allows HHS to require abortion referrals. Quite the opposite, *Rust*'s ambiguity holding proves that the 2021 Rule is "likely unconstitutional as applied here because it imposes an abortion referral condition that is not *unambiguously* required by Title X." Pet. for Cert. 12 (emphasis added).

What's more, *Loper Bright* requires "courts [to] decide legal questions by applying *their own* judgment." 144 S. Ct. at 2261 (emphasis added). And the Tenth Circuit did not follow that instruction here. Instead, it declared in a footnote that reliance on *Rust* was justified because *Loper Bright* "clarified that it was not 'call[ing] into question prior cases that [had] relied on the *Chevron* framework.'" App.29a n.16 (quoting *Loper Bright*, 144 S. Ct. at 2273).

That conclusion misreads this Court's directive in *Loper Bright*. This Court's explanation of the precedential value of prior *Chevron* cases must be read alongside *Loper Bright*'s next sentence: "The holdings of those cases that *specific agency actions* are lawful ... are still subject to statutory *stare decisis* despite [the Court's] change in interpretive methodology." 144 S. Ct. at 2273 (emphasis added). The "specific agency action[]" held lawful in *Rust* was HHS's *1988* Rule—not its 2021 Rule. And that Rule *prohibited* counseling and referral for abortions. *Rust*, 500 U.S. at 179–80. So statutory stare decisis says nothing about whether the opposite agency action—reflected in the 2021 Rule—is itself lawful.

Contrary to the Tenth Circuit's reasoning, the Sixth Circuit's opinion in *Ohio* does not support HHS's reading of Section 1008. The Sixth Circuit observed that *Rust* decided only that Section 1008 was ambiguous at *Chevron* step one and deferred to HHS's 1988 reading at step two. 87 F.4th at 770. That meant that, in future cases, courts still would have to decide whether *new* HHS rules were "permissible" or "reasonable" at step two. *Ibid.* Whether the 2021 Rule is a permissible reading of Section 1008 was thus an open question after *Rust*. *Ibid.* And now, under *Loper Bright*, courts must arrive at the "single, best meaning" of even a previously held ambiguous statute when confronted with new agency action—like the 2021 Rule. 144 S. Ct. at 2266. The court below erred by failing to interpret Section 1008 de novo.

Lastly, *Chevron* deference can't apply to the 2021 Rule for a more fundamental reason: HHS never claimed to interpret Section 1008. Responding to comments that requiring abortion referrals "squarely" violates Section 1008's plain text, HHS engaged in

zero statutory analysis. 86 Fed. Reg. at 56149. Instead, it argued that "[c]ounseling for abortion, including referral when requested, has never been held to constitute a violation of section 1008," and prohibiting abortion referrals would be "inconsistent with nearly 40 years of agency practice." 86 Fed. Reg. at 56149–50. That's it. The Rule never even quotes Section 1008's text.

B. The best reading of Section 1008 precludes a referral requirement.

The de novo interpretation of Section 1008 that the Tenth Circuit should have conducted shows that the statute's best interpretation precludes a referral requirement. Section 1008 prohibits Title X funds from being "used in programs where abortion is a method of family planning." 42 U.S.C. 300a-6. The plain meaning of the word "method" is "a deliberate or systematic means of obtaining a particular end." *Tennessee*, 117 F.4th at 372 (Kethledge, J., dissenting). A program that refers a patient interested in abortion to an abortion provider deliberately and systematically employs a means for obtaining an abortion. After all, knowing "where to obtain a product or procedure is the first step toward actually obtaining it." *Ibid.* And providing a "hotline" that could supply the same information does not change that. *Id.* at 373. Rather than allowing HHS to require Title X grantees to refer for abortions, Section 1008 precludes HHS from doing so. On the best reading of its plain text, then, Section 1008 prohibits the 2021 Rule's abortion-referral mandate.

III. An injunction would protect the rights of healthcare professionals and help provide medical care to vulnerable Oklahomans.

"Protecting religious liberty and conscience is obviously in the public interest." *California* v. *Azar*, 911 F.3d 558, 582 (9th Cir. 2018). An injunction restoring Oklahoma's Title X funding would help protect the religious liberty and conscience rights of many healthcare entities and professionals across the state—and it would help secure healthcare access for all Oklahomans, especially for those living in rural communities already facing healthcare shortages.

Due to "the COVID-19 pandemic, labor shortages, and a growing number of baby boomers who are reaching retirement age each year, Oklahoma has seen an increase in demand for healthcare workers." *The Growing Demand for Healthcare Workers in Oklahoma* 1, AMERICAN IMMIGRATION COUNCIL, perma.cc/G8D3-C4JM. Even before COVID, the state "faced severe physician shortages, with some counties across the state registering eight physicians per 100,000 residents." *Id.* at 3. And today, "[p]rojections remain dire." *Ibid.* The state is "expected to need an additional 451 primary care physicians by 2030, significantly impacting the accessibility of healthcare, particularly in rural communities." *Ibid.* Absent an injunction restoring Oklahoma's Title X funding, the barriers to care Oklahomans are experiencing already will be worse.

Meanwhile, if Oklahoma bows to HHS's unlawful demands, healthcare professionals who cannot in good conscience counsel or refer for abortions will be forced out of providing Title X services like fertility education and treatment. A recent survey found that

30 percent of OBGYNs practicing in pro-life states like Oklahoma do not provide counseling or referrals for abortions. Brittni Fredericksen et al., *A National Survey of OBGYNs' Experiences After Dobbs* (Figure 3), KAISER FAMILY FOUNDATION (June 21, 2023), perma.cc/BV8Q-JG6R. Among the OBGYNs surveyed in these states, 35 percent cited their beliefs as one reason they do not participate in abortion. *Ibid.* (Figure 4). Depending on their specialty, experience, and location, some of these professionals could be driven out of the practice of medicine entirely. The result would deprive Oklahomans of vital healthcare services from conscientious professionals dedicated to doing no harm to their patients or their children.

Congress intended for Title X grants to fund a wide array of healthcare entities engaged in a wide range of activities, including "preventive family planning services, population research, infertility services, and other related medical, informational, and educational activities." *Rust*, 500 U.S. at 178–79 (quoting H. R. Conf. Rep. No. 91–1667, p. 8 (1970)). HHS claims to promote diversity among grantees. 86 Fed. Reg. at 56168. But given its recent demands and termination decisions, that claim rings hollow. Far from protecting conscientious providers, the 2021 Rule's strict enforcement threatens to force them out of the practice of medicine altogether.

As a result, the Rule risks reducing the resources available to people seeking fertility services, family-planning information, and other medical services. Diminishing services through discrimination against conscientious healthcare providers harms the public interest. This Court should grant the petition and hold that Oklahoma is entitled to an injunction of HHS's abortion-counseling-and-referral mandate.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

CHRISTOPHER P. SCHANDEVEL
Counsel of Record
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176
(571) 707-4655
cschandevel@ADFlegal.org

JOHN J. BURSCH
ERIN M. HAWLEY
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001
(202) 393-8690

CHLOE K. JONES
ALLIANCE DEFENDING FREEDOM
1000 Hurricane Shoals Rd. NE
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774

NOVEMBER 2024