No. 15-274

In the Supreme Court of the United States

WHOLE WOMAN'S HEALTH, *et al.*,

Petitioners,

v.

KIRK COLE, M.D., COMMISSIONER OF THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES, *et al.*,

Respondents.

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

AMICUS BRIEF ON BEHALF OF THEOLOGIANS AND ETHICISTS SUPPORTING PETITIONERS

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INTEREST OF AMICI CURIAE[1]

Amici[2] are theologians, ethicists, as well as scholars and teachers in the theology of various major religions. They study the nature of God and humanity, and how morality, philosophy, and religious teachings and faith apply to one's beliefs and actions. *Amici* have an interest in promoting a legal regime that is moral, fair, and truly just, drawing on the principles that would form the foundation of such a regime from theological and philosophical thought throughout human history.

Amici understand the fraught moral debate that surrounds abortion, and some recognize—and subscribe to—the view that abortion is a grave sin, regardless of circumstances. Yet, *amici* endorse and submit this brief in support of Petitioner Whole Woman's Health because the passage of the two provisions of Texas House Bill 2 at issue in this case ("HB2") is manifestly unjust and immoral under theological tenets. *Amici* believe this to be true regardless of one's belief as to whether abortion is morally permissible, and even regardless of one's belief as to whether abortion should be legal.

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[1] The parties have consented to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part, and no party, counsel for a party, or any person other than *amici* and their counsel financially contributed to preparing this brief.

[2] *Amici curiae* are listed in the Appendix to this brief.

SUMMARY OF THE ARGUMENT

"*Woe to them that make wicked laws: and when they write, write injustice.*" --Isaiah 10:1

St. Thomas of Aquinas is one of the most important theologians and legal philosophers of Christian history. Not only do his writings form the basis of Catholic theology, but his *Treatise on Law* in his magnum opus, the *Summa Theologiae*, occupies a central role in Western ethics and jurisprudence. In the *Summa*, he writes, "that which is not just seems to be no law at all: wherefore the force of a law depends on the extent of its justice." Thomas Aquinas, *The Summa Theologiae of St. Thomas Aquinas*, First Part of the Second Part, Question 95, Article 2 (Fathers of the English Dominican Province trans., Burns, Oates & Washbourne, 2d rev. ed. 1920) (1274) (internal citations removed).[3] It follows that no matter the morality of the end that is to be achieved, the use of an unjust law to achieve it would be illegitimate under these principles of theology. To do so threatens to cause more harm than good, corrodes the public faith in law and civil order, and undermines the legitimacy of law itself as an institution.

HB2 is an unjust law because it is not rational, it was not duly promulgated, and it does not promote the common good. HB2's two provisions at issue in this

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[3] We cite the *Summa Theologiae* as "*ST*" in the rest of this brief. The Part referenced is cited as follows: "I" for the First Part, "I-II" for the First Part of the Second Part," "II-II" for the Second Part of the Second Part," and so on. "Q." followed by the numeral identifies the Question; "Art." followed by a numeral identifies the Article. If applicable, citations are further specified by the abbreviation "Obj." for an objection, or "ad" for St. Thomas's reply to an objection.

case—the admitting privileges and ambulatory surgical center (ASC) requirements[4]—purport to protect patient safety. But HB2 actually undermines its stated objective: not only do medical professionals say HB2 is unnecessary, by forcing the closure of many abortion clinics, the law drives women to undertake more dangerous procedures, either at home or later in their pregnancies. That HB2 is not rationally related to its stated goals exposes it as a pretext that is meant simply to severely reduce abortion access. And a law based on dishonesty is immoral, regardless of whether one favors its hidden objective. HB2 also cruelly imposes disproportionate burdens on the health and resources of women who can least bear them, threatening those that government has the greatest moral obligation to protect. Finally, HB2 seeks to surreptitiously undermine the prevailing law on abortion while evading what should be a forthright, national debate on whether the procedure should be made illegal, despite the plurality of religious views on the procedure. For all these reasons, HB2 is a "wicked" law and should not stand, regardless of one's personal views on abortion.

ARGUMENT

I. Human Law Must Be Just, and HB2 Is Not Just.

A law that is not just is not law at all. *ST* I-II, Q. 95, Art. 2. St. Thomas saw human law as one part of a grand architecture of law—eternal, Divine, natural, and human—all of which operate to induce humans to

[4] The use of "HB2" throughout this brief refers to Tex. Health & Safety Code Ann. § 171.0031(a)(1)(A) and Tex. Health & Safety Code Ann. § 245.010(a), the two provisions at issue in this case.

act or to restrain us from acting in a way that is consonant with God's eternal order. *ST* I-II, Q. 90, Art. 1. In Thomistic thought, humans participate in this order during their lives through natural law, which is how we, as rational creatures, share in eternal law. *ST* I-II, Q. 91, Art. 2. The precepts of natural law, in turn, flow from the universal command that we follow our natural inclination to achieve good and avoid evil. *ST* I-II, Q. 94, Art. 2. Bestowed with the ability to discern natural law through reason, and to live in accordance with natural law through will, humans thereby participate in God's wisdom and providential care. *ST* I-II, Q. 91, Art. 2, ad 2, and Art. 3, ad 1. But because the precepts of natural law do not have the level of specificity to provide the necessary guidance for day-to-day living, we are driven to develop and promulgate human law, through reason and deliberation, to achieve the ends that are commanded by natural law and to care for ourselves and each other. *ST* I-II, Q. 91, Art. 3, ad 1. For any human law to be just—and thus truly law—St. Thomas teaches that it must fulfill four criteria: it must be an ordinance of reason, made by public authority, promulgated, and for the common good. *ST* I-II, Q. 90, Arts. 1–4; *see also ST* I-II, Q. 95, Art. 3. To lack any one of these conditions is to fall short of being true law. *ST* I-II, Q. 90, Art. 4. The Texas statute here does not comport with the first, third, or fourth criteria.

A. HB2 Is Unjust Because It Is Not Based on Reason.

1. Law must be grounded in reason. *ST* I-II, Q. 90, Art. 1. Humans possess rational souls that endow them with the ability to reason, so a law can only be a proper "rule and measure of human acts"—*i.e.*, something that commands us to do the right thing, in the

right way—if it properly relates to our rationality. *Id.* To determine whether a law reflects the human capacity for rational deliberation, we must first consider the end or purpose that law is meant to achieve, and then ascertain whether the law, as means, correlates to the ends identified. *See ST* I-II, Q. 90, Art. 1, (citing Aristotle, *Physics*, Book ii, Ch. 9 (350 BC)); ST I-II, Q. 90, Art. 1, ad 3; ST I-II, Q. 91, Art. 2; *see also* J. Budziszewski, *Commentary on Thomas Aquinas's Treatise on Law*, 21, 30–32 (Cambridge University Press, 2014). Just as the implement to achieve the end of cutting wood should take the form of a saw, made of iron, and equipped with teeth, a law meant to achieve a contemplated end should assume the form that rationally accomplishes its stated end. *See ST* I-II, Q. 95, Art. 3; Aristotle, *Physics*, Book ii, Ch. 9.

When a law fails this test, it is irrational and unjust under Thomistic principles. If a law is detached from reason, it strays from natural law because it rejects the purpose for its existence, which is to reflect the rational quality of the human soul that is given the capacity to use reason to achieve the objectives informed by natural law. A law that is not of reason "is no longer a law but a perversion of law." *ST* I-II, Q. 95, Art. 2.

2. HB2 fails the rule of reason. The declared objective is the protection of women's health. *See* Resp't Br. in Opp'n to Writ of Cert. at 2 ("Texas's admitting-privileges and ambulatory surgical center (ASC) requirements raise the standard of care for all abortion patients."). Yet, as leading professional physician and medical organizations such as the American Public Health Association, the American College of Obstetricians and Gynecologists, and the American Medical Association have recognized, and the district court has

found, legal abortion is one of the safest medical procedures, and is not made safer by the challenged requirements. *See Whole Woman's Health v. Lakey*, 46 F. Supp. 3d 673, 684-85 (W.D. Tex. 2014). And according to these groups' expertise, the admitting privileges and ASC requirements that HB2 imposes are "devoid of any medical or scientific purpose" and any claims to improved patient care are unsupported by scientific or medical evidence. *See* Br. for Am. Pub. Health Ass'n as *Amicus Curiae* in Support of Writ of Cert. at 12, 16; Br. for Am. Coll. of Obstetricians & Gynecologists, et al. as *Amicus Curiae* in Support of Writ of Cert. at 5–6, 14. Instead of improving patient safety, HB2's core effect is to close clinics and thereby delay and complicate the efforts of women seeking to obtain a safe medical procedure, where delay (due to distance, cost, and longer wait-times) measurably increases the risk of the procedure to a woman's health and safety. *See* World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2d ed. 2012) at 17 (noting that incidence and complications from unsafe abortions are generally lower where abortion is less legally restricted); Sharon A. Dobie et al., *Abortion Services in Rural Washington State, 1983-1984 to 1993-1994: Availability and Outcomes*, 31 Fam. Plan. Persp. 241, 244–45 (1999) (showing decreased availability of abortion providers correlates with significant increase of later pregnancy terminations). A law incorporating measures that undermine its stated goal is a fundamental exercise in irrationality. On this basis alone, HB2 is unjust and should not stand.

B. HB2 Is Unjust Because It Is Not Promulgated

1. HB2 further is unjust because it is a dishonest pretextual law, which fails to fulfill St. Thomas's criteria that laws be duly promulgated. "[I]n order that a law obtain the binding force which is proper to a law, it must needs be applied to the men who have to be ruled by it. Such application is made by its being notified to them by promulgation." *ST* I-II, Q. 90, Art. 4. There is a failure of promulgation when a law is unknown to the public over which it governs, whether it is literally due to being kept secret, or more insidiously because its meaning is indiscernible as a result of vagueness or arbitrary interpretation. "Law is defined to be a rule of action; but how can that be a rule, which is little known, and less fixed?" *The Federalist* No. 62 (James Madison).

Pretextual laws are not promulgated because they are necessarily based on a lie: although they purport to address one end, they are actually intended to achieve another. The people are not notified about the true meaning and application of a pretextual law because the law is outwardly dishonest about the end it wishes to achieve, and reflects "the intention of a bad will . . . that someone may be deceived." *ST* II-II, Q. 110, Art. 1; *see also ST* I-II, Q. 95, Art. 3. A just law must be *honesta*: honest and honorable. *ST* I-II, Q. 95, Art. 3, Obj. 1; *see also* Budziszewski, *supra*, at 324. Although the notion that dishonesty is immoral is near-universal regardless of religion and theology, it bears stating that St. Augustine and St. Thomas both taught that "every lie is a sin," with St. Thomas further holding that "lying is directly and formally opposed to the virtue of truth." *ST* II-II, Q. 110, Art. 3; *ST* II-II, Q. 110, Art. 1; *see* St. Augustine, *De mendacio*

n. 42 ("But whoso shall think there is any sort of lie that is not sin, will deceive himself foully, while he deems himself honest as a deceiver of other men.").

2. HB2 is not *honesta*: it is dishonest in that it purports to protect patient safety but really seeks to prevent women from obtaining safe, legal abortions through widespread closures of abortion clinics; it is dishonorable in that it is reckless about the real harms that it will inflict on the populace its promulgators govern. *See ST* I-II, Q. 95, Art. 3 (teaching that law should "prevent[] any harm ensuing from the law itself"). Recognizing that this Court in *Casey* instructed states to refrain from designing laws that "strike at the right [to abortion] itself," Texas legislators attempted to maintain throughout debate that HB2's admitting privileges and ASC requirements were based on a concern for women's health, and not intended to shut down clinics. *Planned Parenthood v. Casey*, 505 U.S. 833, 874 (1992); *see also HB 2 Debate - Second Reading*, 83rd Leg., 2d Sess. Supp., at S1, S35 (Tx. July 9, 2013) (statements of Laubenberg and Menendez). That stated rationale was implausible from the beginning, because physician groups and medical experts uniformly told the Texas legislature that HB2's restrictions are medically unnecessary and would actually harm patient safety and public health. *See, e.g.*, American Congress of Obstetricians and Gynecologists, *Open Letter to Texas Legislators: Get Out of Our Exam Rooms* (July 9, 2013). And, in fact, the legislators themselves knew that the law's stated purpose was a cover. For example, one legislator lay the pretext bare, recounting how another member boasted:

> I can't wait for two weeks from now when this bill makes it to the governor's desk and we can

> finally stop saying this is about women's health, and talk about what it is, which is shutting down abortion clinics. I can't wait to go back to my constituents and be able to say that.

HB2 Debate - Second Reading, 83rd Leg., 2d Sess. Supp., at S134–35 (statement of Turner). As St. Thomas predicted, the effect of this pretense was to confuse the public: after HB2's passage, some women believed that abortion had been outlawed in Texas; others were caught unprepared for how difficult it became to obtain an abortion until the need arose. *See, e.g.*, Tara Culp-Ressler, *Anti-Abortion Activists Trying to Pretend Women in Texas No Longer Have Right to Choose*, ThinkProgress (Aug. 9, 2015), http://thinkprogress.org/health/2015/08/09/3688682/abortion-law-texas-confusion/).

An irrational law that is designed to pass muster under existing, controlling law (or public opinion) through pretext falls even farther away from justice because it implicitly acknowledges its illegitimacy in its very existence. Because the practical effects of HB2 do not correlate with its stated purpose of promoting women's health, the law is irrational and thereby unjust. But because HB2 was purposely passed to restrict women from obtaining legal abortions, and not to promote women's health, not only is the law irrational—it is immoral, and its true meaning is hidden from the public. This Court should stand guard against the danger that such laws erode the legitimacy of the legal system itself. *See ST* I-II, Q. 95, Art. 2; *see also Casey*, 505 U.S. at 865 ("The Court's power lies . . . in its legitimacy, a product of substance and perception that shows itself in the people's acceptance

of the Judiciary as fit to determine what the Nation's law means and to declare what it demands.").

C. HB2 Is Unjust Because It Is Not in the Common Good.

If the form of human law must pertain to reason, then the purpose of human law must be *ad bonum commune*: directed to the common good. *ST* I-II, Q. 90, Art. 3 ("A law, properly speaking, regards first and foremost the order to the common good."). If not conducive to the common good, laws are unjust and "are acts of violence rather than laws." *ST* I-II, Q. 96, Art. 4.

1. HB2 Causes More Harm Than Good.

HB2 is unjust because it brings little benefit to the common good but instead brings about measurable harm. St. Thomas warned that "human law should never be changed, unless, in some way or other, the common weal be compensated according to the extent of the harm done" by the change in the law itself. *ST* I-II, Q. 97, Art. 2. Here, little common good results from the introduction of HB2. Its stated objective of improving patient safety through onerous requirements is unsupported by scientific and medical evidence, as medical association after medical association have explained.

While HB2 does nothing to improve patient safety, its grievous impacts on the health and safety of women in Texas weigh heavily in the balance on the side of harm. If the challenged regulations are upheld, they would have the effect of reducing the number of clinics providing abortion services in Texas—the second-largest and second-most populous state in the nation—by 75%, from over 40 to 10 or fewer, with the surviving clinics clustered around four major urban

hubs. *See Whole Woman's Health v. Cole*, 790 F.3d 563, 578 (5th Cir. 2015) *modified*, 790 F.3d 598 (5th Cir. 2015), *cert. granted*, No. 14A1288, (Nov. 13, 2015). As a result of these closures, the remaining clinics strain to absorb and schedule new patients, and some women must drive hundreds of miles to reach an abortion provider. *See* Br. For Am. Pub. Health Ass'n as *Amicus Curiae* in Support of Writ of Cert. at 22–23; Kim Soffen, *How Texas Could Set National Template for Limiting Abortion Access*, N.Y. Times (Aug. 19, 2015), http://www.nytimes.com/2015/08/20/upshot/how-texas-could-set-national-template-for-limiting-abortion-access.html.

Delay, distance, and the attendant increased costs and risks created by each provision threaten the health, safety, and well-being of women. For some, the inescapable delay caused by the shortage of providers means that they have to undergo the procedure later. While abortion is very safe, the risk to the woman's health increases when it is performed later in the pregnancy. *See* Br. for Am. Pub. Health Ass'n as *Amicus Curiae* in Support of Writ of Cert. at 22. For those in rural areas, these burdens are compounded by distance, which creates both scheduling difficulties and new financial burdens, as well as real post-procedure medical risks that may be exacerbated by long-distance travel. For example, some of the small percentage of women who suffer post-abortion complications, such as hemorrhaging, may find themselves needing urgent medical assistance while on a state highway during a multi-hour drive home from a distant provider, instead of being already safely at home. *See Lakey*, 46 F. Supp. 3d at 684. For others, the delay and distance prevents them from obtaining a legal abortion, which may lead to illegal procedures and self-help, all of which pose real threats to their health. *See*

Texas Policy Evaluation Project, *Texas Women's Experiences Attempting Self-Induced Abortion in the Face of Dwindling Options* (Nov. 17, 2015), https://utexas.app.box.com/WExSelfInductionResearchBrief/ (noting that primary reasons Texas women chose to self-induce abortion included lacking funds to travel to a clinic or to pay for the procedure, as well as local clinic closures); *see generally* Br. for Am. Pub. Health Ass'n as *Amicus Curiae* in Support of Writ of Cert. at 20–28. To punish, stigmatize, and demean women—by increasing delay, distance, cost, and risk—in the exercise of what this Court has held as a constitutionally protected right impermissibly deprives them of their dignity and liberty rights. *See United States v. Windsor*, 133 S. Ct. 2675, 2696 (2013) (holding federal statute invalid for disparaging and injuring individuals whose dignity the State sought to protect through marriage laws); *Cline v. Okla. Coal. for Reprod. Justice*, 313 P.3d 253, 262 (Okla. Sup. Ct. 2013) (finding abortion restriction "so completely at odds" with medical standards "that it can serve no purpose other than to prevent women from obtaining abortions and to punish and discriminate against those who do"). When these substantial harms are objectively weighed against the lack of gains in patient safety, HB2 cannot be justified as meeting the requirement that the law be *ad bonum commune*.

2. HB2 Disproportionally Hurts Vulnerable Women.

HB2's failure to serve the common good is especially unjust because its harms disproportionately fall on low-income, rural women, who will suffer the brunt of the mental, physical, and financial burdens of the law, despite being the least able to do so. A just law may not place disproportionate burdens on anyone in

the community. *ST* I-II, Q. 96, Art. 4. Even laws that intend to serve the common good may be unjust "when burdens are imposed unequally on the community[;]" one that causes *more* harm than good is especially immoral if its impact is concentrated on society's most vulnerable. *Id.* Unlike affluent women, for whom HB2 may be a mere inconvenience, low-income and rural women are significantly impacted by the clinic closures while being the least able to afford the increased costs of long-distance travel, including mileage, accommodations, care for their existing children, and missing work. This inequity is especially glaring in light of Catholic Social Teaching and its preferential option for the poor, which admonishes governments "to promote to the utmost the interests of the poor," and requires that:

> [W]hen there is question of defending the rights of individuals, the poor and badly off have a claim to especial consideration. The richer class have many ways of shielding themselves, and stand less in need of help from the State; whereas the mass of the poor have no resources of their own to fall back upon, and must chiefly depend upon the assistance of the State.

Pope Leo XIII, *Rerum Novarum*, 32, 37; *see also ST* II-II, Q. 66, Art. 7 ("Hence whatever certain people have in superabundance is due, by natural law, to the purpose of succoring the poor."). HB2 not only fails to promote the interests of the poor, it directly and disproportionately burdens them. It therefore is an unjust law.

II. HB2 Undermines *Casey*'s Protection of Religious Freedom Through Surreptitious Means.

Not only is HB2 unsound as law, it seeks also to furtively undermine the core holding of *Casey* that currently preserves the religious liberty of a woman whose faith does not forbid her to obtain an abortion. "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." *Casey*, 505 U.S. at 851. To use HB2 to hinder all women from being able to seek abortions because of one's specific moral view is to undercut *Casey* without engaging in the forthright moral debate and colloquy that such a sea change in the law should require. Those who support an outright ban of abortion should openly argue that their moral view about the state's interests in developing life at all stages justifies more restrictions than *Casey* allows. *See id*. Because proponents of HB2 instead chose to hide their true motives, HB2 also is unjust.

The major religions have themselves recognized the importance of respect for religious freedom that our Constitution recognizes. For example, the Vatican has declared that "the right of man to religious freedom has its foundation in the dignity of the person," Holy See, Declaration on Religious Freedom – *Dignitatis Humanae* ¶ 9 (Dec. 7, 1965), http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decl_19651207_dignitatis-humanae_en.html. Likewise, Presbyterians recognize that "[t]he church cannot demand that its ethic, which is born out of its faith in the Lordship of Jesus Christ

and the authority of Scripture, become the law of the state (especially of a pluralistic state like ours) for all persons." Office of the General Assembly Presbyterian Church, Report of the Special Committee on Problem Pregnancies and Abortion, 11 (1992).

Religious traditions have pluralistic moral views on abortion, from prohibitive to permissive. No one voice can speak for all faith traditions, and even within a particular faith, debate about abortion can remain unsettled. Some religions canonically affirm support for broad and equal access to abortion services congruent with this Court's protection of the procedure as a constitutionally protected right. *See* Unitarian Universalist Association, *Abortion: Right to Choose: 1978 General Resolution*, http://www.uua.org/statements/abortion-right-choose; Unitarian Universalist Association, *Right to Choose: 1987 General Resolution*, http://www.uua.org/statements/right-choose; Gloria H. Albrecht, *Contraception and Abortion Within Protestant Christianity*, *in Sacred Rights: The Case for Contraception and Abortion in World Religions*, 95 (Daniel C. Maguire ed., Oxford University Press, 2003) [hereinafter *Sacred Rights*]. Other religions expressly permit abortion under certain circumstances—such as danger to the life and health of the woman, or the avoidance of disgrace—especially during the early stages of development. *See, e.g.*, Laurie Zoloth, *"Each One an Entire World:" A Jewish Perspective on Family Planning*, *in Sacred Rights* at 36, 39–42. Yet other religious traditions confer women with the responsibility for their own decisions about family planning, contraception and abortion. *See, e.g.*, Mary C. Churchill, *Reproductive Rites and Wrongs: Lessons from American Indian Religious Traditions, Historical Experience, and Contemporary Life*, *in Sacred Rights* at 188–91. And in many, religious leaders

continue to wrestle internally with divergent views on the morality and permissiveness of abortion. *See* Parichart Suwanbubbha, *The Right to Family Planning, Contraception, and Abortion in Thai Buddhism*, *in Sacred Rights* at 156; William R. LaFleur, *Liquid Life: Abortion and Buddhism in Japan*, 198–220 (Princeton University Press, 1992); Sandhya Jain, *The Right to Family Planning, Contraception, and Abortion: The Hindu View*, *in Sacred Rights* at 141.

Even within Catholicism, views on abortion have historically been pluralistic. St. Antoninus "approved of early abortions to save the life of the woman" and was canonized as a saint. Daniel C. Maguire, *Sacred Energies: When the World's Religions Sit Down to Talk about the Future of Human Life and the Plight of This Planet*, 125 (Fortress Press, 2000). Today, "even Catholic defenders of the hierarchical church ban on abortion are not in agreement with each other" with regard to whether abortion is moral in cases of threat to the mother's life, rape, or severe genetic deformity. *See* Christine E. Gudorf, *Contraception and Abortion in Roman Catholicism*, *in Sacred Rights* at 68–69, 73. Many modern Catholic theologians "allow early abortion under some circumstances." *Id.*

Because there exists no unified religious or moral position on abortion even within major religions, a state's attempt to restrict the accessibility of abortion necessarily impinges on the religious and moral decisions of *some* individuals. But "no one is to be prevented in the matter of religion from acting according to the demands of his dignity or according to his inmost religious convictions." John Courtney Murray, *The Human Right to Religious Freedom*, *in Religious Liberty: Catholic Struggles with Pluralism*, 229–44 (J. Leon Hooper, S.J., ed., 1993). Instead, citizens on all

sides of the issue have the right to convince others through an honest debate, not to coerce them through underhanded state action such as HB2. *Hill v. Colo.*, 530 U.S. 703, 791 (2000) (Kennedy, J., dissenting) ("Foreclosed from using the machinery of government to ban abortions in early term, those who oppose it are remitted to debate the issue in its moral dimensions.").

This nation has long drawn strength from the rich and diverse religious beliefs within its borders. "[S]ince this Nation was founded and until the present day, many Americans deem that their own existence must be understood by precepts far beyond the authority of government to alter or define." *Town of Greece v. Galloway*, 134 S.Ct. 1811, 1827 (2014). "Among the reasons the United States is so open, so tolerant, and so free is that no person may be restricted or demeaned by government in exercising his or her religion. Yet neither may that same exercise unduly restrict other persons . . . in protecting their own interests, interests the law deems compelling." *Burwell v. Hobby Lobby Stores, Inc.*, 134 S.Ct. 2751, 2786–87 (2014) (Kennedy, J., concurring).

CONCLUSION

For the reasons above, *amici* respectfully request the Court to invalidate the HB2 provisions at issue.

Respectfully submitted,

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DECEMBER 30, 2015

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