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LAWRENCE G. WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN
Chief of Civil Litigation

MEGAN A. LARRONDO, ISB #10597
DAYTON P. REED, ISB #10775
Deputy Attorneys General
954 W. Jefferson Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8073
megan.larrondo@ag.idaho.gov
dayton.reed@ag.idaho.gov

Attorneys for Respondent

IN THE SUPREME COURT OF THE STATE OF IDAHO

PLANNED PARENTHOOD OF THE GREAT NORTHWEST, HAWAII, ALASKA, INDIANA, KENTUCKY, on behalf of itself, its staff, physicians and patients, and Caitlin Gustafson, M.D., on behalf of herself and her patients,

Petitioners,

v.

STATE OF IDAHO,

Respondent.

and

SCOTT BEDKE, in his official capacity as Speaker of the House of Representatives of the State of Idaho; CHUCK WINDER, in his official capacity as President Pro Tempore of the Idaho State Senate; and the SIXTY-SIXTH IDAHO LEGISLATURE,

Intervenors-Respondents.

Docket No. 49615-2022

REPLY IN SUPPORT OF RESPONDENT'S MOTION TO VACATE STAY

I. ARGUMENT

Faced with the fact that the stay order that they benefited from was improperly issued, Petitioners attempt to obfuscate and cast blame on the State rather than accept the procedural shortcomings of their choices. Petitioners are the author of their case: they chose the venue, the respondent, and even to not affirmatively seek either a stay or an alternative writ. These choices were not the State's fault, but they do preclude the Court from issuing a stay or an alternative writ. The procedural issues that have arisen demonstrate how unfit Petitioners' case is for the extraordinary exercise of this Court's original jurisdiction. This case is an ordinary declaratory judgment action shoehorned into an extraordinary petition for a writ. The district court, with the tools available to it, is best suited to handle this case. Now that these procedural issues have been brought to the Court's attention on appropriate briefing, this Court should vacate the stay of implementation of Senate Bill 1309 and its trailer bill (collectively "the Heartbeat Act") issued on April 8, 2022.

A. The motion is procedurally proper.

The State's Motion to Vacate Stay was timely filed. The State's motion to vacate is governed by Idaho Appellate Rule 32(c), which permits any motion other than a motion to dismiss to be made "at any time." I.A.R. 32(c). Petitioners erroneously rely upon Idaho Appellate Rule 12, which sets a wholly inapplicable deadline for filing *motions for permissive appeal*. Idaho Appellate Rule 12 simply has no applicability here because a motion to vacate a stay made to the very court that issued the stay is not a motion for permission to appeal a ruling of a lower court. Under Idaho Appellate Rule 32(c), which properly governs, even if this Court were to construe the motion to vacate the stay as a motion for reconsideration (and it should not, because the State is not asking

the Court to reconsider its entry of the stay in the first place, but instead asking the Court to terminate the stay), the motion to vacate was timely filed.

Petitioners also err in assuming that the State had an obligation to ask the Court to vacate a stay that had not even been requested, let alone entered, in its April 4, 2022 reply brief. The degree of prescience that Petitioners demand is breathtaking. The State's April 4 reply brief was filed in support of its effort to have the Court reconsider the entry of an expedited briefing schedule, not in response to a motion or application for a stay or an alternative writ. Petitioners never even mentioned the possibility of a stay in an original action, nor did they cite I.A.R. 13(g) in their opposition briefing. Petitioners merely stated in their opposition to motion for reconsideration that they "[were] not opposed" to the idea of this Court issuing an alternative writ. *Opp'n to Resp't's Mot. to Recons*. (*Recons. Opp'n*) 7. But, again, they did not request one (indeed, the Court did not issue an alternative writ at all).

Petitioners' assertions that the motion to vacate reflects a change in position by the State are incorrect. The State never requested or consented to this Court preventing the Heartbeat Act from taking effect. When one reads the motion for reconsideration briefing in full, setting aside Petitioners' effort to pull isolated quotes out of context, the State merely pointed out alternative, straightforward methods that could potentially remedy Petitioners' concerns, other than expedited briefing, to explain why expedited briefing was unnecessary. *Mem. ISO Mot. to Recons*. 4–5; *Reply ISO Mot. to Recons*. 3. By pointing out the potential availability of an alternative writ, the State did not request an alternative writ against itself on Petitioners' behalf. And the State's statement that it would be prudent to preserve the status quo rather than require it to meet an unnecessarily short deadline was part of its argument as to why expedited briefing was inappropriate, not a *carte blanche* request for some unspecified order to be entered against it. *Mem. ISO Mot. to Recons*. 4.

Thus, the State argued the existence of alternative writs and tools available to the district court in support of the motion to reconsider: "But in any case, all duly-enacted statutes have immediate effect upon their effective date. This fact is not sufficient justification to bypass *the district court and the tools* that exist to preserve the status quo during a legal challenge." *Id.* at 5 (emphasis added).

Contrary to their efforts to recast their briefing now, Petitioners did not "ask[ ]" the Court to enter an alternative writ in their opposition to the motion to reconsider.[1] *Pet'rs' Br. in Opp'n to State of Idaho's Mot. to Vacate Stay* 2. Instead, they indicated that they did "not oppose" the State's (nonexistent) "request." *Recons. Opp'n* 7. On reply, the State chose to remain focused on the issues raised in the motion before the Court—the expedited briefing schedule and the availability of tools at the district court level to address the perceived need for an expedited briefing schedule. *Reply ISO Mot. to Recons*. This was not a concession to Petitioners' mischaracterization about a tangential issue that was not before the Court.

The State disagreed with the entry of the stay the moment it was entered. The Attorney General's Office made its opposition to the stay clear shortly after the stay was entered:

> In response to the condensed timeline, the Office of the Attorney General filed a motion asking the Supreme Court to reconsider, and laid out arguments for why expediting such a complex case with multiple constitutional issues was not appropriate. The state's arguments included a discussion of other tools the courts have to address the need for urgency in a case without a rush to judgment that could damage the Attorney General's ability to defend state law in the future.
>
> In its response to the state's motion to reconsider, Planned Parenthood misrepresented that the state had suggested the court issue a stay. The misrepresentation was carried over into the court's order staying the law.

[1] Petitioners do not even attempt to argue that they asked the Court to enter a stay in their briefing.

Wasden Issues Statement in Response to False Claim over Defense of Heartbeat Law, State of Idaho Office of the Attorney General (April 13, 2022), https://www.ag.idaho.gov/newsroom/wasden-issues-statement-in-response-to-false-claim-over-defense-of-heartbeat-law/. The State waited to file the Motion to Vacate Stay in order to preserve the resources of the parties and in the interests of judicial efficiency. By filing the motion to vacate and opposition brief together, the State was able to incorporate arguments made in its opposition brief into its motion to vacate. *See, e.g.*, *Mem. ISO Resp't's Mot. to Vacate Stay* 5 ("As described in Respondent's opposition brief, one of the many fundamental flaws with Petitioners' challenge is Petitioners' failure to identify any actual or threatened proposed act to enjoin. *See Resp't's Opp'n Br.*, Section III.A."); *id.* at 9 ("The State of Idaho is not the proper respondent for the issuance of a writ. *See Resp't's Opp'n Br*., Section III.A.4.").

Any assertion that the State requested or consented to a stay is mistaken. The motion to vacate is procedurally proper and timely filed.

B. The Court lacks authority to stay implementation of a duly enacted statute.

Petitioners err in arguing that this Court could stay the implementation of the Heartbeat Act under I.A.R. 13(g), which is only available to stay a "proposed act, a pending action or proceeding, or the enforcement of any judgment, order or decree." I.A.R. 13(g). The Heartbeat Act going into effect is not an "act" at all. After the Heartbeat Act was signed into law, no person need "act" for the Act to be effective nor was any "act" required for Idaho's citizens to take advantage of the Act's cause of action. And no state actor can take any action to enforce the Act. *Pet'rs' Br. ISO Pet.*, Ex. 1 at 4:30–40. For this reason, Petitioners' argument that the Court could stay "enforcement" of the Heartbeat Act under I.A.R. 13(g) when the only respondent before the Court

is the State of Idaho is particularly puzzling. *Pet'rs' Br. in Opp'n to State of Idaho's Mot. to Vacate Stay* n.2.

The time between when a bill is signed into law and its effective date is not an "act." Petitioners are thus correct that "the Court has no power to stay an [allegedly] unconstitutional law once it is passed by the Legislature and signed by the governor" under I.A.R. 13(g) simply because it exists. Pet'rs' Br. in Opp'n to State of Idaho's Mot. to Vacate Stay 4. There must be a proposed or threatened action by an individual before the Court to be stayed. This limitation is consistent with the language of I.A.R. 13(g) and with the limits on the Court's authority to act, such as case and controversy requirements. This Court does not insert itself into the legislative process and "stay" proposed laws, regardless of any preliminary, advisory thoughts regarding a law's constitutionality it may have. This Court stays the *actions* of officials and the proceedings of courts. I.A.R. 13(g) does not apply because there is simply no "act" for the Court to stay.

Petitioners attempt to argue that "act" in I.A.R. 13(g) means 'legislation.' *Id.* But this semantic stretch is unsupported. First, I.A.R. 13(g) only allows the Court to stay "a *proposed* act" (emphasis added). Petitioners' definition of "act" would allow the Court to preliminarily render a statute ineffective, but only when it is not actually the law and when a lawsuit is not ripe. Second, taken to its logical conclusion, Petitioners' definition would allow the Court to interrupt the legislative process because "proposed act" could mean a bill at any stage between routing slip and enacted bill before its effective date. Idaho Appellate Rule 13(g) cannot have been intended to allow this Court to usurp the prerogative of the legislative branch and "stay" bills that are not even laws yet, even before lawsuits challenging those bills would be ripe.

Petitioners argue in the alternative that the stay was authorized under Idaho Appellate Rule 5(d), asserting that the Rule "allows the Court to 'direct the respondent . . . to refrain from acting,

as directed in the writ, pending hearing and upon such conditions as the Court may impose.'" *Id.* But, again, the Rule's language indicates that a direction to refrain from acting, "as directed in the writ," is a mandatory component of a writ issued by the Court. An alternative writ of prohibition

> must state generally the allegation against the party to whom it is directed, and command such party to desist or refrain from further proceedings in the action or matter specified therein until the further order of the court from which it is issued, or to show cause before such court, at a specified time and place, why such party should not be absolutely restrained from any further proceedings in such action or matter.

Idaho Code § 7–403. This Court's order did none of these things. Further, contrary to Petitioners' contention, Petitioners never *applied* for an alternative writ, although that is a prerequisite for an alternative writ.[2] *See* Idaho Code §§ 7–404, 7–305 (providing that alternative writ is allowed when an *ex parte* application to the court is made). Petitioners' distaste for separate applications for an alternative writ and a peremptory writ cannot overcome the fact that they require separate filings. Idaho Code § 7-403 ("The writs must be *either* alternative *or* peremptory.") (emphasis added). Moreover, Petitioners omit from their quotation language from Rule 5(d) providing that a direction to refrain from acting can only be issued by "[a] majority of the entire Court." I.A.R. 5(d). Here, the order granting reconsideration and issuing the stay was only issued by the Chief Justice and does not indicate that it was joined by the majority of the Court. I.A.R. 5(d) does not support the stay issued.

Petitioners rely on *Blackwell Lumber Co. v. Empire Mill Co.*, 29 Idaho 236, 158 P. 792, 793 (1916), for the proposition that this Court has the authority to "stay" the Heartbeat Act under its constitutional authority to issue writs necessary to carry out its *original* jurisdiction. *Pet'rs' Br. in Opp'n to State of Idaho's Mot. to Vacate Stay 5–6.* But *Blackwell Lumber* does not stand for

[2] In any case, the Court did not issue an alternative writ; it issued a "stay" under I.A.R. 13(g).

this proposition, and neither do the constitutional provisions it relies upon. *Blackwell Lumber* was about whether the Supreme Court should issue an order staying proceedings *during the pendency of an appeal*. 29 Idaho 236, 158 P. at 793. The constitutional provisions the Court cited to support the issuance of the order support the Court's authority to issue "all writs necessary or proper to the complete exercise of its *appellate* jurisdiction." *Id.* (quoting Idaho Const. art. V, § 13) (emphasis added). That rationale has no applicability here.

Neither I.A.R. 13(g), nor I.A.R. 5(d), nor case law support the "stay[ ]" of "implementation" that the Court issued. *Order Granting Mot. to Recons*. 2. The Court lacks authority to "stay" an entire statute, and the stay should be vacated.

C. The constitutional separation of powers compels vacating the stay.

This Court is not like the Legislature or the Governor; it cannot repeal or veto a law. Instead, this Court decides cases and controversies.[3] As part of its role in deciding cases and controversies, it has the limited power to restrain the actions of a particular actor when those actions would result in constitutional harm to the plaintiff.

Petitioners incorrectly assert that it is "standard Idaho practice" for this Court to issue a stay in "pre-enforcement challenges to [allegedly] unconstitutional laws." *Pet'rs' Br. in Opp'n to State of Idaho's Mot. to Vacate Stay* 6. They cite *Van Valkenburgh v. Citizens for Term Limits* and *Coeur D'Alene Turf Club, Inc. v. Cogswell* for this proposition. *Id.* But these cases each involved respondents whose actions the Court was able to order: the Secretary of State in *Van Valkenburgh*,

[3] The State cited *Winsness v. Yocom*, 433 F.3d 727, 728 (10th Cir. 2006), in its Memorandum in support of Respondent's Motion to Vacate Stay for the purpose of illustrating this point, that the function of courts is to decide cases and controversies, and not to take legislative actions, such as "staying" a statute outside a case or controversy or "purg[ing laws] from the statute books." Petitioners' argument related to *Winsness* misunderstands the proposition for which the State cited the case.

and a specific judge in *Coeur D'Alene Turf Club*. *Van Valkenburgh*, 135 Idaho 121, 123, 15 P.3d 1129, 1131 (2000) ("This is a petition for a writ of prohibition and application for a declaratory judgment seeking to prevent the Secretary of State from taking any action pursuant to I.C. § 34–970B . . . "); *Coeur D'Alene Turf Club, Inc.*, 93 Idaho 324, 325, 461 P.2d 107, 108 (1969) (explaining that petition sought a writ against "Darwin D. Cogswell, Judge of the District Court of the First Judicial District, State of Idaho, in and for the County of Kootenai" to prevent further judicial proceedings pending the appeal). Here, in contrast, the Court's stay purports to enjoin the conduct of every Idaho citizen, as "implementation" of the law requires citizens to sue under the Heartbeat Act's cause of action—citizens who did not have notice that their rights would be adjudicated and had no opportunity to assert their interests. *See Bear Lake Cnty. v. Budge*, 9 Idaho 703, 75 P. 614, 618 (1904) (explaining that the constitution protects individuals from having their private rights determined without their involvement). In fact, Planned Parenthood affiliates recently demonstrated their recognition of the need to sue actual state officers in challenging a similar law in an original action in the Oklahoma Supreme Court, where the petitioners named multiple court clerks as respondents in addition to the State of Oklahoma.[4]

[4] *See* App. 1 to this reply brief (denying temporary restraining order or temporary injunction); *see also* Mary Anne Pazanowski, *Oklahoma's Texas-Style Six-Week Abortion Ban OK'd for Now*, Bloomberg Law (May 4, 2022, 7:12 AM), https://news.bloomberglaw.com/litigation/oklahomas-texas-style-six-week-abortion-ban-okd-for-now. The attempt to sue court clerks is problematic, as the U.S. Supreme Court has explained that court clerks, like judges, are not litigants adverse to petitioners, and a lawsuit attempting to enjoin them from docketing SB 8 lawsuits does not qualify as an actual controversy arising between adverse litigants. *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 532, 211 L. Ed. 2d 316 (2021). Nonetheless, this case demonstrates the need to sue actual people to obtain an order controlling their conduct.

D. The Court cannot issue a writ or stay against the State of Idaho.

Petitioners cite no case that demonstrates that the Court can issue a writ or order against the State of Idaho that controls the conduct of the State as a whole, including its citizenry. [5] Instead, Petitioners rely on a case where the Court found that claims against the State were not barred by the doctrine of sovereign immunity. *Tucker v. State*, 162 Idaho 11, 18, 394 P.3d 54, 61 (2017) ("we hold that sovereign immunity is inapplicable when constitutional violations are alleged"). Notably, the plaintiffs in *Tucker* did not bring their constitutional challenge before this Court; they brought it in the district court. 162 Idaho at 16, 394 P.3d at 59.[6] The issue of sovereign immunity has no relevance as to whether the Court can issue a writ or stay that controls the conduct of the entire State when the State of Idaho is the only named respondent.

E. The stay does not satisfy the four *Lunneborg* elements regarding discretion.

The Court's order shows that it issued the stay solely based on a misconception that the parties requested a stay. *Order Granting Mot. to Recons*. 2. Despite Petitioners' recharacterization of this Court's order issuing the stay, it was not made based on any finding or rationale of "the

[5] A petition for writ is not a method for a court to just "review[] the constitutionality of [allegedly] blatantly unconstitutional laws" as Petitioners assert. *Pet'rs' Br. in Opp'n to State of Idaho's Mot. to Vacate Stay* 8. In an original action such as this, a declaratory judgment as to the constitutionality of a statute can issue only as a pendent claim in a case where the Court has original jurisdiction—which is limited to appeals and writs. Idaho Const. art. V, § 9. And in order to issue a writ of prohibition, there must be some act *of the respondent* to prohibit. I.A.R. 5(d). The State of Idaho is not an official with an act to enjoin; moreover, the Heartbeat Act prohibits any State official from enforcing the law. The State of Idaho is not the appropriate respondent. This does not mean that the constitutionality of the Heartbeat Act is unreviewable in a lawsuit filed in the proper forum against a proper party.

[6] The plaintiffs in *Tucker* sued not only the State of Idaho, but also the Governor, and members of the Public Defense Commission. This is in stark contrast to this case, where Petitioners have only named the State of Idaho.

seriousness of the constitutional issues presented and the catastrophic effects of allowing SB 1309 to go into effect." *Pet'rs' Br. in Opp'n to State of Idaho's Mot. to Vacate Stay* 9.

For its authority to issue the stay, the Court cited I.A.R. 13(g), which is a discretionary rule. This Court has identified four elements required for exercising discretion: the Court must (1) perceive the issue as discretionary; (2) act within the outer boundaries of its discretion; (3) act consistently with the applicable legal standards; and (4) reach its decision by the exercise of reason. *Lunneborg v. My Fun Life*, 163 Idaho 856, 863, 421 P.3d 187, 194 (2018). Elements (3) and (4) are not met here, because the Court "stayed" a *law* when the legal standard in I.A.R. 13(g) only allows a stay of "a proposed act, a pending action or proceeding, or the enforcement of any judgment, order or decree, including but not limited to an injunction, writ of mandamus or prohibition." Element (4) is not met because the Court made its decision based on a misunderstanding rather than an exercise of reason. Therefore, the *Lunneborg* discretion elements were not met, and the stay should be vacated.

II. CONCLUSION

For the foregoing reasons, the State respectfully requests that the Court immediately vacate the impermissible "stay of the implementation" of the Heartbeat Act entered on April 8, 2022. No basis exists for the stay.

DATED this 17th day of May, 2022.

OFFICE OF THE ATTORNEY GENERAL

By: */s/ Megan A. Larrondo*
MEGAN A. LARRONDO
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of May, 2022, I electronically filed the foregoing with the Clerk of the Court using the iCourt e-file system which sent a Notice of Electronic Filing to the following persons:

Michael J. Bartlett, michael@bartlettfrench.com
BARTLETT & FRENCH LLP

Alan E. Schoenfeld alan.schoenfeld@wilmerhale.com
Michelle N. Diamond michelle.diamond@wilmerhale.com
Rachel E. Craft rachel.craft@wilmerhale.com
Cindy Y. Pan cindy.pan@wilmerhale.com
Samuel J. McHale sam.mchale@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP (New York, NY Office)

Joseph H. Rosenberg joseph.rosenberg@wilmerhale.com
Ann E. Himes annie.himes@wilmerhale.com
WILMER CUTLER PICKERING
HALE AND DORR LLP (Washington, DC Office)

Vikram P. Iyer
WILMER CUTLER PICKERING vikram.iyer@wilmerhale.com
HALE AND DORR LLP (Los Angeles, CA Office)

Attorneys for Petitioners

Daniel W. Bower
MORRIS BOWER & HAWS PLLC dbower@morrisbowerhaws.com

Attorneys for Intervenors-Respondents

/s/ Megan A. Larrondo
MEGAN A. LARRONDO
Deputy Attorney General

RESPONDENT STATE OF IDAHO'S REPLY RE: MOTION TO VACATE STAY

APPENDIX 1

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Oklahoma Call For Reproductive Justice, on behalf of itself and its members, Tulsa Women's Reproductive Clinic, LLC, on behalf of itself, its physicians, its staff, and its patients, Alan Brain, M.D., on behalf of himself and his patients, Comprehensive Health Of Planned Parenthood Great Plains, Inc., on behalf of itself, its physicians, its staff, and its patients and Planned Parenthood Of Arkansas & Eastern Oklahoma, on behalf of itself, its physicians, its staff and its patients,
Petitioners,

vs.

The State of Oklahoma, Nichole Cooper in her official capacity as court clerk of Adair County, Tammi Miller in her official capacity as court clerk of Alfalfa County, Angela Nuttall in her official capacity as court clerk of Atoka County, Tammie Patzkowsky in her official capacity as court clerk of Beaver County, Donna Howell in her official capacity as court clerk of Beckaham County, Christy Malti in her official capacity as court clerk of Blaine County, Donna Alexander in her official capacity as court clerk of Bryan County, Patti Barger in her official capacity as court clerk of Caddo County, Marie Hirst in her official capacity as court clerk of Canadian County, Renee Bryant in her official capacity as court clerk of Carter County, Lesa Rousey-Daniels in her official capacity as court clerk of Cherokee County, Laura Sumner in her official capacity as court clerk of Choctaw County, Metzi Brown in her official capacity as court clerk of Cimarron County, Marilyn Williams in her official capacity as court clerk of Cleveland County, LaDonna Flowers in her official capacity as court clerk of Coal County, Robert Morales in his official capacity as court clerk of Comanche County, Terry Kelley in her official capacity as court clerk

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of Cotton County, Deborah Mason in her official capacity as court clerk of Craig County, Amanda Vanorsdol in her official capacity as court clerk of Creek County, Staci Hunter in her official capacity as court clerk of Custer County, Caroline Weaver in her official capacity as court clerk of Delaware County, Rachelle Rogers in her official capacity as court clerk of Dewey County, Sally Wayland in her official capacity as court clerk of Ellis County, Janelle Sharp in her official capacity as court clerk of Garfield County, Laura Lee in her official capacity as court clerk of Garvin County, Lisa Hannah in her official capacity as court clerk of Grady County, Deana Killian in her official capacity as court clerk of Grant County, Jeanna Scott in her official capacity as court clerk of Greer County, Stacy Macias in her official capacity as court clerk of Harmon County, Susan Breon in her official capacity as court clerk of Harper County, Tina Oaks in her official capacity as court clerk of Haskell County, Ashley Sanford in her official capacity as court clerk of Hughes County, Tina Swailes in her official capacity as court clerk of Jackson County, Kimberly Berry in her official capacity as court clerk of Jefferson County, Cassandra Slover in her official capacity as court clerk of Johnston County, Marilee Thornton in her official capacity as court clerk of Kay County, Lisa Markus in her official capacity as court clerk of Kingfisher County, Kay Richards in her official capacity as court clerk of Kiowa County, Melinda Brinlee in her official capacity as court clerk of Latimer County, Melba Hall in her official capacity as court clerk of Le Flore County, Cindy Kirby in her official capacity as court clerk of Lincoln County, Cheryl Smith in her official capacity as court clerk of Logan County, Wendy Holland in her official capacity as court clerk of Love County, Shauna Hoffman in her official capacity as court clerk of Major County, Wanda Pierce in her official capacity as court clerk of Marshall County, Jenifer Clinton in her official

capacity as court clerk of Mayes County, Kristel Gray in her official capacity as court clerk of McClain County, Kathy Gray in her official capacity as court clerk of McCurtain County, Lisa Rodebush in her official capacity as court clerk of McIntosh County, Jodi Jennings her official capacity as court clerk of Murray County, Robyn Boswell in her official capacity as court clerk of Muskogee County, Hillary Vorndran in her official capacity as court clerk of Noble County, April Frauenberger in her official capacity as court clerk of Nowata County, Sherri Foreman in her official capacity as court clerk of Okfuskee County, Rick Warren in his official capacity as court clerk of Oklahoma County, Charly Criner in her official capacity as court clerk of Okmulgee County, Jennifer Burd in her official capacity as court clerk of Osage County, Cassie Key in her official capacity as court clerk of Ottawa County, Ila Potts in her official capacity as court clerk of Pawnee County, Lori Allen in her official capacity as court clerk of Payne County, Pam Smith in her official capacity as court clerk of Pittsburg County, Karen Dunnigan in her official capacity as court clerk of Ponotoc County, Valerie Ueltzen in her official capacity as court clerk of Pottawatomie County, Tina Freeman in her official capacity as court clerk of Pushmataha County, Jan Bailey in her official capacity as court clerk of Roger Mills County, Cathi Edwards in her official capacity as court clerk of Rogers County, Kimberly Davis in her official capacity as court clerk of Seminole County, Gina Cox in her official capacity as court clerk of Sequoyah County, Melody Harper in her official capacity as court clerk of Stephens County, M. Renee Ellis in her official capacity as court clerk of Texas County, Kevin Stevens in his official capacity as court clerk of Tillman County, Don Newberry in his official capacity as court clerk of Tulsa County, Jim Hight in his official capcity as court clerk of Wagoner County, Jill Spitzer in her official

capacity as court clerk of Washington, Lynda Vermillion her official capacity as court clerk of Washita County, Staci Davey in her official capacity as court clerk of Woods County and Tammy Roberts in her official capacity as court clerk of Woodward County,
Respondents.

ORDER

Petitioners' Emergency Motion for an Immediate Temporary Restraining Order and/or Temporary Injunction to Preserve the Status Quo Pending Decision on Application for Original Jurisdiction is denied.

Done by Order of the Supreme Court in Conference this 3rd day of May, 2022.

CHIEF JUSTICE

CONCUR: Darby, C.J., Kane, V.C.J., Kauger, Gurich, Rowe, and Kuehn, JJ.

DISSENT: Winchester, Edmondson, and Combs, JJ.

Winchester, J., with whom Combs, J., joins, dissenting:
I would wait until the Governor signs the legislation before ruling on a stay or other relief.