1. No. 20220696-SC
2. **IN THE SUPREME COURT OF THE STATE OF UTAH**
3. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
4. State of Utah, *et al.*,
5. *Petitioners*,
6. v.
7. Planned Parenthood Association of Utah,
8. *Respondent*.
9. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**
10. On Interlocutory Appeal from the Third Judicial District Court, Salt Lake County
11. Hon. Andrew H. Stone, District Court No. 220903886
13. **BRIEF OF RELIGIOUS ORGANIZATIONS AND CLERGY AS AMICI CURIAE IN SUPPORT OF PLANNED PARENTHOOD AND AFFIRMANCE**
14. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**STATEMENT OF IDENTITY AND INTEREST**

Amici curiaereligious congregations First Unitarian Church of Salt Lake City, South Valley Unitarian Universalist Society, Unitarian Universalist Church of Ogden, Temple Har Shalom, First Baptist Church of Salt Lake City, Mount Tabor Lutheran Church, and Utah Muslim Civic League, and their religious leaders Rev. Monica Dobbins, Rev. Ian Maher White, Rev. Lora Young, Rabbi David Levinsky, Rev. Dr. Curtis Price, Rev. David Nichols, and Exec. Dir. Luna Banuri, together with Bishop Phyllis Spiegel of the Episcopal Diocese of Utah, and Rev. Nancy J. Cormack-Hughes, hospital chaplain and ordained minister of the Presbyterian Church (U.S.A.) (collectively, “amici”), respectfully submit this brief in support of Planned Parenthood Association of Utah and affirmance of the district court’s decision below.

These religious congregations and clergy, located in Utah, hold worship services, share their faith with others, engage in pastoral care of congregants and others, and act in society consistent with their faith. Through their work, many amici have provided counseling to individuals concerning healthcare decisions, including around issues of reproductive rights and abortion.

The national Unitarian Universalist Association (“UUA”)—to which the three amici curiae Unitarian churches belong—regularly files amicus briefs in court cases that involve human rights in support of positions that are grounded in the UUA’s social justice statements through its democratic social witness process. The Central Conference of American Rabbis (clerical leaders of Reform Judaism) filed an amicus brief in the recent decision of *Dobbs v. Jackson Women’s Health*, 597 U.S. \_\_ (2022). The Evangelical Lutheran Church in America (of which Mount Tabor is a member) filed an amicus brief in support of the separation of church and state in *Kennedy v. Bremerton School District*, 597 U.S. \_\_ (2022).

None of these congregations have moral teachings that life begins at conception or implantation, or that abortion is always sinful and immoral. None of these congregations have “pro-birth” moral teachings that align with Utah’s draconian Criminal Abortion Prohibition (“Criminal Abortion Ban”), set forth in [Utah Code sections 76-7a-101 through 76‑7a‑301](https://www.westlaw.com/Document/N1BFA2D00CD2011EB825FC22BFCF76B4F/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0). None of these congregations have ecclesiastical structures in which one anointed leader determines what is moral behavior for all members of the religion. These pastors and rabbis engage in counseling in light of the inspired writings and teachings of their religions. These congregations all have faith traditions that rely upon the individual member’s discernment as to what is moral behavior in their individual lives based on the teachings of their faith, including when to access abortion care.

The Criminal Abortion Ban’s provisions will prevent members of these congregations from exercising their faith and acting in accordance with their consciences in accessing abortion care. The Criminal Abortion Ban’s grounding in the moral beliefs of some religions over others denigrates the moral beliefs of these congregations and their members and further harms them in this way.

These congregations and their members all strive to live in accordance with their moral beliefs and to take action in the world to advance justice and equity. They present this brief in accordance with those beliefs.

**NOTICE, CONSENT, AND INVOLVEMENT**

Counsel for the parties received timely notice of this brief on January 11, 2023, and all parties consented to its filing. No party or party’s counsel authored this brief in whole or in part. No person other than amici, its members, or its counsel contributed money that was intended to fund preparing or submitting this brief.

**INTRODUCTION**

When it comes to freedom of religious exercise and conscience, Utah is unique. Its expansive constitutional protections for religious pluralism and the right to live free from legal domination by a single church were forged in the crucible of a lengthy struggle for statehood, shaped by the experiences of members of the Church of Jesus Christ of Latter-day Saints (hereinafter “Mormons” or “LDS”) subjected to territorial rule by a federal government deeply hostile to their beliefs, and by the experiences of non-Mormons living under a local government dominated by the LDS Church.

This singular history, borne over decades, produced a careful compromise at Utah’s constitutional convention that resulted in protections more deeply committed to the principles of religious pluralism and legal neutrality than any other state in the Union. Utah stands alone in constitutionally prohibiting the domination of laws by any single religion or church and affirmatively guaranteeing the “[p]erfect toleration of religious sentiment” as both a condition of Utah’s statehood and an enduring promise of its constitutional design. [Utah Const. art. III](https://www.westlaw.com/Document/N30E3A1B08F7D11DBAEB0F162C0EFAF87/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0).

Utah’s Criminal Abortion Ban defies the profound underpinnings of this careful compromise and subverts its most basic guarantees. It takes an issue (unlike murder, theft, and other facile analogies offered by Petitioners) on which religions widely disagree and enacts into law, almost to the letter, the beliefs of a single, dominant religious faith. And in doing so, it betrays the promise of Utah’s constitution and the recognition by its delegates more than a century ago that this is a state for people of all faiths, or no faith at all, not just those in the legislative majority.

It is often easy to reduce cases of religious liberty to the tired adage that anything goes so long as it is a “generally applicable” law. Surely that is the refrain of Petitioners here. But Utah’s unique religious exercise protections demand more. If they have no application here, to this issue, which has been animated by and imbued with religious fervor for decades and can hardly be called a secular matter by any honest observer, it’s hard to see when they would. No matter where the constitutional line is for laws that stray too far into freedom of belief and conscience, Utah’s Criminal Abortion Ban goes far beyond it. This Court should affirm the decision of the district court.

**ARGUMENT**

**I. Utah’s Unique Protections for Religious Exercise and Conscience**

Utah’s protections for the freedom of religious exercise and conscience are set forth in [Article I, section 4 of the Utah Constitution](https://www.westlaw.com/Document/N0E2437208F7D11DBAEB0F162C0EFAF87/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0):

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment.

These provisions were not enacted on a blank slate. They came against the backdrop of “the unique history of church-state relations in Utah—relations that occupied center stage in our state’s social and political history for almost fifty years preceding the adoption of the 1896 constitution.” *[Soc’y of Separationists, Inc. v. Whitehead](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_921)*[, 870 P.2d 916, 921 (Utah 1993)](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_921). For many reasons, but for religion in particular, Utah is not like other states. “Utah is the only state in the Union which is known primarily because of the religion of its leading denomination and is the sole state that traces its origin to the founding of a new Faith on American soil.” *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0)*[.](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0)

This singular history involved the experiences not just of non-Mormons in the territory subjected to religious domination by the LDS Church, but also the other way around. “[T]he perspective of the delegates at the constitutional convention” was deeply influenced by this dual experience. *[Id.](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_935)* [at 935](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_935). As this Court observed:

Mormon delegates likely viewed the territorial government—controlled by federally appointed non-Mormons—as oppressive. They had experienced the attempted control and suppression of their religious beliefs and practices by the federal government, often operating through territorial officials. On the other side, non-Mormon delegates had lived under social, economic, and political domination by the Mormon Church. They had experienced the oppression that can occur when one religious group has unfettered control over the political machinery of local government. Both groups of delegates could claim that some form of authority, be it federal or local, had denied them freedom of conscience, and both were acutely aware of the threat government power presented to that freedom.

*[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0)*[.](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0)

The convention itself “manifested a parallel intention to … bring all Utahns together. Opening prayer was held daily during the convention, but it was offered by ministers of various denominations[.]” *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_936)*[. at 936](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_936). “Further, the delegates’ debates clearly indicate that nonreligious belief systems are included within the understanding of freedom of conscience.”[[1]](#footnote-1)

The resulting constitution that was ultimately accepted by Congress was Utah’s seventh attempt at achieving statehood. As former Chief Justice Durham and her co-authors explain:

The delegates’ second major concern in drafting the 1896 Constitution was to promote an aura of inclusiveness. They sought not only to further ease the divide between Mormons and non-Mormons already resident, but also to reassure those contemplating settlement in Utah that they could comfortably live and do business there. Utah’s concern, however, was particularly acute given its negative national image throughout the era of controversy over polygamy and church control.[[2]](#footnote-2)

“[T]hese lessons were learned at a steep price.” *[Soc’y of Separationists](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0)* [at 940](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0). And they resulted in a compromise born of a belief in limited government that more fully constrained the Utah legislature from enacting laws on matters of conscience than any other state. “Almost every imaginable protection for religious freedom and injunction against the union of church and state has been included” in Utah’s constitution.[[3]](#footnote-3) Utah’s constitution contains far “broader and more detailed prohibitions” on religious interference than the First Amendment, with “paragraphs that are expressed in clearer terms and that are given even more vivid meaning by our unique and relatively recent history.” *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_930%2c+940)*[. at 930, 940](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_930%2c+940). The “drafters of the Utah Constitution … wisely concluded that it was best to maintain neutrality among various religious groups as well as between those whose consciences were persuaded by religion and those whose consciences were not.” *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_940)*[. at 940](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_940). This Court “has interpreted the state constitution’s provisions on religious freedom and freedom of conscience, in light of Utah’s history, as evidencing a strict policy of neutrality between religion and nonreligion.”[[4]](#footnote-4)

The Utah Constitution’s “right of conscience” was derived in part from the writings of James Madison, whose proposals for a broader conscience right in the federal constitution found fertile ground in Utah.[[5]](#footnote-5) Madison’s original draft of the First Amendment was more expansive than what was ultimately adopted: “The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext infringed.”[[6]](#footnote-6)

Madison’s strong belief in freedom of conscience was forcefully set forth in his famous *Memorial and Remonstrance Against Religious Assessments* (1785), in which he urged the Virginia legislature not to approve payment for Teachers of the Christian Religion, calling it a “dangerous abuse of power.”[[7]](#footnote-7) He argued for the separation of church and state and was influential in the nineteenth century “during the progressive disestablishment of churches in the several states.”[[8]](#footnote-8) A hundred years later, his views were foundational “in the series of cases through which the Supreme Court upheld the First Amendment as a ‘wall of separation’ between state and church.”[[9]](#footnote-9)

In *Memorial and Remonstrance*, in words that echo through the Utah constitution, Madison argued that “freedom of conscience” should be the centerpiece of all civil liberties:[[10]](#footnote-10)

Above all are they [all men] to be considered as retaining an ‘equal title to the free exercise of Religion according to the dictates of Conscience.’ Whilst we assert for ourselves a freedom to embrace, to profess and to observe the Religion which we believe to be of divine origin, we cannot deny any equal freedom to those whose minds have not yet yielded to the evidence which has convinced us.[[11]](#footnote-11)

This fundamental, underlying principle of religious neutrality under the law—“the maintenance of a level playing field in civil matters—as between religious and nonreligious sentiments,” *[Soc’y of Separationists](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_936)*[, 870 P.2d at 936](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_936)—is the bedrock of Utah’s constitutional promise and “a natural common ground to the veterans of Utah’s struggle for statehood.” *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0)*[.](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0)

Among the other unique provisions derived from Utah’s particular religious history is an express prohibition on domination by any one faith in matters of the state. This was a goal shared by Mormons and non-Mormons alike, each of whom had experienced subjugation based on their beliefs in the territorial era. “[N]o other state constitution forbids the union of church and state or the domination or interference by any church with state functions.” *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_935)*[. at 935](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_935). And this domination clause, as this Court has instructed, must be read in conjunction with the rights of free exercise and conscience in [Article I, section 4](https://www.westlaw.com/Document/N0E2437208F7D11DBAEB0F162C0EFAF87/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0). The provisions inform each other and together provide the scope of protections secured by the Utah Constitution. *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_920)*[. at 920-21](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_920). Domination by one particular faith, through legislative enactment or otherwise, poses a direct threat of interference with the freedom of religious exercise and conscience secured by Utah’s constitutional design.[[12]](#footnote-12)

In the end, as this Court has held, “all these provisions, when read together, [mean] that they are designed to protect religious exercise and freedom of conscience in general, [and] … to prevent one religious denomination from dominating … the government[.]” *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_935)*[. at 935](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_935). Put more simply, “[r]eligious exercise is to be unfettered, and freedom of conscience is to be supreme.” *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_940)*[. at 940](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_940).[[13]](#footnote-13)

**II. Utah’s Criminal Abortion Ban Unconstitutionally Enacts One Religion’s Beliefs Over Others**

Many people think religions are monolithic when it comes to issues like abortion. That misperception is especially acute where one faith dominates, as in Utah. But that is not the reality. There is a vast diversity of views on the metaphysical, spiritual, and deeply personal issues abortion involves that places them squarely within the protections for religious pluralism that Utah’s constitution secures.[[14]](#footnote-14)

Utah’s Criminal Abortion Ban is not neutral when it comes to choosing sides in religious beliefs. It is, not surprisingly, almost exactly the teachings on abortion espoused by the LDS Church. That church’s official statement on abortion phrases the issue (dismissively) as one of “personal or social convenience,” and states:

The Church of Jesus Christ of Latter-day Saints believes in the sanctity of human life. Therefore, the Church opposes elective abortion for personal or social convenience, and counsels its members not to submit to, perform, encourage, pay for, or arrange for such abortions. The Church allows for possible exceptions for its members when:

* Pregnancy results from rape or incest, or
* A competent physician determines that the life or health of the mother is in serious jeopardy, or
* A competent physician determines that the fetus has severe defects that will not allow the baby to survive beyond birth.[[15]](#footnote-15)

Utah’s Criminal Abortion Ban tracks this statement almost exactly. There, abortion is prohibited unless:

* “the woman is pregnant as a result of rape, rape of a child, or incest” and the physician confirms the assault was reported to law enforcement;
* it is “necessary to avert the death of the woman … or a serious risk of substantial and irreversible impairment of a major bodily function;” or
* “two physicians … concur, in writing, … that the fetus has a defect that is uniformly diagnosable and uniformly lethal; or has a severe brain abnormality that is uniformly diagnosable . . . .”[[16]](#footnote-16)

Anyone who lives in Utah knows why this is the case. The Utah Legislature is dominated, to a disproportionate extent, by members of the LDS faith.[[17]](#footnote-17) There is nothing inherently wrong with that, but it is no surprise that legislation enacted by that super-majority coheres precisely with the dominant majority’s religious beliefs. In simpler terms, it is relevant to the analysis. The LDS Church itself is, of course, entitled to devise and preach its own views on abortion. The freedom of religion demands no less. What it is not entitled to do is to have those religious beliefs encoded into criminal law on a highly controversial issue that sharply divides those of different faiths and ideologies, in violation of the bedrock principles of religious neutrality and freedom of conscience on which this state was founded.

If religious pluralism matters at all, these doctrinal differences matter too. While some religions hold that life begins at conception or implantation and all abortion (and certain forms of birth control) is immoral, other religions, including those of the amici congregations, do not equate a fetus to a living human being and have no religious objection to abortion per se*.* While some religions believe that pregnancy occurs because a god decides that a child should be born, other religions do not believe in a god who is actively intervening in human affairs in this way. While some religions believe that the pain of pregnancy and childbirth are the result of original sin and that pregnancy and childbirth should be the punishment for extramarital sex, other religions do not believe in original sin or that sexual activity is punished in that way.

All amici believe that the choice to bear a child or to terminate a pregnancy pre-viability is a moral choice informed by applicable faith traditions that should be left to the person who is pregnant, not the government. (*See, e.g.*, R.286 at ¶ 20.)

Unitarians have no doctrine as to when life begins, nor that abortion must be avoided. Instead, Unitarians “embrace the reproductive justice framework, which espouses the human right to have children, not to have children, to parent the children one has in healthy environments and to safeguard bodily autonomy and to express one’s sexuality freely.”[[18]](#footnote-18) As early as 1987, the Unitarian Universalist Association General Assembly adopted a resolution that women should have the right to choose to terminate a pregnancy:

**The Right to Choose 1987 General Resolution:**

BECAUSE, Unitarian Universalists believe that the inherent worth and dignity of every person, the right to individual conscience, and respect for human life are inalienable rights due every person; and that the personal right to choose in regard to contraception and abortion is an important aspect of these rights … the 1987 General Assembly of the Unitarian Universalists Association reaffirms its historic position, supporting the right to choose contraception and abortion as legitimate aspects of the right to privacy.[[19]](#footnote-19)

Reform Judaism (the dominant branch in Utah) has long supported a woman’s right to terminate a pregnancy consistent with its understanding of Jewish moral principles.[[20]](#footnote-20) Most recently, in response to the leaked *Dobbs* decision, the Central Conference of American Rabbis wrote that such a decision “would violate the religious freedom of Jews and others whose religious traditions, like ours, permit abortion.”[[21]](#footnote-21)

The Evangelical Lutheran Church in America (of which Mount Tabor is a member) affirms that “there can be sound reasons for ending a pregnancy through induced abortion,” and that there are situations where obtaining an abortion may be a “morally responsible” choice. It “opposes laws that deny access to safe and affordable services for morally justifiable abortions.”[[22]](#footnote-22)

As early as 1970, the Presbyterian Church declared that “the artificial or induced termination of a pregnancy is a matter of careful ethical decision of the patient … and therefore should not be restricted by law….”[[23]](#footnote-23) Noting that many complicated circumstances could present themselves, the Presbyterian Church concluded: “We affirm the ability and responsibility of women, guided by the Scriptures and the Holy Spirit, in the context of their communities of faith, to make good moral choices in regard to problem pregnancies.”[[24]](#footnote-24)

The American Baptist Churches (of which First Baptist Church is a member) have issued a statement that calls upon all local churches and all members to be prayerful in ministering to those facing pregnancy decisions.[[25]](#footnote-25) Baptists have a deep conviction in “Soul Liberty” that allows each person to “enter into a direct relationship to God without outside mediation.”[[26]](#footnote-26) In accordance with this belief, the decision whether to terminate a pregnancy must be left to the pregnant woman.

The Episcopal Church maintains that access to equitable health care, including reproductive health care and reproductive procedures, is “an integral part of a woman’s struggle to assert her dignity and worth as a human being.” The church holds that “reproductive health procedures should be treated as all other medical procedures, and not singled out or omitted by or because of gender.”  The Episcopal Church sustains its “unequivocal opposition to any legislation on the part of the national or state governments which would abridge or deny the right of individuals to reach informed decisions [about the termination of pregnancy] and to act upon them.” As stated in the 1994 Act of Convention, the church also opposes any “executive or judicial action to abridge the right of a woman to reach an informed decision … or that would limit the access of a woman to safe means of acting on her decision.”[[27]](#footnote-27)

In Islam, although there are variations, a fetus is generally not considered to be “ensouled” until 120 days after conception, and there is no blanket prohibition on abortion before that point.[[28]](#footnote-28) Further, classical Islamic practice dictates that “the fetus was never seen as a legal person before birth” and “the status of women … means that women must not be seen simply as vessels to carry sperm to maturity. It means that women must assert control of their bodies, and their concerns and feelings must be given prime consideration.”[[29]](#footnote-29)

For further elaboration on the wide diversity of religious views on this issue, amici refer the Court to the Religious Coalition for Reproductive Choice, a national, interfaith movement advancing “reproductive health, choice, rights and justice through education, prophetic witness, pastoral presence and advocacy,”[[30]](#footnote-30) with dozens of founding members, including those from Unitarian, Jewish, Lutheran, Muslim, and Presbyterian faiths.[[31]](#footnote-31) The RCRC states:

RCRC values and promotes religious liberty which upholds the human and constitutional rights of all people to exercise their conscience to make their own reproductive health decisions without shame and stigma. RCRC challenges systems of oppression and seeks to remove the multiple barriers that impeded individuals, especially those in marginalized communities, in accessing comprehensive reproductive health care with respect and dignity.[[32]](#footnote-32)

Amici congregations and clergy consider the morality of abortion within the context of the pregnant person’s life. Consistent with these sentiments, all amici are deeply concerned that, while any woman who becomes pregnant deserves the agency to make her own moral decision, it is disproportionately the poor[[33]](#footnote-33) and women of color[[34]](#footnote-34) who seek abortion care. Nationally, the majority of women seeking abortions, and nearly the majority in Utah, already have children.[[35]](#footnote-35) “[I]n the Turnaway Study … their desire to care for the children they already have is a leading reason for aborting a pregnancy.”[[36]](#footnote-36) These mothers do not believe they are immorally killing a baby, but rather are making the moral decision to put their responsibilities to their existing children first. This is consistent with the Unitarian obligation to respect the “inherent worth and dignity of every person”[[37]](#footnote-37) and with every other religion that places a moral responsibility to care for living dependents above any obligation to bring a fetus to life.[[38]](#footnote-38) Scientific findings also support this choice.[[39]](#footnote-39)

Similarly, poor childless women, like Declarant Doe, make the moral choice to avoid giving birth to a child for whom they cannot adequately care and when the father is unwilling to commit to parenthood.[[40]](#footnote-40) In the Turnaway Study, women gave multiple reasons for terminating a pregnancy, including financial (40%) and partner-related (31%) reasons.[[41]](#footnote-41) Amici would support and affirm the moral choices women make to avoid giving birth to a child they cannot care for and in the absence of a supportive relationship.

Nor do amici subscribe to the simplistic argument that adoption is an easy solution to an unwanted pregnancy.[[42]](#footnote-42) This attitude discounts the medical risks of pregnancy and childbirth,[[43]](#footnote-43) ignores the fact that the mother cannot guarantee adoption,[[44]](#footnote-44) and fails to account for the harm that the relinquishing mother experiences.

“There is general consensus among adoption researchers that for many women the experience of relinquishment is often fraught with intense feelings of grief, loss, shame, guilt, remorse, and isolation.”[[45]](#footnote-45) A meta-analysis of English-language studies from 1978 through 1994 regarding the post-relinquishment experience “noted a theme of chronic grief that negatively impacted birth mothers’ health, mental health, and relationships.”[[46]](#footnote-46) More recent studies have confirmed these findings.[[47]](#footnote-47) While one might think that such feelings of grief and loss would dissipate with time, studies have found that the opposite is true.[[48]](#footnote-48)

Perhaps due to the anticipation of such feelings, or due to a moral obligation to the child, the vast majority of women who face an unplanned pregnancy choose to keep the child rather than relinquish it for adoption.[[49]](#footnote-49)

Amici believe we should trust women with the highly personal decision about terminating a pregnancy, relinquishing a child for adoption, or taking on the responsibility of motherhood. These decisions are deeply rooted in conscience, and the government should not control them.

**III. Utah’s Criminal Abortion Ban Violates the Utah Constitution’s Unique Protections for Religious Exercise and Conscience**

For all these reasons, it follows directly that Utah’s Criminal Abortion Ban cannot be reconciled with the broad protections for religious neutrality and anti-domination in the Utah Constitution, at least not in a way that avoids rendering those provisions functionally meaningless.

The law is not religiously neutral in a way that even passing scrutiny can support. It wades into highly controversial religious waters by declaring a “compelling interest in the protection of the *lives of unborn children*,” [Utah Code § 76-7-301.1(2)](https://www.westlaw.com/Document/N219807508F8711DBAEB0F162C0EFAF87/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0) (emphasis added), embedding a religious belief about when life begins where those of other faiths would see only a fetal potential for life. Notably, this compelling interest in fetal “life” gives way if the woman has been raped and reported the rape to law enforcement, [Utah Code §§](https://1.next.westlaw.com/Document/N63020BB09A4911EAB11AE48D1468CED2/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)) [76-7a-](https://1.next.westlaw.com/Document/N63020BB09A4911EAB11AE48D1468CED2/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))[201(1)(c)(i)(A), (ii)(A)](https://1.next.westlaw.com/Document/N63020BB09A4911EAB11AE48D1468CED2/View/FullText.html?originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))—a premise philosophically hard to square with the view that abortion is murder, but perfectly consistent with the LDS position as to when abortion is permissible. Some religions would not allow that exception. Amici believe other circumstances may equally justify an abortion that are not encoded in the LDS position or Utah’s Criminal Abortion Ban. The diversity of moral beliefs on these issues shows why the highly personal and conscience-laden abortion decision should be left to the moral discernment of the pregnant woman herself.

As a result, Utah’s Criminal Abortion Ban enacts one set of religious beliefs to the exclusion of numerous Utah citizens of different faiths, and therefore is not consistent with the principles of religious pluralism Utah’s founders carefully implanted in our constitution. And this directly implicates the fundamental concern that was laced throughout our state’s long path to statehood—domination by a single faith to the derogation of others. If anything is clear from our constitutional history, it is that this unique religious concern—one on which Utah stands alone—deserves protection under the law, and by this Court.

It is no answer to say that Utah’s citizens remain free to *believe* whatever they want, despite regulation of their *conduct* by the Criminal Abortion Ban. This Court has been crystal clear that Article I, section 4 ensures the freedom of “religious *exercise*,” not merely thought. *[Soc’y of Separationists](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_935%2c+940)*[, 870 P.2d at 935, 940](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_935%2c+940) (emphasis added); *cf.* *[Burwell v. Hobby Lobby Stores, Inc.](https://www.westlaw.com/Document/If648fefa003611e4b86bd602cb8781fa/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_780_720)*[, 573 U.S. 682, 720 (2014)](https://www.westlaw.com/Document/If648fefa003611e4b86bd602cb8781fa/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_780_720). The right of conscience, too, is inextricably related to the actions a person takes, not merely what they think. To argue that a person’s liberty remains intact based solely on what is in their head, all while their personal moral decisions are constrained under threat of criminal punishment, is to eviscerate the meaning of what liberty is.

It is likewise no answer to say that it is permissible for the government to legislate in ways that “happen[] to coincide” with specific religious beliefs. *[McGowan v. Maryland](https://www.westlaw.com/Link/Document/FullText?cite=366US420&VR=3.0&RS=da3.0)*[, 366 U.S. 420, 442 (1961)](https://www.westlaw.com/Link/Document/FullText?cite=366US420&VR=3.0&RS=da3.0). Of course that is true. Uncontroversial laws prohibiting murder, assault, theft, and the like, all with robust secular justifications grounded in the social contract, fall into that category. But that anodyne observation cannot possibly be the end of the story. If it were, Utah’s unique prohibitions on the intermingling of church and state would be a dead letter, essentially exempting any religiously based law that happens to have a secular justification from the protections of Article I, section 4. The analysis demands more than that.

Put a different way, Petitioners’ position seems to be that because some other laws correspond with religious beliefs, and those laws are okay, this one must be too. From that, they argue there is therefore no limiting principle and posit the reductive conclusion that any religiously infused law must be immune from scrutiny.

That is a dangerously languid approach to constitutional analysis. It certainly doesn’t justify the conclusion that no law, no matter how religiously infused, is beyond reproach. And it is plainly not the case for abortion—an issue no one would describe as uncontroversial or readily justified by purely secular reasons. Unlike laws against murder and theft, for example, which are only prohibitory, abortion bans force a pregnant person to *do something* in violation of many peoples’ consciences and beliefs—carry a child to term and involuntarily alter the structure of their family. And they do so based on metaphysical assumptions about the beginning of life that are not the proper domain of secular law. In this way, the Ban uses legal machinery to interfere with some of the most profound and personal conscience-based choices a woman can make about her body, her life, and her family. The argument that such laws are akin to forbidding shoplifting is as superficial as it is wrong.

None of this entails the parade of horribles Petitioners conjure—that invalidating a single, religiously infused law under Utah’s unique constitutional provisions means “conscience” would become a type of blanket immunity, with rampant drug use and animal sacrifice in the streets surely to follow. That is an equally unserious approach to determining what Utah’s constitutional protections actually mean and doing the hard work of applying them to the particular law before the Court.

Whether there is a limiting principle is an important question in any constitutional analysis. And it may very well be an important one for this Court to answer in some closer case involving religious liberty. But not this one. Not on an issue that so starkly divides people of different faiths, and those of no faith at all, that rests on metaphysical questions the government has no business dictating, and that, in this incarnation, so precisely adheres to the views of one dominant religion over the rest.

\* \* \*

Utah’s founding principles and the backbone of its constitution are built on principles of religious pluralism—that regardless of one’s faith, or absence thereof, one can live here without the government imposing the tenets of unwanted sectarian beliefs on their lives. Those freedoms were hard won. They are fundamental. And Utah’s Criminal Abortion Ban directly violates them. The district court was right to say that this issue is serious enough to warrant further litigation. This Court should say the same.

**CONCLUSION**

For all the foregoing reasons, amici request that this Court affirm the decision of the district court.

Respectfully Submitted this 25th day of January 2023.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 24(a)(11) of the Utah Rules of Appellate Procedure, the undersigned hereby certifies that according to the word count of the word processing system used to prepare this brief, this brief contains 6,597 words, excluding the title page, table of contents, table of authorities, any addendum, and certificates hereto. Neither this brief nor any addendum contains non-public information.

/s/ David C. Reymann

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 25th day of January 2023, I served the foregoing **BRIEF OF RELIGIOUS ORGANIZATIONS AND CLERGY AS AMICI CURIAE IN SUPPORT OF PLANNED PARENTHOOD AND AFFIRMANCE** via email on the following:

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1. Daniel J. H. Greenwood, Kathy Wyer, & Christine Durham, *Utah’s Constitution: Distinctively Undistinctive*, in The Constitutionalism of American States, George E. Connor, Christopher W. Hammons, eds. 657 (2006) (hereinafter, “Greenwood”) at 657, *citing* Proceedings 1:240 (statement of Mr. Van Horne). [↑](#footnote-ref-1)
2. Greenwood at 656. [↑](#footnote-ref-2)
3. Lester J. Mazor, *Notes on a Bill of Rights in a* *State Constitution*, 1996 Utah L. Rev. 326, 331 (hereinafter, “Mazor”) (citing, in addition to [Article 1, section 4](https://www.westlaw.com/Document/N0E2437208F7D11DBAEB0F162C0EFAF87/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0), provisions in Article X guaranteeing the public schools will be free of sectarian control, forbidding religious tests of admission as teacher or student, and prohibiting appropriation of government aid to institutions controlled by any church, sect or denomination). [↑](#footnote-ref-3)
4. Greenwood at 657. [↑](#footnote-ref-4)
5. *See* Christine M. Durham, *What Goes Around Comes Around: The New Relevance of State Constitutional Law*, 38 Valparaiso U. Law Rev. 353, 354, 359–61 (2004). [↑](#footnote-ref-5)
6. Irving Brant, The Fourth President: A Life of James Madison, 234 (1970) (hereinafter, “Brant”). [↑](#footnote-ref-6)
7. *Memorial and Remonstrance Against Religious Assessments*, Founders Online, <https://founders.archives.gov/documents/Madison/01-08-02-0163>. [↑](#footnote-ref-7)
8. Brant at 129. [↑](#footnote-ref-8)
9. *Id*. [↑](#footnote-ref-9)
10. *James Madison and the Bill of Rights*, George Washington Institute for Religious Freedom, available at: <https://www.gwirf.org/james-madison-and-the-bill-of-rights/>. [↑](#footnote-ref-10)
11. *Memorial and Remonstrance*, quoting Article XVI, Virginia Declaration of Rights. [↑](#footnote-ref-11)
12. Mormons and non-Mormons alike recognized the need for strict separation of the church’s doctrines from the state’s enacted laws. Oliver Cowdery’s 1835 declaration of belief, now canonized in the Mormon faith as “Doctrine and Covenants 134,” stated that “the civil magistrate should restrain crime, but never control conscience; should punish guilt, but never suppress the freedom of the soul,” and that “[w]e do not believe it just to mingle religious influence with civil government.” Patrick Mason, *LDS Church Has Learned to Dance with the Secular State*, Salt Lake Tribune (Nov. 21, 2022), <https://www.sltrib.com/opinion/commentary/2022/11/22/patrick-mason-lds-church-has/>. [↑](#footnote-ref-12)
13. *[Id](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_940)*[. at 940](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_940). As expressed in the predicate to Utah’s statehood in its Enabling Act, [*id*. at 928](https://www.westlaw.com/Document/I412095dcf59f11d9b386b232635db992/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0&fragmentIdentifier=co_pp_sp_661_928), later enshrined in the admitting Ordinance of Utah’s Constitution, “[p]erfect toleration of religious sentiment is guaranteed.” [Utah Const. Art. III](https://www.westlaw.com/Document/N30E3A1B08F7D11DBAEB0F162C0EFAF87/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0). [↑](#footnote-ref-13)
14. “[F]aith leaders are too often imagined as exclusively aligned with the anti-abortion camp. Prior to Roe, however, clergy ran an extensive abortion referral network. Between 1967-73, a group of 2,000 liberal Protestant ministers, Jewish rabbis, dissident Catholic nuns and priests, and laity from a spectrum of denominations, openly facilitated access to abortion for tens of thousands.” Gillian Frank, *The Religious Network that Made Abortion Safe When it Was Illegal* (August 17, 2022), available at: <https://genderpolicyreport.umn.edu/the-religious-network-that-made-abortion-safe-when-it-was-illegal/>. [↑](#footnote-ref-14)
15. Abortion, *Newsroom*, The Church of Jesus Christ of Latter-Day Saints, available at: <https://newsroom.churchofjesuschrist.org/official-statement/abortion>. [↑](#footnote-ref-15)
16. [Utah Code § 76-7a-201(1)](https://www.westlaw.com/Document/N63020BB09A4911EAB11AE48D1468CED2/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0). [↑](#footnote-ref-16)
17. L. Davidson, *Latter-day Saints are Overrepresented in Utah’s Legislature, Holding 9 of Every 10 Seats,* Salt Lake Tribune, January 19, 2021 (noting that 60% of Utahns but 86% of legislators are members of the LDS church), available at: <https://www.sltrib.com/news/politics/2021/01/14/latter-day-saints-are/>. [↑](#footnote-ref-17)
18. Reproductive Justice 2015 Statement of Conscience, available at: <https://www.uua.org/action/statements/reproductive-justice> (“Unitarian Universalists support ... [t]he individual’s right to make reproductive choices…. Our religious tradition directs us to respect the diversity of faith traditions that surround us and insists that no singular religious viewpoint or creed guide the policies of our governments.”). [↑](#footnote-ref-18)
19. Unitarian Universalist Association, *Right to Choose 1987 General Resolution*, available at: <https://www.uua.org/action/statements/right-choose>. [↑](#footnote-ref-19)
20. Central Conference of American Rabbis, *Resolution Adopted by the CCAR On Abortion and the Hyde Amendment* (1984), available at: <https://www.ccarnet.org/ccar-resolutions/abortion-1984/>. [↑](#footnote-ref-20)
21. CCAR, *Central Conference of American Rabbis Statement on Draft Supreme court Opinion Overturning Roe v. Wade* (2022), available at: <https://www.ccarnet.org/ccar-statement-on-draft-supreme-court-opinion-overturning-roe-v-wade/>. [↑](#footnote-ref-21)
22. Evangelical Lutheran Church in America, *A Social Statement on: Abortion*, 6-7 and 9-10, available at: <https://www.elca.org/faith/faith-and-society/social-statements/abortion>. [↑](#footnote-ref-22)
23. Minutes of the 182nd General Assembly (1970), United Presbyterian Church in the U.S.A. p. 891, quoted at: <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>. [↑](#footnote-ref-23)
24. Presbyterian Church (U.S.A.), *What We Believe: Social Issues—Abortion / Reproductive Choice Issues*, available at: <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>. [↑](#footnote-ref-24)
25. *American Baptists Resolution. Concerning Abortion and Ministry in the Local Church*,available at: <http://religiousinstitute.org/denom_statements/american-baptist-resolution-concerning-abortion-and-ministry-in-the-local-church/>. [↑](#footnote-ref-25)
26. *Our Baptist Liberties*, First Baptist Church, Salt Lake City, available at: <https://www.firstbaptist-slc.org/baptist-freedoms>. [↑](#footnote-ref-26)
27. Quotes in this paragraph and the General Convention Resolutions they cite are available at: *Summary of General Convention Resolutions on Abortion and Women’s Reproductive Health*, May 17, 2019, <https://www.episcopalchurch.org/ogr/summary-of-general-convention-resolutions-on-abortion-and-womens-reproductive-health/>. [↑](#footnote-ref-27)
28. *See generally* Mohammed A. Albar, DM, FRCP, *Induced Abortion from an Islamic Perspective: Is It Criminal or Just Elective?*, Nat’l Libr. of Med. (Sep.–Dec. 2001), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3439741/> (discussing “the different views on abortion, its history, its evolution over time, and the present legal circumstances[, with a particular] emphasis on the situation in Islamic countries”). [↑](#footnote-ref-28)
29. Khaleel Mohammed, *Islam and Reproductive Choice,* Religious Coalition for Reproductive Choice,[www.rcrc.org/muslim](http://www.rcrc.org/muslim). [↑](#footnote-ref-29)
30. Religious Coalition for Reproductive Choice, [www.rcrc.org](http://www.rcrc.org). [↑](#footnote-ref-30)
31. *Founding Members*, Religious Coalition for Reproductive Choice, [www.rcrc.org/founding-members/](http://www.rcrc.org/founding-members/). [↑](#footnote-ref-31)
32. Religious Coalition for Reproductive Choice, [www.rcrc.org](http://www.rcrc.org). [↑](#footnote-ref-32)
33. Teresa Ghilarducci, *59% of Women Seeking Abortions Are Mothers Facing High Poverty Risk*, Forbes (Dec 24, 2021), 49% were poor, 75% low income, available at: <https://www.forbes.com/sites/teresaghilarducci/2021/12/24/59-of-women-seeking-abortions-are-mothers-facing-high-poverty-risk/?sh=a37d564264f8>. [↑](#footnote-ref-33)
34. Dehlendorf, Harris & Weitz, *Disparities in Abortion Rates: A Public Health Approach,* 103(10) Am. J. Public Health 1772 (Oct. 2013), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3780732/> (noting lack of access to family planning and mistrust of the medical system). [↑](#footnote-ref-34)
35. “Fifty-nine percent of abortions in 2014 were obtained by patients who had had at least one birth.” Guttmacher Institute, *Induced Abortion in the United States: Fact Sheet* (Sept. 2019), available at: <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states?gclid=CjwKCAjw5P2aBhAlEiwAAdY7dODDARmrOTM0_Wgvy56F9WFCoYBjg7fvEqAHycPWbFkNvRcTCuENtxoCz-4QAvD_BwE>; Andy Larsen, *Here’s what data shows on who, where and why women get abortions in Utah*, Salt Lake Tribune, July 2, 2022, available at: <https://www.sltrib.com/news/2022/07/02/heres-what-data-shows-who/>. [↑](#footnote-ref-35)
36. Diane Greene Foster, Ph.D., The Turnaway Study 199 (2020) and Advancing New Standards in Reproductive Health (ANSIRH), *The Turnaway Study*, available at: <https://www.ansirh.org/research/ongoing/turnaway-study>. This comprehensive longitudinal study compared women denied an abortion to women receiving an abortion, and followed both sets of women for five years. It has resulted in over 50 scientific papers in peer-reviewed journals. [↑](#footnote-ref-36)
37. The Seven Principles, <https://www.uua.org/beliefs/what-we-believe/principles>. [↑](#footnote-ref-37)
38. Declarants Roe and Moe in this case, for instance, sought an abortion because of their financial and emotional responsibilities to their existing children. (R.719-28.) [↑](#footnote-ref-38)
39. Existing children do economically and developmentally worse when their mother is denied an abortion than when she obtains an abortion, and the child born is more likely to be poor than later-born children of women who were able to terminate an unwanted pregnancy. Foster, *supra* note 36 at 202-203, and ANSIRH, *id*. [↑](#footnote-ref-39)
40. Doe is a community college student and a server earning $1,000 per month, below 100% of poverty. (R.714-17.) [↑](#footnote-ref-40)
41. Foster, *supra* note 36 at 35, 234-35. Women who were able to terminate their pregnancy were more likely to be in a supportive relationship with a partner two years later. [↑](#footnote-ref-41)
42. Indicative of this type of argument, Justice Alito wrote, “a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.” *Dobbs v. Jackson Women’s Health*, 597 U.S. \_\_ (2022). During oral argument, Justice Barrett asked whether “safe haven laws” allowing anonymous relinquishment of infants don’t “take care of that problem” of forced parenthood. *Dobbs* Tr. at p. 56, lines 23-24. [↑](#footnote-ref-42)
43. The “risk of death associated with childbirth [is] approximately 14 times higher” than the risk of death due to abortion. Raymond & Grimes*, The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics & Gynecology 215, 216 (2012). [↑](#footnote-ref-43)
44. *See* R.294 at ¶ 42. When an unwed father is able to contest an adoption, and is not unfit, the court will dismiss the adoption and conduct a custody hearing in which the mother may wish to seek custody in the “best interests” of the child. [Utah Code § 78B-6-133](https://www.westlaw.com/Document/N7EAD7090CD2211EB825FC22BFCF76B4F/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=da3.0). [↑](#footnote-ref-44)
45. Madden, E. E., Ryan, S., Aguiniga, D. M., Killian, M., & Romanchik, B. (2018), *The Relationship Between Time and Birth Mother Satisfaction With Relinquishment*, Families in Society, 99(2), 170–183, available at: <https://doi.org/10.1177/1044389418768489>; *see also* R.294 at ¶ 41. [↑](#footnote-ref-45)
46. *Id*., citing Askren and Bloom, *Postadoption Reactions of the Relinquishing Mother: A Review*, Journal of Obstetric, Gynecological & Neonatal Nursing, 28(4), 395-400 (1999). [↑](#footnote-ref-46)
47. *Id.* [↑](#footnote-ref-47)
48. *Id.* In contrast, the Turnaway Study shows that having an abortion does not increase the likelihood of “developing depression, anxiety, post-traumatic stress or suicidal ideation.” Biggs et al., *Women’s Mental Health and Well-Being 5 Years After Receiving or Being Denied an Abortion: A Prospective, Longitudinal Cohort Study*, 74 JAMA Psychiatry 169, 177 (2017). [↑](#footnote-ref-48)
49. G. Sisson, L. J. Ralph, H. Gould, D.G. Foster, *Adoption Decision Making Among Women Seeking Abortion*, 27(2) Women’s Health Issues 136-144 (March 2017). Of participants from the “Turn-Away Study” who gave birth, 91% chose to parent their baby. *See supra* note 37. [↑](#footnote-ref-49)