



July 29, 2022

Via Electronic Filing
Supreme Court of Texas
Supreme Court Building
201 W 14th St., Room 104
Austin, Texas 78711

Re: *In re Ken Paxton, et al.*, No. 22-0527

TO THE HONORABLE SUPREME COURT OF TEXAS:

Texas Right to Life submits this letter brief as *amicus curiae* in support of Relators' Petition for Writ of Mandamus.

I. INTEREST OF AMICUS CURIAE

Texas Right to Life is a nonprofit organization devoted to protecting the sanctity of human life and stopping attacks on innocent human life, including elective abortion in Texas. Texas Right to Life utilizes related entities which engage in educating citizens that each abortion murders a human being. Texas Right to Life's 501(c)(4) organization routinely advocates for passage of laws that protect preborn children, and Texas Right to Life's political action committee supports candidates for elective office who share their commitment to stopping elective abortion in Texas.

II. ARGUMENT

The purpose of this letter brief is to provide additional legal analysis support in favor of Article 4512.2 of the Revised Civil Statutes, colloquially dubbed the "accomplice liability" provision found in Texas' pre-*Roe* criminal statutes.¹ For the

¹ See *Ex parte Campbell*, 267 S.W.3d 916, 924 (Tex. Crim. App. 2008) (opining that "article 1072 [of the 1911 Penal Code (now art. 4512.2)] provided for a theory of accomplice liability with respect to abortion offenses" (citing *Fondren v. State*, 169 S.W. 411, 415 (Tex. Crim. App. 1914))).

reasons outlined below, Amicus Curiae support Relators' Petition, focusing specifically on the accomplice liability provision.²

A. The doctrine of “repeal by implication” requires irreconcilable differences between two statutes that have the same subject and object; such irreconcilable differences are absent between Article 4512.2 and the Trigger Ban.³

Simply being two statutes that address the same subject matter does not give rise to repeal of one by the other through implication. As this Court stated in *Cole v. State*,

It is not sufficient that there be a discrepancy between different parts of a system of legislation upon the same general subject; there must be a conflict between different statutes upon the same specific subject.

Cole v. State, 170 S.W. 1036, 1037 (Tex. 1914) (citation omitted) (emphasis added). There are many laws throughout Texas that address the same subject matter, just in different places and passed by different legislatures. For example, elections in Texas are not just governed by the Texas Election Code, but rather have other statutes governing certain election activity found in places like the Water Code and the Health and Safety Code. The dissolving of a taxing unit is generally governed by the Election Code, except for the dissolution of a local hospital district with special rules found in the Texas Health and Safety Code. The subjects are the same, but they are not irreconcilably different.

Here, the Trigger Ban specifically and intentionally addresses the criminal activity of healthcare professionals who engage in providing illegal abortions to pregnant women in Texas. The Legislature chose not to address liability of private individuals through that particular piece of legislation, as a liability mechanism was already in place through the pre-*Roe* statutes. Thus, instead of supporting repeal by implication, the Legislature's decision to not address accomplice liability in the Trigger Ban actually provides support for the effectiveness of the pre-*Roe* accomplice liability provision. Finally, the lack of discussion regarding accomplice

² *N.b.*, the same provision appeared in substantially the same form in all penal codes adopted by the legislature since 1856. See Tex. Pen. Code of 1925, art. 1192; Tex. Pen. Code of 1911, art. 1072; Tex. Pen. Code of 1895, art. 642; Tex. Pen. Code of 1879, art. 537; Tex. Pen. Code of 1856, art. 532.

³ See H.B. 1280, 87th Leg. R.S. (2021).

liability in the Legislature’s final piece of Trigger Ban legislation does not negate the existence of the pre-*Roe* statutes.

There is no irreconcilable difference between the accomplice liability provision in the pre-*Roe* statutes (Article 4512.2) and the Trigger Ban. Rather, Article 4512.2 provides a prosecutorial vehicle for accomplice liability; the Trigger Ban provides no such vehicle. Any district attorney who wishes to prosecute accomplice liability would choose the tool of Article 4512.2, not the Trigger Ban. They are each different tools in the same toolbox. Accomplice liability is simply a problem that the Texas Legislature decided was adequately addressed in the pre-*Roe* statutes and needed no change. This position is even more clearly reiterated in the Trigger Ban’s language specifically rejecting the repeal of the pre-*Roe* statutes by implication.⁴

III. CONCLUSION

For the reasons detailed in this letter brief, Amicus Curiae Texas Right to Life respectfully asks this Court to grant the Relators’ Petition for Writ of Mandamus.

Respectfully submitted,

/s/ Emily Cook

Emily Cook

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⁴ See H.B. 1280, 87th Leg. R.S. § 4 (2021). “The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother’s life is in danger.”

RULE 11(C) DISCLOSURE

No fee was paid or promised in association with the preparation of this letter brief, and none involved in its preparation have any pecuniary interest in the outcome of this case.

CERTIFICATE OF COMPLIANCE

Microsoft Word 2016 reports that this document contains 834 words, excluding any parts exempted by Rule 9.4(i)(1) of the Texas Rules of Appellate Procedure.

/s/ Emily Cook

Emily Cook

CERTIFICATE OF SERVICE

On July 29, 2022, pursuant to Rule 11(d) of the Texas Rules of Appellate Procedure, this document was served on Marc Hearron and Melissa Hayward, counsel for Real Parties In Interest, via [REDACTED] and [REDACTED]; and on Natalie D. Thompson, counsel for Relators, via: [REDACTED].

/s/ Emily Cook

Emily Cook

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Associated Case Party: WHOLE WOMAN'S HEALTH ALLIANCE

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