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**IN THE SUPREME COURT OF THE  
STATE OF GEORGIA**

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**Case No. S23A0421**

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STATE OF GEORGIA,

*Defendant-Appellant,*

v.

SISTERSONG WOMEN OF COLOR REPRODUCTIVE JUSTICE  
COLLECTIVE, et al.,

*Plaintiffs-Appellees.*

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On Appeal from the Superior Court of Fulton County  
Superior Court Case No. 2022CV367796

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**BRIEF OF AMICI CURIAE NATIONAL COUNCIL OF JEWISH WOMEN,  
SADHANA: COALITION OF PROGRESSIVE HINDUS, METROPOLITAN  
COMMUNITY CHURCHES, WOMEN’S RABBINIC NETWORK,  
RECONSTRUCTIONIST RABBINICAL ASSOCIATION, HINDUS FOR  
HUMAN RIGHTS, JEWISH COUNCIL FOR PUBLIC AFFAIRS,  
RABBINICAL ASSEMBLY, INTERFAITH ALLIANCE FOUNDATION,  
ATLANTA RABBINICAL ASSOCIATION, THE UNITARIAN  
UNIVERSALIST ASSOCIATION, CATHOLICS FOR CHOICE, AND  
SOUTHEAST CONFERENCE UNITED CHURCH OF CHRIST IN  
SUPPORT OF APPELLEES**

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Jennifer N. Ide, Esq.  
879 East Rock Springs Road  
Atlanta, GA 30306  
(h) (404)-575-4994  
(f) (404)-963-0829  
jennifer.n.ide@gmail.com

*Counsel for Amici Curiae*

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## INTRODUCTION

Since long before Georgia even became a state, it has been home to people of diverse religious backgrounds and beliefs. Native American tribes have populated the state for centuries, practicing a rich and varied set of creeds. In 1733, the first group of Jewish settlers arrived in Georgia and established one of the oldest synagogues in the country—still standing today in Savannah. And as Georgia’s demographics continue to evolve, members of various Christian denominations live alongside those practicing Judaism, Islam, Hinduism, Buddhism, and other faiths. Still others practice their own sincerely held religious beliefs unaffiliated with any official faith or church. No one religion or denomination defines Georgia’s residents.

House Bill 481 (H.B. 481 or the LIFE Act) simultaneously disregards and threatens Georgia’s religious diversity by codifying into law one religious view about when life begins and whether and when the decision to terminate a pregnancy can morally be made. The officials who enacted H.B. 481 did not hide that their motivation for its passage was their personal religious beliefs. And by making these religious tenets state law, H.B. 481 prevents those who adhere to different religious beliefs from freely exercising those beliefs, including by forcing Georgians to join in the exercise of that state-endorsed religious belief or face severe consequences. H.B. 481 thus violates the religious liberties guaranteed to Georgians under the

federal and state constitutions.

Amici curiae submit this brief to make clear to this Court that H.B. 481’s enactment has broad implications for constitutional rights in Georgia—these legal issues have not been raised by the parties to the appeal but bear heavily on and further reflect the correctness of the trial court’s decision and the law’s unconstitutionality.

### **IDENTITY AND INTEREST OF AMICI CURIAE**

Amici curiae are a diverse group of religious organizations whose religious beliefs are restricted by H.B. 481.

Amicus the National Council of Jewish Women (“NCJW”) is a grassroots organization of volunteers and advocates who turn our ideals into action. Inspired by Jewish values and law, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms, including access to safe and legal abortion, medically accurate information, access to contraception, and the elimination of obstacles that limit reproductive freedom. Consistent with our mission, Jewish tenets, and our Resolution to work for comprehensive, equitable, and accessible family planning and reproductive health services, NCJW submits this brief in support of Appellees. The additional amici are faith-based organizations that espouse a wide range of religious traditions and beliefs:

- Sadhana: Coalition Of Progressive Hindus.
- Metropolitan Community Churches.
- Women’s Rabbinic Network.
- Reconstructionist Rabbinical Association.
- Hindus For Human Rights.
- Jewish Council For Public Affairs.
- Rabbinical Assembly.
- Interfaith Alliance Foundation.
- Atlanta Rabbinical Association.
- The Unitarian Universalist Association.
- Catholics For Choice.
- Southeast Conference United Church Of Christ.

## **ARGUMENT**

Georgians sincerely hold a panoply of religious beliefs about when life or personhood begins and whether or when terminating a pregnancy is a sin. H.B. 481 ignores this diversity of religious belief and suppresses its exercise by codifying a singular religious view—that life begins at conception and abortion at almost any stage of pregnancy is a sin—into state law. H.B. 481’s implications for religious

liberty in the state provide yet another compelling reason for this Court to confirm that the law is unconstitutional.

**I. Georgians sincerely hold different religious beliefs about abortion and when life begins.**

The religious belief that life begins at conception and abortion at almost any stage of pregnancy is immoral is not one shared by every religion or its practitioners. It is not even one universally shared by Christians or Catholics. Instead, religious traditions vary in their teachings and tenets about these issues, while their adherents also vary in their own sincerely held beliefs. Many traditions prescribe religious beliefs that run contrary to the view that abortion is always sinful—and in fact may view terminating a pregnancy as the correct moral choice in some cases.

**A. Religious traditions do not share a uniform view of when life begins.**

At the outset, the view that life begins at conception is not even uniformly held in the Christian sphere. The Presbyterian Church, Lutheran Church, and United Church of Christ have all declined to take a position on when life begins, while noting the diverse range of religious views on the question.<sup>1</sup> As the United Church

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<sup>1</sup> See Presbyterian Church (U.S.A.), *Abortion/Reproductive Choice Issues*, <https://www.presbyterianmission.org/what-we-believe/social-issues/abortion-issues/>; Evangelical Lutheran Church in America, *Social Statement on Abortion* at 1, 3 n.2 (1991), <http://download.elca.org/ELCA%20Resource%20Repository/AbortionSS.pdf>; United Church of Christ, *Statement on Reproductive Health and Justice*, available at <https://d3n8a8pro7vhmx.cloudfront.net/unitedchurchofchrist/legacyurl/455/reproductive-health-and-justice.pdf>.

of Christ observed, “there are many religious and theological perspectives on when life and personhood begin,” and “public policy must honor this rich religious diversity.”<sup>2</sup> Similarly, the Church of Jesus Christ of Latter-Day Saints (“LDS Church”) has never taken an official position on when a fetus becomes a person.<sup>3</sup> And Catholic teachings on when life begins have changed dramatically over time. Catholic scholars and the Catholic Church have, at different times, taken the varying views that “ensoulment” occurs 40 to 90 days after conception,<sup>4</sup> at the time of “quickening” (usually around 18 weeks gestation),<sup>5</sup> at or near the time of childbirth,<sup>6</sup> or at some other undefined point in pregnancy.<sup>7</sup>

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<sup>2</sup> See United Church of Christ, *Statement on Reproductive Health and Justice*, *supra* note 1.

<sup>3</sup> Peggy Fletcher-Stack, *Surprise! The LDS Church can be seen as more ‘pro-choice’ than ‘pro-life’ on abortion. Here’s why*, SALT LAKE TRIBUNE (June 1, 2019), available at <https://www.sltrib.com/religion/2019/06/01/surprise-lds-church-can/>; see also Park Ridge Ctr., *The Latter-day Saints Tradition: Religious Beliefs and Healthcare Decisions* at 10 (Deborah Abbott ed., 2002), [https://www.advocatehealth.com/assets/documents/faith/latter-day\\_saints\\_tradition.pdf](https://www.advocatehealth.com/assets/documents/faith/latter-day_saints_tradition.pdf).

<sup>4</sup> See Anne Stensvold, *A History of Pregnancy in Christianity: From Original Sin to Contemporary Abortion Debates* 45-46 (2015).

<sup>5</sup> *Id.* at 70; Frank K. Flinn, *Encyclopedia of Catholicism* 4-5 (2007); Elissa Strauss, *When Does Life Begin? It’s Not So Simple*, SLATE (Apr. 4, 2017), <https://slate.com/human-interest/2017/04/when-does-life-begin-outside-the-christian-right-the-answer-is-over-time.html> (hereinafter “Strauss, *When Does Life Begin?*”).

<sup>6</sup> St. Thomas Aquinas, *Summa Contra Gentiles* 2.88-89; St. Thomas Aquinas, *Summa Theologiae* 1.118; see also Garry Wills, *Abortion Isn’t a Religious Issue*, L.A. TIMES (Nov. 4, 2007), available at <https://www.latimes.com/la-op-wills4nov04-story.html>.

<sup>7</sup> Strauss, *When Does Life Begin?* (“[T]he Catholic Church has never dogmatically defined when life begins,” but rather, “there is a recognition that there is unfolding

Religious traditions beyond Christianity take similarly divergent views of when life begins. The Jewish tradition generally views the creation of a human life as something that happens gradually over time.<sup>8</sup> Judaic “tradition holds that we enter life in stages and leave in stages.”<sup>9</sup> Specific to pregnancy, the Talmud teaches that a fetus is “mere fluid” up to the point of 40 days of gestation,<sup>10</sup> and from that point is considered a physical part of the pregnant individual’s body<sup>11</sup> rather than an individual “having a life of its own.”<sup>12</sup>

In the Islamic faith, “there is no universally agreed-upon moment when a fetus becomes a person.”<sup>13</sup> But the predominant view among Muslims is that a fetus

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developmental potential in embryo, from unification between sperm and egg to birth. There is no defined moment of ensoulment.” (quoting Daniel Sulmasy, a Catholic bioethicist and director of the Program on Medicine and Religion at the University of Chicago); *see also Roe v. Wade*, 410 U.S. 113, 133 n.22 (1973) (citing Augustine, *De Origine Animae* 4.4, discussing history of theological debates over the beginning of human life), *overruled by Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

<sup>8</sup> *See* Strauss, *When Does Life Begin?*.

<sup>9</sup> *See id.* (quoting Rabbi Elliot Dorff, bioethicist and professor of Jewish theology at the American Jewish University in California); *see also* Nat’l Council of Jewish Women, *Abortion and Jewish Values Toolkit* at 16 (2020), [https://www.ncjw.org/wp-content/uploads/2020/05/NCJW\\_ReproductiveGuide\\_Final.pdf](https://www.ncjw.org/wp-content/uploads/2020/05/NCJW_ReproductiveGuide_Final.pdf) (hereinafter, “NCJW, *Abortion and Jewish Values*”).

<sup>10</sup> Talmud Yevamot 69b, available at <https://www.sefaria.org/sheets/234926.8?lang=bi>.

<sup>11</sup> Talmud Gittin 23b:9, available at <https://www.sefaria.org/Gittin.23b.9?lang=bi>.

<sup>12</sup> Rabbi Danya Ruttenberg, *The Torah of Reproductive Justice*, <https://www.sefaria.org/sheets/234926?lang=bi> (hereinafter “*Torah of Reproductive Justice*”).

<sup>13</sup> Strauss, *When Does Life Begin?*.

acquires personhood 120 days from conception—at approximately 19-20 weeks of gestation.<sup>14</sup> In sum, there is no uniform view of when life begins shared by all religious traditions—there is not even such a uniform view within Christianity.

**B. Religious traditions have varying beliefs and laws regarding the termination of a pregnancy.**

Along with having different beliefs about when life begins, denominations within and outside of Christianity also hold varying teachings about abortion. There is no uniform view that abortion in all cases is immoral or sinful—rather, many traditions permit abortion at varying times and under varying circumstances, and some affirm that it can at times be the moral, or even religiously-mandated course of action.

Many Protestant denominations teach that decisions about reproductive health and pregnancy are matters of individual conscience. The United Church of Christ embraces the view that “[e]very woman must have the freedom of choice to follow her personal religious and moral convictions concerning the completion or termination of her pregnancy.”<sup>15</sup> The Episcopal Church of America argues that the

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<sup>14</sup> Mark Cherry, *Religious Perspectives on Bioethics* 196-97 (2004); Abdulaziz Sachedina, *Islamic Biomedical Ethics: Principles and Application* 134-35, 140-41 (2009); Dariusch Atighetchi, *Islamic Bioethics: Problems and Perspectives* 94 (2006); see also Strauss, *When Does Life Begin?*

<sup>15</sup> Sixteenth General Synod (1987), Eighth General Synod at 2 (1971), and Thirteenth General Synod at 10 (1981) of the United Church of Christ, *Resolutions on Freedom of Choice*, available at <https://new.uccfiles.com/pdf/GS-Resolutions-Freedom-of-Choice.pdf>.

decision to terminate a pregnancy is a matter of “individual conscience” to be made with “the advice and counsel” of the Christian community.<sup>16</sup> Accordingly, the Episcopal Church has repeatedly reaffirmed its “unequivocal opposition” to any legislation “that abridges the right of a woman to reach an informed decision about the termination of pregnancy or that would limit the access of a woman to safe means of acting on her decision.”<sup>17</sup> The Unitarian Universalist Association similarly views “the personal right to choose in regard to contraception and abortion” as central to the “right of individual conscience.”<sup>18</sup> And while the LDS Church “opposes elective abortion for personal or social convenience,”<sup>19</sup> it allows for exceptions and ultimately “defers to the moral agency” of the pregnant woman in deciding whether to terminate a pregnancy.<sup>20</sup>

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<sup>16</sup> Episcopal Church, *Standing Commission on Human Affairs and Health*, Resolution #C047 (1988), available at [https://episcopalarchives.org/cgi-bin/acts/acts\\_resolution.pl?resolution=1988-C047](https://episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=1988-C047).

<sup>17</sup> Episcopal Church, *Standing Commission on Human Affairs and Health*, Resolution #A054 (1994), available at [https://episcopalarchives.org/cgi-bin/acts/acts\\_resolution.pl?resolution=1994-A054](https://episcopalarchives.org/cgi-bin/acts/acts_resolution.pl?resolution=1994-A054) (reaffirming the 1967 General Convention Statement on Abortion).

<sup>18</sup> Unitarian Universalist Ass’n, *General Resolution on the Right to Choose* (1987), available at <https://www.uua.org/action/statements/right-choose>.

<sup>19</sup> The Church of Jesus Christ of Latter-Day Saints, *Abortion*, <https://newsroom.churchofjesuschrist.org/official-statement/abortion>.

<sup>20</sup> Peggy Fletcher-Stack, *Surprise! The LDS Church can be seen as more ‘pro-choice’ than ‘pro-life’ on abortion. Here’s why*, *supra* note 3 (citing the work of Courtney Campbell, a Mormon professor of religion and culture at Oregon State University); *see also* Park Ridge Ctr., *The Latter-day Saints Tradition: Religious Beliefs and Healthcare Decisions*, *supra* note 3 (affirming the “right of a woman to make her own decision” in the matter of whether to have an abortion).



Other Christian denominations extend this principle further to affirm that not only does the decision whether to terminate a pregnancy lie with an individual or couple, but the decision to end a pregnancy can be the moral one. The Presbyterian Church teaches that all “[h]umans are empowered by the spirit prayerfully to make significant moral choices, including the choice to continue or end a pregnancy.”<sup>21</sup> It also affirms that a “considered decision” to end a pregnancy “can be morally acceptable” and “should not be restricted by law.”<sup>22</sup> The Disciples of Christ has similarly resolved that “the place of decision making on abortion” lies “with the individuals involved with the pregnancy . . . on the basis of ethical and moral grounds.”<sup>23</sup> It does not, the church has confirmed, lie “with public legislators.”<sup>24</sup> In the same vein, the Evangelical Lutheran Church in America recognizes that abortion can be the “morally responsible decision.”<sup>25</sup> And the Episcopal Church of America recognizes that terminating a pregnancy can be “the moral option” and expresses a

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<sup>21</sup> Minutes of the 217th General Assembly of the Presbyterian Church (U.S.A.) at 905 (2006), available at [https://www.pcusa.org/site\\_media/media/uploads/oga/publications/journal2006.pdf](https://www.pcusa.org/site_media/media/uploads/oga/publications/journal2006.pdf).

<sup>22</sup> Presbyterian Church (U.S.A.), Abortion/Reproductive Choice Issues, *supra* note 1.

<sup>23</sup> *Freedom of Choice Act of 1989: Hearing on S. 1912 Before the S. Comm. on Labor and Human Resources*, 101st Cong. 237 (1990) (testimony of John O. Humbert, General Minister and President, Christian Church [Disciples of Christ] in the U.S.A. and Canada) (citing General Assembly of the Disciples of Christ Resolution 8954 (1989) and 7524 (1975)).

<sup>24</sup> *Id.*

<sup>25</sup> Evangelical Lutheran Church in America, *Social Statement on Abortion*, *supra* note 1, at 6-7.

“deep conviction” that any regulation of abortion “must take special care to see that individual conscience is respected.”<sup>26</sup>

Moreover, many adherents to Christian and Catholic faiths sincerely hold the belief that terminating a pregnancy aligns with their religion—even if that belief departs from their church’s official teachings.<sup>27</sup> The General Board of American Baptist Churches recognizes that many American Baptists believe that abortion “can be a morally acceptable action.”<sup>28</sup> And though the Catholic Church’s official stance is that abortion is impermissible, most American Catholics believe that abortion can be a morally acceptable choice.<sup>29</sup>

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<sup>26</sup> See Episcopal Church, *Standing Commission on Human Affairs and Health*, Resolution #A087 at 153 (1988), available at [https://www.episcopalarchives.org/e-archives/gc\\_reports/reports/1988/bb\\_1988-R016.pdf](https://www.episcopalarchives.org/e-archives/gc_reports/reports/1988/bb_1988-R016.pdf); see also *supra* notes 16 and 17.

<sup>27</sup> See Columbia Law School, Law, Rights, and Religion Project, *A Religious Right to Abortion: Legal History & Analysis* at 3 (2022), available at <https://lawrightsreligion.law.columbia.edu/sites/default/files/content/LRRP%20Religious%20Liberty%20%26%20Abortion%20Rights%20memo.pdf> (“Many members of religious denominations that oppose abortion nevertheless support the right to abortion access, including nearly a third (30%) of Southern Baptists, and over a quarter (27%) of Latter-day Saints.”).

<sup>28</sup> General Board of the American Baptist Churches, *Resolution Concerning Abortion and Ministry in the Local Church* at 1 (1987), available at [http://religiousinstitute.org/denom\\_statements/american-baptist-resolution-concerning-abortion-and-ministry-in-the-local-church/](http://religiousinstitute.org/denom_statements/american-baptist-resolution-concerning-abortion-and-ministry-in-the-local-church/); see also Alliance of Baptists, *A Statement on Lifelong Sexual Education, Sexual & Reproductive Rights, and Opposing Sexual Justice and Violence* (2012), available at <https://web.archive.org/web/20210115142453/https://allianceofbaptists.org/assets/uploads/congregations/LifelongSexualEducation2012.pdf>.

<sup>29</sup> Belden Russonello Strategists LLC, *2016 Survey of Catholic Likely Voters* at 5 (Oct. 2016), available at <https://www.catholicsforchoice.org/wp-content/uploads/>

Outside Christianity, varying religious traditions view abortion as morally permissible at a spectrum of times and circumstances, and even required in some cases. Jewish law requires abortion when it is necessary to safeguard the pregnant woman’s wellbeing—including when the pregnancy poses a risk to her mental health.<sup>30</sup> Reform, Reconstructionist, and Conservative Judaism all adopt the view that whether to terminate a pregnancy is a “moral decision” that “women are capable of making.”<sup>31</sup>

Other major religions take the same position that abortion can be a moral choice and must be made according to the dictates of individual conscience. Majorities of Buddhists and Hindus in the United States believe that abortion should be legal in all or most cases.<sup>32</sup> And some Islamic teachings permit abortion, under

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2016/10/2016-Catholic-Voter-Poll.pdf (“Sixty percent of Catholic likely voters overall say that ‘deciding to have an abortion can be a morally acceptable position.’”).

<sup>30</sup> See Mishnah Ohalot 7:6, available at [https://www.sefaria.org/Mishnah\\_Oholot.7.6?lang=bi](https://www.sefaria.org/Mishnah_Oholot.7.6?lang=bi); Strauss, *When Does Life Begin?*; NCJW, *Abortion and Jewish Values* at 16; *Torah of Reproductive Justice* (Rashi on Sanhedrin 72b:14).

<sup>31</sup> 144 Cong. Rec. S10491 (daily ed. Sept. 17, 1998) (quoting Letter of 729 Rabbis in Support of President Clinton’s Veto of H.R. 1122 (Sept. 10, 1998)); see also Religious Action Ctr. of Reform Judaism, *Reproductive Health and Rights*, <https://rac.org/issues/reproductive-health-and-rights> (“The Reform Movement’s positions on reproductive rights are grounded in the core belief that each person should have agency and autonomy over their own bodies.”).

<sup>32</sup> Pew Research Ctr., *2014 Religious Landscape Study* at 110, 197, available at <https://www.pewresearch.org/religion/about-the-religious-landscape-study/>;

certain circumstances, up to 19-20 weeks of gestation.<sup>33</sup>

These religious traditions take varying views of whether and when a woman may morally, consistent with her faith, choose to terminate a pregnancy. There is no uniform agreement that abortion is immoral or sinful. The consensus instead leans the other way; different religions and denominations affirm a wide spectrum of beliefs about whether and when terminating a pregnancy may be prohibited, permitted, or even required.

## **II. H.B. 481 codifies into state law one religious view of abortion and when life begins.**

In 2019, Georgia's elected officials chose to ignore the diversity of religious thought on the questions of when life begins and pregnancy termination, instead enshrining their own religious view of these issues as state law. That year, the Georgia legislature passed H.B. 481, titled the Living Infants Fairness and Equality Act. Governor Brian Kemp signed the bill into law.<sup>34</sup> H.B. 481 amends the Georgia Code to define "natural person" to mean "any human being including an unborn child," and further defines "unborn child" to mean "a member of the species *Homo sapiens* at any stage of development who is carried in the womb."<sup>35</sup> The law thus

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<sup>33</sup> Mohammad A. Albar, *Induced Abortion From An Islamic Perspective: Is It Criminal Or Just Elective?*, 8 J. FAM. CMTY. MED. 25, 29-32 (2001); *see also* Strauss, *When Does Life Begin?*.

<sup>34</sup> *See* 2019 Ga. Laws Act 234 (H.B. 481).

<sup>35</sup> *Id.*

codifies the religious view that life begins at conception: “*at any stage of development,*” an embryo or fetus in utero is a “natural person.”<sup>36</sup>

H.B. 481 then provides that “[n]o abortion is authorized or shall be performed if an unborn child has been determined . . . to have a detectable human heartbeat”—something the law states may occur “[a]s early as six weeks’ gestation,” a marker that may reflect as few as four weeks of embryonic development.<sup>37</sup> The law provides only vague and limited exceptions to this ban that prohibits abortions at all but the earliest stages of conception: terminating a pregnancy is permitted only if (1) a “medical emergency exists” (a term that does not include life-threatening psychiatric emergencies), (2) the pregnancy is “medically futile” (defined as an “irremediable” condition “incompatible with sustaining life after birth”), or (3) the pregnancy stems from rape or incest for which an official police report was filed.<sup>38</sup>

Physicians who violate these provisions face a potential prison sentence of up to ten years, loss of their medical licenses, and civil suits by patients.<sup>39</sup> The weight of this provision cannot be understated—physicians who provide medically appropriate care to end a pregnancy, in accordance with their religious beliefs, can be sent to prison for doing so.

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<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

Although H.B. 481 purports to reflect “modern medical science . . . demonstrat[ing] that unborn children are a class of living, distinct persons,” this assertion crumbles under the slightest scrutiny.<sup>40</sup> In fact, the law’s reference to a “human heartbeat” at six weeks’ gestation is entirely unscientific. There is no such thing as a “fetal” or “human heartbeat” at six weeks’ gestation, because no functioning cardiovascular system or heart exists at that point of embryonic development.<sup>41</sup> What an ultrasound might reflect at six weeks’ gestation is instead “an electrical pulse that’s translated into the sound” made by the ultrasound.<sup>42</sup> Modern science does not view that electrical activity as a “human heartbeat” or define personhood to include an embryo at the earliest stage of conception. But Georgia’s elected officials do—because of their own religious beliefs.

Rather than legislate according to modern science or public policy, Georgia’s elected officials legislated according to their own religious view of when life begins and whether abortion is a sin. The officials who enacted H.B. 481 made this

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<sup>40</sup> *Id.*

<sup>41</sup> See, e.g., Selena Simmons-Duffin & Carrie Feibel, *The Texas abortion ban hinges on ‘fetal heartbeat.’ Doctors call that misleading*, NPR (May 3, 2022), available at <https://www.npr.org/sections/health-shots/2021/09/02/1033727679/fetal-heartbeat-isnt-a-medical-term-but-its-still-used-in-laws-on-abortion>.

<sup>42</sup> Kaitlin Sullivan, *‘Heartbeat bills’: Is there a fetal heartbeat at six weeks of pregnancy?*, NBC NEWS (Apr. 17, 2022), available at <https://www.nbcnews.com/health/womens-health/heartbeat-bills-called-fetal-heartbeat-six-weeks-pregnancy-rcna24435>.

religious motivation explicit. Representative Josh Bonner, a co-sponsor of the bill, “pray[ed]” that his colleagues would support the legislation to protect “the unborn.”<sup>43</sup> Another proponent of the bill, Senator Renee Unterman, stated that “[i]t [was] truly God’s work to be successful with our initiative for HB 481 . . . to become law in the state of Georgia.”<sup>44</sup> She also spoke of her own “joy of having God’s children,” to which she attributed her fervor “for this important issue.”<sup>45</sup>

When Governor Kemp signed the bill into law, he expressed his gratitude to those “who believe, as I do that every baby has a right to life.”<sup>46</sup> He quoted the Bible, stating that Georgians “are called to be strong and courageous.”<sup>47</sup> And he also asserted that Georgians “must protect life at all stages” and “must remember

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<sup>43</sup> Cindy Morley, *House bill would change abortion laws in Georgia*, INSIDERADVANTAGE (Feb. 28, 2019), available at <https://insideradvantage.com/2019/02/28/house-bill-would-change-abortion-laws-in-georgia-2/>.

<sup>44</sup> Kessarín Horvath, Georgia Senate Press Office, *Sen. Renee Unterman Issues Statement on the Living Infants Fairness and Equality Act* (May 7, 2019), available at <https://senatepress.net/sen-renee-unterman-issues-statement-on-the-living-infants-fairness-and-equality-life-act.html>.

<sup>45</sup> *Id.*

<sup>46</sup> Vanessa Romo, *Georgia’s Governor Signs ‘Fetal Heartbeat’ Abortion Law*, NPR (May 7, 2019), available at <https://www.npr.org/2019/05/07/721028329/georgias-governor-signs-fetal-heartbeat-law>.

<sup>47</sup> Patricia Mazzei & Alan Blinder, *Georgia Governor Signs ‘Fetal Heartbeat’ Abortion Law*, THE NEW YORK TIMES (May 7, 2019), available at <https://www.nytimes.com/2019/05/07/us/heartbeat-bill-georgia.html>; *see also* *Joshua* 1:9 (“Have I not commanded you? Be strong and courageous.”).

our higher calling.”<sup>48</sup>

The Governor later said about the bill that, by enacting it, he and the Georgia legislature had “protected the sanctity of God’s greatest gift, life.”<sup>49</sup> He attributed his motive for doing so to his role in “a family of faith.”<sup>50</sup>

The government officials who made H.B. 481 law were motivated by their religious beliefs that life begins at conception and abortion is almost always a sin. Those views are religious—they are not based in modern medicine or public policy. And those religious views are not uniformly shared by Georgians, even in the realm of Christianity. H.B. 481 reflects an impermissible effort to codify religion into law and restricts the exercise of religious beliefs by those who do not share the religious beliefs of the representatives who enacted the law.

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<sup>48</sup> Mazzei & Blunder, *Georgia Governor Signs ‘Fetal Heartbeat’ Abortion Law*, *supra* note 47.

<sup>49</sup> Ross Williams, *Kemp glosses over Georgia’s restrictive abortion law at gathering for anti-abortion advocates*, GEORGIA RECORDER (Sept. 15, 2022), available at <https://georgiarecorder.com/2022/09/15/kemp-glosses-over-georgias-restrictive-abortion-law-at-gathering-for-anti-abortion-advocates/>.

<sup>50</sup> *Id.*



**III. H.B. 481 restricts the exercise of Georgians' sincerely held religious beliefs and violates their constitutional rights.**

H.B. 481 reflects religious beliefs that conflict with those of many Georgians and will prohibit those citizens from exercising their contrary beliefs. By restricting the exercise of the varied religious beliefs about conception and abortion and enshrining one religious view into state law, H.B. 481 violates the federal and state constitutions.

**A. H.B. 481 prevents Georgians from exercising their religious beliefs.**

H.B. 481, by codifying the religious principles that life begins at conception and abortion is almost always a sin, prevents Georgians who sincerely believe otherwise from exercising their religious beliefs. The many Christians, Jews, Hindus, Muslims, Buddhists, and others who take views different from those made law by H.B. 481—*e.g.*, that life begins at some point after conception, decisions about terminating a pregnancy are matters of individual conscience and moral agency, abortions are morally permissible or even required under some circumstances, or reproductive choice is a matter of social justice—will all be prohibited from acting according to those beliefs. *See supra* at 4-12. Under H.B. 481, they will be forced to carry pregnancies to term that their religious faiths allow or instruct them to terminate. These results undermine the free exercise of religion both the federal and state constitution guarantee.

The First Amendment of the United States Constitution, incorporated against the states through the Fourteenth Amendment, provides that legislatures “shall make no law . . . prohibiting the free exercise” of religion. U.S. Const. amend. I. Under the First Amendment, a non-neutral law that burdens an individual’s religious practice is unconstitutional if it is not supported by a compelling state interest that is narrowly tailored to that interest. *See Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022). The Georgia Constitution provides parallel protection for freedom of religion, providing that “[e]ach person has the natural and inalienable right to worship God, each according to the dictates of that person’s own conscience; and no human authority should, in any case, control or interfere with such right of conscience.” Ga. Const. art. I, § 1, ¶ III. H.B. 481 violates these protections by imposing one set of religious beliefs on all Georgians. It is a non-neutral bill that burdens individuals’ free exercise of their contrary religious beliefs, and the State cannot show that it survives strict scrutiny.

The bill is not neutral because it was religiously motivated and is directed at what, for many people of faith, qualifies as a religious practice—the decision whether and under what circumstances to terminate a pregnancy made according to the dictates of one’s own conscience. *See supra* at 7-12, 14-16; *see also Kennedy*, 142 S. Ct. at 2421-22 (“A government law will not qualify as neutral if it is specifically directed at religious practice.”); *Masterpiece Cakeshop Ltd. v. Colo. Civ.*

*Rights Comm’n*, 138 S. Ct. 1719, 1732 (2018) (The First Amendment “guarantee[s] that our laws be applied in a manner that is neutral toward religion.”). And it burdens that religious practice by compelling Georgians to act contrary to their own beliefs, including by compelling women to carry pregnancies to term they would otherwise terminate and medical providers to either violate their own religious beliefs or face potential civil or criminal repercussions. See *Lyng v. Northwest Indian Cemetery Protective Ass’n*, 485 U.S. 439, 449 (1988) (religious beliefs are burdened when government action coerces individuals “into violating their religious beliefs” or “penalize[s] religious activity”); *Bauchman ex rel. Bauchman v. W. High Sch.*, 132 F.3d 542, 557 (10th Cir. 1997) (a burden occurs if the government’s “challenged action is coercive or compulsory in nature”). This framework epitomizes the non-neutral coercion the Free Exercise Clause forbids: abide by the religious tenets Georgia has codified, and violate one’s own religious beliefs, or face severe consequences. And for the same reasons, it violates the freedom of individual conscience the Georgia Constitution guarantees.

This non-neutral law that burdens religious practice and freedom of conscience cannot be justified by any compelling state interest, nor is it narrowly tailored to suit any such interest. There is no “secular purpose” supporting “legislative declarations that life begins at conception.” *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 566 (1989) (Stevens, J., concurring). And H.B. 481

and its proponents identify no valid secular purpose behind the bill beyond their view that an embryo at the earliest stages of life is a “natural person.” Instead, the law’s purported basis in “modern medical science” is a sham. *See supra* at 13-14. The only purpose motivating H.B. 481 and its restrictions on abortion is “a religious tenet of some but by no means all Christian faiths,” and it thus “serves no identifiable secular purpose.” *Webster*, 492 U.S. at 566-67 (Stevens, J., concurring). Nor would the law be sufficiently tailored to any such interest, given its almost blanket ban on abortion and illusory exceptions.

H.B. 481 enshrines religious rather than secular beliefs and overrides and threatens to punish the prayerful and faith-guided decisions of Georgians whose faith takes a different view of conception and abortion. Its Free Exercise intrusion is yet another reason why the law is unconstitutional.

## CONCLUSION

H.B. 481 ignores the religious diversity that defines Georgia and the United States by enshrining a singular religious view about conception and abortion into state law. But this religious view is not shared by all Georgians—in fact, it conflicts with and restricts the exercise of many Georgians’ sincerely held beliefs. The law’s implications for religious liberty in Georgia provide even more justification for affirming the decision below and holding H.B. 481 unconstitutional.

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Respectfully submitted,

/s/ Jennifer N. Ide

Jennifer N. Ide, Esq.  
879 East Rock Springs Road  
Atlanta, GA 30306  
(h) (404)-575-4994  
(f) (404)-963-0829  
jennifer.n.ide@gmail.com

*Counsel for Amici Curiae  
National Council of Jewish Women,  
Sadhana: Coalition of Progressive Hindus,  
Metropolitan Community Churches,  
Women's Rabbinic Network,  
Reconstructionist Rabbinical Association,  
Hindus for Human Rights, Jewish Council  
for Public Affairs, Rabbinical Assembly,  
Interfaith Alliance Foundation, Atlanta  
Rabbinical Association, The Unitarian  
Universalist Association, Catholics for  
Choice, Southeast Conference United  
Church of Christ*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 16th day of February, 2023, I filed with the Clerk the foregoing Brief and served a true and accurate copy upon all counsel of record in this appeal via electronic mail and U.S. Mail, first-class postage prepaid, addressed as follows:

Christopher M. Carr  
*Attorney General*  
Stephen J. Petrany  
*Solicitor General*  
Ross W. Bergethon  
*Deputy Solicitor General*  
Office of the Attorney General  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
spetrany@law.ga.gov

Julia Blackburn Stone  
Sarah Brewerton-Palmer  
Katie W. Gamsey  
Caplan Cobb LLC  
75 14th Street, NE, Suite 2700  
Atlanta, Georgia 30309  
jstone@caplancobb.com  
spalmer@caplancobb.com  
kgamsey@caplancobb.com

Michael B. Terry  
Tiana S. Mykkeltvedt  
Jane D. Vincent  
Laurie Ann Taylor  
Bondurant Mixson & Elmore LLP  
1201 W. Peachtree Street NW,  
Suite 3900  
Atlanta, Georgia 30309

Julia Kaye  
Rebecca Chan  
Brigitte Amiri  
Johanna Zacarias  
American Civil Liberties Union  
Foundation, Inc.  
125 Broad Street, 18th Floor  
New York, New York 10004  
jkaye@aclu.org  
rebeccac@aclu.org  
bamiri@aclu.org  
jzacarias@aclu.org

Cory Isaacson  
Nneka Ewulonu  
American Civil Liberties Union  
Foundation of Georgia, Inc.  
P.O. Box 570738  
Atlanta, Georgia 30357  
newulonu@acluga.org

Susan Lambiase  
Planned Parenthood Federation of  
America  
123 William Street, Floor 9  
New York, New York 10038  
susan.lambiase@ppfa.org

terry@bmelaw.com  
mykkeltvedt@bmelaw.com  
vincent@bmelaw.com  
ltaylor@bmelaw.com

*/s/ Jennifer N. Ide*

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*Counsel for Amici Curiae  
National Council of Jewish Women,  
Sadhana: Coalition of Progressive Hindus,  
Metropolitan Community Churches,  
Women's Rabbinic Network,  
Reconstructionist Rabbinical Association,  
Hindus for Human Rights, Jewish Council  
for Public Affairs, Rabbinical Assembly,  
Interfaith Alliance Foundation, Atlanta  
Rabbinical Association, The Unitarian  
Universalist Association, Catholics for  
Choice, Southeast Conference United  
Church of Christ*