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2023 OK 24

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

OKLAHOMA CALL FOR REPRODUCTIVE JUSTICE, on behalf of itself and its members; TULSA WOMEN'S REPRODUCTIVE CLINIC, LLC, on behalf of itself, its physicians, its staff, and its patients; ALAN BRAID, M.D., on behalf of himself and his patients; COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, INC., on behalf of itself, its physicians, its staff, and its patients; and PLANNED PARENTHOOD OF ARKANSAS & EASTERN OKLAHOMA, on behalf of itself, its physicians, its staff, and its patients,

Petitioners,

v.

GENTNER DRUMMOND, in his official capacity as Attorney General for the State of Oklahoma; VICKI BEHENNA, in his official capacity as District Attorney for Oklahoma County; STEVE KUNZWEILER, in his official capacity as District Attorney for Tulsa County; LYLE KELSEY, in his official capacity as Executive Director of the Oklahoma State Board of Medical Licensure and Supervision; BRET S. LANGERMAN, in his official capacity as President of the Oklahoma State Board of Osteopathic Examiners; and KEITH REED, in his official capacity as the Commissioner of the Oklahoma State Board of Health,

Respondents.

FILED
SUPREME COURT
STATE OF OKLAHOMA
MAR 21 2023
JOHN D. HADDEN
CLERK

No. 120,543

FOR OFFICIAL PUBLICATION

KAUGER, J., with whom Edmondson, J., and Combs, J., joins, concurring:

¶1 I fully concur in the majority opinion which finds 21 O.S. 2021 §861 constitutional. I write only to address the incongruity of 63 O.S. Supp. 2022 §1-731.4[1] The right to preserve the life of the mother is deeply rooted in Oklahoma

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[1]Title 63 O.S. Supp. 2022 §1-731.4 provides:

A. As used in this section:

1. The terms "abortion" and "unborn child" shall have the same meaning as provided by Section 1-730 of Title 63 of the Oklahoma Statutes; and

2. "Medical emergency" means a condition which cannot be remedied by delivery of the child in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury including a life-endangering physical condition caused by or arising from the pregnancy itself.

B. 1. Notwithstanding any other provision of law, a person shall not purposely perform or attempt to perform an abortion except to save the life of a pregnant woman in a medical emergency.

2. A person convicted of performing or attempting to perform an abortion shall be guilty of a felony punishable by a fine not to exceed One Hundred Thousand Dollars ($100,000.00), or by confinement in the custody of the Department of Corrections for a term not to exceed ten (10) years, or by such fine and imprisonment.

3. This section does not:

a. authorize the charging or conviction of a woman with any criminal offense in the death of her own unborn child, or

b. prohibit the sale, use, prescription or administration of a contraceptive measure, drug or chemical if the contraceptive measure, drug or chemical is administered before the time when a pregnancy could be determined through conventional medical testing and if the contraceptive measure, drug or chemical is sold, used, prescribed or administered in accordance with manufacturer instructions.

4. It is an affirmative defense to prosecution under this section if a licensed physician provides medical treatment to a pregnant woman which results in the accidental or

law. In territorial days,[2] and statutorily at statehood, the law preserved this right.[3] Obviously, the framers of the Constitution took this into account when they

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unintentional injury or death to the unborn child.

[2]1890, Statutes of Oklahoma Territory, provided:

(2187) §1. Every person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug or substance, or uses or employs any instrument, or other means whatever, with intent thereby to procure the miscarriage of such woman, **unless the same is necessary to preserve her life**, is punishable by imprisonment in the Territorial prison not exceeding three years, or in a county hail not exceeding one year. (Emphasis supplied.)

(2188) §2. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with the intent thereby to procure a miscarriage, **unless the same is necessary to preserve her life**, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Emphasis supplied.)

Like unto it, the statutes of Indian Territory, M.D., c. 45, §§1491-1961 (May 2, 1890) §932 provided:

It shall be unlawful for any one to administer or prescribe any medicine or drugs to any woman with child, with intent to produce an abortion or premature delivery of any fetus before the period of quickening, or to produce or attempt to produce such abortion by any other means: and any person offending against the provisions of this section shall be fined in any sum not less than one nor more than five years. Provided, that this section shall not apply to any abortion produced by any regular practicing physician **for the purpose of saving the mother's life.** (Emphasis supplied.)

[3]R.L. 1910, §2437 provides in pertinent part:

Submitting to or soliciting attempt to commit abortion. Any woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, **unless the same is necessary to preserve her life,** is punishable by imprisonment in the county jail not exceeding one year, or by a fine not exceeding one thousand dollars or by both. History. Dak. 6539 S. 1890, Sect. 2188. (Emphasis supplied.)

unambiguously guaranteed the inherent rights of life, liberty, and the pursuit of happiness.[4] There

was not an exception carved out of the statutes or the Constitution requiring a medical emergency.[5] The law provided that the right to terminate a pregnancy was available to preserve the life of the mother — period.[6]

¶2 The Oklahoma Constitution begins with the Preamble:

> Invoking the guidance of Almighty God, in order to secure and perpetuate the blessing of liberty; to secure just and rightful government; to promote our mutual welfare and happiness, we, the people of the State of Oklahoma, do ordain and establish this Constitution.

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[4]The Okla. Const. art. 2, §2 provides:

> All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry.

The Okla. Const. art. 2, §7 provides:

> No person shall be deprived of life, liberty, or property, without due process of law.

[5]R.L. 1910 §2436 provided in pertinent part:

> 2436. **Procuring an abortion.** A person who administers to any pregnant woman, or who prescribes for any such woman, or advises or procures any such woman to take any medicine, drug, or substance, or uses or employs any instrument, or other means whatever, with intent thereby to produce the miscarriage of such woman, **unless the same is necessary to preserve her life,** is punishable by imprisonment in the penitentiary not exceeding three years, or in a country jail not exceeding one year. History. Dak. 6538 S. 1890, Sec. 1287. (Emphasis supplied.)

[6]Preserve is defined by The Webster's New International 2nd ed. Dictionary (1950) as:

> 1. To keep or save from injury or destruction, to guard or defend from evil; to protect; to save . . .

The Oklahoma Constitution ends with the Schedule. Section 1 of the Schedule expressly preserves existing rights. It provides:

> No existing rights, actions, suits, proceedings, contracts, or claims shall be affected by the change in the forms of government, but all shall continue as if no change in the forms of government had taken place. And all processes which may have been issued previous to the admission of the State into the Union under the authority of the Territory of Oklahoma or under the authority of the laws in force in the Indian Territory shall be as valid as if issued in the name of the State.

Section 2 of the Schedule provides that:

> All laws in force in the Territory of Oklahoma at the time of the admission of the State into the Union, which are not repugnant to this Constitution, and which are not locally inapplicable, shall be extended to and remain in force in the State of Oklahoma until they expire by their own limitation or are altered or repealed by law.[7]

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[7]The Historical and Statutory Notes of the Schedule state as follows in pertinent part:

> The first legislative assembly of the Territory of Oklahoma, adopted the Dakota Code of 1887, as the 'Penal Code of the State of Oklahoma,' effective December 25, 1890. . .
>
> As thus adopted in 1890, the Penal Code has been continued in force, substantially in its original form, in both the Territory and the State of Oklahoma.
>
> Section 2 of the Schedule to the Constitution provides, in substance, that all laws in force in the Territory at the time of admission of the State, which were not repugnant to the Constitution and which were not locally inapplicable should be extended to and remain in force in the State until they expired by their own limitation or were altered or repealed.

Title 21 O.S. 2021 §1, which was originally enacted in 1910 (R.L. 1910 §2082), and has remained unchanged, provides that:

> This chapter shall be known as the penal code of the State of Oklahoma.

¶3 Schedule 2 safeguarded the right to terminate a pregnancy to preserve the life of the mother, the same as the right to have children is a basic, fundamental, unenumerated, civil right which is not explicit in the Constitution. For example, the Okla. Const. art 2, §26[8] grants the right to bear arms, but nowhere in the original Constitution is the right to marry or to bear children — but they are inherent, basic, unenumerated, fundamental liberty rights.

¶4 The law allowing termination of a pregnancy to preserve the life of the mother was the same as before statehood and before and after the constitutional convention. Obviously, the Constitutional Convention did not find the right to terminate a pregnancy to preserve the life of the mother to be repugnant to the Constitution. The Constitution Schedule affirmed the right which existed pre-statehood. [9] It continued until the 3rd Legislature Session in which some members

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[8]The Okla. Const. art 2, §26 provides:

> The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereunto legally summoned, shall never be prohibited; but nothing herein contained shall prevent the Legislature from regulating the carrying of weapons.

[9]William H. Murray, President of the Oklahoma Constitutional Convention and the first Speaker of the House of Representatives, Henry S. Johnston, Secretary of the Constitutional Convention, First President Pro Tempore of the Oklahoma Senate and 7th Governor of Oklahoma, and Robert L Williams, the First Chief Justice of the Oklahoma Supreme Court and the 3rd Governor of Oklahoma, all signed the Constitution. In a letter from Murray, to the Secretary of the State of Oklahoma, C.C. Childers, on February 22, 1941, Murray listed people who did not sign the original because they did not have the opportunity to do so. However, he states that they would have signed the copy filed with the Secretary of State. Among them M.J.

of the House and Senate who had been delegates to the Constitutional Convention reaffirmed it.

¶5 The right of termination existed even at times when the woman had no control over her own body. A married woman, in what is now the United States, from the time of its earliest settlement until well into the twentieth century, had little or no say about her body and her children, her property, where she lived, her civic duties, her opportunities, her career, her dress ---- indeed her life. The incongruity of the challenged statute is that from colonization until present times, a woman's right to control her life, liberty, and pursuit of happiness has grown exponentially.

¶6 Nevertheless, with the enactment of the challenged statute, despite great leaps in the advancements of personal autonomy, a woman in Oklahoma has been stripped of one right which existed in both territorial days and statehood ----- the right to terminate a pregnancy to preserve her life without exception. This is not compatible with the Oklahoma Constitution which provides greater rights than the United States Constitution.[10] The federal constitution is the floor, not the

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Kane, the second Chief Justice of the Oklahoma Supreme Court.

[10]Several previous Oklahoma Supreme Court decisions illustrate this concept. See, Urnholtz v. City of Tulsa, 1977 OK 98, 565 P.2d 15, 24 (Okla.1977); Short v. Kiamichi Area Vocational-Technical School Dist. No. 7, 1988 OK 89, 761 P.2d 472, 478 (Okla.1988), *cert. denied*, 489 U.S. 1066 (1989); In re A.E,1987 OK 76, 743 P.2d 1041 (Okla.1987); In re D.D.F.,

ceiling.[11] If the state's constitution provides greater rights, it prevails, and since Dobbs v. Jackson Women's Health Organization,142 S.Ct. 2228, 213 L.Ed.2d 545(2022) United States Supreme Court has deferred this question to the states to determine.[12]

I.
THE RIGHT OF TERMINATION TO PRESERVE HER LIFE EXISTED EVEN AT TIMES WHEN A WOMAN HAD LITTLE OR NO SAY ABOUT HER BODY.

¶7 Women have had to deal with the threat of legally and socially condoned discrimination and physical violence visited against them for centuries. Despite the scriptural admonition that husbands love their wives as their own bodies, corporal discipline was permitted by law, and the emphasis was on submission of

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1990 OK 89, 801 P.2d 703, 706 (Okla.1990).

[11]During his confirmation hearings as Chief Justice, William Rehnquist remarked that he viewed the protections of the Federal Constitution as the floor, rather than a ceiling. *Nomination of Justice William Hubbs Rehnquist: Hearings Before the Committee on the Judiciary United States Senate*, 99th Cong., 2d Sess. 141 (1986).

[12]Michigan v. Long, 463U.S. 1032 (1983). There are a multitude of cases illustrating the floor-ceiling concept which reflect a state's constitution can provide greater rights than the federal constitution. For example, see Employment Division, Department of Human Resources of Oregon v. Smith, 494 U.S. 872, 902 (1990); State of Alaska v. Enserch Alaska Construction, Inc., 787 P.2d 624 (Alaska 1989); In re T.W., 551 So.2d 1186 (Fla. 1989); State v. Kam, 69 Haw. 483, 748 P.2d 372 (1988); Mountain States Tel. & Tel. Co. v. Arizona Corp. Comm, 160 Ariz. 350, 358, 773 P.2d 455, 463 (1989); Deer Valley Unified School Dist. No. 97 v. Superior Court, 157 Ariz. 537, 541, 760 P.2d 537, 541 (1988).

a wife to the husband.[13] The early laws of Rome made women subject to the power of their husbands, and gave husbands the power to execute their wives under socially condoned circumstances. A husband during this period could put his wife to death for drinking wine or committing adultery. [14] The King of England, Henry the VIII, beheaded two of his wives.

¶8 Corporal discipline against a wife by a husband existed from the earliest days of American colonization. Spousal abuse was even the subject of "humorous" cartoons. It is in this time that the common understanding that a husband could beat his wife with a stick no larger than his thumb apparently

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[13]*Ephesians* 5:22-23, 25, 28-29, King James Bible, (2023), https://www.kingjamesbibleonline.org, provides in pertinent part:

> 22 Wives, submit yourselves to your own husbands as unto the Lord. 23 For the husband is the head of the wife even as Christ is the head of the church: and he is the Savior of the body.
>
> 25 Husbands, love your wives, even as Christ also loved the church, and gave himself for it; . . .
>
> 28 So ought men to love their wives as their own bodies. He that loveth his wife loveth himself;
>
> 29 For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church:

[14]Serena Witzke, Blog: *Domestic Violence in Ancient Rome and Game of Thrones, Society for Classical Studies*, March 27, 2019, https://classicalstudies.org/scs-blog/switzke/blog-domestic-violence-ancient-rome-and-game-thrones; accessed December 19, 2022. See also, Bozman v. Bozman, 376 Md. 461, 469-70, 830 A.2d 450, 455 (2003) for a discussion of the common law doctrine of interspousal immunity.

became entrenched in the minds of lawyers and jurists.[15] This "rule of thumb" lived on in the United States well into the nineteenth century.[16]

¶9 One exception to this practice was found with the English Puritans, who enacted the first laws anywhere in the world against wife-beating.[17] Nevertheless the Anglo-American common law originally provided that a husband, as master of his household, could subject his wife to corporal punishment or "chastisement" as long as he did not inflict permanent injury on her.[18] He could do this much in the same way he was allowed to correct his children.[19] His slaves were subject to even more severe discipline.[20] (History casts a long shadow. On February 2, 2023, the Fifth Circuit Court of Appeals, decided that a person under a domestic violence protective order had the right to continue to possess guns.)

¶10 Marriage did not take from the wife her general capacity to commit a

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[15]Henry Ansgar Kelly, *Rule of Thumb and the Folklaw of the Husband's Stick*, Jo. Legal Educ., Vol. 44, No. 3, 341, 348 (1994). Http///www.jstor.org/stable.

[16]Bradley v. State, 1 Miss. 156, 158 (1824); State v. Rhodes, 61 N.C. 453, 456 (1868).

[17]Elizabeth Pleck, *Criminal Approaches to Family Violence*, 1640-1980, 11 Crime and Justice 19-20 &23 (1989), http://www.jstor.org/stable/1147525.

[18]Bozman v. Bozman, see supra note 11, at 469-70.

[19]Bozman v. Bozman, see see note 11 at 458.

[20]Majorie Brown, *Chastisement: Wives and Slaves in Nineteeth Century North Carolina*, (1993); Summary at https://repository. Library.georgetowen.edu/handle/10822/1051110.

crime, but it cast on her the duty of obedience to her husband. Except as to crimes named in the Penal Code, in the absence of proof to the contrary, the law presumed that when she committed the act, it was charged in the presence and with the assent of her husband, and was the result of restraint or coercion.[21]

¶11 Because the husband was the head of the household, and the person who directed its activity, the wife generally received immunity from prosecution for certain crimes.[22] Immunity was granted, with certain exceptions, because if a wife committed a crime in the presence of her husband, it was accepted that she must have been acting under coercion or in obedience to her husband because he was the head of household.[23]

¶12 Although many of these practices or notions were no longer sanctioned by statehood, it was 1973 before Oklahoma women finally gained the right to recover against a tortfeasor for loss of consortium — a right previously reserved for men only.[24] From Oklahoma statehood until 1984, a husband could rape his

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[21]Harmon v. State, 1953 OK CR 106, 260 P.2d 422.

[22]Lynch v. State, 1940 OK CR 5, 98 P.2d 625, 627.

[23]Janice P. Dreiling, *Women and Oklahoma Law: How It Has Changed, Who Changed It, and What is Left*, 40 Okla. Law Rev. 417, 417-18, 426 (1987),(citing W. Blackstone, *Commentaries on the Law*, Ch. 15, at 189 (1941)); 76 O.S. Supp. 1976 §8.

[24]Title 32 O.S. Supp. 1973 §15 was enacted in 1973 to provide:

Women shall retain the same legal existence and legal personality after marriage as before

wife because rape was defined as an act of sexual intercourse accomplished with a female, not the wife of the perpetrator."[25] In 1984, the following provision was added to the statute:

> B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person and if:
>
> 1. A petition for divorce is pending; or
> 2. A petition for legal separation is pending or has been granted; or
> 3. A petition for a protective order as provided . . .is pending; or
> 4. The victim and perpetrator are living separate and apart from each other.

The statute has been amended several times, but it wasn't until 1993, that the conditions of divorce, separation, etc. were removed.[26] A woman can no longer be

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> marriage, and shall receive the same protections of all her rights as a woman, which her husband does as a man; and for any injury sustained to her reputation, person, property, character or any natural right, her own medical expenses, and by reason of loss of consortium, she shall have the same right to appeal in her own name alone to the courts of law or equity for redress and protection that her husband has to appeal in his one name alone.

The Tenth Circuit found that, in an Oklahoma federal court, a wife could recover in a diversity action for loss of consortium in an accident that occurred before the statutory change. The accident occurred before the statutory changes, and the Court determined that before the statutory change, the law was unconstitutional. Duncan v. Gen. Motors Corp., 499 F.2d 835 (10th Cir. 1974).

[25]From 1910 to 1981, the statutory language of 21 O.S. 1981 §1111 remained unchanged. It provided in pertinent part:

> Rape is an act of sexual intercourse accomplished with a female, not the wife of the perpetrator . . . .

[26]Title 21 O.S. Supp. 1993 §1111. Ironically, even though an employer was not required to pay for women's birth control, it voluntarily paid for Viagra, vasectomies, and condoms.

beaten or legally raped by her husband.[27] Even with such advancements, and the enactment of the Violence Against Women Act,[28] 63 O.S. Supp. 2022 §1-731.4 removes the right a woman had to terminate a pregnancy to preserve her life without exception before and after statehood in Oklahoma.

II.

THE RIGHT OF TERMINATION TO PRESERVE HER LIFE EXISTED EVEN AT TIMES WHEN A WOMAN HAD LITTLE OR NO SAY ABOUT HER PROPERTY.

¶13 "The husband and wife are one person in law," the English legal theorist Sir William Blackstone explained in 1765; "that is, the very being or legal

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Nicole Leinbach-Reyhle, *The Hobby Lobby Mess: 3 Quick Facts You Need to Know*, Forbes July 2,2014. https://www.forbes.com/sites/nicoleleinbachreyhle/2014/07/02/the-hobby-lobby-mess-3-quick-facts-you-need-to-know-about/?sh=4914561423a8.

[27]The South Carolina Constitution art. 17, §3 provided:

> Divorce from the bonds of matrimony shall not be allowed in this state.

Even a federal judge could not get a divorce in South Carolina. Judge J. Waties Waring who presided over the case of Isaac Woodward Jr., and who later became a civil rights icon, asked his wife of thirty years to move to Florida, establish residency, and file for divorce. Waring is also known for laying the ground work for the United States Supreme Court to decide Brown v. Board of Education, 347 U.S. 483 (1954). *Love Stories, Equal Partners*, Charleston Magazine, February 2010. https://charlestonmag.com/features/love_stories.

[28]108 Stat. 1796, 42 U.S.C. ch. 136 (1994). The VAWA also applies to men. In Oklahoma, the word "men" includes "women." See discussion ¶14, infra. *Questions and Answers: Abused Spouses, Children and Parents Under the Violence Against Women Act* (VAWA), United States Citizenship and Immigration Services, Feb. 10, 2022. Https://www.uscis.gov/humanitarian/abused-spouses-children-and-parents/questions-and-answers-abused-spouses-children-and-parents-under-the-violence-against-women-act-vawa.

existence of the woman is suspended during the marriage."[29] A historian noted that the Tennessee legislature allegedly stated that "married women lack independent souls" and therefore should not be allowed to own property.[30]

¶14 Abigail Adams in a letter to John Adams on March 31, 1776, wrote. "I long to hear that you have declared an independency. . . I desire you would Remember the Ladies, and be more generous and favorable to them than your ancestors."[31] In 1782, she complained that married women's property was subject to the control and disposal of their husbands.

¶15 Under the law, husbands assumed complete authority over their wives' real estate (land and buildings). If a married woman brought personal property (which consisted of everything except real estate or property subsequently acquired, be it cash or cattle), it, along with the income generated by her real estate, went to her husband, to dispose of as he pleased. Spinsters and widows

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[29]William Blackstone, *Commentaries on the Law*, ch. 15, at 189 (1941).

[30]Mallory Reader, *The Feminism of Property Rights*, The Cato Blog, March 22, 2021, https://www.cato.org/blog/feminism-property-rights. See also, Amelia Jenks Bloomer, *Have Women Souls?*, The Lily, vol. II., No. 3 at 21, March 1, 1850, reprinted in *The Radical Women's Press of the 1850's 198-99* (Women's Source Library, vol. II., Ann Russo & Charis Kramaroe eds., 2001)

[31]Woody Holton, *Abigail Adams*, Free Press, 2009, page 99. Holton notes:

> Years later these words would transform Adams into a feminist icon, and it is easy to forget that she wrote them for an audience of one. Moreover, out of all the contexts in which men lorded it over women in politics, the courts, the workplace, and so on and on and on - she only called attention to one: marriage.

could execute wills disposing of their belongings. Married women lacked the ability to do so. They were not permitted to distribute their real estate and there was no legal mechanism for them to express their wishes regarding their personal property; because they had none to give.[32]

¶16 It wasn't until the middle of the eighteenth century that married women began to gain some level of autonomy over their property. By the end of the Civil War, Married Women's Property Acts granting women rights to own and control property had been enacted in twenty-nine states.[33] However, the right to own property did not provide wives parity with their husband in the decisions relating to the household/family. If they were not the head of the household, Oklahoma women could not hold a homestead until 1905.[34] It wasn't until 1988, that Representative Freddie Williams managed to change the statute that prevented married women from deciding where or how they were to live because her husband made the decision as head of the family. Title 32 O.S.1981 §2, provided:

> The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto.

Some women coped by utilizing the old adage which was memorialized in *My Big*

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[32] Woody Holton, *Abigail Adams*, The New York Times, December 11, 2009.

[33]Mallory Reader, *The Feminism of Property Rights*, The Cato Blog, March 22, 2021, https://www.cato.org/blog/feminism-property-rights.

[34]1905 Okla. Terr. Sess Law, ch 18, at 255.

Fat Greek Wedding: "The man may be the head of the household, but the woman is the neck, and she can turn the head whichever way she pleases." This statute was repealed in 1988.

¶17 Until 1974, most banks refused to issue a credit card to an unmarried woman, and if a woman were married, her husband was required to cosign.[35] Equal pay for equal work is an area where progress has been slow. Employment of women has always been problematic. During World War II, the Rosie Riveters necessarily began doing men's jobs because men were at war. After the war ended, the women were replaced by returning veterans who needed the jobs.[36]

¶18 From 1960 to 2007, women made from 56.6% to 77% of a men's wages.[37] The Equal Pay Act of 1963 prohibited sex-based wage discrimination in the same establishment for jobs that require substantially equal skill, effort, and responsibility under similar working conditions. (Oklahoma was one of fifteen states that failed to pass the proposed Equal Rights Amendment.) Despite the Equal Pay Act, and the 2009 Lilly Ledbetter Act, women have not reached

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[35]Jessica Hill, *Post Detailing 9 Things Women Couldn't Do Before 1971 Is Mostly Right*, USA TODAY, October 28, 2020.

[36]Maria Cristina Santana, *From Empowerment to Domesticity, The Case of Rosie the Riveter and the WWII Campaign*, Frontiers in Sociology, 23 December 2016 Sec. Gender, Sex and Sexualities Volume 1 - 2016 | https://doi.org/10.3389/fsoc.2016.00016.

[37]National Committee on Pay Equality, *The Wage Gap over Time: In Real Dollars, Women See a Continuing Gap*, https://www.pay-equality.org/info-time.html.

parity.[38] In 2021, the average woman who was employed full-time, was paid an average of 82% of the typical man's pay. The teaching profession has always been dominated by women. Nevertheless, according to a recent Brookings Institute brief, men are paid up to $4000.00 annually more than women.[39] Historically, an Oklahoma woman, whether married or single, — even if she were not allowed to decide where or how to live, or to make decisions about her family, or to own a credit card, or to earn equal pay could terminate a pregnancy to preserve her life without exception — until now.

III.
THE RIGHT TO TERMINATE TO PRESERVE HER LIFE EXISTED EVEN AT TIMES WHEN A WOMAN HAD LITTLE OR NO SAY ABOUT HER ABILITY TO VOTE, HER CIVIC PARTICIPATION, OR HER CAREER.

¶19 The woman's suffrage movement began in the United States in 1848.[40]

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[38]*Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009*, United States Equal Opportunity Employment Commission, https://www.eeoc.gov/laws/guidance/equal-pay-act-1963-and-lilly-lefbetter-fair-pay-act-2009.

[39]Hansen, Michael; Quintero, Diana; Zerbino Nicholas; *Public Schools Heavily Rely on Women's Labor. Why do they Pay Female Teachers Less?* Brookings Institution, March 9, 2023; https://www.brokings.edu/research/gender-wate-gaps-policy-brief/.

[40]*The Women's Right Movement, 1848-1917,* History, Art & Archives, United States House of Representatives, Historical Essay: *I'm No Lady; I'm a Member of Congress.* On August 1832, the first women's suffrage petition was presented to British Parliament. The British Library, Women's Suffrage Timeline, https://www.bl.uk/votes-for-women/articles/womens-sufferage-timeline#footnote 1.

Despite protests, marches, imprisonment, hunger strikes, and force feedings of suffragettes, when the Oklahoma Constitution was ratified in 1907, women were still not allowed to vote, except in school board elections.[41] They could not vote because they were not qualified electors — a status reserved only to males.[42] Title

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[41]Oelerking v. Hiatt, 1918 OK 38, ¶11, 170 P. 476. See also, National Park Service Article, *Oklahoma and the 19th Amendment*, https://www.nps.gov/articles/oklahoma-and-the-19th-amendment.htm (citing, Ida Husted Harper, *History of Women's Suffrage, 1900-1920*, Vol. 6 (1923); the National Amendment Women Suffrage, Ass'n Papers (Library of Congress, National Register Nominations from the National Park Service. The Okla. Const. art. 3, §1 required electors to be "male." Art. 3, §3 provided that:

> Until otherwise provided by law, all female citizens of this state, possessing like qualifications of male electors, shall be qualified to vote at school district elections or meetings.

Native women did not have the same voting rights as white women until five years after suffrage was granted in Oklahoma. Native Americans were excluded from citizenship when the U.S. Constitution was ratified in 1788. Scott v. Sanford, 60 U.S. 393 (1857). Upon the ratification of the 14th Amendment, African Americans were granted citizenship and the right to vote, but the law was interpreted as inapplicable to Native American men. Becky Little, *Native Americans' Long Journey to US Citizenship and Voting Rights*, https://www.history.com/news/native-american-voting-rights-citizenship (updated Sep. 28, 2022) Nevertheless, the Oklahoma Constitution gave them this right. Native people were finally granted citizenship with the passage of the Indian Citizenship Act, also known as the Snyder Act in 1924. 43 Stat. 252.

[42]Under the Oklahoma statute, R.L. 1910, §3118 which provided:

> The qualified electors of the State shall be male citizens of the United States, male citizens of the State, and male persons of Indian descent, native of the United States who are over the age of twenty-one years, who have resided in the State one year, in the county six months, and in the election precinct thirty days next preceding the election at which any elector offers to vote: Provided, that no person adjudged guilty of felony after the adoption of the constitution of this State, subject to such exceptions as the legislature may prescribe, unless his citizenship shall have been restored in the manner provided by law; not any person while kept in a poorhouse or other asylum at the public expense except Federal and Confederate ex-soldiers: nor any person in a public prison, nor any idiot or lunatic, shall be entitled to vote at any election under the laws of this State.

R.L. 1910 §2943 provided: "Words used in the masculine gender include the feminine and neuter."[43] This statute has not been amended. However, in the 2023 legislative session, a bill has advanced to define "female." Women were prevented from serving as jurors because it was determined that although the use of the word "men" was inclusive of women, but the use of the word "male" did not include female. The statute defining qualified electors used "male."[44]

¶20 Obviously, women could not serve on juries because they could not qualify as electors. The qualifications pursuant to Oklahoma Statute, 1910, §3698 for jury duty were even more stringent.[45] It excluded habitual drunkards, those

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The Constitution did not change until 1978 by legislative referendum. The revised Okla. Const. art. 3, §1, provides:

> Subject to such exceptions as the Legislature may prescribe, all citizens of the United States, over the age of eighteen (18) years, who are bona fide residents of this state, are qualified electors of this state.

[43]Title 25 O.S. 2021 §24.

[44]In re House Bill No. 145, 1951 OK 288, ¶14, 237 P.2d 364. The electors in the Constitutional provisions, art. 3, §1, see note 42, supra, provided that qualified electors of the State shall be "male" citizens. The only reference to "men" in the Constitution is art. 2, §18 and 19, which referred to grand jury and the right to trial by jury of "men."

[45]Oklahoma Statutes, 1910 §3698 provided:

> Qualifications and exemptions. All male citizens, residing in this State, having the qualifications of electors, of sound mind and discretion, of good moral character, not justices of the supreme court or judges of the criminal court of appeals, district court, superior court or county court, sheriffs or deputy sheriffs, constables, jailers, licensed attorneys engaged in the practice of law, habitual drunkards, not afflicted with a bodily infirmity amounting to a disability, and who have never been convicted of any infamous crime or served a term of imprisonment in any penitentiary, for the commission of a

affected by disabilities, and lacking good moral character from service. The combined disqualifications of 1910, Art. 5, §3118 and Oklahoma statutes 1910 §368 meant that a woman had the same disqualifying characteristics as a prisoner, a poorhouse or asylum dweller, a drunk, idiot, incompetent felon, and those lacking good moral character.

¶21 Sir William Blackstone, making sure the "defect of sex" disqualification was written into law, was alleged to have asserted that women were too emotional, dumb, or irrational to be trusted with jury duty. In this country, supporters of the exclusion of women from juries based their objections as a need to protect women from the ugliness and depravity of trials; women were just too fragile and virginal to withstand the polluted courtroom atmosphere.[46]

¶22 Wyoming was the first state to allow women to serve as grand jurors in 1870.[47] It was 81 years later before Oklahoma, in 1951, allowed women to serve

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felony, are competent jurors to serve on all grand and petiti juries within their counties: Provided, that persons over sixty years of age, ministers of the gospel, and county or district officials, practicing physicians, undertakers, pharmacists, teachers in public schools, postmasters, and carriers of the United States mail, members of the national guard, and all members of good standing of any regular organized fire department, if they claim their exemption shall not be compelled to serve as jurors in this State.

[46]J.E.B. v. Alabama *ex. rel.* T.B., 511 U.S. 127, 132-33 (1994).

[47]Kim Viner, *Women on the Jury: Wyoming Makes History Again*, WyoHistory.org. A project of the Wyoming Historical Society, January 2, 2020.

on grand and petit juries.[48] (However, 22 O.S. 2011 §311 still refers to grand jurors as men.[49])

¶23 When the Oklahoma Constitution was ratified in 1907, women were allowed to be notaries and county school superintendents, but justices, district judges, or court clerks had to be qualified voters;[50] of course, at the time, women were not. In 1912, the Oklahoma Supreme Court determined women could hold the office of county clerk.[51]

¶24 In 1923, Oklahoma voters passed a state question designed to amend art. 6 §3 of the Oklahoma Constitution. It provided that women could hold any state office. The amendment passed by an 86,000 vote margin. But a lawsuit was filed, and in 1930, the Oklahoma Supreme Court held that the amendment was void because the question had been wrongfully held in a special election when it

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[48]In re House Bill No. 145, 1951 OK 288, ¶19, 237 P.2d 624; 38 O.S. 1951 §28.

[49]Title 22 O.S. 2011 §311 provides:

> A grand jury is a body of men consisting of twelve jurors impaneled and sworn to inquire into and true presentment make of all public offenses against the state committed or triable within the county for which the court is holden.

[50]Janice P. Dreiling, *Women and Oklahoma Law: How It Has Changed, Who Changed It, and What is Left*, 40 Okla. Law Rev. 417, 426 (1987), (citing W. Blackstone, *Commentaries on the Law*, Ch. 15, at 189 (1941)). Title 76 O.S. Supp. 1976 § 8; R. Darcy, *Women Suffrage in Oklahoma*, Oklahoma Women's Almanac (2005).

[51]Gilliland v. Whittle, 1912 OK 663, ¶3, 127 P. 698.

should have been submitted in a general election.[52] Even if it had been determined to be valid, it contained the proviso that a person could not serve unless they had been a qualified elector for ten years preceding the election or appointment, thus precluding service at the time it passed. Women could not qualify because suffrage was granted in Oklahoma in 1919 and ten years would not have passed by 1923. It was 1942 before organized efforts were successful in getting the question finally passed, making women eligible for the top state offices.[53]

¶25 Qualified women struggled against professional barriers and were often denied the privilege of practicing law.[54] The Illinois Supreme Court denied Myra Bradwell's application on the basis that married women could not make contracts, which was a necessity for any lawyer. They denied her application a second time on February 5, 1870, with Chief Justice Charles B. Lawrence pontificating "God designed the sexes to occupy spheres of action and it belonged to men to make,

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[52]Looney v. Leeper, 1930 OK 455, 292 P. 365.

[53]State Question No. 302, S.J.R. No. 18, 1942 Okla. Sess. Law 542, amending the provisions of Okla. Const. art. VI, §3 to read:

> No person shall be eligible to the office of Governor, Lieutenant Governor, Secretary of State, State Auditor and Inspector, Attorney General, State Treasurer or Superintendent of Public Instruction except a citizen of the United States of the age of not less than thirty-one (31) years and who shall have been ten (10) years next preceding his or her election, or appointment, a qualified elector of this state.

[54]Supreme Court of the United States, *In re Lady Lawyers: The Rise of Women Attorneys and the Supreme Court*, https://www.supremecourt.gov/visiting/exhibitions/LadyLawyers/Default.aspx.

apply and execute the laws as an almost axiomatic truth."[55]

¶26 Justice Joseph Bradley, in his concurring opinion in Bradwell v. The State, 83 U.S. 130 (1873), wrote that there was no historical precedent for women to engage in any and every occupation, profession, or employment. "The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, a woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."

¶27 Minerva K. Elliott Lentz passed and was admitted to the Oklahoma Territory bar in 1893.[56] As of 2021, women have gone from being denied admission to the bar to becoming 55.29% of all students in ABA approved law schools.[57] In 1982, seventy-five years after statehood, Alma Bell Wilson was appointed by Governor George Nigh as the first woman on the Oklahoma Supreme

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[55]Bradwell v. State of Illinois, 83 U.S. 132 (1872) quoting In re Bradwell, 55 Ill. 535, 539, 1869).

[56]Melissa DeLacerda and Patsy Trotter, *Oklahoma's Women Lawyers*, Oklahoma Women's Almanac, 39 (2005).

[57]American Bar Association, *Profile of the Legal Profession 2022*, Women in the Legal Profession. https://www.abalegalprofile.com/women.php.

Court.[58] In January of 1995, Mary Fallin became the first woman to serve as lieutenant governor of Oklahoma. In 2011, two women ran for Governor. After defeating Jari Askins, a former judge, legislator, and presently the first woman Administrative Director of the Oklahoma Courts, Fallin became the first woman in over one hundred years after statehood to serve as governor of Oklahoma.[59] A woman has not served as Speaker of the Oklahoma House of Representatives, or as President Pro Tempore of the Senate. Nor has a woman done so in the United States Senate.

¶28 The exclusion of women from membership in all-male clubs was declared unconstitutional in New York State Club Association Inc. v. City of New York, 487 U.S. 1 (1988); and the 1987 ruling, Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537 (1987), gave women access to the inner circle of business and professional leaders. It allowed women to have luncheon meetings with their town's movers and shakers. With this opening, women were exposed to business opportunities and gained the ability to be on equal footing with their male colleagues to network and make potential contacts.

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[58]Melissa DeLacerda and Patsy Trotter, *Oklahoma's Women Lawyers*, Oklahoma Women's Almanac, 39 (2005).

[59]Mary Fallin, National Governors Association. https://www.NGA.org/governor/mary-fallin/.

¶29 For the most part, women are no longer considered to have the same disqualifications as prisoners, asylum dwellers, drunks, idiots, incompetents, felons, and sufferers from defects of sex; or too dumb, emotional, or irrational to be trusted with voting, jury duty, civic participation, or the practice of law.[60] Nevertheless, women in Oklahoma before and after statehood had the right to terminate a pregnancy to preserve her life without the determination that a medical emergency existed.

IV.
THE RIGHT TO TERMINATION TO PRESERVE HER LIFE EXISTED EVEN AT TIMES WHEN A WOMAN HAD LITTLE OR NO SAY ABOUT HER DRESS.

¶30 In the 1600's in New Jersey, the law provided that women would be subjected to the same treatment as witches if they lured men into marriage with the wearing of high-heeled shoes.[61] In the 1700's Pennsylvania, a man could obtain a divorce if his wife had used cosmetics during courtship.[62] (Today, women in Iran are subject to dying for failing to cover their hair).

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[60]There is still a prejudice about "women drivers."

[61]*Footalk, Sumptuary Laws of the Seventeenth Century*, History of Sumptuary Laws Blog (Mar. 7, 2022) http://sumptuarylaw.blogspot.com/2010/08/sumptuary-laws-of-seventeenth-century.html.

[62]Sarah E. Schaffer, *Reading Our Lips: The History of Lipstick Regulation in Western Seats of Power*, Food and Drug Law Journal, Vol. 62, No. 1, 165-225, (2007). http://www.jstor.org/stable/26660916.

¶31 Cosmetics and shoes were not the only problem, especially when it came to women's sports and how they dressed. Basketball became the first women's team sport one year after it was invented by Dr. James Naismith in 1891. Senda Berenson Abbott, the director of physical culture at Smith College, taught the game to her students. Because the social institutions at the time emphasized the frailty of women and their place in the home, she modified the men's rules.[63] There was concern that women might suffer from nervous fatigue if the game was too strenuous. Some also worried that women might get the vapors, fall to the floor in a swoon, and have to be revived by smelling salts.[64]

¶32 Because of the concerns for women's frailty, her revisions of the rules confined players to three divisions of the court with two guards, two centers, and two forwards. They could not cross the line into another part of the court. Players were limited to three dribbles, and for a short time only two were allowed. The three sections were reduced to two in 1938.[65]

¶33 Initially, players wore some of the first trousers for women, a long-

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[63]Sally Jenkins, *History of Women's Basketball* (July 3, 1997), https://www.wnba.com/news/history-of-womens-basketball/.

[64]Sally Jenkins, *History of Women's Basketball*, https://www.wnba.com/news/history-of-womens-basketball/ (July 3, 1997).

[65]Sally Jenkins, *History of Women's Basketball*, https://www.wnba.com/news/history-of-womens-basketball/ (July 3, 1997).

sleeved blouse, and knee-length skirts to protect their femininity. Although the introduction of trousers was criticized, in 1896, Clara Gregory Baer at Sophie Newcomb College replaced the initial uniforms. Loose bloomers worn over stockings were introduced. Still, only fingers, necks, and heads were exposed to public view. Male spectators were not allowed to watch the game because it was socially unacceptable.[66]

¶34 Although women outlive men by five years, women had apparently overcome the vapors, swoons, and frailty enough to play the full court in 1977.[67] However, in Oklahoma, they were not allowed to sprint down the full court in their short shorts and sleeveless tank tops with reckless abandon until 1995.[68] In 1996, the WNBA was established, and women had a league of their own. But this is not the end of the issue for women in sports. In 2023, Florida initially sought mandatory menstrual cycle reports from high school students before allowing girls to participate in sports. Subsequently, the Florida High School Athletic Association reversed this requirement after months of criticism and public

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[66]Sally Jenkins, *History of Women's Basketball*, https://www.wnba.com/news/history-of-womens-basketball/ (July 3, 1997).

[67]Sally Jenkins, *History of Women's Basketball*, https://www.wnba.com/news/history-of-womens-basketball/ (July 3, 1997).

[68]Ray Soldan, *6-on-6 Was Original Girls Game in State*, Oklahoman, March 10, 1995, https://www.oklahoman.com/story/news/1995/03/10/6-on-6-was-original-girls-game-in-state/62397932007/ (March 10, 1995).

outcry.[69]

¶35 Trousers weren't just a problem on the basketball court. They presented a problem in the trial courts as well. In 1938, Helen Hulin, a witness against two men who had burgled her home, was held in contempt and sent to jail by Judge Arthur A. Gurcrin for wearing trousers.[70] It was well understood by women appearing in the Oklahoma District Courts that trousers were verboten. However, the Federal District Courts were explicit. In 1994, the rules of the U.S. District Court of the Eastern District of Oklahoma, for women lawyers and employees provided: "women were to wear dresses and suits" ---- which did not include pant-suits.[71] The Oklahoma Supreme Court did not need to have a dress code barring trousers for women because there were no women lawyers working for the Supreme Court until 1972.

¶36 Until 1993 women were expressly forbidden to appear on the floor of

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[69]Carlos Suarez and Devon M. Sayers, Florida High School Athletic Association Removes All Questions About Menstruation From Required Medical Evaluation Form, www.cnn.com, Feb. 9, 2023; Sarah McCammon, Young Florida Athletes Won't Have to Share Their Menstrual Cycle Details to Compete, www.npr.org Feb. 9, 2023.

[70]Scott Harrison, *California Retrospective: In 1938, L.A. Woman Went to Jail for Wearing Slacks in Courtroom*, L.A. Times (Oct. 23, 2014). https://www.latimes.com/local/california/la-me-california-retrospective-20141023-story.html (Oct. 23, 2014).

[71]Bethanne W. McNamara, *All Dressed Up with No Place to Go: Gender Bias in Oklahoma Federal Court Dress Codes*, 30 Tulsa L.J. 395 (2013), https://digitalcommons.law.utulsa.edu/tlr/vol30/iss2/5.

the United States Senate in trousers. Newly elected Senator Carol Moseley Braun, who was unaware of the prohibition inadvertently wore her pant-suit to work. Senator Barbara Mikulski followed "suit" and the taboo ended.[72] As recently as 2014, a law professor expressed his reasons why women should not wear trousers. He wrote:

> Women must veil their form to obscure its contours out of charity towards men. To know that women in pants have this effect on men and to wear them is a sin against charity as well as modesty.[73]

¶37 In 2017, what was called "the right to bare arms" in the United States Senate resulted in modernization of the prohibition against women wearing sleeveless tops or dresses without a sweater or jacket ---- or open-toe shoes. The women members celebrated by taking a group photo on the Capitol steps in their sleeveless tops and dresses. (However, this year the Missouri legislature reverted to the earlier dress code of the U.S. House of Representatives forbidding sleeveless attire.) Despite the open toes, sleeveless, or "trouser problem" on the basketball court, the courthouse or in Congress, women in Oklahoma had the right

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[72]Jocelyn Sears, *Why Women Couldn't Wear Pants on the Senate Floor Until 1993*, (March 22, 2017) https://www.mentalfloss.com/article/93384/why-women-couldnt-wear-pants-senate-floor-until-1993.

[73]Brian McCall, *To Build the City of God: Living as Catholics in a Secular Age,* (2014). Drew Hutchenson, OU Daily (Sept. 30, 208), *OU Law Professor, Associate Dean Expresses Homophobic, Sexist Views in 2014*. https://www.oudaily.com/ou-law-professor-associate-dean-expresses-homophobic-sexist-views-in-2014-book/article_b023ece8-c50b-11e8-8678-a71250ce7740.html.

to terminate a pregnancy in order to preserve their life without a medical emergency.

CONCLUSION

¶38 The physical and mental abilities and attributes of women have always been questioned. When the steam locomotive was introduced, railroads were criticized because some thought that women's bodies were not designed to go at 50 miles per hour. The concern was that their uteri would fly out of their bodies if they were accelerated at that speed.[74]

¶39 With the invention of the automobile concerns much like those expressed for a woman serving on a jury arose. Allegedly, because women were prone to fantasy, physical weakness, and hysteria, they would lose control. Therefore, they should not be allowed to drive. This myth was dispelled by Alice Ramsey who, with three other women, drove across the country in 1909, even changing her own flat tire.[75]

¶40 Women were precluded from being astronauts because they had to be test pilots. Women were not allowed to be test pilots, so they could not be

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[74]Beth Dreher, *7 Shocking Things Women Weren't Allowed To Do Until Pretty Recently*, Women's Day, Aug. 12, 2016.

[75]Marina Koestler Ruhen, *Alice Ramsey's Historic Cross-Country Drive*, Smithsonian Magazine, June 4, 2009.

astronauts. Again, like qualifications for jury duty, because they could not be an elector, they couldn't serve on a jury. Or they couldn't be a lawyer because they lacked the ability to contract.

¶41 Now, women can drive cars, even competing in the Indy 500. Women can run in marathons, which was forbidden by the American Athletics Association until 1970, for fear they would be infertile. The next mission to the moon will include a woman who will travel thousands of miles per hour. The first Native American woman completed a space walk from the International Space Station in January of 2023. In the 2023 Super Bowl, fighter jets that flew over the game were piloted and crewed by women. Even so, a woman lacks the right she had in 1893, to terminate a pregnancy to preserve her life without qualification.

¶42 The analogy here is like and unlike a hot appendix. If a woman presented with a fever, elevated white cell count, and pain in the lower right quadrant of her body, the physician under the reasonable standards of medical practice, may remove it without waiting until it bursts in a "medical emergency." Evidently the same standard is inapplicable to eclampsia. Must an Oklahoma physician wait until their patient has a seizure, a stroke, experiences multiple organ failure, goes septic, or goes into a coma because of the fear of criminal prosecution?

¶43 This certainly appears to be a problem in Texas. For example, five women joined in Zurawaski v. State of Texas, No. D-1-GN-000968, filed in the District Court of Travis County Texas March 6, 2023, seeking a permanent injunction because physicians were afraid to provide necessary and potentially live-saving obstetrical care. According to their allegations, Amanda Z., after a year and a half of fertility treatments, exploratory procedures, uses of multiple medications, and treatment with intrauterine insemination finally got pregnant. However, at seventeen weeks complications arose from weakening cervical tissue, and she was told her baby would not survive. Because physicians were too fearful to treat her without her being in an emergent medical condition, she had to wait until she was septic and near death before they would act to preserve her life.

¶44 Two of the women, Lauren M. and Ashley B., each learned that one of their twins was not viable. They both had to travel out of state for treatment in order to save their lives and that of their remaining twin. Anna Z. was forced to fly across multiple states after her water broke, risking labor, septic shock, and hemorrhaging because, even though her baby would not survive, Texas physicians denied treatment for fear of prosecution.

¶45 Lauren H.'s baby had a condition where a skull would not develop with a severely underdeveloped brain and no chance of survival. She alleged that she

could not get treatment in Texas. Her specialist couldn't help her and was even fearful to give her information about her options. The specialist would not provide a referral or even transfer her medical records to an abortion provider. Because neighboring states were inundated with appointments, she had to travel to Washington state — it was the only state she could find that had an open appointment.

¶46 Although the Oklahoma Legislature is considering several bills which address termination, and there may be an initiative petition or referendum, this is the cause before us. We need to do our jobs, uphold our oaths of office, and address the issues without delay rather than speculate about what might be. For some women, the draconian law which allows no exception, in the absence of a medical emergency to preserve the life of the mother, may be a death sentence. In some instances, women may have fewer rights than a convicted murderer on death row. These women may be subject to a death sentence without being afforded due process or any provision for clemency or pardon. Imagine that.