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5 **AN ENGROSSED RESOLUTION**  
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7 In support of State of Wisconsin legislative changes ensuring access to abortion care  
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10 WHEREAS, the 1973 US Supreme Court ruling in *Roe v. Wade* made access to  
11 safe and legal abortion a Constitutional right in the United States; and  
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13 WHEREAS, in a nearly unprecedented taking of a settled right in the United  
14 States, the US Supreme Court issued a ruling on June 24, 2022 in *Dobbs v. Jackson*  
15 *Women’s Health Organization* which overturned *Roe v. Wade*, allowing states to ban  
16 abortion; and  
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18 **WHEREAS, based on Organisation for Economic Co-operation and**  
19 **Development (OECD) data, the United States has the worst maternal mortality rate**  
20 **among advanced economies, and according to the United States Centers for**  
21 **Disease Control and Prevention (CDC), Black maternal mortality is greater than**  
22 **white women by a multiple of three and forced birthing will potentially exacerbate**  
23 **this trend; and**  
24

25 **WHEREAS, there is a continued need for surgical intervention via abortion**  
26 **to save the life of persons experiencing ectopic pregnancy, the growth of an**  
27 **embryo or fetus outside of the uterus, or in the case of retained or incomplete**  
28 **miscarriage or placental retention after childbirth, among other situations where**  
29 **it may be deemed necessary by a licensed healthcare provider; and**  
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31 **WHEREAS, Idaho Code § 18-622, Idaho’s “total abortion ban,” made it a**  
32 **criminal offense for anyone to perform an abortion at any time, except “when**  
33 **necessary to prevent the death of the pregnant woman,” however, as the United**  
34 **States federal government argued in *United States v. The State of Idaho*, with the**  
35 **testimony of medical *amicus curiae*, the imprecision of medical treatment with**  
36 **varied possible outcomes make it impossible to determine with absolute certainty**  
37 **that death may be the result: “[W]hile [Idaho’s] declarations speak in terms of**  
38 **absolutes, medicine does not work that way in most cases. Death May be a**  
39 **possible or even probably outcome, but different outcomes or conditions may**  
40 **also be probable.”; and pondering whether a condition is sufficiently grave to**  
41 **perform an abortion may also delay necessary care, potentially causing harm and**

42 violating the federal Emergency Medical Treatment and Labor Act of 1986  
43 (EMTALA); and

44

45 WHEREAS, the EMTALA in 42 USC § 1395dd(a) defines an “emergency  
46 medical condition” as:

47 (A) a medical condition manifesting itself by acute symptoms of sufficient  
48 severity (including severe pain) such that the absence of immediate  
49 medical attention could reasonably be expected to result in –

50

51 (i) placing the health of the individual (or, with respect to a pregnant  
52 woman, the health of the woman or her unborn child) in serious  
53 jeopardy,

54 (ii) serious impairment to bodily functions, or

55 (iii) serious dysfunction of any bodily organ or part; . . .

56

57 ; and

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59 WHEREAS, the United States District Court for the District of Idaho ruled  
60 on August 24, 2022 in *United States v. The State of Idaho*, that Idaho Code § 18-  
61 622 violated the Supremacy Clause of the United States Constitution as the Code  
62 conflicted with the federal EMTALA and further ruled the Code illegal where it  
63 conflicted with the EMTALA; and

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65 WHEREAS, on July 8, 2022, two weeks after the *Dobbs Decision*, President  
66 Joe Biden issued his Executive Order 14076 on Protecting Access to  
67 Reproductive Healthcare Services which directed the Administration to

68

69 • Safeguard access to reproductive healthcare services including abortion  
70 and contraception, particularly when abortion may be necessary to save  
71 the life of a pregnant woman

72 • Protect the privacy of patients and their access to accurate information

73 • Promote the safety and security of patients, providers, and clinics

74 • Coordinate the implementation of Federal efforts to protect reproductive  
75 rights and access to healthcare

76

77 ; and

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79 WHEREAS, in *State of Texas et al. v. Secretary of Health and Human*  
80 *Services et al.*, the plaintiffs sued the federal Department of Health and Human  
81 Services to prevent the Department from enforcing the EMTALA as interpreted by  
82 President Biden’s Administrative Order, arguing the Order exceeded the EMTALA  
83 by:

84

- 85 • “[N]ot considering the welfare of the unborn children when determining  
86 how to stabilize a pregnant woman”
- 87 • “[Preempting Texas] laws notwithstanding explicit provisions to the  
88 contrary” as “Texas civil and criminal laws prohibit abortion unless there is  
89 a threat to the life of the pregnant woman” and the Texas Human Life  
90 Protection Act (HLPa) “prohibits abortion unless a pregnancy-related  
91 ‘physical condition’ is ‘life-threatening’ and ‘places the female at risk of  
92 death or poses a serious risk of substantial impairment of a major bodily  
93 function,” and “HLPa’s language indicates that the life-threatening  
94 physical condition must be present, rather than likely to be emergent”
- 95 • “[I]nterferes with the practice of medicine in violation of the Medicare Act”  
96 by threatening civil monetary penalties

97  
98 ; and

99  
100 WHEREAS, on August 23, 2022, the United States District Court, Northern  
101 District of Texas, Lubbock Division, agreed with the plaintiffs in *State of Texas et*  
102 *al. v. Secretary of Health and Human Services et al.* that the President’s Executive  
103 Order exceeded the EMTALA citing the Act “protects *both* mothers and unborn  
104 children, is silent as to abortion, and preempts state law only when the two  
105 directly conflict. Since the statute is silent on the question, the Guidance cannot  
106 answer how doctors should weigh risks to both a mother and her unborn child.  
107 Nor can it, in doing so, create a conflict with state law where one does not exist.  
108 The Guidance was thus unauthorized.”; and

109  
110 WHEREAS, it is clear the United States District Court, Northern District of  
111 Texas, was spurious in its *Texas v. DHHS Secretary* ruling as it intentionally  
112 misread the *prima facie* plain reading of the EMTALA’s definition of “emergency  
113 medical condition” and the realities of medical care as acknowledged in the  
114 United States District Court for the District of Idaho’s *US v. Idaho* ruling; and  
115

116 WHEREAS, Wisconsin has a 173-year-old criminal abortion law still in its  
117 statutes, from Wisconsin Chapter 133, §§ 10-11, Laws of 1849, as amended in 1858,  
118 which effectively bans all abortions in the state by making it a felony to perform an  
119 abortion with no exception for rape or incest; and

120  
121 WHEREAS, Wisconsin’s newer abortion statute, Wis. Stat. § 940.04, does  
122 provide an exception for an abortion if the mother’s life is at risk, but in this medically  
123 sensitive scenario, the statute mandates that medical staff must somehow find two other  
124 doctors to review the case and positively affirm that the mother’s life is indeed at risk,  
125 and that an abortion is medically necessary to save the woman’s life; the statute does  
126 not provide guidelines for how to affirm or deny the maternal health exemption, creating

127 the potential for delays in decision-making, litigation, and physical harm to the mother;  
128 and  
129

130 **WHEREAS, Wis. Stat. § 640.04 is plainly in violation of the federal EMTALA**  
131 **and subsequently the Supremacy Clause of the United States Constitution, and**  
132 **the discourse in the *US v. Idaho* and *Texas v. DHHS Secretary* rulings show what**  
133 **is at stake for pregnant people in Wisconsin who may require abortion to save**  
134 **their own lives in emergency medical care; and**  
135

136 WHEREAS, a Marquette University Law School poll in July 2022 indicated that  
137 64 percent of Wisconsin residents support access to abortion care in all or most cases,  
138 while only eight percent of Wisconsinites said abortion should be illegal in all cases; and  
139

140 WHEREAS, it is clear Wisconsin law is not in line with public sentiment, **does**  
141 **not account for proper medical care and contingencies, is in violation of the**  
142 **federal Emergency Medical Treatment and Labor Act of 1986 and the US**  
143 **Constitution's Supremacy Clause,** and must change to be in line with the times; and  
144

145 WHEREAS, the Committee on Intergovernmental Relations, at its meeting of  
146 September 12, 2022, made no recommendation regarding File No. 22-927, due to a  
147 parliamentary tie on a motion to adopt (vote 2-1-1); now, therefore,  
148

149 BE IT RESOLVED, the Milwaukee County Board of Supervisors hereby affirms  
150 its support and calls upon the State of Wisconsin to protect abortion care as the right to  
151 choose and the residents of Milwaukee County and the State of Wisconsin should have  
152 access to this healthcare service in their own communities; and  
153

154 **BE IT FURTHER RESOLVED, the Milwaukee County Board of Supervisors**  
155 **hereby calls upon the State of Wisconsin to amend its statutes enabling abortion**  
156 **care for Wisconsinites, or minimally, amend its statutes to bring Wisconsin law in**  
157 **line with the federal Emergency Medical Treatment and Labor Act of 1986; and**  
158

159 BE IT FURTHER RESOLVED, Office of Government Affairs staff is authorized  
160 and requested to communicate the contents of this resolution to the Wisconsin  
161 Governor and State policymakers, and support legislation that achieves the criteria  
162 outlined in this resolution; and  
163

164 BE IT FURTHER RESOLVED, the Office of Government Affairs staff is  
165 authorized and directed to provide this resolution to the Wisconsin Counties Association  
166 for consideration in its legislative platform.  
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