

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

WENDY DAVIS; MARVA SADLER; SEAN MEHL; and STIGMA RELIEF FUND,
Plaintiffs,
v.
MISTIE SHARP; SADIE WELDON; ASHLEY MAXWELL; and BRISCOE ROWELL CAIN III,
Defendants.
CIVIL ACTION
CASE NO. 22-cv-373

COMPLAINT

Plaintiffs, by and through their undersigned attorneys, bring this complaint against the above-named Defendants and in support thereof allege the following:

INTRODUCTION

1. Abortion funds are charitable organizations that provide financial assistance to abortion patients. Plaintiffs are an abortion fund that serves Texas abortion patients and three individuals who wish to donate money to abortion funds that serve Texas abortion patients, including two who currently serve on the Board of Directors of the Plaintiff abortion fund. They bring this lawsuit under 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202 to seek a declaration that the following laws are unenforceable because they violate the U.S. Constitution: Texas Senate Bill 8, 87th Leg., Reg. Sess. (Tex. 2021) (“S.B. 8”), and Texas Penal Code arts. 1191-94, 1196 (1972) (the “Criminal Abortion Ban”), which the U.S. Supreme Court held unconstitutional in Roe v. Wade, 410 U.S. 113, 164–67 (1973). A copy of S.B. 8 is attached as Exhibit 1, and the text of the Criminal Abortion Ban is set forth in Roe. See 410 U.S. at 117 n.1.

1 The Criminal Abortion Ban was also codified at Tex. Civil Stat. arts. 4512.1-4512.4, 4512.6 (1974).

2. S.B. 8 is a blatantly unconstitutional law that bans abortion beginning at approximately six weeks of pregnancy, as measured from the first day of a patient's last menstrual period ("LMP"), and incentivizes vigilante harassment of anyone who assists abortion patients. Since it took effect on September 1, 2021, S.B. 8 has dramatically reduced abortion access in Texas. This has had an immediate and devastating impact on all Texans seeking abortion care, which is felt most acutely by the marginalized communities that abortion funds serve. Many of these Texans do not know that they are pregnant before six weeks LMP or cannot marshal the resources needed to obtain abortion care before six weeks LMP. Those who are able to travel out of state for abortion care do so at the expense of their well-being, dignity, financial resources, and job and care-taking responsibilities. Those unable to leave Texas are forced to suffer the life-altering physical, emotional, and economic consequences of unwanted pregnancy and childbirth.

3. Ironically, by banning abortions at six weeks of pregnancy, S.B. 8 has led to a significant increase in second-trimester abortions. Many Texans who are just beyond the statute's gestational limit are delayed by the need to gather the resources and make the arrangements required for out-of-state travel. Exacerbating the problem, the cost of abortion care increases with gestational age, which often compounds delay. The longer someone is delayed, the more money they must raise to pay for the procedure, which traps patients with limited financial means in a terrible cycle. In addition, abortion providers in states neighboring Texas lack the capacity to meet the increased demand for their services. Consequently, Texas patients must compete with patients living in those states for a limited number of appointments, leading many Texans to seek abortion care in states that are farther away. The result is cascading delays in abortion access across the country, with some Texas patients traveling hundreds or even thousands of miles to reach an available abortion provider.

4. S.B. 8 prohibits government officials from directly enforcing its provisions. Instead, it deputizes private citizens to enforce the statute, allowing “any person” other than a government official to bring a civil lawsuit against anyone who provides an abortion in violation of the statute, “aids or abets” such an abortion, or intends to do so. S.B. 8 § 3 (codified at Tex. Health & Safety Code § 171.208) (hereinafter S.B. 8 citations are to newly created sections of Tex. Health & Safety Code only). The only conduct that S.B. 8 explicitly identifies as aiding or abetting is “paying for or reimbursing the costs of an abortion.” Tex. Health & Safety Code § 171.208(a)(2). S.B. 8 authorizes private suits regardless of whether the person suing has any connection to the abortion or person sued. If a claimant in an S.B. 8 case prevails, they are entitled to (1) “injunctive relief sufficient to prevent” future violations; (2) “statutory damages” of *at least* \$10,000 per abortion, with no apparent maximum amount; and (3) costs and attorney’s fees. *Id.* § 171.208(b). In effect, S.B. 8 places a bounty on people who facilitate abortion access, inviting random strangers to sue them.

5. Texas has admitted that the goal of S.B. 8’s enforcement scheme is to prevent federal courts from holding the State accountable for the statute’s blatantly unconstitutional provisions.² As the legislative director for Texas Right to Life (the largest anti-abortion organization in the State) explained during the legislative proceedings, every six-week ban on abortion adopted by other states “has been enjoined or had at least some negative court action,” and “it’s because of the [government] enforcement mechanism[]” provided for in those laws.³ He

² Video of Oral Arg. at 17:48-18:07, *Whole Woman’s Health v. Jackson*, 65 Tex. Sup. Ct. J. 625 (Mar. 14, 2022) (Cause No. 22-0033), <https://www.texasbarcle.com/cle/SCPlayer5.asp?sCaseNo=22-0033&bLive=&k=&T=17>.

³ *Hr’g on S.B. 8 Before the S. Comm. on State Affairs*, 87th Leg., Reg. Sess. 7:30-7:45 (Tex. 2021) (statement of John Seago, Leg. Dir. of Tex. Right to Life), https://tlcsenate.granicus.com/MediaPlayer.php?view_id=49&clip_id=15469.

later added that some abortion opponents thought that the approach taken by other states “was not working in federal court, so let’s try a different route.”⁴

6. Thus, S.B. 8 seeks not only to strip Texans of their fundamental right to make decisions about their pregnancies based on their individual circumstances and religious beliefs, but also to make a mockery of the federal courts. This is the case even though—or perhaps because—the law has long recognized that federal courts play a crucial role in “vindicat[ing] federal rights and hold[ing] state officials responsible to ‘the supreme authority of the United States.’” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984) (quoting *Ex parte Young*, 209 U.S. 123, 160 (1908)). Indeed, more than a century of precedent “has permitted the Civil War Amendments to the Constitution to serve as a sword, rather than merely as a shield, for those whom they were designed to protect.” *Edelman v. Jordan*, 415 U.S. 651, 664 (1974). Those Civil War Amendments led to the enactment of 42 U.S.C. § 1983, which authorizes this lawsuit.

7. Plaintiffs bring this lawsuit against Defendant Mistie Sharp because she has sworn under penalty of perjury that she intends to sue abortion funds that pay for abortions in violation of S.B. 8. Likewise, Plaintiffs bring this suit against Defendants Sadie Weldon and Ashley Maxwell because they have initiated proceedings to sue certain Texas abortion funds and their donors, employees, and volunteers under S.B. 8, and publicly threatened all Texas abortion funds and their associates with civil lawsuits under S.B. 8. Plaintiffs bring this lawsuit against Defendant Briscoe Rowell Cain III, a member of the Texas House of Representatives, because he sent cease-and-desist letters to Texas abortion funds and made public statements asserting that Texas abortion

⁴ Sabrina Tavernise, *Citizens, Not the State, Will Enforce New Abortion Law in Texas*, N.Y. Times (July 9, 2021), <https://www.nytimes.com/2021/07/09/us/abortion-law-regulations-texas.html>.

funds and their donors, employees, and volunteers are subject to prosecution under the Criminal Abortion Ban.

8. At core, the question in this case is whether Texas may adopt a law that sets about to “do precisely that which the [Constitution] forbids.” *Terry v. Adams*, 345 U.S. 461, 469–70 (1953) (holding that a political association’s exclusion of Black voters from political primaries was unconstitutional state action designed to insulate primaries from federal court review). The answer to that question must be no. Otherwise, states and localities across the country would have free rein to target the exercise of federal rights they disfavor for ruinous civil liability.

9. Plaintiffs urgently need this Court to stop Texas’s brazen defiance of the rule of law, uphold the federal constitutional rights of pregnant Texans, and restore the ability of abortion funds and their associates to fully serve Texas abortion patients.

JURISDICTION AND VENUE

10. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. This is a civil rights action arising under 42 U.S.C. § 1983 and the U.S. Constitution.

11. Plaintiffs’ claims for declaratory relief are authorized by 28 U.S.C. §§ 2201-2202, Rule 57 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of the Court, including the Court’s inherent authority to enforce the supremacy of federal law as against contrary state law.

12. Venue is appropriate in this district under 28 U.S.C § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this district. *See Trois v. Apple Tree Auction Ctr., Inc.*, 882 F.3d 485, 492–94 (5th Cir. 2018) (discussing the requirements for venue under 28 U.S.C. § 1391(b)). Plaintiff Stigma Relief Fund serves clients who reside and/or seek abortion care in this district. The individual Plaintiffs seek to continue donating money to Stigma Relief Fund and other abortion funds that serve clients who reside

and/or seek abortion care in this district. Ms. Sadler and Mr. Mehl also serve on the Board of Directors of Stigma Relief Fund. In addition, Defendant Sharp has intervened in a lawsuit pending in this district based on her declared intention to sue Texas abortion funds under S.B. 8. Defendant Weldon has taken steps to enforce S.B. 8 against an abortion fund based in this district. Likewise, Defendant Cain sent cease-and-desist letters to Texas abortion funds using his official letterhead, and he maintains an office in this district. Additionally, S.B. 8 was enacted in this district, which includes the State capitol.

13. This case is related to two open cases in this district that are assigned to the Honorable Robert Pitman: *Whole Woman's Health v. Jackson*, No. 1:21-CV-616-RP and *United States v. Texas*, No. 1:21-CV-796-RP. Both cases involve challenges to the constitutionality of S.B. 8. Marva Sadler is also a plaintiff in *Whole Woman's Health v. Jackson*.

PLAINTIFFS

14. Plaintiff Wendy Davis is a Texas resident who strongly supports abortion rights. She currently donates money to the abortion fund targeted by Defendant Weldon, and she works in coalition with that abortion fund and others to support abortion patients and advocate for abortion rights. Defendants' public threats against abortion funds and their associates have had a chilling effect on some of those organizations and individuals, including the other Plaintiffs, which intrudes upon Ms. Davis' ability to associate with like-minded people to express her views and achieve her advocacy goals.

15. Plaintiff Marva Sadler is a Texas resident who has worked in Texas abortion clinics for over fifteen years. She currently serves as the Chair of the Stigma Relief Fund's Board of Directors, and she regularly donates money to that organization. Ms. Sadler sometimes donates money to other Texas abortion funds, as well. She is aware of Defendants' threats concerning enforcement of S.B. 8 and the Criminal Abortion Ban against Texas abortion funds and their

donors, employees, and volunteers. Because of those threats, she intends to forgo making additional donations to Texas abortion funds until the Court clarifies whether and to what extent she can face liability for doing so.

16. Plaintiff Sean Mehl is a Virginia resident and has worked in abortion clinics for nearly a decade. He currently serves on Stigma Relief Fund's Board of Directors, and he regularly donates money to that organization. Mr. Mehl sometimes donates money to other Texas abortion funds as well. He is aware of Defendants' threats concerning enforcement of S.B. 8 and the Criminal Abortion Ban against Texas abortion funds and their donors, employees, and volunteers. Because of those threats, he intends to forgo making additional donations to Texas abortion funds until the Court clarifies whether and to what extent he can face liability for doing so.

17. Plaintiff Stigma Relief Fund is a nonprofit organization incorporated under the laws of Texas. The mission of Stigma Relief Fund is to ensure that everyone who needs an abortion receives the compassionate, high-quality abortion care they deserve. To that end, Stigma Relief Fund provides financial and practical support to abortion patients seeking care at allied clinics, including clinics in Texas. Many patients who seek help from the Stigma Relief Fund are past six weeks LMP. Given Defendants' threats concerning enforcement of S.B. 8 and the Criminal Abortion Ban against Texas abortion funds and their associates, the Stigma Relief Fund has ceased providing financial assistance to Texas patients beyond six weeks LMP unless they travel out of state to obtain abortion care. Further, the Stigma Relief Fund is concerned that Defendants' threats will have a chilling effect on its donors, prospective employees, and volunteers.

DEFENDANTS

18. Defendant Mistie Sharp is a Texas resident. S.B. 8 deputizes her to enforce the statute, and she has sworn under penalty of perjury that she intends to sue abortion funds that pay for abortions in violation of S.B. 8.

19. Defendant Sadie Weldon is a Texas resident. S.B. 8 deputizes her to enforce the statute. She has commenced legal proceedings against at least one Texas abortion fund and publicly threatened all Texas abortion funds and their associates with civil lawsuits under S.B. 8.

20. Defendant Ashley Maxwell is a Texas resident. S.B. 8 deputizes her to enforce the statute. She has commenced legal proceedings against at least one Texas abortion fund and publicly threatened all Texas abortion funds and their associates with civil lawsuits under S.B. 8.

21. Defendant Briscoe Rowell Cain III is the Texas State Representative of House District 128. He sent cease-and-desist letters on his official letterhead to Texas abortion funds and made public statements asserting that all Texas abortion funds and their associates are subject to prosecution under the Criminal Abortion Ban.

FACTUAL ALLEGATIONS

I. ABORTION IN THE UNITED STATES

22. Legal abortion is one of the safest medical interventions performed in the United States. In recent years, the abortion-related mortality rate has been 0.44 abortion-related deaths per 100,000 abortions.⁵ Abortion-related mortality is lower than that for colonoscopies, plastic surgery, dental procedures, and adult tonsillectomies.⁶

23. Notably, abortion entails significantly less medical risk than carrying a pregnancy to term and giving birth. Maternal mortality is a serious problem in the United States. We have the highest maternal mortality rate among developed countries, and it has increased during the

⁵ Katherine Kortzmit et al., *Abortion Surveillance—United States, 2018*, MMWR Surveillance Summaries, Nov. 27, 2020, at 7, <https://www.cdc.gov/mmwr/volumes/69/ss/pdfs/ss6907a1-H.pdf>.

⁶ Nat'l Acads. of Scis., Eng'g, & Med., *The Safety and Quality of Abortion Care in the United States* 74-75 (2018), <https://doi.org/10.17226/24950> (“NASEM Report”).

COVID-19 pandemic.⁷ Pregnancy-related deaths disparately impact communities of color: Black and Indigenous people die from pregnancy-related causes at a much higher rate than white people.⁸

21. Overall, the risk of death from carrying a pregnancy to term is approximately fourteen times higher than that from having an abortion, and every pregnancy-related complication is more common among people giving birth than among those having abortions.⁹ Additionally, although abortion is safe throughout pregnancy, the risk, complexity, and duration of abortion care increase with gestational age.¹⁰ Thus, delaying or preventing people from accessing wanted abortion care increases their risks of complication and death.

22. In addition to being safe, abortion is also common: approximately one in four women¹¹ in the United States will have an abortion by age forty-five.¹²

23. People seek abortions for a variety of deeply personal reasons, including familial, medical, and financial ones. Deciding whether to end a pregnancy or give birth implicates a

⁷ Roni Caryn Rabin, *Maternal Deaths Rose During the First Year of the Pandemic*, N.Y. Times (Feb. 23, 2022), <https://www.nytimes.com/2022/02/23/health/maternal-deaths-pandemic.html?smid=url-share>.

⁸ *Id.*

⁹ Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216-17 (2012).

¹⁰ NASEM Report, *supra* note 6, at 10.

¹¹ Although most people with the capacity to become pregnant are women, some transgender men and nonbinary people also have the capacity to become pregnant. *See, e.g.*, Heidi Moseson et al., *Development of an affirming and customizable electronic survey of sexual and reproductive health experiences for transgender and gender nonbinary people*, PLoS ONE, May 4, 2020, at 2-3, <https://doi.org/10.1371/journal.pone.0232154>; Juno Obedin-Maliver & Harvey J. Makadon, *Transgender men and pregnancy*, 9 *Obstetric Med.* 4, 4–6 (2016). The language used in the scientific literature and caselaw does not always reflect this reality. *See, e.g., Reprod. Health Servs. v. Strange*, No. 17-13561, 2021 WL 2678574, at *1 n.2 (11th Cir. June 30, 2021) (“Although this opinion uses gendered terms, we recognize that not all persons who may become pregnant identify as female.”). Nevertheless, the Constitution protects the fundamental right of all pregnant people, regardless of gender identity, to access pre-viability abortion care.

¹² Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 *Am. J. Pub. Health* 1904, 1907-08 (2017).

person's core religious beliefs, values, and family circumstances. Some people have abortions because it is not the right time to have a child or add to their families. Others want to pursue educational or professional goals; lack the economic resources needed to raise children; lack support from their partners or have abusive partners; have medical conditions that heighten the risks of pregnancy or receive a diagnosis of fetal anomaly; are pregnant as a result of rape or incest; or simply do not want to have children. Many people have multiple, intersecting reasons for deciding to have an abortion.

24. Nearly 60% of abortion patients in the United States have already had a child.¹³

25. Most abortion patients have religious affiliations. Nationwide, 24% are Roman Catholics; 17% are mainline Protestants; 13% are evangelical Protestants; and 8% belong to other faith traditions.¹⁴

26. Three-quarters of U.S. abortion patients have low incomes, with nearly half living below the federal poverty level.¹⁵

II. S.B. 8'S STATUTORY FRAMEWORK

27. As enacted, S.B. 8 has ten sections. Its operative provisions are set forth in Sections 3 and 4, which include an abortion ban, civil enforcement mechanism, and fee-shifting scheme. These provisions are described in detail below.

¹³ Kortsmitt et al., *supra* note 5, at 6.

¹⁴ Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008* 7 (May 2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf.

¹⁵ *Id.*

A. Section 3 of S.B. 8: The Six-Week Ban and Civil Enforcement Mechanism

(i) *The Abortion Ban*

28. Section 3 of S.B. 8 requires physicians who perform abortions in Texas to first determine whether “a detectable fetal heartbeat” is present. Tex. Health & Safety Code § 171.203(b); *see id.* § 171.201(1). It prohibits the physician from providing an abortion after “detect[ing] a fetal heartbeat” or if the physician “failed to perform a test to detect a fetal heartbeat.” *Id.* § 171.204(a). S.B. 8 contains no exception for pregnancies that result from rape or incest, or for fetal health conditions that are incompatible with sustained life after birth. The only exception is for a medical emergency. *Id.* §§ 171.204(a), 171.205(a). Sections 7 and 9 of S.B. 8 impose additional reporting requirements on abortions performed because of a medical emergency. *Id.* §§ 171.008, 245.011(c).

29. S.B. 8 defines “fetal heartbeat” as “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” *Id.* § 171.201(1). In a typically developing pregnancy, ultrasound can generally detect cardiac activity beginning at approximately six weeks LMP.

30. S.B. 8 thus prohibits virtually all abortions after approximately six weeks LMP—before many patients even know they are pregnant. Indeed, for patients with regular menstrual periods, six weeks of pregnancy is only two weeks after the patient’s first missed period.

31. A full-term pregnancy is approximately 40 weeks LMP.

32. The cells that produce the early cardiac activity described in S.B. 8 have not yet formed a “heart.” The term “heartbeat” in S.B. 8 thus covers not just a “heartbeat” in the lay sense, but also early cardiac activity—more accurately, electrical impulses—present before full development of the cardiovascular system. Similarly, a developing pregnancy is properly referred to as an “embryo” until approximately ten weeks LMP, when it becomes a “fetus.” So, despite

S.B. 8’s use of the phrase “fetal heartbeat,” the law forbids abortion even when cardiac activity is detected in an embryo. *See id.* §§ 171.201(1), 171.201(7), 171.204(a). Because neither “fetal” nor “heartbeat” is accurate medical terminology at this stage of pregnancy, Plaintiffs refer to the prohibition against providing an abortion after the detection of a “fetal heartbeat” as a “six-week ban.”

33. No embryo is viable at six weeks LMP, or at any other point when cardiac activity can first be detected by ultrasound. Instead, viability is generally understood as the point in pregnancy when a fetus, if born at that time, would have a reasonable likelihood of sustained life after birth, with or without artificial support.

34. Viability typically occurs around twenty-four weeks LMP. By prohibiting abortion after approximately six weeks LMP, S.B. 8 bans abortion months before viability is possible.

(ii) *Civil Liability for Providing Prohibited Abortions and Aiding or Abetting Prohibited Abortions*

35. S.B. 8 creates civil liability for “perform[ing] or induc[ing] an abortion in violation of” the six-week ban. *Id.* § 171.208(a)(1).

36. S.B. 8 also creates civil liability for “knowingly engag[ing] in conduct that aids or abets the performance or inducement of” an abortion that violates the six-week ban. *Id.* § 171.208(a)(2). Although S.B. 8 does not define aiding or abetting, it expressly prohibits “paying for or reimbursing the costs of an abortion.” *Id.* Further, S.B. 8 makes someone liable for aiding or abetting a prohibited abortion “regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of” S.B. 8. *Id.*

37. Finally, S.B. 8 creates civil liability for anyone who “intends to” perform, induce, aid, or abet a prohibited abortion, regardless of whether they actually commit those acts. *Id.* § 171.208(a)(3).

(iii) Enforcement Actions and Penalties for Non-Compliance

38. S.B. 8 expressly precludes government officers from directly enforcing the six-week ban. *Id.* § 171.207(a). Instead, the statute creates a private, civil enforcement mechanism: “Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person” who performs a prohibited abortion, aids or abets a prohibited abortion, or intends to engage in these activities. *Id.* § 171.208(a)(1)-(3).

39. Besides government officers, the only people barred from initiating an S.B. 8 enforcement action are those “who impregnated the abortion patient through an act of rape, sexual assault, incest,” or certain other crimes. *Id.* § 171.208(j). However, because the six-week ban itself contains no exception for pregnancies resulting from rape, sexual assault, or incest, anyone *other* than the perpetrator could still sue a healthcare provider, abortion fund or family member who helps a patient end a pregnancy that resulted from the offense.

40. S.B. 8 does not permit suits against abortion patients. *Id.* § 171.206(b)(1). But it provides a ready tool for abusive partners or family members who wish to thwart a patient’s abortion. Under S.B. 8, if such individuals know about a patient’s plan to obtain an abortion, they can sue the patient’s abortion provider, or anyone else who “intends” to assist with that abortion, to prevent the patient from accessing care. *Id.* § 171.208(a)(1)-(3).

41. S.B. 8 imposes draconian penalties. Where an S.B. 8 claimant prevails, “the court shall award”: (1) “injunctive relief sufficient to prevent” future violations or conduct that aids or abets violations; (2) “statutory damages” to the claimant “in an amount of not less than \$10,000 for each abortion” that was provided, aided, or abetted; and (3) the claimant’s “costs and attorney’s fees.” *Id.* § 171.208(b). S.B. 8 does not require the claimant to allege or prove any injury to obtain an award.

(iv) ***The Rigged Nature of the Enforcement Proceedings***

42. At every turn, the rules governing S.B. 8 enforcement proceedings sharply diverge from the rules that normally apply to Texas litigants in ways that make it impossible for those sued to fairly defend themselves.

43. ***Statewide venue:*** S.B. 8 allows “any person”—including people with no connection to the abortion or patient, and those who are motivated by hostility to abortion rights or a desire for financial gain—to file lawsuits in their home counties and then veto transfer to a more appropriate venue. As a result, those targeted by S.B. 8 lawsuits can be forced to defend themselves in multiple, simultaneous enforcement proceedings in courts across the State. *See id.* § 171.210(a)(4) (permitting suit in the claimant’s county of residence if “the claimant is a natural person residing in” Texas); *id.* § 171.210(b) (providing that an S.B. 8 “action may not be transferred to a different venue without the written consent of all parties”). In contrast, venue in Texas is generally limited to where the events giving rise to a claim took place or where the defendant resides, *see* Tex. Civ. Prac. & Rem. Code § 15.002(a), and a Texas state court may generally transfer venue “[f]or the convenience of the parties and witnesses and in the interest of justice,” *id.* § 15.002(b).

44. ***One-way fee-shifting in favor of S.B. 8 claimants:*** S.B. 8 provides that, in enforcement proceedings, anyone who brings an S.B. 8 claim and prevails is entitled to recover costs and attorney’s fees. Tex. Health & Safety Code § 171.208(b)(3). Meanwhile, those sued under S.B. 8 cannot be awarded costs or attorney’s fees if they prevail, regardless of how many times they are sued or in how many venues. *Id.* § 171.208(i).

45. ***Elimination of defenses:*** S.B. 8 purports to bar people who are sued from raising seven defenses under the statute, including that they believed that S.B. 8 was unconstitutional; that

they relied on a court decision, later overruled, that was in place at the time of the acts underlying the suit; or that the patient consented to the abortion. *Id.* § 171.208(e)(2), (3), (6). S.B. 8 also states that people who are sued may not rely on any “state or federal court decision that is not binding on the court in which the action” was brought. *Id.* § 171.208(e)(4), (5). The clear import of these provisions is to undermine the supremacy of federal law, force supporters of abortion patients to defend themselves over and over again, and hamstring that defense.

46. The rigged nature of S.B. 8 enforcement proceedings sharply curtails Plaintiffs’ ability to vindicate their federal constitutional rights in state court.

B. Section 4 of S.B. 8: The Fee-Shifting Provision Applicable to All Lawsuits Challenging the Validity of Texas Abortion Restrictions

47. Section 4 of S.B. 8 creates an unprecedented one-way fee-shifting provision designed to deter all legal challenges to Texas abortion restrictions and penalize anyone who tries to bring such a challenge. This provision applies to any person—including a party’s lawyers—who seeks injunctive or declaratory relief to prevent enforcement of S.B. 8 or any other “law that regulates or restricts abortion,” or any law that excludes those who “perform or promote” abortion from participating in a public funding program. Tex. Civ. Prac. & Rem. Code § 30.022(a).

48. This fee provision purports to apply in state and federal court, and to any state or federal claim, including Section 1983 claims brought to vindicate federal constitutional rights.

49. Under this provision, civil-rights plaintiffs and their attorneys can be forced to pay defendants’ attorney’s fees unless they prevail on all of their claims. If a court dismisses a claim brought by the civil-rights plaintiff, regardless of the reason, or enters judgment in the other party’s favor on that claim, the party defending the abortion restriction is deemed to have “prevail[ed].” *Id.* § 30.022(b)(1)-(2). That is presumably true even if the court ultimately enjoins the challenged

abortion restriction in full after, for example, rejecting one claim pleaded in the alternative or dismissing another rendered moot by circumstance.

50. According to Section 4 of S.B. 8, the party seeking fees need not even have asked for them in the underlying litigation. Rather, that party can file a new lawsuit against the plaintiffs and/or their attorneys at any time within three years of the claim resolution. Further, the party seeking fees can choose to litigate their application in a new venue before a judge who did not preside over the initial case. *Id.* § 30.022(c), (d)(1)-(2).

51. State courts resolving such fee applications are directed to start from scratch. According to S.B. 8, they may not consider whether the court in the underlying case already denied fees to the party defending the abortion restriction, or already considered the application of S.B. 8 Section 4 and held it “invalid, unconstitutional, or preempted by federal law.” *Id.* § 30.022(d)(3). Nor does S.B. 8 explicitly limit fees to what is reasonable, unlike other fee-shifting statutes such as 42 U.S.C. § 1988.

III. THE CRIMINAL ABORTION BAN

52. Section 2 of S.B. 8 includes a legislative finding that Texas has “never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.” S.B. 8 § 2 (Tex. 2021).

53. The Criminal Abortion Ban made it a crime to “procure an abortion” at any stage of pregnancy. *See Roe*, 410 U.S. at 117 n.1. It further provided that: “Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.” *Id.* Its only exception was for an abortion “procured or attempted by medical advice for the purpose of saving the life of the mother.” *Id.* Violations of the ban were punishable by imprisonment. *Id.*

54. In *Roe*, the U.S. Supreme Court affirmed a declaratory judgment that the Criminal Abortion Ban is unconstitutional and held that no further relief was necessary because the Court “assume[ed] the Texas prosecutorial authorities will give full credence to this decision that the present criminal abortion statutes of that State are unconstitutional.” 410 U.S. at 166.

IV. IMPACT OF THE SIX-WEEK BAN ON PATIENTS SEEKING ABORTION CARE

55. Persistent and formidable barriers prevent many people from obtaining abortions before six weeks of pregnancy. These barriers include limited financial resources; systemic racism; later recognition of pregnancy; logistical factors such as difficulty taking time off from work or school, caregiving responsibilities, and lack of access to reliable and affordable transportation; and restrictive state laws. Clients of abortion funds typically experience multiple barriers simultaneously, and their impact is cumulative. People with low incomes, people of color, immigrants, and adolescents who lack parental support are disproportionately impacted by these barriers and are therefore more likely than others to experience delay in abortion access despite acting with urgency to obtain abortion care. For many of these individuals, there is no practical difference between banning abortion at six weeks LMP and banning abortion altogether.

56. Having limited financial resources is a major barrier to abortion access. For people with little disposable income, it often takes time to save or raise enough money to pay for an abortion.¹⁶ The cost of abortion care increases as pregnancy progresses, however.¹⁷ Consequently,

¹⁶ Ushma D. Upadhyay et al., *Denial of Abortion Because of Provider Gestational Age Limits in the United States*, 104 Am. J. Pub. Health 1687, 1692 (2014).

¹⁷ Sarah C.M. Roberts et al., *Out-of-Pocket Costs and Insurance Coverage for Abortion in the United States*, 24 Women’s Health Issues e211, e214 (2014).

the longer it takes someone to secure the money to pay for an abortion, the more the procedure will cost, which can trap an abortion patient in a cycle of fundraising and delay.¹⁸

57. Although abortion funds provide financial assistance to abortion patients, they are generally able to cover only a fraction of the cost of abortion care. One study of data collected from thirty abortion facilities throughout the United States, which took into account financial assistance provided by abortion funds, found that, for more than half of the patients involved in the study, the total out-of-pocket costs (including both abortion and travel), exceeded one-third of a patient's monthly income.¹⁹ Not surprisingly, 54% of the sample reported that the need to raise money to pay for the abortion and related expenses delayed them from obtaining care, consistent with other research findings.²⁰

58. Systemic racism is another barrier to abortion access that delays people from obtaining care.²¹ Systemic racism has contributed to severe and pervasive disparities in reproductive healthcare access and outcomes among racial and ethnic groups, including higher rates of unintended pregnancy; preterm birth; maternal mortality; and breast, cervical, and

¹⁸ Diana Greene Foster & Katrina Kimport, *Who Seeks Abortions at or After 20 Weeks?*, 45 *Persp. on Sexual & Reprod. Health* 210, 214 (2013) (“For some women, raising money for the procedure took so long that by the time they had gathered enough money, their pregnancy had progressed to a stage that necessitated a more expensive procedure.”).

¹⁹ Roberts et al., *supra* note 17, at e214.

²⁰ *Id.* at e215; accord Upadhyay et al., *supra* note 16, at 1692 (“In this study, one of the primary reasons for delay in seeking an abortion was time spent raising the funds to pay for the procedure and travel.”); Jessica W. Kiley et al., *Delays in request for pregnancy termination: comparison of patients in the first and second trimesters*, 81 *Contraception* 446, 449 (2010) (“Our findings demonstrate that many women experience substantial difficulty obtaining money to pay for their procedures, and this problem was more common among the second-trimester respondents.”); Lawrence B. Finer et al., *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 *Contraception* 334, 341-42 (2006) (“[S]econd-trimester patients were significantly more likely to indicate that they were delayed because they needed time to raise money for the abortion.”).

²¹ See Terri-ann Monique Thompson et al., *Racism Runs Through It: Examining the Sexual and Reproductive Health Experience of Black Women in the South*, 41 *Health Affairs* 195, 198 (2022).

endometrial cancer deaths among Black individuals.²² A growing body of literature documenting these impacts has led leading professional organizations in the field of obstetrics and gynecology to acknowledge that “[d]ifferences in outcomes result from many factors, including racism and bias in access to and delivery of quality health care, and must be acknowledged and addressed.”²³ Systemic racism contributes to delays in abortion access for people of color, particularly those who are Black.²⁴ Nationwide, more than 60% of abortion patients are people of color, including 28% who are Black.²⁵ Relative to white individuals, Black individuals are significantly more likely to obtain an abortion in the second trimester of pregnancy.²⁶

59. Later recognition of pregnancy is also a major barrier to obtaining abortion care before six weeks LMP.²⁷ Many people do not realize that they are pregnant until they are more than six weeks along. Several factors may contribute to later recognition of pregnancy, including lack of sex education; low health literacy; lack of access to routine healthcare; and physical factors, such as lack of pregnancy-related symptoms, irregular menstrual cycles, use of hormonal

²² Am. Coll. of Obstetricians & Gynecologists, *Racial and Ethnic Disparities in Obstetrics and Gynecology*, 126 *Obstetrics & Gynecology* e130, e131 tbl.1 (2015).

²³ Am. Ass’n of Gynecologic Laparoscopists et al., *Joint Statement: Obstetrics and Gynecology: Collective Action Addressing Racism* (Aug. 27, 2020), <https://www.acog.org/news/news-articles/2020/08/joint-statement-obstetrics-and-gynecology-collective-action-addressing-racism>.

²⁴ Christine Dehlendorf et al., *Disparities in Abortion Rates: A Public Health Approach*, 103 *Am. J. Pub. Health* 1772, 1776 (2013).

²⁵ Jerman et al., *supra* note 14, at 5.

²⁶ Rachel K. Jones & Jenna Jerman, *Characteristics and Circumstances of U.S. Women Who Obtain Very Early and Second-Trimester Abortions*, *PLoS ONE*, Jan. 25, 2017, at 9, 12, <https://doi.org/10.1371/journal.pone.0169969>.

²⁷ Diana Greene Foster et al., *Timing of Pregnancy Discovery Among Women Seeking Abortion*, 104 *Contraception*, 642, 642 (2021); Jones & Jerman, *supra* note 26, at 11; Foster & Kimport, *supra* note 18, at 212, 213; Finer et al., *supra* note 20, at 338, 343.

contraceptives, and above- or below-average weight.²⁸ Adolescents are particularly likely to be delayed in recognizing that they are pregnant.²⁹

60. In addition, logistical factors are a significant source of delay in accessing care for many abortion patients. A study examining causes of delay among people who have abortions at twenty weeks' gestation or later found that, "[o]nce participants decided to have an abortion, logistics often complicated their ability to obtain the procedure."³⁰ Relevant logistical factors include difficulty taking time off from work or school, caregiving responsibilities, and lack of access to reliable and affordable transportation.³¹

61. Texas' restrictive abortion laws further delay many patients' access to care. For example, all patients living within one hundred miles of an abortion clinic must travel there for an ultrasound examination at least twenty-four hours before their abortion, Tex. Health & Safety Code §§ 171.011-.016, and patients less than eighteen years old must obtain written parental consent or a court order authorizing their abortion, Tex. Fam. Code §§ 33.001-.014. Moreover, Texas generally bars coverage of abortion through its Medicaid program, 1 Tex. Admin. Code § 354.1167, health plans offered in the State health-insurance exchange, Tex. Ins. Code § 1696.002, and private insurance plans, *id.* § 1218.001-.006, compounding the financial hurdles patients face in attempting to access abortion services.

²⁸ Foster et al., *supra* note 27, at 643-45; Foster & Kimport, *supra* note 18, at 214; Finer et al., *supra* note 20, at 343; Eleanor A. Drey et al., *Risk Factors Associated with Presenting for Abortion in the Second Trimester*, 107 *Obstetrics & Gynecology* 128, 134 (2006).

²⁹ Finer et al., *supra* note 20, at 338, 343.

³⁰ Foster & Kimport, *supra* note 18, at 214.

³¹ Upadhyay et al., *supra* note 16, at 1689; Kiley et al., *supra* note 20, at 449; Finer et. al, *supra* note 20, at 335, 341-42.

62. Given these realities, it is not surprising that abortions in Texas dropped by nearly 60% after the six-week ban took effect, according to data published by the Texas Health and Human Services Commission.³²

63. A substantial number of people unable to obtain abortions in Texas before six weeks LMP lack the resources or mobility to travel out of state.³³ As a result, they are suffering the physical and psychological impact of unwanted pregnancy and giving birth against their will or attempting to end their pregnancies without access to licensed healthcare providers.

64. Even for someone who is otherwise healthy and has an uncomplicated pregnancy, pregnancy and childbirth pose serious medical risks with both short- and long-term consequences for the patient's physical and psychological health. For someone with a medical condition caused or exacerbated by pregnancy, these risks are even greater.

65. Not only does being forced to continue a pregnancy jeopardize a person's health, it also undermines the stability and well-being of their family, including existing children.

66. For people experiencing intimate partner violence, forced pregnancy also exacerbates the risk of violence and further tethers the pregnant person to their abuser.

67. In addition, forced pregnancy compounds the anguish of patients and their families who receive fetal diagnoses that are incompatible with sustained life after birth—requiring patients to carry nonviable pregnancies for months and suffer the physical and psychological burdens and risks of pregnancy, labor, and delivery, knowing all the while that their child will not survive.

³² Associated Press, *Abortions in Texas fell 60 percent in month after restrictive new law*, NBC News (Feb. 10, 2022, 3:53 PM EST), <https://www.nbcnews.com/politics/politics-news/abortions-texas-fell-60-perfect-month-after-restrictive-new-law-n1288948>.

³³ See Kari White et al., *Research Brief: Texas Senate Bill 8: Medical and Legal Implications*, Tex. Policy Evaluation Project (July 2021), <http://sites.utexas.edu/txpep/files/2021/07/TxPEP-research-brief-senate-bill-8.pdf>.

68. Many Texans who are able to travel out of state for abortion care are significantly delayed in obtaining abortions by having to gather the resources and make the arrangements required for out-of-state travel. Because the vast majority of abortion patients are poor or have low incomes, they often have to forgo basic needs for themselves and their families to save enough money.

69. Moreover, abortion clinics in neighboring states are overwhelmed with the influx of Texans making appointments there. Patients seeking appointments at these clinics are having to wait several weeks as the clinics struggle to provide this time-sensitive care.³⁴ Those who cannot wait must travel even farther distances. Some Texas patients have traveled over 1,000 miles—each way—to obtain abortion care on the East or West Coast.

IV. DEFENDANTS' THREATS OF CIVIL LAWSUITS AND CRIMINAL PROSECUTION

70. On September 22, 2021, Defendant Sharp moved to intervene in a challenge to S.B. 8 pending in this district “to defend and preserve [her] state-law right to sue abortion funds that pay for post-heartbeat abortions in violation of Senate Bill 8.” Sharp Decl. ¶ 12, *United States v. Texas*, No. 1:21-cv-00796-RP, Dkt. 28-1; see Mot. to Intervene at 3, *United States v. Texas*, No. 1:21-cv-00796-RP, 2021 WL 4593319 (W.D. Tex. Sept. 22, 2021), Dkt. 28. In support of her motion, she declared under penalty of perjury that she “intend[s] to sue . . . abortion funds who pay for other people’s abortions in violation of Senate Bill 8.” Sharp Decl. ¶ 9, *United States v.*

³⁴ See Caroline Kitchener, *Texas patients are rushing to get abortions before the state’s six-week limit. Clinics are struggling to keep up.*, Wash. Post (Feb. 14, 2022, 5:00 AM EST), <https://www.washingtonpost.com/politics/2022/02/14/texas-abortion-sb8/> (“Texas patients who can afford to travel out of state will also face delays. Schedules are backed up in Oklahoma, New Mexico, Louisiana and Colorado, as clinics struggle to absorb the surge of patients traveling from Texas.”).

Texas, No. 1:21-cv-00796-RP, Dkt. 28-1. The Court granted Ms. Sharp’s motion to intervene on September 28, 2021. Order, *United States v. Texas*, No. 1:21-cv-00796-RP, Dkt. 40.

71. In February 2022, Defendants Weldon and Maxwell respectively filed in state court verified petitions to take depositions and investigate a lawsuit (“Rule 202 Petitions”) against two Texas abortion funds—Lilith Fund for Reproductive Equity and North Texas Equal Access Fund. Redacted copies of the Rule 202 Petitions are attached hereto as Exhibits 2 and 3. These petitions assert that Defendants’ “goal is to . . . ascertain the identity of all individuals and organizations who are subject to liability under [Texas Health & Safety Code] section 171.208.” Ex. 2 at 3; Ex. 3 at 3.

72. On February 14, 2022, Defendants Weldon and Maxwell issued a press release through their lawyers stating that they filed the Rule 202 Petitions “to determine which individuals are subject to civil liability and criminal prosecution for paying [for] illegal abortions, which will include employees, volunteers, and donors” of the respondent abortion funds.³⁵ On February 21, 2022, Defendants Weldon and Maxwell issued another press release through their lawyers stating that the respondent abortion funds “exposed their employees, volunteers, and donors to civil lawsuits and potential criminal prosecution.”³⁶ That same day, in response to a tweet by one of the abortion funds announcing its goal to “raise \$20k for Texans who need abortions,” Defendants’

³⁵ *AFL Files Petitions Against Two Abortion Funds in Texas Who Violated the Texas Heartbeat Act*, America First Legal (Feb. 14, 2022), <https://www.aflegal.org/news/afl-files-petitions-against-two-abortion-funds-in-texas-who-violated-the-texas-heartbeat-act>; see also America First Legal (@America1stLegal), Twitter (Feb. 14, 2022, 2:18 PM), <https://twitter.com/America1stLegal/status/1493349001386770433?cxt=HHwWgoC-labAuLkpAAAA>.

³⁶ *Abortion Funds to Face Pre-Suit Discovery over Violations of the Texas Heartbeat Act*, Thomas More Society (Feb. 21, 2022, 9:00 PM), <https://thomasmoresociety.org/abortion-funds-to-face-pre-suit-discovery-over-violations-of-the-texas-heartbeat-act/>.

lawyers tweeted a warning to potential “donors” that they “could get sued under S.B. 8.”³⁷ A copy of this exchange is attached hereto as Exhibit 4. Two days later, on February 23, 2022, Defendants’ lawyers tweeted that “[i]t is illegal to donate to abortion funds that pay for abortions performed in Texas. Violators are subject to civil lawsuits and criminal prosecution.”³⁸ A copy of this statement is attached hereto as Exhibit 5.

73. On March 18, 2022, Defendant Cain issued a press release on his official letterhead stating that he “sent cease-and-desist letters to every abortion fund in Texas, reminding them that Texas law imposes felony criminal liability on any person who ‘furnishes the means for procuring an abortion knowing the purpose intended.’”³⁹ The press release further stated that Representative “Cain warned that the employees, volunteers, and donors of abortion funds will be criminally prosecuted if they do not immediately halt their illegal acts and stop paying for abortions performed in Texas.”⁴⁰ A copy of this press release is attached hereto as Exhibit 6.

74. On March 29, 2022, Defendant Cain sent a letter to an attorney representing some of the Texas abortion funds. The letter, which appears in Defendant Cain’s Twitter feed, stated that he sent the cease-and-desist letters in his official capacity as a Texas State Representative.⁴¹ It further stated that the U.S. Supreme Court lacks the authority to invalidate Texas laws that violate the U.S. Constitution and that “article 4512.2 [of the Revised Civil Statutes] remains fully

³⁷ Thomas More Society (@ThomasMoreSoc), Twitter (Feb. 21, 2022, 4:45 PM), <https://twitter.com/ThomasMoreSoc/status/1495922599704121352>.

³⁸ Thomas More Society (@ThomasMoreSoc), Twitter (Feb. 23, 2022, 4:20 PM), <https://twitter.com/ThomasMoreSoc/status/1496641113305886725>.

³⁹ Press Release, State Representative Briscoe Cain Sends Cease-And-Desist Letters to Abortion Funds in Texas (Mar. 18, 2022), <https://twitter.com/BriscoeCain/status/1504891954475290624/photo/1>.

⁴⁰ *Id.*

⁴¹ Letter from Briscoe Cain (Mar. 29, 2022), https://twitter.com/bradj_TX/status/1508919831860588549/photo/1.

enforceable against abortion funds that pay for abortions in Texas, as well as their donors.”⁴² A copy of this letter is attached hereto as Exhibit 7. On March 30, 2022, Defendant Cain tweeted the following directive: “Prosecute Texas Abortion Funds.” A copy of this statement is attached hereto as Exhibit 8.

75. Because of Defendants’ threats concerning enforcement of S.B. 8 and the Criminal Abortion Ban against Texas abortion funds and their associates, Plaintiffs Sadler and Mehl intend to cease donating money to Texas abortion funds, including the Stigma Relief Fund, until the Court confirms that these laws are unenforceable because they violate the U.S. Constitution.

CLAIMS FOR RELIEF

CLAIM I **(Due Process Clause)**

76. The allegations in paragraphs 1 through 75 above are incorporated as if fully set forth herein.

77. By banning abortion at a pre-viability stage of pregnancy, Section 3 of S.B. 8 violates the Due Process Clause of the Fourteenth Amendment, which protects the right to pre-viability abortion access.

78. By failing to provide adequate procedural safeguards to defendants in S.B. 8 enforcement actions and imposing excessive, mandatory penalties, Section 3 of S.B. 8 violates the right to procedural due process protected by the Due Process Clause of the Fourteenth Amendment.

⁴² *Id.*

CLAIM II
(First Amendment)

79. The allegations in paragraphs 1 through 75 are incorporated as if fully set forth herein.

80. By threatening to chill abortion funds' relationships with their donors, employees, and volunteers, Section 3 of S.B. 8 violates the freedom of expressive association protected by the First Amendment.

81. By subjecting Plaintiffs and their attorneys to liability based on the viewpoint they express in litigation, Section 4 of S.B. 8 violates the First Amendment.

CLAIM III
(Supremacy Clause)

82. The allegations in paragraphs 1 through 75 above are incorporated as if fully set forth herein.

83. With respect to claims brought under 42 U.S.C. § 1983, the fee-shifting scheme set forth in Section 4 of S.B. 8 is preempted by 42 U.S.C. § 1988.

84. The Criminal Abortion Ban cannot be lawfully enforced because, in *Roe v. Wade*, 410 U.S. 113 (1973), the U.S. Supreme Court held that it was unconstitutional.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment that S.B. 8 is unconstitutional and preempted by federal law, and is therefore unenforceable;

B. Enter a declaratory judgment that the Criminal Abortion Ban cannot be lawfully enforced because the U.S. Supreme Court held that it was unconstitutional.

C. Award Plaintiffs their reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988; and

D. Grant such other and further relief as the Court may deem just, proper, and equitable.

Dated: April 19, 2022

Respectfully submitted,

/s/ Stephanie Toti

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**Motion for admission pro hac vice forthcoming*

Attorneys for Plaintiffs

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WENDY DAVIS; MARVA SADLER; SEAN MEHL; and STIGMA RELIEF FUND

(b) County of Residence of First Listed Plaintiff Tarrant (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

MISTIE SHARP; SADIE WELDON; ASHLEY MAXWELL; and BRISCOE ROWELL CAIN III

County of Residence of First Listed Defendant Henderson (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-2202. Brief description of cause: This is an action challenging the constitutionality of a state law regulating abortion rights.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Honorable Robert Pitman DOCKET NUMBER Nos.1:21-CV-616; 1:21-CV-796

DATE 4/19/2022 SIGNATURE OF ATTORNEY OF RECORD

/s/ Stephanie Toti

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ATTACHMENT TO CIVIL COVER SHEET

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**Motion for admission pro hac vice forthcoming*

*Attorneys for Plaintiffs Wendy Davis, Marva Sadler, Sean Mehl,
and Stigma Relief Fund*

EXHIBIT #1

S.B. No. 8

1 AN ACT

2 relating to abortion, including abortions after detection of an
3 unborn child's heartbeat; authorizing a private civil right of
4 action.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. This Act shall be known as the Texas Heartbeat
7 Act.

8 SECTION 2. The legislature finds that the State of Texas
9 never repealed, either expressly or by implication, the state
10 statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113
11 (1973), that prohibit and criminalize abortion unless the mother's
12 life is in danger.

13 SECTION 3. Chapter 171, Health and Safety Code, is amended
14 by adding Subchapter H to read as follows:

15 SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

16 Sec. 171.201. DEFINITIONS. In this subchapter:

17 (1) "Fetal heartbeat" means cardiac activity or the
18 steady and repetitive rhythmic contraction of the fetal heart
19 within the gestational sac.

20 (2) "Gestational age" means the amount of time that
21 has elapsed from the first day of a woman's last menstrual period.

22 (3) "Gestational sac" means the structure comprising
23 the extraembryonic membranes that envelop the unborn child and that
24 is typically visible by ultrasound after the fourth week of

S.B. No. 8

1 pregnancy.

2 (4) "Physician" means an individual licensed to
3 practice medicine in this state, including a medical doctor and a
4 doctor of osteopathic medicine.

5 (5) "Pregnancy" means the human female reproductive
6 condition that:

7 (A) begins with fertilization;

8 (B) occurs when the woman is carrying the
9 developing human offspring; and

10 (C) is calculated from the first day of the
11 woman's last menstrual period.

12 (6) "Standard medical practice" means the degree of
13 skill, care, and diligence that an obstetrician of ordinary
14 judgment, learning, and skill would employ in like circumstances.

15 (7) "Unborn child" means a human fetus or embryo in any
16 stage of gestation from fertilization until birth.

17 Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds,
18 according to contemporary medical research, that:

19 (1) fetal heartbeat has become a key medical predictor
20 that an unborn child will reach live birth;

21 (2) cardiac activity begins at a biologically
22 identifiable moment in time, normally when the fetal heart is
23 formed in the gestational sac;

24 (3) Texas has compelling interests from the outset of
25 a woman's pregnancy in protecting the health of the woman and the
26 life of the unborn child; and

27 (4) to make an informed choice about whether to

S.B. No. 8

1 continue her pregnancy, the pregnant woman has a compelling
2 interest in knowing the likelihood of her unborn child surviving to
3 full-term birth based on the presence of cardiac activity.

4 Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT
5 REQUIRED; RECORD. (a) For the purposes of determining the
6 presence of a fetal heartbeat under this section, "standard medical
7 practice" includes employing the appropriate means of detecting the
8 heartbeat based on the estimated gestational age of the unborn
9 child and the condition of the woman and her pregnancy.

10 (b) Except as provided by Section 171.205, a physician may
11 not knowingly perform or induce an abortion on a pregnant woman
12 unless the physician has determined, in accordance with this
13 section, whether the woman's unborn child has a detectable fetal
14 heartbeat.

15 (c) In making a determination under Subsection (b), the
16 physician must use a test that is:

17 (1) consistent with the physician's good faith and
18 reasonable understanding of standard medical practice; and

19 (2) appropriate for the estimated gestational age of
20 the unborn child and the condition of the pregnant woman and her
21 pregnancy.

22 (d) A physician making a determination under Subsection (b)
23 shall record in the pregnant woman's medical record:

24 (1) the estimated gestational age of the unborn child;

25 (2) the method used to estimate the gestational age;

26 and

27 (3) the test used for detecting a fetal heartbeat,

S.B. No. 8

1 including the date, time, and results of the test.

2 Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH
3 DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by
4 Section 171.205, a physician may not knowingly perform or induce an
5 abortion on a pregnant woman if the physician detected a fetal
6 heartbeat for the unborn child as required by Section 171.203 or
7 failed to perform a test to detect a fetal heartbeat.

8 (b) A physician does not violate this section if the
9 physician performed a test for a fetal heartbeat as required by
10 Section 171.203 and did not detect a fetal heartbeat.

11 (c) This section does not affect:

12 (1) the provisions of this chapter that restrict or
13 regulate an abortion by a particular method or during a particular
14 stage of pregnancy; or

15 (2) any other provision of state law that regulates or
16 prohibits abortion.

17 Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS.

18 (a) Sections 171.203 and 171.204 do not apply if a physician
19 believes a medical emergency exists that prevents compliance with
20 this subchapter.

21 (b) A physician who performs or induces an abortion under
22 circumstances described by Subsection (a) shall make written
23 notations in the pregnant woman's medical record of:

24 (1) the physician's belief that a medical emergency
25 necessitated the abortion; and

26 (2) the medical condition of the pregnant woman that
27 prevented compliance with this subchapter.

S.B. No. 8

1 (c) A physician performing or inducing an abortion under
2 this section shall maintain in the physician's practice records a
3 copy of the notations made under Subsection (b).

4 Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This
5 subchapter does not create or recognize a right to abortion before a
6 fetal heartbeat is detected.

7 (b) This subchapter may not be construed to:

8 (1) authorize the initiation of a cause of action
9 against or the prosecution of a woman on whom an abortion is
10 performed or induced or attempted to be performed or induced in
11 violation of this subchapter;

12 (2) wholly or partly repeal, either expressly or by
13 implication, any other statute that regulates or prohibits
14 abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

15 (3) restrict a political subdivision from regulating
16 or prohibiting abortion in a manner that is at least as stringent as
17 the laws of this state.

18 Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT.

19 (a) Notwithstanding Section 171.005 or any other law, the
20 requirements of this subchapter shall be enforced exclusively
21 through the private civil actions described in Section 171.208. No
22 enforcement of this subchapter, and no enforcement of Chapters 19
23 and 22, Penal Code, in response to violations of this subchapter,
24 may be taken or threatened by this state, a political subdivision, a
25 district or county attorney, or an executive or administrative
26 officer or employee of this state or a political subdivision
27 against any person, except as provided in Section 171.208.

S.B. No. 8

1 (b) Subsection (a) may not be construed to:

2 (1) legalize the conduct prohibited by this subchapter
3 or by Chapter 6-1/2, Title 71, Revised Statutes;

4 (2) limit in any way or affect the availability of a
5 remedy established by Section 171.208; or

6 (3) limit the enforceability of any other laws that
7 regulate or prohibit abortion.

8 Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR
9 ABETTING VIOLATION. (a) Any person, other than an officer or
10 employee of a state or local governmental entity in this state, may
11 bring a civil action against any person who:

12 (1) performs or induces an abortion in violation of
13 this subchapter;

14 (2) knowingly engages in conduct that aids or abets
15 the performance or inducement of an abortion, including paying for
16 or reimbursing the costs of an abortion through insurance or
17 otherwise, if the abortion is performed or induced in violation of
18 this subchapter, regardless of whether the person knew or should
19 have known that the abortion would be performed or induced in
20 violation of this subchapter; or

21 (3) intends to engage in the conduct described by
22 Subdivision (1) or (2).

23 (b) If a claimant prevails in an action brought under this
24 section, the court shall award:

25 (1) injunctive relief sufficient to prevent the
26 defendant from violating this subchapter or engaging in acts that
27 aid or abet violations of this subchapter;

S.B. No. 8

1 (2) statutory damages in an amount of not less than
2 \$10,000 for each abortion that the defendant performed or induced
3 in violation of this subchapter, and for each abortion performed or
4 induced in violation of this subchapter that the defendant aided or
5 abetted; and

6 (3) costs and attorney's fees.

7 (c) Notwithstanding Subsection (b), a court may not award
8 relief under this section in response to a violation of Subsection
9 (a)(1) or (2) if the defendant demonstrates that the defendant
10 previously paid the full amount of statutory damages under
11 Subsection (b)(2) in a previous action for that particular abortion
12 performed or induced in violation of this subchapter, or for the
13 particular conduct that aided or abetted an abortion performed or
14 induced in violation of this subchapter.

15 (d) Notwithstanding Chapter 16, Civil Practice and Remedies
16 Code, or any other law, a person may bring an action under this
17 section not later than the fourth anniversary of the date the cause
18 of action accrues.

19 (e) Notwithstanding any other law, the following are not a
20 defense to an action brought under this section:

21 (1) ignorance or mistake of law;

22 (2) a defendant's belief that the requirements of this
23 subchapter are unconstitutional or were unconstitutional;

24 (3) a defendant's reliance on any court decision that
25 has been overruled on appeal or by a subsequent court, even if that
26 court decision had not been overruled when the defendant engaged in
27 conduct that violates this subchapter;

S.B. No. 8

1 (4) a defendant's reliance on any state or federal
2 court decision that is not binding on the court in which the action
3 has been brought;

4 (5) non-mutual issue preclusion or non-mutual claim
5 preclusion;

6 (6) the consent of the unborn child's mother to the
7 abortion; or

8 (7) any claim that the enforcement of this subchapter
9 or the imposition of civil liability against the defendant will
10 violate the constitutional rights of third parties, except as
11 provided by Section 171.209.

12 (f) It is an affirmative defense if:

13 (1) a person sued under Subsection (a)(2) reasonably
14 believed, after conducting a reasonable investigation, that the
15 physician performing or inducing the abortion had complied or would
16 comply with this subchapter; or

17 (2) a person sued under Subsection (a)(3) reasonably
18 believed, after conducting a reasonable investigation, that the
19 physician performing or inducing the abortion will comply with this
20 subchapter.

21 (f-1) The defendant has the burden of proving an affirmative
22 defense under Subsection (f)(1) or (2) by a preponderance of the
23 evidence.

24 (g) This section may not be construed to impose liability on
25 any speech or conduct protected by the First Amendment of the United
26 States Constitution, as made applicable to the states through the
27 United States Supreme Court's interpretation of the Fourteenth

S.B. No. 8

1 Amendment of the United States Constitution, or by Section 8,
2 Article I, Texas Constitution.

3 (h) Notwithstanding any other law, this state, a state
4 official, or a district or county attorney may not intervene in an
5 action brought under this section. This subsection does not
6 prohibit a person described by this subsection from filing an
7 amicus curiae brief in the action.

8 (i) Notwithstanding any other law, a court may not award
9 costs or attorney's fees under the Texas Rules of Civil Procedure or
10 any other rule adopted by the supreme court under Section 22.004,
11 Government Code, to a defendant in an action brought under this
12 section.

13 (j) Notwithstanding any other law, a civil action under this
14 section may not be brought by a person who impregnated the abortion
15 patient through an act of rape, sexual assault, incest, or any other
16 act prohibited by Sections 22.011, 22.021, or 25.02, Penal Code.

17 Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE
18 LIMITATIONS. (a) A defendant against whom an action is brought
19 under Section 171.208 does not have standing to assert the rights of
20 women seeking an abortion as a defense to liability under that
21 section unless:

22 (1) the United States Supreme Court holds that the
23 courts of this state must confer standing on that defendant to
24 assert the third-party rights of women seeking an abortion in state
25 court as a matter of federal constitutional law; or

26 (2) the defendant has standing to assert the rights of
27 women seeking an abortion under the tests for third-party standing

S.B. No. 8

1 established by the United States Supreme Court.

2 (b) A defendant in an action brought under Section 171.208
3 may assert an affirmative defense to liability under this section
4 if:

5 (1) the defendant has standing to assert the
6 third-party rights of a woman or group of women seeking an abortion
7 in accordance with Subsection (a); and

8 (2) the defendant demonstrates that the relief sought
9 by the claimant will impose an undue burden on that woman or that
10 group of women seeking an abortion.

11 (c) A court may not find an undue burden under Subsection
12 (b) unless the defendant introduces evidence proving that:

13 (1) an award of relief will prevent a woman or a group
14 of women from obtaining an abortion; or

15 (2) an award of relief will place a substantial
16 obstacle in the path of a woman or a group of women who are seeking
17 an abortion.

18 (d) A defendant may not establish an undue burden under this
19 section by:

20 (1) merely demonstrating that an award of relief will
21 prevent women from obtaining support or assistance, financial or
22 otherwise, from others in their effort to obtain an abortion; or

23 (2) arguing or attempting to demonstrate that an award
24 of relief against other defendants or other potential defendants
25 will impose an undue burden on women seeking an abortion.

26 (e) The affirmative defense under Subsection (b) is not
27 available if the United States Supreme Court overrules *Roe v. Wade*,

S.B. No. 8

1 410 U.S. 113 (1973) or *Planned Parenthood v. Casey*, 505 U.S. 833
2 (1992), regardless of whether the conduct on which the cause of
3 action is based under Section 171.208 occurred before the Supreme
4 Court overruled either of those decisions.

5 (f) Nothing in this section shall in any way limit or
6 preclude a defendant from asserting the defendant's personal
7 constitutional rights as a defense to liability under Section
8 171.208, and a court may not award relief under Section 171.208 if
9 the conduct for which the defendant has been sued was an exercise of
10 state or federal constitutional rights that personally belong to
11 the defendant.

12 Sec. 171.210. CIVIL LIABILITY: VENUE.

13 (a) Notwithstanding any other law, including Section 15.002,
14 Civil Practice and Remedies Code, a civil action brought under
15 Section 171.208 shall be brought in:

16 (1) the county in which all or a substantial part of
17 the events or omissions giving rise to the claim occurred;

18 (2) the county of residence for any one of the natural
19 person defendants at the time the cause of action accrued;

20 (3) the county of the principal office in this state of
21 any one of the defendants that is not a natural person; or

22 (4) the county of residence for the claimant if the
23 claimant is a natural person residing in this state.

24 (b) If a civil action is brought under Section 171.208 in
25 any one of the venues described by Subsection (a), the action may
26 not be transferred to a different venue without the written consent
27 of all parties.

S.B. No. 8

1 Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL
2 IMMUNITY PRESERVED. (a) This section prevails over any
3 conflicting law, including:

4 (1) the Uniform Declaratory Judgments Act; and

5 (2) Chapter 37, Civil Practice and Remedies Code.

6 (b) This state has sovereign immunity, a political
7 subdivision has governmental immunity, and each officer and
8 employee of this state or a political subdivision has official
9 immunity in any action, claim, or counterclaim or any type of legal
10 or equitable action that challenges the validity of any provision
11 or application of this chapter, on constitutional grounds or
12 otherwise.

13 (c) A provision of state law may not be construed to waive or
14 abrogate an immunity described by Subsection (b) unless it
15 expressly waives immunity under this section.

16 Sec. 171.212. SEVERABILITY. (a) Mindful of *Leavitt v.*
17 *Jane L.*, 518 U.S. 137 (1996), in which in the context of determining
18 the severability of a state statute regulating abortion the United
19 States Supreme Court held that an explicit statement of legislative
20 intent is controlling, it is the intent of the legislature that
21 every provision, section, subsection, sentence, clause, phrase, or
22 word in this chapter, and every application of the provisions in
23 this chapter, are severable from each other.

24 (b) If any application of any provision in this chapter to
25 any person, group of persons, or circumstances is found by a court
26 to be invalid or unconstitutional, the remaining applications of
27 that provision to all other persons and circumstances shall be

S.B. No. 8

1 severed and may not be affected. All constitutionally valid
2 applications of this chapter shall be severed from any applications
3 that a court finds to be invalid, leaving the valid applications in
4 force, because it is the legislature's intent and priority that the
5 valid applications be allowed to stand alone. Even if a reviewing
6 court finds a provision of this chapter to impose an undue burden in
7 a large or substantial fraction of relevant cases, the applications
8 that do not present an undue burden shall be severed from the
9 remaining applications and shall remain in force, and shall be
10 treated as if the legislature had enacted a statute limited to the
11 persons, group of persons, or circumstances for which the statute's
12 application does not present an undue burden.

13 (b-1) If any court declares or finds a provision of this
14 chapter facially unconstitutional, when discrete applications of
15 that provision can be enforced against a person, group of persons,
16 or circumstances without violating the United States Constitution
17 and Texas Constitution, those applications shall be severed from
18 all remaining applications of the provision, and the provision
19 shall be interpreted as if the legislature had enacted a provision
20 limited to the persons, group of persons, or circumstances for
21 which the provision's application will not violate the United
22 States Constitution and Texas Constitution.

23 (c) The legislature further declares that it would have
24 enacted this chapter, and each provision, section, subsection,
25 sentence, clause, phrase, or word, and all constitutional
26 applications of this chapter, irrespective of the fact that any
27 provision, section, subsection, sentence, clause, phrase, or word,

S.B. No. 8

1 or applications of this chapter, were to be declared
2 unconstitutional or to represent an undue burden.

3 (d) If any provision of this chapter is found by any court to
4 be unconstitutionally vague, then the applications of that
5 provision that do not present constitutional vagueness problems
6 shall be severed and remain in force.

7 (e) No court may decline to enforce the severability
8 requirements of Subsections (a), (b), (b-1), (c), and (d) on the
9 ground that severance would rewrite the statute or involve the
10 court in legislative or lawmaking activity. A court that declines
11 to enforce or enjoins a state official from enforcing a statutory
12 provision does not rewrite a statute, as the statute continues to
13 contain the same words as before the court's decision. A judicial
14 injunction or declaration of unconstitutionality:

15 (1) is nothing more than an edict prohibiting
16 enforcement that may subsequently be vacated by a later court if
17 that court has a different understanding of the requirements of the
18 Texas Constitution or United States Constitution;

19 (2) is not a formal amendment of the language in a
20 statute; and

21 (3) no more rewrites a statute than a decision by the
22 executive not to enforce a duly enacted statute in a limited and
23 defined set of circumstances.

24 SECTION 4. Chapter 30, Civil Practice and Remedies Code, is
25 amended by adding Section 30.022 to read as follows:

26 Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS
27 CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any

S.B. No. 8

1 person, including an entity, attorney, or law firm, who seeks
2 declaratory or injunctive relief to prevent this state, a political
3 subdivision, any governmental entity or public official in this
4 state, or any person in this state from enforcing any statute,
5 ordinance, rule, regulation, or any other type of law that
6 regulates or restricts abortion or that limits taxpayer funding for
7 individuals or entities that perform or promote abortions, in any
8 state or federal court, or that represents any litigant seeking
9 such relief in any state or federal court, is jointly and severally
10 liable to pay the costs and attorney's fees of the prevailing party.

11 (b) For purposes of this section, a party is considered a
12 prevailing party if a state or federal court:

13 (1) dismisses any claim or cause of action brought
14 against the party that seeks the declaratory or injunctive relief
15 described by Subsection (a), regardless of the reason for the
16 dismissal; or

17 (2) enters judgment in the party's favor on any such
18 claim or cause of action.

19 (c) Regardless of whether a prevailing party sought to
20 recover costs or attorney's fees in the underlying action, a
21 prevailing party under this section may bring a civil action to
22 recover costs and attorney's fees against a person, including an
23 entity, attorney, or law firm, that sought declaratory or
24 injunctive relief described by Subsection (a) not later than the
25 third anniversary of the date on which, as applicable:

26 (1) the dismissal or judgment described by Subsection
27 (b) becomes final on the conclusion of appellate review; or

S.B. No. 8

1 (2) the time for seeking appellate review expires.

2 (d) It is not a defense to an action brought under
3 Subsection (c) that:

4 (1) a prevailing party under this section failed to
5 seek recovery of costs or attorney's fees in the underlying action;

6 (2) the court in the underlying action declined to
7 recognize or enforce the requirements of this section; or

8 (3) the court in the underlying action held that any
9 provisions of this section are invalid, unconstitutional, or
10 preempted by federal law, notwithstanding the doctrines of issue or
11 claim preclusion.

12 SECTION 5. Subchapter C, Chapter 311, Government Code, is
13 amended by adding Section 311.036 to read as follows:

14 Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A
15 statute that regulates or prohibits abortion may not be construed
16 to repeal any other statute that regulates or prohibits abortion,
17 either wholly or partly, unless the repealing statute explicitly
18 states that it is repealing the other statute.

19 (b) A statute may not be construed to restrict a political
20 subdivision from regulating or prohibiting abortion in a manner
21 that is at least as stringent as the laws of this state unless the
22 statute explicitly states that political subdivisions are
23 prohibited from regulating or prohibiting abortion in the manner
24 described by the statute.

25 (c) Every statute that regulates or prohibits abortion is
26 severable in each of its applications to every person and
27 circumstance. If any statute that regulates or prohibits abortion

S.B. No. 8

1 is found by any court to be unconstitutional, either on its face or
2 as applied, then all applications of that statute that do not
3 violate the United States Constitution and Texas Constitution shall
4 be severed from the unconstitutional applications and shall remain
5 enforceable, notwithstanding any other law, and the statute shall
6 be interpreted as if containing language limiting the statute's
7 application to the persons, group of persons, or circumstances for
8 which the statute's application will not violate the United States
9 Constitution and Texas Constitution.

10 SECTION 6. Section 171.005, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 171.005. COMMISSION [~~DEPARTMENT~~] TO ENFORCE;
13 EXCEPTION. The commission [~~department~~] shall enforce this chapter
14 except for Subchapter H, which shall be enforced exclusively
15 through the private civil enforcement actions described by Section
16 171.208 and may not be enforced by the commission.

17 SECTION 7. Subchapter A, Chapter 171, Health and Safety
18 Code, is amended by adding Section 171.008 to read as follows:

19 Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion
20 is performed or induced on a pregnant woman because of a medical
21 emergency, the physician who performs or induces the abortion shall
22 execute a written document that certifies the abortion is necessary
23 due to a medical emergency and specifies the woman's medical
24 condition requiring the abortion.

25 (b) A physician shall:

26 (1) place the document described by Subsection (a) in
27 the pregnant woman's medical record; and

S.B. No. 8

1 (2) maintain a copy of the document described by
2 Subsection (a) in the physician's practice records.

3 (c) A physician who performs or induces an abortion on a
4 pregnant woman shall:

5 (1) if the abortion is performed or induced to
6 preserve the health of the pregnant woman, execute a written
7 document that:

8 (A) specifies the medical condition the abortion
9 is asserted to address; and

10 (B) provides the medical rationale for the
11 physician's conclusion that the abortion is necessary to address
12 the medical condition; or

13 (2) for an abortion other than an abortion described
14 by Subdivision (1), specify in a written document that maternal
15 health is not a purpose of the abortion.

16 (d) The physician shall maintain a copy of a document
17 described by Subsection (c) in the physician's practice records.

18 SECTION 8. Section [171.012\(a\)](#), Health and Safety Code, is
19 amended to read as follows:

20 (a) Consent to an abortion is voluntary and informed only
21 if:

22 (1) the physician who is to perform or induce the
23 abortion informs the pregnant woman on whom the abortion is to be
24 performed or induced of:

25 (A) the physician's name;

26 (B) the particular medical risks associated with
27 the particular abortion procedure to be employed, including, when

S.B. No. 8

1 medically accurate:

2 (i) the risks of infection and hemorrhage;

3 (ii) the potential danger to a subsequent
4 pregnancy and of infertility; and

5 (iii) the possibility of increased risk of
6 breast cancer following an induced abortion and the natural
7 protective effect of a completed pregnancy in avoiding breast
8 cancer;

9 (C) the probable gestational age of the unborn
10 child at the time the abortion is to be performed or induced; and

11 (D) the medical risks associated with carrying
12 the child to term;

13 (2) the physician who is to perform or induce the
14 abortion or the physician's agent informs the pregnant woman that:

15 (A) medical assistance benefits may be available
16 for prenatal care, childbirth, and neonatal care;

17 (B) the father is liable for assistance in the
18 support of the child without regard to whether the father has
19 offered to pay for the abortion; and

20 (C) public and private agencies provide
21 pregnancy prevention counseling and medical referrals for
22 obtaining pregnancy prevention medications or devices, including
23 emergency contraception for victims of rape or incest;

24 (3) the physician who is to perform or induce the
25 abortion or the physician's agent:

26 (A) provides the pregnant woman with the printed
27 materials described by Section [171.014](#); and

S.B. No. 8

1 (B) informs the pregnant woman that those
2 materials:

3 (i) have been provided by the commission
4 [~~Department of State Health Services~~];

5 (ii) are accessible on an Internet website
6 sponsored by the commission [~~department~~];

7 (iii) describe the unborn child and list
8 agencies that offer alternatives to abortion; and

9 (iv) include a list of agencies that offer
10 sonogram services at no cost to the pregnant woman;

11 (4) before any sedative or anesthesia is administered
12 to the pregnant woman and at least 24 hours before the abortion or
13 at least two hours before the abortion if the pregnant woman waives
14 this requirement by certifying that she currently lives 100 miles
15 or more from the nearest abortion provider that is a facility
16 licensed under Chapter 245 or a facility that performs more than 50
17 abortions in any 12-month period:

18 (A) the physician who is to perform or induce the
19 abortion or an agent of the physician who is also a sonographer
20 certified by a national registry of medical sonographers performs a
21 sonogram on the pregnant woman on whom the abortion is to be
22 performed or induced;

23 (B) the physician who is to perform or induce the
24 abortion displays the sonogram images in a quality consistent with
25 current medical practice in a manner that the pregnant woman may
26 view them;

27 (C) the physician who is to perform or induce the

S.B. No. 8

1 abortion provides, in a manner understandable to a layperson, a
2 verbal explanation of the results of the sonogram images, including
3 a medical description of the dimensions of the embryo or fetus, the
4 presence of cardiac activity, and the presence of external members
5 and internal organs; and

6 (D) the physician who is to perform or induce the
7 abortion or an agent of the physician who is also a sonographer
8 certified by a national registry of medical sonographers makes
9 audible the heart auscultation for the pregnant woman to hear, if
10 present, in a quality consistent with current medical practice and
11 provides, in a manner understandable to a layperson, a simultaneous
12 verbal explanation of the heart auscultation;

13 (5) before receiving a sonogram under Subdivision
14 (4)(A) and before the abortion is performed or induced and before
15 any sedative or anesthesia is administered, the pregnant woman
16 completes and certifies with her signature an election form that
17 states as follows:

18 "ABORTION AND SONOGRAM ELECTION

19 (1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY
20 SECTIONS [171.012](#)(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN
21 PROVIDED AND EXPLAINED TO ME.

22 (2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN
23 ABORTION.

24 (3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR
25 TO RECEIVING AN ABORTION.

26 (4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE
27 SONOGRAM IMAGES.

S.B. No. 8

1 (5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE
2 HEARTBEAT.

3 (6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN
4 EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO
5 ONE OF THE FOLLOWING:

6 ___ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT,
7 INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN
8 REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN
9 REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT
10 RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

11 ___ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE
12 WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY
13 CODE.

14 ___ MY UNBORN CHILD [~~FETUS~~] HAS AN IRREVERSIBLE MEDICAL
15 CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC
16 PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

17 (7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND
18 WITHOUT COERCION.

19 (8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE
20 NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER
21 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE
22 THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

23 I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR
24 MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED
25 UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS
26 IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS
27 AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION

S.B. No. 8

1 PROCEDURE. MY PLACE OF RESIDENCE IS:_____.

2 _____

3 SIGNATURE DATE";

4 (6) before the abortion is performed or induced, the
5 physician who is to perform or induce the abortion receives a copy
6 of the signed, written certification required by Subdivision (5);
7 and

8 (7) the pregnant woman is provided the name of each
9 person who provides or explains the information required under this
10 subsection.

11 SECTION 9. Section 245.011(c), Health and Safety Code, is
12 amended to read as follows:

13 (c) The report must include:

14 (1) whether the abortion facility at which the
15 abortion is performed is licensed under this chapter;

16 (2) the patient's year of birth, race, marital status,
17 and state and county of residence;

18 (3) the type of abortion procedure;

19 (4) the date the abortion was performed;

20 (5) whether the patient survived the abortion, and if
21 the patient did not survive, the cause of death;

22 (6) the probable post-fertilization age of the unborn
23 child based on the best medical judgment of the attending physician
24 at the time of the procedure;

25 (7) the date, if known, of the patient's last menstrual
26 cycle;

27 (8) the number of previous live births of the patient;

S.B. No. 8

1 [~~and~~]

2 (9) the number of previous induced abortions of the
3 patient;

4 (10) whether the abortion was performed or induced
5 because of a medical emergency and any medical condition of the
6 pregnant woman that required the abortion; and

7 (11) the information required under Sections
8 171.008(a) and (c).

9 SECTION 10. Every provision in this Act and every
10 application of the provision in this Act are severable from each
11 other. If any provision or application of any provision in this Act
12 to any person, group of persons, or circumstance is held by a court
13 to be invalid, the invalidity does not affect the other provisions
14 or applications of this Act.

15 SECTION 11. The change in law made by this Act applies only
16 to an abortion performed or induced on or after the effective date
17 of this Act.

18 SECTION 12. This Act takes effect September 1, 2021.

S.B. No. 8

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 8 passed the Senate on March 30, 2021, by the following vote: Yeas 19, Nays 12; and that the Senate concurred in House amendments on May 13, 2021, by the following vote: Yeas 18, Nays 12.

Secretary of the Senate

I hereby certify that S.B. No. 8 passed the House, with amendments, on May 6, 2021, by the following vote: Yeas 83, Nays 64, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

EXHIBIT #2

Cause No. 22-01-014

In re Sadie Weldon,

Petitioner

IN THE DISTRICT COURT
JACK COUNTY, TEXAS
271stJUDICIAL DISTRICT

**VERIFIED PETITION TO TAKE DEPOSITION TO
INVESTIGATE A LAWSUIT**

Petitioner Sadie Weldon respectfully asks the Court for permission to take a deposition by oral examination of [REDACTED] of the Lilith Fund for Reproductive Equity. Ms. Weldon seeks this testimony to investigate potential claims brought by Ms. Weldon or others under section 171.208 of the Texas Health and Safety Code.

PERSONS TO BE DEPOSED AND JURISDICTION

1. Petitioner Sadie Weldon is a citizen of Texas and resident of Jack County.

2. Ms. Weldon seeks to depose [REDACTED]. Upon information and belief, [REDACTED] is a resident of [REDACTED] County and may be served at [REDACTED]. [REDACTED] telephone number is [REDACTED].

3. In accordance with Rule 202.2(b)(1) of the Texas Rules of Civil Procedure, this petition is filed in Jack County, the county in which the venue of the anticipated suit may lie.

4. This petition is verified by Ms. Weldon, as required by Rule 202.2(a) of the Texas Rules of Civil Procedure.

ANTICIPATED ACTION

5. This petition is filed in anticipation of possible future civil actions brought under section 171.208 of the Texas Health and Safety Code, against individuals and organizations that performed or aided or abetted abortions in violation of the Texas Heartbeat Act, also known as Senate Bill 8 or SB 8. It is also filed to investigate the possibilities for future civil actions brought under section 171.208 of the Texas Health

and Safety Code. In her capacity as deputy director of the Lilith Fund for Reproductive Equity (“Lilith Fund”), [REDACTED] has stated in a sworn declaration that her organization knowingly and intentionally aided or abetted at least one post-heartbeat abortion in violation of the Texas Heartbeat Act. *See* Declaration of [REDACTED] ¶ 8 (attached as Exhibit 1).

6. [REDACTED] submitted this sworn declaration in a lawsuit that her organization brought against Texas Right to Life and its legislative director, John Seago. This lawsuit was originally filed as *Lilith Fund for Reproductive Equity v. State of Texas, et al.*, No. D-1-GN-21-004504 (Travis County), and was transferred by the multidistrict litigation panel to 98th Judicial District Court of Travis County. Those pre-trial proceedings were conducted under the caption of *Van Stean v. State of Texas, et al.*, No. D-1-GN-21-004179, and the cases are currently on appeal to the Third Court of Appeals in Austin. *See Texas Right to Life, et al. v. Van Stean, et al.*, No. 03-21-00650-CV.

7. The Lilith Fund for Reproductive Equity (“Lilith Fund”) is expected to have information relevant to the potential claims that Ms. Weldon is investigating, and it is expected to have interests adverse to Ms. Weldon in any anticipated suit. The Lilith Fund’s mailing address is [REDACTED]; its registered office is at [REDACTED]; and its fax number is [REDACTED]. Its phone number is unknown.

8. [REDACTED] is expected to have information relevant to the potential claims that Ms. Weldon is investigating, and she is expected to have interests adverse to Ms. Weldon in any anticipated suit. On information and belief, [REDACTED] address is [REDACTED], and her phone number is [REDACTED].

9. Additional parties are expected to have information relevant to the potential claims that Ms. Weldon is investigating, as well as interests adverse to Ms. Weldon’s in any anticipated suit, but the identities of those parties are currently unknown. [REDACTED]

██████ sworn declaration states that the Lilith Fund aided or abetted the provision of at least one post-heartbeat abortion performed in Texas. But ██████ declaration does not say who provided those post-heartbeat abortions, nor does it identify the individuals who aided or abetted these illegal abortions. Ms. Weldon's goal is to use the deposition sought by this petition to ascertain the identity of all individuals and organizations who are subject to liability under section 171.208.

NOTICE OF RELATED CASES

10. There are no ongoing cases between Ms. Weldon and ██████. There are also no ongoing cases between Ms. Weldon and the Lilith Fund.

11. There are several ongoing cases that seek to restrain state officials and private individuals from enforcing certain provisions in SB 8. One of those cases is *Whole Woman's Health v. Jackson*, in which the plaintiffs are attempting to enjoin state licensing authorities from taking adverse action against abortion providers and medical professionals that violate the Texas Heartbeat Act. That case is currently pending in the U.S. Court of Appeals for the Fifth Circuit, after a remand from the Supreme Court of the United States. *See Whole Woman's Health v. Jackson*, No. 21-50792 (5th Cir.); *see also Whole Woman's Health v. Jackson*, 142 S. Ct. 522 (2021). On January 17, 2022, the Fifth Circuit certified a state-law question to the Supreme Court of Texas. *See Whole Woman's Health v. Jackson*, --- F.4th ----, 2022 WL 142193 (5th Cir.). Those certification proceedings remain pending in the state supreme court.

12. A coalition of abortion providers and abortion funds has also filed suit in state court to restrain Texas Right to Life and its legislative director, John Seago, from initiating lawsuits against them under section 171.208 of the Texas Health and Safety Code. The district judge in those cases denied the defendants' motion to dismiss un-

der the Texas Citizens Participation Act, and the defendants have taken an interlocutory appeal from that ruling. That appeal is currently pending in the Third Court of Appeals. *See Texas Right to Life v. Van Stean*, No. 03-21-00650-CV.

BACKGROUND

13. The Texas Heartbeat Act, also known as SB 8, outlaws abortion after a fetal heartbeat is detectable. *See* Tex. Health & Safety Code § 171.204.

14. SB 8 prohibits state officials from enforcing the law. *See* Tex. Health & Safety Code § 171.207. Instead of public enforcement by state officials, SB 8 establishes a private right of action that authorizes individuals to sue those who violate the statute. *See* Tex. Health & Safety Code § 171.208. These private civil-enforcement suits may be brought against anyone who “performs or induces” a post-heartbeat abortion, *see id.* at § 171.208(a)(1), as well as anyone who “knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of [SB 8],” *id.* at § 171.208(a)(2). Lawsuits may also be brought against anyone who “intends” to perform or aid or abet a post-heartbeat abortion in Texas.

15. A plaintiff who successfully sues an individual or organization under section 171.208 is entitled to injunctive relief and \$10,000 in statutory damages for each unlawful abortion that the defendant performed or facilitated, plus costs and attorneys’ fees. *See* Tex. Health & Safety Code § 171.208(b).

16. The Texas Heartbeat Act took effect on September 1, 2021, and it has remained in effect as the law of Texas since that time.

17. The person that Ms. Weldon seeks to depose is the leader of an organization that helps women in Texas abort their unborn children. [REDACTED] is deputy director of the Lilith Fund for Reproductive Equity (“Lilith Fund”). She is “responsible

for executing Lilith Fund’s mission, ensuring our programs are effective and efficient, and supervising staff and volunteers.” ██████ Decl. ¶ 3 (attached as Exhibit 1).

18. The Lilith Fund aids or abets abortion in Texas through a variety of means. As ██████ explained in a sworn statement, the Lilith Fund “provides financial assistance and emotional support for people needing abortions in Texas.” ██████ Decl. ¶ 4 (attached as Exhibit 1).

19. Since the Texas Heartbeat Act took effect on September 1, 2021, the Lilith Fund has aided or abetted at least one post-heartbeat abortion in violation of the law. In her sworn declaration, ██████ stated:

Lilith Fund has engaged in conduct with the intent to assist pregnant Texans obtain abortions after the detection of cardiac activity. Specifically, following the entry of an injunction by the Honorable Robert Pitman on October 6, 2021, Lilith Fund paid for at least one abortion without confirming the gestational age of the client’s pregnancy and at least one abortion with the belief that the client’s pregnancy was after the period in which cardiac activity is usually detectable. In doing so, it was Lilith Fund’s intention to pay for the abortions even if cardiac activity was detected.

██████ Decl. ¶ 8 (attached as Exhibit 1).

20. Ms. ██████ sworn declaration also states that the Lilith Fund “partners with” several abortion providers in northern Texas. This includes “clinics that have publicly confirmed that post-cardiac activity abortions were performed” in violation of the Texas Heartbeat Act. ██████ Decl. ¶ 9 (attached as Exhibit 1).

REQUEST FOR DEPOSITION

21. Ms. Weldon seeks a court order authorizing her to depose ██████ because she seeks to investigate potential claims that she or others might bring under section 171.208 of the Texas Health and Safety Code, against any person or organization that performed or aided or abetted illegal post-heartbeat abortions of the type described in ██████ declaration. *See* Tex. R. Civ. P. 202(d)(2).

22. Ms. Weldon additionally seeks to depose [REDACTED] because she anticipates the institution of a suit in which [REDACTED] or the Lilith Fund may be a party. *See* Tex. R. Civ. P. 202(d)(1).

23. There is good reason for this court to find that deposing [REDACTED] at this time is the best way to avoid a delay or failure of justice in an anticipated suit. *See* Tex. R. Civ. P. 202.4(a). In addition, the likely benefit of allowing Ms. Weldon to depose [REDACTED] to investigate a potential claim outweighs the burden or expense of the procedure. *See* Tex. R. Civ. P. 202.4(b).

24. Ms. Weldon is considering whether to sue individuals and organizations that performed or facilitated the illegal abortions described in [REDACTED] declaration. The sworn statement of [REDACTED] makes it clear that the Lilith Fund has violated the Texas Heartbeat Act in a manner that could expose its employees, volunteers, and donors to liability under section 171.208 of the Texas Health and Safety Code.

25. Yet Ms. Weldon is unwilling to file suit as this time because she is still investigating the range of potential defendants, as well as any possible defenses or substantive arguments that they might raise in the litigation. Ms. Weldon expects to be able to better evaluate the prospects for legal success after deposing [REDACTED] and discovering the extent of involvement of each individual that aided or abetted post-heartbeat abortions in violation of SB 8.

26. Ms. Weldon also wishes to preserve evidence of how the Lilith Fund aided or abetted abortions in violation of SB 8, as well as evidence surrounding the involvement of each individual who aided or abetted these illegal abortions. Ms. Weldon seeks to depose [REDACTED] on topics including the following: the Lilith Fund's exact role in supporting, funding, and facilitating abortions provided in violation of the Texas Heartbeat Act; the identity of each individual or entity that the Lilith Fund collaborated with in providing these illegal abortions; the number of illegal abortions provided; whether the Lilith Fund has in any way distinguished its funding streams

for advocacy and its funding streams for conduct that aids or abets illegal abortions performed in Texas; and the sources of financial support for the Lilith Fund. Ms. Weldon also seeks discovery of documents¹ that reveal the sources of funding for Lilith Fund's operations and address the issues that will be covered in the deposition.

27. Deposing ██████████ allows Ms. Weldon to preserve evidence of great importance to the anticipated litigation. ██████████ sworn declaration already attests to her knowledge of violations of the law. What Ms. Weldon does not know is how many violations occurred and what other parties were involved in providing these illegal abortions. The value of this information to any subsequent litigation, and to the important policies embodied in the Heartbeat Act, is high. It is, indeed, essential to be able to implement the law.

28. Delay in obtaining this evidence increases the chances that information about the abortions provided will be forgotten and that documentation will become more difficult to obtain. Given the widespread press coverage of the Texas Heartbeat Act, including attention to the risks taken by abortion providers who choose to violate the

1. The scope of a pre-suit deposition under Rule 202 is the same as a regular deposition of non-parties in litigation. *See* Tex. R. Civ. P. 202.5. This specifically allows document-production requests. *See* Tex. R. Civ. P. 199.2(b)(5) (providing for requests for production along with a deposition notice); Tex. R. Civ. P. 205.1(c) (providing for noticing document production requests to nonparties); *In re City of Tatum*, 567 S.W.3d 800, 808 (Tex. App. 2018) (“The “language of these rules when read together permits a petition seeking a pre-suit deposition under Rule 202 to also request the production of documents.” quoting *In re Anand*, No. 01-12-01106-CV, 2013 WL 1316436, at *3 (Tex. App. Apr. 2, 2013)). *See also City of Dallas v. City of Corsicana*, No. 10-14-00090-CV, 2015 WL 4985935, at *6 (Tex. App. Aug. 20, 2015) (“Under rule 202, documents can be requested in connection with a deposition.”). While some courts have refused to permit document discovery under Rule 202, *see, e.g., In re Pickrell*, No. 10-17-00091-CV, 2017 WL 1452851, at *6 (Tex. App. Apr. 19, 2017), they have not analyzed the text of Rule 202.5 or its relationship to Rule 199. *See In re City of Tatum*, 567 S.W.3d 800, 808 n. 7 (Tex. App. 2018) (criticizing courts denying document production under Rule 202).

Act's provisions,² there is considerable incentive for violators to hide or obscure any record of their involvement in unlawful activities.

29. Without the documentation, there would be a risk of miscarriage or delay of justice, as the law of Texas would be difficult or impossible to enforce. The policy of the state will be thwarted if it is not possible to identify the parties complicit in providing illegal abortions.

30. It would also enhance judicial efficiency to allow the eventual lawsuit to consider the entire chain of events (from funding to actual performance of the abortion) involved in the particular violations of SB 8 that ████████ described in her sworn statement. Waiting for discovery in the course of litigation not only runs increased risks of forgetfulness or record-keeping deficiencies. It also has costs to the administration of justice in that the courts would have to adjudicate the matters either in separate proceedings, or through complaints successively amended to add additional defendants. Allowing deposition under Rule 202 would avoid this delay of justice.

31. The burden on ████████ is modest. To be sure, she must appear for a deposition and must produce documents. But the inconvenience will only grow greater with any delay, as memories fade and documents accumulate. The value of the information sought outweighs the burden, as required by Rule 202.

32. Ms. Weldon seeks to depose ████████ by oral deposition. *See* Tex. R. Civ. P. 199. A notice of deposition identifying the topics for examination is attached to this Petition as Exhibit 2. This procedure will impose a minimal burden on ████████ while permitting Ms. Weldon to preserve for future litigation information about the illegal abortions that ████████ has acknowledged.

2. *See, e.g.*, Abigail Abrams, *Inside The Small Group of Doctors Who Risked Everything to Provide Abortions in Texas*, Time (Oct. 14, 2021), available at <https://bit.ly/3qxa5qx>.

33. Ms. Weldon further requests that the court order [REDACTED] to produce at or before the deposition any and all non-privileged documents relating to: Lilith Fund's role in supporting, funding, and facilitating abortions provided in violation of the Texas Heartbeat Act; the identity of all individuals or entities that the Lilith Fund collaborated with in providing these illegal abortions; the number of post-heartbeat abortions provided in Texas since September 1, 2021; and the sources of financial support for the Lilith Fund's abortion-assistance activities.

REQUEST FOR HEARING

34. After the service of this petition and a notice of hearing, Ms. Weldon respectfully requests that the court conduct a hearing, in accordance with Rule 202.3(a) of the Texas Rules of Civil Procedure, to determine whether to issue an order allowing the deposition.

REQUEST FOR RELIEF

35. For these reasons, Ms. Weldon respectfully requests that the court set a date for a hearing on this petition, and thereafter issue an order:

- a. finding that the benefits of a deposition and accompanying production of documents outweighs the burden;
- b. finding that a deposition and accompanying production of documents will avoid delay or failure of justice;
- c. authorizing Ms. Weldon to take an oral deposition of [REDACTED];
- d. requiring [REDACTED] to produce the documents identified by this petition, at a time and place to be agreed by the parties; and
- e. awarding all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

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* *pro hac vice* applications
forthcoming

Dated: January 26, 2022

/s/ Jonathan F. Mitchell
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info@thomasmoresociety.org

Counsel for Petitioner

Cause No. 22-01-014

In re Sadie Weldon,
Petitioner

IN THE DISTRICT COURT
JACK COUNTY, TEXAS
271st JUDICIAL DISTRICT

VERIFICATION

STATE OF TEXAS

COUNTY OF JACK

Before me, the undersigned notary public, on this day personally appeared Sadie Weldon and after being duly sworn, stated under oath that she has read the above verified petition to take deposition to investigate potential legal claims and its exhibits; that every statement of fact contained in it is within her personal knowledge and is true and correct; and that every exhibit is an authentic copy of what it purports to be.

Sadie Weldon

SADIE WELDON

Subscribed and sworn to me
this 26th day of January, ~~2020~~ 2022

Debra Tillery
NOTARY

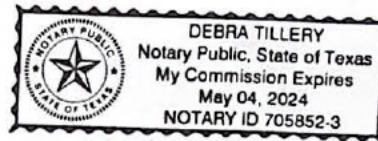


EXHIBIT #3

Cause No. 22-1046-431

In re Ashley Maxwell,

Petitioner

IN THE DISTRICT COURT
DENTON COUNTY, TEXAS
____ JUDICIAL DISTRICT

**VERIFIED PETITION TO TAKE DEPOSITION TO
INVESTIGATE A LAWSUIT**

Petitioner Ashley Maxwell respectfully asks the Court for permission to take a deposition by oral examination of [REDACTED] of the North Texas Equal Access Fund. Ms. Maxwell seeks this testimony to investigate potential claims brought by Ms. Maxwell or others under section 171.208 of the Texas Health and Safety Code.

PERSONS TO BE DEPOSED AND JURISDICTION

1. Petitioner Ashley Maxwell is a citizen of Texas and resident of Hood County.

2. Ms. Maxwell seeks to depose [REDACTED]. Upon information and belief, [REDACTED] is a resident of [REDACTED] and may be served at [REDACTED]. [REDACTED] telephone number is [REDACTED].

3. In accordance with Rule 202.2(b)(2) of the Texas Rules of Civil Procedure, this petition is filed in Denton County, the county in which [REDACTED] resides.

4. This petition is verified by Ms. Maxwell, as required by Rule 202.2(a) of the Texas Rules of Civil Procedure.

NATURE OF THE ACTION

5. This petition is filed to investigate the possibilities for future civil actions brought under section 171.208 of the Texas Health and Safety Code, against individuals and organizations that performed or aided or abetted abortions in violation of the Texas Heartbeat Act, also known as Senate Bill 8 or SB 8. In her capacity as executive director of the North Texas Equal Access Fund (“TEA Fund”), [REDACTED] has stated in a sworn declaration that her organization knowingly and intentionally

aided or abetted at least one post-heartbeat abortion in violation of the Texas Heartbeat Act. *See* Declaration of [REDACTED] ¶ 7 (attached as Exhibit 1).

6. [REDACTED] submitted this sworn declaration in a lawsuit that her organization brought against Texas Right to Life and its legislative director, John Seago. This lawsuit was originally filed as *North Texas Equal Access Fund v. State of Texas, et al.*, No. D-1-GN-21-004503 (Travis County), and was transferred by the multidistrict litigation panel to 98th Judicial District Court of Travis County. Those pre-trial proceedings were conducted under the caption of *Van Stean v. State of Texas, et al.*, No. D-1-GN-21-004179, and the cases are currently on appeal to the Third Court of Appeals in Austin. *See Texas Right to Life, et al. v. Van Stean, et al.*, No. 03-21-00650-CV.

7. North Texas Equal Access Fund (“TEA Fund”) is expected to have information relevant to the potential claims that Ms. Maxwell is investigating, and it is expected to have interests adverse to Ms. Maxwell in any anticipated suit. The TEA Fund’s mailing address is [REDACTED]; its registered office is at [REDACTED]; and its phone number is [REDACTED].

8. [REDACTED] is expected to have information relevant to the potential claims that Ms. Maxwell is investigating, and she is expected to have interests adverse to Ms. Maxwell in any anticipated suit. On information and belief, [REDACTED] address is [REDACTED], and her phone number is [REDACTED].

9. Additional parties are expected to have information relevant to the potential claims that Ms. Maxwell is investigating, as well as interests adverse to Ms. Maxwell’s in any anticipated suit, but the identities of those parties are currently unknown. [REDACTED] sworn declaration states that the TEA Fund aided or abetted the provision of at least one post-heartbeat abortion performed in Texas. But [REDACTED] declaration does not say who provided those post-heartbeat abortions, nor does it identify

the individuals who aided or abetted these illegal abortions. Ms. Maxwell's goal is to use the deposition sought by this petition to ascertain the identity of all individuals and organizations who are subject to liability under section 171.208.

NOTICE OF RELATED CASES

10. There are no ongoing cases between Ms. Maxwell and [REDACTED]. There are also no ongoing cases between Ms. Maxwell and TEA Fund.

11. There are several ongoing cases that seek to restrain state officials and private individuals from enforcing certain provisions in SB 8. One of those cases is *Whole Woman's Health v. Jackson*, in which the plaintiffs are attempting to enjoin state licensing authorities from taking adverse action against abortion providers and medical professionals that violate the Texas Heartbeat Act. That case is currently pending in the U.S. Court of Appeals for the Fifth Circuit, after a remand from the Supreme Court of the United States. *See Whole Woman's Health v. Jackson*, No. 21-50792 (5th Cir.); *see also Whole Woman's Health v. Jackson*, 142 S. Ct. 522 (2021). On January 17, 2022, the Fifth Circuit certified a state-law question to the Supreme Court of Texas. *See Whole Woman's Health v. Jackson*, --- F.4th ----, 2022 WL 142193 (5th Cir.). Those certification proceedings remain pending in the state supreme court.

12. A coalition of abortion providers and abortion funds has also filed suit in state court to restrain Texas Right to Life and its legislative director, John Seago, from initiating lawsuits against them under section 171.208 of the Texas Health and Safety Code. The district judge in those cases denied the defendants' motion to dismiss under the Texas Citizens Participation Act, and the defendants have taken an interlocutory appeal from that ruling. That appeal is currently pending in the Third Court of Appeals. *See Texas Right to Life v. Van Stean*, No. 03-21-00650-CV.

BACKGROUND

13. The Texas Heartbeat Act, also known as SB 8, outlaws abortion after a fetal heartbeat is detectable. *See* Tex. Health & Safety Code § 171.204.

14. SB 8 prohibits state officials from enforcing the law. *See* Tex. Health & Safety Code § 171.207. Instead of public enforcement by state officials, SB 8 establishes a private right of action that authorizes individuals to sue those who violate the statute. *See* Tex. Health & Safety Code § 171.208. These private civil-enforcement suits may be brought against anyone who “performs or induces” a post-heartbeat abortion, *see id.* at § 171.208(a)(1), as well as anyone who “knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of [SB 8],” *id.* at § 171.208(a)(2). Lawsuits may also be brought against anyone who “intends” to perform or aid or abet a post-heartbeat abortion in Texas.

15. A plaintiff who successfully sues an individual or organization under section 171.208 is entitled to injunctive relief and \$10,000 in statutory damages for each unlawful abortion that the defendant performed or facilitated, plus costs and attorneys’ fees. *See* Tex. Health & Safety Code § 171.208(b).

16. The Texas Heartbeat Act took effect on September 1, 2021, and it has remained in effect as the law of Texas since that time.

17. The person that Ms. Maxwell seeks to depose is the leader of an organization that helps women in Texas abort their unborn children. [REDACTED] is executive director of the North Texas Equal Access Fund (“TEA Fund”). She is “responsible for executing TEA Fund’s mission, protecting the organization’s financial health, and supervising staff and volunteers.” [REDACTED] Decl. ¶ 3 (attached as Exhibit 1).

18. The TEA Fund aids or abets abortion in Texas through a variety of means. As [REDACTED] explained in a sworn statement, the TEA Fund “provides financial,

emotional, and logistical support for low-income abortion patients in north Texas.”

██████ Decl. ¶ 4 (attached as Exhibit 1).

19. Most of the abortions that the TEA Fund aids or abets occur after a fetal heartbeat is detectable. ██████ Decl. ¶ 4 (attached as Exhibit 1).

20. Since the Texas Heartbeat Act took effect on September 1, 2021, the TEA Fund has aided or abetted at least one post-heartbeat abortion in violation of the law.

In her sworn declaration, ██████ stated:

TEA Fund has engaged in conduct with the intent to assist pregnant Texans obtain abortions after the detection of cardiac activity. Specifically, following the entry of an injunction by the Honorable Robert Pitman on October 6, 2021, and while that injunction was still in place, TEA Fund paid for at least one abortion after confirming the gestational age of the fetus was beyond the time when cardiac activity is usually detected. In doing so, it was TEA Fund’s intention to pay for the abortion even if cardiac activity was detected.

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21. ██████ sworn declaration also states that the TEA Fund “partner[s] with” several abortion providers in northern Texas. This includes “clinics that have publicly confirmed that post-cardiac activity abortions were performed” in violation of the Texas Heartbeat Act. ██████ Decl. ¶ 8 (attached as Exhibit 1).

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23. Ms. Maxwell additionally seeks to depose ██████ because she anticipates the institution of a suit in which ██████ or the TEA Fund may be a party. *See* Tex. R. Civ. P. 202(d)(1).

24. There is good reason for this court to find that deposing [REDACTED] at this time is the best way to avoid a delay or failure of justice in an anticipated suit. *See* Tex. R. Civ. P. 202.4(a). In addition, the likely benefit of allowing Ms. Maxwell to depose [REDACTED] to investigate a potential claim outweighs the burden or expense of the procedure. *See* Tex. R. Civ. P. 202.4(b).

25. Ms. Maxwell is considering whether to sue individuals and organizations that performed or facilitated the illegal abortions described in [REDACTED] declaration. The sworn statement of [REDACTED] makes it clear that the TEA Fund has violated the Texas Heartbeat Act in a manner that could expose its employees, volunteers, and donors to liability under section 171.208 of the Texas Health and Safety Code.

26. Yet Ms. Maxwell is unwilling to file suit as this time because she is still investigating the range of potential defendants, as well as any possible defenses or substantive arguments that they might raise in the litigation. Ms. Maxwell expects to be able to better evaluate the prospects for legal success after deposing [REDACTED] and discovering the extent of involvement of each individual that aided or abetted post-heartbeat abortions in violation of SB 8.

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also seeks discovery of documents¹ that reveal the sources of funding for the TEA Fund's operations and address the issues that will be covered in the deposition.

28. Deposing ██████████ allows Ms. Maxwell to preserve evidence of great importance to the anticipated litigation. ██████████ sworn declaration already attests to her knowledge of violations of the law. What Ms. Maxwell does not know is how many violations occurred and what other parties were involved in providing these illegal abortions. The value of this information to any subsequent litigation, and to the important policies embodied in the Heartbeat Act, is high. It is, indeed, essential to be able to implement the law.

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Act's provisions,² there is considerable incentive for violators to hide or obscure any record of their involvement in unlawful activities.

30. Without the documentation, there would be a risk of miscarriage or delay of justice, as the law of Texas would be difficult or impossible to enforce. The policy of the state will be thwarted if it is not possible to identify the parties complicit in providing illegal abortions.

31. It would also enhance judicial efficiency to allow the eventual lawsuit to consider the entire chain of events (from funding to actual performance of the abortion) involved in the particular violations of SB 8 that ██████████ described in her sworn statement. Waiting for discovery in the course of litigation not only runs increased risks of forgetfulness or record-keeping deficiencies. It also has costs to the administration of justice in that the courts would have to adjudicate the matters either in separate proceedings, or through complaints successively amended to add additional defendants. Allowing deposition under Rule 202 would avoid this delay of justice.

32. The burden on ██████████ is modest. To be sure, she must appear for a deposition and must produce documents. But the inconvenience will only grow greater with any delay, as memories fade and documents accumulate. The value of the information sought outweighs the burden, as required by Rule 202.

33. Ms. Maxwell seeks to depose ██████████ by oral deposition. *See* Tex. R. Civ. P. 199. A notice of deposition identifying the topics for examination is attached to this Petition as Exhibit 2. This procedure will impose a minimal burden on ██████████ while permitting Ms. Maxwell to preserve for future litigation information about the illegal abortions that ██████████ has acknowledged.

2. *See, e.g.*, Abigail Abrams, *Inside The Small Group of Doctors Who Risked Everything to Provide Abortions in Texas*, Time (Oct. 14, 2021), available at <https://bit.ly/3qxa5qx>.

34. Ms. Maxwell further requests that the court order [REDACTED] to produce at or before the deposition any and all non-privileged documents relating to: TEA Fund's role in supporting, funding, and facilitating abortions provided in violation of the Texas Heartbeat Act; the identity of all individuals or entities that the TEA Fund collaborated with in providing these illegal abortions; the number of post-heartbeat abortions provided in Texas since September 1, 2021; and the sources of financial support for the TEA Fund's abortion-assistance activities.

REQUEST FOR HEARING

35. After the service of this petition and a notice of hearing, Ms. Maxwell respectfully requests that the court conduct a hearing, in accordance with Rule 202.3(a) of the Texas Rules of Civil Procedure, to determine whether to issue an order allowing the deposition.

REQUEST FOR RELIEF

36. For these reasons, Ms. Maxwell respectfully requests that the court set a date for a hearing on this petition, and thereafter issue an order:

- a. finding that the benefits of a deposition and accompanying production of documents outweighs the burden;
- b. finding that a deposition and accompanying production of documents will avoid delay or failure of justice;
- c. authorizing Ms. Maxwell to take an oral deposition of [REDACTED];
- d. requiring [REDACTED] to produce the documents identified by this petition, at a time and place to be agreed by the parties; and
- e. awarding all other relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

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chad@fillmorefirm.com

* *pro hac vice* applications
forthcoming

Dated: February 2, 2022

/s/ Jonathan F. Mitchell
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(312) 782-1887 (fax)
info@thomasmoresociety.org

Counsel for Petitioner

Cause No. _____

In re Ashley Maxwell,
Petitioner

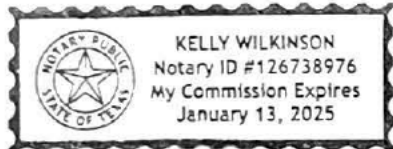
IN THE DISTRICT COURT
DENTON COUNTY, TEXAS
____ JUDICIAL DISTRICT

VERIFICATION

STATE OF TEXAS

COUNTY OF _____

Before me, the undersigned notary public, on this day personally appeared Ashley Maxwell and after being duly sworn, stated under oath that she has read the above verified petition to take deposition to investigate potential legal claims and its exhibits; that every statement of fact contained in it is within her personal knowledge and is true and correct; and that every exhibit is an authentic copy of what it purports to be.



Ashley Maxwell

ASHLEY MAXWELL

Subscribed and sworn to me
this 2 day of February, ~~2020~~ 2022

Kelly Wilkinson

NOTARY

EXHIBIT #4



Lilith Fund @lilithfund · Feb 21

...

Help us raise \$20k for Texans who need abortions this [#AmplifyATX!](#)

It's been 174 days of an extreme abortion ban but that's why we are now frequently covering the entire procedure cost for our clients and serving nearly every client who calls.



2

20

32



@ThomasMoreSoc @ThomasMoreSoc · Feb 21

...

[@lilithfund](#) donors could get sued under SB 8: thomasmoresociety.org/abortion-funds...

7

3

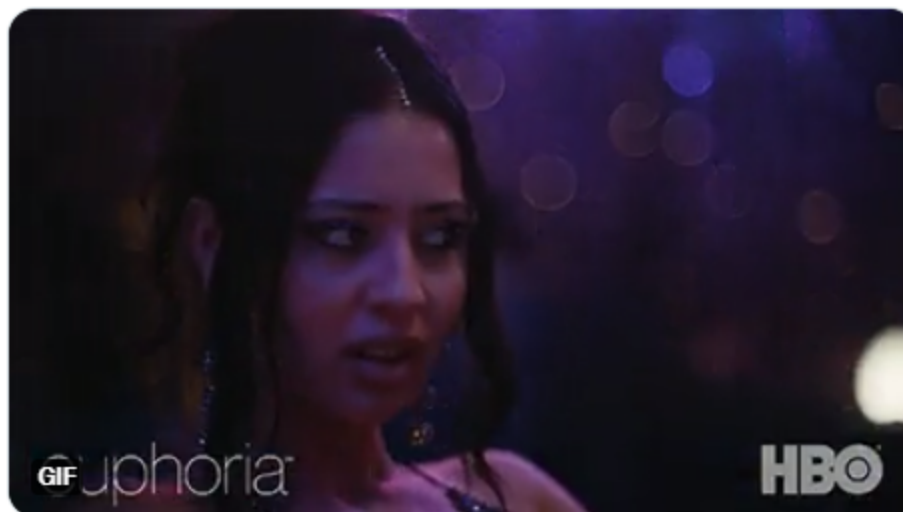
1



Lilith Fund @lilithfund · Feb 22

...

Yeah we think you're wrong. Worry about yourself and we'll keep funding abortions and supporting Texans 📈



1

20



EXHIBIT #5



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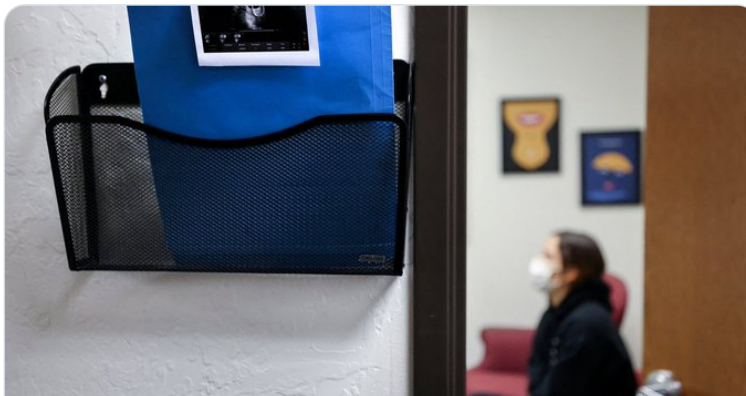
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@ThomasMoreSoc
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It is illegal to donate to #abortion funds that pay for abortions performed in #Texas. Violators are subject to civil #lawsuits and criminal #prosecution.



texastribune.org

Anti-abortion lawyers target those funding the procedure for potentia...
Attorneys who helped design Texas' novel abortion ban have asked a judge to allow them to depose the leaders of two abortion funds, seeking information ...

7:20 PM · Feb 23, 2022 · Twitter Web App

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Tweet your reply

Reply



Jac @JacUnderATree · Feb 24

Replying to @ThomasMoreSoc

Nowhere in the Bible does it condemn abortion.
Nowhere in the Bible does it mandate Christians to force their beliefs on others through theocratic laws.
The abortion "issue" was created by the far right to divide this country.
It's not about religion or life. It's about power.



1

3



atriana @atriana · Feb 24

Replying to @ThomasMoreSoc

Not if the donor is out of state.



MaxDWolf @MaxDWolf · Feb 24

Replying to @ThomasMoreSoc

Fascinating how y'all are already forgetting the "after 6 weeks" part.



2



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JoyceW
@joyce_GMH



Pope Francis @Pontifex · 3h

If prayer is real, it necessarily bears fruit in charity.

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Restoring respect in marriage, and religious freedom since 1997. We are a national law firm that provides legal services.

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EXHIBIT #6



For Immediate Release
March 18, 2021

**State Representative Briscoe Cain Sends
Cease-And-Desist Letters to Abortion Funds in Texas**

Texas abortion funds must immediately stop paying for abortions performed in Texas or face criminal prosecution, according to a cease-and-desist letter sent by a Chairman of the Texas House of Representatives.

Representative Briscoe Cain (R - Deer Park) has sent cease-and-desist letters to every abortion fund in Texas, reminding them that Texas law imposes felony criminal liability on any person who “furnishes the means for procuring an abortion knowing the purpose intended.” Violations are punishable by two to five years imprisonment, and the statute of limitations is three years. Cain warned that the employees, volunteers, and donors of abortion funds will be criminally prosecuted if they do not immediately halt their illegal acts and stop paying for abortions performed in Texas.

“These are criminal organizations,” said Cain. “It is a crime to pay for another person’s abortion in Texas, and anyone who gives money to these abortion funds will be prosecuted.”

Cain said he would introduce legislation next session that will empower district attorneys from throughout the state to prosecute violations of the state’s abortion laws when the local district attorney fails or refuses to do so. This will ensure that abortion providers and funds are prosecuted for their crimes even when they reside in counties where the local district attorney refuses to enforce the state’s abortion laws. Cain’s bill will also eliminate the three-years statute of limitations that currently applies to abortion-related crimes.

“Abortion funds think they can flout the law because a local district attorney refuses to bring charges,” said Cain. “We will fix this problem next session. Anyone involved with these abortion funds will be held accountable for their crimes.”

###

EXHIBIT #7



TEXAS HOUSE *of* REPRESENTATIVES

Briscoe Cain
District 128

CHAIR, HOUSE COMMITTEE ON ELECTIONS
MEMBER, HOUSE COMMITTEE ON BUSINESS & INDUSTRY

March 29, 2022

Jennifer R. Ecklund
Thomposon Coburn LLP
2100 Ross Avenue, Suite 3200
Dallas, Texas 75201

Dear Ms. Ecklund:

I write in response to your letter of March 24, 2022. The letters that I sent to your clients on March 18, 2022, were sent in my capacity as a Texas State Representative. Your clients are committing criminal acts under article 4512.2 of the Revised Civil Statutes and they must immediately halt their criminal conduct.

Your letter falsely claims that article 4512.2 was “struck down” by the Supreme Court in *Roe v. Wade*, 410 U.S. 113 (1973). Courts do not have the ability or the authority to “strike down” or formally revoke statutes when pronouncing them unconstitutional. The Supreme Court of the United States and the Supreme Court of Texas have made this abundantly clear. See *Whole Woman’s Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021) (“[F]ederal courts enjoy the power to enjoin individuals tasked with enforcing laws, not the laws themselves.”); *Pidgeon v. Turner*, 538 S.W.3d 73, 88 n.21 (Tex. 2017) (“We note that neither the Supreme Court in *Obergefell* nor the Fifth Circuit in *De Leon* ‘struck down’ any Texas law. When a court declares a law unconstitutional, the law remains in place unless and until the body that enacted it repeals it”). More importantly, the severability provisions of Texas law allow the state’s pre-*Roe* abortion statutes to be enforced in situations that do not violate the constitutional rights of abortion patients. See Tex. Gov’t Code § 311.032(c); Tex. Gov’t Code § 311.036(c). So article 4512.2 remains fully enforceable against abortion funds that pay for abortions performed in Texas, as well as their donors.

If you are advising your clients that they may continue flouting article 4512.2 with impunity, then you are committing legal malpractice and exposing yourself and your law firm to criminal sanctions and professional discipline. And if you and your clients want to adhere to your delusional belief that article 4512.2 no longer exists as the law of Texas, then we welcome the opportunity to have the judiciary set you straight.

Sincerely,

A handwritten signature in blue ink that reads "Briscoe Cain".

Briscoe Cain
Texas State Representative
House District 128

EXHIBIT #8



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Briscoe Cain @BriscoeCain

#ProsecuteTexasAbortionFunds

5:56 PM · Mar 30, 2022 from Texas, USA · Twitter for iPhone

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puddin n tain @Goodtrouble79 · 12h
Replying to @BriscoeCain
See you soon 😊

1



1



Ponygirl923 @ponygirl923 · 14h
Replying to @BriscoeCain
Texas woman here. Telling you...



1



9



mel (she/her) @melissa_w · 15h
Replying to @BriscoeCain
You mean #ProtectTexasAbortionFunds bc if so then yass ☀️
#ProtectALLAbortionFunds

1

1

14



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Greg Abbott @GregAbbott_TX · 22h
Governor candidate, TX

Great progress is being made building the Texas border wall.

We continue getting easements on land along the border where more wall will be added.

This is in addition to the 10,000 National Guard + the Texas Dept. of Public Safety making arrests and laying down razor wire.



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JoyceW @joyce_GMH