CAUSE NO. ____________

KATE COX; JUSTIN COX; and DAMLA KARSAN, M.D., on behalf of herself, her staff, nurses, pharmacists, agents, and patients,	IN THE DISTRICT COURT OF
Plaintiffs,	TRAVIS COUNTY, TEXAS
v.	______ JUDICIAL DISTRICT
STATE OF TEXAS; ATTORNEY GENERAL OF TEXAS, KEN PAXTON, in his official capacity as Attorney General of Texas; TEXAS MEDICAL BOARD; and STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board,	
Defendants.	

PLAINTIFFS' ORIGINAL VERIFIED PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION

Plaintiffs file this Original Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order and Permanent Injunction. The immediate threat of enforcement of Texas's abortion bans, codified at Tex. Health & Safety Code §§ 170A.001-002 (the "Trigger Ban"), Tex. Health & Safety Code §§ 171.002(3), 171.203-205 ("S.B. 8"), and 1925 Tex. Penal Code arts. 1191-96 (the "pre-*Roe* Ban"), is causing irreparable injury to Plaintiffs, Plaintiff's patients, and Plaintiff's staff, nurses, pharmacists, and agents. **Plaintiffs respectfully urge the Court to rule expeditiously on the requested relief.**

INTRODUCTION

1. **Kate Cox needs an abortion, and she needs it now.** Ms. Cox is currently 20 weeks pregnant,[1] and she has been to three different emergency rooms in the last month due to severe

[1] Consistent with standard medical practice, gestational ages as used in this petition are dated from the first day of the patient's last menstrual period ("LMP"), which is typically approximately two weeks before the estimated date of fertilization of a pregnancy.

cramping and unidentifiable fluid leaks. For weeks, Ms. Cox's physicians have been telling her that early screening and ultrasound tests suggest that her pregnancy is unlikely to end with a healthy baby. Because Ms. Cox has had two prior cesarean surgeries ("C-sections"), continuing the pregnancy puts her at high risk for severe complications threatening her life and future fertility, including uterine rupture and hysterectomy. Ms. Cox understands that a dilation and evacuation ("D&E") abortion is the safest option for her health and her best medical option given that she wants to have more children in the future. Yet because of Texas's abortion bans, Ms. Cox's physicians have informed her that their "hands are tied" and she will have to wait until her baby dies inside her or carry the pregnancy to term, at which point she will be forced to have a third C-section, only to watch her baby suffer until death.

2. On November 28, 2023, Ms. Cox received the results of an amniocentesis which confirmed prior prenatal testing—her third pregnancy has full trisomy 18, meaning her pregnancy may not survive to birth, and, if it does, her baby would be stillborn or survive for only minutes, hours, or days. November 28, 2023 is the same day that the Texas Supreme Court heard oral argument in a similar case filed in this Court in March, *Zurawski v. State of Texas*, Cause No. D-1-GN-23-000968 (353th Judicial Dist., Travis Cty.). Because of the unusual confluence of events and the specific progression of her medical condition, Ms. Cox both heard about the case and was able to reach out to Plaintiffs' counsel for help. Most Texans will not be so lucky.

3. Over the months that *Zurawski* has been pending, the state defendants have refused to provide any clarification of the law or even their own interpretation of its meaning. Before the Supreme Court of Texas, the state defendants conceded that a physician could provide an abortion to a patient with a fatal fetal diagnosis if there was "some evidence" of "substantial impairment of

a major bodily function." But the state defendants have never said what evidence nor what condition would be enough. All the while, pregnant Texans like Ms. Cox have continued to suffer.

4. Because Ms. Cox cannot wait for the Texas Supreme Court to issue its ruling, nor for the stay of proceedings in *Zurawski* to be lifted, she files this separate action, with the physician who could provide her a D&E abortion if Texas law was not standing in the way, to seek a temporary restraining order authorizing her physician to provide her with the abortion she needs to preserve her life and her fertility.

DISCOVERY CONTROL PLAN

5. Plaintiffs request that this case be conducted as a Level 3 case for the purposes of discovery in accordance with Texas Rule of Civil Procedure 190.4. In addition, pursuant to Texas Rule of Civil Procedure 47(c)(5), Plaintiffs state that they seek non-monetary relief only.

PARTIES

I. PLAINTIFFS

A. Kate Cox

6. Kate Cox is 31 years old and lives in the greater Dallas-Fort Worth metroplex in Texas.

7. Ms. Cox is a mother of two, a 3-year-old daughter and a 1-and-a-half-year-old son, and she and her husband hope to have more children. Ms. Cox's prior deliveries were not easy, and both of her children were delivered via cesarean surgery ("C-section").

8. Ms. Cox learned she was pregnant for the third time in August 2023. She was still breastfeeding her son, and so she was not tracking her cycle precisely, but she and her husband had been hoping for a third. Her whole family was thrilled.

9. In October 2023, Ms. Cox provided a blood sample for noninvasive prenatal blood testing ("NIPT"), which can be done between 10 and 13 weeks to screen for some fetal conditions

as well as reveal the sex of the pregnancy. Ms. Cox was excited to learn the sex of her baby so early,[2] as she had for her older children. When Ms. Cox's OB/GYN called her with the results, however, Ms. Cox immediately knew something was wrong. She had never received NIPT results directly from her doctor before.

10. Ms. Cox's OB/GYN informed her that the NIPT indicated that her baby was at high risk for trisomy 18, a condition with a very high likelihood of miscarriage or stillbirth and low survival rates. Because the test is not diagnostic, her OB/GYN recommended further testing and referred her to a maternal-fetal medicine ("MFM") specialist. Ms. Cox and her husband were deeply concerned but tried to remain hopeful.

11. At her first appointment with the specialist later in October, she received a detailed ultrasound that showed Ms. Cox's baby had a single umbilical artery where there should be two and a "spine abnormality." The specialist recommended amniocentesis testing at 16 weeks and continued ultrasound testing in the meantime.

12. Over the next 5 weeks, Ms. Cox received weekly ultrasounds to monitor her baby's growth. At each ultrasound, the prognosis worsened. The ultrasounds revealed multiple serious conditions including: a single artery in the umbilical cord; a protrusion from the baby's abdomen, likely an umbilical hernia; a twisted spine likely due to spina bifida, a neural tube defect; clubbed or "rocker-bottom" foot; intrauterine growth restriction; and irregular skull and heart development. The appointments were devastating for Ms. Cox and her husband. Many of the conditions, including the twisting of their baby's spine, were clearly visible on the ultrasound, and at each visit, the chances of a third healthy baby felt more and more remote. Ms. Cox's specialist told her

[2] This petition describes pregnancy using medical terminology, unless describing a particular patient's pregnancy, in which case, consistent with principles of medical ethics, it adopts the terminology preferred by the individual patient.

and her family that given the results of the ultrasound alone, their baby was likely to pass in utero, be stillborn, or only live for a week at most.

13. Ms. Cox's physicians informed her that continuing the pregnancy would pose risks to her health as well. In October, Ms. Cox did a screening test for gestational diabetes that revealed elevated glucose. Ms. Cox also had elevated glucose in a prior pregnancy. Due to these results and other underlying health conditions, she is at increased risk of gestational hypertension, gestational diabetes, fetal macrosomia, cesarean delivery, post-operative infections, and anesthesia complications.

14. At the beginning of November, when Ms. Cox was 16 weeks, she underwent an amniocentesis procedure and was told it would take several weeks to receive the complete results. Ms. Cox was given the option to pay extra to receive preliminary results using fluorescence in situ hybridization ("FISH") within 48 hours. The FISH results again suggested that her baby had trisomy 18.

15. On November 17, Ms. Cox went to the emergency room due to severe cramping and diarrhea that had been going on for several days. She had been experiencing intermittent cramping throughout the pregnancy, but when the cramps became worse, Ms. Cox worried that her baby was in distress. An ultrasound in the emergency room once again revealed irregular growth, particularly around the baby's spine. But without other signs of maternal or fetal distress, Ms. Cox was sent home.

16. On November 25, after two days of painful cramping, Ms. Cox again went to the emergency room. She was also concerned she was leaking amniotic fluid, as her underwear was wet, and she did not know why. An ultrasound revealed the presence of "endocervical mild fluid" in her vaginal canal, and Ms. Cox was transferred to another hospital for additional testing. When

medical staff at the second hospital were unable to determine the source of the leaking fluid, Ms. Cox was eventually sent home.

17. Ms. Cox finally received the official results of the amniocentesis on November 28, 2023, the same day the Texas Supreme Court heard argument in *Zurawski*. The diagnosis was confirmed: their baby has full trisomy 18. Ms. Cox and her family were devastated.

18. Ms. Cox's physicians explained that some families with a trisomy 18 diagnosis choose to continue their pregnancies, while others choose abortion. She was told that in her case, there was virtually no chance that their baby would survive to birth or long afterwards, so Ms. Cox asked about termination. Ms. Cox was shocked when her physician told her that due to Texas's abortion bans, as long as her baby had a heartbeat, she would not be able to obtain an abortion in Texas. All they could do was continue to monitor the baby for cardiac activity. If the baby's heartbeat stopped, they could offer her a labor induction, but because of her prior C-sections, induction carries a serious risk of uterine rupture. If the baby survived to term, Ms. Cox could receive an induction or C-section, but it was clear to Ms. Cox that C-section was the safer option for her health because of the risk of uterine rupture with induction given her prior two C-Sections. Yet Ms. Cox's physicians also explained that a C-section at full term would make subsequent pregnancies higher risk and make it less likely she would be able to carry a third child in the future.

19. The safest option to protect Ms. Cox's health and future fertility was to get a D&E abortion. But Ms. Cox's physicians told her that because of Texas's abortion laws, there was likely no one in the state who could provide her the procedure.

20. After much discussion with her husband and her family, Ms. Cox decided that terminating this pregnancy is the right decision for her family. In her own words: "It is not a matter of *if* I will have to say goodbye, but *when*. I do not want to continue the pain and suffering that has

plagued this pregnancy. I do not want to put my body through the risks of continuing this pregnancy. I do not want to continue until my baby dies in my belly or I have to deliver a stillborn baby or one where life will be measured in hours or days, full of medical tubes and machinery. Trisomy 18 babies that survive birth often suffer cardiac or respiratory failure. I do not want my baby to arrive in this world only to watch her suffer a heart attack or suffocation. I desperately want the chance to try for another baby and want to access the medical care now that gives me the best chance at another baby."

21. For these reasons, Ms. Cox wants a D&E abortion to protect her life, health, and future fertility.

22. Ms. Cox researched her options online and because of the fortuitous timing, came across multiple news stories about the Texas Supreme Court argument in *Zurawski*. Ms. Cox reached out to Plaintiffs' counsel on November 30, 2023.

23. Ms. Cox wants to receive an abortion as soon as possible, and she does not want to have to leave her state to obtain this necessary medical care.

24. Ms. Cox's claims are capable of repetition but evading review. Ms. Cox sues on her own behalf.

B. Justin Cox

25. Justin Cox is 34 years old and lives in the greater Dallas-Fort Worth metroplex in Texas. Mr. Cox is married to Ms. Cox.

26. If permitted by law and/or court order, Mr. Cox hopes to assist his wife in obtaining the abortion she needs to preserve her life and future fertility.

27. Mr. Cox's claims are capable of repetition but evading review. Mr. Cox sues on his own behalf.

C. Dr. Damla Karsan

28. Plaintiff Damla Karsan, M.D, is a board-certified OB/GYN in private practice at Comprehensive Women's Healthcare in Houston, Texas, who is licensed to practice medicine in the state of Texas.

29. Dr. Karsan has practiced obstetrics and gynecology in Houston since 2001. As part of her practice, Dr. Karsan provides gynecological care, prenatal care, and obstetric care to her patients and to her colleagues' patients when she is on-call at the hospital where she has admitting privileges.

30. She is also trained to provide abortion care, and before S.B. 8, she routinely provided abortions to her patients as part of their comprehensive reproductive health care needs.[3]

31. Over her career, Dr. Karsan has personally treated pregnant patients with a wide variety of obstetrical and other health complications that develop during pregnancy, including but not limited to: miscarriage; ectopic pregnancy; management of fetal demise; complications of pregnancy, including cervical insufficiency, previable preterm premature rupture of membranes ("PPROM"), bleeding, preeclampsia, hyperemesis gravidarum; maternal comorbidities such as hypertension, diabetes, heart disease, kidney disease, cancer, rheumatologic disorders, psychiatric conditions, including those that may lead to suicide; complicated twin pregnancies; lethal fetal anomalies; various genetic diagnoses, including trisomy 13, 18, and 21; structural fetal abnormalities; and molar pregnancy. Dr. Karsan consults with specialists in the care of such patients—including but not limited to emergency medicine hospitalists, cardiologists, oncologists, anesthesiologists, and maternal fetal medicine doctors—and actively participates in the care of her

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[3] Before S.B. 8, Texas law generally permitted physicians to provide a limited number of abortions per year up to 18 weeks LMP in their private practices, or up to 22 weeks LMP in a hospital or ambulatory surgical center. *See* Tex. Health & Safety Code §§ 171.004, 171.045, 245.004.

patients who are treated for emergent health conditions during their pregnancies. Dr. Karsan intends to continue providing the full scope of care to her pregnant patients in the future.

32. Since S.B. 8 took effect, Dr. Karsan has seen the devastating impact of Texas's abortion bans on her practice and on that of her colleagues. In Dr. Karsan's experience, widespread fear and confusion regarding the scope of Texas's abortion bans have chilled the provision of necessary obstetric care, including abortion care. Dr. Karsan and her colleagues fear that prosecutors and politicians will target them personally and threaten the state funding of the hospitals where they work if they provide abortion care to pregnant people with emergent medical conditions.

33. Dr. Karsan has seen that physicians in Texas are even afraid to speak out publicly about this issue for fear of retaliation. Dr. Karsan feels she is only able to speak out publicly because she is in private practice and not directly employed by a state-funded hospital.

34. Dr. Karsan has also personally treated pregnant patients with emergent medical conditions since S.B. 8 took effect and consulted with colleagues about the care of such patients. In Dr. Karsan's experience, an emergent condition or emergency situation cannot be formulaically defined and will always depend on the patient's unique situation.

35. Since *Roe v. Wade* was overturned, Dr. Karsan has treated patients with emergent medical conditions, including patients carrying pregnancies with lethal fetal conditions who needed treatment for complications like kidney stones, bipolar disorder, and hemorrhage, and patients diagnosed with PPROM. Before S.B. 8, Dr. Karsan would have offered abortion care to these patients. Now, Dr. Karsan instead has had to give them information about where to seek abortion care out of state.

36. Dr. Karsan has met Ms. Cox, reviewed her medical records, and discussed Ms. Cox's case with her hospital administration. If the Plaintiffs receive a temporary restraining order from this Court saying that Ms. Cox's abortion is authorized by Texas law, Dr. Karsan may be able to provide her with a D&E abortion.

37. Dr. Karsan sues on her own behalf, on behalf of herself, her staff, nurses, pharmacists, agents, and patients.

II. DEFENDANTS

38. Defendant the State of Texas is responsible for the enforcement of Texas laws, including its abortion bans. The State of Texas includes private citizens that could potentially enforce S.B. 8.

39. Defendant Ken Paxton is the Attorney General of Texas. As Attorney General, he is empowered to institute an action for a civil penalty against physicians licensed in Texas who violate or threaten to violate any provision of the Texas Medical Practice Act, including provisions triggered by a violation of the Trigger Ban. Tex. Occ. Code § 165.101; *id.* § 164.053. The Attorney General is additionally empowered to file a civil action against any person who violates the Trigger Ban, seeking a civil penalty of at least $100,000, plus attorney's fees and costs. Tex. Health & Safety Code § 170A.005. Defendant Paxton has threatened that he will "strictly enforce" the Trigger Ban.[4] Defendant Paxton is sued in his official capacity and may be served with process at 300 West 15th Street, Austin, Texas 78701.

40. Defendant Texas Medical Board ("TMB") is the state agency mandated to regulate the practice of medicine by licensed doctors in Texas. TMB must initiate disciplinary action

[4] Ken Paxton, Tex. Att'y Gen., *Advisory on Texas Law Upon Reversal of* Roe v. Wade (June 24, 2022), https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/Post-Roe%20Advisory.pdf.

against licensees who violate any provision of the Texas Medical Practice Act or Chapter 171 of the Texas Health and Safety Code. Tex. Occ. Code § 165.001; *id.* § 164.055. TMB may impose discipline on a doctor who violates any state law "connected with the physician's practice of medicine" because such violation constitutes per se "unprofessional or dishonorable conduct." Tex. Occ. Code § 164.053(a)(1); *id*. § 164.052(a)(5); *see also id.* § 164.053(b) (making clear that "[p]roof of the commission of the act while in the practice of medicine . . . is sufficient" for discipline). TMB "shall" also "revoke the license, permit, registration, certificate, or other authority" of a physician who violates the Trigger Ban. Tex. Health & Safety Code § 170A.007. TMB may be served with process at 1801 Congress Avenue, Suite 9.200, Austin, Texas 78701.

41. Defendant Stephen Brint Carlton is the Executive Director of TMB and in that capacity serves as the chief executive and administrative officer of TMB. Tex. Occ. Code § 152.051. Mr. Carlton is sued in his official capacity and may be served with process at 1801 Congress Avenue, Suite 9.200, Austin, Texas 78701.

JURISDICTION AND VENUE

42. Plaintiffs have standing to bring this action. The state defendants acknowledged as much before the Texas Supreme Court in the *Zurawski* case. There, the state defendants told the Supreme Court that, "for example," a patient-plaintiff who is currently pregnant and receives a fatal fetal diagnosis, "bringing a lawsuit in that specific circumstance [of a fetal diagnosis] to challenge whether or not the statute encompasses that [diagnosis and accompanying health conditions]" against "either the attorney general or the executive director of TMB" would suffice for standing purposes.[5] The state defendants made similar statements regarding a physician-

[5] Oral Arg., *State of Texas v. Zurawsk*i, at 12:24–13:28 (Tex. Nov. 28, 2023), https://www.youtube.com/watch?v=Ult-iWTMNl4.

plaintiff who needs to bring suit for clarity on a specific patient's case.[6]

43. This action is brought pursuant to Texas Rules of Civil Procedure 680 to 693, Texas Civil Practice and Remedies Code Chapter 65, and the common law of Texas to obtain declaratory and injunctive relief against Defendants.

44. This Court has jurisdiction over this matter, pursuant to the Texas Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code § 37.001, *et seq.* ("UDJA"), Sections 24.007 and 24.008 of the Texas Government Code, and Texas Constitution, Article V, § 8.

45. Further, this Court has jurisdiction over Plaintiffs' request for declaratory and injunctive relief against Defendants because the UDJA waives sovereign and governmental immunity for challenges to the validity of statutes.

46. The Court also has jurisdiction over the Defendants sued in their official capacity because the *Ultra Vires* Doctrine permits claims brought against state officials for nondiscretionary acts unauthorized by law. *See* Tex. Civ. Prac. & Rem. Code §§ 37.003, 37.004, 37.006; *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 634-635 (Tex. 2010); *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621-22 (Tex. 2011).

47. The state defendants acknowledged before the Texas Supreme Court in the *Zurawski* case that a court "could get to the merits" in a lawsuit identical to this one. There, the state defendants told the Texas Supreme Court that a patient-plaintiff in circumstances identical to Ms. Cox's "would sue either the Attorney General or the Executive Director of TMB, perhaps under an *ultra vires* theory."[7] "That might be a way you could get to the merits there."[8] Likewise,

[6] *See, e.g.*, *id.* at 11:23–12:20.

[7] *Id.* at 13:07–35.

[8] *Id.*

when pressed, the state defendants acknowledged that "I think if a doctor had a specific circumstance in front of them, they could perhaps bring that lawsuit."[9] That would be a lawsuit "under the UDJA" that names "either the TMB or the Attorney General."[10]

48. Finally, Texas's abortion bans are enforced through civil means, including steep civil penalties and disciplinary sanctions. *See, e.g.*, Tex. Occ. Code §§ 165.001, 164.052(a)(5), 164.053(a), 164.055; Tex. Health & Safety Code §§ 170A.005, 170A.007. This Court has jurisdiction to render a declaratory judgment regarding a civil enforcement scheme.

49. Although there are also potential criminal penalties for providing a prohibited abortion in Texas, this Court has jurisdiction to enter declaratory and injunctive relief because of the bans' civil penalties. Additionally, the Court has jurisdiction to enter declaratory and injunctive relief because criminal enforcement threatens irreparable injury to physicians' vested property interests in their medical licenses and liberty interests in pursuit of their chosen profession. *See Tex. Propane Gas Ass'n v. City of Houston*, 622 S.W.3d 791, 798–99 (Tex. 2021) (holding that district court had jurisdiction to render declaratory judgment regarding municipal criminal ordinances because the ordinances threatened irreparable injury to the plaintiff's property rights); *TitleMax of Tex., Inc. v. City of Austin*, 639 S.W.3d 240, 248 (Tex. Ct. App. 2021) (same). This Court also has jurisdiction because application of the abortion bans is causing pregnant people to face death, sustain physical injury, and endure extreme mental anguish, which is unconstitutional and threatens irreparable injury to Physician Plaintiffs' and their patients' rights. *State v. Morales*, 869 S.W.2d 941, 942 (Tex. 1994).

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[9] *Id.* at 13:36–14:04.

[10] *Id.* at 11:30–50.

50. Venue is proper in Travis County because Defendants State of Texas, Paxton, TMB, and Carlton reside or have their principal office in Travis County. Tex. Civ. Prac. & Rem. Code § 15.002(a).

51. Plaintiffs' request for prospective relief is specifically authorized as a request for a declaratory judgment under the UDJA. An action for a declaratory judgment is neither legal nor equitable but is sui generis—that is, of its own kind. *Tex. Liquor Control Bd. v. Canyon Creek Land Corp.*, 456 S.W.2d 891, 895 (Tex. 1970). Without such declaratory judgment, Plaintiffs have no meaningful remedy for their state law claims in accordance with Texas Constitution Article I, § 13.

FACTUAL ALLEGATIONS

I. BACKGROUND

A. Abortion is Health Care

52. Every major mainstream medical organization, including the American Medical Association ("AMA"), the American College of Obstetricians and Gynecologists ("ACOG"), the American College of Emergency Physicians ("ACEP"), and the Society for Maternal-Fetal Medicine ("SMFM"), recognizes that abortion is necessary health care. These organizations are all opposed to governmental interference into patient-physician relationships. Such interference is contrary to the appropriate exercise of professional judgment that medical professionals need to exercise to protect patients' well-being. As Ms. Cox's experience demonstrates, abortion bans are a paradigmatic example of such governmental interference.

53. The vast majority of abortions in the United States at 20 weeks of pregnancy or later are accomplished through an outpatient procedure. Procedural abortions are possible throughout pregnancy and involve a two-step process where the medical provider first partially dilates the patient's cervix (using medications and/or mechanical or osmotic dilators), then

evacuates the uterus using suction aspiration, instruments, or some combination. Dilation is done either the same day or the day before, and the evacuation phase of a procedural abortion typically takes around 5 minutes in the first trimester of pregnancy and 10-20 minutes in the second trimester, depending on the patient's response to the procedure and the complexity of the case.[11] Starting at approximately 15 weeks, a procedural abortion is typically referred to as a dilation and evacuation or D&E abortion.

54. The only other medically proven abortion method is induction abortion, where a physician uses medication to induce labor and delivery of a non-viable fetus. Induction of labor accounts for only about 2% of second-trimester abortions nationally. Induction abortions must be performed in a hospital or similar facility that has the capacity to monitor a patient overnight and provide pain management (e.g., epidural). Induction abortions can last anywhere from five hours to three days; are extremely expensive; entail more pain, discomfort, and recovery time for the patient—similar to giving birth—than procedural abortion; and are medically contraindicated for some patients.[12]

55. All pregnancy care, including abortion, is time sensitive. Medically unnecessary delays in access to abortion care always harm pregnant people. Yet pregnancy can lead to any number of urgent or emergent conditions, if not outright medical emergencies, where especially prompt termination of pregnancy is necessary to preserve the life, health, and/or future fertility of the pregnant person. The American Board of Emergency Medicine ("ABEM") defines "emergent" conditions as cases where the "[p]atient presents with symptoms of an illness or injury that may

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[11] *See The Safety and Quality of Abortion Care in the United States*, Nat'l Acads. of Sci., Eng'g, & Med. (2018) at 51-65.

[12] *See id.* at 5-8, 66-68.

progress in severity or result in complications with a high probability for morbidity if treatment is not begun quickly."[13]

B. Texas's Abortion Bans

56. Texas has several abortion bans, each of which contains a medical exception to preserve patients' lives and health (collectively, the "Emergent Medical Condition Exception").

1. Texas's Definition of Abortion

57. Texas law does not define "abortion" using the medical definition. Rather, Texas law states: "'Abortion' means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to: (A) save the life or preserve the health of an unborn child; (B) remove a dead, unborn child whose death was caused by spontaneous abortion; or (C) remove an ectopic pregnancy." Tex. Health & Safety Code § 245.002(1).

58. Texas law defines "ectopic pregnancy" as "the implantation of a fertilized egg or embryo outside of the uterus." Tex. Health & Safety Code § 245.002(4-a).

59. While there is no express definition, it is generally understood that in the context of Texas's definition of abortion, "dead" means that there is no cardiac activity present in the embryo or fetus. *See, e.g.*, Tex. Health & Safety Code §§ 171.201-203 (emphasizing importance of a "fetal heartbeat" or "cardiac activity" to "unborn life").

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[13] Michael S. Beeson et al., *The 2019 Model of the Clinical Practice of Emergency Medicine*, 59 J. of Emergency Med. 96 (2020), https://www.jem-journal.com/article/S0736-4679(20)30154-2/fulltext.

60. Abortions done to "save the life or preserve the health of *an* unborn child" are not considered abortions under Texas law. Tex. Health & Safety Code § 245.002(1)(A) (emphasis added); *see also* Tex. Health & Safety Code § 170A.002(b) (applying exception to abortion ban where "the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create . . . a serious risk of substantial impairment of a major bodily function of the pregnant female.").

61. Texas's abortion bans cite back to Texas's definition of abortion, meaning that neither medical care involving removal of an ectopic pregnancy, nor removal of pregnancy tissue where no cardiac activity is present, is an abortion under Texas law.

2. Trigger Ban

62. Texas's criminal ban on abortion is often referred to as the Trigger Ban because, while signed into law in 2021, it specified a contingent effective date and did not take effect until August 25, 2022, 30 days after the Supreme Court issued its judgment overturning *Roe v. Wade*.[14]

63. The Trigger Ban states that "[a] person may not knowingly perform, induce, or attempt an abortion," citing to Texas's longstanding definition of abortion. Tex. Health & Safety Code §§ 170A.001(a), 170A.002(a).

64. There are both criminal and civil penalties for violations of the Trigger Ban.

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[14] Defendant Paxton published an "Advisory on Texas Law" after the U.S. Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Org.*, Case No. 19-1392, on June 24, 2022, that correctly noted the effective date of the Trigger Ban as 30 days after issuance of the "judgment" in *Dobbs*. Ken Paxton, Tex. Att'y Gen., *Advisory on Texas Law Upon Reversal of* Roe v. Wade (June 24, 2022), https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/Post-Roe%20Advisory.pdf. Defendant Paxton later published an "Updated Advisory on Texas Law" upon issuance of the *Dobbs* judgment that confirmed that the Trigger Ban would take effect August 25, 2022. Ken Paxton, Tex. Att'y Gen., *Updated Advisory on Texas Law Upon Reversal of* Roe v. Wade (July 27, 2022), https://texasattorneygeneral.gov/sites/default/files/images/executive-management/Updated%20Post-Roe%20Advisory%20Upon%20Issuance%20of%20Dobbs%20Judgment%20(07.27.2022).pdf.

65. A person can be charged with either a first- or second-degree felony for violating the Trigger Ban. Tex. Health & Safety Code § 170A.004. First-degree felonies are subject to imprisonment for life, or a term of between 5 and 99 years. Tex. Penal Code § 12.32. Second-degree felonies are punishable by imprisonment for a term of between 2 and 20 years. Tex. Penal Code § 12.33.

66. Further, the Trigger Ban states that the relevant licensing authority, the Texas Medical Board, "shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation" of the Trigger Ban. Tex. Health & Safety Code § 170A.007.

67. Finally, any person who violates the Trigger Ban "is subject to a civil penalty of not less than $100,000 for each violation," and "[t]he attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action." Tex. Health & Safety Code § 170A.005.

68. The only exception to the Trigger Ban is an abortion performed by a physician on a patient with an emergent medical condition (*see infra* ¶ 82).

3. Senate Bill 8

69. Senate Bill 8 of 2021 prohibits physicians from providing an abortion in Texas if the embryo or fetus has detectible cardiac activity. Tex. Health & Safety Code §§ 171.201-204. S.B. 8 took effect in September of 2021 and creates additional civil penalties for physicians who perform abortions prohibited by S.B. 8.

70. Violations of S.B. 8 are subject to a bounty-hunting civil enforcement scheme allowing any individual to seek "statutory damages in an amount of not less than $10,000 for each

abortion that the defendant performed" and "injunctive relief sufficient to prevent the defendant from violating" S.B. 8 in the future. Tex. Health & Safety Code §§ 171.207-211.

71. Like the Trigger Ban, the only exception to S.B. 8's ban on abortion in pregnancies with detectible cardiac activity is an abortion performed by a physician on a patient with an emergent medical condition (discussed in detail below).

72. S.B. 8 also created new state documentation and reporting requirements that apply to all abortions performed under the Emergent Medical Condition Exception. As of September 1, 2021, all abortions performed under the Emergent Medical Condition Exception must be documented in detail by the treating physician. Specifically, the physician must "execute a written document": (1) that "certifies the abortion is necessary due to a medical emergency;" (2) that "specifies the medical condition the abortion is asserted to address;" (3) that "provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition;" (4) "place the document . . . in the pregnant woman's medical record" (5) and "maintain a copy of the document . . . in the physician's practice records." Tex. Health & Safety Code §§ 171.008, 171.205.

73. S.B. 8 also requires physicians who perform abortions at abortion facilities to report all abortions performed under the Emergent Medical Condition Exception to the state. Tex. Health & Safety Code § 245.011(c)(10), (11) (requiring reporting to include "whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion").

4. Pre-Roe Ban

74. The Texas abortion ban at issue in *Roe v. Wade* (the "pre-*Roe* Ban")[15] also contained an exception for the life of the pregnant person.[16] After the pre-*Roe* Ban was held unconstitutional in 1973, it was removed from the Texas Penal Code and Texas Civil Code. The Texas Legislature then enacted a comprehensive statutory scheme permitting and regulating abortion. In light of those later enactments, the Fifth Circuit held that the pre-*Roe* Ban was impliedly repealed. *McCorvey v. Hill*, 385 F.3d 846 (5th Cir. 2004).[17]

75. On June 24, 2022, for the first time, the text of the pre-*Roe* Ban was placed on the Texas Legislature's website, with the note that the relevant statutes were "held to have been impliedly repealed in *McCorvey v. Hill*, 385 F.3d 846 (5th Cir. 2004)."[18] Despite that holding and subsequent litigation regarding the pre-*Roe* Ban, Defendant Paxton took the position that the pre-*Roe* Ban was immediately enforceable after *Roe v. Wade* was overturned. Courts addressing this issue after *Roe* was overturned, however, largely disagree. *See* Order at 1, *Fund Tex. Choice v. Paxton*, No. 1:22-CV-859-RP (W.D. Tex. Feb. 24, 2023), ECF No. 120 ("[T]he Court finds that the pre-*Roe* laws have been repealed by implication . . . ."); *Texas v. Becerra*, No. 5:22-CV-185-

[15] "If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By 'abortion' is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused." 1925 Tex. Crim. Stat. 1191.

[16] "By medical advice. Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." 1925 Tex. Crim. Stat. 1196.

[17] *See also Whole Woman's Health v. Paxton*, Civil Cause No. 2022-38397, 2022 WL 2314499 (Harris Cnty. Dist. Ct. June 27, 2022), *injunction lifted by In re Paxton*, No. 22-0527, 2022 WL 2425619 (Tex. July 1, 2022), *case dismissed* (Harris Cnty. Dist. Ct. Oct. 5, 2022); *Texas v. Becerra*, No. 5:22-cv-185-H, 2022 WL 3639525 (N.D. Tex. Aug. 23, 2022), *appeal docketed*, No. 22-11037 (5th Cir. Oct. 25, 2022); Order, *Fund Tex. Choice v. Paxton*, No. 1:22-cv-00859 (W.D. Tex. Feb. 24, 2023), ECF No. 120.

[18] Vernon's Tex. Civ. Stats. ch. 6-1/2 (last updated Dec. 14, 2022), https://statutes.capitol.texas.gov/Docs/SDocs/VERNON'SCIVILSTATUTES.pdf.

H, 2022 WL 3639525, at *2 (N.D. Tex. Aug. 23, 2022) (treating the pre-Roe Ban as enforceable but noting that the Trigger Ban "reflects a more recent, more specific regulation of abortion and, normally, a more recent enactment governing the same subject supersedes prior enactments").

5. House Bill 3058 of 2023

76. In 2023, Texas passed House Bill 3058, a bill that creates a limited affirmative defense for "medical treatment" provided to pregnant Texans with preterm premature rupture of membranes ("PPROM"), a condition where a patient's water breaks prematurely before fetal viability. The law does not amend either abortion ban or add new exceptions. Instead, it: amends medical-malpractice tort law to create an affirmative defense for civil lawsuits brought under the Trigger Ban, but not S.B.8, Tex. Civ. Prac. & Rem. Code § 74.552(a); amends the Medical Practice Act to restrict TMB from disciplining a physician who "exercised reasonable medical judgment in providing medical treatment" to a patient with PPROM, Tex. Occ. Code § 164.055(c); and provides a justification defense in criminal prosecutions for physicians who reasonably provide "medical treatment" to a patient with PPROM, Tex. Penal Code § 9.35.

77. As the *Zurawski* district court noted, an affirmative defense is "vastly less protective than an exception" because it shifts the burden to the defendant to prove the defense. Moreover, H.B. 3058 may generate further physician confusion because singling out PPROM, but not other common pregnancy complications, incorrectly suggests that PPROM does not fall within the Trigger Ban's medical exception. In other words, H.B. 3058 does not appear to put physicians in any position different from where they were already.

C. Exception to Texas's Abortion Bans for Emergent Medical Conditions

78. Texas's abortion laws have long recognized that providing abortion care to pregnant people with emergent medical conditions is exempted from the state's various restrictions

on the provision of abortion. Yet inconsistencies in the language of these provisions, the use of non-medical terminology, and sloppy legislative drafting have resulted in understandable confusion throughout the medical profession regarding the scope of the exception.

1. History of the Emergent Medical Condition Exception

79. Texas's Emergent Medical Condition Exception first appeared in the Texas Code in 2011, when Texas updated its informed consent requirements for abortion and created certain exceptions for cases of so-called "medical emergency." It defined "medical emergency" as "a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed." Tex. Health & Safety Code § 171.002(3) (hereinafter the "Definition Provision").

80. Over the last ten years, Texas has added numerous requirements to its abortion code that, utilizing this definition, have exceptions for "medical emergencies."[19] For example, in 2017 Texas passed a ban on "dismemberment abortion"—essentially a ban on dilation and evacuation ("D&E") abortions—that has an exception for "medical emergencies." Tex. Health & Safety Code § 171.152(a).

81. S.B. 8 is another example. The only exception to S.B. 8's abortion ban and its associated civil penalties is for patients where "a physician believes a medical emergency exists." Tex. Health & Safety Code § 171.205.

82. The same language in the Definition Provision appears as the sole exception to the

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[19] *See* Tex. Health & Safety Code § 171.0124 (informed consent); Tex. Fam. Code §§ 33.002, 33.0022 (informed consent for minors); Tex. Ins. Code §§ 1218.001, 1696.001 (insurance coverage); Tex. Gov't Code § 2273.002 (facility licensing); Tex. Health & Safety Code § 171.152(a) (ban on "dismemberment abortions"); Tex. Occ. Code § 164.052 (physician licensing).

Trigger Ban. Specifically, Texas's criminal ban on abortion "does not apply if: (1) the person performing, inducing, or attempting the abortion is a licensed physician; (2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and (3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create: (A) a greater risk of the pregnant female's death; or (B) a serious risk of substantial impairment of a major bodily function of the pregnant female." Tex. Health & Safety Code § 170A.002(b).

83. Texas law has several other abortion restrictions that utilize virtually the same definition of "medical emergency" used in S.B. 8 and the Trigger Ban, and thus do not apply to a patient who falls within the Emergent Medical Condition Exception. These laws include: a ban on abortion procedures performed using D&E, Tex. Health & Safety Code § 171.152; a law requiring certain biased counseling before abortion and a 24-hour mandatory delay, Tex. Health & Safety Code § 171.0124; and a law prohibiting the use of tax revenue for abortions, Tex. Health & Safety Code § 285.202.

2. Physician Discretion Under the Emergent Medical Condition Exception

84. Courts have long recognized that where an abortion ban provides an exception for patients in certain circumstances, a good faith standard, rather than a reasonable person standard, must apply. *See, e.g.*, *Colautti v. Franklin*, 439 U.S. 379, 395-96 (1979) ("Because of the absence of a scienter requirement in the provision directing the physician to determine whether the fetus is

or may be viable, the statute is little more than 'a trap for those who act in good faith'" (quoting *United States v. Ragen*, 314 U.S. 513, 524 (1942))); *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 205 (6th Cir. 1997) ("The determination of whether a medical emergency or necessity exists . . . is fraught with uncertainty and susceptible to being subsequently disputed by others. . . . In an area as controversial as abortion, . . . where there is such disagreement, it is unlikely that the prosecution could not find a physician willing to testify that the physician did not act reasonably. Under the Act, a physician who performs a post-viability abortion under either the medical emergency or medical necessity exception may be held liable, even if the physician believed he or she was acting reasonably, and in accordance with his or her best medical judgment, as long as others later decide that the physician's actions were nonetheless unreasonable.").

85. The Emergent Medical Condition Exception's language, which appears five times in the Texas abortion code, contains conflicting language across the different sections regarding physician discretion and intent. This leaves physicians uncertain whether the treatment decisions they make in good faith, based on their medical judgment, will be respected or will be later disputed.

86. For example, the Trigger Ban defines "reasonable medical judgment" as "a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved." Tex. Health & Safety Code § 170A.001(4).

87. Yet the Trigger Ban also prohibits a physician from "knowingly" providing a prohibited abortion. Thus, a physician does not violate the Trigger Ban by providing an abortion in reliance on the exception unless the physician subjectively *knows* that in the exercise of reasonable medical judgment, the patient does *not* have a condition qualifying for the exception. When a physician relies on the exception in good faith, the physician does not know that the

exception does not apply. Stated differently, a physician cannot knowingly violate the ban if she acts in good faith reliance on the exception.

88. Meanwhile, the Definition Provision's language, which applies to S.B. 8, does not explicitly mention intent. Instead, the language "as certified by a physician" modifies the exception language, suggesting that the treating physician's good faith certification, buttressed by the documentation and reporting requirements for medical emergencies added to the code by S.B. 8, governs the assessment of a patient's circumstances.

89. Physicians confronted with the question of whether or not a patient qualifies for the Emergent Medical Condition Exception must consider not only their ethical responsibilities as physicians and potential medical malpractice liability if they do not follow the standard of care, but the risk of loss of liberty and prison sentence they will face, Tex. Health & Safety Code § 170A.004, Tex. Penal Code §§ 12.32-12.33, and the potential loss of their license to practice medicine and pursue their chosen profession if they are found guilty of violating an abortion ban, Tex. Occ. Code §§ 165.001, 164.052(a)(5), 164.053(a), 164.055; Tex. Health & Safety Code § 170A.007.

90. Understandable confusion regarding physicians' level of discretion under Texas's abortion bans and fear for the legal consequences if they are wrong, is leading to physicians denying care to patients—including patients presenting with emergent conditions—even when such care likely would fall within the exception. As Plaintiffs' experiences show, because of the laws' uncertainty, physicians are over-complying with the laws to the detriment of their patients' lives and health.

91. Texas's abortion bans can and should be read to ensure that physicians have wide discretion to determine the appropriate course of treatment, including abortion care, for their

patients who present with emergent medical conditions—without being second guessed by the Attorney General, the Texas Medical Board, a prosecutor, or a jury.

3. Conditions Included in the Emergent Medical Condition Exception

92. In addition to the conflicting language regarding physician intent, Texas law provides scant guidance for what the rest of the language in the Emergent Medical Condition Exception means. Nowhere in the code does Texas law define any of the following distinctions: "risk" versus "serious risk"; "insubstantial impairment" versus "substantial impairment"; or "minor bodily function" versus "major bodily function." Nor does Texas law define what it means to have "a serious risk of a substantial impairment" or "a substantial impairment of a major bodily function."

93. None of this terminology has standardized meaning in the medical profession, leaving physicians to guess at how to translate it into clinical practice. The lack of clarity is preventing medical professionals from providing the care that their patients need.

94. The best reading of Texas law's plain text in the context of supporting patient and physician autonomy requires, at a minimum, that: (1) measurement of risk is left to physician judgment; (2) impairment of a "major bodily function" includes harm to reproductive functions and fertility (3) acute risk need not be already present or imminent; and (4) the patient's condition need not be presently "life-threatening."

95. A condition placing the pregnant person at "risk" or "serious risk" includes any condition that, in the physician's judgment, merits intervention to prevent "death" or "substantial impairment of a major bodily function," given the patient's symptoms, medical history, and the physician's experience and training.

96. While "major bodily function" is not defined in the Texas Health and Safety Code, the Texas Labor Code defines the term to include "reproductive functions." Tex. Labor Code § 21.002(11-a) ("[M]ajor bodily function, includ[es], but [is] not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.").

97. Accordingly, any physical condition that presents a serious risk of substantially impairing the patient's future fertility falls within the exception. This includes any condition that poses a serious risk of substantial impairment or loss of the patient's uterus, ovaries, or other reproductive organs.

98. The exception does not require that any of the risks to the pregnant person be imminent. To the contrary, the exception only requires that a physician certify that the patient is "in danger of death" *or* has a condition that creates "a serious risk of substantial impairment of a major bodily function."

99. Nor does the best reading of the exception require that the pregnant person have a condition that is imminently and/or definitively "life-threatening." While the exception references a "life-threatening physical condition," this phrase must be read together with the full language of the exception, which permits physicians to provide an abortion if the patient's condition would pose a serious risk to her health (specifically, a "serious risk of substantial impairment of a major bodily function") if left untreated.

4. Legislative Intent Regarding the Scope of the Emergent Medical Condition Exception

100. According to the lead and primary sponsors of the Texas Abortion Bans, the legislative intent was that it would be "the determination of the physician and the woman" whether

the woman has "a physical condition" that meets the requirements of the Emergent Medical Condition Exception.[20]

101. Representative Giovanni Capriglione, the primary sponsor of the Trigger Ban in the House, responded to a reporter's questions about exceptions to the ban by saying "if a qualified doctor, a physician *believes* that the pregnant mother's life is at risk, then they would be able to make a medical decision in that particular instance."[21]

102. In 2013, then-Representative Jodie Laubenberg was one of the primary sponsors on a bill banning abortion after 20 weeks of pregnancy that also contained the Emergent Medical Condition Exception. During a debate on the House floor regarding the bill, Representative Laubenberg described the exception as "very broad" *eight times*.[22]

103. Yet the legislators who supported these bills and other politicians in Texas who championed them have largely remained silent since S.B. 8 took effect and *Roe* was overturned.

104. Meanwhile, confusion among the medical profession over the last year and a half regarding the scope and meaning of the exception has been widely reported, showing that Plaintiffs' experiences are the norm, not the exception.

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[20] *Senate Session*, 87th Leg., Reg. Sess. (Tex. Mar. 29, 2021) (floor debate on Senate Bill 9, the companion bill to House Bill 1280, the Trigger Ban), https://tlcsenate.granicus.com/MediaPlayer.php?view_id=49&clip_id=15566 (beginning at 4:47:18); *House Session*, 83d Leg., 2d Called Sess., House Journal Suppl. S4–S6 (Tex. July 9, 2013) (floor debate on House Bill 2), https://journals.house.texas.gov/HJRNL/832/PDF/83C2DAY02SUPPLEMENTFINAL.PDF (House Bill 2 "gives the physician full authority to know what condition his patient is in and to have that authority to make that determination.").

[21] *Texas' 'Trigger Law' on Abortion Set to Go into Effect in 30 Days*, KLTV (June 24, 2022), https://www.kltv.com/2022/06/24/texas-trigger-law-abortion-set-go-into-effect-30-days/ (emphasis added).

[22] *See id.* ("This bill does give the physician the full autonomy and full authority to take care of his patient."), *id.* (The exception language "places the physician at the center of this [determination]," so that "[i]t will be his judgment" whether the patient has met the threshold for an abortion under the exception.), *id.* (The bill "gives the physician full control" over determining whether the "threshold" for the emergent medical condition exception is met.), *id.* ("By this language, we're allowing whatever the physician determines to be the condition that would impair the physical life of the woman" to control.), *id.* ("[T]his language actually gives broad coverage by allowing the physician, the physician, to have that authority."), *id.* ("Actually, it's not [tying the physician's hands]" because "[i]t's very broad to give that physician the authority."), *id.* ("It's whatever the doctor believes is in the best interest for the health of the pregnant mom."), *id.* ("I would not want to limit the physician's authority.").

105. Shortly after *Roe v. Wade* was overturned, the Texas Medical Association ("TMA") asked state regulators to provide guidance to the state's physicians on the scope of the exception. Public reporting indicates that in July 2022, TMA sent a letter to the Texas Medical Board ("TMB") saying it had received complaints that hospitals, administrators, and their attorneys are prohibiting doctors from providing abortion services to patients with major pregnancy complications for fear of violating Texas's abortion bans. The letter, which is not public, is said to have asked the TMB to "swiftly act to prevent any wrongful intrusion into the practice of medicine."[23]

106. Upon information and belief, to date, the TMB has not responded to TMA.

107. Similarly, Texas Senator Bryan Hughes, the author of S.B. 8, sent a letter to the TMB on August 4, 2022, regarding reported complaints that hospitals "may be wrongfully prohibiting or seriously delaying physicians from providing medically appropriate and possibly life saving services to patients who have various pregnancy complications. These complaints arise from confusion or disregard of the law in Texas since [*Roe* was overturned] and must be corrected." Letter from Bryan Hughes to Executive Director Brint Carlton (Aug. 4, 2022) (attached hereto as Exhibit A).[24] Senator Hughes's Letter concludes by saying, "Texas law makes it clear that a mother's life and major bodily function should be protected." Ex. A at 2.

108. Upon information and belief, to date, the TMB has not responded to Senator Hughes's letter.

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[23] Allie Morris, *Texas Hospitals Fearing Abortion Law Delay Pregnant Women's Care, Medical Association Says*, Dallas Morning News (July 14, 2022), https://www.dallasnews.com/news/politics/2022/07/14/texas-hospitals-fearing-abortion-law-delay-pregnant-womens-care-medical-association-says/.

[24] The letter was made public in a news report regarding Texas's interpretation of EMTALA after *Roe* was overturned. Dan Vergano, *The Federal Law Against Patient Dumping—EMTALA—Is the Latest Front in the Abortion Battle*, Grid (Aug. 29, 2022), https://www.grid.news/story/science/2022/08/29/the-federal-law-against-patient-dumping-emtala-is-the-latest-front-in-the-abortion-battle.

109. When Governor Greg Abbott was asked about the Emergent Medical Condition Exception during his re-election campaign for governor, he said the following: "[S]omething that really does need to be done and that is clarify what it means to protect the life of the mother. . . . But that said, I've even seen some other situations that some women are going through where they're not getting the health care they need to protect their life. . . . [T]he point is this, our goal is to make sure we protect the lives of both the mother and the baby. And there's been too many allegations that have been made about ways in which the lives of the mother are not being protected. And so that must be clarified."[25]

110. When Jonathan Mitchell, a former Texas Solicitor General who helped draft S.B. 8, was asked if he was concerned about the patient stories told in this case, he said the following: "It concerns me, yeah, because the statute was never intended to restrict access to medically necessary abortions, and the statute specifically says that it's not restricting access to medically necessary abortions. So that shouldn't be happening. The statute was written to draw a clear distinction between abortions that are medically necessary and abortions that are purely elective. Only the purely elective abortions are unlawful under SB 8."[26] Mitchell was sitting next to Senator Hughes in Senator Hughes's office when he made this statement.

111. Defendant Paxton sued Secretary of Health and Human Services Xavier Becerra over legal guidance that the Biden administration's HHS issued after *Roe v. Wade* was overturned. That guidance reiterated that the federal EMTALA law obligates hospitals and physicians to provide abortion care to a patient who presents to the hospital's emergency department if a physician or other qualified medical provider determines that the patient has an emergency medical

[25] Michael McCardel, *Race for Texas Governor: Full interview with Governor Greg Abbott*, WFAA (Oct. 16, 2022) at 1:42-2:26, https://www.wfaa.com/article/news/politics/inside-politics/texas-politics/inside-texas-politics-governor-greg-abbott-full-interview/287-e3aa0d2f-d204-46a9-8d4e-7dc442e5e6fa.

condition and that an abortion is needed to prevent serious jeopardy to the patient's health. The guidance states that physicians and hospitals have a legal obligation to follow EMTALA even if doing so involves providing treatment—including abortion—that is prohibited in the state where the hospital is located. After receiving a preliminary injunction blocking part of the guidance in Texas, Paxton issued a press release lauding the decision, stating: "We're not going to allow left-wing bureaucrats in Washington to transform our hospitals and emergency rooms into walk-in abortion clinics" and "I will fight back to defend our pro-life laws and Texas mothers and children."[27]

112. As Ms. Cox's experience shows, Texas law is not "pro-life" when it comes to pregnant people's lives, and the State of Texas has failed to give physicians any meaningful guidance on how to interpret its laws consistent with that goal.

D. *Zurawski v. Texas*

113. On March 6, 2023, *Zurawski v. Texas* was originally filed by five women and two obstetrician-gynecologists ("OB/GYNs") against the State of Texas and its officials and agencies that enforce Texas's abortion bans, seeking clarification regarding the medical exceptions to Texas's bans. Since then, the case has grown to 22 plaintiffs.

114. On August 4, 2023, a Travis County District Court entered a temporary injunction providing a statutory interpretation regarding the scope of the abortion statutes and, in the alternative, concluding that as-applied to Texans with life- or health-threatening pregnancy complications, the abortion bans likely violated the Texas Constitution. The same day, the State

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[27] Ken Paxton, Tex. Att'y Gen., *Paxton Secures Victory Against Biden Administration, Blocks HHS from Forcing Healthcare Providers to Perform Abortions in Texas* (Aug. 24, 2022), https://www.texasattorneygeneral.gov/news/releases/paxton-secures-victory-against-biden-administration-blocks-hhs-forcing-healthcare-providers-perform.

defendants filed a notice of appeal, automatically staying both the district court's order and the district court's proceedings pending appeal.

115. Dr. Ingrid Skop, a board-certified OB/GYN licensed to practice medicine in Texas, was Defendants' testifying expert and sole witness in the District Court, and largely agreed with the *Zurawski* Plaintiffs' positions.

116. Dr. Skop testified that Texas law clearly allows an abortion for a maternal life-threatening condition without requiring that the threat to the patient's life be immediate. She testified that Texas law allows doctors to use their judgment in determining whether the medical exception applies.

117. Dr. Skop testified that in her view, Texas's abortion laws do not change anything about how doctors are allowed to treat patients in the hospital. If a doctor would have intervened to terminate a pregnancy before the abortion laws took effect, the current abortion laws allow them to intervene in the same way they always have.

118. Dr. Skop testified that Texas's abortion laws allow doctors to practice according to the standard of care. And when a woman's pregnancy threatens her life, the standard of care is to offer termination of pregnancy, which could be through inducing labor, a Caesarean section, or induced abortion like a D&E.

119. Dr. Skop testified that if the termination of pregnancy is done before fetal viability and is done to protect the pregnant patient's life or to prevent serious irreversible injury to an organ system, then Texas law allows the termination, regardless of the method of termination, including D&E abortion, suction aspiration, or medication abortion.

120. Dr. Skop also testified that if a physician induces labor before fetal viability and does so with the intent to save the pregnant person's life, then it is not an abortion at all under Texas law.

121. Dr. Skop testified that even though she believes the Texas abortion laws are clear and that nothing should change regarding how doctors treat patients in the hospital, she is aware that doctors have, in fact, changed the way that they have practiced. Dr. Skop testified that many doctors are confused about when they can provide abortion. In fact, doctors are not just confused, they are frightened because they do not understand the law. She testified that doctors are afraid of committing a felony or risking losing their certification from the TMB.

122. Dr. Skop testified that at one of the medical systems where she practices, she has seen that doctors have changed how they have provided care to their patients from before and after *Dobbs*. She testified: "The doctors are frightened. They're misinformed. They don't—they have not read the law in many cases. It is the blind leading the blind on the ground." She testified she has seen doctors refusing to intervene even though they know it is not the standard of care, and they justify it by saying, "I'm not going to risk a felony. I'm not going to risk losing my board certification."

123. Texas has failed to provide clarification or guidance on the meaning of the exception, despite being asked repeatedly.

124. Even Dr. Skop placed the blame for the confusion and fear in part on Defendant TMB: "The Texas Medical Board—obviously, if someone were to lose their board certification, it would come through the Texas Medical Board. The Texas Medical Board has provided the doctors with no reassurance that it's not going to take their board certification if it disagrees with their management, and so, unfortunately, the substandard care that's occurring is because the doctors

don't understand the law." Dr. Skop testified about her awareness that doctors are not just confused, they are frightened because they do not understand the law. She testified that doctors are afraid of committing a felony or risking losing their certification from the TMB.

125. Dr. Skop testified that she had reached out to members of the medical executive board at her hospital begging for clarification because she had seen confusion.

126. Dr. Skop has also written that one of the reasons doctors are confused about what they are allowed to do is that "[g]overnment agencies and medical organizations that have historically cleared up confusion when laws were misunderstood have remained eerily silent." In the same writing, Dr. Skop wrote that doctors in Texas are "fearful." Almost a year after S.B. 8 took effect, she wrote that "[c]onfusion abounds in Texas today because 10 months have passed since the Texas Human Life Protection Act was implemented, and the organizations that usually helped to clarify laws for physicians remain uncharacteristically silent."

127. Dr. Skop wrote that Defendant TMB "could educate and reassure physicians by reminding them that they can and should practice according to the standard of care. They have previously offered guidance to help physicians understand confusing laws." She continued: "Yet they have remained silent and not provided needed clarification to help physicians and avoid confusion."

128. On November 28, 2023, the Texas Supreme Court heard argument in the *Zurawski* Defendants' appeal of the district court's entry of a temporary injunction and denial of their plea to the jurisdiction.

II. APPLICATION OF TEXAS'S ABORTION BANS TO MS. COX

A. D&E Abortion is Medically Necessary for Ms. Cox

129. The longer Ms. Cox stays pregnant, the higher the risks to her life and health, including her fertility.

130. While Ms. Cox's life may not be imminently at risk, she is at high risk for many serious medical conditions that pose risks to her future fertility and can become suddenly and unexpectedly life-threatening.

131. Ms. Cox understands that the safest medical option to preserve her life and future fertility is a D&E abortion. If Ms. Cox is unable to receive a D&E abortion, she will receive either 1) a labor induction at term or earlier, if her baby's heartbeat stops, or 2) a C-section at full term. Both are associated with significantly higher mortality and morbidity than abortion and both pose significant risks to her future fertility.

132. Induction of labor after C-section carries the risk of uterine rupture. In patients where risk of uterine rupture is especially high, including where they have had recent and repeat C-sections, major medical associations like ACOG recommend against induction.[28]

133. A C-section is major surgery that becomes risker each time it is repeated. The risks of repeat C-sections include placenta problems such as placenta previa, blood transfusion, uterine rupture, damage to the bladder, infection, and hysterectomy.[29]

B. Mr. Cox Fears Liability Under S.B. 8

134. Mr. Cox is extremely concerned for his wife's life and wants to help her get the healthcare she needs to protect her life and ensure that they can have more children in the future.

135. Without court intervention, Mr. Cox fears liability under S.B. 8 for assisting his wife in obtaining medically necessary abortion care in Texas.

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[28] *See Vaginal Birth After Cesarean Delivery: Frequently Asked Questions*, ACOG, https://www.acog.org/womens-health/faqs/vaginal-birth-after-cesarean-delivery.

[29] *See Cesarean Birth: Frequently Asked Questions*, ACOG, https://www.acog.org/womens-health/faqs/cesarean-birth; Nicole E. Marshall, et al., *Impact of Multiple Cesarean Deliveries on Maternal Morbidity: A Systematic Review*, 2011 Am. J. of Obstetrics & Gynecology, Sept. 205(3): 262.e1-8, https://www.ajog.org/article/S0002-9378(11)00763-0/fulltext.

C. Dr. Karsan Cannot Provide Ms. Cox with an Abortion Under Texas Law without Court Authorization.

136. Dr. Karsan has reviewed Ms. Cox's medical records. The risks of trisomy 18 pregnancy combined with Ms. Cox's medical history and comorbidities indicate that Ms. Cox's life, health, and fertility are at risk if she continues the pregnancy. In Dr. Karsan's medical opinion, a D&E abortion is the best medical option to preserve Ms. Cox's life, health, and fertility.

137. Like its abortion bans, certain of Texas's abortion restrictions do not apply in cases of "medical emergencies." Texas's prohibition on D&E procedures, for example, has an exception for "medical emergencies" that uses the same definition of the term that applies for S.B. 8. *See* Tex. Health & Safety Code § 171.152(a). Various other abortion restrictions do not apply in cases of "medical emergencies," including Texas's biased counseling and 24-hour mandatory delay, Tex. Health & Safety Code § 171.0124, and Texas's law prohibiting the use of tax revenue for abortions, Tex. Health & Safety Code § 285.202.

138. Dr. Karsan has met Ms. Cox, reviewed her medical records, and believes in good faith, exercising her best medical judgment, that a D&E abortion is medically recommended for Ms. Cox.

139. It is also Dr. Karsan's good faith belief and medical recommendation that that the Emergent Medical Condition Exception to Texas's abortion bans and laws permits an abortion in Ms. Cox's circumstances, as Ms. Cox has a life-threatening physical condition aggravated by, caused by, or arising from her current pregnancy that places her at risk of death or poses a serious risk of substantial impairment of her reproductive functions if a D&E abortion is not performed.

140. Dr. Karsan is unsure how close to death her patients need to be before abortion is permitted under Texas law. As has been the case with prior patients over the last two years, Dr.

Karsan is unsure if Ms. Cox's current medical condition counts as close enough to death under Texas law for the Emergent Medical Condition Exception to apply.

141. Without authorization from the Court to provide Ms. Cox a medically indicated abortion, Dr. Karsan cannot risk loss of her medical license, life in prison, and massive civil fines.

142. Dr. Karsan has consulted with the administration of the hospital where she regularly practices and has been told that if she obtains court authorization to protect her and any medical staff who would assist her in performing an abortion from liability under Texas's abortion bans, the hospital will allow her to perform a D&E abortion for Ms. Cox.

III. THE TEXAS CONSTITUTION PROTECTS PREGNANT PEOPLE WITH EMERGENT MEDICIAL CONDITIONS AND THEIR PHYSICIANS FROM STATE DEPRIVATION OF THEIR RIGHTS

A. Pregnant People and their Families Have Fundamental and Equal Rights Under the Texas Constitution

143. The Supreme Court may have stripped pregnant people of their federal constitutional right to abortion, *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), but that does not mean that Plaintiffs are without Constitutional Rights.

144. The Texas Constitution guarantees its citizens certain fundamental rights, specifically: "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19. People do not lose these rights simply because they are pregnant. Moreover, Texas law cannot demand that a pregnant person sacrifice their life, their fertility, or their health for any reason, let alone in service of "unborn life," particularly where a pregnancy will not or is unlikely to result in the birth of a living child with sustained life.

145. The Texas Constitution also prohibits Texas law from excluding pregnant people with certain kinds of emergent conditions—for example, pregnant people whose health risks are not imminently "life-threatening"—from receiving appropriate and/or life-saving medical care.

146. The Texas Constitution also guarantees "equal rights" under the law and prohibits the law from "den[ying] or abridg[ing rights] because of sex." Tex. Const. art. I, §§ 3, 3a. To deny a "woman known to be pregnant" equal access to life-saving and health-preserving medical care, simply because she is pregnant, would violate this foundational premise of equality under Texas law.

147. The Texas Constitution also states that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Tex. Const. art. I, § 13. To deny pregnant people access to abortion when necessary to preserve their lives, health, or fertility, or to deny individuals the ability to aid or abet pregnant people in accessing such abortion care, would violate this provision of the Texas Constitution.

148. The state cannot force its citizens to continue pregnancies that will need to be delivered by C-section when the pregnancy will not produce a child with sustained life. *See In re A.C.*, 573 A.2d 1235, 1261–63 (D.C. 1990) (en banc); *In re Baby Boy Doe*, 632 N.E.2d 326, 402 (Ill. App. Ct. 1994).

149. To the extent Texas's abortion bans bar the provision of abortion to pregnant people to treat medical conditions that pose a risk to the pregnant person's life or a significant risk to their health, and prevent individuals from aiding or abetting pregnant people in accessing such abortion,

the bans violate pregnant people's fundamental rights under §§ 13, 19 and their rights to equality under the law under §§ 3, 3a.

150. Indeed, Texas's abortion bans fail any level of constitutional review when applied to such pregnant people. "If the Texas [pre-*Roe* ban] statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective under the test stated in *Williamson* . . . ." *Roe v. Wade*, 410 U.S. 113, 173 (1973) (Rehnquist, J., dissenting). Because the abortion bans force pregnant people with emergent medical conditions to surrender their lives, health, and/or fertility, they have no rational relationship to protecting life, health, or any other legitimate state interest.

B. Texas-Licensed Physicians Have Liberty and Property Rights to Provide Care to Pregnant People with Emergent Conditions

151. The Texas Constitution guarantees that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19. The threatened enforcement of the abortion bans against physicians who in good faith provide abortions for pregnant people suffering emergent medical conditions infringes this constitutional guarantee.

152. Section 19 guarantees Texas-licensed physicians the right to practice their profession by providing abortion to their pregnant patients to treat emergent medical conditions that the physician determines poses a risk to the patient's life or health.

153. To fulfill this guarantee, physicians must be able to exercise their good faith judgment in the care of their patients with emergent conditions without threat that the state will take their license and/or liberty if a prosecutor or jury second guesses their medical judgment.

154. Texas law authorizes Defendant TMB to institute disciplinary and licensing proceedings against any physician who performs an abortion that the TMB determines did not

meet the Emergent Medical Condition Exception. *See, e.g.*, Tex. Occ. Code §§ 165.001, 164.052(a)(5), 164.053(a), 164.055; Tex. Health & Safety Code § 170A.007. These proceedings may result in a provider losing their license to practice medicine. *See, e.g.*, Tex. Health & Safety Code § 170A.007.

155. Disciplinary actions are reported to the National Practitioner Data Bank[30] and can have collateral consequences on a physician's ability to practice in other U.S. states.[31] Defendant TMB, for example, requires physicians to make timely reports of any disciplinary actions taken by other jurisdictions against the physician, 22 Tex. Admin. Code § 173.3, and has taken disciplinary action against physicians based on conduct occurring in other states.[32] Upon information and belief, disciplinary sanctions may also result in loss of employment.

156. Physicians must make a substantial investment to obtain a medical license in Texas.

157. According to the TMB, to be eligible for a physician's license in Texas, individuals must: graduate from an accredited medical school, having gained admission through a highly competitive application process which often necessitates incurring significant amounts of debt (in 2019, an average of between $94,399 and $142,797 for students at medical schools in Texas);[33] complete at least one continuous year of graduate medical training or a fellowship; pass rigorous

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[30] *See* 42 U.S.C. § 11132 (requiring state medical boards to report all revocations or suspensions of physician licenses); *see also* Nat'l Practitioner Data Bank, *Guidebook*, at Ch. E: Reports, Table E-1 (Oct. 2018), https://www.npdb.hrsa.gov/resources/aboutGuidebooks.jsp (explaining state medical boards and hospitals have mandatory reporting obligations).

[31] *See, e.g.*, Tex. Admin. Code § 173.3(d) (requiring reporting within 30 days of any actions issued by another state); Tex. Med. Bd. Press Release at 4-5, *TMB Disciplines 27 Physicians at June Meeting, Adopts Rule Changes* (June 30, 2022), https://www.tmb.state.tx.us/dl/2B28AF92-02B2-0425-2295-86E2DEAD1C51 (describing "other states' [disciplinary] actions").

[32] Tex. Med. Bd. Press Release at 4-5, *TMB Disciplines 27 Physicians at June Meeting, Adopts Rule Changes* (June 30, 2022), https://www.tmb.state.tx.us/dl/2B28AF92-02B2-0425-2295-86E2DEAD1C51.

[33] *See, e.g.*, *Medical School Debt Keeps Climbing,* Tex. Med. Ass'n (April 2020), https://app.texmed.org/tma.archive.search/files/53049/april_20_tm_educationinfographic.pdf.

state examinations; practice medicine full-time for one year; and, *inter alia*, have no relevant disciplinary or criminal history. 22 Tex. Admin Code § 163.2.

158. If physicians meet these requirements and incur the substantial associated costs, they are eligible for full licensure in Texas for which they must apply. 22 Tex. Admin Code §§ 163.2, 163.4. Once granted, a physician may practice medicine within Texas and has a vested property interest in their license.

159. Revoking or suspending a physician's license based on a flawed interpretation of the Emergent Medical Condition Exception is improper interference with the physician's vested property interest in their license.

160. Further, sending a physician to prison for up to 99 years for providing timely and appropriate medical care to a pregnant person with an emergent medical condition is improper interference with the physician's liberty.

161. Physicians have constitutional rights under § 19 of the Texas Constitution including rights to liberty, property, and substantive due course of law. Even for laws that only touch on economic rights, § 19 requires a rational relationship to the purpose of the law.

162. As applied to pregnant people with emergent medical conditions and the physicians treating them, Texas's abortion bans fail to comply with the Texas Constitution. They do not serve a proper legislative purpose because far from furthering life, they harm pregnant people's lives, and the lives of their children, without furthering potential life at all. Texas law also demands that there be a real and substantial connection between a legislative purpose and the language of the law as it functions in practice. For pregnant people with emergent medical conditions, there is none. Further, for patients with emergent conditions, Texas's abortion bans work an excessive

burden on physicians treating such patients relative to their purported purpose. *See, e.g.*, *Patel v. Tex. Dep't of Licensing & Reg.*, 469 S.W.3d 69, 80-81 (Tex. 2015).

CLAIMS

CLAIM I: DECLARATORY JUDGMENT

163. The allegations in paragraphs 1 through 162 above are incorporated as if fully set forth herein.

164. Plaintiffs hereby petition the Court pursuant to the UDJA.

165. Section 37.002 of the UDJA provides that it is remedial and its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

166. Under Section 37.003 of the UDJA, a court of proper jurisdiction has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect and the declaration has the force and effect of a final judgment or decree.

167. Plaintiffs thus seek a declaratory judgment that the exception to Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202, permits physicians to provide a pregnant person with abortion care when the physician determines, in their good faith judgment and in consultation with the pregnant person, that the pregnant person has a physical emergent medical condition that poses a risk of death or a risk to their health (including their fertility).

168. Plaintiffs also seek a declaratory judgment that, at a minimum, Texas's abortion bans do not preclude a physician from providing abortion care where, in the physician's good faith judgment and in consultation with the pregnant person, a pregnant person has: a physical medical condition or complication of pregnancy that poses a risk of infection, bleeding, or otherwise makes

continuing a pregnancy unsafe for the pregnant person; a physical medical condition that is exacerbated by pregnancy, cannot be effectively treated during pregnancy, or requires recurrent invasive intervention; and/or a fetal condition where the fetus is unlikely to survive the pregnancy and sustain life after birth.

169. Plaintiffs have sued the State and the relevant state agencies, and that they seek to have this Court determine the validity of Texas's abortion bans as applied in circumstances arising from emergent medical conditions. Therefore, the State and its agencies are necessary parties to this suit and governmental immunity does not apply.

CLAIM II: ULTRA VIRES

170. The allegations in paragraphs 1 through 169 above are incorporated as if fully set forth herein.

171. A state office may not act without legal authority. *See, e.g.*, *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

172. Any official's enforcement of Texas's abortion bans against 1) any physician who provides an abortion to a pregnant person after determining that, in the physician's medical judgment, the pregnant person has a physical emergent medical condition for which abortion would prevent or alleviate a risk of death or risk to their health (including their fertility), or 2) any individual aiding or abetting a pregnant person in obtaining such an abortion, would be inconsistent with the Emergent Medical Condition Exception to Texas's abortion bans and therefore would be *ultra vires*.

173. Plaintiffs have sued the Defendant state officials in their official capacities, and they seek prospective relief other than the recovery of monetary damages. Therefore, governmental immunity does not apply.

CLAIM III: SECTION 19 RIGHTS OF PREGNANT PEOPLE

174. The allegations in paragraphs 1 through 173 above are incorporated as if fully set forth herein.

175. Under the Texas Constitution, "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19.

176. To the extent Texas's abortion bans bar the provision of abortion to pregnant people to treat emergent medical conditions that pose a risk to pregnant people's lives or health (including their fertility), the bans violate pregnant people's fundamental rights under Article I, § 19 of the Texas Constitution.

177. To the extent Texas's abortion bans force pregnant people to continue pregnancies that will need to be delivered by C-section when the pregnancy will not produce a child with sustained life, the bans violate pregnant people's fundamental rights under Article I, § 19 of the Texas Constitution.

178. Thus applied, Texas's abortion bans do not serve a compelling or important state interest and are not sufficiently tailored to serve any compelling interest.

179. Thus applied, Texas's abortion bans also lack any rational relationship to protecting life, health, or any other legitimate state interest.

180. Plaintiffs seek a declaratory judgment that Article I, § 19 of the Texas Constitution guarantees a pregnant person the right to an abortion where the pregnant person has an emergent medical condition that poses a risk of death or risk to their health (including their fertility), and an abortion would prevent or alleviate such risk.

181. Any official's enforcement of Texas's abortion bans as applied to a pregnant person with an emergent medical condition for whom an abortion would prevent or alleviate a risk of

death or risk to their health (including their fertility) would be inconsistent with Article I, § 19 of the Texas Constitution and therefore would be *ultra vires*.

CLAIM IV: EQUAL RIGHTS FOR PREGNANT PEOPLE AND SUPPORTERS OF ABORTION

182. The allegations in paragraphs 1 through 181 above are incorporated as if fully set forth herein.

183. Under the Texas Constitution, "[a]ll freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services." Tex. Const. art. I, § 3.

184. Texas does not prevent non-pregnant people or people unable to get pregnant from accessing critical medical treatment nor force them to unnecessarily suffer severe illnesses and injuries and undergo mental anguish.

185. To the extent Texas's abortion bans bar or delay the provision of abortion to a pregnant person with an emergent medical condition that poses a risk of death or risk to their health (including their fertility), while allowing non-pregnant people and people unable to get pregnant to access medical treatment for emergent medical conditions, Texas's abortion bans violate pregnant people's right to equal rights.

186. S.B. 8 also singles out people who "aid or abet" or intent to "aid or abet" pregnant people seeking such abortion, and then treats this category of people differently from all other defendants in civil litigation in Texas.

187. S.B. 8 alters the procedural rules and limits the substantive defenses and arguments available in S.B. 8 enforcement proceedings to skew those proceedings and harm those sued under S.B. 8 in violation of the constitutional guarantee of equal protection. The statute's venue and fee-

shifting provisions, its openness to claimants without any connection to an abortion, and its evisceration of defenses and arguments, all work together to disadvantage supporters of abortion.

188. Thus applied, Texas's abortion bans do not serve a compelling or important state interest and are not sufficiently tailored to serve any compelling interest.

189. Thus applied, Texas's abortion bans also lack any rational relationship to protecting life, health, or any other legitimate state interest.

190. Plaintiffs seek a declaratory judgment that Article I, § 3 of the Texas Constitution guarantees a pregnant person the right to an abortion where the pregnant person has an emergent medical condition that poses a risk of death or risk to their health (including their fertility), and an abortion would prevent or alleviate such risk.

191. Plaintiffs seek a declaratory judgment that, to the extent S.B. 8 prevents an individual from aiding or abetting a pregnant person in obtaining an abortion necessary to preserve their life or health (including their fertility), S.B. 8 violates Article I, § 3 of the Texas Constitution.

192. Any official's enforcement of Texas's abortion bans as applied to 1) a pregnant person with an emergent medical condition for whom an abortion would prevent or alleviate a risk of death or risk to their health (including their fertility), or 2) an individual aiding or abetting a pregnant person in obtaining such an abortion, would be inconsistent with Article I, § 3 of the Texas Constitution and therefore would be *ultra vires*.

CLAIM V: EQUALITY BASED ON SEX FOR PREGNANT PEOPLE

193. The allegations in paragraphs 1 through 192 above are incorporated as if fully set forth herein.

194. Under the Texas Constitution, "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin." Tex. Const. art. I, § 3a.

195. To the extent Texas's abortion bans bar or delay the provision of abortion to a "woman known to be pregnant" to treat an emergent medical condition that poses a risk of death or risk to their health (including their fertility), while allowing other people to access medical treatment for emergent medical conditions, Texas's abortion bans deny pregnant women equality because of sex.

196. To the extent the Texas's abortion bans are based on gender stereotypes that a woman's primary role is to birth children and be a mother, they constitute discrimination because of sex.

197. Thus applied, Texas's abortion bans do not serve a compelling or important state interest and are not sufficiently tailored to serve any compelling interest.

198. Thus applied, Texas's abortion bans also lack any rational relationship to protecting life, health, or any other legitimate state interest.

199. Plaintiffs seek a declaratory judgment that Article I, § 3a of the Texas Constitution guarantees a pregnant person the right to an abortion where the pregnant person has an emergent medical condition that poses a risk of death or risk to their health (including their fertility), and an abortion would prevent or alleviate such risk.

200. Any official's enforcement of Texas's abortion bans as applied to a pregnant person with an emergent medical condition for whom an abortion would prevent or alleviate a risk of death or risk to their health (including their fertility) would be inconsistent with Article I, § 3a of the Texas Constitution and therefore would be *ultra vires*.

CLAIM VI: SECTION 13 RIGHTS FOR PREGNANT PEOPLE AND SUPPORTERS OF ABORTION

201. The allegations in paragraphs 1 through 200 above are incorporated as if fully set forth herein.

202. The Texas Constitution states that "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Tex. Const. art. I, § 13.

203. To the extent that S.B. 8 prevents a pregnant person from obtaining an abortion to preserve their life or health (including their fertility) or prevents an individual from aiding or abetting a pregnant person in obtaining such an abortion, it violates Article I, Section 13.

204. Plaintiffs seek a declaratory judgment that Article I, § 13 of the Texas Constitution guarantees a pregnant person the right to an abortion where the pregnant person has an emergent medical condition that poses a risk of death or risk to their health (including their fertility), and an abortion would prevent or alleviate such risk.

205. Plaintiffs seek a declaratory judgment that, to the extent S.B. 8 prevents an individual from aiding or abetting a pregnant person in obtaining an abortion necessary to preserve their life or health (including their fertility), S.B. 8 violates Article I, § 13 of the Texas Constitution.

206. Any official's enforcement of Texas's abortion bans as applied to 1) a pregnant person with an emergent medical condition for whom an abortion would prevent or alleviate a risk of death or risk to their health (including their fertility), or 2) an individual aiding or abetting a pregnant person in obtaining such an abortion, would be inconsistent with Article I, § 13 of the Texas Constitution and therefore would be *ultra vires*.

CLAIM VII: SECTION 19 RIGHTS OF PHYSICIANS

207. The allegations in paragraphs 1 through 206 above are incorporated as if fully set forth herein.

208. Under the Texas Constitution, "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19.

209. Section 19 guarantees Texas-licensed physicians the right to practice their profession by providing abortion to their pregnant patients to treat emergent medical conditions that the physician determines pose a risk to the pregnant person's life or health (including their fertility).

210. To the extent Texas's abortions bans bar or delay physicians from providing abortion to treat emergent medical conditions that pose a risk to a pregnant person's life or health (including their fertility), Texas's abortion bans violate Texas-licensed physicians' rights under Section 19.

211. Thus applied, Texas's abortion bans do not serve a proper legislative purpose, there is no real and substantial connection between a legislative purpose and the language of the abortion bans as those bans function in practice for patients with emergent medical conditions, and Texas's abortion bans work an excessive burden on Texas-licensed physicians treating such patients relative to their purpose.

212. Thus applied, Texas's abortion bans also lack any rational basis.

213. Plaintiffs seek a declaratory judgment that Article I, § 19 of the Texas Constitution guarantees Texas-licensed physicians the right to provide an abortion to a pregnant person to treat an emergent medical condition that the physician determines poses a risk to the pregnant person's life or health (including their fertility).

214. Any official's enforcement of Texas's abortion bans as applied to a Texas-licensed physician who provides an abortion to a pregnant person to treat an emergent medical condition that the physician determines poses a risk to the pregnant person's life or health (including their fertility) would be inconsistent with Article I, § 19 of the Texas Constitution and therefore would be *ultra vires*.

CLAIM VIII: APPLICATION FOR TEMPORARY RESTRAINING ORDER

215. The allegations in paragraphs 1 through 214 above are incorporated as if fully set forth herein.

216. Pursuant to Texas Civil Practice and Remedies Code Section 65.011 *et seq.*, Plaintiffs are entitled to a temporary restraining order against Defendants, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them, prohibiting enforcement of Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202, against Plaintiffs Ms. and Mr. Cox and Dr. Karsan and her staff, nurses, pharmacists, agents, and patients, for purposes of terminating Ms. Cox's current pregnancy.

217. Defendants' threatened enforcement of Texas's abortion bans is causing imminent, irreparable injury to Plaintiffs.

218. Plaintiffs are likely to prevail on the merits of this case and receive the requested declaratory judgment, as well as equitable relief.

219. Plaintiffs also have no adequate remedy at law for Defendants' threatened actions. Specifically, money damages are insufficient to redress the threatened injury to Plaintiffs.

220. The threatened injury to Plaintiffs far outweighs any possible damages to Defendants. Ms. Cox needs a time-sensitive medically necessary abortion procedure to preserve

her life, health, and fertility, which Dr. Karsan cannot provide without equitable relief from this Court. There is no state interest that can outweigh the harm caused to Ms. Cox, Mr. Cox, and their family by being denied or delayed in accessing abortion.

221. Accordingly, to preserve the status quo, Plaintiffs request that Defendants be cited to appear, and further request that the Court enter a temporary restraining order pursuant to Texas Rule of Civil Procedure 680 *et seq.* and Texas Civil Practice and Remedies Code Section 65.011 *et seq*.

222. Plaintiffs are willing to post a bond for any temporary restraining order if ordered to do so by the Court, but request that the bond be minimal because Defendants are acting in a governmental capacity, have no pecuniary interest in the suit, and no monetary damages can be shown. Tex. R. Civ. P. 684.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To enter a judgment against Defendants granting appropriate declaratory relief to clarify the scope of the exception to Texas's abortion bans and laws consistent with the Texas Constitution;

B. To enter a judgment against the Defendant state officials that enforcing Texas's abortion bans and laws contrary to the Court's declaration regarding their scope would be *ultra vires*;

C. To enter a judgment that Texas's abortion bans and laws, as applied to pregnant people with emergent medical conditions and Texas-licensed physicians treating such patients, violate the Texas Constitution;

D. To issue temporary injunctive relief as soon as possible and permanent injunctive relief that restrains Defendants, their agents, servants, employees, attorneys, and

any persons in active participation or concert with Defendants, from enforcing Texas's abortion bans and laws or instituting disciplinary actions related to alleged violations of the abortion bans in a manner violating the court's judgment;

E. To retain jurisdiction after judgment for the purposes of issuing further appropriate injunctive relief if the Court's declaratory judgment is violated; and

F. To such other and further relief as the Court deems just and proper.

Dated: December 5, 2023

Respectfully submitted,

/s/ Austin Kaplan

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* Pro hac vice application pending
** Pro hac vice applications forthcoming

Exhibit A

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The Texas Senate

Bryan Hughes

Committees on:
State Affairs, Chair
Education
Jurisprudence
Natural Resources &
Economic Development
Nominations
Redistricting

August 4, 2022

Executive Director Brint Carlton, JD
Texas Medical Board
333 Guadalupe Street
Tower 3, Suite 610
Austin, Texas 78701

Re: Concerns over allegations received involving the potential corporate practice of medicine and patients experiencing pregnancy complications

Dear Executive Director Carlton:

It has come to my attention that the Texas Medical Association has received and notified the Texas Medical Board of complaints alleging potential violations of Texas' prohibition on the corporate practice of medicine.[1] Such complaints include the allegations that hospitals, their administrators, or even their lawyers may be wrongfully prohibiting or seriously delaying physicians from providing medically appropriate and possibly life saving services to patients who have various pregnancy complications.[2] These complaints arise from confusion or disregard of the law in Texas since the ruling by the United States Supreme Court on *Dobbs v. Jackson Women's Health Organization* and must be corrected.

One mentioned example involves the interference by at least two hospitals of care for premature ruptures of membranes and forcing these patients to be sent home to miscarry without proper pain management or care being provided at the hospital. Another egregious example involves the allegation that a hospital instructed a physician to turn away a pregnant mother diagnosed with an ectopic pregnancy until it ruptured. These disturbing allegations of the prohibited practice of medicine by laypersons and malpractice by acquiescent physicians must be investigated and if they are occurring, stopped.

Pregnancy complications such as these should be swiftly and reasonably treated to prevent or address a medical emergency determined by the physician.[3] "Medical emergency" is defined under Texas Health and Safety Code 171.002(3) to mean "a life-threatening physical condition aggravated by, caused by, or arising

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[1] See, e.g., 22 TAC §177.17(a) stating, in part, "The corporate practice of medicine doctrine is a legal doctrine, which generally prohibits corporations, entities, or non-physicians from practicing medicine. The prohibition on the corporate practice of medicine is based on numerous provisions of the Medical Practice Act, including §§155.001, 155.003, 157.001, 164.052(a)(8), (13), and 165.156."

[2] Letter sent to the Texas Medical Board on behalf of the Texas Medical Association on July 13, 2022 notifying the Board of these complaints.

[3] Other pregnancy complication that a physician could determine rise to the level of a "medical emergency" are ectopic pregnancies, preterm premature rupture of membranes, pre-eclampsia, hemorrhaging, strain on the mother's heart, or peripartum cardiomyopathy. This is a non-exhaustive list.

from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed." This definition has not changed.

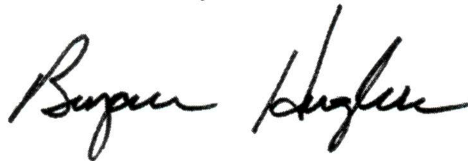
Senate Bill 8, The Heartbeat Act, expressly allows for a physician to perform or induce an abortion "if a physician believes that a medical emergency exists…."[4] House Bill 1280, the Trigger Bill, also provides an express exemption to prosecution where a physician "in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced."[5]

The definition of abortion also provides guidance as to what is not a violation of Texas law: "The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to save the life or preserve the health of an unborn child; remove a dead, unborn child whose death was caused by spontaneous abortion; or remove an ectopic pregnancy."[6]

Texas law makes it clear that a mother's life and major bodily function should be protected. Any deviation, such as these allegations, should be investigated as potential malpractice and a non-physician (including hospitals) instructing a physician to act should be investigated as a prohibition on the corporate practice of medicine.

I respectfully request that the Texas Medical Board issue guidance on this issue and investigate these allegations.

Sincerely,



Bryan Hughes

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[4] Texas Health and Safety Code Sec. 171.205(a), SB 8, 87th Leg.
[5] Texas Health and Safety Code Sec. 170A.002, HB 1280, 87th Leg.
[6] Under Texas Health and Safety Code Sec. 245.002(1): "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;
(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or
(C) remove an ectopic pregnancy.

VERIFICATION

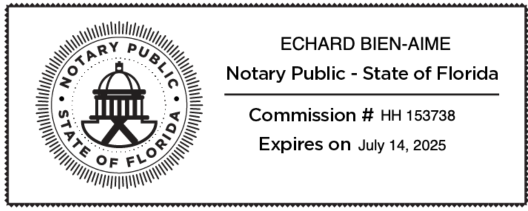
STATE OF ~~TEXAS~~ Florida **§**

COUNTY OF Saint Lucie **§**

Before me, the undersigned notary public, on this day personally appeared Kate Cox, who declares and states that she is authorized to make this affidavit, that she has read the Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

Katelynn Cox
____
Kate Cox

Sworn to and subscribed before me, the undersigned, this 4 day of December 2023.



Echard bien-aime
____
Notary Public, State of ~~Texas~~ Florida
Commission Expires on 07/14/2025

Notarized online using audio-video communication

VERIFICATION

STATE OF ~~TEXAS~~ Florida §

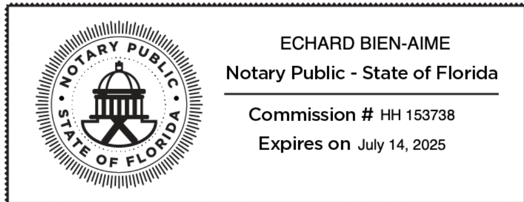
COUNTY OF Saint Lucie §

Before me, the undersigned notary public, on this day personally appeared Justin Cox, who declares and states that he is authorized to make this affidavit, that he has read the Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon his personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of his knowledge, true and correct.

Justin T Cox

Justin Cox

Sworn to and subscribed before me, the undersigned, this 4 day of December 2023.



Echard bien-aime

Notary Public, State of ~~Texas~~ Florida
Commission Expires on 07/14/2025

Notarized online using audio-video communication

VERIFICATION

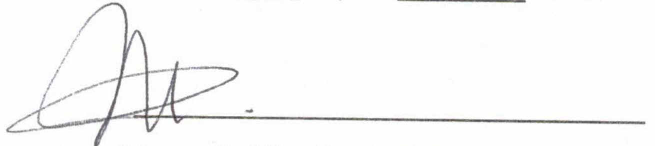
STATE OF TEXAS §

COUNTY OF HARRIS §

Before me, the undersigned notary public, on this day personally appeared Damla Karsan, M.D., who declares and states that she is authorized to make this affidavit, that she has read the Verified Petition for Declaratory Judgment and Application for Temporary Restraining Order and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

Damla Karsan

Sworn to and subscribed before me, the undersigned, this 5th day of December 2023.



Notary Public, State of Texas
Commission Expires on 2/17/2025

CAUSE NO. ____________

KATE COX; JUSTIN COX; and DAMLA KARSAN, M.D., on behalf of herself, her staff, nurses, pharmacists, agents, and patients,	IN THE DISTRICT COURT OF
Plaintiffs,	TRAVIS COUNTY, TEXAS
v.	______ JUDICIAL DISTRICT
STATE OF TEXAS; ATTORNEY GENERAL OF TEXAS, KEN PAXTON, in his official capacity as Attorney General of Texas; TEXAS MEDICAL BOARD; and STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board,	
Defendants.	

[PROPOSED] TEMPORARY RESTRAINING ORDER

On the ___ day of December, 2023, the Court considered Plaintiffs Kate Cox, Justin Cox, and Dr. Damla Karsan's Application for Temporary Restraining Order ("Application") seeking to restrain Defendants State of Texas, Attorney General of Texas, Ken Paxton, Texas Medical Board, and Stephen Brint Carlton ("Defendants"), their agents, servants, employees, attorneys, and all persons in active concert and participation with Defendants from enforcing Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002 (the "Trigger Ban"), Tex. Health & Safety Code §§ 171.002(3), 171.203-205 ("S.B. 8"), and 1925 Tex. Penal Code arts. 1191-96 (the "pre-*Roe* Ban"), and certain Texas abortion laws utilizing the same medical exception, Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202, against Plaintiffs Kate and Justin Cox and Plaintiff Dr. Karsan and her staff, nurses, pharmacists, agents, and patients. After consideration of the Application and pursuant to the Texas Rule of Civil Procedure 680, the Court hereby finds:

FINDINGS

The Court finds that Ms. Cox's life, health, and fertility are currently at serious risk, and she needs a dilation and evacuation ("D&E") abortion immediately to preserve her life, health, and fertility. Ms. Cox's circumstances meet the medical exception to Texas's abortion bans and laws.

Ms. Cox is currently 20 weeks pregnant. Ms. Cox has two young children already, both delivered by cesarean surgery ("C-section"). Her third child has been diagnosed with full trisomy 18. After multiple screenings, ultrasounds, and diagnostic testing, Ms. Cox's physicians have confirmed that her baby may not survive to birth and, if so, will only live for minutes, hours, or days.

The longer Ms. Cox stays pregnant, the greater the risks to her life. Ms. Cox has already been to three emergency rooms with severe cramping, diarrhea, and leaking unidentifiable fluid. If she is forced to continue this pregnancy, Ms. Cox is at a particularly high risk for gestational hypertension, gestational diabetes, fetal macrosomia, post-operative infections, anesthesia complications, uterine rupture, and hysterectomy, due to her two prior C-sections and underlying health conditions. If she is forced to carry this pregnancy to term, she will likely need a third C-section. Undergoing a third C-section would make subsequent pregnancies higher risk and make it less likely that Ms. Cox would be able to carry another child in the future.

Dr. Karsan has met Ms. Cox, reviewed her medical records, and believes in good faith, exercising her best medical judgment, that a D&E abortion is medically recommended for Ms. Cox and that the medical exception to Texas's abortion bans and laws permits an abortion in Ms. Cox's circumstances. Dr. Karsan, however, cannot risk liability under Texas's abortion bans and laws for providing Ms. Cox's abortion absent intervention from the Court confirming that doing so will not jeopardize Dr. Karsan's medical license, finances, and personal liberty.

Mr. Cox is married to Ms. Cox and is the father of her children. He is ready to assist Ms. Cox in obtaining an abortion in Texas but needs assurances from this Court that doing so will not violate Texas's abortion bans and laws.

The Court finds that (1) Dr. Karsan is a Texas-licensed physician, and (2), consistent with Dr. Karsan's good faith belief and medical recommendation, that Ms. Cox has a life-threatening physical condition aggravated by, caused by, or arising from her current pregnancy that places her at risk of death or poses a serious risk of substantial impairment of her reproductive functions if a D&E abortion is not performed. Ms. Cox's circumstances thus fall within the medical exception to Texas's abortion bans and laws. Texas law therefore permits Dr. Karsan to perform, induce, or attempt an abortion for Ms. Cox, and permits Mr. Cox to assist Ms. Cox in obtaining that abortion.

This Court further finds that a D&E abortion is the method of abortion medically necessary to preserve Ms. Cox's life, health, and future fertility, and poses far fewer risks than an induction or a C-section.

The Court further finds that the risks to Ms. Cox's life, health, and fertility do not arise from a claim or diagnosis that Ms. Cox would engage in conduct that might result in her own death or self-harm.

Money damages are insufficient to remedy the injuries to Plaintiffs that will result if Defendants are not enjoined from instituting civil, criminal, or disciplinary investigations or actions under Texas's abortion bans and laws related to the abortion Ms. Cox is currently seeking. Conversely, Defendants will not be harmed if the Court restrains them and anyone in active participation or concert with them from enforcing Texas's abortion bans and laws as applied to the abortion Ms. Cox is currently seeking.

Defendants are responsible for enforcing Texas's abortion bans and laws. Defendant State of Texas enforces all Texas laws and includes persons acting under color of state law who could potentially enforce S.B. 8 and the pre-*Roe* ban. Defendants Attorney General Paxton, the Texas Medical Board, and Stephen Brint Carlton are statutorily empowered to assess civil penalties and disciplinary sanctions against anyone who violates the Trigger Ban and other Texas abortion laws. Defendants have not disavowed enforcement of these laws in circumstances like Ms. Cox's, nor have they provided any clarity as to how physicians like Dr. Karsan or persons like Mr. Cox should interpret the medical exception to Texas's abortion bans and laws that Defendants enforce. Violations of Texas's abortion bans and laws are subject to heavy penalties, including lifetime imprisonment, hundreds of thousands of dollars in fines and penalties, and loss of professional license. The Court finds that Plaintiffs are reasonably chilled from performing or aiding in the performance of an abortion for Ms. Cox without issuance of temporary relief restraining Defendants.

Defendants were provided notice of the cause of action, the Application, and the hearing conducted. Unless Defendants are restrained, Plaintiffs face an imminent threat of irreparable harm under Texas's abortion bans and laws. Judicial intervention is necessary to preserve Plaintiffs' legal right to obtain, provide, aid, or abet the abortion Ms. Cox is currently seeking.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

A. A Temporary Restraining Order is entered enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active participation or concert with them, from enforcing Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202 against Plaintiffs and their staff, nurses, pharmacists, agents, and patients, as applied to Ms. Cox's current pregnancy.

B. Defendants shall provide notice of this Temporary Restraining Order to their officers, agents, servants, employees, and attorneys, and all other persons in active participation or concert with them.

C. The matter is scheduled for a permanent injunction hearing on the ___ day of _____________, 2024, at _______.

D. Plaintiffs' bond is set at __________. A law firm check or credit card is sufficient to post bond. Upon the filing of the bond required herein, the Clerk of this Court shall issue a Temporary Restraining Order in conformity with the law and the terms of this Order Granting Plaintiffs' Application for Temporary Restraining Order.

E. All parties may be served with notice of this Temporary Restraining Order and of the hearing on the request for Permanent Injunction in any matter provided under Rule 21a of the Texas Rules of Civil Procedure.

F. This Temporary Restraining Order shall expire on ______________, 2023, at 5:00 p.m.

SIGNED this _______ day of _____________, 2023, at __________ a.m./p.m.

____

PRESIDING JUDGE