

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

WHOLE WOMAN’S HEALTH; PLANNED)
PARENTHOOD CENTER FOR CHOICE;)
PLANNED PARENTHOOD OF GREATER TEXAS)
SURGICAL HEALTH SERVICES; PLANNED)
PARENTHOOD SOUTH TEXAS SURGICAL)
CENTER; ALAMO CITY SURGERY CENTER)
PLLC d/b/a ALAMO WOMEN’S REPRODUCTIVE)
SERVICES; SOUTHWESTERN WOMEN’S)
SURGERY CENTER; and NOVA HEALTH)
SYSTEMS, INC. d/b/a REPRODUCTIVE)
SERVICES, each on behalf of itself, its staff,)
physicians and patients; and CURTIS BOYD, M.D.;)
JANE DOE, M.D.; BHAVIK KUMAR, M.D.; and)
ALAN BRAID, M.D., each on behalf of himself and)
his patients,)

Plaintiffs,)

v.)

KEN PAXTON, Attorney General of Texas;)
MARGARET MOORE, District Attorney for Travis)
County; NICHOLAS LAHOOD, Criminal District)
Attorney for Bexar County; JAIME ESPARZA,)
District Attorney for El Paso County; FAITH)
JOHNSON, District Attorney for Dallas County;)
SHAREN WILSON, Criminal District Attorney for)
Tarrant County; RICARDO RODRIGUEZ, JR.,)
Criminal District Attorney for Hidalgo County;)
ABELINO REYNA, Criminal District Attorney for)
McLennan County; and KIM OGG, Criminal District)
Attorney for Harris County, each in their official)
capacities, as well as their employees, agents, and)
successors,)

Defendants.)

CIVIL ACTION

CASE NO. 1:17-cv-690

COMPLAINT

Plaintiffs, by and through their undersigned attorneys, bring this Complaint against the above-named Defendants, their employees, agents and successors in office, and in support thereof allege the following:

I. PRELIMINARY STATEMENT

1. Pursuant to 42 U.S.C. § 1983, Plaintiffs, Texas healthcare providers, bring this action on behalf of themselves, their staff, physicians, and patients. They challenge certain provisions of Texas Senate Bill 8, enacted during the 2017 legislative session (“S.B. 8”), that ban the dilation and evacuation abortion procedure (“D & E”), the safest and most common method of abortion after approximately 15 weeks of pregnancy. S. B. 8, creating Tex. Health & Safety Code §§ 171.151-154. A copy of S.B. 8 is attached hereto as Exhibit 1. These provisions are scheduled to take effect on September 1, 2017.

2. The ban on D & E threatens the health of Plaintiffs’ patients and their access to abortion care, subjects Plaintiffs to criminal penalties, and violates Plaintiffs’ patients’ constitutional rights. Specifically, a ban on D & E procedures imposes an undue burden on women seeking second-trimester abortions. In addition, to the extent that any physician can continue to provide D & E procedures, the ban violates Plaintiffs’ patients’ right to bodily integrity because it would require them to accept unnecessary, invasive, and potentially painful medical procedures, in order to access their constitutional right to abortion.

3. To protect Plaintiffs and their patients from these constitutional violations, and to avoid irreparable harm, Plaintiffs seek declaratory and injunctive relief to prevent enforcement of the D & E ban.

II. JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over Plaintiffs' federal claims under 28 U.S.C. §§ 1331 and 1343(a)(3).

5. Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this court.

6. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because Defendants Ken Paxton and Margaret Moore, who are sued in their official capacities, carry out their official duties in this district.

III. PLAINTIFFS

7. Plaintiff Whole Woman's Health operates licensed abortion facilities in Austin, Fort Worth, McAllen, and San Antonio. Whole Woman's Health provides a range of reproductive health services, including medication and surgical abortions. Whole Woman's Health provides abortions in the second trimester of pregnancy, including D & E procedures that would be banned should S.B. 8 take effect. Whole Woman's Health sues on behalf of itself, its staff, physicians, and patients.

8. Plaintiff Planned Parenthood Center for Choice ("PP Houston") operates a licensed ambulatory surgical center in Houston. PP Houston provides a range of reproductive health services, including medication and surgical abortions. PP Houston provides abortions in the second trimester of pregnancy, including D & E procedures that would be banned should S.B. 8 take effect. PP Houston sues on behalf of itself, its staff, physicians, and patients.

9. Plaintiff Planned Parenthood of Greater Texas Surgical Health Services (“PPGT Surgical Health Services”) operates licensed ambulatory surgical centers in Austin, Dallas, and Fort Worth, and a licensed abortion facility in Waco. PPGT Surgical Health Services provides a range of reproductive health services, including medication and surgical abortions. PPGT Surgical Health Services provides abortions in the second trimester of pregnancy, including D & E procedures that would be banned should S.B. 8 take effect. PPGT Surgical Health Services sues on behalf of itself, its staff, physicians, and patients.

10. Plaintiff Planned Parenthood South Texas Surgical Center (“PPST Surgical Center”) operates a licensed ambulatory surgical center in San Antonio. PPST Surgical Center provides a range of reproductive health services, including medication and surgical abortions. PPST Surgical Center provides abortions in the second trimester of pregnancy, including D & E procedures that would be banned should S.B. 8 take effect. PPST Surgical Center sues on behalf of itself, its staff, physicians, and patients.

11. Plaintiff Alamo City Surgery Center PLLC d/b/a Alamo Women’s Reproductive Services (“Alamo Women’s”), is a licensed ambulatory surgical center in San Antonio. Alamo Women’s provides a range of reproductive health services, including medication and surgical abortions. Alamo Women’s provides abortions in the second trimester, including D & E procedures that would be banned should S.B. 8 take effect. Alamo Women’s sues on behalf of itself, its staff, physicians, and patients.

12. Plaintiff Southwestern Women’s Surgery Center (“Southwestern”) operates a licensed ambulatory surgical center in Dallas. Southwestern provides a range of reproductive health services, including medication and surgical abortions. Southwestern provides abortions in

the second trimester, including D & E procedures that would be banned should S.B. 8 take effect. Southwestern sues on behalf of itself, its staff, physicians, and patients.

13. Plaintiff Nova Health Systems, Inc. d/b/a Reproductive Services (“Reproductive Services”), operates a licensed abortion facility in El Paso. Reproductive Services provides a range of reproductive health services, including medication and surgical abortion. Reproductive Services provides abortions in the second trimester, including D & E procedures that would be banned should S.B. take effect. Reproductive Services sues on behalf of itself, its staff, physicians, and patients.

14. Curtis Boyd, M.D., is a family practice physician licensed to practice in the State of Texas. Dr. Boyd has an ownership interest in Southwestern. He provides D & E procedures that would be banned should S.B. 8 take effect. Dr. Boyd sues on his own behalf and on behalf of his patients.

15. Jane Doe, M.D., M.A.S., is a board-certified family medicine physician licensed to practice in the State of Texas. Dr. Doe is the medical director at Southwestern. She provides D & E procedures that would be banned should S.B. 8 take effect. Dr. Doe sues on her own behalf and on behalf of her patients.

16. Bhavik Kumar, M.D., M.P.H., is a board-certified family medicine physician licensed to practice in the State of Texas. Dr. Kumar is the medical director for the Whole Woman’s Health clinics in Texas. He provides D & E procedures that would be banned should S.B. 8 take effect. Dr. Kumar sues on his own behalf and on behalf of his patients.

17. Alan Braid, M.D. is a board-certified obstetrician/gynecologist licensed to practice in the State of Texas. Dr. Braid has an ownership interest in Alamo Women’s. He

provides D & E procedures that would be banned should S.B. 8 take effect. Dr. Braid sues on his own behalf and on behalf of his patients.

IV. DEFENDANTS

18. Defendant Ken Paxton is the Attorney General of Texas. He is empowered to assist county and district attorneys in the prosecution of criminal offenses, Tex. Govt. Code § 574.004, and therefore criminal violations of S.B. 8. He is sued in his official capacity and may be served with process at 300 West 15th Street, Austin, Texas 78701.

19. Defendant Margaret Moore is the District Attorney for Travis County. She is responsible for prosecuting criminal violations of the D & E ban occurring in Travis County. She is sued in her official capacity and may be served with process at 509 West 11th Street, Room 300, Austin, Texas 78701.

20. Defendant Nicholas LaHood is the Criminal District Attorney for Bexar County. He is responsible for prosecuting criminal violations of the D & E ban occurring in Bexar County. He is sued in his official capacity and may be served with process at 101 West Nueva Street, 4th Floor, San Antonio, Texas 78205.

21. Defendant Faith Johnson is the District Attorney for Dallas County. She is responsible for prosecuting criminal violations of the D & E ban occurring in Dallas County. She is sued in her official capacity and may be served with process at 133 North Riverfront Boulevard, LB 19, Dallas, Texas 75207.

22. Defendant Jaime Esparza is the District Attorney for El Paso County. He is responsible for prosecuting criminal violations of the D & E ban occurring in El Paso County. He is sued in his official capacity and may be served with process at El Paso County Courthouse, 500 East San Antonio Avenue, Room 201, El Paso, Texas 79901.

23. Defendant Kim Ogg is the Criminal District Attorney for Harris County. She is responsible for prosecuting criminal violations of the D & E ban occurring in Harris County. She is sued in her official capacity and may be served with process at 1201 Franklin Street, Suite 600, Houston, Texas 77002.

24. Defendant Ricardo Rodriguez, Jr., is the Criminal District Attorney for Hidalgo County. He is responsible for prosecuting criminal violations of the D & E ban occurring in Hidalgo County. He is sued in his official capacity and may be served with process at 100 East Cano, Edinburg, Texas 78539.

25. Defendant Abelino Reyna is the Criminal District Attorney for McLennan County. He is responsible for prosecuting criminal violations of the D & E ban occurring in McLennan County. He is sued in his official capacity and may be served with process at 219 North 6th Street, Suite 200, Waco, Texas 76701.

26. Defendant Sharen Wilson is the Criminal District Attorney for Tarrant County. She is responsible for prosecuting criminal violations of the D & E ban occurring in Tarrant County. She is sued in her official capacity and may be served with process at the Tim Curry Criminal Justice Center, 401 West Belknap Street, Fort Worth, Texas 76196-0201.

V. FACTUAL ALLEGATIONS

Background

27. Legal abortion is extremely safe, and safer for a woman than carrying a pregnancy to term and giving birth.

28. Nonetheless, the earlier in pregnancy a woman is able to access abortion care, the safer it is for her because remaining pregnant itself entails risks and the risks associated with abortion increase as pregnancy advances.

29. In Texas, as in the nation as a whole, the vast majority of women who seek abortion care do so in the first trimester of pregnancy. Likewise, the great majority of second-trimester abortions occur in the early weeks of the second trimester. Still, a significant number of women in Texas seek abortions between 14 and 22 weeks, as measured from the first day of the woman's last menstrual period ("LMP").

30. Women seek abortion during the second trimester for the same reasons they seek earlier procedures, including a variety of personal and medical reasons. Women may also seek abortion during the second trimester because they have been delayed due to late confirmation of pregnancy or difficulty gathering funds to pay for the procedure or organizing the logistics of necessary travel, time off work and child care. In addition, the identification of major anatomic or genetic anomalies in the fetus most commonly occurs in the second trimester, and women may choose to terminate a pregnancy for that reason.

31. Women face many obstacles accessing abortion care in Texas.

32. Many abortion patients are low income, and struggle to make arrangements for, and absorb the cost of, missed work, childcare if they have children, which most do, transportation to and from the clinic, and any needed hotel rooms. These burdens are increased by Texas's mandate that a woman make an additional, unnecessary trip to a physician, to receive state-mandated counseling and an ultrasound in person, and then delay at least 24 hours before making another trip to obtain her abortion.

33. As a result of existing Texas regulations, an abortion of a fetus age 16 weeks gestational age or more may be performed only at an ambulatory surgical center or hospital licensed to perform the abortion. Tex. Health & Safety Code § 171.004. In addition, abortions

are prohibited after 20 weeks post-fertilization, except in narrow circumstances. Tex. Health & Safety Code § 171.044.

34. S.B. 8 is the latest in a long string of attempts by Texas to place burdensome, medically unnecessary restrictions on women's access to abortion. In 2003, Texas instituted a 24-hour mandatory delay between a woman providing informed consent for an abortion and her obtaining the procedure. In 2011, Texas amended its informed consent requirements regarding abortion to include a mandatory ultrasound at least 24 hours before the procedure (or two hours for patients who live at least 100 miles from the nearest licensed abortion facility). In June of 2016, the United States Supreme Court struck down two provisions of another Texas anti-abortion law, because the burdens imposed by the restrictions outweighed any benefits the requirements advanced. *Whole Woman's Health v. Hellerstedt*, ___ U.S. ___, 136 S. Ct. 2292 (2016). Just four days after the Supreme Court issued its decision, the Texas Department of State Health Services published proposed regulations eliminating the typical, medically appropriate methods of disposal for embryonic and fetal tissue, and instead requiring healthcare facilities to dispose of all such tissue from abortion and miscarriage by burial or cremation. This court granted a preliminary injunction blocking the amendments from taking effect, noting that the circumstances suggested that "the actual purpose of the Amendments is to limit abortion access in Texas." *Whole Woman's Health v. Hellerstedt*, No. 1:16-cv-01300-SS, ___ F. Supp. 3d ___, 2017 WL 462400 (W.D. Tex. Jan. 27, 2017), *appeal docketed*, No. 17-50154 (5th Cir. Mar. 1, 2017).

35. The Texas legislature introduced more than fifty restrictive abortion bills during the 2017 regular session. S.B. 8 as originally drafted and debated was an unrelated abortion

restriction. The D & E ban and other restrictions were attached as last minute amendments, without committee hearings and with scant debate.

The Ban on D & E Procedures

36. The challenged provisions of S.B. 8 criminalize the performance of what the statute calls a “dismemberment abortion.” Although this is not a medical term that is used by physicians or that appears in any medical literature, the definition in the statute clearly prohibits a procedure referred to in the medical profession as dilation and evacuation or “D & E.” D & E, which can be performed in an outpatient setting, is the safest and most common method of abortion after approximately 15 weeks of pregnancy.

37. S.B. 8 defines “dismemberment abortion” as follows:

“[D]ismemberment abortion” means an abortion in which a person, with the purpose of causing the death of an unborn child, dismembers the living unborn child and extracts the unborn child one piece at a time from the uterus through the use of clamps, grasping forceps, tongs, scissors, or a similar instrument that, through the convergence of two rigid levers, slices, crushes, or grasps, or performs any combination of those actions on, a piece of the unborn child’s body to cut or rip the piece from the body. The term does not include an abortion that uses suction to dismember the body of an unborn child by sucking pieces of the unborn child into a collection container. The term includes a dismemberment abortion that is used to cause the death of an unborn child and in which suction is subsequently used to extract pieces of the unborn child after the unborn child’s death.

S.B. 8, creating Tex. Health & Safety Code § 171.151.

38. The only exception to S.B. 8’s prohibition on D & E procedures is for instances in which a “medical emergency” exists. Although not further defined within the subchapter creating the D & E ban, “medical emergency” is defined elsewhere in the same chapter of the Texas Health and Safety Code to mean: “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).

39. Violation of the ban is a “state jail felony,” S.B. 8, creating § 171.153, punishable by a minimum of 180 days to a maximum of two years in jail, and a fine of up to \$10,000. Tex. Penal Code § 12.35(a)-(b).

40. S.B. 8 also separately bans a distinct variant of the D & E procedure, known by the medical term dilation and extraction (“D & X”), a procedure previously used by a minority of physicians later in the second trimester. S.B. 8, creating §§ 171.101-106. This prohibition, which purports to ban so-called “partial-birth” abortions, is substantially similar to a federal prohibition that is currently in effect, 18 U.S.C. § 1531, and is not challenged here.

The Impact of the D & E Ban on Women Seeking Second-Trimester Abortions

41. S.B. 8 bans dilation and evacuation abortion, or D & E, the safest and most common abortion method used after approximately 15 weeks of pregnancy. Enforcement of the ban would threaten women’s bodily autonomy, health, and access to abortion in Texas.

42. In the first trimester of pregnancy, abortions are performed using medical or instrumental (also called surgical) means. Medication abortions, which are typically available up to 10.0 weeks LMP, involve the ingestion of two medications to terminate the pregnancy, in a process similar to a miscarriage. Instrumental abortions in the first trimester are performed using a suction device to aspirate (or empty) the uterus.

43. For all instrumental abortions, before the physician can remove the products of conception, it is necessary to dilate the cervix to allow the passage of instruments. Adequate cervical preparation is critical to ensuring the procedure is performed safely and without trauma to the cervix. Dilation can be accomplished by a variety of means, depending on the patient and

the length of the pregnancy. Methods include the use of mechanical dilators, ingestion of medications, and, after the first trimester, can include the insertion of osmotic dilators into the cervix, which absorb moisture and gradually expand.

44. Starting at approximately 14.0 weeks LMP, physicians may use a combination of suction and forceps or other instruments to remove the fetus and other products of conception from the uterus. Because the cervical opening is smaller than the fetus, separation or disarticulation of fetal tissue usually occurs as the physician uses instruments to bring the tissue through the cervix. A procedure in which the physician uses instruments, alone or in conjunction with suction, to empty the uterus in this manner is known as D & E.

45. D & E is safely performed as an outpatient procedure throughout the second trimester of pregnancy. The evacuation phase takes approximately 10 minutes.

46. Other than D & E, the only other medically-proven abortion method available throughout the second trimester 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 5% 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. 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 that of a woman giving birth—than D & E; and are medically contraindicated for some patients.

47. Many Texas hospitals prohibit abortions except in very limited circumstances and therefore the option of second-trimester induction, in addition to the added time, expense, and physical and emotional burdens, is not available to most women in Texas.

48. The D & E ban does not apply in instances in which the physician—through a separate procedure—causes fetal demise prior to starting the evacuation phase of the D & E. This does not, however, materially narrow the scope of the ban or lessen its impact.

49. Before 18 weeks LMP, there is no reliable, safe, studied, or medically appropriate way for Plaintiffs to attempt to cause fetal demise. Attempting to do so would be difficult and would impose risks with no medical benefit to the patient, and is virtually untested, has unknown risks and uncertain efficacy. Requiring demise in every instance would be outside the standard of care and would in some circumstances amount to experimental procedures.

50. Starting at 18 or 20 weeks LMP, some, but not all, physicians in Texas use a hypodermic needle to inject a drug called digoxin transabdominally (through the abdomen into the uterus) or transvaginally (through the vaginal wall or through the cervix) to attempt to cause fetal demise.

51. Because digoxin can take up to 24 hours to cause fetal demise, even if such injections were feasible and medically appropriate prior to 18 weeks LMP—which they are not—its use in the early second trimester would require women to make an additional and unnecessary trip to the clinic because, but for the need for demise, the physician could achieve adequate dilation and complete the procedure in one visit. This extra trip would be a tremendous burden on patients, compounding the burdens patients already face, and introducing untested and unnecessary health risks.

52. The physicians who use digoxin to attempt to induce fetal demise do so for a variety of reasons, including out of fear of prosecution under the federal ban on so-called partial-birth abortions, now also prohibited by S.B. 8, creating Texas Health and Safety Code §§ 171.101-106. While some physicians feel that demise makes the procedure easier because the

fetal tissue may soften as a result of demise, published data show that use of digoxin provides no clear medical benefit to the patient. According to the American Congress of Obstetricians and Gynecologists: “No evidence currently supports the use of induced fetal demise to increase the safety of second-trimester medical or surgical abortion.” Am. Coll. Obstetricians & Gynecologists, *Practice Bulletin Number 135: Second-Trimester Abortion* (June 2013).

53. Risks associated with digoxin injections include infection, delivery of the fetus outside of a healthcare facility, and an increased risk of hospitalization. The procedure, which involves injection using a long needle, can also be painful and cause severe anxiety for many women. In addition, the procedure is more difficult for some women due to anatomical characteristics, such as obesity, fibroids, and cesarean scars from previous deliveries, and more risky for women with certain heart conditions should the digoxin enter the maternal circulation.

54. Digoxin also sometimes fails to cause fetal demise in the expected period of time after the injection. If the D & E ban were to go into effect, a second injection would be necessary in this situation, but this is unstudied and is not accepted medical practice for the vast majority of patients, who are already adequately dilated and otherwise ready to proceed with the procedure. A second injection would add yet another day to the procedure, increase the risk of infection and extramural delivery, particularly for patients already well dilated, as well as increase the burdens on women seeking second-trimester abortions, with no medical justification. Physicians who currently use digoxin rarely, if ever, administer second injections of digoxin.

55. It is not clear whether the medical emergency exception provides physicians with protection from criminal prosecution if faced with the scenario in which digoxin has failed to cause demise within the expected time, but it is in the patient’s best medical interest to complete

the procedure, because it is unlikely that a physician could certify, on pain of criminal penalty, that the condition, although serious, comes within the extremely narrow definition of medical emergency. Tex. Health & Safety Code § 171.002(3).

56. There are no other reliable, safe, and available methods of attempting to cause fetal demise in the outpatient setting. An injection of KCl (potassium chloride) directly into the fetal heart does effectively cause demise, but requires years of specialized training and hospital-grade equipment, and can be fatal to the woman if administered incorrectly.

57. Moreover, current Texas law prohibits the off-label prescription of an “abortion-inducing drug.” Tex. Health & Safety Code § 171.063. This law applies to the provision of abortions using medications, rather than abortions using instruments. However, on its face, the law could also apply to the use of any substance, including digoxin or KCl, to cause fetal demise prior to abortion because neither of these drugs are labeled for that purpose. Out of an abundance of caution, some Texas physicians do not use digoxin to cause fetal demise for fear of prosecution under this provision.

58. Nor is umbilical cord transection, where a clinician attempts to grasp and divide the umbilical cord to cause demise, a realistic means of avoiding criminal prosecution under the D & E ban. Umbilical cord transection can be very difficult, especially at earlier gestational ages, and it may not be possible for every patient. A physician cannot know ahead of time if he or she will be able to safely grasp the cord, but at that point the procedure is underway and it exposes the woman to increased risks, such as risk of infection, not to complete the procedure. Umbilical cord transection also exposes patients to increased risk of uterine perforation, cervical injury, and bleeding; and would prolong the D & E, also increasing risks. Additionally, there is a

risk that a physician attempting to grasp the cord will instead grasp fetal tissue, and therefore violate, rather than circumvent, the D & E ban.

59. The safest and most efficacious way for a physician to perform a D & E procedure or to attempt to induce fetal demise if the physician believes there are reasons to do so, is by using the techniques with which the physician is familiar and comfortable, based on his or her training and experience.

60. Before starting a D & E, it is impossible to know whether an attempt to cause fetal demise will be possible or successful. Thus, the effect of S.B. 8 is that Plaintiffs may be prevented from starting any D & E because they know they may not be able to complete the procedure without violating the D & E ban.

61. S.B. 8 therefore imposes a criminal ban, and significant penalties, on the performance of D & E, the safest and most common method of second-trimester abortion after approximately 15 weeks of pregnancy, leaving physicians with no reasonable alternatives by which to continue providing this abortion care.

62. Enforcement of the D & E ban would irreparably harm women seeking second-trimester abortions by denying them access to the safest and most common method of abortion after approximately 15 weeks of pregnancy. Even if limited access remains available, the ban forces women seeking second-trimester abortions to undergo more complex and risky procedures, including compelling them to undergo painful, untested, and invasive medical procedures, in order to access their constitutional right to abortion.

63. Enforcement of the D & E ban would also subject Plaintiffs' patients to irreparable harm from the violation of their constitutional rights.

CLAIMS FOR RELIEF

COUNT I

(Due Process—Undue Burden on Plaintiffs’ Patients’ Right to Liberty and Privacy)

64. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 63.

65. By banning the safest and most common method of abortion used after approximately 15 weeks of pregnancy, the D & E ban violates Plaintiffs’ patients’ right to liberty and privacy as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it imposes an undue burden on women seeking to terminate a pregnancy before viability.

COUNT II

(Due Process—Plaintiff’s Patients’ Right to Bodily Integrity)

66. Plaintiffs reallege and incorporate by reference the allegations contained in paragraphs 1 through 65.

67. By forcing women to undergo additional, invasive, and potentially painful procedures to obtain a second-trimester abortion or continue a pregnancy, the D & E ban violates Plaintiffs’ patients’ right to bodily integrity as guaranteed by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

INJUNCTIVE RELIEF

68. The D & E ban subjects Plaintiffs’ patients to irreparable harm for which there exists no adequate remedy at law, and threatens Plaintiffs with substantial penalties for providing constitutionally protected abortion care.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

- A. To issue a preliminary injunction and permanent injunction restraining Defendants and their successors in office from enforcing the D & E ban, and specifically those provisions of S.B. 8 creating Texas Health and Safety Code §§ 171.151-154.
- B. To enter a judgment declaring that the D & E ban, and specifically those provisions of S.B. 8 creating Texas Health and Safety Code §§ 171.151-154, violate the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.
- C. To award Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988.
- D. To grant such other and further relief as the Court deems just and proper.

Dated: July 20, 2017

Respectfully submitted,

/s/ Patrick J. O'Connell
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*Application for admission *pro hac vice* filed herewith

Exhibit 1

S.B. No. 8

1 AN ACT

2 relating to certain prohibited abortions and the treatment and
3 disposition of a human fetus, human fetal tissue, and embryonic and
4 fetal tissue remains; creating a civil cause of action; imposing a
5 civil penalty; creating criminal offenses.

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

7 SECTION 1. Section 33.001(1), Family Code, is amended to
8 read as follows:

9 (1) "Abortion" has the meaning assigned by Section
10 245.002, Health and Safety Code [~~means the use of any means to~~
11 ~~terminate the pregnancy of a female known by the attending~~
12 ~~physician to be pregnant, with the intention that the termination~~
13 ~~of the pregnancy by those means will with reasonable likelihood~~
14 ~~cause the death of the fetus~~]. This definition, as applied in this
15 chapter, [~~applies only to an unemancipated minor known by the~~
16 ~~attending physician to be pregnant and~~] may not be construed to
17 limit a minor's access to contraceptives.

18 SECTION 2. Section 161.006(b), Family Code, is amended to
19 read as follows:

20 (b) In this code, "abortion" has the meaning assigned by
21 Section 245.002, Health and Safety Code [~~means an intentional~~
22 ~~expulsion of a human fetus from the body of a woman induced by any~~
23 ~~means for the purpose of causing the death of the fetus~~].

24 SECTION 3. Section 170.001(1), Health and Safety Code, is

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1 amended to read as follows:

2 (1) "Abortion" has the meaning assigned by Section
3 245.002 [~~means an act involving the use of an instrument, medicine,~~
4 ~~drug, or other substance or device developed to terminate the~~
5 ~~pregnancy of a woman if the act is done with an intention other than~~
6 ~~to:~~

7 [~~(A) increase the probability of a live birth of~~
8 ~~the unborn child of the woman,~~

9 [~~(B) preserve the life or health of the child; or~~

10 [~~(C) remove a dead fetus].~~

11 SECTION 4. Section 171.002(1), Health and Safety Code, is
12 amended to read as follows:

13 (1) "Abortion" has the meaning assigned by Section
14 245.002 [~~means the use of any means to terminate the pregnancy of a~~
15 ~~female known by the attending physician to be pregnant with the~~
16 ~~intention that the termination of the pregnancy by those means~~
17 ~~will, with reasonable likelihood, cause the death of the fetus].~~

18 SECTION 5. Section 171.061(1), Health and Safety Code, is
19 amended to read as follows:

20 (1) "Abortion" has the meaning assigned by Section
21 245.002. This definition, as applied in this subchapter, may not be
22 construed to apply to an act done with the intent to [~~means the act~~
23 ~~of using, administering, prescribing, or otherwise providing an~~
24 ~~instrument, a drug, a medicine, or any other substance, device, or~~
25 ~~means with the intent to terminate a clinically diagnosable~~
26 ~~pregnancy of a woman and with knowledge that the termination by~~
27 ~~those means will, with reasonable likelihood, cause the death of~~

S.B. No. 8

1 ~~the woman's unborn child. An act is not an abortion if the act is~~
2 ~~done with the intent to:~~

3 ~~[(A) save the life or preserve the health of an~~
4 ~~unborn child,~~

5 ~~[(B) remove a dead, unborn child whose death was~~
6 ~~caused by spontaneous abortion,~~

7 ~~[(C) remove an ectopic pregnancy; or~~

8 ~~[(D)]~~ treat a maternal disease or illness for
9 which a prescribed drug, medicine, or other substance is indicated.

10 SECTION 6. Chapter 171, Health and Safety Code, is amended
11 by adding Subchapters F and G to read as follows:

12 SUBCHAPTER F. PARTIAL-BIRTH ABORTIONS

13 Sec. 171.101. DEFINITIONS. In this subchapter:

14 (1) "Partial-birth abortion" means an abortion in
15 which the person performing the abortion:

16 (A) for the purpose of performing an overt act
17 that the person knows will kill the partially delivered living
18 fetus, deliberately and intentionally vaginally delivers a living
19 fetus until:

20 (i) for a head-first presentation, the
21 entire fetal head is outside the body of the mother; or

22 (ii) for a breech presentation, any part of
23 the fetal trunk past the navel is outside the body of the mother;
24 and

25 (B) performs the overt act described in Paragraph
26 (A), other than completion of delivery, that kills the partially
27 delivered living fetus.

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

4 Sec. 171.102. PARTIAL-BIRTH ABORTIONS PROHIBITED. (a) A
5 physician or other person may not knowingly perform a partial-birth
6 abortion.

7 (b) Subsection (a) does not apply to a physician who
8 performs a partial-birth abortion that is necessary to save the
9 life of a mother whose life is endangered by a physical disorder,
10 physical illness, or physical injury, including a life-endangering
11 physical condition caused by or arising from the pregnancy.

12 Sec. 171.103. CRIMINAL PENALTY. A person who violates
13 Section 171.102 commits an offense. An offense under this section
14 is a state jail felony.

15 Sec. 171.104. CIVIL LIABILITY. (a) Except as provided by
16 Subsection (b), the father of the fetus or a parent of the mother of
17 the fetus, if the mother is younger than 18 years of age at the time
18 of the partial-birth abortion, may bring a civil action to obtain
19 appropriate relief, including:

20 (1) money damages for physical injury, mental anguish,
21 and emotional distress; and

22 (2) exemplary damages equal to three times the cost of
23 the partial-birth abortion.

24 (b) A person may not bring or maintain an action under this
25 section if:

26 (1) the person consented to the partial-birth
27 abortion; or

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1 (2) the person's criminally injurious conduct resulted
2 in the pregnancy.

3 Sec. 171.105. HEARING. (a) A physician who is the subject
4 of a criminal or civil action for a violation of Section 171.102 may
5 request a hearing before the Texas Medical Board on whether the
6 physician's conduct was necessary to save the life of a mother whose
7 life was endangered by a physical disorder, physical illness, or
8 physical injury, including a life-endangering physical condition
9 caused by or arising from the pregnancy.

10 (b) The board's findings under Subsection (a) are
11 admissible in any court proceeding against the physician arising
12 from that conduct. On the physician's motion, the court shall delay
13 the beginning of a criminal or civil trial for not more than 60 days
14 for the hearing to be held under Subsection (a).

15 Sec. 171.106. APPLICABILITY. A woman on whom a
16 partial-birth abortion is performed or attempted in violation of
17 this subchapter may not be prosecuted under this subchapter or for
18 conspiracy to commit a violation of this subchapter.

19 SUBCHAPTER G. DISMEMBERMENT ABORTIONS

20 Sec. 171.151. DEFINITION. In this subchapter,
21 "dismemberment abortion" means an abortion in which a person, with
22 the purpose of causing the death of an unborn child, dismembers the
23 living unborn child and extracts the unborn child one piece at a
24 time from the uterus through the use of clamps, grasping forceps,
25 tongs, scissors, or a similar instrument that, through the
26 convergence of two rigid levers, slices, crushes, or grasps, or
27 performs any combination of those actions on, a piece of the unborn

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1 child's body to cut or rip the piece from the body. The term does
2 not include an abortion that uses suction to dismember the body of
3 an unborn child by sucking pieces of the unborn child into a
4 collection container. The term includes a dismemberment abortion
5 that is used to cause the death of an unborn child and in which
6 suction is subsequently used to extract pieces of the unborn child
7 after the unborn child's death.

8 Sec. 171.152. DISMEMBERMENT ABORTIONS PROHIBITED. (a) A
9 person may not intentionally perform a dismemberment abortion
10 unless the dismemberment abortion is necessary in a medical
11 emergency.

12 (b) A woman on whom a dismemberment abortion is performed,
13 an employee or agent acting under the direction of a physician who
14 performs a dismemberment abortion, or a person who fills a
15 prescription or provides equipment used in a dismemberment abortion
16 does not violate Subsection (a).

17 Sec. 171.153. CRIMINAL PENALTY. (a) A person who violates
18 Section 171.152 commits an offense.

19 (b) An offense under this section is a state jail felony.

20 Sec. 171.154. CONSTRUCTION OF SUBCHAPTER. (a) This
21 subchapter shall be construed, as a matter of state law, to be
22 enforceable to the maximum possible extent consistent with but not
23 further than federal constitutional requirements, even if that
24 construction is not readily apparent, as such constructions are
25 authorized only to the extent necessary to save the subchapter from
26 judicial invalidation. Judicial reformation of statutory language
27 is explicitly authorized only to the extent necessary to save the

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1 statutory provision from invalidity.

2 (b) If any court determines that a provision of this
3 subchapter is unconstitutionally vague, the court shall interpret
4 the provision, as a matter of state law, to avoid the vagueness
5 problem and shall enforce the provision to the maximum possible
6 extent. If a federal court finds any provision of this subchapter
7 or its application to any person, group of persons, or
8 circumstances to be unconstitutionally vague and declines to impose
9 the saving construction described by this subsection, the Supreme
10 Court of Texas shall provide an authoritative construction of the
11 objectionable statutory provisions that avoids the constitutional
12 problems while enforcing the statute's restrictions to the maximum
13 possible extent and shall agree to answer any question certified
14 from a federal appellate court regarding the statute.

15 (c) A state executive or administrative official may not
16 decline to enforce this subchapter, or adopt a construction of this
17 subchapter in a way that narrows its applicability, based on the
18 official's own beliefs concerning the requirements of the state or
19 federal constitution, unless the official is enjoined by a state or
20 federal court from enforcing this subchapter.

21 (d) This subchapter may not be construed to:

22 (1) authorize the prosecution of or a cause of action
23 to be brought against a woman on whom an abortion is performed or
24 induced in violation of this subchapter; or

25 (2) create or recognize a right to abortion or a right
26 to a particular method of abortion.

27 SECTION 7. Subtitle H, Title 2, Health and Safety Code, is

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1 amended by adding Chapter 173 to read as follows:

2 CHAPTER 173. DONATION OF HUMAN FETAL TISSUE

3 Sec. 173.001. DEFINITIONS. In this chapter:

4 (1) "Authorized facility" means:

5 (A) a hospital licensed under Chapter 241;

6 (B) a hospital maintained or operated by this
7 state or an agency of this state;

8 (C) an ambulatory surgical center licensed under
9 Chapter 243; or

10 (D) a birthing center licensed under Chapter 244.

11 (2) "Human fetal tissue" means any gestational human
12 organ, cell, or tissue from an unborn child. The term does not
13 include:

14 (A) supporting cells or tissue derived from a
15 pregnancy or associated maternal tissue that is not part of the
16 unborn child; or

17 (B) the umbilical cord or placenta, provided that
18 the umbilical cord or placenta is not derived from an elective
19 abortion.

20 Sec. 173.002. APPLICABILITY. This chapter does not apply
21 to:

22 (1) human fetal tissue obtained for diagnostic or
23 pathological testing;

24 (2) human fetal tissue obtained for a criminal
25 investigation;

26 (3) human fetal tissue or human tissue obtained during
27 pregnancy or at delivery of a child, provided the tissue is obtained

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1 by an accredited public or private institution of higher education
2 for use in research approved by an institutional review board or
3 another appropriate board, committee, or body charged with
4 oversight applicable to the research; or

5 (4) cell lines derived from human fetal tissue or
6 human tissue existing on September 1, 2017, that are used by an
7 accredited public or private institution of higher education in
8 research approved by an institutional review board or another
9 appropriate board, committee, or body charged with oversight
10 applicable to the research.

11 Sec. 173.003. ENFORCEMENT. (a) The department shall
12 enforce this chapter.

13 (b) The attorney general, on request of the department or a
14 local law enforcement agency, may assist in the investigation of a
15 violation of this chapter.

16 Sec. 173.004. PROHIBITED DONATION. A person may not donate
17 human fetal tissue except as authorized by this chapter.

18 Sec. 173.005. DONATION BY AUTHORIZED FACILITY. (a) Only
19 an authorized facility may donate human fetal tissue. An
20 authorized facility may donate human fetal tissue only to an
21 accredited public or private institution of higher education for
22 use in research approved by an institutional review board or
23 another appropriate board, committee, or body charged with
24 oversight applicable to the research.

25 (b) An authorized facility may not donate human fetal tissue
26 obtained from an elective abortion.

27 Sec. 173.006. INFORMED CONSENT REQUIRED. An authorized

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1 facility may not donate human fetal tissue under this chapter
2 unless the facility has obtained the written, voluntary, and
3 informed consent of the woman from whose pregnancy the fetal tissue
4 is obtained. The consent must be provided on a standard form
5 prescribed by the department.

6 Sec. 173.007. CRIMINAL PENALTY. (a) A person commits an
7 offense if the person:

8 (1) offers a woman monetary or other consideration to:

9 (A) have an abortion for the purpose of donating
10 human fetal tissue; or

11 (B) consent to the donation of human fetal
12 tissue; or

13 (2) knowingly or intentionally solicits or accepts
14 tissue from a fetus gestated solely for research purposes.

15 (b) An offense under this section is a Class A misdemeanor
16 punishable by a fine of not more than \$10,000.

17 (c) With the consent of the appropriate local county or
18 district attorney, the attorney general has concurrent
19 jurisdiction with that consenting local prosecutor to prosecute an
20 offense under this section.

21 Sec. 173.008. RECORD RETENTION. Unless another law
22 requires a longer period of record retention, an authorized
23 facility may not dispose of any medical record relating to a woman
24 who consents to the donation of human fetal tissue before:

25 (1) the seventh anniversary of the date consent was
26 obtained under Section 173.006; or

27 (2) if the woman was younger than 18 years of age on

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1 the date consent was obtained under Section 173.006, the later of:

2 (A) the woman's 23rd birthday; or

3 (B) the seventh anniversary of the date consent
4 was obtained.

5 Sec. 173.009. ANNUAL REPORT. An authorized facility that
6 donates human fetal tissue under this chapter shall submit an
7 annual report to the department that includes for each donation:

8 (1) the specific type of fetal tissue donated; and

9 (2) the accredited public or private institution of
10 higher education that received the donation.

11 SECTION 8. Section 245.002, Health and Safety Code, is
12 amended by amending Subdivisions (1) and (4-a) and adding
13 Subdivision (4-b) to read as follows:

14 (1) "Abortion" means the act of using or prescribing
15 an instrument, a drug, a medicine, or any other substance, device,
16 or means with the intent to cause the death of an unborn child of a
17 woman known to be pregnant [~~an act or procedure performed after~~
18 ~~pregnancy has been medically verified and with the intent to cause~~
19 ~~the termination of a pregnancy other than for the purpose of either~~
20 ~~the birth of a live fetus or removing a dead fetus]. The term does
21 not include birth control devices or oral contraceptives. An act is
22 not an abortion if the act is done with the intent to:~~

23 (A) save the life or preserve the health of an
24 unborn child;

25 (B) remove a dead, unborn child whose death was
26 caused by spontaneous abortion; or

27 (C) remove an ectopic pregnancy.

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1 (4-a) "Ectopic pregnancy" means the implantation of a
2 fertilized egg or embryo outside of the uterus.

3 (4-b) "Executive commissioner" means the executive
4 commissioner of the Health and Human Services Commission.

5 SECTION 9. Section 245.005(e), Health and Safety Code, is
6 amended to read as follows:

7 (e) As a condition for renewal of a license, the licensee
8 must submit to the department the annual license renewal fee and an
9 annual report [~~, including the report required under Section~~
10 ~~245.011~~].

11 SECTION 10. The heading to Section 245.011, Health and
12 Safety Code, is amended to read as follows:

13 Sec. 245.011. PHYSICIAN REPORTING REQUIREMENTS; CRIMINAL
14 PENALTY.

15 SECTION 11. Section 245.011, Health and Safety Code, is
16 amended by amending Subsections (a), (b), (d), and (e) and adding
17 Subsections (f) and (g) to read as follows:

18 (a) A physician who performs an abortion at an [~~Each~~]
19 abortion facility must complete and submit a monthly [~~an annual~~]
20 report to the department on each abortion [~~that is~~] performed by the
21 physician at the abortion facility. The report must be submitted on
22 a form provided by the department.

23 (b) The report may not identify by any means [~~the physician~~
24 ~~performing the abortion or~~] the patient.

25 (d) Except as provided by Section 245.023, all information
26 and records held by the department under this chapter are
27 confidential and are not open records for the purposes of Chapter

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1 552, Government Code. That information may not be released or made
2 public on subpoena or otherwise, except that release may be made:

3 (1) for statistical purposes, but only if a person,
4 patient, physician performing an abortion, or abortion facility is
5 not identified;

6 (2) with the consent of each person, patient,
7 physician, and abortion facility identified in the information
8 released;

9 (3) to medical personnel, appropriate state agencies,
10 or county and district courts to enforce this chapter; or

11 (4) to appropriate state licensing boards to enforce
12 state licensing laws.

13 (e) A person commits an offense if the person violates
14 Subsection (b), (c), or (d) [this section]. An offense under this
15 subsection is a Class A misdemeanor.

16 (f) Not later than the 15th day of each month, a physician
17 shall submit to the department the report required by this section
18 for each abortion performed by the physician at an abortion
19 facility in the preceding calendar month.

20 (g) The department shall establish and maintain a secure
21 electronic reporting system for the submission of the reports
22 required by this section. The department shall adopt procedures to
23 enforce this section and to ensure that only physicians who perform
24 one or more abortions during the preceding calendar month are
25 required to file the reports under this section for that month.

26 SECTION 12. Chapter 245, Health and Safety Code, is amended
27 by adding Sections 245.0115 and 245.0116 to read as follows:

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1 Sec. 245.0115. NOTIFICATION. Not later than the seventh
2 day after the date the report required by Section 245.011 is due,
3 the commissioner of state health services shall notify the Texas
4 Medical Board of a violation of that section.

5 Sec. 245.0116. DEPARTMENT REPORT. (a) The department
6 shall publish on its Internet website a monthly report containing
7 aggregate data of the information in the reports submitted under
8 Section 245.011.

9 (b) The department's monthly report may not identify by any
10 means an abortion facility, a physician performing the abortion, or
11 a patient.

12 SECTION 13. Subtitle B, Title 8, Health and Safety Code, is
13 amended by adding Chapter 697 to read as follows:

14 CHAPTER 697. DISPOSITION OF EMBRYONIC AND FETAL TISSUE REMAINS

15 Sec. 697.001. PURPOSE. The purpose of this chapter is to
16 express the state's profound respect for the life of the unborn by
17 providing for a dignified disposition of embryonic and fetal tissue
18 remains.

19 Sec. 697.002. DEFINITIONS. In this chapter:

20 (1) "Cremation" means the irreversible process of
21 reducing remains to bone fragments through direct flame, extreme
22 heat, and evaporation.

23 (2) "Department" means the Department of State Health
24 Services.

25 (3) "Embryonic and fetal tissue remains" means an
26 embryo, a fetus, body parts, or organs from a pregnancy that
27 terminates in the death of the embryo or fetus and for which the

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1 issuance of a fetal death certificate is not required by state law.
2 The term does not include the umbilical cord, placenta, gestational
3 sac, blood, or body fluids.

4 (4) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 (5) "Incineration" means the process of burning
7 remains in an incinerator.

8 (6) "Interment" means the disposition of remains by
9 entombment, burial, or placement in a niche.

10 (7) "Steam disinfection" means the act of subjecting
11 remains to steam under pressure to disinfect the remains.

12 Sec. 697.003. APPLICABILITY OF OTHER LAW. Embryonic and
13 fetal tissue remains are not pathological waste under state law.
14 Unless otherwise provided by this chapter, Chapters 711 and 716 of
15 this code and Chapter 651, Occupations Code, do not apply to the
16 disposition of embryonic and fetal tissue remains.

17 Sec. 697.004. DISPOSITION OF EMBRYONIC AND FETAL TISSUE
18 REMAINS. (a) Subject to Section 241.010, a health care facility
19 in this state that provides health or medical care to a pregnant
20 woman shall dispose of embryonic and fetal tissue remains that are
21 passed or delivered at the facility by:

22 (1) interment;

23 (2) cremation;

24 (3) incineration followed by interment; or

25 (4) steam disinfection followed by interment.

26 (b) The ashes resulting from the cremation or incineration
27 of embryonic and fetal tissue remains:

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1 (1) may be interred or scattered in any manner as
2 authorized by law for human remains; and

3 (2) may not be placed in a landfill.

4 (c) A health care facility responsible for disposing of
5 embryonic and fetal tissue remains may coordinate with an entity in
6 the registry established under Section 697.005 in an effort to
7 offset the cost associated with burial or cremation of the
8 embryonic and fetal tissue remains of an unborn child.

9 (d) Notwithstanding any other law, the umbilical cord,
10 placenta, gestational sac, blood, or body fluids from a pregnancy
11 terminating in the death of the embryo or fetus for which the
12 issuance of a fetal death certificate is not required by state law
13 may be disposed of in the same manner as and with the embryonic and
14 fetal tissue remains from that same pregnancy as authorized by this
15 chapter.

16 Sec. 697.005. BURIAL OR CREMATION ASSISTANCE REGISTRY. The
17 department shall:

18 (1) establish and maintain a registry of:

19 (A) participating funeral homes and cemeteries
20 willing to provide free common burial or low-cost private burial;
21 and

22 (B) private nonprofit organizations that
23 register with the department to provide financial assistance for
24 the costs associated with burial or cremation of the embryonic and
25 fetal tissue remains of an unborn child; and

26 (2) make the registry information available on request
27 to a physician, health care facility, or agent of a physician or

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1 health care facility.

2 Sec. 697.006. ETHICAL FETAL REMAINS GRANT PROGRAM. The
3 department shall develop a grant program that uses private
4 donations to provide financial assistance for the costs associated
5 with disposing of embryonic and fetal tissue remains.

6 Sec. 697.007. SUSPENSION OR REVOCATION OF LICENSE. The
7 department may suspend or revoke the license of a health care
8 facility that violates this chapter or a rule adopted under this
9 chapter.

10 Sec. 697.008. CIVIL PENALTY. (a) A person that violates
11 this chapter or a rule adopted under this chapter is liable for a
12 civil penalty in an amount of \$1,000 for each violation.

13 (b) The attorney general, at the request of the department,
14 may sue to collect the civil penalty. The attorney general may
15 recover reasonable expenses incurred in collecting the civil
16 penalty, including court costs, reasonable attorney's fees,
17 investigation costs, witness fees, and disposition expenses.

18 Sec. 697.009. RULES. The executive commissioner shall
19 adopt rules to implement this chapter.

20 SECTION 14. Section 164.052(a), Occupations Code, is
21 amended to read as follows:

22 (a) A physician or an applicant for a license to practice
23 medicine commits a prohibited practice if that person:

24 (1) submits to the board a false or misleading
25 statement, document, or certificate in an application for a
26 license;

27 (2) presents to the board a license, certificate, or

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1 diploma that was illegally or fraudulently obtained;

2 (3) commits fraud or deception in taking or passing an
3 examination;

4 (4) uses alcohol or drugs in an intemperate manner
5 that, in the board's opinion, could endanger a patient's life;

6 (5) commits unprofessional or dishonorable conduct
7 that is likely to deceive or defraud the public, as provided by
8 Section 164.053, or injure the public;

9 (6) uses an advertising statement that is false,
10 misleading, or deceptive;

11 (7) advertises professional superiority or the
12 performance of professional service in a superior manner if that
13 advertising is not readily subject to verification;

14 (8) purchases, sells, barter, or uses, or offers to
15 purchase, sell, barter, or use, a medical degree, license,
16 certificate, or diploma, or a transcript of a license, certificate,
17 or diploma in or incident to an application to the board for a
18 license to practice medicine;

19 (9) alters, with fraudulent intent, a medical license,
20 certificate, or diploma, or a transcript of a medical license,
21 certificate, or diploma;

22 (10) uses a medical license, certificate, or diploma,
23 or a transcript of a medical license, certificate, or diploma that
24 has been:

25 (A) fraudulently purchased or issued;

26 (B) counterfeited; or

27 (C) materially altered;

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- 1 (11) impersonates or acts as proxy for another person
2 in an examination required by this subtitle for a medical license;
- 3 (12) engages in conduct that subverts or attempts to
4 subvert an examination process required by this subtitle for a
5 medical license;
- 6 (13) impersonates a physician or permits another to
7 use the person's license or certificate to practice medicine in
8 this state;
- 9 (14) directly or indirectly employs a person whose
10 license to practice medicine has been suspended, canceled, or
11 revoked;
- 12 (15) associates in the practice of medicine with a
13 person:
- 14 (A) whose license to practice medicine has been
15 suspended, canceled, or revoked; or
- 16 (B) who has been convicted of the unlawful
17 practice of medicine in this state or elsewhere;
- 18 (16) performs or procures a criminal abortion, aids or
19 abets in the procuring of a criminal abortion, attempts to perform
20 or procure a criminal abortion, or attempts to aid or abet the
21 performance or procurement of a criminal abortion;
- 22 (17) directly or indirectly aids or abets the practice
23 of medicine by a person, partnership, association, or corporation
24 that is not licensed to practice medicine by the board;
- 25 (18) performs an abortion on a woman who is pregnant
26 with a viable unborn child during the third trimester of the
27 pregnancy unless:

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1 (A) the abortion is necessary to prevent the
2 death of the woman;

3 (B) the viable unborn child has a severe,
4 irreversible brain impairment; or

5 (C) the woman is diagnosed with a significant
6 likelihood of suffering imminent severe, irreversible brain damage
7 or imminent severe, irreversible paralysis;

8 (19) performs an abortion on an unemancipated minor
9 without the written consent of the child's parent, managing
10 conservator, or legal guardian or without a court order, as
11 provided by Section 33.003 or 33.004, Family Code, unless the
12 abortion is necessary due to a medical emergency, as defined by
13 Section 171.002, Health and Safety Code;

14 (20) otherwise performs an abortion on an
15 unemancipated minor in violation of Chapter 33, Family Code; or

16 (21) performs or induces or attempts to perform or
17 induce an abortion in violation of Subchapter C, F, or G, Chapter
18 171, Health and Safety Code.

19 SECTION 15. Section 164.055(b), Occupations Code, is
20 amended to read as follows:

21 (b) The sanctions provided by Subsection (a) are in addition
22 to any other grounds for refusal to admit persons to examination
23 under this subtitle or to issue a license or renew a license to
24 practice medicine under this subtitle. The criminal penalties
25 provided by Section 165.152 do not apply to a violation of Section
26 170.002, Health and Safety Code, or Subchapter C, F, or G, Chapter
27 171, Health and Safety Code.

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1 SECTION 16. Section 48.02(a), Penal Code, is amended to
2 read as follows:

3 (a) In this section, "human [~~Human~~] organ" means the human
4 kidney, liver, heart, lung, pancreas, eye, bone, skin, [~~fetal~~
5 tissue,] or any other human organ or tissue, but does not include
6 hair or blood, blood components (including plasma), blood
7 derivatives, or blood reagents. The term does not include human
8 fetal tissue as defined by Section 48.03.

9 SECTION 17. Chapter 48, Penal Code, is amended by adding
10 Section 48.03 to read as follows:

11 Sec. 48.03. PROHIBITION ON PURCHASE AND SALE OF HUMAN FETAL
12 TISSUE. (a) In this section, "human fetal tissue" has the meaning
13 assigned by Section 173.001, Health and Safety Code.

14 (b) A person commits an offense if the person knowingly
15 offers to buy, offers to sell, acquires, receives, sells, or
16 otherwise transfers any human fetal tissue for economic benefit.

17 (c) An offense under this section is a state jail felony.

18 (d) It is a defense to prosecution under this section that
19 the actor:

20 (1) is an employee of or under contract with an
21 accredited public or private institution of higher education; and

22 (2) acquires, receives, or transfers human fetal
23 tissue solely for the purpose of fulfilling a donation authorized
24 by Section 173.005, Health and Safety Code.

25 (e) This section does not apply to:

26 (1) human fetal tissue acquired, received, or
27 transferred solely for diagnostic or pathological testing;

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1 (2) human fetal tissue acquired, received, or
2 transferred solely for the purposes of a criminal investigation;

3 (3) human fetal tissue acquired, received, or
4 transferred solely for the purpose of disposing of the tissue in
5 accordance with state law or rules applicable to the disposition of
6 human fetal tissue remains;

7 (4) human fetal tissue or human tissue acquired during
8 pregnancy or at delivery of a child, provided the tissue is acquired
9 by an accredited public or private institution of higher education
10 for use in research approved by an institutional review board or
11 another appropriate board, committee, or body charged with
12 oversight applicable to the research; or

13 (5) cell lines derived from human fetal tissue or
14 human tissue existing on September 1, 2017, that are used by an
15 accredited public or private institution of higher education in
16 research approved by an institutional review board or another
17 appropriate board, committee, or body charged with oversight
18 applicable to the research.

19 (f) With the consent of the appropriate local county or
20 district attorney, the attorney general has concurrent
21 jurisdiction with that consenting local prosecutor to prosecute an
22 offense under this section.

23 SECTION 18. (a) Not later than December 1, 2017, the
24 executive commissioner of the Health and Human Services Commission
25 shall adopt any rules necessary to implement Section 245.011,
26 Health and Safety Code, as amended by this Act, and Chapters 173 and
27 697, Health and Safety Code, as added by this Act.

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1 (b) The Department of State Health Services shall:

2 (1) as soon as practicable after the effective date of
3 this Act, develop the electronic reporting system required by
4 Section 245.011, Health and Safety Code, as amended by this Act;

5 (2) not later than October 1, 2017, establish the
6 grant program required by Section 697.006, Health and Safety Code,
7 as added by this Act;

8 (3) not later than December 1, 2017, prescribe the
9 standard consent form required by Section 173.006, Health and
10 Safety Code, as added by this Act; and

11 (4) not later than February 1, 2018, begin to award
12 grants under the grant program described by Subdivision (2) of this
13 subsection.

14 SECTION 19. (a) Subchapters F and G, Chapter 171, Health
15 and Safety Code, as added by this Act, apply only to an abortion
16 performed on or after the effective date of this Act. An abortion
17 performed before the effective date of this Act is governed by the
18 law in effect immediately before the effective date of this Act, and
19 that law is continued in effect for that purpose.

20 (b) Sections 173.003, 173.004, 173.005, and 173.006, Health
21 and Safety Code, as added by this Act, apply to a donation of human
22 fetal tissue that occurs on or after the effective date of this Act,
23 regardless of whether the human fetal tissue was acquired before,
24 on, or after that date.

25 (c) An authorized facility is not required to make an
26 initial annual report under Section 173.009, Health and Safety
27 Code, as added by this Act, before January 1, 2019.

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1 (d) Chapter 697, Health and Safety Code, as added by this
2 Act, applies only to the disposition of embryonic and fetal tissue
3 remains that occurs on or after February 1, 2018. The disposition
4 of embryonic and fetal tissue remains that occurs before February
5 1, 2018, is governed by the law in effect immediately before the
6 effective date of this Act, and the former law is continued in
7 effect for that purpose.

8 (e) Chapter 48, Penal Code, as amended by this Act, applies
9 only to an offense committed on or after the effective date of this
10 Act. An offense committed before the effective date of this Act is
11 governed by the law in effect on the date the offense was committed,
12 and the former law is continued in effect for that purpose. For
13 purposes of this subsection, an offense was committed before the
14 effective date of this Act if any element of the offense occurred
15 before that date.

16 SECTION 20. It is the intent of the legislature that every
17 provision, section, subsection, sentence, clause, phrase, or word
18 in this Act, and every application of the provisions in this Act to
19 each person or entity, are severable from each other. If any
20 application of any provision in this Act to any person, group of
21 persons, or circumstances is found by a court to be invalid for any
22 reason, the remaining applications of that provision to all other
23 persons and circumstances shall be severed and may not be affected.

24 SECTION 21. (a) If some or all of the provisions of this
25 Act are ever temporarily or permanently restrained or enjoined by
26 judicial order, all other provisions of Texas law regulating or
27 restricting abortion shall be enforced as though the restrained or

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1 enjoined provisions had not been adopted; provided, however, that
2 whenever the temporary or permanent restraining order or injunction
3 is stayed or dissolved, or otherwise ceases to have effect, the
4 provisions shall have full force and effect.

5 (b) Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in
6 which in the context of determining the severability of a state
7 statute regulating abortion the United States Supreme Court held
8 that an explicit statement of legislative intent is controlling, it
9 is the intent of the legislature that every provision, section,
10 subsection, sentence, clause, phrase, or word in this Act, and
11 every application of the provisions in this Act, are severable from
12 each other. If any application of any provision in this Act to any
13 person, group of persons, or circumstances is found by a court to be
14 invalid, the remaining applications of that provision to all other
15 persons and circumstances shall be severed and may not be affected.
16 All constitutionally valid applications of this Act shall be
17 severed from any applications that a court finds to be invalid,
18 leaving the valid applications in force, because it is the
19 legislature's intent and priority that the valid applications be
20 allowed to stand alone. Even if a reviewing court finds a provision
21 of this Act to impose an undue burden in a large or substantial
22 fraction of relevant cases, the applications that do not present an
23 undue burden shall be severed from the remaining provisions and
24 shall remain in force, and shall be treated as if the legislature
25 had enacted a statute limited to the persons, group of persons, or
26 circumstances for which the statute's application does not present
27 an undue burden. The legislature further declares that it would

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1 have passed this Act, and each provision, section, subsection,
2 sentence, clause, phrase, or word, and all constitutional
3 applications of this Act, irrespective of the fact that any
4 provision, section, subsection, sentence, clause, phrase, or word,
5 or applications of this Act, were to be declared unconstitutional
6 or to represent an undue burden.

7 (c) If any provision of this Act is found by any court to be
8 unconstitutionally vague, then the applications of that provision
9 that do not present constitutional vagueness problems shall be
10 severed and remain in force.

11 SECTION 22. This Act takes effect September 1, 2017.

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 8 passed the Senate on March 15, 2017, by the following vote: Yeas 24, Nays 6; and that the Senate concurred in House amendments on May 26, 2017, by the following vote: Yeas 22, Nays 9.

Secretary of the Senate

I hereby certify that S.B. No. 8 passed the House, with amendments, on May 20, 2017, by the following vote: Yeas 93, Nays 45, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Whole Woman's Health, et al.

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

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

Patrick J. O'Connell, Law Offices of Patrick J. O'Connell PLLC, 2525 Wallingwood, Bldg. 14, Austin, Texas 78746, (512) 852-5918

DEFENDANTS

Ken Paxton, et. al.

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1983. Brief description of cause: Constitutional challenge of state law.

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/20/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Patrick J. O'Connell

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE