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May 11, 2022

Via Texas eFile & eServe

RE: Tex. Sup. Ct. Cause No. 22-0008;

Greg Abbott v. Mexican American Legislative Caucus et al.

<https://search.txcourts.gov/Case.aspx?cn=22-0008&coa=cossup>

**AMICUS CURIAE LETTER BRIEF
ON STANDING AND REDRESSABILITY ISSUES
IN CONSTITUTIONAL CHALLENGES TO STATE LAWS
AND UTILIZATION OF THE UDJA FOR SUCH CHALLENGES**

Dear Mr. Hawthorne:

I do not take a position on how this case should be decided and do not submit this friend-of-the-court letter brief in support of either party.

Instead, I wish to alert the Court that the important issues that are the subject of the Court's requested **supplemental briefing** have ramifications that the entire Court may wish to consider; or at least Justices Blacklock and Devine in light of their history of separate opinions on pertinent doctrinal and procedural issues.

Specifically, the issues here raised by the Court *sua sponte* have a bearing on pending litigation involving the **Texas Heartbeat Act (S.B.8)**, possible future litigation of repetitive or similar nature, and challenges to the Act's constitutionality in different procedural postures in state and

federal courts.

OVERVIEW

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INTRO: STANDING TO SUE AND USE OF DJA TO ATTACK STATUTES

Two distinct **standing issues** play a central role in the currently-pending but stalled multi-district litigation (MDL) involving S.B.8: The alleged standing of the numerous pro-abortion plaintiffs who sued Texas Right to Life and its agents, and the standing of "any person" to bring suit under S.B.8, which the MDL plaintiffs challenge as unconstitutional under the Texas constitution.

In the 14 separate, now consolidated, MDL cases, the plaintiffs likewise rely on the **Texas version of the Uniform Declaratory Judgments**

Act (UDJA or DJA) as the basis for judicial relief, codified as Chapter 37 of the Civil Practice and Remedies Code.

IV. CLAIMS

CLAIM 1: DECLARATORY JUDGMENT (against Declaratory Defendants)

71. Plaintiff re-alleges and restates the preceding paragraphs as if they were fully set forth herein.

72. Plaintiff hereby petitions the Court pursuant to the UDJA, Chapter 37 of the Civil Practice and Remedies Code.

73. 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.

74. 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.

75. Section 37.004 of the UDJA provides that a person whose rights, status, or other legal relations are affected by statute may have determined any question of construction or validity

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DECLARATORY JUDGMENT AND ULTRA VIRES FINDING, AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR ANTI-SUIT INJUNCTION **PAGE 17**
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arising under the statute and obtain a declaration of rights, status, or other legal relations thereunder.

Plaintiffs invoked the Texas UDJA in Van Stean v. Texas, Cause No. D-1-GN-21-004187, Travis County District Court.

These plaintiffs have already obtained injunctive relief that is not

ancillary to a declaratory judgment, but is based on section 5 of the Texas Rules of Civil Procedure and premised on the likely success on the merits of the claims of unconstitutionality the plaintiffs assert under the UDJA. See orders at Tabs A and B of the Appendix below.

No final judgment has been rendered.

In 13 of the 14 MDL cases the plaintiffs also named state officials as defendants, though they have since nonsuited them. See Docket Sheet for lead MDL case at Tab C; Docket entry for ORDER on Oct. 19, 2021, at page 8 of 15.

Depending on the Court's ruling on the legal issues implicated in the appeal now before it in Tex. Cause No. 22-0008, these declaratory judgment claims against the State might be revived, either in the pending cases or in new ones yet to be filed.

This amicus doesn't take a position on whether this prospect is desirable or not. Suffice it to point out that currently it is private-party defendants, rather than the State of Texas or one of its agencies, that are facing the specter of having substantial attorneys fees shifted to them in Travis County regardless of outcome. Fee awards under the Texas version of the UDJA may, after all, be bestowed on either party irrespective of who prevailed. And the sympathies of multiple district judges in Travis County are already well known in light of the numerous temporary orders promptly issued in the MDL cases in favor of the plaintiffs even though these orders impose a prior restraint on the Defendants' First Amendment rights to

petition.

There are two more cases involving the Texas Heartbeat Act that are not of the pre-enforcement type and have not been consolidated into the MDL cohort of cases. These cases may proceed independently elsewhere, may receive different judicial treatment, and may result in different outcomes. These pending cases could also be affected by Texas Supreme Court decisions handed down in the interim.

I will briefly describe the two sets of S.B.8-related cases in the sections that follow and attempt to highlight the intersecting legal issues.

A. The 14 Consolidated MDL Cases: Van Stean et al v. Texas RTL

In these cases, now consolidated by the Texas Judicial Panel on Multi-District Litigation, the plaintiffs challenge the constitutionality of the Texas Heartbeat Act under various provisions of the Texas constitution.

The issue of **standing** is being litigated in two respects: (1) The standing asserted by the numerous abortion providers and other pro-abortion plaintiffs to bring a pre-enforcement challenge to the Texas Heartbeat Act against Texas Right to Life, its legislative director, and others acting in concert with Texas RTL; and (2) the **statutory standing** granted by the Texas Legislature to "any person" other than a Texas official or public employee to file a civil enforcement suit under subchapter H of Chapter 171 of the Health and Safety Code, which the pro-abortion plaintiffs challenge as unconstitutional along with other features of S.B.8. See Health & Safety

Code Sec. 171.207 *et seq.*

As for (1), Judge David Peeples, sitting as MDL pre-trial judge by assignment, denied the Texas RTL Defendants' plea to the jurisdiction in an interlocutory ruling that is not immediately appealable. Judge Peeples also denied the Defendants' motion to dismiss under the Texas Citizens Participation Act (TCPA), however, which is immediately appealable.

An interlocutory appeal of the latter ruling is currently pending in the Third Court of Appeal under appellate case number 03-21-00650-CV. Along with their merits argument disputing the plaintiffs' *prima facie* case under the TCPA, Appellants Texas Right to Life and John Seago again challenge the plaintiffs' standing to sue them. Although Texas Right to Life and John Seago are nongovernmental actors, which distinguishes the MDL cases from the one *sub judice* here, they too contest the element of redressability as an essential component of standing.

Additionally, an argument is being advanced that Texas Right to Life should be deemed an agent of the State of Texas based on the notion that the pro-life organization would act as an enforcer on behalf of the State of Texas if it were not enjoined from filing S.B.8 suits. Such enforcement cannot currently happen because agreed temporary injunction orders are in place (attached below at Tabs A and B), but the propriety of injunctive relief remains a live controversy.

Judge Peeples expressly declined to grant a permanent anti-suit injunction against Texas Right to Life and its associates summarily,

reserving the issue for a trial on the merits on account of the presence of material issues of disputed fact. No such trial can currently take place, however, because the appeal of the TCPA ruling triggered an automatic stay of the proceedings in the trial court. The 14 cases consolidated by the MDL Panel are consequently stuck in the Third Court of Appeals for the time being.

As for (2), Judge Peeples ruled in favor of the abortion providers and their allies by way of partial summary judgment, finding the broad "any person" standing granted by S.B.8 to be unconstitutional under the Texas constitution. The declaration to that effect is interlocutory, however, and does not bind any other court.

4. Plaintiffs' Motions for Summary Judgment are **granted in part** and **denied in part**.

A. **Standing for uninjured persons.** The court **sustains** Plaintiffs' contention that SB 8's grant of standing for "any person" to seek \$10,000 and a mandatory injunction without showing harm violates the Texas Constitution's "open courts" provision. Plaintiffs' request that the court declare TEX. HEALTH & SAFETY CODE ANN. § 171.208 unconstitutional on this ground is **granted**.

Judge Peeples' ruling on "any person" standing under SB8.
Peeples Order at p. 46.

A text-searchable version of the full 48-page interlocutory opinion order issued by Judge Peeples on December 9, 2021, is contained in a Jan 10, 2022, filing posted on the MDL Panel docket for the Texas Heartbeat Litigation. See Tex. 21-0782.

<https://search.txcourts.gov/Case.aspx?cn=21-0782&coa=cossup>

The order "Denies Defendants' Plea to the Jurisdiction, denies Defendants'

Motion to Dismiss Under the Texas Citizens Participation Act, grants Partial Summary Judgment to Plaintiffs, and Issues a Declaratory Judgment holding parts of SB 8 unconstitutional."

(1) The Issue of Scope: Complete Relief Versus Partial Relief

Also at issue in the MDL cases is the question of complete vs. substantial relief. Clearly, neither a declaratory judgment nor a temporary or permanent injunction against Texas Right to Life would bind other private would-be S.B.8 enforcers who act and proceed independently. The Third Court of Appeals has already acknowledged as much. *See Doe v. Planned Parenthood of Greater Texas Surgical Health Services*, No. 03-21-00519-CV (Feb. 11, 2022, no pet. h.).

But an appellate ruling in favor of the plaintiffs-appellees in the consolidated MDL cases would nonetheless have immediate precedential force in the Third Appellate District and the trial courts subject to it. That would include all of the MDL cases pending under lead case number D-1-GN-21-004179 in the 98th District Court of Texas in Travis County and any subsequently adjoined tag-along cases from any other county in Texas.

(2) Potential for Inconsistent Holdings Among Courts of Appeals

Two other S.B.8-related cases, however, *Gomez v. Alan Braid, MD*, and *Stilley v. Alan Braid, MD*, are pending in Bexar County district courts, which are subject to the authority of the **Fourth Court of Appeals in San Antonio**, rather than the **Third in Austin**. Those trial court cases likewise present questions of whether the plaintiffs have standing to sue, and one

featured the invocation of the Texas Declaratory Judgments Act as a legal basis for a challenge to the Texas Heartbeat Act. The Attorney General is not involved in any of these cases even as an amicus curiae; nor has a notice of constitutional challenge to a state statute (yet) been filed in either one of the two Bexar County cases that remain open and pending.

B. Stilley v. Braid, MD, in Bexar County, Cause No. 2021CI19940

Oscar Stilley filed this case on September 20, 2021, but never served Defendant Braid with citation. No judicial action of any kind has taken place in this case as of May 9, 2022. With Braid not having made an appearance of his own accord even though he has retained Texas counsel, this case should now be eligible to be dismissed for want of prosecution.

Instead of prosecuting his own state-court case, Stilley has willingly participated in the interpleader litigation instituted by Defendant Alan Braid as plaintiff-in-interpleader and declaratory-judgment seeker in Illinois. Stilley also intervened in U.S.A. v. Texas in the Northern District of Texas in 2021. Unlike Gomez, Stilley did assert a claim for statutory damages of at least \$10,000 and up to \$100,000 for Braid's admitted violation of S.B.8 in his Bexar County action, thereby exceeding the amount-in-controversy threshold of \$75,000 for purposes of diversity jurisdiction in federal courts. Arguably, Stilley's version of an S.B.8 claim for 100K provides an alternative jurisdictional basis for the federal action Dr. Braid filed in Chicago. Although he is a resident of Arkansas and efiled his state-court action in Texas, Stilley hasn't challenged the propriety of venue and forum of Braid's counter-suit

in Chicago.

C. Gomez v. Braid, MD, in Bexar County, Cause No. 2021CI19920

Felipe N. Gomez filed his state-court action against Alan Braid, MD, on September 20, 2021, but later nonsuited it in December 2021 without ever having served the Defendant, and without having been successful in his efforts to persuade Dr. Braid to enter an appearance voluntarily.

Rather than asserting a bona-fide S.B.8 claim against Braid, Gomez pleaded for a declaration in favor of the Defendant that S.B.8 is unconstitutional under *Roe v. Wade*, thus aligning himself with the abortion provider whom he had sued. Unlike the MDL cases, this challenge is based on federal constitutional law.

The trial court judge should have dismissed this case for lack of a justiciable controversy, rather than allowing it to linger on the docket until Gomez decided to file his nonsuit. In any event, Gomez filed another state-court action against Alan Braid on May 4, 2022, in Bexar County, which was assigned docket number 2022CI08302. Regardless of the status and nature of the disposition of Gomez's first case against Dr. Braid -- which remains unclear -- the second one is indisputably a live case on the trial court docket as of May 9, 2022.

D. Counter-Litigation Initiated by Alan Braid, MD, to invalidate S.B.8 in a Distant Federal Forum

In addition to the two state-court litigations in Bexar County, Texas, a collusive **federal declaratory judgment action** is currently pending

between private parties in the U.S. District Court for the Northern District of Illinois under the guise of a statutory interpleader. See Alan Braid, MD v. Oscar Stilley et al. Case No. 1:21-cv-05283. Docket outside PACER available at: <https://www.courtlistener.com/docket/60626475/braid-v-stilley/>

In that case, San Antonio abortion provider Alan Braid, MD, sought to consolidate the S.B.8 actions he had solicited through his Washington Post op-ed and turn the tables on the individuals he had goaded into suing him in Texas by converting them from plaintiffs/claimants into defendants in a federal forum of his choice. See Complaint for Interpleader and Declaratory Judgment at Tab F ; 28 U.S. Code § 1335 (statutory authority for federal interpleader).

Having committed the prohibited act that gives rise to legal liability under Texas law (presuming that S.B.8 is constitutionally valid), and having advertised his defiance of Texas law to a national audience, Braid went to federal court complaining that he faced multiple suits and duplicative liability as a result of his self-confessed S.B.8 violation. With an assembled team of 12 attorneys, including several Texas attorneys who had to seek pro hac vice admission, he asked a federal judge in Chicago to resolve the purported contest over the minimum statutory penalty through an interpleader action under 28 U.S. Code § 1335, and insists that he should be awarded \$10,000 because none of litigants who accepted his invitation to sue him is entitled to it. Braid, in effect, appears as an interpleader claimant himself rather than merely as an innocent stakeholder, asserting his own claim for \$10,000 based on a factual and legal predicate for a civil lawsuit

he himself endeavored to orchestrate. Braid also wants the individuals he enticed to participate in his staged test case against S.B.8 to pay his attorney fees.

Braid promptly deposited the minimum statutory "bounty" amount of \$10,000 into the registry of the federal court in Chicago, and asked the district judge to award that interpleaded amount back to himself as the successful plaintiff, based on the requested judicial declaration that S.B.8 is unconstitutional and could not therefore entail legal liability for the abortion he admitted having performed in violation of Texas Heartbeat Act after it went into effect on September 1, 2021.

59. Dr. Braid is entitled to declaratory judgment that he is entitled to retain the contested statutory damages award associated with the September 6 abortion, and that he cannot be subject to any other damages or injunction associated with the care he provided on

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September 6, because SB8 is void for being in violation of the United States Constitution's substantive due process guarantee.

THIRD CLAIM FOR RELIEF

Dr. Braid asserts that he "is entitled to declaratory judgment that he is entitled to retain the contested statutory damages award." Complaint for Interpleader and Declaratory Judgment at p. 17, para. 59; attached at Tab F.

Interpleader Defendant Oscar Stilley initially counterclaimed and ostensibly sought declarations opposite to those sought by abortion provider Alan Braid, MD, under the Federal Declaratory Judgment Act, but more recently switched sides and joined his purported opponent in seeking the invalidation of S.B.8 under *Roe* and *Casey*.

Stilley had previously disclosed in statements to the press that he is pro-choice, so the tactical switch in his litigation positions hardly comes as a surprise. If he were to prevail and be awarded any statutory penalty nonetheless, Stilley wants to donate it to a pro-abortion organization. Stilley also disclosed that he had already made a small donation to an abortion fund operating in Texas, and that he is ready to be sued under S.B.8 for aiding and abetting.

Note that this coordinated invalidation of a state statute is being pursued in the absence of the State of Texas/Attorney General in a remote federal forum that is outside even the jurisdiction of Fifth Circuit Court of Appeals. If there was, formally speaking, adversity with respect to the constitutionality of S.B.8, it has now largely dissipated. See April 11, 2022, filing by Alan Braid's attorneys, wherein they point out that Defendant Stilley is broadly in agreement with Braid's motion for summary judgment in Braid's favor. The filing is captioned "RESPONSE by Alan Braid in Support of MOTION by Plaintiff Alan Braid for summary judgment" (Docket item # 96), and is attached to this amicus letter brief at Tab D.

The federal interpleader & declaratory judgment action instituted by

Alan Braid, MD, thus presents the same issue of a lack of subject-jurisdiction in the absence of true adversity and controversy as was presented when Felipe Gomez filed suit against Dr. Alan Braid in state district court in Bexar County. As reflected on the face of his pleadings, Gomez filed suit to help the San Antonio abortion doctor obtain a declaration that S.B.8 is unconstitutional from a Texas judge, so that Braid would be able to resume business as usual. Gomez even denominated himself as "a pro-choice plaintiff" in the style of his state-court pleading, and suggested in amended pleadings that the TRO granted by Travis County Judge Myra Gamble in one of the MDL cases (prior to consolidation) be extended to include Bexar County and Dr. Braid.

Unlike the first suit by Gomez in Bexar County, which Gomez nonsuited in December 2021, the federal action not only remains pending as of May 2022; the federal district judge is apparently poised to grant judgment on the merits, having rejected the lack of case-or-controversy contentions repeatedly made by Gomez in that forum. Due to attorney disciplinary complaints, Gomez is no longer authorized to practice law in that jurisdiction. See *In re Felipe N. Gomez*, Nos. 19-3015, 20-142 (7th Cir. 2020)(affirming disbarment orders), *cited by Charles Schwab & Co. v. Felipe N. Gomez*, No. 21-2531 (7th Cir. Feb. 22, 2022) (rejecting collateral attack).

<https://law.justia.com/cases/federal/appellate-courts/ca7/21-2531/21-2531-2022-02-22.html>

E. Gomez v. Braid II in Bexar County, Cause No. 2022CI08302

In his re-filed suit against Dr. Alan Braid in state court (assigned to the 45th District Court), pro-choice plaintiff Felipe N. Gomez now endeavors to assert a claim for affirmative monetary relief under S.B.8 predicated upon Braid's admitted violation, though he let it be known elsewhere that his motive was to induce Braid to seek the dismissal of the second suit based on Gomez's prior nonsuit in his initial state-court action against Braid filed in 2021. See copy of the recently-filed Complaint attached at Tab E.

Gomez has on multiple occasions sought to get himself dismissed from Braid's interpleader action in the Northern District of Illinois, but so far without success. His second suit appears to stem directly from his failure to extract himself from the interpleader litigation commenced by Dr. Braid, which Gomez strenuously opposes, concerned about being saddled with Braid's attorneys' fees after having set out to help Braid get the Texas Heartbeat Act declared unconstitutional in what law professors euphemistically refer to as a "friendly" lawsuit. Understandably, Gomez is no happy camper, having been rebuffed rather than rewarded for his offer to serve as a "friendly plaintiff" willing "to settle" his lawsuit to the satisfaction of the nominal defendant.

Arguably, Gomez's second S.B.8 lawsuit is also of a sham nature insofar as he filed it in order to lose on the merits rather than win it. According to Gomez, his prior nonsuit in Cause No. 2021CI19920 entails res judicata effect and should grant him protection against being forced to defend the federal interpleader litigation Dr. Braid instituted against him

and others in Chicago. Alternatively, it is conceivable that Gomez will proceed to litigate his S.B.8 claim to judgment, should Defendant Braid fail to raise the preclusion defense. This time, Gomez promptly requested issuance of a citation.

CONCLUSION: THE NEXUS OF THIS APPEAL AND THE S.B.8 LITIGATION

The question of whether the State of Texas can be sued under the state declaratory judgments act (Chapter 37 of the CPRC) to seek the invalidation of a state law goes beyond the current controversy concerning the legality of some electoral districts.

Although none of the pending cases involving S.B.8 currently contains a live claim under the Texas Declaratory Judgments Act against the State of Texas or a state official, a ruling by this court that the DJA is a viable vehicle to challenge a state statute will likely affect pending S.B.8 litigation or will -- for better or worse -- spur additional constitutional challenges invoking the DJA even though the State cannot participate as a party in S.B.8 enforcement actions.

Moreover, a favorable ruling for the plaintiffs in this appeal could -- if not cabined in its reach -- also bolster the currently pending collusive merits phase of the litigation in the Northern District of Illinois, in which a Texas abortion provider and a disbarred pro-choice lawyer on home confinement in Arkansas are seeking an agreed summary judgment that would invalidate a Texas statute under the federal counterpart to the UDJA with no party in that case putting up a substantive defense of the Act. See Alan Braid's

"Complaint for Interpleader and Declaratory Judgment" at Tab F and his MSJ Reply Memorandum at Tab D.

The Texas Supreme Court might accordingly wish to consider the effect that its forthcoming ruling in the current redistricting appeal could have on other important disputes regarding the constitutionality of statutes enacted by the Texas Legislature, given the precedential effect of state supreme court opinions on (1) all lower courts in Texas, including the Bexar County district courts and the Fourth Court of Appeal, where relevant cases are currently pending concerning S.B.8, and (2) federal courts sitting in diversity or exercising supplemental jurisdiction over state-law claims.

Date: May 11, 2022

Respectfully submitted,

/s/ Wolfgang P. Hirczy de Miño

Wolfgang P. Hirczy de Mino, Ph.D.

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Amicus Curiae in support of neither party

TRAP 11 STATEMENT AND CERTIFICATE OF SERVICE

The undersigned amicus curiae is a political scientist by academic training, not an attorney acting in a representational capacity, and hereby

certifies that he has authored this amicus letter brief solely upon his own initiative and is not being paid by any party or nonparty for doing so. Nor has any compensation been promised for submitting this amicus curiae contribution. Tex. R. App. P. 11.

The undersigned amicus further certifies that this letter brief consists of a total of 19 pages and contains fewer than 12,000 words, and that he is simultaneously e-serving lead counsel for the parties to this appeal through the eFiling system as follows:

PETITIONERS:

GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS; JOHN SCHOTT, IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE OF TEXAS; THE STATE OF TEXAS.

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RESPONDENTS:

MEXICAN AMERICAN LEGISLATIVE CAUCUS, TEXAS HOUSE OF REPRESENTATIVES; ROLAND GUTIERREZ; SARAH ECKHARDT; RUBEN CORTEZ, JR.; TEJANO DEMOCRATS.

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For additional attorneys and/or case contacts served electronically, see the automated certificate of service generated by the Texas efilings system, appended to the court copy of this letter filing at the bottom.

/s/ Wolfgang P. Hirczy de Miño

Wolfgang P. Hirczy de Mino, Ph.D.

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Tab A: Temporary Injunction in Van Stean set of cases against Texas RTL

Tab B: Temporary Injunction in Planned Parenthood case vs. Texas RTL

Tab C: Van Stean vs. Texas Right to Life Consolidated MDL Docket Sheet

Tab D: Braid MSJ Reply to Defendants' Responses in Interpleader Case

Tab E: Gomez vs. Braid II Initial Pleading Captioned "Complaint"

Tab F: Braid Complaint for Interpleader and for Declaratory Judgment

EXHIBIT L
Oct. 28, 2021
Temporary Injunction

Filed in the District Court
Of Travis County, Texas
Oct. 28, 2021; 3:05 PM
At _____
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-21-004179

BEFORE THE TEXAS HEARTBEAT LITIGATION MDL PRETRIAL JUDGE

ALLISON VAN STEAN, et al.	§	In the District Court of
	§	
Plaintiff,	§	
	§	Travis County, Texas
v.	§	
	§	
TEXAS RIGHT TO LIFE, et. al,	§	98 th Judicial District
	§	
Defendants.	§	

This Agreed Temporary Injunction relates to the causes transferred from:

CAUSE NO. D-1-GN-21-004179, in the 98th Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004189, in the 250th Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004303, in the 126th Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004316, in the 261st Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004489, in the 98th Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004503, in the 455th Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004504, in the 53rd Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004544, in the 201st Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004606, in the 98th Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004605, in the 455th Judicial District of Travis County, Texas;
CAUSE NO. D-1-GN-21-004648, in the 261st Judicial District of Travis County, Texas; and
CAUSE NO. D-1-GN-21-004846, in the 53rd Judicial District of Travis County, Texas.

AGREED ORDER ON APPLICATION FOR TEMPORARY INJUNCTION

Plaintiffs Allison Van Stean, Michelle Tuegel, Monica Faulkner, Ghazaleh Moayed, North Texas Equal Access Fund, The West Fund, The Afiya Center, The Lilith Fund, Frontera Fund, Clinic Access Support Network, and The Bridge Collective have each filed an application for a temporary injunction prohibiting Defendants Texas Right to Life, John Seago, and the Jane/John Does (collectively, "Defendants"), and all persons in active concert and participation with Defendants, from instituting private enforcement lawsuits against Plaintiffs under Senate Bill 8 ("SB8") until final judgment is entered in this lawsuit.

In the interest of resolving the Plaintiffs' applications, the Defendants agree to stipulate to the entry of this Order provided that Defendants do not admit to the truth of Plaintiffs' allegations or to liability, and Defendants do not waive any defenses or objections to this suit.

The Court, having considered the Plaintiffs' Verified Petitions and applications for a temporary injunction, and the affidavits of Plaintiffs filed in support of their applications for a temporary restraining order and attached hereto as Exhibit A, **finds that this Agreed Order should be GRANTED.** The Court specifically finds as follows:

1. The Court finds that Plaintiffs will be imminently and irreparably harmed absent a temporary injunction. Plaintiffs reasonably fear that Defendants and those acting in concert with them will file claims against them under SB8.

2. The Court finds that Defendants have not shown that they will suffer any harm if a temporary injunction is granted.

3. The Court finds that an underlying cause of action for declaratory judgment exists in this case as to the constitutionality of SB8 and Plaintiffs have shown that they have a probable right to relief on their claims that SB8 violates the Texas Constitution.

4. The Court finds that Plaintiffs have no other adequate remedy at law.

5. The parties agree that the de minimus amount of \$100 total, deposited with the Travis County District Clerk, and the amounts already deposited for the temporary restraining orders already granted in favor of each Plaintiff constitutes sufficient security as bond for any foreseeable harm or compensable damages that could result from the granting of this temporary injunction until further order of this Court or final judgment on the merits.

It is therefore **ORDERED** that Defendants Texas Right to Life, John Seago and their officers, agents, servants, employees, and attorneys, and all persons in active concert and participation with Defendants, including all persons listed in the sealed Exhibit B attached to this

Order, are enjoined from instituting private enforcement lawsuits against Plaintiffs or their staff under SB8, for the pendency of this lawsuit. This temporary injunction shall become effective immediately.

It is **FURTHER ORDERED** that Defendants shall provide notice of this temporary injunction to their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, including the individuals listed in Exhibit B to this Order.

It is **FURTHER ORDERED** that Exhibit B to this Order is temporarily sealed pending the disposition of the Rule 76a motion previously filed by Defendants and set for hearing on November 3, 2021 at 9:00 a.m.

It is **FURTHER ORDERED** that trial on the merits of this case is set for April 4, 2022 at 9:00 a.m. in Travis County, Texas.

It is **FURTHER ORDERED** that the clerk of this Court shall forthwith issue this Order and Writ of Temporary Injunction. Once effective, this Order and Injunction shall remain in full force and effect until final judgment in this matter.

SO ORDERED.

Dated: October 28, 2021 at 12:42 P.M.


Hon. David Peoples

TAB A

AGREED AS TO FORM AND SUBSTANCE:

/s/ Jennifer R. Ecklund

Jennifer R. Ecklund
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ATTORNEYS FOR PLAINTIFFS

/s/ Andrew Stephens

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ATTORNEYS FOR DEFENDANTS

CAUSE NO. D-1-GN-21-004632

**PLANNED PARENTHOOD OF
GREATER TEXAS SURGICAL HEALTH
SERVICES, on behalf of itself, its staff,
physicians, and patients; PLANNED
PARENTHOOD SOUTH TEXAS
SURGICAL CENTER, on behalf of itself,
its staff, physicians, and patients;
PLANNED PARENTHOOD CENTER FOR
CHOICE, on behalf of itself, its staff,
physicians, and patients; BHAVIK
KUMAR, M.D., on behalf of himself and his
patients,**

**In the District Court of
Travis County, Texas**

250th Judicial District

Plaintiffs,

v.

**TEXAS RIGHT TO LIFE, an organization;
JOHN SEAGO; and JANE/JOHN DOES 1–
100,**

Defendants.

**AGREED ORDER ON APPLICATION FOR
TEMPORARY INJUNCTION**

On September 13, 2021, the Court heard the application of Plaintiffs Planned Parenthood of Greater Texas Surgical Health Services, Planned Parenthood South Texas Surgical Center, Planned Parenthood Center for Choice, and Bhavik Kumar, M.D., (collectively “Plaintiffs”) for a temporary injunction prohibiting Defendants Texas Right to Life, John Seago, and the Jane/John Does (collectively, “Defendants”), and all persons in active concert and participation with Defendants, from instituting private enforcement lawsuits against Plaintiffs, their physicians, or their staff under S.B. 8 until final judgment is entered in this lawsuit.

TAB B

In the interest of resolving the Plaintiffs' motion, the Defendants agreed to stipulate to the entry of this order provided that Defendants do not admit to the truth of Plaintiffs' allegations or to liability, and Defendants do not waive any defenses or objections to this suit.

The Court, having considered the Plaintiffs' Original Verified Petition, applications and pleas, the evidence admitted under the rulings of the Court, the parties' stipulation to the entry of a temporary injunction, and the oral arguments submitted by counsel, **finds that this agreed order should be GRANTED.** It specifically finds as follows:

1. The Court finds that Plaintiffs will be imminently and irreparably harmed in the interim absent a temporary injunction. Plaintiffs reasonably fear that Defendants and those acting in concert with them will file claims against them under S.B. 8.

2. The Court finds that Defendants have not shown that they will suffer any harm if a temporary injunction is granted.

3. The Court finds that Plaintiffs have shown that they have a probable right to relief on their claims that S.B. 8 violates the Texas Constitution.

4. The Court finds that Plaintiffs have no other adequate remedy at law.

5. The parties agree that the amount previously deposited with the Travis County District Clerk constitutes sufficient security as bond for any foreseeable harm or compensable damages that could result from the granting of this temporary injunction until further order of this Court or final judgment on the merits.

It is therefore **ORDERED** that Defendants Texas Right to Life, John Seago and their officers, agents, servants, employees, and attorneys, and all persons in active concert and participation with Defendants, including all persons listed in the sealed Exhibit A attached to this Order, are enjoined from instituting private enforcement lawsuits against Plaintiffs, their

TAB B

physicians, or their staff under S.B. 8 for the pendency of this lawsuit. This temporary injunction shall become effective immediately.

It is **FURTHER ORDERED** that Defendants shall provide notice of this temporary injunction to their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, including the individuals listed in Exhibit A to this Order.


It is **FURTHER ORDERED** that Exhibit A to this Order is temporarily sealed pending the filing and disposition of an appropriate sealing motion. A hearing on the forthcoming sealing motion is set for September 30, 2021, at 9:00 a.m.

It is **FURTHER ORDERED** that trial on the merits of this case is set for April 4, 2022, at 9:00 a.m. in Travis County, Texas.

It is **FURTHER ORDERED** that the clerk of this Court shall forthwith issue this Order Granting Temporary Injunction and Writ of Temporary Injunction. Once effective, this Order shall remain in full force and effect until final Judgment in this matter.

SO ORDERED.

Dated: September 13, 2021



KARIN CRUMP
Judge, 250th District Court

AGREED AS TO FORM AND SUBSTANCE:

/s/ Austin Kaplan

Austin Kaplan

State Bar No. 24072176

Kaplan Law Firm, PLLC

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(512) 553-9390

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/s/ Heather Gebelin Hacker

Heather Gebelin Hacker

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HACKER STEPHENS LLP

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Austin, Texas 78746

Telephone: (512) 399-3022

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Case Summary

Case No. D-1-GN-21-004179

VAN STEAN V. STATE OF TEXAS

§
§

Location: **98th District Court**
Filed on: **08/23/2021**

Case Information

Case Type: Injunction
Case Status: **08/23/2021 Open**

Assignment Information

Current Case Assignment

Case Number D-1-GN-21-004179
Court 98th District Court
Date Assigned 08/23/2021

Party Information

Plaintiff	Clinic Access Support Network	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Clinic Access Support Network	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Doe, Jane	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Doe, Jane	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Faulkner, Monica	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Faulkner, Monica	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Frontera Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Frontera Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Fund Texas Choice	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Fund Texas Choice	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Lilith Fund for Reproductive Equity	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Moayedi, Ghazaleh	KAPLAN, AUSTIN HARRIS <i>Retained</i>
	Moayedi, Ghazaleh	KAPLAN, AUSTIN HARRIS <i>Retained</i>

Case Summary

Case No. D-1-GN-21-004179

The Afiya Center	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Afiya Center	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Bridge Collective	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Bridge Collective	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Lilith Fund for Reproductive Equity	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The North Texas Equal Access Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The North Texas Equal Access Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The West Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The West Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
Tuegel, Michelle	KAPLAN, AUSTIN HARRIS <i>Retained</i>
Tuegel, Michelle	KAPLAN, AUSTIN HARRIS <i>Retained</i>
VAN STEAN, ALLISON	ECKLUND, JENNIFER RUDENICK <i>Retained</i> ALBRIGHT, ALEXANDRA W. <i>Retained</i> Greer, Marcy Hogan <i>Retained</i> KAPLAN, AUSTIN HARRIS <i>Retained</i> CASTANEDA, KIRSTEN M <i>Retained</i> DUBOSE, KEVIN <i>Retained</i>

- Defendant** **ANGELA PAXTON STATE OF TEXAS SENATOR**
BOB HALL STATE OF TEXAS SENATOR
BRANDON CREIGHTON STATE OF TEXAS SENATOR
BRIAN BIRDWELL STATE OF TEXAS SENATOR
BRISCOE CAIN STATE OF TEXAS REPRESENTATIVE
BRYAN HUGHES STATE OF TEXAS SENATOR
CHARLES PERRY STATE OF TEXAS SENATOR
CHARLES SCHWERTNER STATE OF TEXAS SENATOR
DAWN BUCKINGHAM STATE OF TEXAS SENATOR
DONNA CAMPBELL STATE OF TEXAS SENATOR
DREW SPRINGER STATE OF TEXAS SENATOR

Case Summary

Case No. D-1-GN-21-004179

DUSTIN BURROWS STATE OF TEXAS REPRESENTATIVE

EDDIE LUCIO STATE OF TEXAS SENATOR

GREG ABBOT GOVERNOR STATE OF TEXAS

JANE NELSON STATE OF TEXAS SENATOR

JEFF LEACH STATE OF TEXAS REPRESENTATIVE

JOAN HUFFMAN STATE OF TEXAS SENATOR

JOHN DOE 1 THROUGH 10

KELLY HANCOCK STATE OF TEXAS SENATOR

KEN PAXTON ATTORNEY GENERAL OF STATE OF TEXAS

LARRY TAYLOR STATE OF TEXAS SENATOR

LOIS KOLKHORST STATE OF TEXAS SENATOR

PAUL BETTENCOURT STATE OF TEXAS SENATOR

SEAGO, JOHN

Mitchell, Jonathan Franklin
Retained

Stephens, Andrew Bowman
Retained

SHELBY SLAWSON STATE OF TEXAS REPRESENTATIVE

Plaintiff

Clinic Access Support Network

KAPLAN, AUSTIN HARRIS
Retained

Clinic Access Support Network

KAPLAN, AUSTIN HARRIS
Retained

Doe, Jane

KAPLAN, AUSTIN HARRIS
Retained

Doe, Jane

KAPLAN, AUSTIN HARRIS
Retained

Faulkner, Monica

KAPLAN, AUSTIN HARRIS
Retained

Faulkner, Monica

KAPLAN, AUSTIN HARRIS
Retained

Frontera Fund

KAPLAN, AUSTIN HARRIS
Retained

Frontera Fund

KAPLAN, AUSTIN HARRIS
Retained

Fund Texas Choice

KAPLAN, AUSTIN HARRIS
Retained

Fund Texas Choice

KAPLAN, AUSTIN HARRIS
Retained

Lilith Fund for Reproductive Equity

KAPLAN, AUSTIN HARRIS
Retained

Moayedi, Ghazaleh

KAPLAN, AUSTIN HARRIS
Retained

Case Summary

Case No. D-1-GN-21-004179

Moayed, Ghazeleh	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Afiya Center	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Afiya Center	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Bridge Collective	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Bridge Collective	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The Lilith Fund for Reproductive Equity	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The North Texas Equal Access Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The North Texas Equal Access Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The West Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
The West Fund	KAPLAN, AUSTIN HARRIS <i>Retained</i>
Tuegel, Michelle	KAPLAN, AUSTIN HARRIS <i>Retained</i>
Tuegel, Michelle	KAPLAN, AUSTIN HARRIS <i>Retained</i>
VAN STEAN, ALLISON	ECKLUND, JENNIFER RUDENICK <i>Retained</i> ALBRIGHT, ALEXANDRA W. <i>Retained</i> Greer, Marcy Hogan <i>Retained</i> KAPLAN, AUSTIN HARRIS <i>Retained</i> CASTANEDA, KIRSTEN M <i>Retained</i> DUBOSE, KEVIN <i>Retained</i>

Defendant ANGELA PAXTON STATE OF TEXAS SENATOR
BOB HALL STATE OF TEXAS SENATOR
BRANDON CREIGHTON STATE OF TEXAS SENATOR
BRIAN BIRDWELL STATE OF TEXAS SENATOR
BRISCOE CAIN STATE OF TEXAS REPRESENTATIVE
BRYAN HUGHES STATE OF TEXAS SENATOR
CHARLES PERRY STATE OF TEXAS SENATOR
CHARLES SCHWERTNER STATE OF TEXAS SENATOR
DAWN BUCKINGHAM STATE OF TEXAS SENATOR
DONNA CAMPBELL STATE OF TEXAS SENATOR

Case Summary

Case No. D-1-GN-21-004179

DREW SPRINGER STATE OF TEXAS SENATOR

DUSTIN BURROWS STATE OF TEXAS REPRESENTATIVE

EDDIE LUCIO STATE OF TEXAS SENATOR

GREG ABBOT GOVERNOR STATE OF TEXAS

JANE NELSON STATE OF TEXAS SENATOR

JEFF LEACH STATE OF TEXAS REPRESENTATIVE

JOAN HUFFMAN STATE OF TEXAS SENATOR

JOHN DOE 1 THROUGH 10

KELLY HANCOCK STATE OF TEXAS SENATOR

KEN PAXTON ATTORNEY GENERAL OF STATE OF TEXAS

LARRY TAYLOR STATE OF TEXAS SENATOR

LOIS KOLKHORST STATE OF TEXAS SENATOR

PAUL BETTENCOURT STATE OF TEXAS SENATOR

SEAGO, JOHN

**Mitchell, Jonathan Franklin
Retained**

**Stephens, Andrew Bowman
Retained**

SHELBY SLAWSON STATE OF TEXAS REPRESENTATIVE

STATE OF TEXAS

STEPHANIE KLICK STATE OF TEXAS REPRESENTATIVE

TEXAS RIGHT TO LIFE

**Mitchell, Jonathan Franklin
Retained**

**Stephens, Andrew Bowman
Retained**

Weldon, Sadie

Case Events

08/23/2021

ORIGINAL PETITION/APPLICATION

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DECLARATORY JUDGMENT AND ULTRA VIRES FINDING AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR ANTI-SUIT INJUNCTION

Party: Plaintiff VAN STEAN, ALLISON

08/23/2021

NEW:ORIGINAL PETITION/APPL (OCA)

Event Code: 4500

08/23/2021

OTHER

UNSIGNED ORDER/PROPOSED ORDER Event Code: 5415

Party: Plaintiff VAN STEAN, ALLISON

08/25/2021

ASM:GN CIVIL PETITION

Event Code: 600 Adjmt Amount: 307.00

Party: Plaintiff VAN STEAN, ALLISON

08/25/2021

ASM:CITATION ISSUE

Event Code: 702 Adjmt Amount: 16.00

Party: Plaintiff VAN STEAN, ALLISON

08/26/2021

OTHER

Case Summary

Case No. D-1-GN-21-004179

CHALLENGE TO CONSTITUTIONALITY OF A STATE STATUTE Event Code: 5415

08/30/2021 OTHER
BRIEF IN SUPPORT OF PLAINTIFFS APPLICATION FOR TEMPORARY RESTRAINING ORDER Event Code: 5415
 Party: Plaintiff VAN STEAN, ALLISON

08/30/2021
 NOTICE
*NOTICE OF HEARING ON PLAINTIFFS APPLICATION FOR TEMPORARY RE STRAINING ORDER AND OR ANTI SUIT
 INJUNCTION* Event Code: 5554
 Party: Plaintiff VAN STEAN, ALLISON

08/30/2021
 ANSWER
*BRIEF IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR TMEPORARY RESTRAINING ORDER AND MOTION TO CANCEL
 HEARING SET FOR AUGUST 30, 2021* Event Code: 5150

08/31/2021 ORDER
TEMPORARY RESTRAINING ORDER Event Code: 8225

08/31/2021 MSF:NEW BOND ID CREATED
Event Code: 32 Adjmt Amount: 100.00
 Party: Plaintiff VAN STEAN, ALLISON

08/31/2021 EXECUTED SERVICE
CITATION-JOHN SEAGO Event Code: 4893
 Party: Defendant SEAGO, JOHN

08/31/2021 NOTICE
NOTICE OF HEARING ON PLAINTIFF'S PETITION FOR TEMPORARY INJU NCTION Event Code: 5554
 Party: Plaintiff VAN STEAN, ALLISON

09/03/2021 ASM:TRO ISSUANCE
Event Code: 710 Adjmt Amount: 16.00
 Party: Plaintiff VAN STEAN, ALLISON

09/03/2021 OTHER
LETTER REQUESTING TRO WRITS Event Code: 5415
 Party: Plaintiff VAN STEAN, ALLISON

09/03/2021 OTHER
LETTER/EMAIL/CORR - LETTER REQUESTING CITATIONS Event Code: 5415
 Party: Plaintiff VAN STEAN, ALLISON

09/03/2021 NOTICE
NOTICE OF HEARING ON PLAINTIFF'S PETITION FOR TEMPORARY INJU NCTION Event Code: 5554
 Party: Plaintiff VAN STEAN, ALLISON

09/07/2021
 ORDER
(PROPOSED) ORDER GRANTING PLAINTIFF'S EMERGENCY MOTIONS FOR EXPEDITED DISCOVERY Event Code: 8225

09/07/2021 MOTION
PLAINTIFFS EMERGENCY MOTION FOR EXPEDITED DISCOVERY Event Code: 5265
 Party: Plaintiff VAN STEAN, ALLISON

09/08/2021
 ORDER
AMENDED ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION FOR EXPEDITED DISCOVERY Event Code: 8225
 Party: Plaintiff VAN STEAN, ALLISON

09/08/2021
 MOTION
AGREED MOTION TO CONTINUE TEMPORARY INJUNCTION HEARING AND EXTEND TEMPORARY RESTRAINING ORDERS
Event Code: 5265
 Party: Plaintiff VAN STEAN, ALLISON

09/09/2021 ASM:CITATION ISSUE
Event Code: 702 Adjmt Amount: 200.00
 Party: Plaintiff VAN STEAN, ALLISON

Case Summary

Case No. D-1-GN-21-004179

09/09/2021 EXECUTED SERVICE
TEMPORARY RESTRAINING ORDER WRIT- TEXAS RIGHT TO LIFE Event Code: 4893

09/09/2021 EXECUTED SERVICE
TEMPORARY RESTRAINING ORDER WRIT- JOHN SEAGO Event Code: 4893
Party: Defendant SEAGO, JOHN

09/12/2021 EXECUTED SERVICE
CITATION - TEXAS RIGHT TO LIFE Event Code: 4893
Party: Defendant TEXAS RIGHT TO LIFE

09/15/2021 MOTION
AGREED MOTION TO SEAL Event Code: 5265

09/16/2021 ORDER
ORDER GRANTING AGREED MOTION TO EXTEND TEMPORARY RESTRAINING ORDER Event Code: 8225

09/16/2021 MOTION
MOTION TO DISMISS UNDER THE TEXAS CITIZENS PARTICIPATION ACT Event Code: 5265

09/17/2021 NOTICE
TEXAS RULES OF CIVIL PROCEDURE 76A 3 NOTICE Event Code: 5554

09/17/2021 ORDER TO SEAL
ORDER GRANTING MOTION FOR TEMPORARY SEALING Event Code: 8608

09/20/2021
NOTICE
NOTICE TO COURT OF FILING OF MOTION TO TRANSFER UNDER RULE 1 3 RULES OF JUDICIAL ADMINISTRATION Event Code: 5554

09/20/2021
MOTION
PLAINTIFFS? EMERGENCY MOTION FOR CONTEMPT AND/OR FOR EXPEDITED DISCOVERY UNDER THE TEXAS CITIZENS PARTICIPATION ACT Event Code: 5265
Party: Plaintiff VAN STEAN, ALLISON

09/20/2021 OTHER
UNSIGNED ORDER/PROPOSED ORDER Event Code: 5415

09/21/2021 ASM:CV MOTION FOR CONTEMPT
Event Code: 635 Adjmt Amount: 80.00
Party: Plaintiff VAN STEAN, ALLISON

09/21/2021 ASM:CV MOTION FOR CONTEMPT
Event Code: 635 Adjmt Amount: 80.00
Party: Plaintiff VAN STEAN, ALLISON

09/21/2021 NOTICE
NOTICE OF HEARING Event Code: 5554
Party: Defendant TEXAS RIGHT TO LIFE

09/25/2021 ASM:CV MOTION FOR CONTEMPT
Automatic assessment adjustment from Void Receipt L - 263988 Event Code: 635 Adjmt Amount: -80.00
Party: Plaintiff VAN STEAN, ALLISON

09/27/2021 ORDER
ORDER OF MULTIDISTRICT LITIGATION PANEL

09/30/2021 OTHER
AFFIDAVIT OF SERVICE - BRISCOE CAIN

09/30/2021 OTHER
AFFIDAVIT OF SERVICE - BRYAN HUGHES

09/30/2021 OTHER
AFFIDAVIT OF SERVICE - KELLY HANCOCK

09/30/2021 OTHER
AFFIDAVIT OF SERVICE - DUSTIN BURROWS

09/30/2021 OTHER
AFFIDAVIT OF DUE DILIGENCE - LARRY TAYLOR

Case Summary

Case No. D-1-GN-21-004179

10/08/2021 OTHER
LETTER BRIEF OF PROFESSOR STEPHEN I. VLADECK AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS

10/19/2021 NOTICE
TEXAS RULE OF CIVIL PROCEDURE 76(3) NOTICE

10/19/2021 ORDER
PLAINTIFFS NOTICE OF NONSUIT WITHOUT PREJUDICE OF CLAIMS AGAINST STATE DEFENDANTS

Party: Plaintiff Clinic Access Support Network;
Plaintiff Clinic Access Support Network;
Plaintiff Doe, Jane;
Plaintiff Doe, Jane;
Plaintiff Faulkner, Monica;
Plaintiff Faulkner, Monica;
Plaintiff Frontera Fund;
Plaintiff Frontera Fund;
Plaintiff Fund Texas Choice;
Plaintiff Fund Texas Choice;
Plaintiff Lilith Fund for Reproductive Equity;
Plaintiff Moayed, Ghazaleh;
Plaintiff Moayed, Ghazaleh;
Plaintiff The Afiya Center;
Plaintiff The Afiya Center;
Plaintiff The Bridge Collective;
Plaintiff The Bridge Collective;
Plaintiff The Lilith Fund for Reproductive Equity;
Plaintiff The North Texas Equal Access Fund;
Plaintiff The North Texas Equal Access Fund;
Plaintiff The West Fund;
Plaintiff The West Fund;
Plaintiff Tuegel, Michelle;
Plaintiff Tuegel, Michelle;
Plaintiff VAN STEAN, ALLISON

Party 2: Defendant ANGELA PAXTON STATE OF TEXAS SENATOR;
Defendant BOB HALL STATE OF TEXAS SENATOR;
Defendant BRANDON CREIGHTON STATE OF TEXAS SENATOR;
Defendant BRIAN BIRDWELL STATE OF TEXAS SENATOR;
Defendant BRISCOE CAIN STATE OF TEXAS REPRESENTATIVE;
Defendant BRYAN HUGHES STATE OF TEXAS SENATOR;
Defendant CHARLES PERRY STATE OF TEXAS SENATOR;
Defendant CHARLES SCHWERTNER STATE OF TEXAS SENATOR;
Defendant DAWN BUCKINGHAM STATE OF TEXAS SENATOR;
Defendant DONNA CAMPBELL STATE OF TEXAS SENATOR;
Defendant DREW SPRINGER STATE OF TEXAS SENATOR;
Defendant DUSTIN BURROWS STATE OF TEXAS REPRESENTATIVE;
Defendant EDDIE LUCIO STATE OF TEXAS SENATOR;
Defendant GREG ABBOT GOVERNOR STATE OF TEXAS;
Defendant JANE NELSON STATE OF TEXAS SENATOR;
Defendant JEFF LEACH STATE OF TEXAS REPRESENTATIVE;
Defendant JOAN HUFFMAN STATE OF TEXAS SENATOR;
Defendant JOHN DOE 1 THROUGH 10;
Defendant KELLY HANCOCK STATE OF TEXAS SENATOR;
Defendant KEN PAXTON ATTORNEY GENERAL OF STATE OF TEXAS;
Defendant LARRY TAYLOR STATE OF TEXAS SENATOR;
Defendant LOIS KOLKHORST STATE OF TEXAS SENATOR;
Defendant PAUL BETTENCOURT STATE OF TEXAS SENATOR;
Defendant SEAGO, JOHN;
Defendant SHELBY SLAWSON STATE OF TEXAS REPRESENTATIVE;
Defendant STATE OF TEXAS;
Defendant STEPHANIE KLICK STATE OF TEXAS REPRESENTATIVE;
Defendant TEXAS RIGHT TO LIFE

10/19/2021 MOTION
PLAINTIFFS MOTION FOR SUMMARY JUDGMENT AGAINST PRIVATE ACTOR DEFENDANTS

Case Summary

Case No. D-1-GN-21-004179

10/19/2021 OTHER
PROPOSED/UNSIGNED ORDER

10/25/2021 NOTICE
NOTICE OF APPEARANCE OF COUNSEL FOR PLAINTIFF ALLISON VAN STEAN
Party: Plaintiff VAN STEAN, ALLISON

10/26/2021 ORDER (Judicial Officer: 98TH, DISTRICT COURT)
ORDER REGARDING HEARING DATES AND BRIEFING SCHEDULE- SIGNED BY JUDGE DAVID PEEPLES
Party: Plaintiff VAN STEAN, ALLISON
Party 2: Defendant TEXAS RIGHT TO LIFE

10/26/2021 OTHER
PLAINTIFFS TEMPORARY INJUNCTION HEARING WITNESS LIST

10/26/2021 OTHER
DEFENDANTS' WITNESS LIST

10/27/2021 OTHER
AFFIDAVIT SERVICE SUBPOENA SARAH Y ZARR

10/28/2021 ORDER (Judicial Officer: 98TH, DISTRICT COURT)
ORDER ESTABLISHING MASTER MDt PRETRIAL COURT FILE-SIGNED BY JUDGE DAVID PEEPLES
Party: Plaintiff VAN STEAN, ALLISON
Party 2: Defendant TEXAS RIGHT TO LIFE

10/28/2021 ORDER
AGREED ORDER ON APPLICATION FOR TEMPORARY INJUNCTION

10/28/2021 ORDER (Judicial Officer: 98TH, DISTRICT COURT)
AGREED ORDER ON APPLICATION FOR TEMPORARY INJUNCTION SIGNED BY JUDGE DAVID PEEPLES
Party: Plaintiff VAN STEAN, ALLISON
Party 2: Defendant TEXAS RIGHT TO LIFE

10/28/2021 ORDER (Judicial Officer: 98TH, DISTRICT COURT)
AGREED ORDER ON APPLICATION FOR TEMPORARY INJUNCTION SIGNED BY JUDGE DAVID PEEPLES
Party: Plaintiff VAN STEAN, ALLISON
Party 2: Defendant TEXAS RIGHT TO LIFE

10/28/2021 OTHER
LETTER REQUESTING ISSUANCE

10/28/2021 OTHER
SUBPOENA RETURN SERVED JAMES GRAHAM

11/03/2021 ANSWER
PLAINTIFFS RESPONSE TO MOTION TO DISMISS UNDER THE TCPA

11/03/2021 OTHER
PLAINTIFFS APPENDIX TO RESPONSE TO MOTION TO DISMISS UNDER THE TCPA

11/03/2021 OTHER
LETTER WITH EXHIBITS FOR PLAINTIFFS' APPENDIX TO RESPONSE TO MOTION DISMISS

11/03/2021 OTHER
LETTER WITH EXHIBITS FOR PLAINTIFFS APPENDIX TO RESPONSE TO MOTION TO DISMISS

11/04/2021 OTHER
PLANNED PARENTHOOD PLAINTIFFS BRIEF IN RESPONSE TO THE COURT S QUESTIONS OF OCTOBER 19, 2021

11/04/2021 ANSWER
PLANNED PARENTHOOD PLAINTIFFS OPPOSITION TO DEFENDANTS PLEA TO THE JURISDICTION
Party: Plaintiff Clinic Access Support Network;
Plaintiff Clinic Access Support Network;
Plaintiff Doe, Jane;
Plaintiff Doe, Jane;
Plaintiff Faulkner, Monica;
Plaintiff Faulkner, Monica;
Plaintiff Frontera Fund;
Plaintiff Frontera Fund;

Case Summary

Case No. D-1-GN-21-004179

Plaintiff Fund Texas Choice;
 Plaintiff Fund Texas Choice;
 Plaintiff Lilith Fund for Reproductive Equity;
 Plaintiff Moayed, Ghazaleh;
 Plaintiff Moayed, Ghazaleh;
 Plaintiff The Afiya Center;
 Plaintiff The Afiya Center;
 Plaintiff The Bridge Collective;
 Plaintiff The Bridge Collective;
 Plaintiff The Lilith Fund for Reproductive Equity;
 Plaintiff The North Texas Equal Access Fund;
 Plaintiff The North Texas Equal Access Fund;
 Plaintiff The West Fund;
 Plaintiff The West Fund;
 Plaintiff Tuegel, Michelle;
 Plaintiff Tuegel, Michelle;
 Plaintiff VAN STEAN, ALLISON

11/04/2021

ANSWER

PLANNED PARENTHOOD PLAINTIFFS OPPOSITION TO DEFENDANTS MOTION TO DISMISS UNDER THE TCPA

Party: Plaintiff Clinic Access Support Network;
 Plaintiff Clinic Access Support Network;
 Plaintiff Doe, Jane;
 Plaintiff Doe, Jane;
 Plaintiff Faulkner, Monica;
 Plaintiff Faulkner, Monica;
 Plaintiff Frontera Fund;
 Plaintiff Frontera Fund;
 Plaintiff Fund Texas Choice;
 Plaintiff Fund Texas Choice;
 Plaintiff Lilith Fund for Reproductive Equity;
 Plaintiff Moayed, Ghazaleh;
 Plaintiff Moayed, Ghazaleh;
 Plaintiff The Afiya Center;
 Plaintiff The Afiya Center;
 Plaintiff The Bridge Collective;
 Plaintiff The Bridge Collective;
 Plaintiff The Lilith Fund for Reproductive Equity;
 Plaintiff The North Texas Equal Access Fund;
 Plaintiff The North Texas Equal Access Fund;
 Plaintiff The West Fund;
 Plaintiff The West Fund;
 Plaintiff Tuegel, Michelle;
 Plaintiff Tuegel, Michelle;
 Plaintiff VAN STEAN, ALLISON

11/04/2021

MOTION

REQUEST TO RULE ON DEFENDANTS PLEAS TO THE JURISDICTION AND DEFENDANTS MOTIONS TO DISMISS UNDER THE TEXAS CITIZENS PARTICIPATION ACT

Party: Defendant TEXAS RIGHT TO LIFE

11/04/2021

MOTION

MOTION FOR DESIGNATION OF ORGANIZING COUNSEL/PARTY REPRESENTATIVE AND CONSOLIDATION OF PLEADINGS

Party: Defendant SEAGO, JOHN;
 Defendant TEXAS RIGHT TO LIFE

11/04/2021 MOTION

MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT HEARING

Party: Defendant SEAGO, JOHN

11/05/2021 ANSWER

DEFENDANTS PLEA TO THE JURISDICTION

Case Summary

Case No. D-1-GN-21-004179

Party: Defendant SEAGO, JOHN;
 Defendant TEXAS RIGHT TO LIFE

11/05/2021 OTHER
PLAINTIFFS TRIAL BRIEF ON SB8 S \$10,000 PENALTY PROVISION

11/05/2021 OTHER
PLAINTIFFS TRIAL BRIEF ON DECLARATORY JUDGMENT ACT RELIEF

11/05/2021 OTHER
LETTER TO JUDGE PEEPLES REGARDING TRANSMITTAL OF ALL NOTEBOOKS

11/08/2021 ANSWER
DEFENDANTS RESPONSE TO PLAINTIFFS MOTIONS FOR SUMMARY JUDGMENT

11/08/2021
 ANSWER
PLAINTIFFS RESPONSE TO DEFENDANTS MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT HEARING AND REQUEST FOR RULING ON DEFENDANTS OTHER MOTIONS

11/08/2021 ANSWER
PLAINTIFFS RESPONSE TO PLEA TO THE JURISDICTION

11/08/2021
 ANSWER
PLAINTIFF S RESPONSE TO DEFENDANTS MOTION FOR DESIGNATION OF ORGANIZING COUNSEL/PARTY REPRESENTATIVE AND CONSOLIDATION OF PLEADINGS

11/08/2021 OTHER
E. MYERS LETTER TO JUDGE PEEPLES RE: MSJ MATERIALS

11/08/2021 OTHER
PLAINTIFFS NOTEBOOK OF BRIEFING RELEVANT TO PLAINTIFFS MOTION FOR SUMMARY JUDGMENT

11/08/2021
 OTHER
PLAINTIFFS NOTEBOOK OF AUTHORITIES RELEVANT TO INDIVIDUAL PLAINTIFF S MOTION FOR SUMMARY JUDGMENT

11/09/2021
 ANSWER
PLANNED PARENTHOOD PLAINTIFFS OPPOSITION TO DEFENDANTS MOTION FOR CONTINUANCE OF SUMMARY JUDGMENT HEARING AND REQUEST FOR RULING ON OTHER MOTIONS

11/09/2021
 ANSWER
PLANNED PARENTHOOD PLAINTIFFS RESPONSE TO DEFENDANTS MOTION FOR DESIGNATION OF ORGANIZING COUNSEL/PARTY REPRESENTATIVE AND CONSOLIDATION OF PLEADINGS

11/09/2021
 MOTION
DEFENDANTS MOTION FOR LEAVE TO FILE AND SERVE RESPONSE TO PLAINTIFFS MOTIONS FOR SUMMARY JUDGMENT LESS THAN SEVEN DAYS PRIOR TO HEARING
 Party: Defendant SEAGO, JOHN;
 Defendant TEXAS RIGHT TO LIFE

11/09/2021 MOTION
DEFENDANTS OBJECTIONS TO PLAINTIFFS SUMMARY JUDGMENT EVIDENCE
 Party: Defendant SEAGO, JOHN;
 Defendant TEXAS RIGHT TO LIFE

11/16/2021 ANSWER
PLAINTIFFS RESPONSE TO DEFENDANTS OBJECTIONS TO PLAINTIFFS SUMMARY JUDGMENT EVIDENCE

11/17/2021 ANSWER
PLAINTIFFS REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

11/17/2021 OTHER
PROPOSED ORDER

11/18/2021
 ANSWER
PLANNED PARENTHOOD PLAINTIFFS' RESPONSES TO DEFENDANTS' OBJECTIONS TO PLAINTIFFS' SUMMARY JUDGMENT

Case Summary

Case No. D-1-GN-21-004179

EVIDENCE

Party: Plaintiff Clinic Access Support Network;
 Plaintiff Clinic Access Support Network;
 Plaintiff Doe, Jane;
 Plaintiff Doe, Jane;
 Plaintiff Faulkner, Monica;
 Plaintiff Faulkner, Monica;
 Plaintiff Frontera Fund;
 Plaintiff Frontera Fund;
 Plaintiff Fund Texas Choice;
 Plaintiff Fund Texas Choice;
 Plaintiff Lilith Fund for Reproductive Equity;
 Plaintiff Moayed, Ghazaleh;
 Plaintiff Moayed, Ghazaleh;
 Plaintiff The Afiya Center;
 Plaintiff The Afiya Center;
 Plaintiff The Bridge Collective;
 Plaintiff The Bridge Collective;
 Plaintiff The Lilith Fund for Reproductive Equity;
 Plaintiff The North Texas Equal Access Fund;
 Plaintiff The North Texas Equal Access Fund;
 Plaintiff The West Fund;
 Plaintiff The West Fund;
 Plaintiff Tuegel, Michelle;
 Plaintiff Tuegel, Michelle;
 Plaintiff VAN STEAN, ALLISON

11/18/2021 ANSWER

DEFENDANTS SUPPLEMENTAL OBJECTIONS TO PLAINTIFFS SUMMARY JUDGMENT EVIDENCE

Party: Defendant SEAGO, JOHN;
 Defendant TEXAS RIGHT TO LIFE

11/19/2021 OTHER

PROPOSED ORDER

11/22/2021 OTHER

DEFENDANTS SUPPLEMENTAL BRIEF

11/22/2021 OTHER

PROPOSED ORDER

11/22/2021 OTHER

PROPOSED ORDER

11/22/2021 OTHER

PROPOSED ORDER

11/22/2021

MOTION

DEFENDANTS OBJECTIONS TO AND MOTION TO STRIKE PROPOSED ORDER SUBMITTED BY PLANNED PARENTHOOD

11/22/2021

ANSWER

PLAINTIFFS RESPONSES TO DEFENDANTS SUPPLEMENTAL OBJECTIONS TO PLAINTIFFS SUMMARY JUDGMENT EVIDENCE

11/23/2021

OTHER

OPPOSITION TO DEFENDANTS OBJECTIONS TO AND MOTION TO STRIKE PROPOSED ORDER SUBMITTED BY PLANNED PARENTHOOD

11/24/2021 ORDER

ORDER GRANTING DEFENDANTS' MOTION TO SEAL

11/24/2021

ORDER (Judicial Officer: BURGESS, DON)

ORDER GRANTING DEFENDANTS MOTION FOR LEAVE TO FILE AND SERVE RESPONSE TO PLAINTIFFS MOTIONS FOR SUMMARY JUDGMENT LESS THAN SEVEN DAYS PRIOR TO HEARING

Case Summary

Case No. D-1-GN-21-004179

12/09/2021
ORDER*ORDER DECLARING CERTAIN CIVIL PROCEDURES UNCONSTITUTIONAL AND ISSUING DECLARATORY JUDGMENT -
SIGNED BY JUDGE DAVID PEEPLES*

Party: Plaintiff Clinic Access Support Network

12/09/2021 NOTICE OF APPEAL
NOTICE OF APPEAL

12/10/2021 OTHER
LETTER FROM 3RD COA

12/20/2021 OTHER
DEFENDANTS' REQUEST FOR REPORTER'S RECORD

12/20/2021 OTHER
DEFENDANT'S REQUEST FOR PREPARATION OF CLERK'S RECORD

12/21/2021 OTHER
STATUS LETTER FILED WITH 3RD COA

12/27/2021 OTHER
LETTER FROM 3RD COA

01/04/2022 OTHER
LETTER FROM 3RD COA

01/06/2022 OTHER
LETTER FROM 7TH COA

01/10/2022 OTHER
LETTER FROM 7TH COA

01/10/2022 OTHER
LETTER FROM 7TH COA

01/10/2022 OTHER
TAMES RECORD SUBMISSION FOR CLERK'S RECORD FILED WITH 7TH COA

01/13/2022 OTHER
DEFENDANTS' REQUEST FOR PREPARATION OF CLERK'S RECORD

01/13/2022 OTHER
DEFENDANTS' REQUEST FOR PREPARATION OF CLERK'S RECORD ON D-1-GN-21-004544

01/18/2022 OTHER
LETTER FROM 7TH COA

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD ON D-1-GN-21-004193

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD ON D-1-GN-21-004189

01/18/2022 OTHER
REQUEST FOR CLERKS RECORD ON D-1-GN-21-004846

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD ON D-1-GN-21-004504

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD ON D-1-GN-21-004489

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD ON D-1-GN-21-004503

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD ON D-1-GN-21-004632

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD D-1-GN-21-004303

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD D-1-GN-21-004648

Case Summary

Case No. D-1-GN-21-004179

01/18/2022 OTHER
REQUEST FOR CLERK'S RECORD ON D-1-GN-21-004316

01/18/2022 OTHER
PLAINTIFFS REQUEST FOR PREPARATION OF SUPPLEMENTAL CLERK'S RECORD

01/19/2022 OTHER
REQUEST FOR CLERK'S RECORD ON D-1-GN-21-004606

02/09/2022 OTHER
TAMES RECORD SUBMISSION FOR CLERKS RECORDS

02/11/2022 NOTICE
NOTICE OF TRANSFER OF TAG-ALONG CASE TO MULTIDISTRICT COURT
Party: Plaintiff VAN STEAN, ALLISON

02/14/2022 NOTICE
NOTICE OF TRANSFER OF TAG-ALONG CASE TO MULTIDISTRICT COURT
Party: Plaintiff VAN STEAN, ALLISON

02/22/2022 OTHER
APPENDIX IN SUPPORT OF THE PLAINTIFFS' RESPONSE TO MOTION TO DISMISS UNDER THE TCPA - PART 4

02/22/2022 OTHER
PLAINTIFFS' REQUEST FOR SUPPLEMENTAL CLERK'S RECORD

02/22/2022 MOTION
MOTION TO REMAND CASES TO TRIAL COURT

02/22/2022 MOTION
UNOPPOSED MOTION TO SEAL ORIGINAL PETITION IN IN RE MAXWELL

02/22/2022 OTHER
VERIFIED PETITION TO TAKE DEPOSITION TO INVESTIGATE A LAWSUIT AS FILED IN DENTON COUNTY

02/22/2022 MOTION
UNOPPOSED MOTION TO SEAL ORIGINAL PETITION IN IN RE MAXWELL

02/22/2022 OTHER
VERIFIED PETITION TO TAKE DEPOSITION TO INVESTIGATE A LAWSUIT AS FILED IN JACK COUNTY

03/03/2022 OTHER
CLERK'S RECORD HAND DELIVERED TO 3RD COA

03/08/2022 OTHER
TAMES RECORD SUBMISSION FOR CLERK'S RECORD

03/16/2022 OTHER
LETTER FROM 3RD COA

03/16/2022 NOTICE OF TAG ALONG CASE
NOTICE OF TRANSFER OF TAG-ALONG CASE TO MULTIDISTRICT PRETRIAL COURT

03/16/2022 NOTICE OF TAG ALONG CASE
NOTICE OF TRANSFER OF TAG-ALONG CASE TO MULTIDISTRICT PRETRIAL COURT

03/21/2022 MOTION
NOTICE TO THE COURT AND MOTION TO SET HEARING
Party: Defendant SEAGO, JOHN;
Defendant TEXAS RIGHT TO LIFE

Service Events

10/29/2021 **Writ**
SEAGO, JOHN
Unserved
TEXAS RIGHT TO LIFE
Unserved

Case Summary

Case No. D-1-GN-21-004179

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALAN BRAID, M.D.,

Interpleader Plaintiff,

v.

OSCAR STILLEY; FELIPE N. GOMEZ;
WOLFGANG P. HIRCZY DE MINO,
PH.D., AKA TEXAS HEARTBEAT
PROJECT,

Interpleader Defendants.

Case No: 1:21-cv-05283

**PLAINTIFF ALAN BRAID M.D.'S REPLY MEMORANDUM
IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT**

Plaintiff Alan Braid M.D. respectfully submits this short Reply in support of his Motion for Summary Judgment (“Motion”).

There are three interpleader defendants. Two have responded to Dr. Braid’s Motion.

Defendant Felipe N. Gomez filed a Local Rule 56.1(b)(2) Response to Dr. Braid’s L.R. 56.1(a)(2) Statement of Material Facts. *See* ECF No. 87. Defendant Gomez has not filed a supporting memorandum of law in opposition to the Motion.

Defendant Oscar Stilley filed a Local Rule 56.1(b)(2) Response and a supporting memorandum of law. *See* ECF No. 94 & 95.

Defendant Wolfgang P. Hirczy de Miño, a.k.a “Texas Heartbeat Project,” has been served with process, ECF No. 45, and the Motion. He has not filed a response to the Motion or filed any other papers in this matter. He is aware of the Motion. He requested copies of the motion papers from Dr. Braid’s counsel, who of course provided them.

TAB D

The Texas Attorney General, pursuant to the applicable federal statute and Rule 5.1(b), has been repeatedly notified, including by this Court, of the pendency of this constitutional challenge to Texas Senate Bill 8. *See* ECF No. 4 & 35. Texas has not appeared or filed any response.

This Reply addresses the contrary arguments from Defendants Gomez and Stilley.

A. Gomez Did Not File a Memorandum Opposing Summary Judgment and His Material Facts Response Does Not Create a Genuine Dispute

Interpleader Defendant Gomez did not submit a brief in opposition to Dr. Braid's Motion. Defendant Gomez did file a response to Dr. Braid's Material Fact Statement, but Gomez's responses do not create a material fact sufficient to deny summary judgment.

Despite his failure to file a memorandum of law pursuant to L.R. 56.1(b)(1), Gomez appears to oppose Dr. Braid's Motion. Gomez's Material Fact Statement Response asserts that summary judgment "is clearly not appropriate for a hotly contested issue of fact now being litigated in several forum," ECF No. 87 ¶ 2; and that Dr. Braid cannot demonstrate "harm" and that this "bar[s]" summary judgment. ECF No. 87 ¶ 8. Gomez also says that "the fact that other actions exist with the same disputes" likewise bars summary judgment "as a matter of record by plaintiff's own admission." *Id.* ¶ 18. Dr. Braid addresses each of these three contentions.

The "hotly contested" fact issue to which Gomez refers is the definition of "viability." Defendant Gomez does not support his opposition with any citation and thus does not controvert the sworn affidavit of Dr. Braid, a board-certified OB/GYN and licensed physician.

Gomez states without support that Dr. Braid cannot assert third party "harm" in this constitutional challenge. Gomez's position is contradicted by decades of Supreme Court precedent, which Dr. Braid addressed in his Motion. *See* ECF No. 75 at 11 n.2.

Gomez claims that "other actions exist with the same disputes" and thus this Court cannot grant Dr. Braid's summary judgment motion. Gomez is wrong. This case is the only one in the

nation in which claimants under S.B. 8 (Gomez, Stilley and Hirczy de Miño) have attempted to enforce Texas’s anti-abortion law against a provider, Dr. Braid. Other litigants (including Dr. Braid’s clinic) have asserted that the law is unconstitutional in a pre-enforcement challenges, but rulings by the U.S. Court of Appeals for the Fifth Circuit and Supreme Court will preclude the merits of Section 3 of S.B. 8 from being reached in that challenge. *See* Dkt. 75-2 ¶¶ 18–25). Thus S.B. 8 has remained in full effect since September 1, 2021, and other states are following Texas’s lead.

B. Stilley Does Not Defend S.B. 8’s Constitutionality and Agrees With Dr. Braid’s Material Fact Statement

Defendant Oscar Stilley complied with this Court’s Local Rules for parties opposing motions for summary judgment. *See* ECF No. 94–95. In his Memorandum of Law, Defendant Stilley does not defend the constitutionality of S.B. 8 except in one respect. Stilley identifies S.B. 8’s severability clause as containing, memorably, “the tiniest sliver of validity.” *See* Dkt. 94 at 17. Defendant Stilley describes there a discrete circumstance in which he asks that S.B. 8 be preserved. *See id.* Dr. Braid disagrees that any portion of S.B.8 is constitutionally valid. But if a portion were valid—it is not—the harm suffered by pregnant people in Texas since September 1, 2021, does not justify preserving the aspect Defendant Stilley identifies, or for the purpose for which he intends to use the law.

Defendant Stilley also filed a Local Rules-compliant Response to Dr. Braid’s Material Fact Statement. That response admits each of the material facts contained in Dr. Braid’s statement and adds an additional 18 paragraphs of additional material facts. ECF No. 95. No response or reply to those additional material facts is required and they do not affect Dr. Braid’s entitlement to summary judgment.

Dated: April 11, 2022

Respectfully submitted,

ALAN BRAID, M.D.

By: /s/ Suyash Agrawal
One of His Attorneys

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*Appearing *pro hac vice*
** *Pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I certify that on April 11, 2022, a true and correct copy of this document was served on Wolfgang P. Hirczy de Mino via email wphdmphd@gmail.com, an email address from which he has corresponded with Dr. Braid's counsel in this case.

/s/ Suyash Agrawal _____

45th District Court**Case Summary****Case No. 2022CI08302****Felipe N Gomez VS Alan Braid, MD**§
§
§Location: **45th District Court**
Judicial Officer: **45th, District Court**
Filed on: **05/04/2022**

Case Information

Case Type: OTHER CIVIL CASES
Case Status: **05/04/2022 Pending**

Assignment Information

Current Case AssignmentCase Number 2022CI08302
Court 45th District Court
Date Assigned 05/04/2022
Judicial Officer 45th, District Court

Party Information

*Lead Attorneys***Plaintiff Gomez, Felipe N Pro Se****Defendant Braid, Alan MD**

Events and Orders of the Court

05/04/2022 New Cases Filed (OCA)
05/04/2022 PETITION
SB 8 Complaint
05/04/2022 STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS
05/06/2022 REQUEST FOR SERVICE AND PROCESS

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ALAN BRAID, M.D.,

Interpleader Plaintiff,

v.

OSCAR STILLEY; FELIPE N. GOMEZ;
WOLFGANG P. HIRCZY DE MINO, PH.D.,
AKA TEXAS HEARTBEAT PROJECT,

Interpleader Defendants.

Case No:

**COMPLAINT FOR INTERPLEADER AND
DECLARATORY JUDGMENT**

Interpleader Plaintiff Alan Braid, M.D. brings this action for interpleader and declaratory judgment and states as follows:

I. PRELIMINARY STATEMENT

1. On September 1, 2021, Texas Senate Bill 8 (“SB8”), codified as Texas Health & Safety Code §§ 171.201 *et seq.*, took effect, implementing a near total ban on pre-viability abortions in Texas in defiance of nearly fifty years of Supreme Court precedent and the protections enshrined in the United States Constitution. The Supreme Court has made clear that “a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability.” *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 879 (1992); *accord Roe v. Wade*, 410 U.S. 113 (1973). Texas’s ban directly conflicts with this well-settled law and subjects abortion providers to ruinous monetary penalties through a civil enforcement

scheme uniquely crafted to evade judicial review and to harass abortion providers by subjecting them to enforcement proceedings in which they have no fair prospect of defending themselves.

2. In an attempt to evade pre-enforcement review, Texas’s ban bars government officials—such as district attorneys or the health department—from directly enforcing the prohibition and instead subjects abortion providers to civil actions that can be brought by “[a]ny person,” seeking injunctive relief, a statutory penalty of at least \$10,000, and costs and attorney’s fees. Tex. Health & Safety Code §§ 171.207(a), 171.208(a)–(b).

3. The Texas Legislature and the law’s proponents intended SB8 to interfere with healthcare providers’ provision of abortion care by making it too costly and risky for providers to provide that care. So far, the law has had its desired effect. To date, nearly all Texas abortion providers have ceased providing healthcare prohibited by SB8, leaving women in Texas unconstitutionally deprived of abortion access.

4. Interpleader Plaintiff Alan Braid, M.D., a licensed physician in Texas who has practiced as an OB/GYN for the past 50 years, is the exception. On September 18, 2021, the Washington Post published an opinion authored by Dr. Braid. In it, he described the difficult experiences his patients have encountered over decades of providing reproductive health care. Dr. Braid explained why, on September 6, 2021, he provided an abortion to a patient in violation of SB8’s abortion ban.

5. Three conflicting SB8 claims have now been asserted against Dr. Braid by three different claimants (the “Interpleader Defendants”) from three different states in three different suits, each seeking the same damages award pursuant to SB8 for Dr. Braid’s admitted violation on September 6. To SB8’s proponents, the likelihood of strangers filing multiple, overlapping lawsuits against a provider is a feature of SB8, and not an accident. However, SB8 provides that,

for any given violation, a physician may be required to pay statutory damages only once. The three suits against Dr. Braid thus each assert entitlement to a single damages award; and Dr. Braid asserts that none of them has any right to damages because the law requiring that payment violates the United States Constitution.

6. Dr. Braid brings this action in the nature of interpleader to determine who among the Interpleader Defendants and Dr. Braid has a right to the contested damages award and to avoid wasteful, vexatious and duplicative litigation and potentially conflicting rulings regarding entitlement to that stake. Because Dr. Braid challenges the constitutionality of SB8 as a basis for asserting that none of the Interpleader Defendants is entitled to any recovery, he is filing and serving a notice of constitutional question under Fed. R. Civ. P. 5.1 concurrently with this Complaint.

II. THE PARTIES

7. Dr. Braid is an individual residing in San Antonio, Texas and a citizen of Texas for diversity purposes. Dr. Braid is a licensed physician who has been providing reproductive health care, including abortion services, since the 1970s.

8. Interpleader Defendant Oscar Stilley is an individual residing in Cedarville, Arkansas and a citizen of Arkansas for diversity purposes. On information and belief, Stilley has no prior connection to Dr. Braid or the patient for whom Dr. Braid provided care on September 6, 2021.

9. Interpleader Defendant Felipe N. Gomez is an individual residing in Chicago, Illinois and a citizen of Illinois for diversity purposes. On information and belief, Gomez has no prior connection to Dr. Braid or the patient for whom Dr. Braid provided care on September 6, 2021.

10. Interpleader Defendant Wolfgang P. Hirczy de Mino, Ph.D., aka Texas Heartbeat Project (“THP”), is an individual who resides in Bellaire, Texas and a citizen of Texas for diversity purposes. On information and belief, THP has no prior connection to Dr. Braid or the patient for whom Dr. Braid provided care on September 6, 2021.

III. JURISDICTION AND VENUE

11. The Court has jurisdiction because Dr. Braid brings this Complaint for Interpleader and Declaratory Judgment pursuant to 28 U.S.C. §§ 1335, 1397, and 2361, with respect to the parties’ competing claims to the \$10,000 minimum penalty sought in Interpleader Defendants’ respective complaints filed pursuant to SB8, Tex. Health & Safety Code § 171.208(a).

12. Federal law authorizes Dr. Braid’s claim for injunctive relief in 28 U.S.C. §§ 2202 and 2361. Dr. Braid’s claim for declaratory relief is authorized by 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure. Dr. Braid’s claims for equitable relief are further authorized by the general legal and equitable powers of the Court.

13. The claimants in this action are of minimally diverse citizenship as required for statutory interpleader actions; the amount in controversy exceeds \$500.00; and Dr. Braid will, on the Court’s authorization, deposit the amount in controversy with the Court’s registry pending this action’s resolution.

14. Venue is proper in this District under 28 U.S.C. § 1397 because this is a civil action of interpleader or in the nature of interpleader under 28 U.S.C. § 1335 and is brought in a judicial district in which Gomez, one of the claimants, resides.

IV. FACTS

A. SB8 Authorizes Individuals to Bring Civil Suit Against Healthcare Providers for Performing Prohibited Abortions.

15. SB8 § 3 added Subchapter H to Chapter 171 of the Texas Health & Safety Code. Newly-added § 171.204(a) of the Texas Health & Safety Code prohibits a physician from “knowingly perform[ing] or induc[ing] an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child,” or failed to perform a test to detect a so-called fetal heartbeat. The statute provides no exception for pregnancies resulting from rape or incest, or for fetal health conditions that are incompatible with sustained life after birth. Rather, the only exception is a very narrow “medical emergency” exception. Tex. Health & Safety Code §§ 171.204(a), 171.205(a).

16. SB8 defines “fetal heartbeat” as “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” *Id.* § 171.201(1). Embryonic cardiac activity can typically be detected beginning at approximately six weeks of pregnancy, measured from the first day of a patient’s last menstrual period (“LMP”). Consequently, using SB8’s “fetal heartbeat” definition, SB8 prohibits nearly all abortions after six weeks, which is before some individuals even learn of their pregnancy, and several months before viability.

17. The embryonic cells that produce early cardiac activity described in SB8 have not yet formed a heart. The term “heartbeat” in SB8 thus covers not just a “heartbeat,” but also early cardiac activity—more accurately, electrical impulses—present before full development of the cardiovascular system. Similarly, a developing pregnancy is properly referred to as an “embryo” until approximately ten weeks LMP, when it becomes a “fetus.” So, despite SB8’s use of the phrase “*fetal* heartbeat,” the statute forbids abortion even when cardiac activity is detected in an embryo. *See id.* §§ 171.201(1), 171.201(7), 171.204(a) (emphasis added).

18. No embryo is viable at the first point when cardiac activity can first be detected by ultrasound. Rather, viability generally does not occur until approximately 24 weeks LMP—approximately four months after the cutoff for abortions under SB8.

19. SB8’s enforcement provision empowers “Any person, other than an officer or employee of a state or local governmental entity” in Texas to bring a civil action against a physician who “performs or induces an abortion” in violation of SB8, as well as anyone who “knowingly engag[es] in conduct that aids or abets the performance or inducement of” an abortion that violates the statute, or who “intends” to provide, aid, or abet a prohibited abortion. Tex. Health & Safety Code § 171.208(a)(1)–(2). Liability for aiding and abetting abortion applies “regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of” the statute. *Id.* § 171.208(a)(2).

20. If a claimant prevails in an action brought pursuant to SB8’s enforcement provision, a court “shall” award:

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

(2) statutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed or induced in violation of this subchapter. . . and

(3) costs and attorney’s fees.

Id. § 171.208(b)(1)–(3).

21. Consequently, claimants filing suit pursuant to § 171.208(a) are awarded a minimum of \$10,000 if they prevail on their suit. The statute does not set a maximum damages amount. However, while any person in the world may sue under SB8, only one claimant will be entitled to collect the statutory penalty for any given violation of SB8: Under § 171.208(c), a

court may not award relief in response to a violation of SB8 if the defendant shows that he or she previously paid statutory damages for that particular abortion performed or induced in violation of SB8.

B. Interpleader Defendants Filed Competing Suits Against Dr. Braid Alleging That He Violated SB8.

22. Dr. Braid is a physician who has been providing reproductive healthcare since 1972. On September 18, 2021, the Washington Post published Dr. Braid’s op-ed entitled “Why I Violated Texas’s Extreme Abortion Ban.” In it, Dr. Braid described his and his patients’ experiences and stated, “that is why, on the morning of Sept. 6, I provided an abortion to a woman who, though still in her first trimester, was beyond the state’s new limit.” Indeed, on September 6, 2021, Dr. Braid provided an abortion to a patient in her first trimester after detecting cardiac activity in the patient’s pregnancy.

23. After the Washington Post published Dr. Braid’s opinion piece, three claimants—the Interpleader Defendants—filed competing suits against him, alleging that he provided abortion care in violation of SB8.

24. Stilley filed his complaint (“Stilley Complaint”) captioned *Oscar Stilley v. Alan Braid, MD*, Case No. 2021CI19940, in the 438th Judicial District Court of Bexar County, Texas, on September 20, 2021. A copy of the Stilley Complaint is attached as Exhibit A.

25. The Stilley Complaint alleges that “On or about September 6, 2021,” Dr. Braid performed an abortion and that “[t]he aborted fetus had a detectable heartbeat at the time of the abortion.” The Stilley Complaint states that this violated SB8 and seeks “in no case less than the statutory minimum of \$10,000,” as well as an injunction prohibiting Dr. Braid from further violations of SB8 and costs and fees.

26. Gomez filed his complaint captioned *Felipe N. Gomez v. Dr. Alan Braid*, Case No. 2021CI19920, in the 224th Judicial District Court of Bexar County, Texas, on September 20, 2021. Gomez then filed an amended complaint (“Gomez Complaint”), adding additional defendants Planned Parenthood, South Austin; the United States; and the State of Texas, on September 23, 2021. A copy of the Gomez Complaint is attached as Exhibit B.

27. The Gomez Complaint alleges that Dr. Braid performed an abortion “on or about 9.6.21 where his patient was more than 6 weeks pregnant, and/or where the fetus had a detectable heartbeat, which Sec. 171.208(a)(1) declares is illegal.” The Gomez Complaint cites to § 171.208, the enforcement provision of SB8 that provides that the court “shall award” injunctive relief, a minimum \$10,000 damages payment for each violation, and costs and fees to a successful claimant.

28. THP filed its complaint (“THP Complaint”) captioned *Texas Heartbeat Project v. Alan Braid, M.D.*, Cause No. 21-2276-C, on September 22, 2021 in the 7th Judicial District Court of Smith County, Texas. A copy of the THP Complaint is attached as Exhibit C.

29. The THP Complaint alleges that “before September 19, 2021, Defendant ALAN BRAID, M.D., knowingly performed an abortion in violation of SB8 and subsequently disclosed and/or publici[z]ed that fact. . .” The THP Complaint seeks a \$10,000 statutory damages payment. While the THP Complaint does not identify September 6 as the date of the alleged abortion, the September 6 abortion is the only abortion that Dr. Braid performed after the effective date of SB8 and “disclosed and/or publici[z]ed” before September 19, 2021. Additionally, THP served a Request for Admission concurrently with his Complaint requesting an admission that “on or about September 6, 2021 you performed or induced an abortion on a patient after you detected cardiac activity in the fetus/embryo/unborn [sic] child in that patient’s

womb.” Ex. C at 6. On information and belief, the THP Complaint seeks damages for Dr. Braid’s performance of the September 6 abortion.

C. An Interpleader Action Is Required to Resolve Conflicting Claims and to Avoid Duplicative Proceedings.

30. Each of the Interpleader Defendants, through their respective complaints (Exs. A–C), assert entitlement to a statutory damages payment for the abortion Dr. Braid disclosed performing on September 6, 2021. However, pursuant to § 171.208(c), Dr. Braid can only be required to pay the penalty in response to one claimant’s suit and can assert that payment to one claimant as a defense to any other suits seeking damages for the September 6 abortion.

31. SB8 violates the United States Constitution in light of, *inter alia*, the rights guaranteed under *Roe v. Wade*, 410 U.S. 113 (1973), and Dr. Braid is entitled to avoid or keep any payment allegedly owed for his violation of SB8.

32. At least three claimants—the three Interpleader Defendants—each assert entitlement to the statutory damages payment for Dr. Braid’s performance of the September 6 abortion, and Dr. Braid asserts that he is entitled to retain that money. Dr. Braid also faces a real risk of additional claimants, particularly in light of his highly publicized statements regarding the September 6 abortion and the fact that SB8 has a four-year statute of limitations, allowing for suits over this single act well into the future. Pursuant to § 171.208(c), only one claimant can collect the payment; Dr. Braid asserts that none can.

D. The Texas State Legislature Designed SB8 to Avoid Judicial Review Despite the Statute’s Use of Judicial Officers to Implement Constitutional Violations.

33. The Supreme Court’s decisions in *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), establish that a state may not prohibit abortion before viability, and nearly 50 years of unbroken precedent has reaffirmed this

principle. Before SB8, courts have uniformly invalidated every state law that bans abortion at a point in pregnancy prior to viability.

34. In light of SB8’s clear violation of constitutionally protected rights, the Texas State Legislature has attempted to insulate SB8 from judicial review by shifting enforcement from the state to private citizens. SB8 thus does not provide for direct enforcement by law enforcement officials (and indeed purports to prohibit it), but instead deputizes private citizens to act as bounty hunters and sue any person whom the claimant believes has provided or aided or abetted an abortion in violation of the statute—or whom the claimant believes “intends” to do so.

35. Public statements by SB8’s drafters and supporters confirm that the intent behind the law was to “insulate the State from responsibility for implementing and enforcing the regulatory regime,” *Whole Woman’s Health v. Jackson*, 21A24, 2021 WL 3910722, at *1 (U.S. Sept. 1, 2021) (Roberts, C.J., dissenting). For example, the legislative director of Texas Right to Life stated that one of the “main motivations” for SB8’s design is to block judicial review. *See* Emma Green, What Texas Abortion Foes Want Next, *The Atlantic* (Sept. 2, 2021), <https://www.theatlantic.com/politics/archive/2021/09/texas-abortion-ban-supreme-court/619953/> (asserting that S.B. 8 was crafted out of “frustrat[ion]” with courts that “block[] pro-life laws because they think they violate the Constitution or pose undue burdens”) (last visited Sept. 29, 2021).

36. One of the attorneys principally involved in advising Texas on SB8 stated: “It is practically impossible to bring a pre-enforcement challenge to statutes that establish private rights of action, because the litigants who will enforce the statute are hard to identify until they actually bring suit.” Jonathan F. Mitchell, *The Writ-of-Erasure Fallacy*, 104 *Va. L. Rev.* 933,

1001 n.270 (2018), https://www.virginialawreview.org/wp-content/uploads/2020/12/Mitchell_Online.pdf (last visited Sept. 29, 2021).

37. And Texas State Senator Bryan Hughes, one of the principal architects of SB8 in the Texas Legislature, confirmed this purpose when he informed reporters that he structured SB8 to avoid the fate of other “heartbeat” bills that have been struck down as unconstitutional. *See* Jacob Gershman, Behind Texas Abortion Law, an Attorney’s Unusual Enforcement Idea, *The Wall Street Journal* (Sept. 4, 2021, 9:38 A.M.), <https://www.wsj.com/articles/behind-texas-abortion-law-an-attorneys-unusual-enforcement-idea-11630762683> (last visited Sept. 9, 2021). Senator Hughes made the point succinctly: “We were going to find a way to pass a heartbeat bill that was going to be upheld.” *Id.* Senator Hughes elsewhere deemed the statute a “very elegant use of the judicial system.” Jenna Greene, Column: Crafty lawyering on Texas abortion bill withstood SCOTUS challenge, *Reuters* (Sept. 5, 2021, 1:52 P.M.), <https://www.reuters.com/legal/government/crafty-lawyering-texas-abortion-bill-withstood-scotus-challenge-greene-2021-09-05/> (last visited Sept. 29, 2021).

38. While Texas has gone to unprecedented lengths to hide its attack on constitutionally protected rights behind a nominally private cause of action, it nonetheless has compelled its judicial branch to serve an enforcer’s role. “It is doubtless true that a State may act through different agencies,” including “its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all actions of the State denying equal protection of the laws, whether it be action by one of these agencies or by another.” *Virginia v. Rives*, 100 U.S. 313, 318 (1879). Awarding the monetary relief that SB8 authorizes (to plaintiffs who need not demonstrate any injury or other connection to the underlying abortion procedure) constitutes state activity designed to violate the Fourteenth Amendment rights of women in Texas. “That the

action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of th[e] [Supreme] Court.” *Shelley v. Kraemer*, 334 U.S. 1, 14 (1948). The Texas Legislature’s attempt to distance government actors from any enforcement of its unconstitutional ban on pre-viability abortions, and thus to evade judicial review, ignores that judicial officers are government actors, too.

39. Additionally, under the state-action doctrine, private actors may be found to function as agents or arms of the state itself and thus are bound by the Constitution’s restrictions on state action. *See, e.g., Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001). SB8 vests individuals with law-enforcement authority—a power traditionally reserved exclusively to a sovereign—in a manner that appears to be “unprecedented,” *Whole Woman’s Health v. Jackson*, 2021 WL 3910722, at *2 (Roberts, C.J., dissenting). Among other things, SB8 grants individuals with unsupervised authority to police SB8 violations, and enables them to obtain so-called statutory damages against violators without any showing of personal injury or even connection to an SB8 lawsuit.

40. These individuals are also state actors to the extent they are significantly involved in conduct that would be unconstitutional if engaged in by the state itself or where Texas has sanctioned their conduct. *See, e.g., Reitman v. Mulkey*, 387 U.S. 369, 380-81 (1967) (finding state action where law “authorize[d] . . . racial discrimination in the housing market”). SB8 implicates this doctrine by expressly authorizing—indeed, empowering—individuals to engage in conduct that violates the constitutional rights of women throughout Texas when the state, itself, could not.

E. The Unique Enforcement Mechanisms and Procedures Provided in SB8 Weight Actions Brought Under the Statute Heavily Against Providers.

41. SB8 provides for enforcement mechanisms that differ significantly from those that typically apply to Texas litigants and which heavily tilt SB8 lawsuits strongly toward claimants. While the law contemplates that enforcement actions will be initiated by private actors, SB8's enforcement proceedings use Texas courts to enforce this unconstitutional law while imposing significant and unique burdens on defendants. These burdens help insulate SB8 plaintiffs from any costs or consequences of bringing suit, furthering the likelihood that defendants will face multiple, vexatious litigations over a single potential damages award.

42. Venue in Texas usually lies only where the events giving rise to a claim took place or where the defendant resides, *see* Tex. Civ. Prac. & Rem. Code § 15.002(a), and a Texas state court may generally transfer venue “[f]or the convenience of the parties and witnesses and in the interest of justice,” *id.* § 15.002(b).

43. SB8 diverges from the general venue rules applicable in Texas. It allows “any person” to file an enforcement action in *their own* county of residence (if they are a Texas resident) and then block transfer to a more appropriate venue. *See* Tex. Health & Safety Code § 171.210(a)(4) (permitting suit in the claimant’s county of residence if “the claimant is a natural person residing in” Texas); *id.* § 171.210(b) (providing that SB8 “action may not be transferred to a different venue without the written consent of all parties”). The claimant filing an enforcement action need not have any connection whatsoever to the defendant named in their suit—indeed, here, three claimants with no link to either Dr. Braid, the patient for whom he provided care, or to any patient of Dr. Braid’s generally, filed separate enforcement actions in different counties after learning about the September 6 abortion from media outlets. As a result

of SB8's unique venue provision, abortion providers such as Dr. Braid may need to defend themselves in multiple, simultaneous enforcement proceedings in courts across the state.

44. SB8 creates further imbalance by providing for one-way fee shifting in favor of SB8 claimants. Anyone who successfully brings a claim under the statute is entitled to recover costs and attorney's fees. Yet defendants sued under SB8 cannot be awarded costs or attorney's fees if they prevail, regardless of how many times the defendant may have been sued or how meritless the claimant's suit may be in light of its contravention of federal law. *Id.* §§ 171.208(b)(3), 171.208(i).

45. SB8 rigs proceedings against defendants in an astonishing manner by purporting to bar defendants from raising certain defenses. These include (1) that the defendant believed the law was unconstitutional; (2) that they relied on a court decision, later overruled, that was in place at the time of the acts underlying the suit; or (3) that the patient consented to the abortion. *Id.* § 171.208(e)(2), (3), (6). The statute also purports to prohibit defendants from asserting non-mutual issue or claim preclusion, or from relying as a defense on any other "state or federal court decision that is not binding on the court in which the action" was brought. *Id.* § 171.208(e)(4), (5). These provisions, not typically found in Texas legislation, are plainly intended to chill the provision of constitutionally protected services by making suits under SB8 uniquely difficult to defend such that a filed action is all but assured to lead to liability, with multiple, ruinous and vexatious litigation along the way.

46. SB8 similarly contains a provision applying draconian, one-way fee-shifting measures to deter legal challenges to Texas abortion restrictions, including SB8, penalizing anyone who tries to bring such a challenge. Tex. Civ. Prac. & Rem. Code § 30.022 (this provision is the codification of SB8 § 4). Under this provision, anyone who seeks declaratory or

injunctive relief from enforcement of SB8 or any other “law that regulates or restricts abortion” can be forced to pay the attorney’s fees of the party defending the restriction unless they win on *every* claim they bring. *Id.* If a court dismisses a claim brought by the law’s challenger, regardless of the reason, or enters judgment in the other party’s favor on that claim, the party defending the abortion restriction is deemed to have “prevail[ed].” *Id.* Even if a court enjoins the challenged abortion restriction, so long as the party defending the restriction prevails on a single claim—for instance, if the court rejects one claim pleaded in the alternative or dismisses another rendered moot by circumstance—the challenger and their attorney will be liable for the proponent’s attorney’s fees. No other law in Texas awards attorney’s fees to the losing party or makes a party’s own attorney jointly and severally liable for those fees.

47. SB8 further treats abortion providers differently from other civil defendants by creating new rules of statutory construction and severability that only apply to state abortion laws and regulations. Tex. Health & Safety Code §§ 171.206, 171.212.

48. The Texas Legislature’s efforts to tip SB8 cases in claimants’ favor have resulted in a statute that attempts to rewrite federal law. Under a consistent line of Supreme Court cases, states may regulate abortion services provided prior to viability, but they may not ban abortions. *Jackson Women’s Health Org. v. Dobbs*, 945 F.3d 265, 269 (5th Cir. 2019), *cert. granted*, No. 19-1392, 2021 WL 1951792 (U.S. May 17, 2021). To determine the constitutionality of a state’s abortion regulations, the Court has articulated an undue-burden balancing standard. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 877–78 (1992). But as every court to consider a similar ban, including the Fifth Circuit, has concluded, a ban at six weeks can never survive constitutional review. *Jackson Women’s Health Org. v. Dobbs* (“Jackson Women’s II”), 951 F.3d 246, 248 (5th Cir. 2020) (striking six-week ban because “cardiac activity can be detected

well before the fetus is viable [and] [t]hat dooms the law”). Despite this precedent holding that pre-viability bans necessarily impose an undue burden, SB8 requires state courts to evaluate the burden anew *in every case* as part of an “affirmative defense” in enforcement actions—and even then would fundamentally “limit[]” that test. S.B. 8 § 171.209(c), (d).

49. SB8 additionally directs state-court judges to ignore judgments and injunctions issued by federal courts, for example, by telling state courts to refuse to apply non-mutual collateral estoppel based on such judgments, and by mandating that they ignore whether a federal injunction expressly permitted activity by an abortion provider or other person sued in SB8 proceedings. Tex. Health & Safety Code § 171.208(e)(4), (5). In this manner too SB8 attempts to overrule federal authority via state law.

FIRST CLAIM FOR RELIEF

(Interpleader)

50. Dr. Braid incorporates by reference the allegations in the above paragraphs.

51. The Interpleader Defendants and Dr. Braid assert conflicting claims to the statutory damages mandated by SB8 for Dr. Braid’s performance of the September 6 abortion procedure. Dr. Braid cannot determine which of Interpleader Defendants is entitled to the statutory damages, as he believes none of them, or at most one of them, is entitled to those funds.

52. Continued litigation of Interpleader Defendants’ conflicting claims in separate courts will potentially expose Dr. Braid to conflicting judgments. It will further waste party and judicial resources, as Dr. Braid will be forced to defend simultaneously multiple actions over a single damages award.

53. In the event one or more of Interpleader Defendants’ claims are resolved, Dr. Braid will nevertheless be exposed to potential further vexatious litigation in light of his well-

publicized decision to violate SB8's provisions and the expansive enforcement mechanism allowing "any person" to sue for redress. While SB8 prohibits awarding the same statutory penalty for any given abortion more than once, the fact of prior payment is a defense to a lawsuit, not a bar to a new claimant initiating one. Dr. Braid may thus be forced to defend against multiple actions for the next four years, in addition to the three lawsuits he faces today.

54. Dr. Braid will, on authorization from the Court, deposit the contested funds with the registry of the Court.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment – Fourteenth Amendment Substantive Due Process Defense)

55. Dr. Braid incorporates by reference the allegations in the above paragraphs.

56. The Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973), and decades of subsequent precedent, provide a constitutionally protected right to terminate a pregnancy before viability.

57. SB8 prohibits pre-viability abortion when a "fetal heartbeat," as defined in the statute, is detectable. This occurs months before viability. SB8 consequently violates the substantive due process rights of Dr. Braid's patients to pre-viability abortion, as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

58. SB8 mandates that Texas's state judicial officers participate in and facilitate constitutional violations by requiring them to dispense remedies pursuant to SB8 that undeniably burden constitutionally protected rights.

59. Dr. Braid is entitled to declaratory judgment that he is entitled to retain the contested statutory damages award associated with the September 6 abortion, and that he cannot not be subject to any other damages or injunction associated with the care he provided on

September 6, because SB8 is void for being in violation of the United States Constitution's substantive due process guarantee.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment – Fourteenth Amendment Equal Protection Defense)

60. Dr. Braid incorporates by reference the allegations in the above paragraphs.

61. The Equal Protection Clause commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, thereby requiring the law to treat similarly situated persons in the same manner.

62. SB8 treats abortion providers—and people who “aid or abet” the constitutionally protected right to abortion or “intend” to do so—differently from all other defendants in civil litigation in Texas.

63. SB8 alters the procedural rules and limits the substantive defenses and arguments available to defend against suits filed under SB8, thereby singling out SB8 defendants for different treatment in violation of the United States Constitution's equal protection clause based solely on aiding patients in exercising a constitutional right. SB8's venue and fee-shifting provisions, its contemplation of claimants without any connection to an abortion, its elimination of defenses and arguments, and its attempt to rewrite federal law, each individually and in concert with one another subject SB8 defendants to disparate treatment.

64. SB8's discriminatory enforcement provisions serve no legitimate government interest. Rather, they are animated by animus and are designed to burden the exercise of constitutional rights. SB8's enforcement provisions are also not narrowly tailored. On the contrary, they allow for broad enforcement by any person in the world against any person who provides, or aids and abet, or intends to do any of those things, without inquiry into actual harm

caused or other attendant circumstances. SB8's enforcement scheme consequently violates Dr. Braid's equal protection rights.

65. Dr. Braid is entitled to declaratory judgment that he is entitled to retain the contested statutory damages award associated with the September 6 abortion, and that he cannot be subject to any other damages or injunction associated with the care he provided on September 6, because SB8 is void for violating the United States Constitution's equal protection clause.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment – Fourteenth Amendment Void for Vagueness Defense)

66. Dr. Braid incorporates by reference the allegations in the above paragraphs.

67. SB8 imposes quasi-criminal penalties on persons who provide an abortion in violation of the statute's terms, aids or abets an abortion that violates those terms, or intends to do these things. These penalties include a punitive minimum damages award of \$10,000, without any showing of harm and no maximum; an injunction prohibiting a provider from providing abortion care; and a requirement that the defendant pay costs and attorneys' fees.

68. A law that imposes quasi-criminal penalties is void for vagueness, and thus violates the federal guarantee of due process, if it authorizes or encourages arbitrary and discriminatory enforcement, or fails to provide fair warning of its prohibitions so that ordinary people may conform their conduct accordingly.

69. SB8 empowers arbitrary and discriminatory enforcement in violation of the Constitution by authorizing private individuals to enforce state law in violation of clearly established constitutional rights. Its terms incentivize plaintiffs to force abortion care providers—or even individuals a claimant believes “intend” to provide or assist an abortion—into court to

defend themselves, and to do so without the legal, procedural, and practical controls that might provide some check on government enforcement.

70. SB8 fails to adequately inform regulated parties or potential claimants of what conduct the statute prohibits. Under SB8’s terms, defendants may be held liable for violating the statute if a court decision permitting their conduct at the time it occurred is later overruled on appeal or by a subsequent court. Tex. Health & Safety Code § 171.208(e)(3). Similarly, under SB8, aiding-and-abetting liability may attach “regardless of whether [a] person knew or should have known that the abortion” they aided “would be performed or induced in violation” of the statute’s ban. *Id.* § 171.208(a)(2). And the statute does not limit what conduct may constitute “aiding or abetting” a violation, leaving yet further questions as to what is prohibited. It does, however, provide liability for aiding or abetting a prohibited abortion—including by paying for it—“regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter.” Imposing quasi-criminal penalties under such circumstances compounds the statute’s failure to provide notice of what is prohibited.

71. In all of these circumstances, the only way for people to ensure they do not run afoul of SB8 is by refusing to perform or assist with any abortion (or “intend” to do either)—though in light of the arbitrary enforcement mechanism allowing for any citizen to bring suit based on a defendant’s perceived “intent,” it is not clear how healthcare providers can ever ensure they will avoid suit. Due process does not permit such uncertainty, particularly where, as here, the challenged law threatens to inhibit the exercise of constitutionally protected rights.

72. Dr. Braid is entitled to declaratory judgment that he is entitled to retain the contested statutory damages award associated with the September 6 abortion, and that he cannot be subject to any other damages or injunction associated with the care he provided on

September 6, because SB8 is void for vagueness under the Fourteenth Amendment of the United States Constitution.

FIFTH CLAIM FOR RELIEF

(Declaratory Judgment – Federal Preemption Defense)

73. Dr. Braid incorporates by reference the allegations in the above paragraphs.

74. The United States Constitution is the supreme law of the land, and the Supreme Court is the final arbiter of its meaning. State statutes inconsistent with rights conferred by the United States Constitution or other federal law must give way. SB8 defies this core principle undergirding the rule of law.

75. SB8's terms require the defendant in an enforcement action to affirmatively prove that an award of relief in that action will impose an undue burden in order for that defendant to argue that the statute's terms violate the constitutional right to abortion. This conflicts with the Supreme Court's constitutional precedents, which hold that states may not prohibit pre-viability abortions and that the undue burden test should not be applied on a case-by-case basis in the face of such a ban.

76. SB8's terms also disregard and purport to redefine the undue-burden standard articulated by the U.S. Supreme Court, in conflict with the Supreme Court's constitutional precedents, specifying the limited circumstances under which a court may find an undue burden and purporting to prohibit certain arguments to establish burden. Tex. Health & Safety Code § 171.209(c)–(d).

77. SB8 additionally directs state-court judges to ignore judgments and injunctions issued by federal courts, *id.* § 171.208(e)(4), (5), contrary to decades of U.S. Supreme Court precedent. States cannot simply give federal-court judgments in federal-question cases “whatever

effect they would give their own judgments,” but instead “must accord them the effect” that federal law provides. *Semtek Int’l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 507 (2001).

78. SB8 violates the Supremacy Clause and is preempted because it is contrary to the Fourteenth Amendment to the U.S. Constitution.

79. Dr. Braid is entitled to declaratory judgment that he is entitled to retain the contested statutory damages award associated with the September 6 abortion, and that he cannot be subject to any other damages or injunction associated with the care he provided on September 6, because SB8 conflicts with U.S. Supreme Court interpretations of the federal constitution that confer clear rights on Dr. Braid and his patients.

SIXTH CLAIM FOR RELIEF

(Declaratory Judgment - First and Fourteenth Amendments, Freedom of Speech and the Right to Petition)

80. Dr. Braid incorporates by reference the allegations in the above paragraphs.

81. Section 4 of SB8, codified at Texas Civil Practice & Remedies Code § 30.022, would make Dr. Braid and his attorneys jointly and severally liable to pay the costs and attorney’s fees of any other party to this litigation if the Court either dismisses Dr. Braid’s claim for such equitable relief or enters judgment in that party’s favor. Asserting these equitable remedies as part of his defense against Interpleader Defendants’ claims is a means for Dr. Braid and his attorneys to achieve a lawful objectives through the court system and serves as a form of political expression.

82. Under § 30.022, only litigants seeking to block the enforcement of laws that “regulate[] or restrict[] abortion” or laws that provide funding to entities who “perform or promote” abortion are punished for taking a particular litigation position. In contrast, SB8 does

not impose a penalty on litigants whose goal is to uphold such laws, or who challenge laws that expand access to abortion or provide funding to abortion providers or advocates.

83. In both its purpose and effect, § 30.022 is a viewpoint- and content-based restriction on Dr. Braid's expression in petitioning this Court. By threatening Dr. Braid and his attorneys with massive liability for fees and costs, § 30.022 necessarily chills the exercise of rights to free speech and to petition protected by the First Amendment.

V. PRAYER FOR RELIEF

WHEREFORE, Interpleader Plaintiff Alan Braid, M.D., requests that the Court enter an order or judgment against Interpleader Defendants including the following:

- a. Authorizing Dr. Braid to deposit the contested minimum damages amount of \$10,000 to the registry of the Court;
- b. Determining who among the parties is entitled to the statutory damages award associated with a successful suit against Dr. Braid for his performance of the September 6 abortion, or any part of that award;
- c. Restraining all claimants from instituting or prosecuting any proceeding in any State or United States court affecting the contested damages award until further order of the Court;
- d. Discharging Dr. Braid of any further liability under SB8 for the care he provided to his patient on September 6;
- e. Declaring that Dr. Braid's conduct does not support imposition of an injunction restraining Dr. Braid's ability to provide abortion care;
- f. Declaring the Texas Heartbeat Act, §§ 171.201 *et seq.*, unconstitutional;
- g. Awarding Dr. Braid costs and reasonable attorney's fees; and

h. Granting any further relief as may be just and proper under the circumstances of this case.

Dated: October 5, 2021

Respectfully submitted,

/s/ Suyash Agrawal

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*Application for admission *pro hac vice* forthcoming

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William Thompson	24088531	will.thompson@oag.texas.gov	5/11/2022 12:49:34 PM	SENT
Jack DiSorbo		jack.disorbo@oag.texas.gov	5/11/2022 12:49:34 PM	SENT

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Associated Case Party: John Scott

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