

No. 21-50949

**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

STATE OF TEXAS,
Defendant-Appellant,

ERICK GRAHAM, JEFF TULEY, MISTIE SHARP,
Intervenor Defendants-Appellants.

On Appeal from the United States District Court for
the Western District of Texas, Austin Division
Case No. 1:21-cv-00796

**BRIEF OF PLANNED PARENTHOOD OF GREATER TEXAS SURGICAL
HEALTH SERVICES, PLANNED PARENTHOOD SOUTH TEXAS
SURGICAL CENTER, COMPREHENSIVE HEALTH OF PLANNED
PARENTHOOD GREAT PLAINS, PLANNED PARENTHOOD OF
ARKANSAS & EASTERN OKLAHOMA, PLANNED PARENTHOOD
CENTER FOR CHOICE, AND PLANNED PARENTHOOD OF THE
ROCKY MOUNTAINS AS AMICI CURIAE IN SUPPORT OF
PLAINTIFF-APPELLEE AND DENIAL OF STAY**

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SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

The following listed persons and entities as described in the fourth sentence of Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that members of the Court may evaluate possible recusal.

Amici Curiae

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Planned Parenthood Center for Choice
Planned Parenthood of Greater Texas Surgical Health Services
Planned Parenthood South Texas Surgical Center
Planned Parenthood of the Rocky Mountains
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STATEMENT PURSUANT TO FED. R. APP. P. 29(a)(4)(E)

No party's counsel authored this brief in whole or in part. No party contributed money to fund this brief. No person other than *amici*, their members, or their counsel contributed money to fund this brief.

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INTEREST OF AMICI

Amici provide comprehensive reproductive health care in Texas and nearby States. Through a series of narratives—based on contemporaneous interviews by Planned Parenthood staff—this brief conveys SB8’s real-life impact on Texas patients being denied, and Planned Parenthood staff who are now prohibited from providing, the abortions patients need.

I. PATIENTS IN TEXAS ARE BEING DENIED THEIR RIGHT TO AN ABORTION

F.P.¹ is a sixteen-year-old student denied an abortion under SB8. She is unsure whether she can travel out-of-State. F.P.’s mother became pregnant as a teenager herself and said she will “support whatever [F.P.] decides.” F.P.’s mother said her daughter is “very bright” and “has so much talent.” She sees a “face of anguish” on F.P. and knows she is not ready to have a baby.

F.P.’s mother does not have a stable home. Without financial assistance to travel, F.P.’s mother said F.P. “would be forced to do something that she’s not ready for”: become a parent.

D.O. is the single mother of a kindergartener and is balancing work and school. She was just out of a relationship with her daughter’s father who “was just really bad ... very abusive.” The abuse during her first pregnancy “was horrible”

¹ All initials are pseudonyms to protect interviewees’ privacy.

and “after I had [my daughter], it was even worse.” She “finally got away” and “was building [her] life.” But she said, “there was just no way that I could physically, mentally, emotionally go through that again.” Her daughter’s father “doesn’t pay child support. He sees [their daughter] maybe once a month.” She said, “I just don’t think that I can take it again.”

D.O. could not get an abortion in Texas under SB8. She was filled with “fear of if I’m actually going to be able to go through this, because so many factors have to go around: me missing work, having to make sure that she has somebody to take care [of her daughter], and then probably having to explain the situation to somebody because I need somebody to take care of her, and then the cost. ... It makes me really angry. It makes me really sad.”

B.G. works two jobs, for 55-60 hours weekly. She will soon graduate from college and has a job offer in engineering, which she sees as a path out of poverty; pregnancy would be incompatible with the job’s physical and travel requirements. B.G. said she is not emotionally or financially prepared to have a child because she is the primary provider for herself, her mother, and younger siblings. B.G. grew up with a single mother who was sometimes “very emotionally unstable just because ... she had to go do so much for all of us. ... We didn’t receive that much love when I was a young kid. ... I really don’t want to [repeat that process].”

After learning she could not have an abortion in Texas, B.G. felt “very vulnerable” and said it was “very stressful [and] very hard.” She is concerned about the travel costs, in addition to her regular bills.

E.M. tracks her periods on a phone application but they are irregular, and her pregnancy was “further along ... than [she] anticipated.” Because of SB8, her only option for an abortion is to leave Texas.

E.M. said, “I throw up every day. ... It is awful.” Her “throat is burned” and she struggles to “get through work.”

She is concerned taking time off work to travel for the abortion could affect her retail job since there are “blackout dates for three months where [she] can’t ask for time off.” She struggles to cover expenses and lives paycheck-to-paycheck.

Only E.M.’s partner knows she is pregnant. E.M. thinks her partner suffers from undiagnosed mental illness. She is not sure whether he will travel with her, and she cannot ask anyone else because the abortion is “not something [she] really want[s] to disclose to [] family.” She considered using a ride service/taxi but the idea “is scary” because she would be in a car alone “with a stranger [as she is] coming off anesthesia.”

Clinic staff also report stories of patients affected by SB8. C.Y. in Houston recalls a patient with five children (two of whom have disabilities) who had embryonic cardiac activity at just five weeks, four days pregnant. The patient frantically pleaded, “What am I going to do, what is going to happen now?” Another patient who cannot read or write told staff that going out-of-State would be impossible. A thirteen-year-old patient had to get a judicial bypass before scheduling an abortion, which delayed her—embryonic cardiac activity was detected at six weeks and three days. She cannot leave Texas without her parents knowing because she cannot drive.

E.V. in Houston cried with her first patient after SB8 passed. The patient had detectable embryonic cardiac activity on the day of her scheduled procedure after having none the day before.

E.V. also spoke of a minor patient whose mother only spoke Spanish. Neither the mother nor the patient had been to another State and could not understand why they needed to leave Texas for an abortion or what would be required.

A.S., in Dallas, recalled a patient who was on probation and had no idea how she could leave the State.

K.D. had a patient who “put oils in her vagina” to try to terminate her pregnancy and worries SB8 will force more people into “back-alley ways.”

I.O., in Houston, spoke of a twelve-year-old patient who came in with her mother, a single working mother with other children. The mother said they could not travel out-of-State—they had barely made it to the Texas health center. The twelve-year-old said, “Mom, it was an accident. Why are they making me keep it?”

L.D., a San Antonio physician, had a patient who was undocumented and felt unsafe traveling out-of-State. She would likely be forced to carry her pregnancy to term.

II. PATIENTS ENCOUNTER OBSTACLES TO RECEIVING OUT-OF-STATE CARE

H.S. has two young children and recently separated from her husband. H.S. “couldn’t afford another [child]” and “do[es]n’t want to bring a child into the world like this.” She could not get a health-center appointment until a week after the home pregnancy test, and a hurricane caused further delay. At her appointment, she was six weeks pregnant with embryonic cardiac activity. The earliest out-of-State appointment was in Tulsa. She drove nine hours overnight and booked a motel to sleep for a few hours.

W.M. has hyperemesis gravidarum; she cannot keep food down “for days at a time.” W.M. and her partner want to afford the best life possible for their young daughter. She thinks SB8 is “forcing women into situations to have more than one

child when they can't possibly provide" financially. She believes abortion is sometimes "the most responsible ... or right thing to do."

T.K. suffers from a chronic disease for which she has been unable to get medication for eight months. She fears the stress of the pregnancy "would probably kill [her]."

T.K. said she is not financially stable enough to raise a child. Having grown up in poverty, she "[doesn't] want that cycle to happen again." She noted that baby formula costs \$18 per canister but she barely earns over \$20,000 a year.

As a child, T.K. was sexually abused in the care of extended family. She would not trust anyone to care for her child given the abuse she suffered. She was relieved to secure an out-of-State abortion, but was worried that because of SB8, "they'd be waiting to drag [her] off to jail when [she] got here because [she's] from Texas."

Had she not been able to get an abortion, she would "be looking online to see if there's something [she] could eat that would [terminate the pregnancy], or throw [herself] down the stairs."

J.T. is in her mid-thirties with seven children, and recently lost employment when they contracted COVID-19. She explained that she “can’t have another child” and that her “seven children come first.”

J.T. was too far along to have an abortion in Texas and considered buying “pills” online. With Mississippi appointments booking nine weeks out, J.T. woke up at 4 a.m. to drive six hours to Oklahoma. She split up her children among various caretakers. She said that hotel, food, and gas “took away over half of what I make in the month. ... I looked up my bank account before I walked in [to the clinic].” She also said had she gone to a clinic closer to home, “I could be done and making dinner for my children.”

K.S. works in sales and attends management school. SB8 forced her to travel to Oklahoma.

She and her husband support many family members on a monthly income of under \$2000, but had to take several days of unpaid leave to make the “scary” 10-hour drive to Oklahoma with their infant, reaching their hotel at midnight. They had to drive through the night again to get home after the abortion.

T.I. recently earned her MBA and works full-time. T.I. “was in utter shock,” upon learning she was pregnant. “[She] use[d] protection and ... never had any scares before.”

Although eligible for an abortion in Texas, T.I. traveled to Oklahoma due to anxiety caused by SB8 about “getting found out by the State of Texas.” She also “didn’t want this on [her] bank statements, so [she] sold miscellaneous items in [her] house to have enough cash.” She emphasized, “It is a very scary time.”

Some patients have encountered police while traveling to have an out-of-State abortion, adding to their stress. R.T. was pulled over on her way to Oklahoma. She said, “It was very scary. [The police] made my boyfriend get out of the car, and my boyfriend is African American I was so scared. He asked me where I was going, and I told him to Planned Parenthood. I have never driven here, I don’t know the rules. ... I was in a rental car. ... But now he [was] saying, ‘which Planned Parenthood?’ I thought, ‘what do you want me to say? That I am going to get an abortion?’” G.O. was also stopped; the police officer asked her, “all the way from Dallas to Oklahoma for a doctor’s appointment?” She responded that it was “personal.”

B.Z. made an appointment at an “options clinic” that was (unbeknownst to her) against abortion for a pregnancy consultation. The staff told her she needed a sonogram, but could not have it performed for one week. They did not tell her that this delay might make her ineligible for an abortion under SB8. At her second appointment at the options clinic, B.Z. was exactly six weeks pregnant and suffering from extreme morning sickness. B.Z. said, “[The clinic staff] didn’t care if I wanted to or could have a baby. She wasn’t even worried about how I was so sick.”

B.Z. was diagnosed with hyperemesis gravidarum at an emergency room. The physician told her that it could be a difficult pregnancy, but that leaving Texas was her only option if she wanted an abortion. “It was nerve wracking. How am I going to handle the drive? Can I make it there without throwing up in the car? ... [W]hat happens if something goes wrong in a State I’ve never been to, with my mom so far away?” She estimates the travel and procedure cost her \$800, which she paid out-of-pocket to maintain her privacy from family members on her insurance plan. She missed almost two weeks of work due to illness from the pregnancy. B.Z. said: “I have a vision of what I want my life to look like If I want this vision of my life to happen, being a single mother for a man [who won’t be around] is not what I deserve.”

Planned Parenthood staff in Oklahoma and Colorado also reported the following stories:

S.W. had one Texas patient who got pregnant right after giving birth, and another who had been raped and was terrified that she would be unable to get an appointment.

Physician C.Z. reports of a patient who flew into Denver, rented a car to drive to the clinic in Fort Collins (where the earliest appointment was available), only to discover at her appointment that she had a complicating factor, which required her to drive back to Denver to have the abortion. The Denver staff squeezed her in that day so that she could have an abortion in time to make her return flight.

Nurse practitioner T.W. saw a young teen who came from Texas to Oklahoma after being raped and impregnated by her father. Unfortunately, the family member taking care of her lacked the guardianship forms to be able to consent to the abortion, and they had to turn her away.

III. SB8 TRAUMATIZES HEALTHCARE PROVIDERS

C.Y. and her colleagues feel helpless, admitting they cry after nearly every patient they turn away; this is the hardest job she has ever had. I.O. says the inability to help her patients makes her feel like her heart “has been snatched out of [her] chest.”

A.N., a Houston physician, broke her arm on a Sunday evening and drove herself to the ER so she could work on Monday because she could not risk delaying care for patients.

K.D. says “it’s emotional, it’s hard” to “tell the patient they can’t get their care.” I.O. despairs: “It’s heartbreaking. ... We [don’t] know what happens to these patients.”

Staff in neighboring States are also affected. Tulsa-based H.R. reports that Texas patients now comprise the majority of their patients. Oklahoma staff are working overtime to care for Texas patients denied abortions. H.R. says Texas patients “com[e] with a sense of desperation.” The prolonged hours her team has been working are not sustainable. C.Z. echoed concerns about the stress this puts on staff in New Mexico and Colorado “[b]ecause the care is so intense.”

H.R. says clinicians cannot offer pain medication or sedation to patients who must drive themselves home after the procedure. Supplies are depleting quickly because they are providing extra menstrual and heating pads for the long drives back to Texas.

According to T.W., “there is no family planning clinic a lot of days because their abortion roster is so full right now.” T.W. also notes many patients speak Spanish, but unlike providers in Texas, Oklahoma providers are not generally bilingual.

T.W. says the situation under SB8 is “dangerous.” Oklahoma nurses are triaging patients by phone, including with potentially life-threatening ectopic pregnancy. Some patients express concern about seeking care in Texas after an out-of-State abortion if they experience complications. S.W. says patients ask, “[Are we] going to get sued? What’s going to happen to [us]?” H.R. says, “I started in abortion care twenty years ago. ... [W]e are [now] in a worse place in terms of our ability to treat patients In health care we are supposed to be constantly ... improving how we provide care. And that is not what is happening. It’s worse. ... And our patients feel it.”

T.W. says, “These Texas patients are uniformly terrified,” and SB8 “makes women feel like there’s a bounty on their head for receiving health care. With a \$10,000 incentive to turn people in ... it is endangering the lives of women.”

CONCLUSION

Texas’s motion for an emergency stay should be denied.

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CERTIFICATE OF COMPLIANCE

The foregoing brief complies with Fed. R. App. P. 27(d)(2)(A) because it contains 2,578 words, excluding the portions exempted by Rule 32(f), according to the word-count feature of the word-processing program with which it was prepared. This brief also complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office for Microsoft 365 MSO in 14-point Times New Roman font.

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CERTIFICATE OF SERVICE

I electronically filed the foregoing on October 11, 2021, using the Court's appellate CM/ECF system, which effected service on all counsel of record.

/s/ Alan E. Schoenfeld

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