

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF TEXAS,

Defendant.

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Civil No. 1:21-cv-796

EXHIBIT 6

**Declaration of Vicki Cowart in Support of Plaintiff's
Motion for Temporary Restraining Order and/or
Preliminary Injunction**

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF TEXAS,

Defendant.

Civil Action No. 1:21-cv-00796-RP

**DECLARATION OF VICKI COWART IN SUPPORT OF
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

I, Vicki Cowart, declare as follows:

1. I am over the age of 18. I make this declaration based on personal knowledge of the matters stated herein and on information known or reasonably available to my organization.

2. I am President and CEO of Planned Parenthood of the Rocky Mountains, Inc. ("PPRM"). PPRM is a non-profit headquartered in Denver, Colorado. We operate 22 health centers in the states of Colorado, New Mexico, and Nevada that provide a range of family planning services and other preventative care, including abortions; well-woman preventative care visits; breast exams; Pap tests; sexually transmitted infection (STI) testing and treatment; PrEP and PEP (HIV prevention prescription regimens); a wide range of FDA-approved contraception methods, including highly effective, long-acting reversible contraceptives, or LARCs; pregnancy testing; gender affirming hormone therapy; urinary tract infection treatment; and cervical cancer and testicular cancer screening.

3. Specifically, we provide procedural and medication abortion at four health centers in Colorado (in Denver, Colorado Springs, Durango, and Fort Collins). We also offer medication

abortion at ten additional Colorado health centers in Alamosa, Arvada, Aurora, Boulder, Cortez, Glenwood Springs, Greeley, Littleton, Steamboat Springs, and Salida. In New Mexico, we offer procedural and medication abortion in Albuquerque and medication abortion in Santa Fe, and we offer medication abortion at two health centers in Las Vegas, Nevada.

4. I am responsible for PPRM's management and therefore am familiar with our operations and finances, including the services we provide and the communities we serve.

5. I submit this declaration in support of Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction.

6. I understand that Texas Senate Bill 8 ("S.B. 8" or the "Act"), which took effect on September 1, 2021, bans the provision of abortion in Texas after embryonic cardiac activity can be detected, which occurs by approximately 6 weeks of pregnancy, as measured from the first day of a patient's last menstrual period ("LMP"). I understand that the Act imposes severe penalties on providers such that no abortion provider in Texas is currently offering abortion care in the state if embryonic cardiac activity can be detected, which means people in Texas seeking abortions beginning at approximately 6 weeks LMP must attempt to find a provider in another state in order to get their abortion.

7. Since S.B. 8 has taken effect, and also in the days leading up to its effective date, we have seen a significant spike in the percentage of our patients traveling from Texas seeking abortions at our health centers in New Mexico and Colorado.

8. Prior to S.B. 8 taking effect, on average, PPRM provided abortions to 8.8 patients per week from Texas. Yet, in a one-week period (9/3/21–9/9/21), PPRM provided abortion services to 20 Texas patients—which is 53% of our typical monthly patient volume with less than a third of the month elapsed. In addition, there are at least 64 Texas residents who have scheduled appointments at our health centers in the coming weeks, including at our health centers in Las

Vegas, NV, with a daily increase while S.B. 8 is in effect. And this number may be an underestimation as we don't require patients to provide their address or location when making an appointment. We anticipate the number of Texas residents we see to grow, as we have been flooded with calls from Texas residents since S.B. 8 took effect.

9. Patients from Texas travel incredibly long distances to reach our health centers in New Mexico and Colorado; one patient even traveled all the way to one of our Southern Nevada health centers. For example, we have had Texas patients travel from Fort Worth to Boulder, CO (approximately 790 miles one way); San Antonio to Park Hill, CO (approximately 930 miles one way); and Houston to Fort Collins, CO and Aurora, CO (approximately 1000 miles one way). Even those Texas patients who have come from cities that are closer to the New Mexico border (such as El Paso and Amarillo) are having to make 4-hour drives (one way) to reach our Albuquerque, NM health center. When faced with longer wait times at their "nearest" location within our states, some patients have had to travel longer distances to access the care they need. On average, the Texas patients we have seen since S.B. 8 went into effect have traveled approximately 650 miles (one way) to access abortion out of state.

10. Requiring individuals to seek out-of-state abortion care and travel significant distances can be very burdensome for patients. Specifically, for patients who are experiencing intimate partner violence, seeking an out-of-state abortion poses numerous challenges. For example, one patient told us that she is discreetly attempting to leave Texas without her husband finding out because he is abusive and she does not want to carry this pregnancy to term. She has told our staff that she is desperate, and is going to extraordinary lengths to scrape together the funds (including selling personal items) to be able to make the additional expenses of an out-of-state trip, but is very worried that her husband will find out given all the logistical planning that she is doing.

11. We have also seen patients who are homeless and face tremendous difficulties navigating how to travel a long distance to get an abortion. One Texas patient, for example, told us that by the time they realized they were pregnant, they could not have an abortion under S.B. 8 but they did not have any funds to travel out of state. The patient told us they felt defeated, but knew that having an abortion was the best choice for them for a number of reasons. Fortunately, we were able to get them an appointment at our health center in Colorado and provide assistance for them to get there. Sadly, this level of personal and individualized support will simply not be possible for everyone who contacts us (and there are so many more who will never contact us).

12. Careless individuals trying to find transportation to our health centers from Texas are also experiencing numerous obstacles to travel. For example, we recently provided care to a Texas patient who was 7 weeks pregnant, but who did not have her own credit card to rent a car (which many rental companies require) in order to travel to New Mexico for an appointment. Although the patient is employed full-time, saving the funds to rent the car and pay for gas (in addition to the cost of the abortion) was difficult for her. The patient told us she was ultimately able to secure a rental car by using a friend's credit card, and drove alone out and back to her appointment in the same day—over 1000 miles round trip—because she didn't have paid time off work and couldn't afford to miss the hours.

13. With the influx of Texas patients seeking out-of-state abortion care, a significant percentage of the appointments available in our relatively small New Mexico health centers are going to Texas residents. For example, on August 31, the day prior to the law taking effect, all of our online abortion appointments for PPRM's Albuquerque health center were made by Texas residents. From September 1 to September 11, Texas patients made up close to one-third (29%) of the total abortion patients we saw at our New Mexico health centers.

14. In the coming weeks, we expect this trend to continue, but it will inevitably lead to significant scheduling delays. Indeed, as of date, given the high demand in services, we are having to schedule abortion patients approximately two weeks out. The wait times can be even longer for people seeking abortions after 18 weeks, as we do not provide abortions past 18 weeks LMP in New Mexico or Nevada. Understandably, people are devastated that they cannot access health care closer to home and that they are having to wait longer and face tremendous barriers than if Texas had not forced abortion providers to shut down. One Texas patient had planned her pregnancy but recently learned that the fetus had an anomaly incompatible with life. She was told by her doctor in Texas that there is no exception under S.B. 8 for her circumstances, and that her only options were either to carry to term with the fetus dying after birth, or to leave the state to receive the needed care to terminate the pregnancy. Understandably, she was stricken with grief in dealing with this added burden. Our patient does not want to incur the trauma of being forced to carry the pregnancy to term, and is hoping to move past this loss to continuing planning her family. Faced with this heartbreaking “option,” she decided to make the long trip to Colorado to seek care out of state.

15. Unfortunately, this is not the first time we have seen Texas patients in these dire situations. When Governor Abbott banned abortion care in Texas by executive order during the early part of the COVID-19 pandemic, PPRM saw a similar influx of patients from Texas at our health centers. During the approximately five weeks when Texas deemed abortion services non-essential (3/22/20–4/25/20), PPRM saw 198 patients from Texas where we would have expected only 44 patients based on prior monthly averages. This was a 350% increase over expected patient volume from Texas, and is a relevant case study for what we can anticipate since Texas’ ban on abortions after 6 weeks went into effect. During the time that the COVID-19 executive order was in place, we were referring patients from New Mexico to our Colorado health centers in Durango and Cortez, negatively impacting their ability to seek care closer to their homes in New Mexico.

16. At its peak during the COVID-19 ban, PPRM saw double the Texas patients in one week (64) than would typically be observed in an entire month. Naturally, the numbers from this five-week period only captured Texas patients who had the means, funding, and could take time away from school, work and other responsibilities to facilitate travel outside of Texas for abortion care and undercounts the true demand for services. For a host of reasons, many people will be unable to make the long out-of-state trips to bordering states at all.

17. If we averaged the number of patients seen over the 5-week COVID-19 ban in Texas and assumed the current ban would follow a similar pattern, PPRM would expect to see 2,080 patients from Texas per year, up from 458 (Sept 2020–Aug 2021). This would be 4.5 times as many patients as PPRM usually sees from Texas. Even before the pandemic, this would have strained operations and impacted patients from across our region. But, as I explain further below, over time, the pandemic has put significant strain on our operations and we are not operating today at the same capacity as we were when Texas banned abortion in 2020. Thus, while I expect the demand to be the same (if not greater), I believe even fewer people from Texas seeking out-of-state care will be able to be served in a timely manner, or at all, this time around.

18. While we are doing our best to open up access at our health centers for Texas residents fleeing the state in search of abortion care, we know that we are unable to catch everyone. Indeed, according to the most recent publicly available data, in 2019, there were 55,966 abortions performed in Texas on Texas residents,¹ whereas in 2019, the total number of abortions performed in New Mexico was 2,735.² In 2020, there were 10,368 total abortions performed in Colorado.³

¹ Tex. Health & Hum. Servs., *2019 Induced Terminations of Pregnancy for Texas Residents*, at 2 (Dec. 23, 2020), *available at* <https://www.hhs.texas.gov/sites/default/files/documents/about-hhs/records-statistics/research-statistics/itop/2019/2019-itop-narrative-texas-residents.pdf>.

² N.M. Bur. of Vital Records & Health Stat., *New Mexico Selected Health Statistics Annual Report 2019*, N.M. Dep't of Health, at 60, *available at* <https://www.nmhealth.org/data/view/vital/2504/>.

³ Colo. Vital Stat. Program, *Reported Induced Terminations of Pregnancy: Colorado Occurrences, 1967-2020*, Colo. Dep't of Pub. Health & Env't, at itop1,

Thus, despite sound operations, exhausting effort, and deep dedication to all patients regardless of their zip code, there is simply no way we can increase capacity by that sort of magnitude to absorb tens of thousands Texas patients seeking their important, legal health care.

19. Moreover, like all health care providers, especially during the COVID-19 pandemic, our ability to expand services are limited by the physical facilities we operate and our available staffing. Currently, we are at 75% staff capacity with significant shortages of licensed providers and support staff. Indeed, right now due to staffing shortages, two New Mexico sites are sharing providers as we work to increase staffing. Dealing with an influx of patients traveling long distances from another state also adds to the stress and concerns our staff have about their own health and safety in avoiding contracting COVID-19. Moreover, the strain on our system from Texas patients will have a significant impact on our ability to serve patients from New Mexico and Colorado specifically, which we experienced during the COVID-19 ban. Absorbing thousands of Texas residents will have a domino effect on access and wait times, and will interfere with our ability to provide timely reproductive and sexual health care to the communities we currently serve. Thus, patients living in New Mexico, Colorado, and Nevada must delay preventative care or go without, which may result in undetected cervical or breast cancer, the continued transmission of STIs, or more unintended pregnancies as the result of lapses in access to birth control.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 14, 2021

/s/ Vicki Cowart

Vicki Cowart

<https://drive.google.com/file/d/1V31fU628FZXRvs3GzKY1Jh7KvNZgRExB/view> (last visited Sept. 9, 2021).