

CAUSE NO. D-1-GN-21-004504

<b>LILITH FUND FOR</b>	§	<b>In the District Court of</b>
<b>REPRODUCTIVE EQUITY, INC.,</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Travis County, Texas</b>
	§	
<b>v.</b>	§	
	§	<b>Judicial District <u>53RD</u></b>
<b>STATE OF TEXAS; GREGORY</b>	§	
<b>ABBOTT, in His Official Capacity as</b>	§	
<b>Governor of the State of Texas;</b>	§	
<b>KEN PAXTON, in His Official</b>	§	
<b>Capacity as Attorney General of the</b>	§	
<b>State of Texas; STATE SENATORS</b>	§	
<b>BRYAN HUGHES,</b>	§	
<b>PAUL BETTENCOURT,</b>	§	
<b>BRIAN BIRDWELL,</b>	§	
<b>DAWN BUCKINGHAM,</b>	§	
<b>DONNA CAMPBELL,</b>	§	
<b>BRANDON CREIGHTON,</b>	§	
<b>BOB HALL, KELLY HANCOCK,</b>	§	
<b>JOAN HUFFMAN,</b>	§	
<b>LOIS KOLKHORST,</b>	§	
<b>EDDIE LUCIO, JANE NELSON,</b>	§	
<b>ANGELA PAXTON,</b>	§	
<b>CHARLES PERRY,</b>	§	
<b>CHARLES SCHWERTNER,</b>	§	
<b>DREW SPRINGER, and</b>	§	
<b>LARRY TAYLOR, in Their Official</b>	§	
<b>Capacities as a Texas State Senators;</b>	§	
<b>STATE REPRESENTATIVES</b>	§	
<b>SHELBY SLAWSON,</b>	§	
<b>DUSTIN BURROWS,</b>	§	
<b>BRISCOE CAIN,</b>	§	
<b>STEPHANIE KLICK, and</b>	§	
<b>JEFF LEACH, in Their Official</b>	§	
<b>Capacities as a Representatives in the</b>	§	
<b>Texas House of Representatives;</b>	§	
<b>TEXAS RIGHT TO LIFE, an</b>	§	
<b>organization; and JOHN SEAGO,</b>	§	
<b>and JOHN DOES 1-10,</b>	§	
	§	
<b>Defendants.</b>	§	
	§	

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

Abortion funds provide resources, financial assistance, emotional support, case management, advocacy and education, in support of their missions to provide non-judgmental, compassionate care to people in need of an abortion in Texas. Integral to their purpose is to foster reproductive justice, which includes removing barriers to abortion access through community education.

Plaintiff Lilith Fund for Reproductive Equity, Inc. (“Lilith Fund”) is a non-profit organization based in Dallas that provides financial, emotional, and logistical support for low-income abortion patients in Central Texas. Almost all of its clients are at a point in pregnancy when cardiac activity can be detected. Its core values are compassion, intersectionality, anti-racism, client-centeredness, inclusivity and collaboration. This case arises from Lilith Fund’s (and its staff and volunteers’) fundamental and constitutional rights. “[W]here there is a legal right, there is also a legal remedy . . .” *Marbury v. Madison*, 5 U.S. 137, 163, 2 L. Ed. 60 (1803). And where the right at issue is constitutional, there is no amount of legislative trickery, obfuscation, or wordplay that can subvert it:

. . . all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void. This theory is essentially attached to a written constitution, and is consequently to be considered, by this court, as one of the fundamental principles of our society.

*Id.* at 177. When a legislative act and a constitutional requirement conflict, “it is emphatically the province and duty of the judicial department to say what the law is.” *Id.* Lilith Fund brings this

lawsuit to protect itself, its staff, its volunteers, and the Texans it seeks to assist from Texas Senate

**PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR DECLARATORY JUDGMENT      PAGE 2  
AND ULTRA VIRES FINDING, AND APPLICATION FOR TEMPORARY RESTRAINING  
ORDER AND/OR ANTI-SUIT INJUNCTION**

Bill 8, set to become law on September 1, 2021, from SB8’s blatant, unconstitutional, and invalid infringements on their rights.

## **I. INTRODUCTION**

In May 2021, the Texas Legislature passed a sweeping new abortion prohibition, known as Senate Bill 8 or the “Texas Heartbeat Act” (“SB8”). The law does not criminalize abortion—which would be obviously unconstitutional—but instead subjects anyone who helps a pregnant person obtain an abortion in violation of SB8’s provisions to expansive strict tort civil liability. Specifically, the helper is subjected to strict liability for (1) at least \$10,000 for providing assistance to a person in need of an abortion; and (2) an award of attorneys’ fees to the claimant under SB8. Additionally, upon entry of judgment against the helper, they are also subject to a mandatory injunction to prevent future violations of SB8. The law therefore improperly gives claimants under SB8 a windfall when they have suffered no injury whatsoever, based on the dubious legal premise that helping a person exercise a constitutional right can be policed by private citizens, and that helpers can be punished by their neighbors for doing nothing more than offering a ride, money, or even just offering information.<sup>1</sup>

Lilith Fund is a nonprofit organization incorporated in Texas and based in Austin. Lilith Fund’s mission is to provide financial assistance and emotional support for people needing abortions in Texas, foster a positive culture around abortion, and fight for reproductive justice across the state. Lilith Fund offsets the costs of the abortion care itself rather than the expenses involved in traveling to an abortion provider in Texas. Lilith Fund has nine staff members and

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<sup>1</sup> This case does not challenge the constitutionality of SB8’s abortion restrictions themselves—although the courts have consistently held that a ban on abortions pre-viability is wholly unconstitutional. This case is about the myriad other constitutional rights SB8’s “private enforcement” vitiates for any person subject to SB8’s provisions.

more than thirty volunteers, and primarily serves people living in central and southeast Texas. The hotline program director fields requests from Texans who are unable to afford the cost of their abortion. Callers are typically referred to us by an abortion provider in the state. Lilith Fund prioritizes callers at later gestational ages because they risk exceeding Texas's 22-week gestational age cut-off for a legal abortion and because the cost of an abortion increases as pregnancy progresses. When Lilith Fund helps a caller with the cost of their abortion care, it sends a financial voucher to the abortion provider with whom the caller has scheduled an appointment. Lilith Fund pays the abortion provider after the abortion is completed. Last year, Lilith Fund's hotline program director fielded requests from 4,557 callers requesting help paying for an abortion. Lilith Fund was able to fund 27% of the callers at an average amount of \$348. The average gestational age at which Lilith Fund's clients obtain an abortion is thirteen weeks, and almost all are past eight weeks. As such, almost all of Lilith Fund's clients are at a point in pregnancy when a "fetal heartbeat," as defined in SB8, can be detected. To help address its clients' other immediate needs, such as transportation, lodging, and meals, Lilith Fund coordinates with organizations offering practical support for obtaining an abortion. Lilith Fund also has a practice of following up with clients soon after their scheduled abortion appointment. And Lilith Fund connects clients to story-telling opportunities aimed at combatting the stigma surrounding abortion care, and it also promotes campaigns that educate Texans about their rights and conduct trainings about abortion access within the state. Lilith Fund also openly communicates with the public regarding abortion, voicing its support for abortion rights, advocating for reproductive freedom and reproductive justice, and seeking the support of other who share the same values.

Lilith Fund files this (1) Original Petition and Request for Declaratory Judgment and Ultra Vires Finding, against the State of Texas; Gregory Abbott, in his official capacity as Governor of

the State of Texas; Ken Paxton, in his official capacity as Attorney General of the State of Texas; State Senators Bryan Hughes, Paul Bettencourt, Brian Birdwell, Dawn Buckingham, Donna Campbell, Brandon Creighton, Bob Hall, Kelly Hancock, Joan Huffman, Lois Kolkhorst, Eddie Lucio, Jane Nelson, Angela Paxton, Charles Perry, Charles Schwertner, Drew Springer, and Larry Taylor, in their official capacities as Texas State Senators; and State Representatives Shelby Slawson, Dustin Burrows, Briscoe Cain, Stephanie Klick, and Jeff Leach, in their official capacities as Representatives in the Texas House of Representatives; Texas Right to Life, an organization, and John Seago (collectively the “Declaratory Defendants”); and (2) Application for Temporary Restraining Order and/or Anti-Suit Injunction, and Defendants Texas Right to Life, Seago, and John Does 1-10 (collectively, the “Injunctive Defendants”), and respectfully shows the Court as follows:

## **II. PARTIES**

1. Plaintiff Lilith Fund is a nonprofit organization incorporated in Texas and based in Austin and may be reached at the office of the undersigned.

2. Plaintiff’s request for declaratory judgment and ultra vires finding is on behalf of Plaintiff Lilith Fund, individually, and on behalf of its staff and volunteers. As discussed in detail below, Plaintiff has suffered a direct injury because: (a) it is being required to divert organizational resources to counteract Defendants’ unlawful actions and the threats of civil liability created by SB8’s invalid provisions; and (b) the organization’s mission is also being frustrated. Lilith Fund also has representational standing based on injuries to its staff and volunteers because at least one of its staff and volunteers has standing, the interests at stake are germane to Lilith Fund’s purpose,

and neither the claims nor the relief requested requires participation of the organization's individual members.

3. Defendant the State of Texas can be served at the Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701; or by mail to: P.O. Box 12548, Austin, Texas 78711.

4. Defendant Gregory Abbott is an individual sued in his official capacity as the Governor of the State of Texas and may be served at: Office of the Governor, State Insurance Building, 1100 San Jacinto, Austin, Texas 78701; or by mail to: P.O. Box 12428, Austin, Texas 78711.

5. Defendant Ken Paxton is an individual sued in his official capacity as the Attorney General of the State of Texas and may be served at the Office of the Attorney General, 300 West 15th Street, Austin, Texas 78701; or by mail to: P.O. Box 12548, Austin, Texas 78711. Defendant Ken Paxton is required to be notified of this lawsuit under Section 37.006(b) of the Texas Civil Practice & Remedies Code.

6. Defendant Bryan Hughes is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 110 N. College Ave., Suite 207, Tyler, Texas 75702; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

7. Defendant Paul Bettencourt is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 11451 Katy Freeway, Suite 209, Houston, Texas 77079; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

8. Defendant Brian Birdwell is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave.,

Austin, Texas 78701; or 900 Austin Ave., Suite 500, Waco, Texas 76701; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

9. Defendant Dawn Buckingham is an individual sued in her official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 4400 Buffalo Gap Road, Suite 0400, Abilene, Texas 79606; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

10. Defendant Donna Campbell is an individual sued in her official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 229 Hunters Village, Suite 105, New Braunfels, Texas 78132; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

11. Defendant Brandon Creighton is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 350 Pine Street, Suite 1450, Beaumont, Texas 77701; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

12. Defendant Bob Hall is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or Alliance Building #2, 6537 Horizon Road, Suite B-1, Rockwall, Texas 75032; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

13. Defendant Kelly Hancock is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 9121 Belshire Drive, Suite 200, North Richland Hills, Texas 76182; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

14. Defendant Joan Huffman is an individual sued in her official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 2900 Wesleyan Street, Suite 500, Houston Texas 77027; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

15. Defendant Lois Kolkhorst is an individual sued in her official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 2000 S. Market Street, #101, Brenham, Texas 77833; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

16. Defendant Eddie Lucio is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 221 E. Van Buren Ave., Suite 1, Harlingen, Texas 78550; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

17. Defendant Jane Nelson is an individual sued in her official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 1225 S. Main Street, Suite 100, Grapevine, Texas 76051; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

18. Defendant Angela Paxton is an individual sued in her official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 604 S. Watters Road, Suite 100, Allen, Texas 75013; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.<sup>2</sup>

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<sup>2</sup> Defendant Angela Paxton and Defendant Ken Paxton are married. They will therefore be identified throughout this Petition by their first and last names when they are referenced individually.



19. Defendant Charles Perry is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 11003 Quaker Ave., #101, Lubbock, Texas 79424; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

20. Defendant Charles Schwertner is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 3000 Briarcrest Drive, Suite 202, Bryan, Texas 77802; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

21. Defendant Drew Springer is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 100 Austin Ave., Suite 103, Weatherford, Texas 76086; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

22. Defendant Larry Taylor is an individual sued in his official capacity as a State Senator in the Texas Senate and may be served at: Texas State Capitol, 1100 Congress Ave., Austin, Texas 78701; or 6117 Broadway, Suite 122, Pearland, Texas 77581; or by mail to: P.O. Box 12068, Capitol Station, Austin, Texas 78711.

23. Defendant Shelby Slawson is an individual sued in her official capacity as a State Representative of the Texas House of Representatives and may be served at: Texas State Capitol, Room E2.704, 1100 Congress Ave., Austin, Texas 78701; or by mail to: P.O. Box 2910, Austin, Texas 78768.

24. Defendant Dustin Burrows is an individual sued in his official capacity as a State Representative of the Texas House of Representatives and may be served at: Texas State Capitol,

Room E2.722, 1100 Congress Ave., Austin, Texas 78701; or 10507 Quaker Ave., Suite 103, Lubbock, Texas 79424; or by mail to: P.O. Box 2910, Austin, Texas 78768

25. Defendant Briscoe Cain is an individual sued in his official capacity as a State Representative of the Texas House of Representatives and may be served at: Texas State Capitol, Room E2.706, 1100 Congress Ave., Austin, Texas 78701; or 606 Rollingbrook Drive, Suite 1E, Baytown, Texas 77521; or by mail to: P.O. Box 2910, Austin, Texas 78768

26. Defendant Stephanie Klick is an individual sued in her official capacity as a State Representative of the Texas House of Representatives and may be served at: Texas State Capitol, Room E2.608, 1100 Congress Ave., Austin, Texas 78701; or 6851 NE Loop 820, Suite 230, North Richland Hills, Texas 76180; or by mail to: P.O. Box 2910, Austin, Texas 78768

27. Defendant Jeff Leach is an individual sued in his official capacity as a State Representative of the Texas House of Representatives and may be served at: Texas State Capitol, Room GN.9, 1100 Congress Ave., Austin, Texas 78701; or 550 S. Watters Road, Suite 280, Allen, Texas 75013; or by mail to: P.O. Box 2910, Austin, Texas 78768.

28. Defendants Hughes, Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Kolkhorst, Lucio, Nelson, Angela Paxton, Perry, Schwertner, Springer, Taylor, Slawson, Burrows, Cain, Klick, and Leach are referred to collectively as the “Legislative Defendants.”

29. Defendant John Seago is an individual residing in Travis County, Texas. He may be served at his home located at 2205 Marcus Abrams Blvd, Austin, TX 78748-4009.

30. Defendant Texas Right to Life (“TRL”) is a non-profit organization formed and operating under the laws of the State of Texas with its headquarters located in Bellaire, TX.<sup>3</sup> Defendant Seago serves as the Legislative Director for TRL. TRL may be served through its registered agent, James J. Graham, at 4500 Bissonnet Street, Suite 305, Bellaire, TX 77401.

31. Defendants John Doe 1-10 are individuals who may be identified by Defendants Texas Right to Life and John Seago, and named and served upon their identification.

32. Defendants John Seago, Texas Right to Life, and John Does 1-10 are referred to collectively as “Injunctive Defendants.”

### **III. JURISDICTION AND VENUE**

33. This Court has jurisdiction over this matter, pursuant to The Texas Uniform Declaratory Judgments Act (“UDJA”), Texas Civil Practice and Remedies Code § 37.001, *et seq.*, sections 24.007 and 24.008 of the Texas Government Code, and TEX. CONST. ART. 5, § 8.

34. Further, the Court has jurisdiction over Plaintiff’s request for declaratory relief against the Governor, Attorney General Paxton, and the Legislative Defendants because the UDJA waives sovereign and governmental immunity regarding challenges to the validity of statutes. *See* TEX. CIV. PRAC. & REM. CODE §§ 37.003, 37.004, 37.006; *Tex. Lottery Comm’n v. First State Bank of DeQueen*, 325 S.W.3d 628, 633-34 (Tex. 2010).

35. Venue is proper in Travis County under § 15.002 of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to the claim

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<sup>3</sup> TRL is made up of three related entities: the Texas Right to Life Educational Foundation, a 501(c)(3) nonprofit, Texas Right to Life Committee, Inc., a 501(c)(4) nonprofit corporation, and the Texas Right to Life PAC, a general purpose political action committee. All three entities are operated by the same individuals and may be served at the same address.

occurred in Travis County, as described above and herein, and because Plaintiff and several of the Defendants reside in Travis County.

36. Plaintiff's Request for a Finding of Ultra Vires Acts and the Granting of Prospective Relief is authorized as a request for a Declaratory Judgment and is specifically authorized under the UDJA. An action for a declaratory judgment is neither legal nor equitable but is *sui generis* – that is, of its own kind. *Tex. Liquor Control Board v. Canyon Creek Land Corp.*, 456 S.W.2d 891, 895 (Tex. 1970). Without such declaratory judgment, Plaintiff has no meaningful remedy under the law as required by TEX. CONST. ART 1, § 13.

37. Defendants are proper parties to Plaintiff's claims under the UDJA because they each have or claim an "interest that would be affected by the declaration[s]" sought by Plaintiff. TEX. CIV. PRAC. & REM. C. § 37.006(a).

38. Pursuant to Texas Rule of Civil Procedure 47(c)(5), Plaintiff states it seeks non-monetary relief only.<sup>4</sup>

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<sup>4</sup> As specifically pleaded later in this Petition, Plaintiff does intend to seek an award of costs and reasonable and necessary attorneys' fees, as authorized under Chapter 37 of the Texas Civil Practice and Remedies Code, but it does not believe such an award constitutes monetary relief under Rule 47.

## IV. FACTS

### A. Senate Bill 8

39. On May 19, 2021 Governor Abbott signed into law Senate Bill 8, 87th Leg., Reg. Sess., also known as the “Texas Heartbeat Act”<sup>5</sup>, attached hereto as Exhibit A.<sup>6</sup>

40. SB8 bans abortion at approximately six weeks in pregnancy—not by criminalizing it, which would be a clear violation of the United States Constitution and nearly a half-century of binding authority from the United States Supreme Court—but by deputizing private citizens to enforce the law, allowing “any person” other than governmental officials to bring a civil lawsuit against anyone who provides an abortion in violation of the Act, “aids or abets” such an abortion, or even *intends* to do these things. These civil suits are permitted regardless of whether the person suing has any connection to the abortion or the woman who sought it.<sup>7</sup>

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<sup>5</sup> SB8 defines “fetal heartbeat” as “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” § 171.201(1). In a typically developing pregnancy, ultrasound can generally detect cardiac activity beginning at approximately six weeks of pregnancy, as measured from the first day of a patient’s last menstrual period. But cells that produce early cardiac activity have not yet formed a “heart.” The term “heartbeat” in SB8 thus covers not just a “heartbeat” in the lay sense, but also early cardiac activity—more accurately, electrical impulses—present before full development of the cardiovascular system. Neither “fetal” nor “heartbeat” is accurate medical terminology at this early stage of pregnancy. Plaintiff therefore refers to “cardiac activity” throughout its Petition.”

<sup>6</sup> The majority of SB8’s provisions at issue in this lawsuit are to be codified in Chapter 171 of the Texas Health and Safety Code. The remaining challenged provisions are to be codified in Chapter 30 of the Texas Civil Practice and Remedies Code. This Petition refers to SB8’s specific provisions by their to-be-codified locations.

<sup>7</sup> There is no exception to SB’s purported prohibitions on abortion for a person who has been subjected to sexual assault or incest, although the statute’s authors did see fit to exclude the rapist from the ability to recover the \$10,000 bounty (provided, presumably, that the victim was given the opportunity to demonstrate beyond a reasonable doubt, that they were indeed assaulted). Since fewer than 10% of rapes are reported and fewer than 10% of reported rapes lead to a conviction, this “exception” is effectively meaningless, except as a cursory acknowledgment that rape should not be rewarded with money damages to an assailant.

41. “Aiding and abetting” is not defined by SB8 and could reach any conduct or speech found to relate to an abortion. Further, the statute applies to an individual who even intends to speak or engage in any action that might be construed as assistance in obtaining an abortion. The statute makes clear that a person or entity that provides funds used to obtain an abortion is liable for “aiding and abetting” under SB8, and that person or entity does not even have to know the funds will be used that way in order to be liable.

42. If a claimant in an SB8 case prevails, he is entitled to (1) mandatory “injunctive relief sufficient to prevent” future violations; and (2) without any showing of harm, an award of “statutory damages” of *at least* \$10,000 per violation, with no apparent maximum amount; and (3) costs and attorneys’ fees. SB8 therefore places a bounty on people who provide, aid, fund, speak about, or indeed, even think about abortions, inviting random strangers to sue them throughout the state.

43. SB8 provides that the “prevailing party” in a suit is entitled to damages, but the plaintiff is *always* the prevailing party unless the defendant wins each and every claim completely by final judgment. In literally any other circumstance, the plaintiff is, by definition, the “prevailing party” (even if he prevailed on nothing at all, or if he nonsuited the claim). The fee-shifting regime is unlike any other under Texas law and subjects defendants to liability simply for mounting a defense.

44. SB8 thus creates hundreds of thousands—even millions—of prospective “qui tam” plaintiffs but unlike actual qui tam plaintiffs, the work and recovery of an SB8 claimant does not inure to the state; instead, it simply provides the claimant a financial windfall at no risk to himself. He is never responsible for attorneys’ fees, and he gets to keep all the money he “earns” by bringing

lawsuit after lawsuit against anyone he believes assists with abortions after cardiac activity is detected.

45. SB8 further purports to eliminate virtually any common law defense available to a defendant, except an affirmative defense that the defendant has already been required to pay damages on the exact same claim, related to the exact same abortion. Further, if the defendant dares to affirmatively claim that SB8 is unconstitutional, both the defendant *and its counsel* will be jointly and severally liable for a plaintiff's recovery (including for attorneys' fees), regardless of whether the claim under SB8 has any merit whatsoever. Thus, SB8 seeks to prevent a defendant from obtaining counsel for fear that its attorney could be held jointly and severally liable for any damages.

46. The transparent purpose of SB8's private enforcement scheme is to attempt to prevent anyone from suing government officials for an injunction to block the law before it takes effect. SB8 was purposefully and improperly designed to try to insulate it from any judicial review, usurping both the executive function by deputizing private citizens who oppose abortion to enforce the law (rather than public officials), and supplanting the judiciary's function by depriving citizens of avenues for challenging an unconstitutional law, based solely on the content of the claims they would bring.

47. SB8 will be effective on September 1, 2021.

**B. Defendants**

48. Texas State Senator Hughes is the primary author of SB8. As its author, Defendant Hughes was and is a vocal advocate for SB8.

49. Texas State Senators Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Hall, Hancock, Huffman, Kolkhorst, Lucio, Nelson, Angela Paxton, Perry, Schwertner, Springer, and Taylor co-authored SB8.

50. Texas State Representative Slawson is a primary sponsor of SB8 and presented SB8 in the Texas House of Representatives. Defendant Slawson was and is also a vocal advocate for SB8. During her presentation of SB8 to the Texas House of Representatives, Defendant Slawson stated that, “any Texan would have standing against an abortion provider.” Further, she refused to answer whether the bill would supersede federal law.

51. State Representatives Burrows, Cain, Klick, and Leach also sponsored SB8.

52. Together, the Legislative Defendants drafted, advocated for, and passed SB8.

53. Governor Abbott signed SB8 into law on May 19, 2021. Governor Abbott has released four official statements in support of SB8, and prior to its passing and his signing of it, Governor Abbott provided significant support for SB8 through social and other channels of media.

54. Attorney General Ken Paxton stands ready to defend SB8. On social media and otherwise, Attorney General Paxton has communicated his support for SB8, providing “We proudly defend the right to life, and the Fetal Heartbeat Bill is just our latest victory.”

55. The Declaratory Defendants advocate for the use of SB8 to silence and prevent Plaintiff from exercising its rights under both the U.S. and Texas Constitutions (as described in more detail below).



56. The Injunctive Defendants have been organizing efforts to sue, and plan to sue, individuals and groups that they perceive to be violating or intending to violate SB8. Defendant Seago's recently filed declaration on behalf of Texas Right to Life in Case No. 1:21-cv-00616, in the Western District of Texas, confirms that he and TRL strongly supported the enactment of SB8, and they are publicizing the availability of private enforcement lawsuits under SB8 when it takes effect on September 1, 2021. *See* Declaration of John Seago, attached hereto as Exhibit B.

57. Defendant TRL is a non-profit organization formed and operating under the laws of the State of Texas. TRL "strongly supported the enactment of Senate Bill 8" and "is publicizing the availability of private civil-enforcement lawsuits under Senate Bill 8 through social media and other forms of advertising." *See* Declaration of John Seago, attached hereto as Exhibit B. TRL has also created and is hosting a website seeking information from anonymous "whistleblowers" to "help enforce the Texas Heartbeat Act," which is located at <https://prolifewhistleblower.com>. True and correct copy of various pages accessible through this TRL website are attached hereto as Exhibit C.

58. Defendant John Seago serves as the Legislative Director for TRL. He is involved in the collection of information through TRL's website described in the foregoing paragraph and in his role as Legislative Director "is publicizing the availability of private civil-enforcement lawsuits under Senate Bill 8 through social media and other forms of advertising." *See* Exhibit B. Seago also has "personal knowledge that there are several individuals who intend to sue the abortion-provider plaintiffs and the abortion-fund plaintiffs if they defy Senate Bill 8." *Id.*

59. Seago also testified in support of SB8 during the legislative session, and he has made public statements regarding his belief that SB8 is valid, including: "We still have the utmost confidence in the innovative legal strategy and carefully drafted nature of SB8," and "We fully

believe this pro-life priority will ultimately be upheld and save countless preborn lives.” *See* Heide Perez-Moreno, “Twenty abortion providers sue Texas officials over law that bans abortions as early as six weeks,” *The Texas Tribune* (July 13, 2021), *available at* [www.texastribune.org/2021/07/13/texas-heartbeat-bill-lawsuit/](http://www.texastribune.org/2021/07/13/texas-heartbeat-bill-lawsuit/) (last visited Aug. 29, 2021).

60. Defendants clearly advocate for the use of SB8 to silence and prevent Plaintiff’s actions (as described below) and the threat to Plaintiff’s rights (delineated below) is imminent. *See* Exhibit B, Exhibit C, and Declaration of J. Alexander Lawrence, attached hereto as Exhibit D.

### **C. Plaintiff**

61. Lilith Fund is a nonprofit organization incorporated in Texas and based in Austin.

62. Lilith Fund’s mission is to provide financial assistance and emotional support for people needing abortions in Texas, foster a positive culture around abortion, and fight for reproductive justice across the state. Lilith Fund offsets the costs of the abortion care itself rather than the expenses involved in traveling to an abortion provider in Texas.

63. Lilith Fund has nine staff members and more than thirty volunteers, and primarily serves people living in central and southeast Texas. The hotline program director fields requests from Texans who are unable to afford the cost of their abortion. Callers are typically referred to us by an abortion provider in the state. Lilith Fund prioritizes callers at later gestational ages because they risk exceeding Texas’s 22-week gestational age cut-off for a legal abortion and because the cost of an abortion increases as pregnancy progresses.

64. When Lilith Fund helps a caller with the cost of their abortion care, it sends a financial voucher to the abortion provider with whom the caller has scheduled an appointment. Lilith Fund pays the abortion provider after the abortion is completed. Last year, Lilith Fund’s

hotline program director fielded requests from 4,557 callers requesting help paying for an abortion. Lilith Fund was able to fund 27% of the callers at an average amount of \$348.

65. The average gestational age at which Lilith Fund's clients obtain an abortion is thirteen weeks, and almost all are past eight weeks. As such, almost all of Lilith Fund's clients are at a point in pregnancy when a "fetal heartbeat," as defined in SB8, can be detected.

66. To help address its clients' other immediate needs, such as transportation, lodging, and meals, Lilith Fund coordinates with organizations offering practical support for obtaining an abortion. Lilith Fund also has a practice of following up with clients soon after their scheduled abortion appointment. And Lilith Fund connects clients to story-telling opportunities aimed at combatting the stigma surrounding abortion care, and it also promotes campaigns that educate Texans about their rights and conduct trainings about abortion access within the state

67. Lilith Fund previously funded and will continue to provide funding to support for reproductive healthcare, sexual assault survivors, abortions, and people who seek abortions.

68. Lilith Fund also openly communicates with the public regarding abortion, voicing its support for abortion rights, advocating for reproductive freedom and reproductive justice, and seeking the support of other who share the same values.

69. According to the terms of SB8, Lilith Fund aids and abets abortions in the State of Texas. It has engaged in conduct that helped to facilitate the performance or inducement of an abortion in the past that would have violated SB8's terms, and because Lilith Fund believes that SB8 is void under both federal and Texas law, it believes those supportive services remain protected.

70. SB8 chills Lilith Fund's (and its staff and volunteers') abilities to engage in constitutionally-protected speech by funding organizations that work to ensure people's rights to

reproductive healthcare and provide services for victims of sexual assault insofar as those organizations may be accused of “aiding or abetting” or providing abortion services in Texas, by making Plaintiff’s speech subject to potential tort liability.

71. SB8 further chills Lilith Fund’s free speech by making it (and its staff and volunteers) liable in tort to any person, regardless of whether that person is damaged or injured, on the basis of the content of its speech in support of its mission.

72. Although SB purports to except any conduct which would be protected by the First Amendment to the Constitution, its terms also specifically provide that providing funds that could be used for abortion services constitutes “aiding and abetting.”

73. SB8 targets Lilith Fund (and its staff and volunteers) and is intended specifically to silence Lilith Fund and other funds like them, and to further impugn the constitutional rights of the victims they seek to advise and protect. Such content-specific attacks by the legislature are patently unconstitutional. Lilith Fund’s rights will be immediately violated upon SB8’s effective date of September 1, 2021 and the threat of unmitigated potential civil liability to it is imminent because citizen bounty hunters are already publicly organizing to file lawsuits under SB8. *See* Exhibit B, Exhibit C, and Declaration of J. Alexander Lawrence, attached hereto as Exhibit D.

## V. CLAIMS

### **CLAIM 1: DECLARATORY JUDGMENT (*against Declaratory Defendants*)**

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

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

76. 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.

77. 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.

78. 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 arising under the statute and obtain a declaration of rights, status, or other legal relations thereunder.

#### **A. Plaintiff's Rights to Free Speech**

79. The Texas Constitutions guarantee their citizens the right to free speech, assembly, association, and petition.

80. Section 171.208 of SB8 purports to impose civil liability on anyone who (1) engages in conduct that helps to facilitate the performance or inducement of an abortion in violation of SB8, or (2) merely intends to engage in such conduct.

81. SB8's terms purport to make the following actions violations of Texas law: providing information about how to obtain an abortion, paying for any portion of an abortion, driving a person to an abortion provider, advocating for a person seeking an abortion, providing childcare to a person seeking an abortion, and/or merely "intending" to do any of the above. This is not an all-inclusive list of actions that may violate the terms of SB8; the conduct merely has to be construed as "aid" or assistance.

82. SB8's provision necessarily seeks to impose civil liability on Plaintiff because of the content of its speech

83. Such imposition of civil liability on the content of Plaintiff's speech infringes on its free speech rights to discuss matters of public concern without previous restraint or fear of subsequent punishment.

84. Moreover, because Plaintiff's use of funds is considered political speech, banning the use of such funds based on the basis of their intended purpose is a violation of Plaintiff's free speech rights.

85. SB8's provisions are facially unconstitutional with regard to the free speech guarantees of the Texas Constitution, contain content-based restrictions subject to strict scrutiny, and are retaliatory under the Texas Constitution.

86. Given the breadth of civil liability imposed by the law, SB8 chills speech prior to SB8's effective date and will continue to do so after September 1, 2021.

#### **B. Plaintiff's Open Courts Rights**

87. The Texas Constitution includes an "Open Courts" provision in Article 1, Section 13 that guarantees all litigants the right to redress their grievances and the right to their day in court:

All court shall be open, and every person for an injury done him, in his lands, goods, person, or reputation, shall have remedy by due course of law.

88. Under this provision, citizens must have access to courts unimpeded by unreasonable financial barriers and the legislature may not abrogate the right to assert a well-established common law cause of action.

89. The following provisions of SB8 (a) restrict Plaintiff's right (and the rights of other citizens) to access the courts of this state:

- a. Section 171.208(b)'s provision for mandatory relief for a prevailing claimant;
- b. Section 171.208(b)'s provision for mandatory injunctive relief for a prevailing claimant;
- c. Section 171.208(e)'s elimination of applicable defenses for potential defendants;
- d. Section 171.208(i)'s prohibition of an award of fees to a prevailing defendant;
- e. Section 171.211(b)'s maintenance of immunity for all state and political subdivisions or their employees in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of SB8;<sup>8</sup> and
- f. Section 30.022's imposition of joint and several liability for attorneys' fees on litigants and attorneys/firm that take on challenges to abortion laws, including retroactively.

90. The above provisions purport to eliminate Plaintiff's ability to seek a declaratory judgment regarding the constitutionality of SB8, eliminate defenses to any claims asserted against it under SB8, and impose all financial risks and burdens of seeking any kind of legal redress onto one set of litigants (which includes Plaintiff)—namely those seeking to challenge the provisions of SB8.

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<sup>8</sup> Section 171.211(b) is also unconstitutional under the Equal Protection clauses of both the U.S. and Texas Constitutions because it is a content-based exception to the Legislature's prior waiver of sovereign immunity in the UDJA. Section 171.211(b) cannot survive the any level of Equal Protection review, and most certainly cannot survive the strict scrutiny analysis required when a legislature attempts to enact a statute that applies only to a subset of citizens based on the content of their speech, which is a fundamental right. *Mauldin v. Tex. State Bd. of Plumbing Exam'rs*, 94 S.W.3d 867, 871, 873 (Tex. App.—Austin 2002, no pet.) (“If the statute implicates a fundamental right or a suspect class, then we apply strict scrutiny, under which the statute will be upheld only if it is narrowly tailored to further a compelling government interest.”); *see also City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985).

91. The above provisions also require judges to issue a mandatory injunction sufficient to prevent future conduct if a claimant prevails on his SB8 claim. A mandatory injunction removes all discretion from the trial judge to determine the appropriate relief and subjects a defendant to a civil injunction that is likely to operate as a restraint on the defendant's future work and speech. The mandatory injunction provision also means that a SB8 defendant will be prevented from challenging claims made against her in the future; otherwise, she would subject herself to civil contempt penalties.

92. The above provisions create an automatic conflict between the Plaintiff, a would-be defendant under SB8, and its attorney. Any attorney who agrees to present a constitutional defense or mount a proactive challenge to the constitutionality of SB8 subjects herself and her firm to joint and several liability for the attorneys' fees incurred by the opposing party in the case. The above provisions force an attorney to choose between the best interests of her client and liability under SB8 or to refuse to represent a client at all. The above provisions further prevent a litigant from redressing wrongs done to her rights by significantly burdening her ability to obtain counsel.

93. The above provisions violate the open courts provisions of the Texas Constitution by encouraging wholly frivolous claims for the purpose of harassment and/or fishing expeditions. In other words, potential defendants (like Lilith Fund) bear all of the risk related to being forced to pay attorneys' fees, and there is no disincentive for a plaintiff to bring a claim any time they even suspect non-compliance. This is a waste of the judiciary's resources which the Texas Constitution does not permit; and there is no remedy at law for a defendant, who is impeded by unreasonable financial barriers based on the text of SB8 itself.<sup>9</sup>

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<sup>9</sup> To the extent these provisions apply solely to a subset of litigants defined by the content of the claims or defenses they would assert, all of these provisions also separately violate the Equal Protection clauses of the U.S. and Texas Constitutions.



### **C. Plaintiff's Due Process Rights**

94. Under the Texas Constitution, “[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land.” TEX. CONST. ART. I, § 19.

95. SB8 infringes upon Plaintiff's constitutionally secured rights in the state of Texas, such as freedom of speech, freedom to assemble, freedom of association, equal protection, and the right to openly access the courts.

96. SB8's purpose is not rationally related to any legitimate governmental interest.

97. Further, SB8's actual, real world effect is not rationally related to a governmental interest or is so burdensome as to be oppressive to the above delineated rights.

98. SB8 violates Plaintiff's due process rights, prior to SB8's effective date as well as after.

### **D. SB8 Violates the Texas Prohibition of Retroactive Statutes**

99. Article 1, Section 16 of the Texas Constitution provides:

No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

100. The following provisions of SB8 impair prior and settled rights, which violates the Texas Constitution's prohibition of retroactive statutes:

- a. Section 171.208(e)'s elimination of defenses to liability; and
- b. Section 30.022's imposition of joint and several liability on attorneys or law firms that represent or defend clients in matters that seek injunctive or declaratory relief regarding abortion regulations and statutes.

101. These provisions are not reasonably tailored to the alleged purposes of SB8.

102. The retroactive reach of SB8 burdens Plaintiff by depriving it of its constitutional right to be apprised of laws that it may be held liable for and by impairing its ability to redress its rights in defense.

**E. SB8's Standing Provision is Unconstitutional**

103. SB8 purports to deputize private citizens to enforce the law, allowing “any person” other than government officials to bring a civil lawsuit against anyone who provides an abortion in violation of the Act, “aid or abets” such an abortion, or intends to do these things.

104. SB8 purports to confer standing to a broad group and does not require damages or injury for such private citizens to bring the claim—the private citizen need not show damages or injury.

105. Such broad standing violates the Texas Constitution because the claimants are not personally injured and cannot demonstrate that the claimants suffered an injury.

106. Qui tam actions are used in order to deputize private individuals to act for and on behalf of the government. Here, the state could not enforce the abortion restrictions as drafted in SB8, and thus cannot abdicate authority it does not have to a private individual.

107. Nor can the Texas Legislature set a lower standard than that set by the general doctrine of standing.

108. The broad standing purportedly conferred by SB8 inflicts imminent harm upon the Plaintiff—because all of the Plaintiff's constitutional rights detailed above will be imminently violated.

#### **F. SB8 Violates the Separation of Powers Doctrine**

109. By deputizing private citizens to enforce Texas’s new ban on abortion at five to six weeks gestation, the Texas Legislature (and the Legislative Defendants specifically) have entirely usurped the function of the Executive Branch in enforcing the laws of the state.

110. By permitting bounty-seeking “qui tam” claimants to keep all recoveries obtained by bringing these “strict liability” lawsuits, the Texas Legislature (and the Legislative Defendants specifically) further deprive the State and the Executive Branch of monies obtained solely because of a civil prohibition made by the State itself, thereby violating the separation of powers doctrine.

111. By purportedly insulating SB8 against any type of pre-enforcement judicial review, the Legislative Defendants (and indeed the Texas Legislature itself) fully usurp the role of the Judicial Branch in interpreting the law and determining what the law is and means.

112. By protecting SB8 claimants from any fees that could be awarded against them under other generally applicable states and Rules of the Texas Supreme Court and mandating liability for any defendant who dares to defend himself, Defendants further usurp the role of the Judicial Branch by depriving the Texas judiciary of its role in affording fairness and due process required by the Texas Constitution.

113. SB8 therefore violates the sacred concept of “separation of powers” upon which our very form of democracy rests and guards against tyranny, and upon which the Texas Constitution is based.

#### **G. SB8 Is Void for Vagueness**

114. SB8 is void for vagueness and unenforceable.

115. SB8 is a quasi-criminal statute that imposes civil penalties.

116. SB8 is too vague for the average citizen to determine what persons are regulated, what conduct is prohibited, and what civil penalties may be imposed.

117. SB8 is also void for vagueness because it imposes on Plaintiff's rights to freedom of speech and assembly.

118. SB8 burdens Plaintiff by depriving it of its constitutional right to be apprised of laws that it may be held liable for and by impairing its ability to redress and assert its rights in defense.

119. Because SB8 violates Plaintiff's due process rights, it cannot be enforced.

#### **H. Requested Declaratory Relief**

120. Plaintiff therefore respectfully requests that the Court enter the following declaration:

a. That the Legislative Defendants and Defendant Abbott exceeded their statutory and constitutional authority in passing, signing, or executing SB8 because it violates Plaintiff's right to free speech (including the rights to assemble, associate, and petition) under the Texas Constitution;

b. That the Legislative Defendants and Defendant Abbott exceeded their statutory and constitutional authority in passing, signing, or executing SB8 because it violates Plaintiff's rights to open courts under the Texas Constitution;

c. That the Legislative Defendants and Defendant Abbott exceeded their statutory and constitutional authority in passing, signing, or executing SB8 because it violates Plaintiff's due process or due course rights under the Texas Constitution;

d. That the Legislative Defendants and Defendant Abbott exceeded their statutory and constitutional authority in passing, signing, or executing SB8 by inflicting retroactive liability on Plaintiff in violation of the Texas Constitution;

e. That the Legislative Defendants and Defendant Abbott exceeded their statutory and constitutional authority in passing, signing, or executing SB8's broad standing provisions, which inflict imminent harm upon Plaintiff and violate the Texas Constitution;

f. That the Legislative Defendants and Defendant Abbott inflict harm on Plaintiff and exceeded their statutory and constitutional authority by improperly disregarding the separation of powers required by the Texas Constitution;

g. That the Legislative Defendants and Defendant Abbott exceeded their statutory and constitutional authority in passing, signing, or executing SB8 because it is void for vagueness;

h. That the Legislative Defendants' and Defendant Abbott's ultra vires acts create a violation of due process (as alleged below); and

i. That the following provisions within SB8 are unconstitutional:

- i. Section 171.207(a);
- ii. Section 171.208(a);
- iii. Section 171.208(b);
- iv. Section 171.208(e);
- v. Section 171.208(f);
- vi. Section 171.208(g);
- vii. Section 171.208(h);
- viii. Section 171.208(i);
- ix. Section 171.208(j);

- x. Section 171.209;
- xi. Section 171.211;
- xii. Section 171.212;
- xiii. Section 30.022; and

j. That any claims asserted by Defendants Seago and/or TRL under any provision of SB8 declared to be invalid are themselves invalid and frivolous as a matter of law and have no basis in law.

**CLAIM 2: ULTRA VIRES ACTION**  
**(against the Legislative Defendants and Defendant Abbott)**

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

122. Plaintiff affirmatively pleads and alleges that the Legislative Defendants and Defendant Abbott acted without legal authority—without reference to or in conflict with the constraints of the law authorizing the official to act. Therefore, their actions are ultra vires in nature.

123. Plaintiff further affirmatively pleads and alleges ultra vires acts have been committed, that it has sued the governmental officials in their official capacities, and that it seeks prospective relief other than the recovery of monetary damages. Therefore, governmental immunity does not apply.

124. The Legislature cannot authorize or demand a private cause of action or professional standard that violates constitutional rights.

125. Defendant Abbott cannot authorize or demand a private action or professional standard that violates constitutional rights.

126. SB8 operates unconstitutionally, for any one of and all of the reasons described herein.

127. Defendant Abbott acted without legal authority and exceeded the bounds of his authority by signing an unconstitutional law.

128. The Legislative Defendants exceeded the bounds of their authority by sponsoring and passing an unconstitutional law.

129. The Legislative Defendants and Defendant Abbott do not have the authority to enforce the provisions of SB8 or to authorize any government actor to enforce those provision, and therefore cannot abdicate such authority to a private litigant under the auspices of a “qui tam” action. The granting of non-existent authority conceived by SB8 demonstrates that the Legislative Defendants and Defendant Abbott have exceeded the scope of their authority under Texas and federal law.

130. Moreover, because SB8 is “self-enforcing,” Defendant Abbott has co-opted the role of the judiciary (in interpreting laws) and improperly abdicated his role as Executive (in enforcing laws) and the Legislative Defendants have co-opted the role of the judiciary (in interpreting laws) and the executive (in enforcing laws), and thereby subjected themselves to this action.

131. By attempting to prevent litigants from suing the executive branch through the prohibition on “public” enforcement of the law, the authors of SB8 have attempted to insulate a clearly unconstitutional set of restrictions from judicial review, which is unconstitutional as well.

**VI. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND/OR  
ANTI-SUIT INJUNCTION  
(against the Injunctive Defendants)**

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

133. Pursuant to Texas common law and Texas Civil Practice and Remedies Code Section 65.011(1, 5), Plaintiff is entitled to injunctive relief against the Injunctive Defendants, and all persons in active concert and participation with them, because the Injunctive Defendants' threatened actions of bringing lawsuit after lawsuit against her for constitutionally-protected conduct would cause irreparable injury to Plaintiff.

134. Plaintiff will suffer immediate and irreparable harm if the Injunctive Defendants are not enjoined from organizing and planning to bring lawsuits against Plaintiff and others like it who help women access abortions and other reproductive health services. As set forth above, the Injunctive Defendants have stated they will take action, and if the Injunctive Defendants' threatened actions are allowed to proceed, Plaintiff will be harmed in a manner from which it will be unable to recover.

135. Plaintiff is likely to prevail on the merits of this case and receive the requested declaratory judgment, as well as equitable relief, attorneys' fees, and costs of court.

136. Plaintiff also has no adequate remedy at law for the Injunctive Defendants' threatened actions. Specifically, money damages are insufficient to undo the threatened injury to Plaintiff. Several of Plaintiff's constitutional rights (and those of its members) are at stake and would be irreparably harmed by the continuing threat of multiple lawsuits.

137. The threatened injury to Plaintiff outweighs any possible damages to the Injunctive Defendants. Indeed, the Injunctive Defendants are not harmed by Plaintiff's conduct in any sense, nor by any alleged non-compliance with SB8. Therefore, the Injunctive Defendants would lose absolutely nothing by the issuance of an injunction.

138. Accordingly, Plaintiff requests that this Court issue a temporary restraining order pursuant to Texas Rule of Civil Procedure 680.



139. Plaintiff also requests that this Court issue an anti-suit injunction, preventing lawsuits against it by Injunctive Defendants in other venues under SB8 until such time as this case reaches its conclusion.

## **VII. RELIEF SOUGHT AND DISCOVERY LEVEL**

140. Pursuant to Texas Rule of Civil Procedure 190, Plaintiff requests that discovery in this case be conducted under Level 3. The remedy sought herein is within the jurisdictional limits of this Court. Plaintiff seeks non-monetary and all other relief to which it may show itself entitled.

## **VIII. ATTORNEYS' FEES**

141. Plaintiff specifically requests the recovery of reasonable attorneys' fees in advancing this action under TEX. CIV. PRAC. & REM. CODE § 37.009.

## **IX. PRAYER FOR RELIEF**

For the reasons set forth above, Plaintiff requests the following:

- (a) A finding of ultra vires acts against the Legislative Defendants and Defendant Abbott;
- (b) Judgment against all Defendants for declaratory relief as set forth above;
- (c) A temporary restraining order enjoining the Injunctive Defendants, and any of their agents, and any person or entity acting in concert with them, from instituting lawsuits against Plaintiff pursuant to SB8;
- (d) That the Injunctive Defendants be cited to appear and show cause that that upon hearing, an anti-suit injunction issue enjoining the Injunctive Defendants, and any of their agents and any person or entity acting in concert with them from instituting lawsuits pursuant to SB8 against Plaintiff until or unless this case comes to a conclusion;
- (e) Costs of court;

(f) Any and all costs and reasonable attorneys' fees incurred in any and all related appeals and collateral actions (if any); and

(g) Such other relief to which this Court deems Plaintiff justly entitled

DATED: August 31, 2021.

Respectfully submitted,

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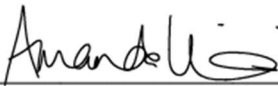
**ATTORNEYS FOR PLAINTIFF**

## **VERIFICATION**

STATE OF TEXAS           §

TRAVIS COUNTY           §

“My name is Amanda Beatriz Williams. I am a resident of Travis County, Texas, over 21 years of age, competent, and capable of making this verification. I am the Executive Director of Lilith Fund for Reproductive Equity, Inc. I have reviewed the foregoing Original Petition and Request for Declaratory Judgment and Ultra Vires Finding, and Application for Temporary Restraining Order and/or Anti-Suit Injunction. I declare under penalty of perjury that the statements of fact within this document related to Lilith Fund for Reproductive Equity, Inc. are within my personal knowledge, and are true and correct.”

  
\_\_\_\_\_  
Amanda Beatriz Williams

Dated August 31, 2021.

# EXHIBIT A

## AN ACT

relating to abortion, including abortions after detection of an unborn child's heartbeat; authorizing a private civil right of action.

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

SECTION 1. This Act shall be known as the Texas Heartbeat Act.

SECTION 2. The legislature finds that the State of Texas never repealed, either expressly or by implication, the state statutes enacted before the ruling in *Roe v. Wade*, 410 U.S. 113 (1973), that prohibit and criminalize abortion unless the mother's life is in danger.

SECTION 3. Chapter 171, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. DETECTION OF FETAL HEARTBEAT

Sec. 171.201. DEFINITIONS. In this subchapter:

.(1) "Fetal heartbeat" means cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.

.(2) "Gestational age" means the amount of time that has elapsed from the first day of a woman's last menstrual period.

.(3) "Gestational sac" means the structure comprising the extraembryonic membranes that envelop the unborn child and that is typically visible by ultrasound after the fourth week of pregnancy.

.(4) "Physician" means an individual licensed to practice medicine in this state, including a medical doctor and a doctor of osteopathic medicine.

.(5) "Pregnancy" means the human female reproductive condition that:

.(A) begins with fertilization;

.(B) occurs when the woman is carrying the developing human offspring; and

.(C) is calculated from the first day of the woman's last menstrual period.

.(6) "Standard medical practice" means the degree of skill, care, and diligence that an obstetrician of ordinary judgment, learning, and skill would employ in like circumstances.

.(7) "Unborn child" means a human fetus or embryo in any stage of gestation from fertilization until birth.

Sec. 171.202. LEGISLATIVE FINDINGS. The legislature finds, according to contemporary medical research, that:

.(1) fetal heartbeat has become a key medical predictor that an unborn child will reach live birth;

.(2) cardiac activity begins at a biologically identifiable moment in time, normally when the fetal heart is formed in the gestational sac;

.(3) Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child; and

.(4) to make an informed choice about whether to continue her pregnancy, the pregnant woman has a compelling interest in knowing the likelihood of her unborn child surviving to full-term birth based on the presence of cardiac activity.

Sec. 171.203. DETERMINATION OF PRESENCE OF FETAL HEARTBEAT REQUIRED; RECORD. (a) For the purposes of determining the presence of a fetal heartbeat under this section, "standard medical practice" includes employing the appropriate means of detecting the

heartbeat based on the estimated gestational age of the unborn child and the condition of the woman and her pregnancy.

(b) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman unless the physician has determined, in accordance with this section, whether the woman's unborn child has a detectable fetal heartbeat.

(c) In making a determination under Subsection (b), the physician must use a test that is:

(1) consistent with the physician's good faith and reasonable understanding of standard medical practice; and

(2) appropriate for the estimated gestational age of the unborn child and the condition of the pregnant woman and her pregnancy.

(d) A physician making a determination under Subsection (b) shall record in the pregnant woman's medical record:

(1) the estimated gestational age of the unborn child;

(2) the method used to estimate the gestational age;

and

(3) the test used for detecting a fetal heartbeat, including the date, time, and results of the test.

Sec. 171.204. PROHIBITED ABORTION OF UNBORN CHILD WITH DETECTABLE FETAL HEARTBEAT; EFFECT. (a) Except as provided by Section 171.205, a physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child as required by Section 171.203 or failed to perform a test to detect a fetal heartbeat.

(b) A physician does not violate this section if the physician performed a test for a fetal heartbeat as required by Section 171.203 and did not detect a fetal heartbeat.

(c) This section does not affect:

(1) the provisions of this chapter that restrict or regulate an abortion by a particular method or during a particular stage of pregnancy; or

(2) any other provision of state law that regulates or prohibits abortion.

Sec. 171.205. EXCEPTION FOR MEDICAL EMERGENCY; RECORDS.

(a) Sections 171.203 and 171.204 do not apply if a physician believes a medical emergency exists that prevents compliance with this subchapter.

(b) A physician who performs or induces an abortion under circumstances described by Subsection (a) shall make written notations in the pregnant woman's medical record of:

(1) the physician's belief that a medical emergency necessitated the abortion; and

(2) the medical condition of the pregnant woman that prevented compliance with this subchapter.

(c) A physician performing or inducing an abortion under this section shall maintain in the physician's practice records a copy of the notations made under Subsection (b).

Sec. 171.206. CONSTRUCTION OF SUBCHAPTER. (a) This subchapter does not create or recognize a right to abortion before a fetal heartbeat is detected.

(b) This subchapter may not be construed to:

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

(2) wholly or partly repeal, either expressly or by implication, any other statute that regulates or prohibits abortion, including Chapter 6-1/2, Title 71, Revised Statutes; or

(3) restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state.

Sec. 171.207. LIMITATIONS ON PUBLIC ENFORCEMENT.

(a) Notwithstanding Section 171.005 or any other law, the requirements of this subchapter shall be enforced exclusively through the private civil actions described in Section 171.208. No enforcement of this subchapter, and no enforcement of Chapters 19 and 22, Penal Code, in response to violations of this subchapter, may be taken or threatened by this state, a political subdivision, a district or county attorney, or an executive or administrative officer or employee of this state or a political subdivision against any person, except as provided in Section 171.208.

(b) Subsection (a) may not be construed to:

(1) legalize the conduct prohibited by this subchapter or by Chapter 6-1/2, Title 71, Revised Statutes;

(2) limit in any way or affect the availability of a remedy established by Section 171.208; or

(3) limit the enforceability of any other laws that regulate or prohibit abortion.

Sec. 171.208. CIVIL LIABILITY FOR VIOLATION OR AIDING OR ABETTING VIOLATION. (a) Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who:

(1) performs or induces an abortion in violation of this subchapter;

(2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of an abortion through insurance or otherwise, if the abortion is performed or induced in violation of this subchapter, regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of this subchapter; or

(3) intends to engage in the conduct described by Subdivision (1) or (2).

(b) If a claimant prevails in an action brought under this section, the 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 for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted; and

(3) costs and attorney's fees.

(c) Notwithstanding Subsection (b), a court may not award relief under this section in response to a violation of Subsection (a)(1) or (2) if the defendant demonstrates that the defendant previously paid the full amount of statutory damages under Subsection (b)(2) in a previous action for that particular abortion performed or induced in violation of this subchapter, or for the particular conduct that aided or abetted an abortion performed or induced in violation of this subchapter.

(d) Notwithstanding Chapter 16, Civil Practice and Remedies Code, or any other law, a person may bring an action under this section not later than the fourth anniversary of the date the cause of action accrues.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

(1) ignorance or mistake of law;

(2) a defendant's belief that the requirements of this subchapter are unconstitutional or were unconstitutional;

(3) a defendant's reliance on any court decision that has been overruled on appeal or by a subsequent court, even if that court decision had not been overruled when the defendant engaged in conduct that violates this subchapter;

(4) a defendant's reliance on any state or federal court decision that is not binding on the court in which the action

has been brought;

.(5) non-mutual issue preclusion or non-mutual claim preclusion;

.(6) the consent of the unborn child's mother to the abortion; or

.(7) any claim that the enforcement of this subchapter or the imposition of civil liability against the defendant will violate the constitutional rights of third parties, except as provided by Section 171.209.

.(f) It is an affirmative defense if:

.(1) a person sued under Subsection (a)(2) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion had complied or would comply with this subchapter; or

.(2) a person sued under Subsection (a)(3) reasonably believed, after conducting a reasonable investigation, that the physician performing or inducing the abortion will comply with this subchapter.

.(f-1) The defendant has the burden of proving an affirmative defense under Subsection (f)(1) or (2) by a preponderance of the evidence.

.(g) This section may not be construed to impose liability on any speech or conduct protected by the First Amendment of the United States Constitution, as made applicable to the states through the United States Supreme Court's interpretation of the Fourteenth Amendment of the United States Constitution, or by Section 8, Article I, Texas Constitution.

.(h) Notwithstanding any other law, this state, a state official, or a district or county attorney may not intervene in an action brought under this section. This subsection does not prohibit a person described by this subsection from filing an amicus curiae brief in the action.

.(i) Notwithstanding any other law, a court may not award costs or attorney's fees under the Texas Rules of Civil Procedure or any other rule adopted by the supreme court under Section 22.004, Government Code, to a defendant in an action brought under this section.

.(j) Notwithstanding any other law, a civil action under this section may not be brought by a person who impregnated the abortion patient through an act of rape, sexual assault, incest, or any other act prohibited by Sections 22.011, 22.021, or 25.02, Penal Code.

Sec. 171.209. CIVIL LIABILITY: UNDUE BURDEN DEFENSE LIMITATIONS. (a) A defendant against whom an action is brought under Section 171.208 does not have standing to assert the rights of women seeking an abortion as a defense to liability under that section unless:

.(1) the United States Supreme Court holds that the courts of this state must confer standing on that defendant to assert the third-party rights of women seeking an abortion in state court as a matter of federal constitutional law; or

.(2) the defendant has standing to assert the rights of women seeking an abortion under the tests for third-party standing established by the United States Supreme Court.

.(b) A defendant in an action brought under Section 171.208 may assert an affirmative defense to liability under this section if:

.(1) the defendant has standing to assert the third-party rights of a woman or group of women seeking an abortion in accordance with Subsection (a); and

.(2) the defendant demonstrates that the relief sought by the claimant will impose an undue burden on that woman or that group of women seeking an abortion.

.(c) A court may not find an undue burden under Subsection (b) unless the defendant introduces evidence proving that:

.(1) an award of relief will prevent a woman or a group



of women from obtaining an abortion; or

.(2) an award of relief will place a substantial obstacle in the path of a woman or a group of women who are seeking an abortion.

.(d) A defendant may not establish an undue burden under this section by:

.(1) merely demonstrating that an award of relief will prevent women from obtaining support or assistance, financial or otherwise, from others in their effort to obtain an abortion; or

.(2) arguing or attempting to demonstrate that an award of relief against other defendants or other potential defendants will impose an undue burden on women seeking an abortion.

.(e) The affirmative defense under Subsection (b) is not available if the United States Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973) or Planned Parenthood v. Casey, 505 U.S. 833 (1992), regardless of whether the conduct on which the cause of action is based under Section 171.208 occurred before the Supreme Court overruled either of those decisions.

.(f) Nothing in this section shall in any way limit or preclude a defendant from asserting the defendant's personal constitutional rights as a defense to liability under Section 171.208, and a court may not award relief under Section 171.208 if the conduct for which the defendant has been sued was an exercise of state or federal constitutional rights that personally belong to the defendant.

#### Sec. 171.210. CIVIL LIABILITY: VENUE.

(a) Notwithstanding any other law, including Section 15.002, Civil Practice and Remedies Code, a civil action brought under Section 171.208 shall be brought in:

.(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

.(2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;

.(3) the county of the principal office in this state of any one of the defendants that is not a natural person; or

.(4) the county of residence for the claimant if the claimant is a natural person residing in this state.

(b) If a civil action is brought under Section 171.208 in any one of the venues described by Subsection (a), the action may not be transferred to a different venue without the written consent of all parties.

Sec. 171.211. SOVEREIGN, GOVERNMENTAL, AND OFFICIAL IMMUNITY PRESERVED. (a) This section prevails over any conflicting law, including:

.(1) the Uniform Declaratory Judgments Act; and

.(2) Chapter 37, Civil Practice and Remedies Code.

(b) This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise.

(c) A provision of state law may not be construed to waive or abrogate an immunity described by Subsection (b) unless it expressly waives immunity under this section.

Sec. 171.212. SEVERABILITY. (a) Mindful of *Leavitt v. Jane L.*

the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to

any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this chapter shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this chapter to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining applications and shall remain in force, and shall be treated as if the legislature had enacted a statute limited to the persons, group of persons, or circumstances for which the statute's application does not present an undue burden.

(b-1) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating the United States Constitution and Texas Constitution, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate the United States Constitution and Texas Constitution.

(c) The legislature further declares that it would have enacted this chapter, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this chapter, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared unconstitutional or to represent an undue burden.

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

(e) No court may decline to enforce the severability requirements of Subsections (a), (b), (b-1), (c), and (d) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision does not rewrite a statute, as the statute continues to contain the same words as before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the Texas Constitution or United States Constitution;

(2) is not a formal amendment of the language in a statute; and

(3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

SECTION 4. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.022 to read as follows:

Sec. 30.022. AWARD OF ATTORNEY'S FEES IN ACTIONS CHALLENGING ABORTION LAWS. (a) Notwithstanding any other law, any person, including an entity, attorney, or law firm, who seeks declaratory or injunctive relief to prevent this state, a political subdivision, any governmental entity or public official in this state, or any person in this state from enforcing any statute, ordinance, rule, regulation, or any other type of law that regulates or restricts abortion or that limits taxpayer funding for individuals or entities that perform or promote abortions, in any state or federal court, or that represents any litigant seeking

such relief in any state or federal court, is jointly and severally liable to pay the costs and attorney's fees of the prevailing party.

(b) For purposes of this section, a party is considered a prevailing party if a state or federal court:

(1) dismisses any claim or cause of action brought against the party that seeks the declaratory or injunctive relief described by Subsection (a), regardless of the reason for the dismissal; or

(2) enters judgment in the party's favor on any such claim or cause of action.

(c) Regardless of whether a prevailing party sought to recover costs or attorney's fees in the underlying action, a prevailing party under this section may bring a civil action to recover costs and attorney's fees against a person, including an entity, attorney, or law firm, that sought declaratory or injunctive relief described by Subsection (a) not later than the third anniversary of the date on which, as applicable:

(1) the dismissal or judgment described by Subsection (b) becomes final on the conclusion of appellate review; or

(2) the time for seeking appellate review expires.

(d) It is not a defense to an action brought under Subsection (c) that:

(1) a prevailing party under this section failed to seek recovery of costs or attorney's fees in the underlying action;

(2) the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

SECTION 5. Subchapter C, Chapter 311, Government Code, is amended by adding Section 311.036 to read as follows:

Sec. 311.036. CONSTRUCTION OF ABORTION STATUTES. (a) A statute that regulates or prohibits abortion may not be construed to repeal any other statute that regulates or prohibits abortion, either wholly or partly, unless the repealing statute explicitly states that it is repealing the other statute.

(b) A statute may not be construed to restrict a political subdivision from regulating or prohibiting abortion in a manner that is at least as stringent as the laws of this state unless the statute explicitly states that political subdivisions are prohibited from regulating or prohibiting abortion in the manner described by the statute.

(c) Every statute that regulates or prohibits abortion is severable in each of its applications to every person and circumstance. If any statute that regulates or prohibits abortion is found by any court to be unconstitutional, either on its face or as applied, then all applications of that statute that do not violate the United States Constitution and Texas Constitution shall be severed from the unconstitutional applications and shall remain enforceable, notwithstanding any other law, and the statute shall be interpreted as if containing language limiting the statute's application to the persons, group of persons, or circumstances for which the statute's application will not violate the United States Constitution and Texas Constitution.

SECTION 6. Section 171.005, Health and Safety Code, is amended to read as follows:

Sec. 171.005. COMMISSION [~~DEPARTMENT~~] TO ENFORCE; EXCEPTION. The commission [~~department~~] shall enforce this chapter except for Subchapter H, which shall be enforced exclusively through the private civil enforcement actions described by Section 171.208 and may not be enforced by the commission.

SECTION 7. Subchapter A, Chapter 171, Health and Safety Code, is amended by adding Section 171.008 to read as follows:

Sec. 171.008. REQUIRED DOCUMENTATION. (a) If an abortion

is performed or induced on a pregnant woman because of a medical emergency, the physician who performs or induces the abortion shall execute a written document that certifies the abortion is necessary due to a medical emergency and specifies the woman's medical condition requiring the abortion.

(b) A physician shall:

(1) place the document described by Subsection (a) in the pregnant woman's medical record; and

(2) maintain a copy of the document described by Subsection (a) in the physician's practice records.

(c) A physician who performs or induces an abortion on a pregnant woman shall:

(1) if the abortion is performed or induced to preserve the health of the pregnant woman, execute a written document that:

(A) specifies the medical condition the abortion is asserted to address; and

(B) provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition; or

(2) for an abortion other than an abortion described by Subdivision (1), specify in a written document that maternal health is not a purpose of the abortion.

(d) The physician shall maintain a copy of a document described by Subsection (c) in the physician's practice records.

SECTION 8. Section 171.012(a), Health and Safety Code, is amended to read as follows:

(a) Consent to an abortion is voluntary and informed only if:

(1) the physician who is to perform or induce the abortion informs the pregnant woman on whom the abortion is to be performed or induced of:

(A) the physician's name;

(B) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed or induced; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform or induce the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest;

(3) the physician who is to perform or induce the abortion or the physician's agent:

(A) provides the pregnant woman with the printed materials described by Section 171.014; and

(B) informs the pregnant woman that those materials:

(i) have been provided by the commission

~~[Department of State Health Services];~~

(ii) are accessible on an Internet website sponsored by the commission ~~[department]~~;

(iii) describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider that is a facility licensed under Chapter 245 or a facility that performs more than 50 abortions in any 12-month period:

(A) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed or induced;

(B) the physician who is to perform or induce the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform or induce the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform or induce the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4) (A) and before the abortion is performed or induced and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

\_\_\_\_ I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

\_\_\_\_ I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

\_\_\_\_ MY UNBORN CHILD ~~[FETUS]~~ HAS AN IRREVERSIBLE MEDICAL

CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245, TEXAS HEALTH AND SAFETY CODE, OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245 OR A FACILITY THAT PERFORMS MORE THAN 50 ABORTIONS IN ANY 12-MONTH PERIOD, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS:\_\_\_\_\_.

SIGNATURE \_\_\_\_\_

DATE"; \_\_\_\_\_

(6) before the abortion is performed or induced, the physician who is to perform or induce the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection.

SECTION 9. Section 245.011(c), Health and Safety Code, is amended to read as follows:

(c) The report must include:

(1) whether the abortion facility at which the abortion is performed is licensed under this chapter;

(2) the patient's year of birth, race, marital status, and state and county of residence;

(3) the type of abortion procedure;

(4) the date the abortion was performed;

(5) whether the patient survived the abortion, and if the patient did not survive, the cause of death;

(6) the probable post-fertilization age of the unborn child based on the best medical judgment of the attending physician at the time of the procedure;

(7) the date, if known, of the patient's last menstrual cycle;

(8) the number of previous live births of the patient; [and]

(9) the number of previous induced abortions of the patient;

(10) whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion; and

(11) the information required under Sections 171.008(a) and (c).

SECTION 10. Every provision in this Act and every application of the provision in this Act are severable from each other. If any provision or application of any provision in this Act to any person, group of persons, or circumstance is held by a court to be invalid, the invalidity does not affect the other provisions or applications of this Act.

SECTION 11. The change in law made by this Act applies only to an abortion performed or induced on or after the effective date of this Act.

SECTION 12. This Act takes effect September 1, 2021.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 8 passed the Senate on March 30, 2021, by the following vote: Yeas 19, Nays 12; and that the Senate concurred in House amendments on May 13, 2021, by the following vote: Yeas 18, Nays 12.

---

Secretary of the Senate

I hereby certify that S.B. No. 8 passed the House, with amendments, on May 6, 2021, by the following vote: Yeas 83, Nays 64, one present not voting.

---

Chief Clerk of the House

Approved:

---

Date

---

Governor

# EXHIBIT B



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

**Whole Woman's Health**, et al.,

Plaintiffs,

v.

**Austin Reeve Jackson**, et al.,

Defendants.

Case No. 1:21-cv-00616-RP

**DECLARATION OF JOHN SEAGO**

I, John Seago, being duly sworn, states as follows:

1. My name is John Seago. I am over 21 years old and fully competent to make this declaration.

2. I have personal knowledge of each of the facts stated in this declaration, and everything stated in this declaration is true and correct.

3. I serve as Legislative Director for Texas Right to Life.

4. Texas Right to Life strongly supported the enactment of Senate Bill 8.

5. Texas Right to Life is publicizing the availability of private civil-enforcement lawsuits under Senate Bill 8 through social media and other forms of advertising, and we are encouraging individuals to sue abortion providers and abortion funds if they defy the law when it takes effect on September 1, 2021.

6. I have personal knowledge that there are several individuals who intend to sue the abortion-provider plaintiffs and the abortion-fund plaintiffs if they defy Senate Bill 8, and those individuals will sue the plaintiffs for violating Senate Bill 8 even if this Court enjoins Mark Lee Dickson from filing private civil-enforcement lawsuits under the statute.

This concludes my sworn statement. I declare under penalty of perjury that the facts stated in this declaration are true and correct.

DocuSigned by:

*John Seago*

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JOHN SEAGO

# EXHIBIT C



# Help enforce the Texas Heartbeat Act

[JOIN THE TEAM](#)

[SEND AN ANONYMOUS TIP](#)

## GETTING INVOLVED

During the Regular Session of the 87th Legislature, Texas lawmakers passed Senate Bill 8, the Texas Heartbeat Act.

SB 8 requires an abortionist to use standard medical practice to detect the preborn child's heartbeat before an elective abortion. If the heartbeat is detected, then the abortion is prohibited. A heartbeat is generally detectable around six weeks of gestation.

If the abortionist is acting in bad faith or does not properly document the method and results of the heartbeat detection the law is violated. Individuals who aid or abet an illegal abortion can also be sued under SB 8.

**SB 8 is unique since enforcement is in the hands of private citizens. The Texas Heartbeat Act calls upon citizens to hold abortionists accountable to following the law.** Any Texan can bring a lawsuit against an abortionist or someone aiding and abetting an abortion after six weeks. If these individuals are proved to be violating the law, they have to pay a fine of at least \$10,000.

Join the team of Pro-Lifers working to  
enforce the Texas Heartbeat Act.

[Click Here](#)

Send an anonymous tip or information  
about potential violations of the Texas  
Heartbeat Act.

[Click Here](#)



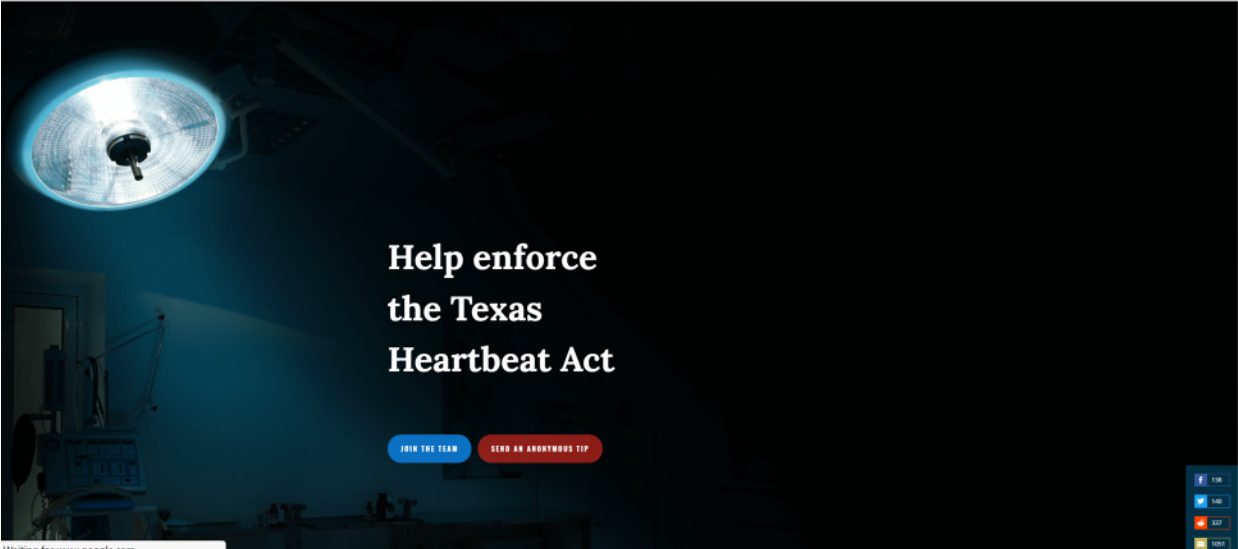
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RIGHT TO LIFE

HOME



# Help enforce the Texas Heartbeat Act

[JOIN THE TEAM](#)[SEND AN ANONYMOUS TIP](#)

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Join the team of Pro-Lifers working to enforce the Texas Heartbeat Act.

[Click Here](#)

Send an anonymous tip or information about potential violations of the Texas Heartbeat Act.

[Click Here](#)

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# EXHIBIT D

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

WHOLE WOMAN’S HEALTH, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION
v.	)	
	)	CASE NO. 21-cv-00616-RP
AUSTIN REEVE JACKSON, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DECLARATION OF J. ALEXANDER LAWRENCE**

J. ALEXANDER LAWRENCE, declares under penalty of perjury that the following statements are true and correct:

1. I am a Partner in the law firm Morrison & Foerster LLP (“Morrison & Foerster”).
2. On August 4, 2021, Judge Austin Jackson held a press conference at Living Alternatives, The AXIA Center (Pregnancy Resource Center) in Tyler, Texas.
3. The video of the press conference is available at <https://www.ketk.com/news/local-news/judge-austin-jackson-east-texas-pro-life-activist-sued-in-effort-to-block-texas-abortion-heartbeat-bill/> (last visited August 7, 2021).
4. Attached hereto as Exhibit A is a true and correct copy of a transcription of the video of the press conference.

Dated: August 7, 2021

/s/ J. Alexander Lawrence  
J. Alexander Lawrence

# **Exhibit A**

**JUDGE AUSTIN JACKSON, EAST TEXAS PRO-LIFE ACTIVISTS SUED IN EFFORT TO BLOCK TEXAS ABORTION HEART (AUGUST 4, 2021)**

**Judge Austin Jackson**

Thank you so much for allowing us to be here today and to the rest of the folks here from Living Alternatives, I want you to know how much this means to me personally that you allowed us to not only come in here, but were willing to show the courage to stand with us on an issue like this.

As a judge, I like to think that every day I get to do a little justice and there's no doubt, looking at what you do here that every day you get to love a little mercy. And I think it's very exciting that today we get to come together and walk humbly together with our God. And so thank you so much for that opportunity.

For those of you who don't know, my name is Austin Reeve Jackson, and I'm the judge of the 114<sup>th</sup> District Court here in Smith County. And we're here today because I have been recently named as the number one target in Texas of Planned Parenthood and other pro-abortion activists. On the most basic level, we're here because these groups have filed a frivolous lawsuit against me down in Travis County in front of a liberal Obama-appointed federal judge for no reason other than that I am someone committed to the rule of law and biblical values. We're here because out-of-county, out-of-state, out-of-touch groups like Planned Parenthood and the ACLU have decided that if they can't silence the legislators down in Austin, maybe they can silence the judges who enforce the law in east Texas. You see, the left is so used to the idea of having an activist judge that they believe any judge can be bought, bullied, or beaten into submission or resignation.

Make no mistake; this lawsuit is a direct attack by far-left groups on the rule of law and the right of pro-life communities to elect people who share their values. This is cancel culture at its finest. But man, am I lucky to be from Smith County. The outpouring of support over this attack on me, on my job, on all of us who share these values has been met by an overwhelming show of support from people like Senator Hughes and the folks here at Living Alternatives. But more than that, I am incredibly thankful for the wonderful, wonderful support from average east Texans, who are not only proud to have a conservative judge who is willing to answer the fight that these groups started, but who are thrilled to be standing by me as we take on this challenge. With their support, I am one hundred percent committed to seeing this frivolous lawsuit dismissed, the attempts to run Christians out of elected office defeated, and the voice and the vote of pro-life Texans defended.

You see, when Planned Parenthood came for me, they didn't realize they were coming for a whole community of Texans who are unshakeable in our belief that there are certain and immutable rights with which we are all endowed not by our government, but by our God. Not by virtue of being out of the womb, but by virtue of having his spirit within us from the moment of conception. And chief among these rights is the unalienable right to life. And with the support of my community, I am here to today that I will not be scared by the vicious attacks and implicit threats of radical organizations. I will not allow the voice and the vote of any Texan to be silenced by the left, but I will stand for what is right. On this front of the culture war, I will yield no further. And regardless of what some organization like Planned

Parenthood threatens me with. No matter what some leftist judge down in Austin may do to me. As for me and my house, we will continue to serve the Lord. And I am thrilled to have by my side in this fight my friend and my lawyer Shane McGuire, who has taken up this cause and who is representing me at no cost to the Smith county taxpayer because he believes in me, but more importantly, because he believes this fight is a fight worth having.

### **Shane McGuire**

Thanks, Reeve. Good morning. My name is Shane McGuire. I just wanted to say a couple of words about the lawsuit itself, the merit or lack thereof of the lawsuit, and why it is I think that Reeve has been sued in this case.

First, I've read this complaint in full. I've read all the motions filed by these special interest groups. And I have to say this lawsuit is frivolous on its face. It is black letter law that you cannot sue a sitting judge and just demand some advisory opinion, asking a court to ban people from filing lawsuits in his court. This—it is open season on judges in Texas if this lawsuit is allowed to go forward.

Now I want to say a word about why it is I think Judge Jackson has been sued in this case. There's a thousand judges in Texas. They could have sued anybody. Reeve came into my office last week and said, "Shane, why do you think it is they picked me?" I said, "Reeve, I've known you a long time. I know exactly why they picked you. They picked you because they know that you're a man who would rather read his bible than read Rules for Radicals by Saul Alinsky. They picked you because they know you're a man of character and integrity and a man of God. And they picked you because they knew you would engage in the fight."

So listen, we're going to file a motion to dismiss this lawsuit today or tomorrow. It's already been drafted. I was editing it as late as 11 o'clock last night. That's going to get on file. I'm sure ultimately the case against Judge Jackson is going to be dismissed if the rules of law are followed. But I would ask you all to pray for him and to pray for his—we've got a great legal team. Pray for all of us as we go forward in this case. And Senator Hughes, thank you for your leadership on the life issue. We appreciate everything that you've done. Thank you all.

### **Senator Bryan Hughes**

It is so good to be here with you. The work you've done for all these years, quietly serving, helping those little babies come in life, alongside those moms, helping those moms in difficult times. Thank you. Our crisis pregnancy centers, the best kept secret of the pro-life movement in all the debate about the right to life. This work done by this place and places like it around Texas and around the country. This is where the real work is being done. Where moms are being helped. They're being encouraged. Where hearts are being changed, and little lives are being saved. So what a blessing to be here. Not my first time here, and is it great to be back here today.

I'm Bryan Hughes, and I'm blessed to represent northeast Texas in the Texas senate, and yes, I'm so honored to be the author of Senate Bill 8, the—we called it the heartbeat bill. It's now the heartbeat law, signed by Governor Abbott. Governor Abbott signed that bill and gave me the pen he used to sign, and I will cherish that forever. That bill says—that law says that little baby growing inside her mother's womb—when there's a heartbeat detected. Every one of us here has a heartbeat. I can tell from looking at you. That heartbeat, that universal sign of

life—they tell us to follow the science. We are following the science. When there is a heartbeat, there is a human life worthy of protection, and that’s what the heartbeat law does in Texas.

Now, it takes a different approach. You may have seen this many places in Texas. They are not blessed with wonderful district attorneys like we have in Jacob Putman. We have a strong constitutional concerted district attorney. Many DAs around the state and around the country publicly told us last year, “If you pass a heartbeat bill, we will not enforce it.” These are district attorneys sworn to enforce the law who said, “We will not enforce a heartbeat bill.” And so that’s why Senate Bill 8 doesn’t need their help. Senate Bill 8 doesn’t require any action by the district attorney, by the state, or any government actor. It’s driven by private individuals who want to stand up for the right to life.

And so any Texan who is aware of an illegal abortion can bring an action against the doctor committing the illegal abortion. Let me be clear. The mother is not affected by the heartbeat law. This is about doctors performing illegal abortions. And any Texan has the right to bring that suit, to right that wrong, to protect that innocent human life. Now the radical abortion industry is upset about this law, and that’s why they’ve taken the extreme step of suing Judge Jackson and every judge in the state of Texas.

I can’t underscore enough what you’ve heard. This lawsuit is radical. It clearly violates the law. And we’re confident the judge will do the right thing. The court system will work as it should. And at the end of the day—at the end of the day, we look forward to this lawsuit being successful on the right side. This law moving forward, and little babies—that little baby growing inside her mother’s womb—inside her mother’s womb ought to be the safest place on earth. That little unborn baby—the most innocent, the most helpless, and the most deserving of protection a human will ever be. We’re so thankful the heartbeat law has been signed by Governor Abbott, and we look forward to its taking effect and being upheld by the courts. Thank you for being here today. God bless you.

### **Unidentified**

Alright, thank you all so much for being here. This concludes the press release. If anyone wants to stay and offer any interviews for Reeve, then you’re welcome to. He’ll be available. Thank you so much.

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

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