

Monica Faulkner,

Plaintiff,

v.

State of Texas, et al.,

Defendants.

IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

250th JUDICIAL DISTRICT

**BRIEF IN OPPOSITION TO PLAINTIFF’S APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND MOTION TO
CANCEL HEARING SET FOR AUGUST 30, 2021**

Yesterday Senate Bill 8 took effect, and the Supreme Court denied a request for emergency relief late last night. *See Whole Woman’s Health v. Jackson*, No. 21A24. Texas abortion providers are now complying with the law and refusing to perform abortions after fetal heartbeat is detectable. *See, e.g., Madlin Mekelburg, Texas Abortion Providers Halt Most Abortions As Six-Week Ban Takes Effect*, Austin American-Statesman (Sept. 1, 2021), available at <https://bit.ly/3mWIM90>. And the plaintiffs have failed to allege or produce evidence that *any* Texas provider will continue performing post-heartbeat abortions now that Senate Bill 8 has taken effect.

Because Texas abortion providers are complying with Senate Bill 8, it is impossible for the plaintiffs to “aid or abet” post-heartbeat abortions in Texas because no illegal abortions are being performed. The plaintiffs cannot violate Senate Bill 8 even if they wanted to, because there are no illegal abortions for anyone to “aid or abet.” And the defendants cannot sue the plaintiffs under Senate Bill 8 because none of the plaintiffs are violating the statute. So there is nothing for this court to enjoin: The plaintiffs are complying with the law, and the defendants are incapable of suing the plaintiffs because they are all complying with the statute.

The burden is on the plaintiffs to show that the defendants intend to sue them absent a TRO or temporary injunction from this Court. They cannot make this showing when: (1) It is undisputed that the plaintiffs are complying with Senate Bill 8; and (2) It is undisputed that Texas Right to Life and Mr. Seago have no intention of suing individuals or entities who are complying with the statute. *See* Declaration of Texas Right to Life (attached); Declaration of John Seago (attached). There is no emergency that warrants a TRO, and there is no “irreparable harm” that will occur in the absence of a TRO or a temporary injunction.

The motion for TRO also should be denied because defendants John Seago and Texas Right to Life have executed sworn declarations stating that:

1. They have no intention of suing Ms. Faulkner over the conduct described in her petition, and they have no intention of acting in concert with anyone who does;
2. They have never intended or threatened to sue Ms. Faulkner under Senate Bill 8’s private-enforcement mechanism, and they have never acted in concert with anyone who has intended or threatened to sue Ms. Faulkner under Senate Bill 8’s private-enforcement mechanism;
3. They will not sue Ms. Faulkner under Senate Bill 8’s private-enforcement mechanism while this lawsuit remains pending, and they will not act in concert with anyone who does;
4. They are not aware any person who intends to sue Ms. Faulkner under Senate Bill 8’s private-enforcement mechanism, and there is no “John Doe” defendant of whom they are aware that intends to sue Ms. Faulkner;
5. They do not expect any person to file lawsuits against anyone under Senate Bill 8’s private-enforcement mechanism, because they expect every abortion provider in Texas to comply with the Texas Heartbeat Act when it takes effect on September 1, 2021.

The declarations are attached as exhibits to this brief.

Ms. Faulkner has no standing to sue defendants John Seago and Texas Right to Life, or any of the supposed “John Doe” defendants, in light of the commitments made in this declaration. In addition, Ms. Faulkner cannot establish irreparable injury when the defendants have committed not to sue her under Senate Bill 8 while this litigation remains pending.

Respectfully submitted.

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* pro hac vice application
forthcoming

Dated: September 2, 2021

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Texas Right to Life and John Seago

CERTIFICATE OF SERVICE

I certify that on September 2, 2021, I served this document through the electronic-filing manager upon:

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