

**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.)	

**PLAINTIFFS’ PARTIALLY UNOPPOSED MOTION
FOR EXPEDITED STATUS CONFERENCE**

TO THE HONORABLE COURT:

Plaintiffs respectfully move for an expedited status conference in this case at the Court’s earliest availability to discuss the timing of any hearing on Plaintiffs’ pending motions and their request for final judgment in the case before September 1, 2021. Plaintiffs further request that the parties be permitted to appear and present at the status conference telephonically. Counsel for all Defendants except Defendant Judge Jackson and Penny Clarkston have informed counsel for Plaintiffs that they would not oppose a status conference anytime the week of August 9; Plaintiffs have been unable to ascertain Defendants Judge Jackson’s and Clarkston’s positions on this motion.

1. On July 13, 2021, Plaintiffs filed this lawsuit challenging Texas Senate Bill 8, 87th Leg., Reg. Sess. (Tex. 2021) (“S.B. 8”). Compl., ECF No. 1. On the same day, Plaintiffs moved for summary judgment on all their claims. Pls.’ Mot. Summ. J., ECF No. 19. On July 16, 2021, Plaintiffs moved for certification of two defendant classes: a Judicial Defendant Class and a Clerk Defendant Class. Pls.’ Mot. Cert. Def. Class Js. & Def. Class Clerks, ECF No. 32.

2. Plaintiffs include individuals and organizations that provide abortions and/or counseling, funding, and practical assistance to individuals in need of abortion in Texas. *See* Pls.’ Mot. Summ. J. 5–7, ECF No. 19. S.B. 8 prohibits physicians from providing an abortion if a “fetal heartbeat,” defined to include “cardiac activity,” is detected. S.B. 8 § 3 (to be codified at Tex. Health & Safety Code §§ 171.203, .204) (hereinafter S.B. 8 § 3 citations are to newly created sections of Tex. Health & Safety Code only). The electrical impulses in an embryo that could constitute “cardiac activity” are generally detectable by about six weeks of pregnancy. *See* Pls.’ Mot. Summ. J. 8, ECF No. 19.

3. S.B. 8 can be enforced directly through civil enforcement actions brought in Texas state court against anyone who (1) provides a prohibited abortion, (2) aids or abets a prohibited abortion, or (3) intends to do either of these things. *See* S.B. 8 § 171.208(a). Additionally, S.B. 8 can be enforced indirectly by state officials who have residual authority to enforce other laws and impose civil or licensure penalties based on violations of S.B. 8. *See* Compl. ¶¶ 51–55, ECF No. 1; Pls.’ Mot. Summ. J. 20–21, ECF No. 19.

4. S.B. 8 has an effective date of September 1, 2021. S.B. 8 § 12. If not blocked before that date, S.B. 8 will prohibit nearly all abortions in Texas: approximately 85% to 90% of patients who obtain abortions in Texas are unable to do so until at least six weeks of pregnancy. *See* Pls.’ Mot. Summ. J. 14, ECF No. 19. Abortion providers will be forced to either stop providing abortions beginning at about six weeks of pregnancy or expose themselves to enforcement actions in which they would face overwhelming legal costs, injunctions preventing them from performing any further prohibited abortions, and ruinous monetary penalties of at least \$10,000 per abortion, *see* S.B. 8 § 171.208(b), as well as the threat of indirect enforcement by the defendant state officials.

5. To date, Plaintiffs have not moved for a preliminary injunction because injunctive relief against the Judicial Defendant Class “shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. § 1983. Plaintiffs seek other relief that would fully address their harms before September 1. *See* Pls.’ Mot. Summ. J. 49–50, ECF No. 19 (explaining scope of relief sought). Final judgment in favor of Plaintiffs from this Court is, therefore, urgently needed before September 1.

6. Plaintiffs respectfully request that the Court schedule an expedited status conference at which the Court and the parties could set a date and time for any hearing that the Court wants to hold on Plaintiffs’ motions, and so that such a hearing would be scheduled with sufficient time for the Court to issue its ruling before the September 1 effective date.

7. All Defendants were properly served in this action a week or more ago. Defendants Judge Jackson, Penny Clarkston, Stephen Carlton, Katherine Thomas, Allison Vordenbaumen Benz, and Ken Paxton were all served personally with the first-day filings, including the motion for summary judgment, on July 14, 2021. Defendant Cecile Erwin Young was served with the same papers on July 15. And Defendant Mark Lee Dickson accepted service of the same papers through his counsel, Jonathan Mitchell, on July 16.

8. Under Local Rule CV-7(d)(2), Defendants’ responses to the motions for summary judgment and class certification are due “not later than 14 days after the filing of the motion[s].” W.D. Tex. L.R. CV-7(d)(2). Pleadings responding to the complaint by Defendants Jackson, Clarkston, Carlton, Thomas, Benz, and Paxton are due on August 4. *See* Fed. R. Civ. P. 12(a)(1)(A)(i). Defendant Young’s responsive pleading is due on August 5, and Defendant Dickson’s is due on August 6. *See id.*

9. Counsel for Plaintiffs have been in contact with counsel for all Defendants except Defendants Clarkston and Judge Jackson, who have not yet identified their counsel. Counsel for Plaintiffs emailed the motion for class certification to Defendant Clarkston today, July 23, and Plaintiffs will attempt to personally serve the motion for class certification on Defendants Clarkston and Judge Jackson today as well.

10. Counsel for Plaintiffs contacted the chambers of Defendant Judge Jackson by telephone on July 22, 2021, to inquire about the identity of his counsel and to seek his position on this motion for a status conference. Judge Jackson has not informed Plaintiffs of his position on this motion.

11. Counsel for Plaintiffs contacted Defendant Clarkston by email on July 22, 2021, to inquire about the identity of her counsel and to seek her position on this motion for a status conference. Ms. Clarkston has not responded.

12. Counsel for Defendant Dickson informed counsel for Plaintiffs that Defendant Dickson would not oppose a status conference anytime the week of August 9.

13. Assistant Attorney General Benjamin S. Walton—who will represent Defendants Carlton, Thomas, Young, Benz, and Paxton—informed counsel for Plaintiffs that those Defendants would not oppose a status conference anytime the week of August 9.

WHEREFORE, Plaintiffs respectfully ask the Court to grant their Motion for Expedited Status Conference at its earliest availability.

Dated: July 23, 2021

Respectfully submitted,

/s/ Christen Mason Hebert

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* *Admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that today, July 23, 2021, I electronically filed a copy of the above document with the Clerk of the Court using the CM/ECF system, and served it as follows:

Via email:

Defendant Penny Clarkston
pclarkston@smith-county.com

Counsel for Defendant Dickson:
Jonathan Mitchell
jonathan@mitchell.law

Counsel for Defendants Carlton, Thomas, Young, Benz, and Paxton:
Benjamin S. Walton
Assistant Attorney General
General Litigation Division
Benjamin.Walton@oag.texas.gov

Via personal service:

The Honorable Austin Reeve Jackson
114th District Court
Smith County Courthouse
100 N. Broadway, Room 209
Tyler, Texas 75702

Penny Clarkston
Smith County District Clerk
100 North Broadway, Room 204
Tyler, Texas 75702

/s/ Christen Mason Hebert
Christen Mason Hebert

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**[PROPOSED] ORDER GRANTING PLAINTIFFS’
MOTION FOR EXPEDITED STATUS CONFERENCE**

Having considered Plaintiffs’ Motion for Expedited Status Conference, and good cause being shown therefor,

IT IS HEREBY ORDERED that Plaintiffs’ Motion is GRANTED.

The Court will hold a status conference in this case on _____.

Parties may appear and present telephonically at the status conference.

Dated: _____

UNITED STATES DISTRICT JUDGE