

No. 21A85

IN THE
Supreme Court of the United States

UNITED STATES OF AMERICA,
Applicant,

v.

STATE OF TEXAS, *et al.*,
Respondents.

ON APPLICATION TO VACATE THE STAY PENDING
APPEAL ISSUED BY THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

**MOTION FOR LEAVE TO FILE BRIEF AS AMICI
CURIAE AND BRIEF OF PLANNED PARENTHOOD
OF GREATER TEXAS SURGICAL HEALTH
SERVICES, PLANNED PARENTHOOD SOUTH
TEXAS SURGICAL CENTER, COMPREHENSIVE
HEALTH OF PLANNED PARENTHOOD GREAT
PLAINS, PLANNED PARENTHOOD OF ARKANSAS
& EASTERN OKLAHOMA, PLANNED
PARENTHOOD CENTER FOR CHOICE, AND
PLANNED PARENTHOOD OF THE ROCKY
MOUNTAINS AS AMICI CURIAE IN SUPPORT OF
THE UNITED STATES OF AMERICA**

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**MOTION FOR LEAVE TO FILE
BRIEF AS AMICI CURIAE**

Pursuant to Supreme Court Rule 37.2(b), Planned Parenthood of Greater Texas Surgical Health Services, Planned Parenthood South Texas Surgical Center, Planned Parenthood Center for Choice, Comprehensive Health of Planned Parenthood Great Plains, Planned Parenthood of Arkansas & Eastern Oklahoma, and Planned Parenthood of the Rocky Mountains (Amici) move for leave to file the attached brief in support of the United States of America’s application to vacate the United States Court of Appeals for the Fifth Circuit’s stay pending appeal of the preliminary injunction entered by the United States District Court for the Western District of Texas. The United States stated that it does not take a position on this motion. The State of Texas has consented conditionally to the filing of this brief.¹ The Intervenor-Respondents oppose the filing of this brief.²

Planned Parenthood is the leading provider of sexual and reproductive health services in the United States. Through the provision of comprehensive, high-quality reproductive health services and related educational programs, and through its work advocating for public policies that advance access to reproductive care, Planned Parenthood assists individuals in making informed decisions about their reproductive and sexual

¹ Texas consented “to a brief filed at or before noon on Tuesday,” October 19, 2021. This brief is being filed on Monday, October 18, 2021.

² The Fifth Circuit entered its stay on October 14, 2021, less than ten days before the United States filed its application, thereby rendering compliance with Rule 37.2(a) impossible. The parties were notified of Amici’s intention to file on October 17, 2021.

health. Planned Parenthood focuses on providing affordable, high-quality care to underserved communities and individuals who face systemic barriers in obtaining such care—including low-income individuals, individuals and communities located in rural areas, and individuals and communities of color. As part of this mission, Planned Parenthood offers financial assistance, including travel-related assistance, for certain patients.

Planned Parenthood amici affiliates operate health centers in Texas, Arkansas, Colorado, Kansas, New Mexico, Oklahoma, and Nevada that provide comprehensive reproductive health care to thousands of patients per year. Planned Parenthood's patients and staff have been directly and negatively affected by Texas Senate Bill No. 8. As a result of SB8, Texas patients who have detectable embryonic cardiac activity (which occurs early in pregnancy, before many patients even know they are pregnant) are prevented from having an abortion in Texas, and must now travel out of State, if they are able to do so, to have an abortion.

Amici's health centers in Colorado, New Mexico, Oklahoma, and Kansas are all seeing an influx of patients who have been turned away from care in Texas due to SB 8 and are attempting to obtain abortions out of State despite the travel and resulting expense, missed work or childcare obligations, and other obstacles that must be overcome in order to do so. As is clear from the interviews conducted in Texas, other patients are not able to leave the State to obtain abortions and must either continue their pregnancies against their will or attempt to obtain an abortion outside the medical system.

In addition to providing a wide variety of medical care, Planned Parenthood has a long history of serving as *amicus curiae* in federal and state court litigation

where statutory restrictions to reproductive medical care have been challenged. *See, e.g., Little Sisters of Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020); *June Med. Servs., LLC v. Gee*, 139 S. Ct. 663 (2019); *National Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361 (2018); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016); *Roe v. Wade*, 410 U.S. 113 (1973); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

Amici seek leave to file the attached amicus brief in support of the United States of America's application to vacate the United States Court of Appeals for the Fifth Circuit's stay pending appeal of the preliminary injunction entered by the United States District Court for the Western District of Texas in order to elevate the voices of patients who have been unable to obtain abortions in Texas as a result of SB 8, or whose experience of trying to obtain an abortion has otherwise been impacted by SB 8, as well as the experience of staff providing care for these patients. Amici believe their perspective would benefit the Court.

Amici therefore respectfully request leave of the Court to file the attached brief.

Respectfully submitted,

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INTEREST OF AMICI CURIAE¹

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

A. Patients In Texas Are Being Denied Their Right To An Abortion

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

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

¹ No counsel for a party authored this brief in whole or in part, and no entity or person, other than amici, their members, and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Amici file herewith a motion for leave to file this brief.

The Fifth Circuit entered its stay on October 14, 2021, less than ten days before the United States filed its application and the parties were notified of Amici’s intention to file on October 17, 2021. The United States stated that it does not take a position on this motion. The State of Texas conditionally consented to the filing of this brief. The Intervenor-Respondents oppose the filing of this brief.

D.O. is the single mother of a kindergartener and is balancing work and school. She was just out of a relationship with her daughter's father who "was just really bad ... very abusive." The abuse during her first pregnancy "was horrible" and "after I had [my daughter], it was even worse." She "finally got away" and "was building [her] life." But she said, "there was just no way that I could physically, mentally, emotionally go through that again." Her daughter's father "doesn't pay child support. He sees [their daughter] maybe once a month." She said, "I just don't think that I can take it again."

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

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

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

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

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

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

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

Clinic staff also report stories of patients affected by SB8. C.Y. in Houston recalls a patient with five children (two of whom have disabilities) who had embryonic cardiac activity at just five weeks, four days pregnant. The patient frantically pleaded, “What am I going to do, what is going to happen now?” Another patient who cannot read or write told staff that going out-of-State would be

impossible. A thirteen-year-old patient had to get a judicial bypass before scheduling an abortion, which delayed her—embryonic cardiac activity was detected at six weeks and three days. She cannot leave Texas without her parents knowing because she cannot drive.

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

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

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

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

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

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

B. Patients Encounter Obstacles To Receiving Out-Of-State Care

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

W.M. has hyperemesis gravidarum; she cannot keep food down “for days at a time.” W.M. and her partner want to afford the best life possible for their young daughter. She thinks SB8 is “forcing women into situations to have more than one child when they can’t possibly provide” financially. She believes abortion is sometimes “the most responsible ... or right thing to do.”

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

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

As a child, T.K. was sexually abused in the care of extended family. She would not trust anyone to care for her child given the abuse she suffered. She was relieved

to secure an out-of-State abortion, but was worried that because of SB8, “they’d be waiting to drag [her] off to jail when [she] got here because [she’s] from Texas.”

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

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

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

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

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

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

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

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

B.Z. made an appointment at an “options clinic” that was (unbeknownst to her) against abortion for a pregnancy consultation. The staff told her she needed a sonogram, but could not have it performed for one week. They did not tell her that this delay might make her ineligible for an abortion under SB8. At her second appointment at the options clinic, B.Z. was exactly six weeks pregnant and suffering from extreme morning

sickness. B.Z. said, “[The clinic staff] didn’t care if I wanted to or could have a baby. She wasn’t even worried about how I was so sick.”

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

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

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

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

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

C. SB8 Traumatizes Healthcare Providers

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

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

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

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

H.R. says clinicians cannot offer pain medication or sedation to patients who must drive themselves home after the procedure. Supplies are depleting quickly

because they are providing extra menstrual and heating pads for the long drives back to Texas.

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

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

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

CONCLUSION

The United States’ application to vacate the stay should be granted.

Respectfully submitted.

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