

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF TEXAS,

Defendant.

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Case No. 1:21-cv-00796-RP

DEFENDANT’S OBJECTIONS TO PLAINTIFF’S DECLARATIONS

Texas objects to the declarations attached to Plaintiff United States’ Emergency Motion for a Temporary Restraining Order or Preliminary Injunction (ECF 8).

A. Objections to Each of Plaintiff’s Declarations as Hearsay

Texas objects to each of Plaintiff’s declarations as hearsay in its entirety. *See* Fed. R. Evid. 801, 802.

B. Declaration of Allison Gilbert (ECF 8-2)

Portion	Basis	Explanation
¶ 13	Relevance	Due to widespread delays in obtaining medical attention during the pandemic, data from 2020 is atypical and does not indicate typical annual abortion data.
¶¶ 11, 14–16, 19, 25–27, 47, 51	Relevance Legal opinion	These paragraphs contain inadmissible legal opinions. They also misrepresent S.B. 8’s requirements and, as a result, state faulty conclusions that do not make a material fact more or less likely to be true.
¶¶ 28–36, 38	Hearsay	These paragraphs are conclusory assertions not based on the personal knowledge of the declarant.
¶¶ 39, 44, 50	Relevance	These assertions, if true, do not make facts material to Plaintiff’s claims more or less likely to be true.

Portion	Basis	Explanation
¶ 41	Conclusory Speculative Hearsay	These assertions are conclusory, not based on the declarant's personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion.
¶ 42	Relevance Legal opinion	These assertions state legal opinions. They also misrepresent S.B. 8's requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.
¶¶ 45–46, 48–49	Hearsay Relevance Legal opinion	These assertions state legal opinions and state facts not within the declarant's personal knowledge. They also misrepresent S.B. 8's requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.
¶¶ 52–53	Conclusory Speculative Relevance Legal opinion	These assertions are speculative and conclusory, simply stating subjective fears. They also contain inadmissible legal opinions. They also misrepresent S.B. 8's requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.
Exh. 1	Hearsay Relevance	This exhibit states facts that are not within the declarant's personal knowledge. It also contains assertions that, if true, do not make material facts more or less likely to be true.

C. Declaration of Lisa Newman (ECF 8-3)

Portion	Basis	Explanation
Exhs. A–D	Hearsay Relevance	These exhibits state facts not within the declarant's personal knowledge. They also make assertions that, if true, do not make material facts more or less likely to be true.

D. Declaration of Amy Hagstrom Miller (ECF 8-4)

Portion	Basis	Explanation
¶ 8	Conclusory Speculative Hearsay	These assertions are conclusory, not based on the declarant's personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion.
¶ 11	Relevance	Due to widespread delays in obtaining medical attention during the pandemic, data from 2020 is atypical and does not indicate typical annual abortion data.
¶ 12	Relevance Legal opinion	These assertions state legal opinions.
¶¶ 13–14	Conclusory Speculative Hearsay Relevance	These assertions are conclusory, not based on the declarant's personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, do they make material facts more or less likely to be true.
¶¶ 15, 26	Relevance Legal opinion	These assertions state legal opinions. They also misrepresent S.B. 8's requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.
¶¶ 16–24	Conclusory Speculative Relevance Legal opinion	These assertions are speculative and conclusory, simply stating subjective fears. They also contain inadmissible legal opinions. They also misrepresent S.B. 8's requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.
¶¶ 25, 27–28	Legal opinion	These assertions state legal opinions.
¶ 29	Conclusory Speculative Legal opinion	These assertions are conclusory and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also state legal opinions, not facts.

Portion	Basis	Explanation
¶¶ 30–37	Conclusory Speculative Hearsay Relevance Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also contain inadmissible legal opinions, as well as misrepresentations of S.B. 8’s requirements and, as a result, faulty conclusions based on those misrepresentations. Nor, if true, do they make material facts more or less likely to be true.
¶¶ 38–46	Conclusory Speculative Hearsay Relevance Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also contain inadmissible legal opinions, as well as misrepresentations of S.B. 8’s requirements and, as a result, faulty conclusions based on those misrepresentations. Nor, if true, do they make material facts more or less likely to be true.
¶ 47	Conclusory Speculative Relevance Legal opinion	These assertions are conclusory and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also contain inadmissible legal opinions, as well as misrepresentations of S.B. 8’s requirements and, as a result, faulty conclusions based on those misrepresentations. Nor, if true, do they make material facts more or less likely to be true.
Exh. 1–2	Hearsay	These exhibits state facts that are not within the declarant’s personal knowledge.

E. Declaration of Melaney A. Linton (ECF 8-5)

Portion	Basis	Explanation
¶¶ 7, 13, 17, 22–25, 27–28	Relevance Legal opinion	These assertions state legal opinions. They also misrepresent S.B. 8’s requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.

Portion	Basis	Explanation
¶¶ 8, 14–15, 28–30, 40–42	Conclusory Speculative Hearsay Relevance Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also contain inadmissible legal opinions, as well as misrepresentations of S.B. 8’s requirements and, as a result, faulty conclusions based on those misrepresentations. Nor, if true, do they make material facts more or less likely to be true.
¶¶ 18–19, 39	Conclusory Speculative Hearsay Relevance	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, do they make material facts more or less likely to be true.
¶¶ 20–21, 32	Conclusory Speculative	These assertions are speculative and conclusory, simply stating subjective fears.
¶¶ 31, 35, 38	Relevance	These assertions, if true, do not make material facts more or less likely to be true.
¶¶ 33–34	Conclusory Speculative Hearsay	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion.
¶¶ 36–37	Hearsay Relevance	These exhibits state facts not within the declarant’s personal knowledge. They also make assertions that, if true, do not make material facts more or less likely to be true.

F. Declaration of Rebecca Tong (ECF 8-6)

Portion	Basis	Explanation
¶¶ 7–8, 35–36	Conclusory Speculative Hearsay Legal opinion Relevance	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, do they make material facts more or less likely to be true.
¶¶ 10–11, 21	Hearsay	These assertions state facts that are not within the declarant’s personal knowledge.

Portion	Basis	Explanation
¶¶ 19, 23–26	Relevance	These assertions, if true, do not make a material fact more or less likely to be true.
¶ 20	Hearsay Relevance Legal opinion	These assertions state legal opinions and state facts not within the declarant’s personal knowledge. They also misrepresent S.B. 8’s requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.
¶¶ 27, 30	Conclusory Speculative	These assertions are conclusory and not based on supporting evidence that would entitle the declarant to reach a conclusion.
¶¶ 28–29	Hearsay Relevance	These exhibits state facts not within the declarant’s personal knowledge. They also make assertions that, if true, do not make material facts more or less likely to be true.
¶¶ 31–34	Conclusory Speculative Relevance	These assertions are conclusory and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, would they make materials facts more or less likely to be true.

G. Declaration of Vicki Cowart (ECF 8-7)

Portion	Basis	Explanation
¶ 6	Hearsay Relevance Legal opinion	These assertions state legal opinions and state facts not within the declarant’s personal knowledge. They also misrepresent S.B. 8’s requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.
¶¶ 8–9	Conclusory Speculative Relevance	These assertions are conclusory and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, would they make materials facts more or less likely to be true.
¶¶ 10–11	Conclusory Speculative Hearsay	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion.

Portion	Basis	Explanation
¶¶ 12–13	Hearsay Relevance	These exhibits state facts not within the declarant’s personal knowledge. They also make assertions that, if true, do not make material facts more or less likely to be true.
¶¶ 14–19	Conclusory Speculative Hearsay Relevance	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, do they make material facts more or less likely to be true.

H. Declaration of Anna Rupani (ECF 8-8)

Portion	Basis	Explanation
¶ 2	Relevance Legal opinion	These assertions state legal opinions and facts that, if true, do not make material facts more or less likely to be true.
¶¶ 14–15, 21	Hearsay	These assertions are not within the declarant’s personal knowledge.
¶¶ 16–17, 20, 28	Conclusory Speculative Hearsay	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion.
¶ 19	Legal opinion	These assertions are legal opinions.
¶¶ 22–23, 25, 27, 29–30	Conclusory Speculative Hearsay Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also contain inadmissible legal opinions, as well as misrepresentations of S.B. 8’s requirements and, as a result, faulty conclusions based on those misrepresentations.
¶¶ 18, 24, 26	Hearsay Relevance	These assertions state facts not within the declarant’s personal knowledge. Nor, if true, do they make material facts more or less likely to be true.

I. Declaration of Joshua Yap (ECF 8-9)

Portion	Basis	Explanation
¶ 4	Legal opinion	These assertions are legal opinions.
¶¶ 5, 27–28	Conclusory Speculative Hearsay Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also contain inadmissible legal opinions, as well as misrepresentations of S.B. 8’s requirements and, as a result, faulty conclusions based on those misrepresentations.
¶¶ 10–11, 13, 16, 21, 25	Conclusory Speculative Hearsay Relevance	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, do they make material facts more or less likely to be true.
¶ 12	Relevance	These assertions, if true, do not make material facts more or less likely to be true.
¶¶ 14–15, 17–20, 24	Hearsay Relevance	These assertions state facts not within the declarant’s personal knowledge. Nor, if true, do they make material facts more or less likely to be true.
¶¶ 22–23	Hearsay Relevance Legal opinion	These assertions state legal opinions; state facts not within the declarant’s personal knowledge; and state facts that, if true, do not make material facts more or less likely to be true. They also misrepresent S.B. 8’s requirements and, as a result, state faulty conclusions that do not make material facts more or less likely to be true.
¶ 26	Conclusory Speculative Hearsay Relevance Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also contain inadmissible legal opinions, as well as misrepresentations of S.B. 8’s requirements and, as a result, faulty conclusions based on those misrepresentations. Nor, if true, do they make material facts more or less likely to be true.

J. Declaration of Alix M. McLearen (ECF 8-10)

Portion	Basis	Explanation
¶ 7	Conclusory Speculative Hearsay	These assertions are conclusory, not based on the declarant's personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion.
¶¶ 8–9	Legal opinion	These assertions are legal opinions.
¶¶ 14–21	Conclusory Speculative Hearsay Legal opinion	These assertions are conclusory, not based on the declarant's personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, do they make material facts more or less likely to be true.

K. Declaration of John Sheehan (ECF 8-11)

Portion	Basis	Explanation
¶¶ 7–11	Legal opinion Best evidence	These assertions are legal opinions. Further, they testify as to the contents of documents without evidence that the documents themselves are unavailable.
¶ 12	Hearsay	These assertions are not within the declarant's personal knowledge.
¶¶ 13–19	Conclusory Speculative Hearsay Legal opinion	These assertions are conclusory, not based on the declarant's personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Nor, if true, do they make material facts more or less likely to be true.

L. Declaration of James S. De La Cruz (ECF 8-12)

Portion	Basis	Explanation
¶¶ 13–14	Legal opinion	Assertions regarding the effect of the settlement in <i>Garza v. Hargan</i> state legal opinions, not facts.

Portion	Basis	Explanation
¶¶ 16–20	Conclusory Speculative Hearsay Relevance Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. They also contain inadmissible legal opinions, as well as misrepresentations of S.B. 8’s requirements and, as a result, faulty conclusions based on those misrepresentations. Nor, if true, do they make material facts more or less likely to be true.

M. Declaration of Patrice Rachel Torres (ECF 8-13)

Portion	Basis	Explanation
¶¶ 12–15, 18, 20	Legal opinion	These assertions state legal opinions.
¶ 17	Conclusory Speculative Hearsay	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion.
¶ 19	Relevance	The declaration states that Job Corps provided transportation services incident to family-planning services in the last three years. But the declarant testified at deposition that she has no knowledge of the agency providing any such services. False statements have no probative value.
¶ 21	Hearsay Legal opinion	The declarant testified that others had calculated these figures and that she did not know how they were calculated. Further, these assertions are legal opinions, not facts.
¶ 22	Hearsay Legal opinion	These assertions state legal opinions and state facts not within the declarant’s personal knowledge.

N. Declaration of Jillian Matz (ECF 8-14)

Portion	Basis	Explanation
¶¶ 6–9	Legal opinion	These assertions state legal opinions, not facts.
¶ 10	Hearsay Relevance Legal opinion	These assertions state legal opinions; state facts not within the declarant’s personal knowledge; and state facts that, if true, do not make material facts more or less likely to be true.
¶¶ 11–13	Conclusory Speculative Hearsay Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Further, they state legal opinions, not facts.

O. Declaration of Laurie Bodenheimer (ECF 8-15)

Portion	Basis	Explanation
¶¶ 5, 7–8	Legal opinion	These assertions state legal opinions, not facts.
¶ 6	Conclusory Speculative Hearsay	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion.
¶¶ 9–14	Conclusory Speculative Hearsay Legal opinion	These assertions are conclusory, not based on the declarant’s personal knowledge, and not based on supporting evidence that would entitle the declarant to reach a conclusion. Further, they state legal opinions, not facts.

P. Declaration of Anne Marie Costello (ECF 8-16)

The declaration should be excluded in its entirety as hearsay and legal opinion. The declarant testified at her deposition that the only factual basis for her declaration was her review of the cited statutes, regulations, and guidance. She further testified that she is not a lawyer and has no formal legal training. Even if interpreting the law were the job of a witness rather than the Court, this declarant would be unqualified to do so.

Q. Conclusion

The Court should sustain the Defendant's objections to the declarations as hearsay and refuse to admit them into evidence. In the alternative, it should sustain the Defendant's particular objections and refuse to admit the objected-to statements into testimony. The State of Texas respectfully requests that it do so.

Date: September 30, 2021

Respectfully submitted.

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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on September 30, 2021, and that all counsel of record were served by CM/ECF.

/s/ Amy S. Hilton _____
AMY S. HILTON
Assistant Attorney General