

[Intro Music]

Kirk McDaniel: Welcome to a breaking news report from Sidebar. I'm Kirk McDaniel, Sidebar producer and reporter in Austin, Texas. On Friday, the Supreme Court released its ruling in the case over Texas' controversial abortion law. Senate Bill 8, also known as the Texas Heartbeat Act, bans abortions once a fetal heartbeat is detected. The law is enforced by private citizens, not the government, allowing any person in or outside of the state of Texas to sue anyone who, according to the law, aids and abets in an abortion. If an individual is successful in their suit, they could be rewarded with a minimum of \$10,000 and attorney's fees. The law has been in effect for 100 days now and has eliminated nearly all abortions in the state. I spoke with Courthouse News reporter Kelsey Reichmann, who covers the high court, about the ruling and what it means for the future of the Texas law. Kelsey, thank you so much for joining me on this very, very busy day. Could you tell me about what happened to the court today?

Kelsey Reichmann: Yes. The court ruled this morning in the Texas SB 8 cases. So those are the cases challenging Texas' near a ban on all abortions in the state. The law bans all abortions after six weeks, which is usually before most women even know they're pregnant. So there are two cases that the court ruled in; one case is from abortion providers. In that case, Whole Woman's Health v. Jackson. That case concerns a procedural issue, and both the cases actually do. The procedural issue goes to the heart of SB 8 and SB 8 has a very unique enforcement mechanism that has made it very challenging for abortion providers to have a pre-enforcement challenge to the law, which they think is unconstitutional. So the way that SB 8 is enforced is it is enforced through private citizens instead of government officials. And so the case before the court asked if the abortion provider sued the correct people and the other case before the court was United States v. Texas. And that was the government's challenge to the Texas law, and the government was challenging the law, saying it was unconstitutional as well, and they were seeking to get an injunction on the law to stop it from being enforced.

KM: So tell me, how did the court rule?

KR: The court ruled in the government's case that they dismiss the case. And Justice Sotomayor was the only dissent on that case. So the law will stay in effect for now and in the abortion providers case. The court gave a very narrow ruling that allows the case to move forward, but in a very narrow way.

KM: I see. Now tell me first about that government case that was dismissed. What was the court's reasoning behind dismissing that case?

KR: They didn't really give any more information. Besides, they just dismissed it, and Sotomayor dissented, but they didn't really provide any more information there. I will say that that case during oral arguments, I think the justices really had a hard time with what the implications might be if that case went forward. And so they were a lot more skeptical of that case when they heard it in November, when these cases were argued before the court than they were of the abortion providers' case. It was easy to see that they might have ruled against the Department of Justice in that case, and that is what they ended up doing, but they didn't provide really any explanation there.

KM: So with the other case filed by abortion providers, what specifically did they rule and why do you think was their argument more successful?

KR: So like I said, it's a very narrow ruling, so they what they said, and Justice Gorsuch wrote the opinion in this case, and they said that the abortion providers can continue their case against defendants with authority over medical licenses. So that basically means the defendants that they enforce the licenses, according to Texas's health and safety code. So those specific defendants, they can continue their case against. However, the abortion providers had also sought to continue their case against these state judges and state clerks, and the justices did not allow that case to go forward. They didn't find that they have standing there. And one of the reasons that Justice Gorsuch cites in his opinion, is he says that there was no limiting principle to that case and that abortion providers didn't really say, you know, what were the limiting factors in that equation? And so he found that troubling. Really, the path forward is for them to continue the case against the defendants with authority over medical licenses, but that's really the only area they have. So it was it was a very narrow ruling.

KM: So going forward, are these cases going to be held in Texas state courts or in the federal court arena?

KR: Yes, so they will continue in in federal court. Marc Herron, who was the attorney for the Center of Reproductive Rights, who argued the case before the Supreme Court. He said that they will continue their case in federal court, but he did stress that, you know, even an injunction against the defendants who are in charge of the licensing, that that doesn't really stop the enforcement mechanism on SB 8. It doesn't stop other cases from proceeding. So it really puts them in a bind. So one of the other, I guess, path forward is that the attorneys talked about on a call today is they talked about this other case that's proceeding in Texas against the Texas Right to Life. It's pursued by Planned Parenthood. So they said that, you know, as that case progresses, if it did get to the Texas Supreme Court that they could get a ruling in their favor that would bind the state courts. I think, you know, they really stressed that time is a factor here, and that case will take a long time to proceed.

Dr. Bhavik Kumar: My name is Dr. Bhavik Kumar and I'm a physician at Planned Parenthood Center for Choice in Houston, Texas. I've been providing abortion care in my home state of Texas for almost seven years now. But these last 100 plus days have been the most challenging of my entire career. Today, because the court once again failed to protect our most basic human rights. More people will continue to suffer as this case winds its way through the legal system.

KR: As time progresses, you know, women in Texas who are seeking abortions don't have access to abortions, and the longer they don't have access to abortions, the implications grow for the states surrounding. And also for abortion providers, they're kind of hamstrung right now with what services they can offer. And if a clinic closes down, they don't usually open back up. So, you know, they really stress that this this really puts them in a bind, and it has major implications in the states surrounding Texas are really seeing a rush from women in Texas who aren't.

KM: So the only way that abortion providers or abortion activists could get this law overturned is essentially by either relying on the Texas case or by the federal case that's now going to continue.

KR: Yeah. And you know, they stressed that in a call this afternoon with reporters, they stressed that they're still looking at all their legal options and they're going to do whatever they can to provide these rights for people in Texas. As of right now, that is the game plan that they can tell us. But, you know, they did express that they are looking into every single option that they can pursue and that they'll continue to do that.

KM: As a reporter, what are you looking for going forward as this case continues?

KR: So what's really interesting is we could see a lot of copycat cases in other states. And so we'll be watching to see if other states enforce similar laws to SB 8. There is also a factor on other constitutional rights, and Marc Herron really stressed that in the call today, where he said, you know, this isn't just about abortion. If SB 8 and its enforcement scheme can go ahead in this case with abortion rights, they can be used for other rights and, you know, doing reporting for this case, there was a specific gun rights group that filed an amicus brief in the case saying that we're scared that a state like California or New York would do this with gun rights and the Second Amendment. So there is a big open question right now what this means for other constitutional rights. Justice Sotomayor really hit on that in her opinion that she wrote in the case. And you know, she hasn't, she hasn't been one to be quiet about her views on this case, and she certainly wasn't today. And you know, she said, by foreclosing suit against state court officials and the state attorney general, the court effectively invites other states to refine SB 8's model for nullifying federal rights. The court thus betrays not only the citizens of Texas, but our constitutional system of government. So really no mincing of words there.

KM: Is there anything else that you think that, you know, people who are in touch with this story or that are watching this story as it plays out that they should really keep in mind as this goes forward?

KR: Yeah. So I mean, I think the other factor to watch is that the court also heard an all-out challenge to Roe v. Wade just at the beginning of the month, and that was the Dobbs case. So we'll also be watching that case and the ruling on that case, which we don't expect until June or July. But in the oral arguments, it did seem like there was a number of justices who would be willing to overturn Roe completely. So we'll have to see how that affects abortion access in a number of states because a lot of states have trigger laws that basically would ban abortions if Roe was overturned. So we'll be watching Dobbs' case, which we probably won't get for a while. But that's another factor to consider when looking at all of this.

KM: Well, final question: Do you think that this was a win for pro-life activists, or was this a win for pro-choice activists and abortion providers?

KR: I definitely don't think it was a win for abortion providers, and they really stressed that in all of their comments and you talk to anybody who, you know, is advocating for pro-choice and they don't think this is a win in any way. And the reason is that it gives the abortion providers such a narrow path to enforcing, you know, their constitutional rights. And I think you see that in Justice Sotomayor's dissent and I think abortion providers and people who are in the pro-choice movement thought this would be an easy case for the court to say, let's just get rid of that and focus on Dobbs, you know? But they really did it, you know, so it is a narrow ruling. You know, while they allowed the case to proceed, I don't know if anti-abortion groups would call it a win for them either, but I know for sure that abortion providers do not think this is a win for them.

KM: Well, Kelsey, thank you so much for coming on the podcast with us and will be looking out for your future reporting. So thank you so much.

KR: Great. Thanks.

KM: Thanks to Kelsey for her reporting on this case and many others before the Supreme Court. Stay up to date with this story and our daily coverage at [courthousenews.com](https://www.courthousenews.com). Make sure to follow us on

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