

**CAUSE NO. D-1-GN-23-000968**

AMANDA ZURAWSKI, et al., <i>Plaintiffs,</i>	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
	§	
STATE OF TEXAS, et al., <i>Defendants.</i>	§	353RD JUDICIAL DISTRICT

**TEMPORARY INJUNCTION ORDER**

On July 19 and 20, 2023, the Court heard testimony on Plaintiffs’ Application for Temporary Injunction (the “Application”) and Plaintiffs’ First Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction (the “Amended Petition”) seeking to temporarily restrain Defendants, the State of Texas, Ken Paxton<sup>1</sup>, Texas Medical Board, and Stephen Brint Carlton (collectively, “Defendants”), their agents, servants, employees, attorneys, and all persons in active concert and participation with Defendants, from enforcing Texas’s abortion bans, as codified at 1925 Tex. Penal Code Arts. 1191–1194, 1196 (Vernon’s Tex. Civ. States Civil Statutes Arts. 4512.1–4512.4, 4512.6) (the “Pre-Roe Ban”), Tex. Health & Safety Code §§ 170A *et seq.* (the “Trigger Ban”), and Tex. Health & Safety Code §§ 171.002, 171.203-205 (“S.B. 8”), in any manner that would prevent pregnant Texans with emergent medical conditions from receiving abortion care, while this litigation proceeds.

Plaintiffs, Amanda Zurawski, Lauren Miller, Lauren Hall, Ashley Brandt, Anna Zargarian, Kylie Beaton, Jessica Bernardo, Samantha Casiano, Austin Dennard, D.O., Taylor Edwards,

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<sup>1</sup> Plaintiffs’ First Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction sued Ken Paxton in his official capacity as Attorney General of Texas (filed 5/22/2023). The Texas House of Representatives passed Articles of Impeachment against Ken Paxton on 5/27/2023. Under Article 15, § 5 of the Texas Constitution, Ken Paxton has been suspended from the exercise of the duties of the office of Attorney General.

Kiersten Hogan, Lauren Van Vleet, and Elizabeth Weller (the “Patient Plaintiffs”), and Judy Levison, M.D., M.P.H, and Damla Karsan, M.D., on behalf of themselves and their patients (the “Physician Plaintiffs”), seek a declaratory judgment construing the “medical emergency” exception to Texas’s abortion bans to allow abortion care for pregnant persons with emergent medical conditions, as defined by medical terminology, and contend that a narrower construction would be inconsistent with the rights of pregnant persons and physicians in Texas under Article I, §§ 3, 3a, and/or 19 of the Texas Constitution and therefore *ultra vires*. After consideration of the Application and the evidence attached thereto, and pursuant to Texas Rule of Civil Procedure 680 *et seq.*, the Court issues the following findings:

### **FINDINGS**

The Court finds Tex. Health and Safety Code §§ 171.206-211 (“S.B. 8”) unconstitutional under Article I, Sec. 13 of the Texas Constitution.

The Court finds that there is uncertainty regarding whether the medical exception to Texas’s abortion bans, codified at Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, permits a physician to provide abortion care where, in the physician’s good faith judgment and in consultation with the pregnant person, a pregnant person has a physical emergent medical condition. The Court finds that physical medical conditions include, at a minimum: a physical medical condition or complication of pregnancy that poses a risk of infection, or otherwise makes continuing a pregnancy unsafe for the pregnant person; a physical medical condition that is exacerbated by pregnancy, cannot be effectively treated during pregnancy, or requires recurrent invasive intervention; and/or a fetal condition where the fetus is unlikely to survive the pregnancy and sustain life after birth. The Court finds that any official’s enforcement of Texas’s abortion bans against any physician who provides an abortion to a pregnant person who, in the physician’s

good faith judgment, has a physical emergent medical condition would be inconsistent with the medical exception to Texas's abortion bans, and therefore would be *ultra vires*.

The Court further finds that any official's enforcement of Texas's abortion bans as applied to a pregnant person with an emergent medical condition for whom an abortion would prevent or alleviate a risk of death or risk to their health (including their fertility) would be inconsistent with the rights afforded to pregnant people under Article I, §§ 3, 3a, and/or 19 of the Texas Constitution and therefore would be *ultra vires*. The Court also finds that any official's enforcement of Texas's abortion bans against any physician who provides an abortion to a pregnant person after determining that, in the physician's medical judgment, the pregnant person has an emergent medical condition for which abortion would prevent or alleviate a risk of death or risk to their health (including their fertility) would be inconsistent with Article I, §§ 3, 3a, and/or 19 of the Texas Constitution, and therefore would be *ultra vires*.

The Court finds that the Patient Plaintiffs each experienced emergent medical conditions during their pregnancies that risked the Patient Plaintiffs' lives and/or health (including their fertility) and required abortion care, but that Patient Plaintiffs were delayed or denied access to abortion care because of the widespread uncertainty regarding physicians' level of discretion under the medical exception to Texas's abortion bans. The Court further finds that the Patient Plaintiffs' claims are capable of repetition but evading review.

The Court further finds that the Physician Plaintiffs routinely treat and/or consult on care for patients with emergent medical conditions, and the uncertainty regarding the scope of the medical exception and the related threat of enforcement of Texas's abortion bans has created an imminent risk that Physician Plaintiffs and other physicians throughout Texas will have no choice but to bar or delay the provision of abortion care to pregnant persons in Texas for whom an abortion

would prevent or alleviate a risk of death or risk to their health (including their fertility) for fear of liability under Texas's abortion bans.

The Court therefore finds that all Plaintiffs, as well as other pregnant persons, physicians, and others in Texas, face a probable, irreparable and imminent injury for which they will have no adequate remedy at law unless: (i) the medical exception permits the Patient Plaintiffs and pregnant persons throughout Texas to receive necessary abortion care in connection with an emergent medical condition, and (ii) Defendants are temporarily enjoined from enforcing Texas's abortion bans in connection with any abortion care provided by the Physician Plaintiffs and physicians throughout Texas to a pregnant person where, in a physician's good faith judgment and in consultation with the pregnant person, the pregnant person has an emergent medical condition requiring abortion care. "Defendants" herein include the Office of the Attorney General of Texas, since Ken Paxton has been suspended from the exercise of the duties of the office per Article 15, § 5 of the Texas Constitution.

Money damages are insufficient to remedy the injuries to Plaintiffs that will result if Defendants are not enjoined from instituting civil, criminal, or disciplinary investigations or actions under Texas's abortion bans related to any abortion care provided to pregnant persons in Texas in connection with an emergent medical condition. Conversely, Defendants will not be harmed if the Court restrains them from enforcing Texas's abortion bans as applied to the provision of necessary abortion care to a pregnant person in Texas for whom an abortion would prevent or alleviate a risk of death or risk to their health (including their fertility).

Defendants were provided notice of the cause(s) of action, the Application, and participated in the hearing. Unless Defendants are restrained, Plaintiffs face an imminent threat of irreparable harm under Texas's abortion bans. This injunction is necessary to preserve Plaintiffs' legal right

to obtain or provide abortion care in Texas in connection with emergent medical conditions under the medical exception and the Texas Constitution.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

A. Emergent medical conditions that a physician has determined, in their good faith judgment and in consultation with the patient, pose a risk to a patient's life and/or health (including their fertility) permit physicians to provide abortion care to pregnant persons in Texas under the medical exception to Texas's abortion bans and Article I, §§ 3, 3a, and 19 of the Texas Constitution.

B. Defendants are restrained from enforcing Texas's abortion bans against physicians who provide abortion care and those that aid or abet in the provision of abortion care for any pregnant person who, in the treating physician's good faith judgment and in consultation with the pregnant person, has: (1) a complication of pregnancy that poses a risk of infection or otherwise makes continuing a pregnancy unsafe for the pregnant person; (2) a condition exacerbated by pregnancy, that cannot be effectively treated during pregnancy, or that requires recurrent invasive intervention; and/or (3) a fetal condition where the fetus is unlikely to survive the pregnancy and sustain life after birth.

C. Until all issues in this lawsuit are finally and fully determined, a temporary injunction is entered immediately enjoining Defendants, their agents, servants, employees, attorneys, and all persons in active concert and participation with Defendants from enforcing Texas's abortion bans in any manner that: (i) would prevent the Patient Plaintiffs and pregnant persons throughout Texas from receiving necessary abortion care in connection with an emergent medical condition; (ii) would subject the Physician Plaintiffs and others in Texas to liability for providing necessary abortion care in connection with an emergent medical condition; and (iii)

would be inconsistent with the rights of pregnant persons and physicians in Texas under Article I, §§ 3, 3a, and/or 19 of the Texas Constitution, and therefore *ultra vires*.

D. Defendants shall provide notice of this temporary injunction to their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them.

E. Plaintiffs' bond is set at \$100. The clerk of this Court shall issue a Temporary Injunction in conformity with the law and the terms of this order.

F. All parties may be served with notice of this Temporary Injunction in any manner provided under Rule 21a of the Texas Rules of Civil Procedure.

G. This Temporary Injunction shall not expire until judgment in this case is entered or this Case is otherwise dismissed by this Court.

H. This matter is set for a trial on the merits on March 25, 2024.

Dated this 4th day of August, 2023.

  
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HONORABLE JESSICA MANGRUM  
Travis County District Court Judge