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

AMANDA ZURAWSKI; LAUREN MILLER; LAUREN HALL; ANNA ZARGARIAN; ASHLEY BRANDT; KYLIE BEATON; JESSICA BERNARDO; SAMANTHA CASIANO; AUSTIN DENNARD, D.O.; TAYLOR EDWARDS; KIERSTEN HOGAN; LAUREN VAN VLEET; ELIZABETH WELLER; KRISTEN ANAYA; AMY CORONADO; KAITLYN KASH; D. AYLEN; KIMBERLY MANZANO; DANIELLE MATHISEN, M.D.; CRISTINA NUÑEZ; DAMLA KARSAN, M.D., on behalf of herself and her patients; and JUDY LEVISON, M.D., M.P.H., on behalf of herself and her patients, Plaintiffs, v. STATE OF TEXAS; ATTORNEY GENERAL OF TEXAS, KEN PAXTON, in his official capacity as Attorney General of Texas; TEXAS MEDICAL BOARD; and STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board, Defendants.	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 353RD JUDICIAL DISTRICT

PLAINTIFFS' SECOND AMENDED VERIFIED PETITION FOR DECLARATORY JUDGMENT AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

As a direct result of Texas's abortion bans, Texas is in the midst of a health care crisis. Amanda Zurawski, Lauren Miller, Lauren Hall, Anna Zargarian, Ashley Brandt, Kylie Beaton, Jessica Bernardo, Samantha Casiano, Austin Dennard, D.O., Taylor Edwards, Kiersten Hogan, Lauren Van Vleet, Elizabeth Weller, Kristen Anaya, Amy Coronado, Kaitlyn Kash, D. Aylen, Kimberly Manzano, Danielle Mathisen, M.D., and Christina Nuñez, and countless other pregnant people have been denied necessary and potentially life-saving obstetrical care because medical professionals throughout the state fear liability under Texas's abortion bans. Amanda was forced

to wait until she was septic to receive abortion care, causing one of her fallopian tubes to become permanently closed. When Lauren M. learned one of her twins was not viable, she was forced to travel out of state for the abortion she needed to save her and her other baby's life. Her baby was born several weeks after this case was filed. Lauren H. received a devastating fetal diagnosis two weeks after *Roe* was overturned, and in the chaos that followed, she was forced to travel to Seattle for an abortion. Pregnant again now, Lauren H. fears that Texas is not safe for her or her family. Anna was forced to fly across multiple states after her water broke, risking that she would go into labor or septic shock on the journey. Ashley had to travel out of state for an abortion to save the life of one of her twins, and afterwards, fearful of documenting Ashley's abortion, her Texas physician instead described her condition as "vanishing twin syndrome."

Yet with the threat of losing their medical licenses, fines of hundreds of thousands of dollars, and up to 99 years in prison lingering over their heads, it is no wonder that doctors and hospitals are turning patients away—even patients in medical emergencies like Amanda, Lauren M., Lauren H., Anna, Ashley, Kylie, Jessica, Samantha, Dr. Dennard, Taylor, Kiersten, Lauren V., and Elizabeth. Plaintiffs file this First Amended Verified Petition for Declaratory Judgment and Application for a Temporary and Permanent Injunction because uncertainty surrounding the meaning of the exception to Texas's abortion bans, codified at Tex. Health & Safety Code §§ 170A.001-002 (the exception to the Trigger Ban) and Tex. Health & Safety Code §§ 171.002(3), 171.203-205 (the "medical emergency" exception to Senate Bill 8 of 2021) (collectively, the "Emergent Medical Condition Exception"), has caused and threatens to cause irreparable injury to Plaintiffs and the Physician Plaintiffs' patients.

Since the filing of Plaintiffs' Original Petition on March 6, 2023, many women have reached out to Plaintiffs and/or Plaintiffs' counsel to say, in the words of one, "your story is my

story." Plaintiffs' bravery has encouraged many of these women to publicly tell their own stories of being denied abortion care. In fact, Lauren Miller's obstetrician, Dr. Austin Dennard, was inspired to share her own story about having to travel out of state for a medically indicated abortion only after her patient joined this lawsuit.

Because Texas's abortion bans continue to harm pregnant people every day, on May 22, 2023, Plaintiffs amended their petition to add 8 additional plaintiffs and to urgently request temporary injunctive relief. The district court subsequently entered a temporary injunction that was stayed almost immediately by defendants' filing of an appeal. On November 14, plaintiffs filed a second amended petition adding an additional 7 plaintiffs, bringing the total number of plaintiffs to 22. Defendants' response to the second amended petition is stayed pending appeal. Yet each day the laws remain in effect, more Texans are harmed. The new plaintiffs represent a cross section of the pregnant people who need abortion care in Texas: they include women of color, women with disabilities, survivors of intimate partner violence, and women who struggle to make ends meet.

Specifically: Dr. Dennard, Jessica, Taylor, Lauren V., Amy, Kaitlyn, Aylen, Kimberly, and Dr. Mathisen received devastating fetal diagnoses and were forced to travel out of state for abortion care, even while the risks to their own health increased. Kiersten, Elizabeth, and Kristen's water broke prematurely, and they were told to wait until they were sick enough to be eligible for abortion care. In Kiersten's case, she was told that if she tried to leave the hospital to seek care elsewhere, she could be arrested for trying to kill her baby. Samantha and Kylie were forced to carry non-viable pregnancies to term. Samantha's daughter passed four hours after birth, and Samantha was only able to afford a gravestone after NPR wrote a story about her and members of the public contributed to her GoFundMe. Kylie was forced to undergo a Cesarean surgery because, due to

the delays in her care caused by Texas's abortion bans, she was no longer eligible for abortion care even out of state. Kylie's son passed the same day they were discharged from the hospital. Cristina has end-stage renal disease and nearly died waiting to be sick enough to receive an abortion. Only after she was hospitalized with deep vein thrombosis, eclampsia, and an embolism, and connected with an attorney who pleaded with hospital staff, did she receive life-saving abortion care. At the time they joined this case, four of the plaintiffs were pregnant, and four more are currently pregnant. One plaintiff has lost an additional pregnancy since joining this case. The harms to pregnant Texans from the state's abortion bans grow every day and should not continue.

In support of their petition, Plaintiffs respectfully show the following:

INTRODUCTION

1. Abortion bans harm the health of women and pregnant people. In September 2021, Senate Bill 8 ("S.B. 8") effectively imposed a statewide ban on abortion after approximately 6 weeks of pregnancy.[1] After the U.S. Supreme Court overturned *Roe v. Wade* in June 2022, Texas's near-total abortion ban took effect. Texans have suffered catastrophic harms because of those bans. Pregnant people in Texas and throughout the country have suffered unnecessary physical and emotional pain and harm, including loss of their fertility. These pregnant people are not hypothetical. They are not unknown. They are real people with families, many with children already, and some of them are plaintiffs in this action.

2. Local newspapers and social media abound with stories of abortion bans harming pregnant people and their families, a large number of whom live in Texas. In every person's story, the same themes emerge: First, abortion is necessary health care that is being denied under Texas's

[1] Consistent with standard medical practice, gestational ages as used in this petition are dated from the first day of the patient's last menstrual period ("LMP"), which is typically approximately two weeks before the estimated date of fertilization of a pregnancy.

civil and criminal abortion bans. Second, abortion bans are preventing pregnant people from receiving the standard of care from their medical professionals in times of crisis. And third, pervasive fear and uncertainty throughout the medical community regarding the scope of the life and health exceptions have put patients' lives and physicians' liberty at grave risk.

3. Abortion bans are hindering or delaying necessary obstetrical care. And, contrary to their stated purpose of furthering life, the bans are exposing pregnant people to risks of death, injury, and illness, including loss of fertility—making it *less* likely that every family who wants to bring children into the world will be able to do so and survive the experience. Medical professionals are now telling their patients that if they want to become pregnant, they should leave Texas.

4. Plaintiffs represent only the tip of the iceberg. Since September 2021, millions of people of reproductive capacity in Texas and beyond have been denied dignified treatment as equal human beings. This Court need not guess at the impact that abortion bans have. Each day, in states across the country, pregnant people like Amanda, Lauren M., Lauren H., Anna, Ashley, Kylie, Jessica, Samantha, Dr. Dennard, Taylor, Kiersten, Lauren V., Elizabeth, Kristen, Amy, Kaitlyn, Aylen, Kimberly, Dr. Mathisen, and Cristina are being denied their ability to control their reproductive lives and to build their families according to their own values and beliefs. Medical professionals are being forced to forgo practicing their profession and fulfilling their ethical duties to patients in the face of catastrophic risks to their liberty and livelihood. Plaintiffs' experiences illustrate that while the stated purpose of Texas's abortion bans may have been to promote healthy babies and families, the bans have done the opposite.

5. Plaintiffs respectfully ask this Court for a declaratory judgment clarifying the scope of Texas's Emergent Medical Condition Exception to its abortion bans, and any and all declaratory

or injunctive relief necessary to protect the health and lives of pregnant Texans with emergent medical conditions.

DISCOVERY CONTROL PLAN

6. Plaintiffs request that this case be conducted as a Level 3 case for the purposes of discovery in accordance with Texas Rule of Civil Procedure 190.4. In addition, pursuant to Texas Rule of Civil Procedure 47(c)(5), Plaintiffs state that they seek non-monetary relief only.

PARTIES

I. PLAINTIFFS

A. Amanda Zurawski

7. Amanda Zurawski is 36 years old and lives in Austin, Texas.

8. Amanda and her husband have known each other since preschool and were married in 2019. They have long wanted to have children. When they started trying for a baby, however, Amanda learned she was not ovulating. After a year and a half of fertility treatments—which included exploratory procedures, use of multiple medications, one misdiagnosis, and treatment with intrauterine insemination or IUI—Amanda finally got pregnant for the first time.

9. Amanda's pregnancy proceeded without incident until, at 17 weeks, 6 days, she was diagnosed with an "incompetent cervix"—weakening of the cervical tissue that causes premature dilation of the cervix. Because her pregnancy was still so many weeks before viability, she was told that her baby[2] would not survive.

10. Amanda and her husband were devastated and kept asking if there was something, anything, her doctors could do. Amanda specifically asked if she was a candidate for cerclage, a

[2] This petition describes pregnancy using medical terminology, unless describing a particular patient's pregnancy, in which case, consistent with principles of medical ethics, it adopts the terminology preferred by the individual patient.

procedure where a patient's cervix is stitched closed to prevent preterm birth. Her doctors told her that unfortunately, her membranes were already prolapsing, meaning that a cerclage procedure would be too risky and, in any event, would not be successful.

11. Amanda was sent home, and that night, her water broke. It was Tuesday, August 23, 2022.

12. Amanda returned to the emergency room that night and was diagnosed with preterm prelabor rupture of membranes (also known as preterm premature rupture of membranes, or "PPROM"). Because all of Amanda's amniotic fluid drained when her water broke, the emergency room kept her overnight in hopes that she would go into labor on her own. In the morning, however, she had not gone into labor, her baby still had cardiac activity, and her vitals were still "stable," meaning she was not *yet* showing signs of acute infection.

13. Amanda was told that under Texas's abortion ban, there was no other medical care the hospital could provide. At this point, absent Texas's abortion bans, a patient in Amanda's situation would have been offered an abortion or transferred to a facility that could offer the procedure. But Amanda was offered neither because the hospital was concerned that providing an abortion without signs of acute infection may not fall within the Emergent Medical Condition Exception in Texas's abortion bans.

14. Amanda was told that delivery could take hours, days, or weeks. Once Amanda heard it could take hours, she decided there was no time to travel to another state for an abortion. She looked it up, and the drive to the closest abortion provider, in Albuquerque, New Mexico, would be 11 hours. The specialist at the hospital also urged Amanda to stay within a 15-minute drive of the hospital, in case her health deteriorated quickly.

15. On Wednesday morning, Amanda was sent home with instructions to monitor herself for signs of infection.

16. Amanda spent Wednesday and Thursday at home, grieving her inevitable loss and worrying about her own health.

17. On Thursday morning, Texas's Trigger Ban went into effect.

18. On Friday morning, Amanda went for a check-up at her obstetrician's office. At her appointment, her vitals were still "stable."

19. On the drive home from her obstetrician's office, however, Amanda developed chills and started shivering, and by the time she got home, she had a temperature of 101 degrees and was not responding to her husband's questions—all signs of sepsis.

20. Amanda's husband called their obstetrician's office and while he was waiting for a call-back, decided he could wait no longer and needed to take her to the emergency room immediately.

21. By the time Amanda was admitted to the labor and delivery unit, her temperature was 102 degrees and peaked at 103.2 degrees. Her medical team confirmed she was indeed septic and put her on antibiotics. The hospital finally agreed she was sick enough that inducing labor would clearly not violate Texas's abortion bans.

22. Amanda delivered, and her baby, Willow, did not survive.

23. That night, Friday, Amanda's fever subsided but her blood pressure and platelet levels remained abnormally low. Amanda was told that while the first infection had cleared, she had developed a secondary infection, chorioamnionitis, and septic shock. The subsequent bout of sepsis landed her in the intensive care unit ("ICU").

24. Amanda spent three days in the ICU while her infection was treated. Amanda's family flew to Austin from across the country because they worried it would be the last time they would see her.

25. Amanda was eventually discharged and returned home, but her suffering was far from over. The infections had caused such severe scar tissue to develop in her uterus and on her fallopian tubes that it obscured x-ray imaging of her reproductive organs. She had a procedure to attempt to remove the scar tissue, and while her physicians were able to clear her uterus and one of her fallopian tubes, the other fallopian tube remains permanently closed.

26. Amanda has been advised by her reproductive specialist that to get pregnant again, she should start in vitro fertilization ("IVF"), which involves its own invasive procedures and uncertain success.

27. Amanda has already begun IVF treatments.

28. Once a pregnant person has been diagnosed with an incompetent cervix in one pregnancy, the risk is high that they will develop the same condition in future pregnancies.

29. Amanda and her husband have been trying to have children for years, and she not only lost her first pregnancy, but because of Texas's abortion bans, she nearly lost her own life and spent days in the ICU for septic infections whose lasting impacts threaten her fertility and, at a minimum, make it more difficult, if not impossible, to get pregnant again in the future.

30. Amanda's claims are capable of repetition but evading review. Amanda sues on her own behalf.

B. Lauren Miller

31. Lauren Miller is 35 years old and lives in Dallas, Texas.

32. Lauren M. first learned she was pregnant from a pharmacy urine test in July 2022, and quickly realized that the first day of her last menstrual period, the date from which her pregnancy would be dated, was June 24, 2022, the same day *Roe v. Wade* was overturned.

33. Lauren M. already had, at the time, a one-year-old son, and she and her husband were excited to have another child join their family. She started keeping a pregnancy journal to document the details of her pregnancy and her emotions about her pregnancy. Lauren M. scheduled her first prenatal visit for approximately 8 weeks.

34. Before her first prenatal visit, however, Lauren M.'s health took a turn for the worse. She experienced horrible nausea and vomiting and could not keep food or even water down. After 36 hours of continuous vomiting, Lauren M. went to the emergency room for treatment for dehydration. At the emergency room, Lauren M. had her first ultrasound and learned she was pregnant with twins. She and her husband were shocked but thrilled.

35. At the emergency room, Lauren M. was also diagnosed with hyperemesis gravidarum, a severe form of persistent nausea that can last throughout pregnancy and cause significant risks for pregnant people and their babies.

36. Lauren M. began treatment for hyperemesis gravidarum but did not respond to medications and continued to struggle with nausea and vomiting as her pregnancy progressed.

37. At Lauren M.'s 12-week ultrasound appointment, she learned that one of her twins—who her doctors referred to as Baby B because it was farther away from her cervix—was not growing as fast as the other twin—who her doctors referred to as Baby A because it was closer to her cervix. While that was a cause for potential concern, obtaining a diagnosis would require additional monitoring and testing. Lauren M. provided a blood sample for noninvasive prenatal blood testing ("NIPT"), which can be done between 10 and 13 weeks to screen for some fetal

conditions. While Lauren M. was still waiting for the NIPT results, she returned a week later for another ultrasound and learned that Baby B had developed two cystic hygromas, fluid filled sacs near the brain. While worrisome, Lauren M.'s physicians still could not yet diagnose Baby B's medical condition and recommended additional testing, specifically chorionic villus sampling ("CVS") or amniocentesis, which involves a needle procedure into the placenta or amniotic fluid.

38. Several days later, Lauren M. received the results from her NIPT test, which indicated that Baby B likely had trisomy 18, a condition with a very high likelihood of miscarriage or stillbirth and low survival rates beyond the first year of life.

39. Lauren M. met with a genetic counselor who struggled to give clear information regarding what this result meant for her pregnancy under Texas's new abortion bans. After receiving a referral to a maternal-fetal medicine ("MFM") specialist who could perform CVS testing, Lauren M. scheduled the first available appointment, which was for the following day.

40. The following day, Lauren M. visited an MFM specialist who performed a high-resolution ultrasound and attempted CVS testing. The MFM confirmed via ultrasound that Baby B had multiple fetal structural abnormalities—cystic hygromas where much of the brain should have been developing, a single artery umbilical cord, incomplete abdominal wall, abnormal heart, abnormal nuchal translucency—and told Lauren M. and her husband that Baby B would likely not survive to birth. Because the ultrasound alone was so conclusive, and because Lauren M.'s uterus was contracting and preventing the needle from reaching the placenta of Baby B, the MFM did not ultimately complete the CVS test.

41. The MFM told Lauren M. and her husband that, before S.B. 8, he would have been able to offer Lauren M. a single fetal reduction (an abortion of Baby B) to give Baby A and Lauren

M. the best chance to avert a health crisis. Now, all he could do was suggest that she travel out of state.

42. In every interaction with their medical team in Texas, Lauren M. and her husband felt confused and frustrated and could not get direct answers. It was apparent that their doctors, nurses, and counselors were all fearful of speaking directly and openly about abortion for fear of liability under Texas's abortion bans.

43. A few days after Lauren M.'s visit with the MFM, she was hospitalized again with complications from hyperemesis gravidarum. Lauren M. was vomiting so violently that she was unable to drive herself to the emergency room and had debilitating chills and severe dehydration requiring hospitalization. If not for Texas's abortion bans, Lauren M. would have had the single fetal reduction before her subsequent emergency room visit.

44. Lauren M. and her husband remained deeply concerned about her health as well as that of Baby A. They ultimately decided to travel out of state to receive a selective fetal reduction abortion procedure. They named their son, Baby B, "Thomas" and started to say goodbye.

45. At 15 weeks at a clinic in Colorado, Lauren M. underwent the selective reduction abortion procedure. It was quick, taking approximately 15 minutes, and uncomplicated. Yet the procedure, plus the associated travel, cost thousands of dollars and required Lauren M. and her husband to be away from their toddler for two days.

46. After the procedure, Lauren M.'s hyperemesis gravidarum symptoms immediately subsided, and her pregnancy with Baby A has since progressed without complications. Lauren M. lost so much weight from hyperemesis gravidarum that she did not return to her pre-pregnancy weight until 29 weeks gestation.

47. After the procedure, Lauren M.'s pregnancy with Baby A progressed without complications.

48. Lauren M. gave birth in late March 2023 to a healthy baby boy who she and her husband named Henry.

49. Lauren M. is thankful that she had the funds and support from family, friends, and employers to allow her and her husband to travel for the health care she needed. She has friends in the medical field who helped her connect with doctors out of state. She knows that many other pregnant people have not been so fortunate.

50. Lauren M. was overjoyed to discover she was pregnant with twins, but after suffering from extreme hyperemesis gravidarum and a devastating fetal diagnosis for Thomas, she believes that Texas's abortion laws made it *less* likely that both she and Henry would survive her pregnancy.

51. At the time this lawsuit was filed, Lauren M. was still pregnant with Henry and continued to fear for her safety as a pregnant woman in Texas. She continues to fear for her safety should she get pregnant in the future.

52. Lauren M.'s claims relate both to her pregnancy at the time of filing this suit and to any future pregnancies and are capable of repetition but evading review. Lauren M. sues on her own behalf.

C. Dr. Austin Dennard

53. Dr. Austin Dennard is 38 years old and lives in Dallas, Texas.

54. Dr. Dennard is a doctor of osteopathic medicine ("D.O.") and works in general obstetrics and gynecology. She specializes in obstetrics, robotic gynecology surgery, and pelvic floor dysfunction. Dr. Dennard is also trained to provide miscarriage care in the first trimester.

55. Lauren M. is one of Dr. Dennard's obstetrical patients.

56. Dr. Dennard and her husband, who is also an OB/GYN, have two children, but they had always wanted a third. In July of 2022, Dr. Dennard was excited to be pregnant, particularly because before this pregnancy, she had had a miscarriage.

57. At Dr. Dennard's 11-week ultrasound visit, however, her baby was diagnosed with anencephaly. Dr. Dennard knew immediately the prognosis for both her and her baby. Her doctor confirmed that the condition was not compatible with survival and that in Texas, all they could offer her was additional ultrasound scans. Dr. Dennard decided she wanted an abortion.

58. Dr. Dennard had been through this before. In her first pregnancy, Dr. Dennard's baby was diagnosed at 18 weeks with a rare genetic condition associated with heart disorders and other medical comorbidities—and she and her husband made the difficult choice to end the pregnancy. At the time, abortion was legal in the state of Texas, and Dr. Dennard was able to get the abortion at a clinic in her home community.

59. This time, however, Dr. Dennard knew that due to Texas's abortion bans, she would need to travel out of state. Dr. Dennard immediately started researching her options and calling friends and colleagues for advice. She decided to travel to the east coast for her care.

60. As soon as she got the diagnosis, Dr Dennard immediately felt silenced and marginalized. She felt like she was in an alternate universe, as a 6th generation Texan, fleeing her own state for basic medical care. She paid out of pocket for her abortion procedure, as well as her travel expenses. Family stayed at home with her children. Colleagues covered her shifts at the hospital. While traveling out of state was traumatic, she was relieved she had the resources to access the care she needed.

61. Dr. Dennard initially considered sharing her story publicly but was nervous to do so. Colleagues in family planning warned Dr. Dennard that there were political consequences associated with being outspoken on abortion.

62. But Dr. Dennard's personal and professional lives collided when months later, one of her patients, Lauren M., faced a similar devastating diagnosis. Dr. Dennard watched Lauren M. go through exactly the same experience—researching abortion providers out of state on her own, traveling to get care, finding childcare, and more. Just like Dr. Dennard, Lauren M. was trying to grieve while being plagued by medical trauma, fear, and confusion.

63. When this lawsuit was filed and Dr. Dennard saw that Lauren M. was one of the plaintiffs, Dr. Dennard knew this was the moment for her to tell her story as well, and she reached out to Plaintiffs' counsel.

64. At the time she joined this lawsuit, Dr. Dennard was still pregnant with her long-awaited third child and feared for her safety as a pregnant woman in Texas. She gave birth in August 2023, and she continues to fear for her safety should she get pregnant in the future.

65. Dr. Dennard's claims relate both to her pregnancy at the time of filing this suit and to any future pregnancies and are capable of repetition but evading review. Dr. Dennard sues on her own behalf.

D. Lauren Hall

66. Lauren Hall is 28 years old and lives outside of Dallas, Texas.

67. Lauren H. and her husband were thrilled when they found out she was pregnant. At her first ultrasound at around 8 weeks, everything looked great. Because her pregnancy was uncomplicated, Lauren H. would not have another ultrasound until her anatomy scan, which is usually scheduled later than 16 weeks. In the meantime, Lauren H. started planning, telling friends and family the news, buying baby clothes and furniture, and even selected a name—Amelia.

68. Lauren H. knew that her OB/GYN was opposed to abortion. But at the time, it did not seem like a big deal.

69. Two weeks after *Roe v. Wade* was overturned, however, Lauren H. went to an appointment with an MFM specialist for her 18-week anatomy scan. Lauren H. is a nurse, and as the ultrasound began, she knew immediately that something was wrong.

70. Lauren H. was told that her baby had anencephaly, a condition where the baby does not develop a skull and has a severely underdeveloped brain. Lauren H. knew that with such a diagnosis, the baby had no chance of survival. Her MFM specialist told her that anencephaly is incompatible with life.

71. Lauren H. was told that there were many physical and mental risks to her if she continued the pregnancy, including hemorrhage and preterm birth. Lauren H. remembers thinking that she did not want to end up bleeding to death on the bathroom floor. She was scared that when something inevitably went wrong, she would not get proper care for this pregnancy in Texas. She decided that she wanted an abortion.

72. Lauren H.'s MFM specialist said she couldn't help her and was even fearful to give her information about her options. *Roe* had just been overturned and everyone Lauren H. encountered was terrified. Her MFM urged her to go out of state and tell no one—not her family, not anyone at the airport—where she was going or what she was doing. Lauren H.'s MFM said she could not provide a referral or even transfer her medical records to an abortion provider. No one knew how far the politicians in Texas would go to prosecute people involved in abortion care.

73. Lauren H. and her husband were grieving, were desperate for help, and they were made to feel like everything they needed was illegal.

74. Lauren H. tried to get an appointment with her OB/GYN, but he was out of town, and no one from the office was responding. Lauren H. even drove to her OB/GYN's office to ask for help in person, but no one would see her. Eventually, someone from the office called back but only offered her information about support groups for patients who give birth to babies with anencephaly. Lauren H. realized she was on her own to figure out what to do.

75. Lauren H. called clinics in Colorado and New Mexico. Because *Roe* had just been overturned and abortion bans were taking effect in states throughout the South, the Colorado and New Mexico clinics were inundated with patients. They didn't have appointments.

76. Lauren H. has struggled with depression, and the stress of searching for care took a huge toll. Her mental health spiraled to the point that she considered checking herself into the hospital. But she was afraid to tell anyone what was going on because she worried what would happen to her if people knew she wanted an abortion.

77. Because she was already 18 weeks pregnant, Lauren H. worried that she was too far along to be seen by most clinics. Eventually, Lauren H. got an appointment at a clinic in Seattle that specializes in cases like hers. Lauren H. and her husband's family sent them money to help pay for the extremely expensive last-minute trip. On her way into the clinic for her appointment, protesters shouted at her that she was a baby killer.

78. Lauren H. and her family grieved their loss but are still processing the trauma of what happened to her and needing to travel so far from home during such a time of chaos and confusion, just to receive necessary health care.

79. At the time this lawsuit was filed, Lauren H. was still pregnant and feared for her safety as a pregnant woman in Texas. She gave birth in August 2023, and she continues to fear for her safety should she get pregnant in the future.

80. Lauren H.'s claims relate both to her pregnancy at the time of filing this suit and to any future pregnancies and are capable of repetition but evading review. Lauren H. sues on her own behalf.

E. Anna Zargarian

81. Anna Zargarian is 33 years old and lives in Austin, Texas.

82. In September 2021, just a few weeks after S.B. 8 took effect, Anna realized that her period was two weeks late.

83. Anna and her now-husband were surprised to learn she was pregnant, but they were excited about having a baby. Anna remembers thinking that it was a good thing she did not want an abortion, as she may have already been past the cutoff for abortion care under S.B. 8.

84. Anna's pregnancy proceeded without incident until, at 19 and a half weeks, she felt a sensation like something was starting to come out of her body. Anna had some cramping but tried to put it out of her mind. Hours later, Anna felt a gush of liquid leave her body, then a second gush left a puddle on the floor. Anna knew something was wrong.

85. Anna and her husband went to the emergency room that night and learned that her water had broken prematurely, and her cervix had started dilating. She was diagnosed with PPROM. Anna was told that because all of the amniotic fluid had drained when her water broke, her baby would not survive to birth.

86. Doctors in the emergency room told Anna that for patients in her situation, they would usually recommend termination of the pregnancy. If she continued the pregnancy, she was at high risk of developing a septic infection or hemorrhaging. Anna works in health care, and as soon as she heard that she was at risk of sepsis, she panicked.

87. The doctors told her that the safest treatment for her was a D&E. But because of S.B. 8, as long as her baby had detectible cardiac activity, Texas law barred them from performing an abortion, unless and until her life was in imminent danger.

88. Anna tried to reason with the doctors in the emergency room. She asked if, instead of a D&E, they could induce her. But the doctors explained that an induction at this stage was also an abortion prohibited by law. When Anna asked for guidance, the medical staff at the hospital were scared to give Anna any information about where to seek abortion care. Instead, one of the doctors typed a generic abortion finder resource into her cell phone and showed the webpage to Anna.

89. Anna was told that she could be admitted to the hospital for "expectant management"—where she would wait either to go into labor naturally, or for her health to deteriorate sufficiently for the hospital to be able to intervene. She was also told that she could wait until the morning to speak to an MFM specialist, but that the MFM would not be able to offer any different treatment.

90. Anna and her husband decided to go home so they could begin researching abortion options on their own. They debated what seemed less risky—an 11 hour drive to New Mexico, or a 2 hour flight to Colorado? Anna wanted to make sure the state she chose did not have a mandatory waiting period that would delay her care further. That night, Anna continued to leak amniotic fluid and experience cramping.

91. The next morning, Anna spoke to her longtime OB/GYN. Anna was concerned that if she went into labor while driving through rural Texas, there would be no hospital where she could access care. While she might go into labor or septic shock on the plane as well, at least the trip would be shorter and she could get to a doctor more quickly. Anna and her OB/GYN agreed:

the best option given the circumstances was for Anna was to leave Texas for an abortion, and that a short flight was less risky than a long drive.

92. Anna called clinics in Colorado, but they were still being inundated by the influx of patients from Texas. A clinic in Denver was able to squeeze her in once she explained why she would not be able to wait weeks for an appointment. Anna bought a plane ticket and paid extra for a seat at the front of the plane near the bathroom. Thankfully, Anna arrived safely.

93. The morning of her procedure, Anna had a fever of 101, but she received an abortion and recovered well.

94. Since this experience, Anna has suffered from stress and anxiety, specifically related to the fear for her life she felt during the trip to Denver. She grieves the loss of a wanted pregnancy and still relives the trauma of being forced to leave Texas in the middle of a medical emergency.

95. Anna still wants to have children, but she is afraid of being pregnant again in Texas. Her doctors have told her that she will be at high risk for developing conditions associated with PPROM in future pregnancies.

96. Anna's claims are capable of repetition but evading review. Anna sues on her own behalf.

F. Ashley Brandt

97. Ashley Brandt is 31 years old and recently moved from Houston to Dallas, Texas.

98. Ashley and her husband got married in 2018 and already have a 3-year-old child. Ashley always wanted to have three children, so when she learned in May of 2022 that she was pregnant with twins, Ashley and her husband were thrilled.

99. During early prenatal visits, Ashley was told she was having identical twin girls, and that each had their own placenta and amniotic sac. Ashley and her husband love being parents and were excited about having twins. They began to tell their friends and family.

100. At her 12-week ultrasound, however, Ashley was told that Twin A's skull was much smaller than Twin B's, and Twin A did not appear to be developing normally. Ashley's OB/GYN explained that Twin A likely had acrania, a condition where the fetus does not develop a skull, and referred her to an MFM specialist for further testing.

101. For over a week, Ashley waited for her insurance to approve a visit with the MFM. She spent much of that week crying in bed. Still reeling from the news, and without guidance from her Texas physicians, Ashley started researching her options online and calling doctors in other states. A doctor in Colorado explained selective fetal reduction, and Ashley realized that an abortion of Twin A could help her save Twin B and herself.

102. Finally at the appointment, Ashley's Texas MFM confirmed that Twin A's skull was not properly developing and that the acrania had progressed to exencephaly, a precursor to anencephaly. The MFM warned Ashley that as long as Twin A continued growing, her chances of miscarriage or premature labor were high. Twin A's amniotic fluid would continue to break down brain tissue until she went into labor, at which point, she could lose both babies. Twin B might survive if born prematurely, but would require intensive neonatal care for months or longer. Further, if Twin A continued growing, there was also a risk of polyhydramnios, or excessive accumulation of amniotic fluid, which put Twin B at risk for fetal growth restriction.

103. Ashley did not want one stillborn, but she definitely did not want two.

104. There were significant risks for Ashley as well, particularly because she had a cesarean delivery with her first pregnancy. Ashley learned that polyhydramnios can lead to

PPROM and/or placental abruption, meaning that Ashley was at risk of infection, bleeding, and hemorrhage. These risks were especially high because Twin A was the twin closest to her cervix.

105. Ashley asked her MFM about selective fetal reduction. Her MFM said that in another world, it would be simple, but this was Texas. And in Texas, abortion is illegal even if it means saving the life of a healthy baby. If Ashley wanted to go out of state for an abortion, that was her right and her MFM would send her medical records. But in Texas, all her physicians could do was monitor her at weekly appointments. Ashley was on her own.

106. Ashley made an appointment with the doctor in Colorado.

107. Ashley and her husband arranged for childcare, took time off work, and made the journey to Colorado. Her abortion procedure went smoothly, and Ashley and her husband flew home.

108. The day she returned home, however, Twin A's amniotic sac ruptured in the middle of the night and the bleeding and leaking fluid sent her to the emergency room. She was terrified that she would lose both babies and that she would somehow be in trouble for going out of state for the fetal reduction procedure. Thankfully, Twin B had a separate amniotic sac which was still intact.

109. In the emergency room, Ashley felt a distinct uneasiness and confusion. It appeared that the medical staff thought they were not supposed to know about Ashley's abortion or discuss it with her. To Ashley, everything felt secretive and icky.

110. The remainder of Ashley's pregnancy was plagued by fear and stress. Ashley's physicians recommended pelvic rest until her third trimester, as well as weekly ultrasounds that she had to pay for out of pocket. Ashley and her husband kept extra money in savings in case they had to leave the state again for medical care.

111. When Ashley reviewed her medical records, she saw a noticeable absence of documentation of her abortion. Her MFM's records contained no reference to their conversations about fetal reduction and at her appointment after the abortion, stated simply "SAB of Twin A," meaning "spontaneous abortion." At every one of her regular appointments with her OB/GYN following the abortion, her OB/GYN's records listed her diagnosis as "vanishing twin syndrome."[3] It was not until she was a few weeks from her due date that her OB/GYN added the following note to her chart: "one twin with acrania and was electively terminated."

112. At 38 weeks, Ashley gave birth to a healthy baby.

113. Ashley feels fortunate that she could leave Texas for an abortion and thankful for the support of family and friends. While she had always planned to have more children, Texas's abortion bans make it hard for her to imagine getting pregnant again.

114. Ashley's claims are capable of repetition but evading review. Ashley sues on her own behalf.

G. Kylie Beaton

115. Kylie Beaton is 33 years old and lives near Fort Worth, Texas.

116. Kylie and her husband have a 4-and-a-half-year-old and have wanted to have more children for years. But it has not been easy. Kylie has a history of polycystic ovary syndrome ("PCOS"), a condition that interferes with ovulation. Also, Kylie's husband was hospitalized for 4 months in 2021 with COVID pneumonia. When he recovered, the couple immediately started trying to get pregnant again but faced challenges. After trying several different fertility medications, Kylie was thrilled to learn she was pregnant.

[3] "Vanishing twin syndrome" is a type of miscarriage where one fetus in a multi-fetal pregnancy stops growing spontaneously and is absorbed into either the body of the pregnant person or (one of) the other fetus(es). *See Vanishing Twin Syndrome*, Cleveland Clinic, https://my.clevelandclinic.org/health/diseases/23023-vanishing-twin-syndrome.

117. At Kylie's 20-week anatomy scan in early January of 2023, however, Kylie's obstetrician told her that something did not look right with the baby's head. Her obstetrician diagnosed the baby with alobar holoprosencephaly, a condition in which the brain does not develop into two hemispheres as it normally would, and the major structures of the brain remain fused in the middle. He referred Kylie to a specialist.

118. The next week, an MFM specialist confirmed the diagnosis and explained that the baby would likely only survive for several days or weeks past birth, if at all. In the meantime, the baby's head would continue to be abnormally large for its gestational age. The specialist told Kylie that due to Texas's abortion laws, there was nothing he could do unless Kylie became severely ill or the baby's heart stopped, and that Kylie would either have to carry to term or she could look for care outside of Texas. Before the law changed, her doctors would have been able to perform a D&E or an induction abortion before the baby's head got too big, but that was no longer legally possible.

119. Unsure what to do or where to go, Kylie and her husband began researching their options. They called a couple of abortion clinics and made an appointment at a clinic in New Mexico for the beginning of February. The procedure would cost $3,500. In advance of traveling to New Mexico, however, an ultrasound revealed that the baby's head was already measuring at close to 24 weeks, abnormally large, meaning its size was past the gestational cutoff for the New Mexico clinic. Kylie and her husband were devastated.

120. They quickly learned that very few clinics in the country provide abortions past this cutoff. Kylie called a few of those clinics, but the procedure would cost between $10,000 and $15,000, which was far beyond their means. Kylie realized that she would have no choice but to continue the pregnancy.

121. At an ultrasound appointment in early March, the baby's head was measuring at 39 weeks even though Kylie was only 28 weeks. Kylie was told this would be the last point at which she would be able to deliver vaginally. She begged the doctors to induce her. Her doctor told her that if not for Texas's abortion bans, he would induce her for a vaginal delivery that day. But because of the law, she was told that no doctor could induce her until 37 weeks.

122. Kylie preferred to deliver vaginally, so her specialist called other doctors to make sure there was nothing more they could do. But her specialist was told that her baby's large head size alone was not enough of a reason to justify an induction abortion under Texas law.

123. Kylie was scheduled for a Cesarean in early May, when she would be 37 weeks.

124. When Kylie was 35 weeks pregnant, however, she started having horrible pain in the right side of her abdomen. It did not feel like labor contractions to Kylie, but she knew something was wrong. After talking with her OB/GYN, she decided to go to the hospital to get checked out. Kylie and her family live an hour from the hospital, and her husband was at work, but another family member was able to drive her. She was in excruciating pain for the entire drive.

125. At the hospital, the medical staff could not determine if she was experiencing unusual labor pains due to the size of her baby's head or if the pain was originating from her gallbladder, appendix, or some other internal organ. Kylie was told that before they could induce her, they would need to rule out her gallbladder and appendix as the source of her pain.

126. By this point, her baby's head circumference was measuring at 49 cm. The average head circumference for a newborn is 35 cm.

127. Tests of her gallbladder and appendix came back normal. Kylie was only a couple centimeters dilated, and due to the size of her baby's head, the staff did not believe she would dilate further. Finally, the hospital agreed to send her for an emergency cesarean.

128. Kylie's OB/GYN performed the cesarean surgery, making a larger incision than normal to accommodate the baby's head. The baby was born at the end of April.

129. Kylie and her husband wanted to donate their baby's heart valves. They named their son Grant, hoping that he could grant other children life.

130. The first day in the hospital, Grant ate relatively well and at times, almost seemed normal. But over the next three days, his condition deteriorated. He cried constantly. He stopped eating. His core temperature gradually decreased. He could not be held upright or it would put too much pressure on his head. The medical staff was unsure if he was experiencing pain, but gave him morphine. Kylie understood he was slowly dying, day by day.

131. On day 4, Kylie's insurance required her to be discharged from the hospital. She and her husband set up hospice care to meet them at home.

132. They were discharged in the early afternoon. The medical staff told Kylie that Grant could not sit in a car seat because it would put too much pressure on his head. So Kylie held Grant in her arms for the hour long car ride home.

133. Kylie's daughter wanted to have a movie night with her brother, so the family watched movies together for a few hours. After her daughter went to bed, however, Grant's breathing became more labored. A hospice nurse came to establish care. For hours, Kylie and her husband watched as their son grew cold in their arms. Late that night, Grant passed.

134. Kylie and her family are still waiting for Grant's cremated ashes to be returned to them. They plan to plant a tree outside their house along with the ashes.

135. Many challenges remain for Kylie and her family. Kylie's milk came in while she was at the hospital and it took weeks to dry up, long after Grant was gone. She is still recovering from the cesarean surgery and struggles to resume normal physical activity. The hardest part,

however, is explaining to their daughter what happened and why. She still says she misses her brother and draws him pictures. Each time, it brings Kylie and her husband a new wave of grief.

136. Kylie will need to wait many months before trying to get pregnant again. Doctors recommend waiting at least 12-18 months after a cesarean to get pregnant again to give the uterus time to heal. Kylie does not want to have another cesarean delivery, but doctors have told her it will be challenging to deliver vaginally in the future, and the risk of another cesarean is higher the sooner she gets pregnant again.

137. When Kylie read about this lawsuit in the news in March of 2023, she decided she wanted to tell her story too, so she contacted a reporter and connected with Plaintiffs' counsel.

138. Kylie believes that the government should not dictate the choices families like hers have to make. Having to go through the birth and death of Grant made losing him so much harder. Kylie wants to fight for other women, so they do not have to experience the same grief and pain.

139. Kylie continues to fear for her health and safety and her ability to get pregnant again in the future. She also fears for her safety as a pregnant woman in Texas if she gets pregnant again.

140. Kylie's claims are capable of repetition but evading review. Kylie sues on her own behalf.

H. Jessica Bernardo

141. Jessica Bernardo is 38 years old and lives near Frisco, Texas.

142. Jessica met her now husband in 2011 and they married in 2018. In 2020, they started trying to get pregnant but ran into challenges, so she started seeing a reproductive specialist. Jessica went through extensive testing and even a medical procedure to improve their chances of conceiving.

143. Jessica finally got pregnant in July of 2022. Jessica and her husband were ecstatic about their pregnancy and they shared the news with family around the world.

144. At around 14 weeks, Jessica received the results from her NIPT genetic testing and learned that there was a high likelihood that their baby had trisomy 21, or Down syndrome. Jessica and her husband were in disbelief, but they both agreed that they would love the baby no matter what. Jessica began researching how to support a baby with a disability, including special schools. She also started reading about and supporting small businesses started by adults with Down syndrome.

145. Jessica and her husband learned the baby was a girl and decided to name her Emma, meaning "whole." They believed that she would be whole, with or without Down syndrome. They also started telling their friends and family the exciting news.

146. Because of the NIPT screening results, Jessica's OB/GYN referred her to an MFM specialist and advised her to make an appointment as soon as possible. When making the appointment, she believes she was told about the option of having an amniocentesis. She researched amniocentesis and determined that she would not elect to have the testing performed because of the small risk of miscarriage. She knew she would keep the baby no matter what.

147. At the visit with the MFM in October 2022, they received devastating news. The scan revealed that the baby had fetal anasarca, which is the end stages of hydrops fetalis otherwise known as extreme full-body edema signifying end of life; other structural abnormalities; and was already showing signs of significant heart failure. Her MFM specialist told her that the baby would not survive to birth. The MFM instructed Jessica to monitor herself for complications like coughing, swelling, and high blood pressure, which could be signs of Mirror syndrome. She had already developed a cough starting at week seven of her pregnancy and her blood pressure had also increased. The MFM did not mention abortion.

148. Afterwards, Jessica did her own research to understand what Mirror syndrome meant and how serious it was. She came to understand that Mirror syndrome is a severe condition in which the pregnant person and fetus both experience severe fluid retention that can lead to both fetal and maternal demise, and that she was at a high risk for developing it. She realized just how risky it would be for her to continue her pregnancy.

149. That same day, Jessica's OB/GYN called her to follow up. Jessica told her doctor she did not want to be left waiting for her baby's heart to stop on its own, that it was cruel and would be detrimental to Jessica's mental health, and that she was also scared of her health deteriorating. She wanted to be able to grieve, start healing, and ultimately, try to get pregnant again. Her OB/GYN told her that before Texas's new laws, she would have been able to provide a "therapeutic birthing" to induce Jessica in the hospital but could no longer do so. Her doctor contacted the ethics committee at her hospital for an exclusion but was not granted one.

150. Jessica felt like her doctor was hesitant to tell Jessica what her options were, other than talk in code. She told her doctor that they had a residence in Colorado and asked her doctor if they should go there. Her doctor responded that yes, Jessica should go to Colorado. Her doctor never mentioned the word abortion.

151. Unfortunately, the clinics in Colorado were all booked—the soonest appointment was two months away. Jessica started looking for other options. She used private browser mode for fear that she would be prosecuted for looking for abortion services out of state. Jessica was eventually able to get an appointment for an abortion in Seattle, and she booked expensive, last-minute flights and a hotel room.

152. At the clinic in Seattle, Jessica was told she was the third patient from Texas that week alone. One of Jessica's doctors told Jessica that she had moved away from Texas due to its

restrictive laws. At 16 weeks and 6 days, and on the same day her nursery furniture was supposed to be delivered, Jessica received her abortion. Jessica wished that she could have been at home while she was going through the worst trauma of her life.

153. After this lawsuit was filed, Jessica reached out to Plaintiffs' counsel. She wanted to tell her story and be part of changing the law. She wants people to know that abortion is healthcare and that these laws are not protecting women.

154. Jessica continues to grieve. She was terrified to get pregnant naturally again in Texas, but because she and her husband still really want a child, she opted for IVF.

155. Jessica is pregnant again now. While she is excited at the thought of having the child she has long awaited, she is terrified of potential complications given the callousness of Texas's laws, which added an additional layer of trauma to her prior pregnancy.

156. Jessica's claims relate both to her current pregnancy and to any future pregnancies and are capable of repetition but evading review. Jessica sues on her own behalf.

I. Samantha Casiano

157. Samantha Casiano is 29 years old and lives in East Texas.

158. Samantha and her partner live in a mobile home with their four children and their goddaughter. Samantha is a busy working mom with a large extended family.

159. Samantha's youngest child was only around 3 months old when she found out she was pregnant again. Samantha was initially excited, but at her 20-week anatomy scan in December of 2022, everything changed. After a long pause during her ultrasound, the doctor entered the room. Without providing Samantha with much explanation of the condition, Samantha's doctor told her that her baby had anencephaly and that the condition was incompatible with life. Samantha was devastated.

160. Samantha immediately asked what her options were. But her doctor's response was, "You have no options. You will have to go through with your pregnancy." Her doctor gave her a prescription for an anti-depressant.

161. Samantha's doctor did not mention the option of leaving the state for abortion care. She assumed her doctor was legally prohibited from doing so. Samantha and her partner investigated their options and called clinics in New Mexico and Arizona but quickly realized it would be financially impossible to make the trip. She would need somewhere to stay, a car, and a way to pay for the procedure, none of which she had. Her family only has one car, which her partner uses to drive an hour and a half to work every day. She also could not miss work or find childcare for her five children.

162. Samantha realized she would have to carry the pregnancy to term.

163. In January, Samantha's doctor wrote her employer a letter, saying that Samantha would need to work from home until she delivered. The doctor's letter said that Samantha's baby had been diagnosed with anencephaly, which is incompatible with life, and that her pregnancy was high risk. Samantha was relieved, as it was excruciating to have people congratulating her, rubbing her belly, and asking questions about her plans for the new baby. Repeatedly having to tell people her baby would not survive made everything worse.

164. As the months wore on, Samantha tried to focus on something positive. She wanted to donate her baby's organs because then there might be a purpose to this pregnancy. But she learned that babies with anencephaly are not eligible for donation.

165. Eventually, all she could think about was that she and her partner needed to bury their daughter and she did not know how they would be able to afford a funeral. She reached out to a Christian pro-life non-profit that paid for professional maternity photos and said they would

help her raise the money. They generated almost no donations. She also started a GoFundMe to pay for the funeral, but that too did not yield much money. Samantha started her own fundraising campaign, including selling *menudo*, a spicy Mexican soup, by the bowl.

166. Samantha grew weary of hearing the phrase "I'm sorry."

167. Samantha read about this lawsuit after it was filed, and she reached out to both a reporter and Plaintiffs' counsel. She wanted people to know her story.

168. At the end of April, Samantha went into labor several weeks early. She panicked. She had not had enough time to raise the money she needed for the funeral.

169. At the hospital, Samantha learned her baby was breech, meaning the fetus was positioned backwards for delivery. Because vaginal delivery can be complicated and dangerous and risk injuring the baby, Cesarean section is recommended for a breech baby. But there was no talk of a Cesarean here. Samantha noted the hypocrisy of treating her daughter like a healthy baby *only* while she was in utero.

170. Samantha gave birth to her daughter and named her Halo. Halo only lived for 4 hours. During those hours, as Samantha watched her daughter gasp for air, she knew for sure she wanted to tell her story publicly.

171. After Halo passed, Samantha's milk came in.

172. Samantha received multiple calls from Texas Women, Infants, and Children ("WIC") to congratulate her on the birth of her baby and update her Medicaid. Each time, Samantha had to tell them that Halo had passed.

173. When it came time to plan Halo's funeral, Samantha and her partner got multiple quotes for thousands of dollars. They found a simple graveside service they could afford and

scheduled it for a Friday morning. When the funeral home tried to charge them an additional $1,100 because it was Good Friday, Samantha cried until they agreed to waive the extra fee.

174. Samantha also connected with an NPR reporter, and after they published a story about her, people donated to her GoFundMe. By then, the simple funeral was already over. But Samantha is thankful she will now be able to buy a headstone.

175. Samantha believes that she should have had the choice and the right over her body and her daughter Halo's body. She wanted to be able to put her daughter to rest earlier, since she was going to have to rest either way. Samantha hopes that the law will change and no one, including her children, will have to go through this again.

176. Samantha's claims are capable of repetition but evading review. Samantha sues on her own behalf.

J. Taylor Edwards

177. Taylor Edwards is 30 years old and lives in Austin, Texas.

178. Taylor and her husband have always wanted to have kids but struggled to get pregnant. Taylor has PCOS, which interferes with ovulation, so they began fertility treatments and IVF. After two years of treatments, Taylor finally got pregnant in November 2022.

179. At first, everything was fine. Taylor had some bleeding at 12 weeks, but ultrasounds showed that the pregnancy was developing normally. Taylor did NIPT genetic testing that came back normal. Taylor and her husband learned they were having a girl and named her Phoebe.

180. Because Taylor had conceived with IVF, her doctor recommended that she do her anatomy scan early, at 17 weeks. That is when everything changed. In February 2023, her MFM specialist told her the baby was measuring unusually small and diagnosed the baby with encephalocele, a bubble-like protrusion on the base of the skull that causes the brain matter to herniate out of the skull. Taylor's MFM told her that no fetal surgery could correct the issue and

that her baby would die at birth and may not even survive the pregnancy. The MFM gave her the name of an abortion clinic in New Mexico but could not advise her further.

181. Taylor sought a second opinion from another MFM who confirmed the diagnosis. Taylor also spoke to her OB/GYN, who said the baby would never be able to breathe on her own.

182. Her doctors counseled her that there was a high risk her baby would not survive to birth and that continuing the pregnancy carried risks for her. Taylor decided she needed an abortion. Her doctors told her that if this had happened a year and a half ago, they could have offered her the care she needed in Texas, but not anymore.

183. The logistics were daunting. Taylor could not use her medical insurance to pay for the abortion. They had to sort out flights, hotels, and transfer of medical records. She and her husband felt like they were completely on their own.

184. Taylor made an appointment at a clinic in New Mexico recommended by her doctor, and she and her husband booked plane tickets. But three hours before their flight was scheduled to leave, the clinic called to say that due to a shortage of medication needed for the procedure, they had to cancel her appointment. Taylor was shocked. She tried to get an appointment at another clinic in New Mexico, but none were available.

185. Taylor started to panic. She worried that by the time she got an appointment, she would be too far along to get an abortion. She started vomiting every day and struggled with the physical and emotional weight of her situation. She also felt like a fraud, walking around pregnant with a baby that would never live.

186. She searched for help online and eventually found a clinic in Colorado with appointments. She traveled to Colorado to receive her abortion.

187. When Taylor returned from Colorado, she saw news about this lawsuit. She was connected to a reporter and Plaintiffs' counsel and decided she needed to tell her story too.

188. Taylor and her husband were back at square one with IVF. She and her husband still wanted a child, but trying again was complex, especially in Texas. Before trying again, Taylor had to have an operative hysteroscopy to repair her uterus, a procedure which her doctor told her was more complex because of the two-week delay in obtaining abortion care.

189. Taylor is currently pregnant again, and while she is excited and hopeful, she is also feels like she is living in the shadow of Texas's laws. She is terrified of being in the same situation again where she cannot get the medical care she needs.

190. Taylor's claims relate both to her current pregnancy and to any future pregnancies and are capable of repetition but evading review. Taylor sues on her own behalf.

K. Kiersten Hogan

191. Kiersten Hogan is 30 years old and lives in the Dallas-Fort Worth area of Texas.

192. Kiersten was living in Oklahoma in June 2021 when she found out she was pregnant. She had long-ago been diagnosed with PCOS, had a history of miscarriages, and had been told when she was a teenager that she could not have children. So, after she missed her period and got a positive pregnancy test, she was surprised but excited.

193. Soon after learning she was pregnant, however, Kiersten started bleeding. She went to the emergency room at a hospital near her home in Oklahoma. After an ultrasound, Kiersten was told that everything looked normal, and that she should rest and abstain from sexual activity. She was relieved.

194. Kiersten lived with her boyfriend, who was physically and emotionally abusive. When he found out she was pregnant, he became violent with her and told her they would have to leave the state for her to get an abortion. Kiersten did not want an abortion. She wanted the baby.

So she decided to wait until her boyfriend was traveling for work, then packed up her things and left.

195. After staying with family briefly, Kiersten came to Waco, Texas, to stay with a friend. She immediately started looking for a job and a place to live. Things were looking up.

196. In August 2021, when she was around 13 weeks pregnant, she started bleeding again, this time passing large clots. She rushed to the emergency room and explained that she had a history of miscarriages and bleeding during this pregnancy. Once again, she was told that everything looked normal, and that she should go home, rest, and abstain from sexual activity.

197. Over the next several weeks, Kiersten tried to take it easy, though she continued to experience bleeding and cramping. She found a new job and a place to live and moved all of her possessions. Shortly after, she started her new job.

198. On September 30, 2021, just weeks after S.B. 8 had taken effect, and days after Kiersten had settled into her new life, she thought her water broke. She was only around 19 weeks pregnant and panicked.

199. Kiersten was rushed to the hospital and admitted where she learned that her amniotic sac was protruding out of her cervix. The diagnosis was cervical insufficiency, and she was told that if it had been diagnosed earlier, she could have had a cerclage procedure to prevent her cervix from dilating prematurely. Now it was too late. While she would likely lose the pregnancy, there was a small chance the sac would recede. In the meantime, they would keep her in the hospital for monitoring.

200. But her water broke a few hours after arriving at the hospital. Kiersten asked what her options were and was told that because of the new Texas law, as long as her baby had a heartbeat, she did not have any options. She would need to stay in the hospital on bedrest until she

either went into labor or got sick enough for the hospital to give her an abortion. She was told that if she tried to leave the hospital, it would be used as evidence that she was trying to kill her baby; that if she tried to do anything to end her pregnancy, criminal charges could be brought against her.

201. On multiple occasions, religious counselors came to visit her, even though she had declined pastoral care. One nurse told her that because of the hospital's religious affiliation, they cared more about fetuses than pregnant women.

202. Kiersten was terrified and felt trapped inside the hospital walls. She was afraid to even go to the bathroom for fear that she would cause herself to go into labor and be arrested. Four days later, on the afternoon of October 4, Kiersten went into labor in the hospital bathroom and delivered her son stillborn.

203. On the morning of October 5, Kiersten was discharged.

204. Texas law caused Kiersten to be detained against her will for four days and made to feel like a criminal, all during the biggest medical emergency of her life.

205. When Kiersten saw news reporting about this lawsuit, she reached out to Plaintiffs' counsel because she wanted to tell her story too.

206. Kiersten's claims are capable of repetition but evading review. Kiersten sues on her own behalf.

L. Lauren Van Vleet

207. Lauren Van Vleet is 27 years old and lives in Jarrell, Texas.

208. Lauren V. and her husband have always wanted children, so they were excited when she got pregnant in October 2022. Her initial bloodwork and ultrasounds were all normal. They learned the baby was a boy and named him Rowan.

209. Lauren V. was scheduled to have her anatomy scan at 20 weeks. However, there was a terrible snow and ice storm that caused widespread power outages and several deaths throughout Texas. Lauren V.'s anatomy scan was rescheduled for two weeks later.

210. At her anatomy scan in February 2023, Lauren V. learned that her baby's skull was not developing properly. Her OB/GYN said it was anencephaly.

211. Lauren V. had an appointment with a high-risk specialist the next day who confirmed the diagnosis and told her that her baby would not survive. Lauren V. was advised that she could either continue the pregnancy or she could go to Colorado or New Mexico for an abortion. Her doctor told her that due to Texas's laws, there was nothing they could do but wait for the baby's heart to stop beating or for her to carry the pregnancy to term.

212. Lauren V. was devastated and had a sudden and suffocating feeling of guilt. She feared that she had done something wrong. Nonetheless, Lauren V. knew that she wanted an abortion.

213. Due to the delay in getting her anatomy scan, Lauren V. was already 23 weeks pregnant and concerned that she would have trouble finding a clinic, even one out of state, with appointments and the ability to provide her with abortion care.

214. Lauren V.'s aunt lives in Maryland, so Lauren V. looked for a provider there. Her family helped her with the logistics, and she got financial support for the procedure. All the while, Lauren V. was terrified about legal liability and avoided texting anyone about her plans.

215. By the time Lauren V. arrived at the clinic for her abortion, she was 24 weeks pregnant. She received the abortion and has spent the last several months trying to heal.

216. When this lawsuit was filed, Lauren V. read about the case with keen interest, particularly because Lauren H.'s story was so similar to her own.

217. Lauren V. wrote a letter to Lauren H., sent it to Plaintiffs' counsel, and asked them to pass it on to her. The letter read, in part: "[I]t wasn't until I read your story on the news and then again in the lawsuit that I actually felt like I had made the right choice. I am so sorry for your loss but I am also very happy to see you fighting for our rights as mothers to make informed decisions about our own bodies and health without feeling like we are committing a terrible crime. Know that you have so many people in your corner and I will be cheering you on as loudly as I can."

218. In the spring of 2023, Lauren V. decided to join this lawsuit.

219. In the fall of 2023, Lauren V. was thrilled to learn she was pregnant again. She quickly began to experience worrying symptoms, however, including bleeding and abdominal pain. Her physician performed an ultrasound and informed Lauren V. that her pregnancy was likely ectopic, and she should continue to monitor her symptoms and return for additional ultrasounds.

220. The next day, Lauren V. started experiencing severe pain on the right side of her abdomen—a telltale sign of ectopic pregnancy—so rushed to the emergency room for further examination. At the emergency room, Lauren V. was once again told her pregnancy was likely ectopic and warned that continuing the pregnancy risked her future fertility and her life. Lauren V. requested methotrexate to terminate her pregnancy, and after seven hours in the emergency room, she received the treatment.

221. Lauren V. was devastated to once again have to terminate a wanted pregnancy to save her life. She continues to want to have children, but she is scared to be pregnant again in Texas.

222. Lauren V.'s claims are capable of repetition but evading review. Lauren V. sues on her own behalf.

M. Elizabeth Weller

223. Elizabeth is 27 years old and lives in Kingwood, Texas.

224. Elizabeth and her husband learned she was pregnant at the beginning of 2022. They had just started trying for a baby, so they were both taken aback and excited. They immediately started planning everything, from their pregnancy announcement to designing the nursery.

225. Elizabeth and her husband opted not to do any genetic testing during her pregnancy because she knew she would want to continue the pregnancy even if her baby had a disability. Elizabeth herself was born with a physical disability, brachial plexus Erb's palsy, which causes partial paralysis of her right arm.

226. Elizabeth was diagnosed with gestational diabetes and began taking medication to control her blood sugar. Otherwise, her pregnancy progressed relatively smoothly. Her anatomy scan revealed no issues. They learned the baby was a girl.

227. But on May 10, 2022, Elizabeth was 19 weeks pregnant when her water broke. Immediately, she knew what it meant. Shocked and terrified, Elizabeth rushed to the emergency room. Once at the hospital, she was told that while her cervix was still closed, she had lost a lot of amniotic fluid.

228. Elizabeth was admitted to the hospital but felt extremely uneasy. Hospital staff told her: "At this point, we just have to hope and pray that it all comes together." They told her to pray as well. Elizabeth felt like she was not getting information about the true severity of her situation and that some staff might even be lying to her.

229. Elizabeth called her OB/GYN who explained that at 19 weeks, the baby was not developed enough to survive and that if she chose to remain pregnant, the baby's chances of survival were almost zero. Her OB/GYN also told her that if she did not terminate the pregnancy, she could get an infection that could cause her to lose her uterus or even her life.

230. That night, Elizabeth and her husband talked at length and decided they wanted to terminate the pregnancy. There was no reason to prolong their suffering and risk Elizabeth's health when their baby would never survive.

231. In the morning, Elizabeth's OB/GYN visited her in the hospital and Elizabeth confirmed that she wanted to terminate the pregnancy. Her OB/GYN said that she needed to clear the procedure with the hospital administration. At this point, Elizabeth was already passing blood clots and began taking a course of prophylactic antibiotics prescribed by the doctor.

232. But hours later, her OB/GYN returned and gave her the bad news: Elizabeth wasn't sick enough to get an abortion. Specifically, because Elizabeth had started antibiotics that were already fending off any infection, she had put herself in a legal grey area. Elizabeth was told that she could either discontinue antibiotics and stay in the hospital to wait to develop an infection and get sicker, or she could go home and look out for signs of infection. Elizabeth chose to go home.

233. For the next three days, Elizabeth's physical, mental, and emotional health deteriorated. She was vomiting constantly and in abdominal pain. Amniotic fluid would not stop leaking out of her body. She checked her temperature every hour and obsessively monitored the color and smell of her vaginal discharge. She was in a terrible mental state, grappling with the fact that her daughter was dying inside of her.

234. On May 13, Elizabeth went to her OB/GYN's office for an ultrasound to determine if the baby still had a heartbeat. The baby did. Elizabeth asked if she should leave the state to seek care, and her doctor said she could leave if she felt comfortable doing so, but that she might bleed out and risk death on the way. Dejected, Elizabeth was leaving her doctor's office when she felt another gush of liquid. This time, her discharge was finally yellow and foul smelling. Elizabeth collected a sample to bring to the hospital as proof.

235. That night, Elizabeth was admitted again and diagnosed with chorioamnionitis. A medical board reviewed her case and finally approved her abortion. Elizabeth was given the medication to induce labor. Her daughter did not survive.

236. While Elizabeth recovered physically, she was outraged about what happened to her. She reached out to lawyers, reporters, and even the Texas Medical Board for help. The Texas Medical Board told her that she could submit a formal complaint against her doctor. But Elizabeth did not blame her doctor—to the contrary, Elizabeth felt her doctor was her only advocate throughout the traumatic incident. Ultimately, the complaint went nowhere.

237. Elizabeth's experience made her feel like she was deserving of punishment and specifically, that the state of Texas wanted her to suffer. She felt emotionally traumatized, depressed, and inadequate. It was as though because she had failed to carry a wanted pregnancy to term, she deserved to be slowly tortured. This feeling of punishment only made the process of healing worse. It felt like a cruel and unusual reminder by the state that she was inadequate, and therefore deserved this punishment.

238. Elizabeth thought: if I don't speak out, who will? But after telling her story to a reporter at NPR, Elizabeth was inundated with other media requests, and decided it was all too much. At the time, she was finishing graduate school and had to focus on healing and her graduate studies.

239. When Elizabeth saw news reports about this lawsuit, however, she knew she wanted to do something more and reached out to Plaintiffs' counsel.

240. Elizabeth and her husband still want children, but they struggle to grapple with the idea as well as the serious risks associated with being pregnant again in Texas.

241. Elizabeth's claims are capable of repetition but evading review. Elizabeth sues on her own behalf.

N. Kristen Anaya

242. Kristen Anaya is 41 years old and lives in the Dallas-Fort Worth area of Texas.

243. Kristen and her husband had been married for several years when they decided they wanted to have children. Kristen has a 21-year-old son from a prior relationship, but she and her husband wanted to have a child together.

244. Kristen initially struggled to get pregnant and began seeing a reproductive specialist. She and her husband decided to try IVF and after two rounds of egg retrievals, they had only one healthy embryo. They transferred the embryo and were thrilled to learn, in January 2023, that Kristen was finally pregnant.

245. At first, Kristen's pregnancy proceeded smoothly. Because part of her cervix was removed in 2013, she attended prenatal appointments every two weeks as a preventative measure.

246. But in April, when Kirsten was 16 and a half weeks pregnant, she started experiencing strange symptoms. At first, she lost what she thought was her mucus plug. She tried not to panic. But within two hours, Kristen's water broke. Kristen immediately called her OB/GYN, who told her to go to the hospital. On the way to the hospital, Kristen started experiencing severe cramping.

247. Once at the hospital, Kristen continued to lose amniotic fluid. She spiked a fever immediately and began having rigors, or uncontrollable shaking, which was so violent that her nurse had trouble placing an IV. An initial ultrasound showed that Kristen had already lost nearly all her amniotic fluid. Later, Kristen would learn these symptoms are all early signs of sepsis.

248. When Kristen was able to consult with her doctor, she learned that without amniotic fluid, her pregnancy could not continue. Kristen and her husband realized then that there was nothing that could be done to save their little girl, who they had already named Tylee.

249. Kristen's doctor also told them that to stop the infection, they would need to induce labor and perform an induction abortion. But because Tylee still had a heartbeat, they would not be able to provide the abortion until Kristen's life was in danger. In other words, before she would provide the abortion, they had to "build a case that her life was in great danger to persuade the hospital to approve her abortion." Kristen's doctor was frustrated, saying she wanted to do what was best for Kristen, but that she had no choice but to wait for Kristen's health to deteriorate. Kristen and her husband were in shock.

250. Over the next 22 hours, hospital staff continued to monitor Kristen's white blood count, lactic acid levels, and her baby's heartbeat. Several times, Kristen's doctor presented her case to hospital administration who said Kristen was not yet sick enough.

251. The hours ticked by. Kristen's fever climbed higher. Staff covered her in ice packs. She was freezing and shaking uncontrollably and vomiting constantly. Kristen and her husband were terrified, they would ask for help, but the doctors and nurses said little. It was clear that the doctors' and nurses' hands were tied, and they felt helpless that they couldn't do anything.

252. Finally, about 22 hours after she was admitted to the hospital, the hospital approved the abortion. Because it was Sunday and the hospital was understaffed, Kristen had to wait another hour until the relevant paperwork was uploaded to the hospital's internal system before the induction could begin.

253. At the same time doctors began Kristen's induction abortion, they also began the sepsis protocol. Kristen was told that she could not have an epidural because her infection was

already too developed. Kristen was offered fentanyl, but she was afraid to take it, so they gave her Tylenol and Ibuprofen to manage the pain. After several hours of contractions and passing blood clots, Kristen finally delivered and was told that Tylee passed. Immediately, Kristen's fever subsided and the vomiting stopped.

254. Staff tried to deliver Kristen's placenta, but because it was infected, the placenta was shredding apart. Kristen was given two more rounds of medication to try to deliver the placenta, but it was unsuccessful. Ultimately, her doctor had to perform a dilation & curettage ("D&C") procedure to remove the placenta.

255. Kristen spent five days in the hospital. She had two blood transfusions because her hematocrit and hemoglobin levels were so low. Slowly, she recovered from the septic infection and eventually returned home.

256. Once home, Kristen continued to experience abdominal pain and was passing blood clots and placental tissue. She eventually returned to the hospital for another procedure to remove additional placental tissue.

257. A couple of weeks after her experience, Kristen shared her story on Facebook. She wanted her friends and family to understand what Texas's law had done to her.

258. The day after sharing her story on Facebook, a friend messaged Kristen telling her to turn on the TV. Kristen saw news reports about this lawsuit being filed. Kristen knew she needed to join and needed to have her voice shared as well. Reporters began reaching out to Kristen on Facebook.

259. After Kristen saw that eight additional women had joined this case, she reached out to Plaintiffs' counsel.

260. Realizing that this had happened to so many other women in Texas made Kristen think that the more people that come forward with their stories, the more likely that the law will change. Kristen believes that her doctor tried her best to protect her but didn't have any options and is frustrated by the idea that her doctor is nonetheless to blame.

261. Kristen and her husband still want to have children but fear for Kristen's safety if she gets pregnant again. Kristen and her husband are currently going through IVF again. They believe they have identified a gestational surrogate who will carry for them. But the potential surrogate also lives in Texas.

262. Kristen's claims are capable of repetition but evading review. Kristen sues on her own behalf.

O. Amy Coronado

263. Amy Coronado is 37 years old and lives in Houston, Texas.

264. In April 2022, Amy and her husband were excited to learn that she was pregnant. They had been trying for some time to expand their family and a prior pregnancy had already ended in miscarriage. Amy and her husband started to announce the news to family and friends.

265. Amy's pregnancy proceeded smoothly at first. Amy and her husband learned they were having a girl and named her Emma Bobbi in honor of Amy's brother who had passed away that same year.

266. Amy was scheduled to have her anatomy scan at 20 weeks. However, because of conflicts with her work schedule, Amy's anatomy scan had to be rescheduled.

267. In August 2022, when Amy was 23 weeks pregnant, she finally had her anatomy scan. During her scan, Amy immediately sensed that something was wrong. The technician conducted the ten-to-fifteen-minute scan in silence before leaving to speak with the doctor. When the technician returned, she said that the doctor wanted to speak with Amy and her husband in

another room. When the doctor finally arrived, he told Amy and her husband that their daughter had a cleft lip and palate, which are symptoms consistent with serious fetal conditions. He referred Amy to an MFM specialist in fetal intervention for further testing.

268. At her next appointment, Amy received devastating news. According to the specialist, Amy's daughter's brain had not properly developed, and the test results were consistent with alobar holoprosencephaly. The specialist told Amy and her husband that based on his observations, there was little to no chance their daughter would survive for long after birth if she even made it to term. The specialist informed them that if Amy continued the pregnancy to term, she would continue to face risks to her own health from the pregnancy, risks arising from her gestational diabetes, and risks of serious infection if her daughter died before Amy went into labor.

269. Amy sought a second opinion from a different MFM specialist, and made an appointment on August 25, 2022, the same day the trigger ban took effect. This MFM confirmed the diagnosis and told her that normally, they would be able to refer her to a local specialist for an abortion procedure but with the change in law, they no longer had local options. He said he was now at a loss for what to do for patients like Amy.

270. With no other option in Texas, Amy and her husband held out hope for a better diagnosis. They pursued all available tests to confirm the diagnosis and its severity. In early September, Amy went for an amniocentesis that again indicated that her daughter had holoprosencephaly and ruled out genetic causes. A few weeks later, Amy received the results of an MRI that confirmed "multiple brain anomalies" consistent with alobar holoprosencephaly, including that the brain had not separated into two hemispheres, and key parts of the cerebrum appeared fused. The MRI also showed that her daughter had a cleft lip and palate and eyes that were very close set together.

271. After receiving the MRI results, Amy made an appointment for an abortion in Alburquerque, New Mexico. She and her husband considered flying but last-minute tickets were too expensive, so instead, they drove 13 hours straight. After two days of cervical dilation, Amy received her abortion. The day after her procedure, Amy and her husband held their daughter and said their goodbyes before starting the 13-hour drive back home. Altogether, they spent four nights in New Mexico.

272. Amy's insurance would not cover the out-of-state procedure, and she was forced to pay out-of-pocket. Between the cost of the procedure, the gas for the drive, and the four-night hotel stay, the abortion was incredibly expensive, and she is still paying off the bills. Amy is grateful for the support of family without whom she would have had to continue the pregnancy to term.

273. In November 2023, Amy saw a TikTok story from a woman who had received the same fetal diagnosis and had also been denied an abortion due to her state's abortion laws. The woman, Allie Phillips, is now suing the State of Tennessee for forcing her to choose between risking her life and obtaining medical care out-of-state. Hearing Allie's story gave Amy comfort that she is not alone in her experience. After watching Allie's TikTok story, Amy contacted Plaintiffs' counsel. Amy wanted to tell her story and be part of changing the law.

274. Amy still struggles to process the trauma of being forced to flee Texas for an abortion, far from supportive family and her home. Amy and her husband continue to grieve.

275. Amy and her husband are eager to try again for a baby, but they fear being forced to again flee Texas for necessary medical care. She fears for her own health and safety if she gets pregnant again.

276. Amy's claims are capable of repetition but evading review. Amy sues on her own behalf.

P. Kaitlyn Kash

277. Kaitlyn Kash is 36 years old and lives in Austin, Texas.

278. Kaitlyn and her husband had their first baby in 2018. They loved being parents and knew early on they wanted to have more children.

279. Kaitlyn learned she was pregnant again in August 2021. Her family was elated.

280. Initially, Kaitlyn's pregnancy progressed as expected. The results of her first trimester NIPT screening showed no cause for concern.

281. In October 2021, Kaitlyn scheduled her 13-week ultrasound. Assuming everything looked good, she and her husband were planning to start sharing the news with her friends and family after the ultrasound. During Kaitlyn's ultrasound, however, her doctor informed her that the baby's extremities were shorter than expected, and while Kaitlyn should not panic, she should consult an MFM specialist immediately.

282. The next day, Kaitlyn met with an MFM specialist, who conducted a detailed ultrasound. After the staff meticulously measured every part of the baby's body, the MFM told the technician and the nurse to leave the room and put the ultrasound away. Kaitlyn and her husband realized there was something wrong.

283. The MFM explained that Kaitlyn's baby had severe skeletal dysplasia, a condition affecting bone and cartilage growth. While this condition usually is not detectible at 13 weeks, the case was so severe that the condition was obvious on ultrasound. The doctor could already see bowing of bones in all the extremities and clubbed feet and hands. In cases this severe, the doctor explained, the likelihood of future skeletal development problems, including stunted ribcage growth and fragile bones, was very high. The MFM explained that the likelihood of surviving birth was low, and if the baby survived, once they took the first breath, the baby would likely suffocate.

Even in the best case scenario, with extensive medical intervention, the baby would likely never be able to leave the hospital.

284. It was only a couple weeks after S.B. 8 took effect, and Kaitlyn's MFM seemed hesitant to talk about abortion. Kaitlyn repeatedly asked what the best options were to ensure the least amount of suffering for her baby, and the MFM just kept saying Kaitlyn would need to focus on determining how much lifesaving intervention she wanted for her baby at birth. She even asked the specialist if a termination would be something to think about given the severity of their case and the doctor responded they couldn't say anything more about it. Instead, the specialist recommended "a second opinion, but outside Texas." The MFM proceeded to list states where Kaitlyn could seek a second opinion, all states where abortion is legal.

285. Kaitlyn knew that she had to flee Texas to get an abortion. She didn't want to carry a child only to watch it suffer and die.

286. A few days later, Kaitlyn and her husband travelled to Kansas for an abortion. She feels lucky that she had the resources to book last minute travel and was able to stay with family in Kansas. Due to Kansas law, Kaitlyn had to first sign and date consent forms before waiting 72 hours to schedule the procedure. The clinic was surrounded by protestors who harassed Kaitlyn and other patients at the entrance. Kaitlyn had her abortion and flew back to Texas.

287. Kaitlyn and her husband were devasted. Kaitlyn developed depression and she started therapy to help grieve her loss. Even though they were afraid of having to endure the same thing again, both Kaitlyn and her husband wanted to have another child. So as they continued to grieve, they kept trying to get pregnant.

288. A couple of months after her abortion, Kaitlyn learned she was already pregnant again. Kaitlyn and her husband were excited but apprehensive. Their biggest fear was to lose a baby again.

289. When Kaitlyn was seven weeks pregnant, she had a miscarriage. Her doctor prescribed medication to help her body pass the pregnancy. But because the drug she was prescribed is also used for medication abortion, her doctor had trouble finding a pharmacy that would fill the prescription. The pharmacists wanted proof that Kaitlyn's pregnancy had no cardiac activity.

290. Shortly thereafter, Kaitlyn got pregnant again. Both Kaitlyn had another miscarriage, and this time passed the pregnancy without medical intervention.

291. Kaitlyn and her husband began to feel hopeless and consulted with a reproductive health specialist and who recommended they start IVF. Kaitlyn learned how to inject herself.

292. Kaitlyn had previously worked at the March of Dimes, a nonprofit organization that focuses on improving maternal health care. Her own experience navigating abortion care in Texas reminded her of the work she had done advocating to protect pregnant people in Texas.

293. In the fall of 2022, after an IVF implantation, Kaitlyn learned she was pregnant again. This was her fifth pregnancy. Kaitlyn and her husband were elated but remained anxious for the duration of her pregnancy. Fortunately, her pregnancy progressed safely and their daughter was born in July 2023.

294. While Kaitlyn is stable now, her delivery was extremely traumatic. Kaitlyn's medical team delivered her daughter without incident but had trouble delivering her placenta. Kaitlyn needed a D&C procedure to remove retained placenta tissue in her uterus, but the hospital was short staffed and struggled to locate the equipment and staff they needed for the procedure.

While Kaitlyn was waiting for the procedure, she began vomiting, lost consciousness, and lost so much blood that she was eventually transferred to the ICU. When she awoke, Kaitlyn was told she was lucky she did not lose her uterus. Kaitlyn still struggles to understand why the hospital had so much trouble providing her with routine postpartum care. She still has elevated liver enzymes that may be the result of the amount of blood she lost.

295. Kaitlyn's claims are capable of repetition but evading review. Kaitlyn sues on her own behalf.

Q. D. Aylen

296. D. Aylen is 33 years old and lives in San Antonio, Texas.

297. Aylen and her husband have been married for five years and always knew they wanted to have a family. She is originally from Argentina and saw her parents sacrifice so much to bring her to this country. Before becoming a mom, Aylen wanted to realize some of her own career goals. After finishing graduate school and securing an executive leadership position at a nonprofit organization, Aylen felt like it was finally the right time to start a family.

298. Aylen started taking prenatal vitamins, and around six months later, in April 2022, on the day her and her husband moved to a new house, she learned she was pregnant. Aylen and her husband were elated. They felt like they were starting a new chapter in their lives.

299. During her first trimester, Aylen was apprehensive but optimistic. One of her friends had had an early miscarriage, and Aylen worried the same thing would happen to her. But as her pregnancy progressed into the second trimester, Aylen and her husband started to prepare for their baby. They bought furniture for the nursery. Aylen never missed a prenatal appointment.

300. At around 17 weeks, Aylen had routine blood work done at one of her appointments. A couple of days later, she received a call from her OB/GYN and immediately thought there was something wrong. Her doctor explained that the results of her test indicated that

her baby possibly had a neural tube defect, like anencephaly or spina bifida, and referred her to an MFM specialist.

301. For the next several weeks, Aylen and her husband worried about the fate of their baby. While they hoped for the best, they decided that if their baby had a fatal condition, Aylen would have an abortion.

302. At 19 weeks, Aylen had her anatomy scan appointment with the MFM specialist. The specialist explained that based on Aylen's blood work, her hCG levels were ten times the expected amount, and the sonogram would likely only confirm a neural tube defect.

303. As her sonogram began, Aylen knew immediately things were not right. Sure enough, her doctor quickly confirmed the baby had anencephaly. Aylen could tell that the doctor wanted to help them but was unable to do so. Aylen told the doctor said she wanted an abortion but knew she would be unable to do so in Texas under its abortion laws. The doctor gave Aylen a pamphlet for an abortion clinic in New Mexico.

304. Aylen and her husband were devastated. They tried to do everything right throughout her pregnancy, and still, the worst had happened. Aylen felt that both she and her baby would be punished even more if she continued the pregnancy.

305. Aylen and her husband started calling clinics in surrounding states, but the wait times for appointments ranged from 4 to 8 weeks. They finally found an appointment in San Diego, California, where Aylen has family. They started making travel arrangements.

306. By the time she arrived in San Diego in August 2022, Aylen was 20 weeks pregnant. Aylen began her procedure with overnight dilation, so she spent one night in pain and unable to sleep, which was particularly challenging because she was so far from home. The next day, Aylen received her abortion.

307. Losing her child and being forced to travel to California to obtain healthcare was one of the worst moments of Aylen's life. She was thankful to be able to access the care she needed but she continues to grieve her loss.

308. Around the anniversary of Aylen's abortion, she decided she wanted to join this lawsuit to honor her baby's memory and reached out to Plaintiffs' counsel. Aylen wants to make sure that no other family has to go through what she endured. She wants to ensure other women have access to abortion, especially because she knows that other families may not have the financial resources she and her husband to travel to another state.

309. Aylen was terrified of being pregnant in Texas, but she and her husband still wanted children, so after processing their grief, they started trying again.

310. Aylen is currently pregnant again and due to give birth in March 2024. Aylen and her husband are excited but plagued by fear. Aylen goes to a support group every week. She is already seeing an MFM specialist and getting sonograms every three weeks. Aylen is taking a huge amount of folic acid, 12 pills every day.

311. Aylen's claims are capable of repetition but evading review. Aylen sues on her own behalf.

R. Kimberly Manzano

312. Kimberly Manzano is 34 years old and lives in the Dallas-Fort Worth area.

313. Kimberly and her husband met in California and were married in September 2022. They settled in Texas to be closer to her husband's family. Kimberly is a law librarian and found a job at a county courthouse. After settling in Texas, Kimberly and her husband decided they wanted to have children right away. Kimberly's husband has a traumatic brain injury and they worried they would struggle to get pregnant.

314. In the fall of 2022, Kimberly and her husband were thrilled when Kimberly got pregnant. Shortly thereafter Kimberly had a spontaneous miscarriage. Up to that time, the miscarriage was the hardest experience in Kimberly's life. But the worst was yet to come.

315. The couple continued trying, and in January 2023, Kimberly learned she was pregnant again. Kimberly and her husband were thrilled.

316. From the beginning of her pregnancy, however, Kimberly experienced troubling symptoms. First, sharp abdominal pain sent Kimberly to the emergency room. She was diagnosed with a subchorionic hematoma, a blood clot between the embryonic membrane and the uterus, a condition that usually does not affect the baby. The emergency room doctors were not concerned and recommended follow up with her OB/GYN. Kimberly and her husband were relieved.

317. When Kimberly was 7 weeks, she visited her OB/GYN and an ultrasound revealed irregular growth in the baby's spine. Kimberly was referred to an MFM specialist.

318. Kimberly was hoping the irregular growth wasn't a serious issue. At 10 weeks, a NIPT test showed low risk for any fetal conditions, and she learned she was having a boy.

319. But that same week Kimberly visited the MFM. He performed an additional ultrasound which showed that the baby was missing a limb, and his liver and intestines were outside of his body. The specialist suspected that Kimberly's baby had amniotic band syndrome, a condition that can affect the fetal growth of multiple body systems. The specialist was concerned that her baby's condition put Kimberly's health at risk. The specialist referred her to a pediatric surgeon, but also suggested that Kimberly consider an abortion out-of-state, as Texas law prevented her from receiving abortion care in Texas.

320. Kimberly and her husband were heartbroken. Hoping there was something they could do to help their baby, they sought advice from the pediatric surgeon, who told them it was

too early to make a diagnosis. They wanted to give their baby a chance to live, no matter how small, so they waited.

321. In the meantime, Kimberly and her husband decided to seek a second opinion from a different MFM specialist. After another ultrasound, the second specialist confirmed that their baby's liver and intestines were outside the body and the baby was missing one limb. This specialist did not think their baby had amniotic band syndrome, but told them that it was too early in the pregnancy to assess their baby's chances of survival. He suggested they wait until 20 weeks to get an MRI.

322. At 15 weeks, Kimberly and her husband returned to the MFM specialist for an ultrasound, just to hear their baby's heartbeat and watch him move. The specialist's opinion had not changed, but he encouraged them to maintain hope.

323. Kimberly's MRI was scheduled for May 10. Kimberly and her husband are devout Christians, and they prayed for a miracle. At the MRI scan, however, the radiologist confirmed the worst: their baby's spinal cord had not closed, the spinal fluid was leaking, the baby had not developed genitalia, had only one kidney, was missing a bladder, and had an abdominal wall defect from the cord to the pelvic area. After reviewing the MRI, her MFM specialist told them "if it was my baby I would want him to be with God now." Kimberly and her husband were devastated.

324. Kimberly also continued to fear for her own health if she continued the pregnancy. Her specialist cautioned that because the baby had no bladder, his urine was circulating in her uterus, which could lead to infection. He explained that the risk of miscarriage and stillbirth was high and if Kimberly managed to carry to term, there was little to no chance her baby would survive more than a couple of days, and he would never be able to leave the hospital. The specialist referred

them to an abortion clinic in New Mexico and explained that the longer they waited, the higher the risk of infection that could lead to infertility.

325. Kimberly and her husband were sad, angry, and terribly scared. The couple talked to their families and friends and met with their pastor. While they had always considered themselves to be anti-abortion, it became clear to them there was no other option. If Kimberly continued the pregnancy, they and their baby would suffer.

326. In mid-May 2023, when Kimberly was 18 weeks pregnant, she and her husband traveled to New Mexico for an abortion. They dropped everything, took time off work, and gathered the necessary travel and procedure costs.

327. Her husband and her continue to grieve their baby's passing. On Father's Day, they got a tattoo to commemorate and honor their baby. For both Kimberly and her husband, losing their baby is the most challenging thing they have ever been through. But the experience made Kimberly feel disgusted that people are made to feel like criminals when they must make the sacrifice she and her husband had to make. Kimberly has stopped donating to anti-abortion organizations. She now believes it is not her place to judge someone's else decision about their pregnancy.

328. In the weeks following her abortion, Kimberly's anger grew. She had seen stories about this lawsuit on social media and decided to reach out to Plaintiffs' counsel. Kimberly prays that her baby's story can spur change and wants to advocate so that no woman has to flee Texas to obtain necessary medical treatment.

329. Although being pregnant in Texas terrifies her, Kimberly and her husband still want to have children. She is currently undergoing IVF treatment.

330. Kimberly's claims are capable of repetition but evading review. Kimberly sues on her own behalf.

S. Dr. Danielle Mathisen

331. Danielle ("Dani") Mathisen, M.D. is 27 years old and grew up in the Fort Worth area, Texas, where her family still resides.

332. In 2022, Dr. Mathisen graduated from the University of Texas Southwestern Medical Center in Dallas, and she is currently an OB/GYN resident physician in Hawai'i. As an OB/GYN resident, Dr. Mathisen works in the labor and delivery unit providing obstetrical and gynecological care, including gynecological surgery and abortions.

333. In 2019, Dr. Mathisen and her now husband were married. Almost two years later, when Dr. Mathisen was in her last year of medical school, she and her husband decided they were ready to start a family. They bought a house in the Fort Worth area with an extra bedroom for a nursery, and she started taking prenatal vitamins.

334. In May 2021, Dr. Mathisen learned she was pregnant. She had always wanted to be two things in life, a fantastic doctor and an excellent mother. Her life seemed to be going as planned.

335. At first, her pregnancy seemed like it was on track. Dr. Mathisen comes from a long line of Texas doctors and her OB/GYN also happened to be her aunt.

336. At 18 weeks, Dr. Mathisen was scheduled for an anatomy scan. Dr. Mathisen's anatomy scan was scheduled at the end of September 2021, shortly after S.B. 8 took effect. As an almost OB/GYN herself, Dr. Mathisen immediately realized there was something wrong on the ultrasound. The scan revealed her baby had several fetal diagnoses, including rocker bottom feet, a hole in the spine, only one kidney, and scoliosis that distorted the baby's heart, and no formed brain structures. Dr. Mathisen's aunt told her the fetal conditions were lethal. Her baby would

likely die before delivery or soon after birth, and if the baby survived childbirth, the baby would slowly suffocate to death.

337. At this point, S.B. 8 had been in effect for two weeks and Dr. Mathisen's aunt was terrified about potentially facing liability under Texas law. She told Dr. Mathisen: "I'm so sorry, but I can't help you here" and advised her to go on a "vacation" to Colorado. Dr. Mathisen was shocked that her own flesh and blood could not help her or even openly discuss abortion due to Texas law.

338. Dr. Mathisen and her husband were devastated. They went home to discuss their options and decided that abortion was the right decision for their family. Carrying their baby to term would mean a life of suffering and trauma, and they did not want to put their baby, or themselves, through the pain. They named their baby Mini and began calling abortion clinics.

339. The clinics in Colorado were full, overflowing with Texans. Dr. Mathisen eventually found an appointment at a clinic in New Mexico for late September 2021. She and her husband started booking travel, paying cash for everything. They told everyone but their closest family, who helped them cover the costs, that they were going on a honeymoon.

340. In New Mexico, when Dr. Mathisen was 18 and a half weeks pregnant, she received her abortion. Dr. Mathisen simultaneously felt sad, angry, and terrified.

341. The morning after her procedure, Dr. Mathisen and her husband flew home. While on the flight, Dr. Mathisen submitted her medical residency applications. She still wanted to be an OB/GYN and half of her residency applications were in Texas. The next day, Dr. Mathisen went back to work and told everyone she had a miscarriage.

342. Almost a year later, on the day *Roe v. Wade* was overturned, Dr. Mathisen decided to share her abortion story on social media. She wanted people to understand how abortion bans

affect families, even those who want to have children. The responses were mixed. Some family members stopped talking to her and her husband, but many more people conveyed their support and sympathy for what she had to endure.

343. When Dr. Mathisen learned about this lawsuit, she wanted to share her experience too. Dr. Mathisen hopes to be a voice for people who can't share their abortion stories and help change the law so that no other patient in Texas has to go through the same trauma.

344. Dr. Mathisen is currently pregnant again now. While her pregnancy is currently progressing as expected and she currently resides outside Texas, the painful experience of her last pregnancy has made it hard for her to get excited. She does not feel safe when she comes back to Texas to visit her family.

345. Dr. Mathisen hopes to one day return to Texas to practice as an OB/GYN but remains conflicted. In Hawai'i, she is able to provide her patients the full spectrum of reproductive care, including abortion. She uses her own abortion experience to be a more compassionate OB/GYN—she can assure patients experiencing a pregnancy loss or seeking an abortion that they are not doing anything wrong. At the same time, she is hesitant to start her own family so far away from her support system and the place she always called home.

346. Dr. Mathisen's claims are capable of repetition but evading review. Dr. Mathisen sues on her own behalf.

T. Cristina Nuñez

347. Cristina Nuñez is 36 years old and lives in El Paso, Texas. She is originally from Mexico and has been living in Texas for almost a decade.

348. Since a young age, Cristina has had to deal with several medical conditions. When she was a child, she was diagnosed with diabetes and hypertension. Later, Cristina developed other cardiovascular issues, anemia, and vision loss. Cristina currently has end-stage renal disease,

diabetic chronic kidney disease, renal failure, and is waiting for a kidney transplant. She has been undergoing dialysis several times per week since August 2021. Due to her medical conditions, Cristina has been unable to work since the winter of 2019.

349. Because of her medical history, Cristina's doctors had always advised her that she should never get pregnant. But in May 2023, Cristina shocked and scared to learn she was pregnant.

350. Cristina always thought pregnancy was a beautiful thing, but she was apprehensive due to her medical history.

351. She immediately informed her doctors at the dialysis center about her pregnancy who referred her to an OB/GYN. She was only six weeks pregnant. The OB/GYN explained to Cristina that her pregnancy was "very high risk" due to her medical conditions. Continuing the pregnancy would require receiving medical care from six different types of doctors, including a nephrologist, who specializes in kidney care, a nutritionist, and an endocrinologist. Her OB/GYN also explained that even if the pregnancy progressed, she would need to be induced at around five months because of the risks to hear health and that in all likelihood, either she, the baby, or both, would die.

352. Cristina told her OB/GYN she wanted an abortion, but the OB/GYN said that abortion was prohibited in Texas except when a patient's life was at risk, so the OB/GYN would present Cristina's case to the hospital administration to determine if she qualified under this exception.

353. Cristina never heard back from the OB/GYN and thinks the doctor was too afraid to even present her case to the hospital.

354. Over the next couple weeks, Cristina's health rapidly deteriorated. Her blood pressure and diabetes worsened. She had to increase her dialysis from two to three hours a day, three times a week, to six hours a day every single day. The dialysis became more painful because her blood was constantly clotting. Doctors would have to stop the dialysis halfway through the session to switch to her other arm. Cristina needed a special medication that would help with the blood clots, but the dialysis center was unable to obtain the drug. Cristina felt like she was slowly dying.

355. Cristina reached out to a second OB/GYN. Cristina explained her medical history to the doctor and that she wanted an abortion. Cristina only speaks Spanish, and because her doctor did not speak Spanish, the doctor's assistant attempted to translate. The assistant explained to Cristina that they could not provide her an abortion due to Texas's laws, and that she needed to figure out how to get an abortion in New Mexico. Cristina was shocked and frustrated.

356. Cristina knew she had to get an abortion to save her life. Cristina tried to make an appointment in New Mexico, but she was told she was not eligible for medication abortion because of her preexisting medical conditions, and she was too early in pregnancy to get a surgical abortion. The medical staff in New Mexico told her that due to her medical conditions, getting an abortion in a hospital would be the safest route. Cristina didn't know what to do.

357. Cristina's symptoms continued to worsen. She developed a strong, sharp pain in her arm and her dialysis treatments became so painful that she considered stopping the treatment. Her arm had turned red from the blood clots. The doctors were afraid she would die if she stopped the treatment. When Cristina said she might stop dialysis, her doctors wanted her to sign a document attesting they were not at fault if something happened to her.

358. At eight weeks, Cristina had to receive emergency surgery to treat the blood clots. She was told that because she was pregnant, she could not receive anesthesia. The doctors inserted a catheter in her chest without pain medication.

359. At each appointment, Cristina's doctors continued to update her about the status of her pregnancy even though Cristina continued to tell them that she wanted an abortion. No one seemed to be listening.

360. At nine weeks, the clots in Cristina's arm worsened. Her arm had turned from red to purple, and the pain was so intense that she couldn't move her arm. Cristina was trained as a nurse in Mexico, and she realized that she was developing a thrombosis.

361. On June 12, 2023, Cristina went to the emergency room. Cristina's arm had now turned from purple to black. After approximately 12 hours of waiting for a diagnosis, doctors confirmed she had a deep vein thrombosis and discovered she had also developed eclampsia and an embolism. She was admitted to the hospital and given antibiotics.

362. Cristina told the doctors she wanted an abortion. Cristina's current OB/GYN wrote a referral letter explaining that Cristina needed an abortion due to the "threat to maternal life and health." Still, the hospital resisted approving the abortion and tried to convince Cristina to voluntarily discharge herself to travel to New Mexico to get an abortion. Cristina was afraid the thrombosis would worsen on her way there and that she would die so she refused to leave.

363. The days passed and still, no one in the hospital would agree to provide an abortion. Cristina was afraid they would let her die. She was also taken aback by how afraid the doctors were of going to prison for providing her the case she needed to save her life. Her doctors did not speak Spanish and there was rarely anyone around to help the doctors translate. Cristina received only limited information about her condition from medical assistants who spoke Spanish.

364. After days of being in the hospital, the blood clots started moving to her lungs and chest, and she started feeling a strong chest pain. Cristina was at risk of losing her arm and of developing a pulmonary embolism.

365. Finally, on June 15, the CEO of the hospital approved Cristina's abortion, but medical staff was unable to find an anesthesiologist willing to participate in the abortion. More days passed. The hospital found another anesthesiologist willing to provide anesthesia at a different campus, but that campus did not have any beds available.

366. Eventually, Cristina connected with an organization that offers pro-bono legal support to pregnant people that provided her an attorney who contacted the hospital administration on her behalf, and a Spanish-speaker who provided support and translation services to Cristina. Nonetheless, it still took several more days before the hospital identified an anesthesiologist in a campus with beds to perform the abortion.

367. After eleven days of waiting, Cristina finally received an abortion on June 23, 2023.

368. After the abortion, Cristina had to stay in the hospital for five more days. She still has blood clots and received surgery in August to treat the clots.

369. Cristina will never understand why she had to become so sick until she could receive an abortion. The law made her feel guilty for wanting an abortion even though the abortion saved her life. As a nurse herself, Cristina knows that the medical care she received was inappropriate.

370. Cristina's claims are capable of repetition but evading review. Cristina sues on her own behalf.

U. Dr. Damla Karsan

371. Plaintiff Damla Karsan, M.D, is a board-certified OB/GYN in private practice at Comprehensive Women's Healthcare in Houston, Texas who is licensed to practice medicine in the state of Texas.

372. Dr. Karsan has practiced obstetrics and gynecology in Houston since 2001. As part of her practice, Dr. Karsan provides gynecological care, prenatal care, and obstetric care to her patients and to her colleagues' patients when she is on-call at the hospital where she has admitting privileges.

373. She is also trained to provide abortion care, and before S.B. 8, she routinely provided abortions to her patients as part of their comprehensive reproductive health care needs.[4]

374. Over her career, Dr. Karsan has personally treated pregnant patients with a wide variety of obstetrical and other health complications that develop during pregnancy, including but not limited to: miscarriage; ectopic pregnancy; management of fetal demise; complications of pregnancy, including cervical insufficiency, PPROM, bleeding, preeclampsia, hyperemesis gravidarum; maternal comorbidities such as hypertension, diabetes, heart disease, kidney disease, cancer, rheumatologic disorders, psychiatric conditions, including those that may lead to suicide; complicated twin pregnancies; lethal fetal anomalies; various genetic diagnoses, including trisomy 13, 18, and 21; structural fetal abnormalities; and molar pregnancy. Dr. Karsan consults with specialists in the care of such patients—including but not limited to emergency medicine hospitalists, cardiologists, oncologists, anesthesiologists, and maternal fetal medicine doctors—and actively participates in the care of her patients who are treated for emergent health conditions

[4] Before S.B. 8, Texas law generally permitted physicians to provide a limited number of abortions per year up to 18 weeks LMP in their private practices, or up to 22 weeks LMP in a hospital or ambulatory surgical center. *See* Tex. Health & Safety Code §§ 171.004, 171.045, 245.004.

during their pregnancies. Dr. Karsan intends to continue providing the full scope of care to her pregnant patients in the future.

375. Since S.B. 8 took effect, Dr. Karsan has seen the devastating impact of Texas's abortion bans on her practice and on that of her colleagues. In Dr. Karsan's experience, widespread fear and confusion regarding the scope of Texas's abortion bans have chilled the provision of necessary obstetric care, including abortion care. Dr. Karsan and her colleagues fear that prosecutors and politicians will target them personally and threaten the state funding of the hospitals where they work if they provide abortion care to pregnant people with emergent medical conditions.

376. Dr. Karsan has seen that physicians in Texas are even afraid to speak out publicly about this issue for fear of retaliation. Dr. Karsan feels she is only able to speak out publicly because she is in private practice and not directly employed by a state-funded hospital.

377. Dr. Karsan has also personally treated pregnant patients with emergent medical conditions since S.B. 8 took effect and consulted with colleagues about the care of such patients. In Dr. Karsan's experience, an emergent condition or emergency situation cannot be formulaically defined and will always depend on the patient's unique situation.

378. Since *Roe v. Wade* was overturned, Dr. Karsan has treated patients with emergent medical conditions, including patients carrying pregnancies with lethal fetal conditions who needed treatment for complications like kidney stones, bipolar disorder, and hemorrhage. Before S.B. 8, Dr. Karsan would have offered abortion care to these patients. Now, Dr. Karsan instead has had to give them information about where to seek abortion care out of state.

379. Dr. Karsan sues on her own behalf and on behalf of her patients.

V. Dr. Judy Levison

380. Plaintiff Judy Levison, M.D., M.P.H., is a board-certified OB/GYN licensed to practice medicine in the state of Texas. Dr. Levison is also a professor in the Department of Obstetrics and Gynecology at Baylor College of Medicine in Houston, Texas.

381. During her career, Dr. Levison has worked in private practice and in educational settings in Washington, California, and Texas providing obstetrical and gynecological care, including abortion, as well as teaching medical students, residents, and fellows. For the last 23 years, Dr. Levison has practiced obstetrics and gynecology in Houston and taught at Baylor College of Medicine, developing internationally recognized expertise in the treatment of pregnant people with HIV. Over her career, Dr. Levison has personally treated pregnant patients and consulted with relevant specialists regarding many different emergent conditions that arise during pregnancy, including, but not limited to: miscarriage; management of fetal demise; ectopic pregnancy; infections during pregnancy, including as a result of PPROM; bleeding and hemorrhage; comorbidities such as hypertension and diabetes; preeclampsia; hyperemesis gravidarum; heart conditions, including pulmonary hypertension and valve replacement; kidney disease; cancer, including cervical and breast cancer; rheumatological problems like lupus or Sjogren's syndrome; psychological conditions, including those that may lead to suicide; and various fetal diagnoses including trisomy 13, 18, and 21, neural tube defects like anencephaly, gastric and cardiac defects, Potter syndrome (where the baby does not properly develop kidneys), and molar pregnancy.

382. Since S.B. 8 took effect, Dr. Levison has seen the devastating impact of Texas's abortion bans on her practice and on that of her colleagues. In Dr. Levison's experience, widespread fear and confusion regarding the scope of Texas's abortion bans has chilled the provision of the standard of practice of obstetric care, including counseling patients about the

options for genetic screening for chromosomal diagnoses or neural tube defects and the options for abortion if a lethal fetal diagnosis was found. Dr. Levison and her colleagues fear that prosecutors and politicians will target them personally and threaten the state funding of their hospitals if they provide abortion care to pregnant people with emergent medical conditions.

383. Dr. Levison partially retired from the practice of medicine in July 2022 in part because, after the Supreme Court overturned *Roe v. Wade* and abortion became nearly completely banned in Texas, she felt she could no longer practice medicine the way she was trained and consistent with her ethical obligations as a physician. Texas's abortion bans have made it impossible for her to provide comprehensive, high-quality reproductive care to her patients.

384. While she is partially retired, Dr. Levison can still see patients and regularly consults with colleagues regarding a wide array of pregnancy complications necessitating abortion care, including various specialists. She regularly consults with OB/GYN and MFM colleagues regarding the care of pregnant patients under Texas's abortion bans. Specifically, since S.B. 8 went into effect, Dr. Levison has consulted with and assisted colleagues regarding patient cases that arguably fall under the Emergent Medical Condition Exception, including patients with PPROM, cancer, diabetes, hypertension, suicidal ideation, and who need fetal reduction procedures. Dr. Levison plans to continue to consult with her colleagues on these cases in the future.

385. Dr. Levison has seen that physicians in Texas are afraid to speak out publicly about Texas's abortion bans for fear of retaliation. Dr. Levison feels she is only able to speak out publicly because she is in the process of retiring.

386. Dr. Levison sues on her own behalf and on behalf of her patients.

387. Plaintiffs Dr. Karsan and Dr. Levison are collectively referred to throughout this Complaint as the "Physician Plaintiffs."

II. DEFENDANTS

388. Defendant State of Texas is responsible for the enforcement of Texas laws, including its abortion bans and the Emergent Medical Condition Exception. The State of Texas includes private citizens that could potentially enforce S.B. 8.

389. Defendant Ken Paxton is the Attorney General of Texas. As Attorney General, he is empowered to institute an action for a civil penalty against physicians licensed in Texas who violate or threaten to violate any provision of the Texas Medical Practice Act, including provisions triggered by a violation of the Trigger Ban. Tex. Occ. Code § 165.101; *id.* § 164.053. The Attorney General is additionally empowered to file a civil action against any person who violates the Trigger Ban, seeking a civil penalty of at least $100,000, plus attorney's fees and costs. Tex. Health & Safety Code § 170A.005. Defendant Paxton has threatened that he will "strictly enforce" the Trigger Ban.[5] Defendant Paxton is sued in his official capacity and may be served with process at 300 West 15th Street, Austin, Texas 78701.

390. Defendant Texas Medical Board ("TMB") is the state agency mandated to regulate the practice of medicine by licensed doctors in Texas. TMB must initiate disciplinary action against licensees who violate any provision of the Texas Medical Practice Act or Chapter 171 of the Texas Health and Safety Code. Tex. Occ. Code § 165.001; *id.* § 164.055. TMB may impose discipline on a doctor who violates any state law "connected with the physician's practice of medicine" because such violation constitutes per se "unprofessional or dishonorable conduct." Tex. Occ. Code § 164.053(a)(1); *id.* § 164.052(a)(5); *see also id.* § 164.053(b) (making clear that "[p]roof of the commission of the act while in the practice of medicine . . . is sufficient" for

[5] Ken Paxton, Tex. Att'y Gen., *Advisory on Texas Law Upon Reversal of* Roe v. Wade (June 24, 2022), https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/Post-Roe%20Advisory.pdf.

discipline). TMB "shall" also "revoke the license, permit, registration, certificate, or other authority" of a physician who violates the Trigger Ban. Tex. Health & Safety Code § 170A.007. TMB may be served with process at 1801 Congress Avenue, Suite 9.200, Austin, Texas 78701.

391. Defendant Stephen Brint Carlton is the Executive Director of TMB and in that capacity serves as the chief executive and administrative officer of TMB. Tex. Occ. Code § 152.051. Mr. Carlton is sued in his official capacity and may be served with process at 1801 Congress Avenue, Suite 9.200, Austin, Texas 78701.

JURISDICTION AND VENUE

392. This action is brought pursuant to Texas Rules of Civil Procedure 680 to 693, Texas Civil Practice and Remedies Code Chapter 65, and the common law of Texas to obtain declaratory and injunctive relief against Defendants.

393. This Court has jurisdiction over this matter, pursuant to the Texas Uniform Declaratory Judgments Act, Texas Civil Practice and Remedies Code § 37.001, *et seq.* ("UDJA"), Sections 24.007 and 24.008 of the Texas Government Code, and Texas Constitution, Article V, § 8.

394. Further, this Court has jurisdiction over Plaintiffs' request for declaratory and injunctive relief against Defendants because the UDJA waives sovereign and governmental immunity for challenges to the validity of statutes.

395. The Court also has jurisdiction over the Defendants sued in their official capacity because the *Ultra Vires* Doctrine permits claims brought against state officials for nondiscretionary acts unauthorized by law. *See* Tex. Civ. Prac. & Rem. Code §§ 37.003, 37.004, 37.006; *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 634-635 (Tex. 2010); *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621-22 (Tex. 2011).

396. Finally, Texas's abortion bans are enforced through civil means, including steep civil penalties and disciplinary sanctions. *See, e.g.*, Tex. Occ. Code §§ 165.001, 164.052(a)(5), 164.053(a), 164.055; Tex. Health & Safety Code §§ 170A.005, 170A.007. This Court has jurisdiction to render a declaratory judgment regarding a civil enforcement scheme.

397. Although there are also potential criminal penalties for providing a prohibited abortion in Texas, this Court has jurisdiction to enter declaratory and injunctive relief because of the bans' civil penalties. Additionally, the Court has jurisdiction to enter declaratory and injunctive relief because criminal enforcement threatens irreparable injury to physicians' vested property interests in their medical licenses and liberty interests in pursuit of their chosen profession. *See Tex. Propane Gas Ass'n v. City of Houston*, 622 S.W.3d 791, 798–99 (Tex. 2021) (holding that district court had jurisdiction to render declaratory judgment regarding municipal criminal ordinances because the ordinances threatened irreparable injury to the plaintiff's property rights); *TitleMax of Tex., Inc. v. City of Austin*, 639 S.W.3d 240, 248 (Tex. Ct. App. 2021) (same). This Court also has jurisdiction because application of the abortion bans is causing pregnant people to face death, sustain physical injury, and endure extreme mental anguish, which is unconstitutional and threatens irreparable injury to Physician Plaintiffs' and their patients' rights. *State v. Morales*, 869 S.W.2d 941, 942 (Tex. 1994).

398. Venue is proper in Travis County because Defendants State of Texas, Paxton, TMB, and Carlton reside or have their principal office in Travis County. Tex. Civ. Prac. & Rem. Code § 15.002(a).

399. Plaintiffs' request for prospective relief is specifically authorized as a request for a declaratory judgment under the UDJA. An action for a declaratory judgment is neither legal nor equitable but is sui generis—that is, of its own kind. *Tex. Liquor Control Bd. v. Canyon Creek*

Land Corp., 456 S.W.2d 891, 895 (Tex. 1970). Without such declaratory judgment, Plaintiffs have no meaningful remedy for their state law claims in accordance with Texas Constitution Article I, § 13.

FACTUAL ALLEGATIONS

I. BACKGROUND

A. Abortion is Health Care

400. Every major mainstream medical organization, including the American Medical Association ("AMA"), the American College of Obstetricians and Gynecologists ("ACOG"), the American College of Emergency Physicians ("ACEP"), and the Society for Maternal-Fetal Medicine ("SMFM"), recognizes that abortion is necessary health care. These organizations are all opposed to governmental interference into patient-physician relationships. Such interference is contrary to the appropriate exercise of professional judgment that medical professionals need to exercise to protect patients' well-being. As the experiences of Amanda, Lauren M., Lauren H., Anna, Ashley, Kylie, Jessica, Samantha, Dr. Dennard, Taylor, Kiersten, Lauren V., Elizabeth, Kristen, Amy, Kaitlyn, Aylen, Kimberly, Dr. Mathisen, and Cristina demonstrate, abortion bans are a paradigmatic example of such governmental interference.

401. The AMA recently updated its Principles of Medical Ethics to clarify that in the context of abortion, "physicians must have latitude to act in accord with their best professional judgment" and be "expressly permitt[ed] . . . to perform abortions in keeping with good medical practice."[6] The AMA also states that "[l]ike all health care decisions, a decision to terminate a pregnancy should be made privately within the relationship of trust between patient and physician

[6] *AMA Announces New Adopted Policies Related to Reproductive Health Care*, Am. Med. Ass'n (Nov. 16, 2022), https://www.ama-assn.org/press-center/press-releases/ama-announces-new-adopted-policies-related-reproductive-health-care.

in keeping with the patient's unique values and needs and the physician's best professional judgment."[7]

402. ACOG, the nation's leading organization of physicians who provide health services unique to people seeking obstetric or gynecologic care, has long maintained the following policy on abortion: "All people should have access to the full spectrum of comprehensive, evidence-based health care. Abortion is an essential component of comprehensive, evidence-based health care."[8]

403. While state laws each adopt slightly different legal definitions for abortion, the medical definition of abortion is well understood: An abortion is the expulsion from the uterus of an embryo or fetus, as well as the products of conception, before viability.[9] In other words, an abortion is the termination and removal from the body of a pregnancy such that the pregnancy will not result in the birth of a living baby.

404. While the medical treatment is generally the same, medical professionals may draw a distinction from the patient's perspective between a "spontaneous abortion" or "miscarriage"—where the embryo or fetus has no discernable cardiac activity—and an "induced abortion"— where the embryo or fetus has cardiac activity. The pregnant person's desire to have a baby or not, however, has no bearing on whether or not an abortion is considered spontaneous or induced.[10]

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[7] *Amendment to Opinion 4.2.7, Abortion H-140.823*, Am. Med. Ass'n (2022) https://policysearch.ama-assn.org/policyfinder/detail/%224.2.7%20Abortion%22?uri=%2FAMADoc%2FHOD.xml-H-140.823.xml.

[8] *Abortion Policy*, ACOG (May 2022) https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2022/abortion-policy.

[9] *See, e.g.*, *Abortion*, Taber's Med. Dictionary, https://www.tabers.com/tabersonline/view/Tabers-Dictionary/766365/all/abortion#:~:text=abortion%20is%20a%20topic%20covered,fetus%20reaches%20a%20viable%20age.

[10] *See Practice Bulletin 200: Early Pregnancy Loss*, ACOG (Nov. 2018) https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2018/11/early-pregnancy-loss; Andrew Moscrop, *Miscarriage or Abortion? Understanding the Medical Language of Pregnancy Loss in Britain; A Historical Perspective*, 39 Med. Humanities 98 (2013), https://mh.bmj.com/content/39/2/98.

405. The majority of abortions in the United States are accomplished either through use of medications (medication abortion) or via an outpatient procedure (procedural abortion). Medication abortions are typically indicated up to 10.0 weeks and involve the ingestion of two medications to terminate the pregnancy, expelling the pregnancy via vaginal bleeding, akin to a heavy period or spontaneous miscarriage. Procedural abortions are possible throughout pregnancy and involve a two-step process where the medical provider first partially dilates the patient's cervix (using medications and/or mechanical or osmotic dilators), then evacuates the uterus using suction aspiration, instruments, or some combination. Dilation is done either the same day or the day before, and the evacuation phase of a procedural abortion typically takes around 5 minutes in the first trimester of pregnancy and 10-20 minutes in the second trimester, depending on the patient's response to the procedure and the complexity of the case.[11]

406. The only other medically proven abortion method is induction abortion, where a physician uses medication to induce labor and delivery of a non-viable fetus. Induction of labor accounts for only about 2% of second-trimester abortions nationally. Induction abortions must be performed in a hospital or similar facility that has the capacity to monitor a patient overnight and provide pain management (e.g., epidural). Induction abortions can last anywhere from five hours to three days; are extremely expensive; entail more pain, discomfort, and recovery time for the patient—similar to giving birth—than procedural abortion; and are medically contraindicated for some patients.[12]

407. While some people attempt to stigmatize abortion care by misusing or conflating pregnancy terminology—e.g., villainizing particular methods of abortion or attempting to

[11] *See The Safety and Quality of Abortion Care in the United States*, Nat'l Acads. of Sci., Eng'g, & Med. (2018) at 51-65.

[12] *See id.* at 5-8, 66-68.

distinguish "elective abortion" from "miscarriage"—mainstream medical professionals understand that patients in any number of circumstances need abortions and that pregnant people, in consultation with their medical providers, should be able to choose the method of abortion appropriate for their circumstances.

B. Some Pregnancies Pose Emergent Medical Risks to Pregnant People's Lives and Health

408. All pregnancy care, including abortion, is time sensitive. Medically unnecessary delays in access to abortion care always harm pregnant people. Yet pregnancy can lead to any number of urgent or emergent conditions, if not outright medical emergencies, where especially prompt termination of pregnancy is necessary to preserve the life, health, and/or future fertility of the pregnant person. The American Board of Emergency Medicine ("ABEM") defines "emergent" conditions as cases where the "[p]atient presents with symptoms of an illness or injury that may progress in severity or result in complications with a high probability for morbidity if treatment is not begun quickly."[13]

409. ACOG has emphasized that "it is impossible to create an inclusive list of conditions that qualify" as emergent or emergencies and thus fall under an exception to a state's abortion ban. Moreover, "it is dangerous to attempt to create a finite list of conditions to guide the practice of clinicians attempting to navigate their state's abortion restrictions." This is true for many reasons, including: "The practice of medicine is complex and requires individualization—it cannot be distilled down to a one-page document or list that is generalizable for every situation; No single patient's condition progresses at the same pace; A patient may experience a combination of medical conditions or symptoms that, together, become life-threatening; Pregnancy often

[13] Michael S. Beeson et al., *The 2019 Model of the Clinical Practice of Emergency Medicine*, 59 J. of Emergency Med. 96 (2020), https://www.jem-journal.com/article/S0736-4679(20)30154-2/fulltext.

exacerbates conditions or symptoms that are stable in nonpregnant individuals; There is no uniform set of signs or symptoms that constitute an 'emergency'; Patients may be lucid and appear to be in stable condition but demonstrate deteriorating health."[14] Nonetheless, medical organizations have described broad categories of types of conditions in pregnancy that are emergent.

410. ABEM's Model of Clinical Practice of Emergency Medicine, the definitive source and guide to the core content found on emergency physicians' board examinations, contains sections on "Complications of Pregnancy," "Complications of Labor," and "Complications of Delivery." The conditions include: (1) ectopic pregnancy; (2) conditions that can lead to dangerous bleeding or hemorrhage, including placental issues; (3) severe forms of hypertension; (4) conditions that can lead to dangerous infection, including premature rupture of membranes; and (5) extreme hyperemesis gravidarum (dangerous nausea and vomiting leading to hospitalization).[15]

411. An ectopic pregnancy is a pregnancy where a fertilized egg implants and grows outside the uterine cavity, usually in the fallopian tube. Ectopic pregnancies cannot result in live births and are life-threatening to the pregnant person because the pregnancy can rupture and cause massive internal bleeding. Ectopic pregnancies must be terminated with medication or surgery as soon as possible after diagnosis.[16]

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[14] *Understanding and Navigating Medical Emergency Exceptions in Abortion Bans and Restrictions*, ACOG (Aug. 15, 2022), https://www.acog.org/news/news-articles/2022/08/understanding-medical-emergency-exceptions-in-abortion-bans-restrictions.

[15] *See* Beeson et al., *supra* note 13.

[16] *See Practice Bulletin 193: Tubal Ectopic Pregnancy*, ACOG (Mar. 2018), https://www.fertilehealthexpert.com/wp-content/uploads/2021/11/Ectopic-Pregnancy-ACOG.pdf.

412. Cesarean-scar ectopic pregnancy, where a pregnancy implants in the scar from a previous cesarean delivery, is considered an emergent condition where, like any other ectopic pregnancy, the recommended treatment is termination of pregnancy.[17]

413. Hemorrhaging during pregnancy is particularly dangerous for patients, as it can lead to organ damage, organ failure, or even death. A variety of preexisting chronic health conditions and health conditions that develop during pregnancy can become emergent due to the risk of hemorrhage during pregnancy. These conditions include, but are not limited to: placenta previa (when the placenta covers the cervix); placental abruption (when the placenta prematurely detaches from the uterine lining); placenta accreta (when the placenta grows into the uterine wall); uterine fibroids (that inhibit the uterus from contracting effectively and stopping bleeding from the placental implantation site); and other forms of first or second trimester bleeding.[18]

414. Severe forms of hypertension in pregnancy can also lead to life-threatening conditions. For example, preeclampsia is a complication of pregnancy which, when severe, can cause seizures, injury to the pregnant person's liver and kidneys, stroke, and death. HELLP (Hemolysis, Elevated Liver Enzymes and Low Platelets) syndrome is a particularly dangerous variant of preeclampsia. For some patients, other forms of hypertension (sometimes in conjunction with other chronic conditions like obesity and diabetes) can increase in severity and cause the same complications seen with severe preeclampsia.

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[17] *SMFM Consult Series #63: Cesarean Scar Ectopic Pregnancy*, Soc'y for Maternal Fetal Med. (Sept. 2022), https://www.smfm.org/publications/448-smfm-consult-series-63-cesarean-scar-ectopic-pregnancy#:~:text=Cesarean%20scar%20ectopic%20pregnancy%20is,in%20securing%20a%20prompt%20diagnosis.

[18] *See Practice Bulletin 222: Gestational Hypertension and Preeclampsia*, ACOG (June 2020), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2020/06/gestational-hypertension-and-preeclampsia; *Practice Bulletin 203: Chronic Hypertension in Pregnancy*, ACOG (Jan. 2019), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2019/01/chronic-hypertension-in-pregnancy.

415. Infection of the reproductive organs, which can lead to chorioamnionitis (infection of the placenta or amniotic fluid) or sepsis (where the body's response to infection damages its own tissue), is another risk that can cause a pregnant person's medical condition to become emergent. Premature dilation of the cervix, for example, dramatically increases a pregnant person's risk of infection and can be caused by conditions like an incompetent cervix (weak cervical tissue) and/or PPROM before the onset of labor. PPROM has a relatively high incidence, occurring in approximately 2% to 3% of pregnancies in the United States, and is an emergent condition itself due to the high risk of infection it entails.[19]

416. Other medical conditions can become emergent during pregnancy, either because being pregnant causes or exacerbates a chronic condition or increases other health risks, or because treatment for the chronic condition is unsafe while pregnant. For example: certain cancers requiring radiation, chemotherapy, or major surgery; certain cardiac, autoimmune, respiratory, or endocrine diseases; certain cases of hyperemesis gravidarum; and certain psychiatric conditions like bipolar disorder, major depressive disorder, anxiety disorders, and psychotic disorders can all be emergent, depending on the circumstances. Intentional acts of violence or accidents, e.g., motor vehicle crashes, firearm violence, intimate partner violence, etc., and substance use disorder can also lead to emergent conditions. Because each patient's circumstances are unique, it is within the purview of the patient's medical provider to determine whether the patient's comorbidities and/or other circumstances make abortion part of the patient's recommended course of treatment.[20]

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[19] *See Practice Bulletin 217: Prelabor Rupture of Membranes*, ACOG (Mar. 2020), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2020/03/prelabor-rupture-of-membranes.

[20] *See High-Risk Pregnancy*, Cleveland Clinic, https://my.clevelandclinic.org/health/diseases/22190-high-risk-pregnancy (last updated Dec. 14, 2021) (describing how certain preexisting conditions exacerbate the risks of the pregnancy); *Practice Bulletin 189: Nausea and Vomiting of Pregnancy*, ACOG (Jan. 2018), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2018/01/nausea-and-vomiting-of-pregnancy; Nicole T. Christian & Virginia F. Borges, *What* Dobbs *Means for Patients with Breast Cancer*, 387 N. Engl. J. Med. 765-67 (Sept. 1, 2022).

417. Finally, certain fetal conditions or diagnoses can increase the risks to a pregnant person's health such that, when combined with the patient's other comorbidities, her medical provider may determine that an abortion is necessary or recommended to prevent serious jeopardy to the pregnant person's health.

418. For example, neural tube defects (including anencephaly); certain trisomies like trisomy 13 and 18 (the presence of an extra chromosome); triploidy (the presence of an extra set of chromosomes); certain gastric and cardiac defects in the fetus; and Potter syndrome (where the fetus does not properly develop kidneys), are examples of conditions where the fetus either will not survive delivery or likely will not survive more than a few hours or days after birth. As in Lauren M.'s case, cystic hygromas may indicate the presence of one or more of these fetal conditions. Abortion is generally indicated for patients with such pregnancies, as abortion is typically medically safer for the pregnant person than carrying the pregnancy to term and delivering a baby with no meaningful chance of survival.

419. Some fetal conditions present particularly acute risks to the pregnant person. For example, partial molar pregnancy is a condition where the placenta transforms into an invasive cancer, thus creating an emergency for the pregnant person. Mirror syndrome is an emergent complication of pregnancy where the pregnant person and fetus both experience severe fluid retention that can lead to both fetal and maternal demise.

420. In the case of multiple pregnancies (twins, triplets, etc.), a fetal condition in one or more of the fetuses, combined with the pregnant person's other comorbidities, can lead to an emergent condition where selective abortion (sometimes called selective "fetal reduction" or "fetal

termination") of one (or more) fetus is necessary to give the pregnant person and the remaining fetus(es) the best chance of survival.[21]

421. The discussion above highlights some of the emergent medical conditions necessitating prompt abortion care, but the list is by no means exhaustive, nor could it be. Mainstream medical associations emphasize that physician discretion to diagnose and treat emergent conditions is paramount to patient health.

422. Thus, where state law seeks to create a statutory exception to its abortion ban to allow abortion care for the purpose of preserving the life or health (including fertility) of the pregnant person, it must recognize that it is within the purview of the medical provider to determine the appropriate course of treatment for the patient. When a physician determines that such treatment includes abortion, the physician must be able to provide that treatment without concern that a prosecutor, jury, or disciplinary board second guessing their medical judgment will send them to prison and/or revoke their medical license.

423. The nature of abortion as critical health care is all the more acute in Texas, where maternal mortality and morbidity rates are rising. Texas's Maternal Mortality and Morbidity Review Committee and the Department of State Health Services recently released their joint biennial report, and the results are shocking and alarming:

424. Among the documented pregnancy-related deaths in Texas, a staggering 90% were preventable.[22]

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[21] *Practice Bulletin 231: Multifetal Gestations Twin Triplet and Higher-Order Multifetal Pregnancies*, ACOG (June 2021), https://www.acog.org/clinical/clinical-guidance/practice-bulletin/articles/2021/06/multifetal-gestations-twin-triplet-and-higher-order-multifetal-pregnancies.

[22] Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report 2022 ("Texas MMRC 2022 Report") at 8, https://www.dshs.texas.gov/sites/default/files/legislative/2022-Reports/Joint-Biennial-MMMRC-Report-2022.pdf.

425. According to the report, the maternal mortality ratio for Texas is higher than the national average—20.2 maternal deaths per 100,000 live births (in 2017, the latest year for which data is available), compared to the national average of 17.4 deaths per 100,000 live births (in 2018, the latest year for which data is available).[23]

426. The report finds that the leading cause of pregnancy-related deaths in Texas was obstetric hemorrhage, and the leading underlying causes of hemorrhage were ruptured ectopic pregnancy, uterine rupture, placental abruption, and placenta accreta—all conditions that are considered emergent. In 2019, at least 13 women in Texas died from a ruptured ectopic pregnancy.[24]

427. The report shows that Severe Maternal Morbidity ("SMM")—defined as "unexpected outcomes of labor and delivery that result in significant short- or long-term consequences to a woman's health" that "if left untreated, could result in death"—increased significantly between 2018 to 2020, surging from 58.2 to 72.7 cases per 10,000 delivery hospitalizations. The total rate of pregnancy-related illnesses and injuries is likely much higher, as the SMM rate only captures the most severe events (life-threatening conditions or life-saving medical procedures) that occur in specific contexts (in hospitals when a patient delivers).[25]

428. Between 2017 and 2020, SMM rates related to sepsis doubled, and SMM rates related to preeclampsia rose by 37% over the same time period.[26]

429. The report also finds significant demographic and geographic disparities in maternal mortality and morbidity, particularly among non-Hispanic Black women, who are twice

[23] *Id.* at 10; *Maternal Mortality Rates in the United States*, Ctrs. for Disease Control & Prevention, https://www.cdc.gov/nchs/data/hestat/maternal-mortality-2021/maternal-mortality-2021.htm.

[24] Texas MMRC 2022 Report at 8.

[25] *Id.* at 10-11.

[26] *Id.* at 8-12.

as likely as white women and four times as likely as Hispanic women to die from pregnancy-related causes.[27]

430. Racial and ethnic disparities in pregnancy-related health outcomes are well-documented throughout the medical literature. Research has shown that, as compared to non-Hispanic white women, Black women in the United States are considerably more likely to experience obstetric complications like hypertensive disorders and preterm birth and to die from complications like preeclampsia, eclampsia, obstetric embolism, hemorrhage, and postpartum cardiomyopathy.[28] Additionally, Black people in the United States are more likely to have preexisting conditions that may be exacerbated by pregnancy such as high blood-pressure, asthma, diabetes, sickle cell disease, and lupus.[29]

431. The Texas Maternal Mortality Report further notes that "delay in referring or access to treatment," "lack of standardized policies/procedures," "failure to screen/inadequate assessment of risk," "lack of continuity of care," and "lack of access/financial resources" are all contributing factors in maternal deaths in Texas.[30]

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[27] *Id.* at 10.

[28] *CDC Press Release: Hypertensive Disorders in Pregnancy Affect 1 in 7 Hospital Deliveries*, Ctrs. for Disease Control & Prevention (Apr. 28, 2022), https://www.cdc.gov/media/releases/2022/p0428-pregnancy-hypertension.html; *Preterm Birth*, Ctrs. for Disease Control & Prevention (Nov. 1, 2022), https://www.cdc.gov/reproductivehealth/maternalinfanthealth/pretermbirth.htm; Marian F. MacDorman, *Racial and Ethnic Disparities in Maternal Mortality in the United States Using Enhanced Vital Records, 2016–2017*, 111(9) Am. J. Publ. Health 1673, 1676 (2021), https://doi.org/10.2105/AJPH.2021.306375; *see also* Texas MMRC 2022 Report at 11-12.

[29] *Facts About Hypertension*, Ctrs. for Disease Control & Prevention (Jan. 5, 2023), https://www.cdc.gov/bloodpressure/facts.htm; Cynthia A. Pate et al., *Asthma Surveillance — United States, 2006–2018*, 70(5) Morbidity & Mortality Weekly Report 1, https://www.cdc.gov/mmwr/volumes/70/ss/ss7005a1.htm?s_cid=ss7005a1_w; *The Facts, Stats, and Impacts of Diabetes*, Ctrs. for Disease Control & Prevention (Jun. 20, 2022), https://www.cdc.gov/diabetes/library/spotlights/diabetes-facts-stats.html; *Data & Statistics on Sickle Cell Disease*, Ctrs. for Disease Control & Prevention (May 2, 2022), https://www.cdc.gov/ncbddd/sicklecell/data.html; Maria Dall'Era, *Systemic Lupus Erythematosus*, in John B. Imboden et al., (eds.), Current Rheumatology Diagnosis and Treatment 3rd ed, New York, NY: McGraw-Hill (2013).

[30] Texas MMRC 2022 Report at D-2, D-3. In fact, a report by March of Dimes found that 49.2% of Texas counties are "maternity care deserts" where maternity health services are entirely absent. It also found that an

432. Barriers such as these disproportionately impact Black patients. Black patients face significant barriers to quality, equitable health care, including delays in care, systemic discrimination, and implicit biases in their interactions with health care providers.[31] Black women in Texas also face disproportionate poverty: 19.5% of Black Texans live in poverty compared to 10.5% of white Texans. And 15.5% of Texan women live in poverty compared to 13% of Texan men.[32] This, coupled with Texas's restrictive Medicaid and insurance coverage policies, renders health care unaffordable for many.[33]

433. The Texas Maternal Mortality Report ends with multiple recommendations that are at odds with the demonstrated impact of Texas's abortion bans. For example: "[p]romote patient-centered care through shared decision-making recognizing women as experts in their values and preferences and supporting informed, collaborative approaches to making health care decisions"; "support health systems with implementing evidence-based standards, guidelines, and practices, increasing patient and family engagement, promoting health care quality improvement, and reducing maternal health disparities"; "[s]upport emergency and maternal health service coordination" as "[e]mergency health providers' knowledge about maternal health, as well as

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additional 22.8% of Texas counties have only low or moderate access where there are few hospitals or birth centers, few obstetric care providers, or a high proportion of women without insurance coverage. *Maternity Care Desert: Texas, 2020*, March of Dimes (last visited Mar. 2, 2023), https://www.marchofdimes.org/peristats/data?reg=99&top=23&stop=641&lev=1&slev=4&obj=9&sreg=48.

[31] Michael T. Halpern & Debra J. Holden, *Disparities in Timeliness of Care for U.S. Medicare Patients Diagnosed with Cancer*, 19(6) Current Oncology e404-13 (2012); Jasmine M. Miller-Kleinhenz et al., *Racial Disparities in Diagnostic Delay Among Women with Breast Cancer*, 18(10) J. Am. Coll. Radiol. 1384 (2021); Joe Feagin & Zinobia Bennfield, *Systemic Racism and U.S. Health Care*, 103 Soc. Sci. & Med. 7 (2013); Bani Saluja & Zenobia Bryant, *How Implicit Bias Contributes to Racial Disparities in Maternal Morbidity and Mortality in the United States*, 30(2) J. Women's Health 270-273 (2021); Brenda Pereda & Margret Montoya, *Addressing Implicit Bias to Improve Cross-Cultural Care*, 61 Clinical Obstetrics & Gynecology 2, 3-5 (2018).

[32] *American Community Survey S107: Poverty Status in the Past 12 Months*, United States Census Bureau (last visited Mar. 1, 2023), https://data.census.gov/table?q=gender+poverty+in+texas.

[33] *The State of Reproductive Health and Rights: A 50-State Report Card*, Population Institute (Feb. 2021), https://www.populationinstitute.org/resource/the-state-of-reproductive-health-and-rights-a-50-state-report-card.

communication and coordination with obstetric and women's health professionals, are critical factors in preventing pregnancy-related deaths."[34]

C. Texas's Abortion Bans

434. Texas has several abortion bans relevant to Amanda, Lauren M., Lauren H., Anna, Ashley, Kylie, Jessica, Samantha, Dr. Dennard, Taylor, Kiersten, Lauren V., Elizabeth, Kristen, Amy, Kaitlyn, Aylen, Kimberly, Dr. Mathisen, Cristina, and the Physician Plaintiffs and their patients.

1. Texas's Definition of Abortion

435. Texas law does not define "abortion" using the medical definition. Rather, Texas law states: "'Abortion' means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to: (A) save the life or preserve the health of an unborn child; (B) remove a dead, unborn child whose death was caused by spontaneous abortion; or (C) remove an ectopic pregnancy." Tex. Health & Safety Code § 245.002(1).

436. Texas law defines "ectopic pregnancy" as "the implantation of a fertilized egg or embryo outside of the uterus." Tex. Health & Safety Code § 245.002(4-a).

437. While there is no express definition, it is generally understood that in the context of Texas's definition of abortion, "dead" means that there is no cardiac activity present in the embryo or fetus. *See, e.g.*, Tex. Health & Safety Code §§ 171.201-203 (emphasizing importance of a "fetal heartbeat" or "cardiac activity" to "unborn life").

[34] Texas MMRC 2022 Report at 16, 17, 20.

438. Abortions done to "save the life or preserve the health of *an* unborn child" are not considered abortions under Texas law. Tex. Health & Safety Code § 245.002(1)(A) (emphasis added); *see also* Tex. Health & Safety Code § 170A.002(b) (applying exception to abortion ban where "the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create . . . a serious risk of substantial impairment of a major bodily function of the pregnant female.").

439. Texas's abortion bans cite back to Texas's definition of abortion, meaning that neither medical care involving removal of an ectopic pregnancy, nor removal of pregnancy tissue where no cardiac activity is present, is an abortion under Texas law.

2. Trigger Ban

440. Texas's criminal ban on abortion is often referred to as the Trigger Ban because, while signed into law in 2021, it specified a contingent effective date and did not take effect until August 25, 2022, 30 days after the Supreme Court issued its judgment overturning *Roe v. Wade*.[35]

441. The Trigger Ban states that "[a] person may not knowingly perform, induce, or attempt an abortion," citing to Texas's longstanding definition of abortion. Tex. Health & Safety Code §§ 170A.001(a), 170A.002(a).

442. There are both criminal and civil penalties for violations of the Trigger Ban.

[35] Defendant Paxton published an "Advisory on Texas Law" after the U.S. Supreme Court issued its opinion in *Dobbs v. Jackson Women's Health Org.*, Case No. 19-1392, on June 24, 2022, that correctly noted the effective date of the Trigger Ban as 30 days after issuance of the "judgment" in *Dobbs*. Ken Paxton, Tex. Att'y Gen., *Advisory on Texas Law Upon Reversal of* Roe v. Wade (June 24, 2022), https://www.texasattorneygeneral.gov/sites/default/files/images/executive-management/Post-Roe%20Advisory.pdf. Defendant Paxton later published an "Updated Advisory on Texas Law" upon issuance of the *Dobbs* judgment that confirmed that the Trigger Ban would take effect August 25, 2022. Ken Paxton, Tex. Att'y Gen., *Updated Advisory on Texas Law Upon Reversal of* Roe v. Wade (July 27, 2022), https://texasattorneygeneral.gov/sites/default/files/images/executive-management/Updated%20Post-Roe%20Advisory%20Upon%20Issuance%20of%20Dobbs%20Judgment%20(07.27.2022).pdf.

443. A person can be charged with either a first- or second-degree felony for violating the Trigger Ban. Tex. Health & Safety Code § 170A.004. First-degree felonies are subject to imprisonment for life, or a term of between 5 and 99 years. Tex. Penal Code § 12.32. Second-degree felonies are punishable by imprisonment for a term of between 2 and 20 years. Tex. Penal Code § 12.33.

444. Further, the Trigger Ban states that the relevant licensing authority, the Texas Medical Board, "shall revoke the license, permit, registration, certificate, or other authority of a physician or other health care professional who performs, induces, or attempts an abortion in violation" of the Trigger Ban. Tex. Health & Safety Code § 170A.007.

445. Finally, any person who violates the Trigger Ban "is subject to a civil penalty of not less than $100,000 for each violation," and "[t]he attorney general shall file an action to recover a civil penalty assessed under this section and may recover attorney's fees and costs incurred in bringing the action." Tex. Health & Safety Code § 170A.005.

446. The only exception to the Trigger Ban is an abortion performed by a physician on a patient with an emergent medical condition (*see infra* ¶ 458).

3. Senate Bill 8

447. Senate Bill 8 of 2021 prohibits physicians from providing an abortion in Texas if the embryo or fetus has detectible cardiac activity. Tex. Health & Safety Code §§ 171.201-204. S.B. 8 took effect in September of 2021 and creates additional civil penalties for physicians who perform abortions prohibited by S.B. 8.

448. Violations of S.B. 8 are subject to a bounty-hunting civil enforcement scheme allowing any individual to seek "statutory damages in an amount of not less than $10,000 for each abortion that the defendant performed" and "injunctive relief sufficient to prevent the defendant from violating" S.B. 8 in the future. Tex. Health & Safety Code §§ 171.207-211.

449. Like the Trigger Ban, the only exception to S.B. 8's ban on abortion in pregnancies with detectible cardiac activity is an abortion performed by a physician on a patient with an emergent medical condition (discussed in detail below).

450. S.B. 8 also created new state documentation and reporting requirements that apply to all abortions performed under the Emergent Medical Condition Exception. As of September 1, 2021, all abortions performed under the Emergent Medical Condition Exception must be documented in detail by the treating physician. Specifically, the physician must "execute a written document": (1) that "certifies the abortion is necessary due to a medical emergency;" (2) that "specifies the medical condition the abortion is asserted to address;" (3) that "provides the medical rationale for the physician's conclusion that the abortion is necessary to address the medical condition;" (4) "place the document . . . in the pregnant woman's medical record" (5) and "maintain a copy of the document . . . in the physician's practice records." Tex. Health & Safety Code §§ 171.008, 171.205.

451. S.B. 8 also requires physicians who perform abortions at abortion facilities to report all abortions performed under the Emergent Medical Condition Exception to the state. Tex. Health & Safety Code § 245.011(c)(10), (11) (requiring reporting to include "whether the abortion was performed or induced because of a medical emergency and any medical condition of the pregnant woman that required the abortion").

*4. Pre-*Roe *Ban*

452. The Texas abortion ban at issue in *Roe v. Wade* (the "pre-*Roe* Ban")[36] also contained an exception for the life of the pregnant person.[37] After the pre-*Roe* Ban was held unconstitutional in 1973, it was removed from the Texas Penal Code and Texas Civil Code. The Texas Legislature then enacted a comprehensive statutory scheme permitting and regulating abortion. In light of those later enactments, the Fifth Circuit held that the pre-*Roe* Ban was impliedly repealed. *McCorvey v. Hill*, 385 F.3d 846 (5th Cir. 2004).[38]

453. On June 24, 2022, for the first time, the text of the pre-*Roe* Ban was placed on the Texas Legislature's website, with the note that the relevant statutes were "held to have been impliedly repealed in *McCorvey v. Hill*, 385 F.3d 846 (5th Cir. 2004)."[39] Despite that holding and subsequent litigation regarding the pre-*Roe* Ban, Defendant Paxton took the position that the pre-*Roe* Ban was immediately enforceable after *Roe v. Wade* was overturned. Courts addressing this issue after *Roe* was overturned, however, largely disagree. *See* Order at 1, *Fund Tex. Choice v. Paxton*, No. 1:22-CV-859-RP (W.D. Tex. Feb. 24, 2023), ECF No. 120 ("[T]he Court finds that the pre-*Roe* laws have been repealed by implication . . . ."); *Texas v. Becerra*, No. 5:22-CV-185-

[36] "If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By 'abortion' is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused." 1925 Tex. Crim. Stat. 1191.

[37] "By medical advice. Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." 1925 Tex. Crim. Stat. 1196.

[38] *See also Whole Woman's Health v. Paxton*, Civil Cause No. 2022-38397, 2022 WL 2314499 (Harris Cnty. Dist. Ct. June 27, 2022), *injunction lifted by In re Paxton*, No. 22-0527, 2022 WL 2425619 (Tex. July 1, 2022), *case dismissed* (Harris Cnty. Dist. Ct. Oct. 5, 2022); *Texas v. Becerra*, No. 5:22-cv-185-H, 2022 WL 3639525 (N.D. Tex. Aug. 23, 2022), *appeal docketed*, No. 22-11037 (5th Cir. Oct. 25, 2022); Order, *Fund Tex. Choice v. Paxton*, No. 1:22-cv-00859 (W.D. Tex. Feb. 24, 2023), ECF No. 120.

[39] Vernon's Tex. Civ. Stats. ch. 6-1/2 (last updated Dec. 14, 2022), https://statutes.capitol.texas.gov/Docs/SDocs/VERNON'SCIVILSTATUTES.pdf.

H, 2022 WL 3639525, at *2 (N.D. Tex. Aug. 23, 2022) (treating the pre-Roe Ban as enforceable but noting that the Trigger Ban "reflects a more recent, more specific regulation of abortion and, normally, a more recent enactment governing the same subject supersedes prior enactments").

D. Exception to Texas's Abortion Bans for Emergent Medical Conditions

454. Texas's abortion laws have long recognized that providing abortion care to pregnant people with emergent medical conditions is exempted from the state's various restrictions on the provision of abortion. Yet inconsistencies in the language of these provisions, the use of non-medical terminology, and sloppy legislative drafting have resulted in understandable confusion throughout the medical profession regarding the scope of the exception.

1. History of the Emergent Medical Condition Exception

455. Texas's Emergent Medical Condition Exception first appeared in the Texas Code in 2011, when Texas updated its informed consent requirements for abortion and created certain exceptions for cases of so-called "medical emergency." It defined "medical emergency" as "a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed." Tex. Health & Safety Code § 171.002(3) (hereinafter the "Definition Provision").

456. Over the last ten years, Texas has added numerous requirements to its abortion code that, utilizing this definition, have exceptions for "medical emergencies."[40] For example, in 2017 Texas passed a ban on "dismemberment abortion"—essentially a ban on dilation and evacuation

[40] *See* Tex. Health & Safety Code § 171.0124 (informed consent); Tex. Fam. Code §§ 33.002, 33.0022 (informed consent for minors); Tex. Ins. Code §§ 1218.001, 1696.001 (insurance coverage); Tex. Gov't Code § 2273.002 (facility licensing); Tex. Health & Safety Code § 171.152(a) (ban on "dismemberment abortions"); Tex. Occ. Code § 164.052 (physician licensing).

("D&E") abortions—that has an exception for "medical emergencies." Tex. Health & Safety Code § 171.152(a).

457. S.B. 8 is another example. The only exception to S.B. 8's abortion ban and its associated civil penalties is for patients where "a physician believes a medical emergency exists." Tex. Health & Safety Code § 171.205.

458. The same language in the Definition Provision appears as the sole exception to the Trigger Ban. Specifically, Texas's criminal ban on abortion "does not apply if: (1) the person performing, inducing, or attempting the abortion is a licensed physician; (2) in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced; and (3) the person performs, induces, or attempts the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless, in the reasonable medical judgment, that manner would create: (A) a greater risk of the pregnant female's death; or (B) a serious risk of substantial impairment of a major bodily function of the pregnant female." Tex. Health & Safety Code § 170A.002(b).

2. Physician Discretion Under the Emergent Medical Condition Exception

459. Courts have long recognized that where an abortion ban provides an exception for patients in certain circumstances, a good faith standard, rather than a reasonable person standard, must apply. *See, e.g.*, *Colautti v. Franklin*, 439 U.S. 379, 395-96 (1979) ("Because of the absence of a scienter requirement in the provision directing the physician to determine whether the fetus is or may be viable, the statute is little more than 'a trap for those who act in good faith'" (quoting *United States v. Ragen*, 314 U.S. 513, 524 (1942))); *Women's Med. Prof'l Corp. v. Voinovich*,

130 F.3d 187, 205 (6th Cir. 1997) ("The determination of whether a medical emergency or necessity exists . . . is fraught with uncertainty and susceptible to being subsequently disputed by others. . . . In an area as controversial as abortion, . . . where there is such disagreement, it is unlikely that the prosecution could not find a physician willing to testify that the physician did not act reasonably. Under the Act, a physician who performs a post-viability abortion under either the medical emergency or medical necessity exception may be held liable, even if the physician believed he or she was acting reasonably, and in accordance with his or her best medical judgment, as long as others later decide that the physician's actions were nonetheless unreasonable.").

460. The Emergent Medical Condition Exception's language, which appears five times in the Texas abortion code, contains conflicting language across the different sections regarding physician discretion and intent. This leaves physicians uncertain whether the treatment decisions they make in good faith, based on their medical judgment, will be respected or will be later disputed.

461. For example, the Trigger Ban defines "reasonable medical judgment" as "a medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved." Tex. Health & Safety Code § 170A.001(4).

462. Yet the Trigger Ban also prohibits a physician from "knowingly" providing a prohibited abortion. Thus, a physician does not violate the Trigger Ban by providing an abortion in reliance on the exception unless the physician subjectively *knows* that in the exercise of reasonable medical judgment, the patient does *not* have a condition qualifying for the exception. When a physician relies on the exception in good faith, the physician does not know that the exception does not apply. Stated differently, a physician cannot knowingly violate the ban if she acts in good faith reliance on the exception.

463. Meanwhile, the Definition Provision's language, which applies to S.B. 8, does not explicitly mention intent. Instead, the language "as certified by a physician" modifies the exception language, suggesting that the treating physician's good faith certification, buttressed by the documentation and reporting requirements for medical emergencies added to the code by S.B. 8, governs the assessment of a patient's circumstances.

464. Physicians confronted with the question of whether or not a patient qualifies for the Emergent Medical Condition Exception must consider not only their ethical responsibilities as physicians and potential medical malpractice liability if they do not follow the standard of care, but the risk of loss of liberty and prison sentence they will face, Tex. Health & Safety Code § 170A.004, Tex. Penal Code §§ 12.32-12.33, and the potential loss of their license to practice medicine and pursue their chosen profession if they are found guilty of violating an abortion ban, Tex. Occ. Code §§ 165.001, 164.052(a)(5), 164.053(a), 164.055; Tex. Health & Safety Code § 170A.007.

465. Understandable confusion regarding physicians' level of discretion under Texas's abortion bans and fear for the legal consequences if they are wrong, is leading to physicians denying care to patients—including patients presenting with emergent conditions—even when such care likely would fall within the exception. As Plaintiffs' experiences show, because of the laws' uncertainty, physicians are over-complying with the laws to the detriment of their patients' lives and health.

466. Texas has failed to provide clarification or guidance on the meaning of the exception, despite being asked repeatedly. *See infra* ¶¶ 486-98.

467. Texas's abortion bans can and should be read to ensure that physicians have wide discretion to determine the appropriate course of treatment, including abortion care, for their

patients who present with emergent medical conditions—without being second guessed by the Attorney General, the Texas Medical Board, a prosecutor, or a jury.

3. Conditions Included in the Emergent Medical Condition Exception

468. In addition to the conflicting language regarding physician intent, Texas law provides scant guidance for what the rest of the language in the Emergent Medical Condition Exception means. Nowhere in the code does Texas law define any of the following distinctions: "risk" versus "serious risk"; "insubstantial impairment" versus "substantial impairment"; or "minor bodily function" versus "major bodily function." Nor does Texas law define what it means to have "a serious risk of a substantial impairment" or "a substantial impairment of a major bodily function."

469. None of this terminology has standardized meaning in the medical profession, leaving physicians to guess at how to translate it into clinical practice. The lack of clarity is preventing medical professionals from providing the care that their patients need.

470. The best reading of Texas law's plain text in the context of supporting patient and physician autonomy requires, at a minimum, that: (1) measurement of risk is left to physician judgment; (2) impairment of a "major bodily function" includes harm to reproductive functions and fertility (3) acute risk need not be already present or imminent; and (4) the patient's condition need not be presently "life-threatening."

471. A condition placing the pregnant person at "risk" or "serious risk" includes any condition that, in the physician's judgment, merits intervention to prevent "death" or "substantial impairment of a major bodily function," given the patient's symptoms, medical history, and the physician's experience and training.

472. While "major bodily function" is not defined in the Texas Health and Safety Code, the Texas Labor Code defines the term to include "reproductive functions." Tex. Labor Code

§ 21.002(11-a) ("[M]ajor bodily function, includ[es], but [is] not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.").

473. Accordingly, any physical condition that presents a serious risk of substantially impairing the patient's future fertility falls within the exception. This includes any condition that poses a serious risk of substantial impairment or loss of the patient's uterus, ovaries, or other reproductive organs.

474. The exception does not require that any of the risks to the pregnant person be imminent. To the contrary, the exception only requires that a physician certify that the patient is "in danger of death" *or* has a condition that creates "a serious risk of substantial impairment of a major bodily function."

475. Nor does the best reading of the exception require that the pregnant person have a condition that is imminently and/or definitively "life-threatening." While the exception references a "life-threatening physical condition," this phrase must be read together with the full language of the exception, which permits physicians to provide an abortion if the patient's condition would pose a serious risk to her health (specifically, a "serious risk of substantial impairment of a major bodily function") if left untreated.

476. The Trigger Ban states that the Emergent Medical Condition Exception does not apply to abortions performed to prevent a pregnant person from harming themself: "A physician may not" provide an abortion "if, at the time the abortion was performed, induced, or attempted, the person knew the risk of death or a substantial impairment of a major bodily function described by [the Emergent Medical Condition Exception] arose from a claim or diagnosis that the female would engage in conduct that might result in the female's death or in substantial impairment of a

major bodily function." Tex. Health & Safety Code § 170A.002(c). The Definition Provision (and thus S.B. 8) does not contain the same carve out.

477. Notwithstanding the Definition Provision's use of the term "medical emergency," the language of the exception—which also appears in the Trigger Ban without the use of the term "medical emergency"—is broader than the type of medical conditions that physicians would consider "emergencies" under, for example, the Emergency Medical Treatment & Labor Act ("EMTALA").[41]

478. An analysis of Texas's Emergent Medical Condition Exception and similar exceptions in other states' abortion bans shows that Texas's language is comparatively broad. Some states do not contain "emergency" exceptions at all, but only provide affirmative defenses to be used in prosecutions.[42] Some states do not explicitly exclude ectopic pregnancies and/or treatment for miscarriage from their definitions of abortion.[43] Some states mention "impairment of a major bodily function" but require such impairment to be "irreversible" in addition to "substantial," while other states limit their exception to life-threatening conditions.[44] And some

[41] *See* 42 U.S.C. § 1395dd(e)(1) (defining medical emergency to involve, among other things, "acute symptoms of sufficient severity (including severe pain)" that create a need for "immediate medical attention").

[42] *See, e.g.*, Idaho Code § 18-622(3); N.D. Cent. Code § 12.1-31-12; Tenn. Code § 39-15-213(c).

[43] *See, e.g.*, Mo. Rev. Stat. § 188.015(1); Miss. Code § 41-41-45(1); Tenn. Code § 39-15-213(a)(1).

[44] *See, e.g.*, Ark. Code § 5-61-303(3) ("'Medical emergency' means a condition in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself."); Ky. Rev. Stat. § 311.772(4)(a) (An abortion may be performed "to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman."); Okla. Stat. tit. 63, § 1-731.4(A)(2) ("'Medical emergency' means a condition which cannot be remedied by delivery of the child in which an abortion is necessary to preserve the life of a pregnant woman whose life is endangered by a physical disorder, physical illness or physical injury including a life-endangering physical condition caused by or arising from the pregnancy itself."); La. Stat. § 40:1061(F) (Abortion may be performed where "necessary in reasonable medical judgment to prevent the death or substantial risk of death due to a physical condition, or to prevent the serious, permanent impairment of a life-sustaining organ of a pregnant woman."); Miss. Code § 41-41-45(2) ("No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother's life."); Mo. Rev. Stat. § 188.015(7) ("'Medical emergency,' a condition which, based on reasonable medical judgment, so complicates the medical condition of a pregnant woman as to necessitate

states require a second physician to confirm that an exception applies.[45]

479. Reading the provisions of the Emergent Medical Condition Exception together, they permit physicians to provide an abortion to a patient where, in the physician's good faith judgment, the patient has a physical condition posing a risk of death or a serious risk to the patient's health. Such conditions include, but are not limited to, the following: conditions that can lead to dangerous bleeding or hemorrhage, including placental conditions; dangerous forms of hypertension; conditions that can lead to dangerous infection, including premature rupture of membranes; other medical conditions that can become emergent during pregnancy, either because being pregnant causes or exacerbates a chronic condition or increases other health risks, or because treatment for the chronic condition is unsafe while pregnant (with the exception of conditions whose emergent nature stems from the risk of self-harm, which are statutorily excluded); and certain fetal conditions or diagnoses that can increase the risks to a pregnant person's health such that, when combined with the patient's other comorbidities, a patient's medical provider may determine that the patient has an emergent condition necessitating abortion.[46]

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the immediate abortion of her pregnancy to avert the death of the pregnant woman or for which a delay will create a serious risk of substantial and irreversible physical impairment of a major bodily function of the pregnant woman."); S.D. Codified Laws § 22-17-5.1 (Abortion prohibited "unless there is appropriate and reasonable medical judgment that performance of an abortion is necessary to preserve the life of the pregnant female."); Tenn. Code § 39-15-213(c)(2) (An abortion may be performed where "the abortion was necessary to prevent the death of the pregnant woman or to prevent serious risk of substantial and irreversible impairment of a major bodily function of the pregnant woman."); Utah Code § 76-7a-201(1)(a) (An abortion may be performed where "necessary to avert: (i) the death of the woman on whom the abortion is performed; or (ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed."); H.B. 481 sec. 4(2), 2019 Leg., Reg. Sess. (Ga. 2019) ("'Medical emergency' means a condition in which an abortion is necessary in order to prevent the death of the pregnant woman or the substantial and irreversible physical impairment of a major bodily function of the pregnant woman.").

[45] *See, e.g.*, Ala. Code § 26-23H-4; Utah Code § 76-7a-201(1)(b).

[46] Other emergent conditions, like ectopic pregnancy, are not included here because the necessary abortion care they require is explicitly excluded from Texas's definition of abortion. *See supra* ¶¶ 435-36.

4. Legislative Intent Regarding the Scope of the Emergent Medical Condition Exception

480. In interpreting the Emergent Medical Condition Exception language, the intent of the legislature and lawmakers who make and enforce Texas's abortion bans, while sparce, is instructive.

481. In 2021, Senator Angela Paxton was the primary sponsor of the Trigger Ban in the Senate. During a debate on the Senate floor regarding the bill, Senator Paxton explained to her Senate colleagues that it "would be the determination of the physician and the woman" whether or not the woman has "a physical condition" that meets the requirements of the Emergent Medical Condition Exception.[47]

482. In 2013, then-Representative Jodie Laubenberg was one of the primary sponsors on a bill banning abortion after 20 weeks of pregnancy that also contained the Emergent Medical Condition Exception. The 20-week ban was ultimately passed into law as part of omnibus anti-abortion legislation, House Bill 2. During a debate on the House floor regarding House Bill 2, Representative Laubenberg explained to her House colleagues that the Bill "gives the physician full authority to know what condition his patient is in and to have that authority to make that determination."[48] She then repeated this understanding of what she described as a "very broad" exception *eight more times* during the floor debate.[49]

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[47] *Senate Session*, 87th Leg., Reg. Sess. (Tex. Mar. 29, 2021) (floor debate on Senate Bill 9, the companion bill to House Bill 1280, the Trigger Ban), https://tlcsenate.granicus.com/MediaPlayer.php?view_id=49&clip_id=15566 (beginning at 4:47:18).

[48] *House Session*, 83d Leg., 2d Called Sess., House Journal Suppl. S4–S6 (Tex. July 9, 2013) (floor debate on House Bill 2), https://journals.house.texas.gov/HJRNL/832/PDF/83C2DAY02SUPPLEMENTFINAL.PDF.

[49] *See id.* ("This bill does give the physician the full autonomy and full authority to take care of his patient."), *id.* (The exception language "places the physician at the center of this [determination]," so that "[i]t will be his judgment" whether the patient has met the threshold for an abortion under the exception.), *id.* (The bill "gives the physician full control" over determining whether the "threshold" for the emergent medical condition exception is met.), *id.* ("By this language, we're allowing whatever the physician determines to be the condition that would impair the physical life of the woman" to control.), *id.* ("[T]his language actually gives broad coverage by allowing the

483. Representative Laubenberg also stated that she "would disagree" with a reading of the bill that blocked physicians from performing an abortion until "an infection has become so severe [that it poses an immediate risk of death]." Consistent with this position, she agreed that "toxemia" and "ruptured membranes" (PPROM) "would be covered under [the] exception."[50]

484. Yet the legislators who supported these bills and other politicians in Texas who championed them have largely remained silent since S.B. 8 took effect and *Roe* was overturned.

485. Meanwhile, confusion among the medical profession over the last year and a half regarding the scope and meaning of the exception has been widely reported, showing that Plaintiffs' experiences are the norm, not the exception.

486. Shortly after *Roe v. Wade* was overturned, the Texas Medical Association ("TMA") asked state regulators to provide guidance to the state's physicians on the scope of the exception. Public reporting indicates that in July 2022, TMA sent a letter to the Texas Medical Board ("TMB") saying it had received complaints that hospitals, administrators, and their attorneys are prohibiting doctors from providing abortion services to patients with major pregnancy complications for fear of violating Texas's abortion bans. The letter, which is not public, is said to have asked the TMB to "swiftly act to prevent any wrongful intrusion into the practice of medicine."[51]

487. Upon information and belief, to date, the TMB has not responded to TMA.

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physician, the physician, to have that authority."), *id.* ("Actually, it's not [tying the physician's hands]" because "[i]t's very broad to give that physician the authority."), *id.* ("It's whatever the doctor believes is in the best interest for the health of the pregnant mom."), *id.* ("I would not want to limit the physician's authority.").

[50] *Id.*

[51] Allie Morris, *Texas Hospitals Fearing Abortion Law Delay Pregnant Women's Care, Medical Association Says*, Dallas Morning News (July 14, 2022), https://www.dallasnews.com/news/politics/2022/07/14/texas-hospitals-fearing-abortion-law-delay-pregnant-womens-care-medical-association-says/.

488. Similarly, Texas Senator Bryan Hughes, the author of S.B. 8, sent a letter to the TMB on August 4, 2022, regarding reported complaints that hospitals "may be wrongfully prohibiting or seriously delaying physicians from providing medically appropriate and possibly life saving services to patients who have various pregnancy complications. These complaints arise from confusion or disregard of the law in Texas since [*Roe* was overturned] and must be corrected." Letter from Bryan Hughes to Executive Director Brint Carlton (Aug. 4, 2022) (attached hereto as Exhibit A).[52]

489. Senator Hughes's letter mentions many of the emergent medical conditions Plaintiffs argue are included in the Emergent Medical Condition Exception, and notes that his list is "non-exhaustive." Senator Hughes explicitly mentions PPROM, the same condition for which Amanda would be denied care three weeks later. *See* Ex. A at 1 n.3 ("[P]regnancy complication[s] that a physician could determine rise to the level of a 'medical emergency' are ectopic pregnancies, preterm premature rupture of membranes, pre-eclampsia, hemorrhaging, strain on the mother's heart, or peripartum cardiomyopathy. This is a non-exhaustive list.").

490. Senator Hughes's Letter concludes by saying, "Texas law makes it clear that a mother's life and major bodily function should be protected." Ex. A at 2.

491. Upon information and belief, to date, the TMB has not responded to Senator Hughes's letter.

492. In the months since, reporters have repeatedly asked Texas legislators to comment on accounts of specific pregnant people who have been denied emergent or emergency care due to

[52] The letter was made public in a news report regarding Texas's interpretation of EMTALA after *Roe* was overturned. Dan Vergano, *The Federal Law Against Patient Dumping—EMTALA—Is the Latest Front in the Abortion Battle*, Grid (Aug. 29, 2022), https://www.grid.news/story/science/2022/08/29/the-federal-law-against-patient-dumping-emtala-is-the-latest-front-in-the-abortion-battle.

the abortion bans. Upon information and belief, with only a couple exceptions, reporters have received no answer.

493. For example, CNN reporters writing a story about Amanda reached out to 28 state legislators for comment. Only one responded: State Senator Eddie Lucio, who left the Senate at the end of 2022. Senator Lucio provided the following quote to the reporters: "Like any other law, there are unintended consequences. We do not want to see any unintended consequences; if we do, it is our responsibility as legislators to fix those flaws."[53]

494. Representative Giovanni Capriglione, the primary sponsor of the Trigger Ban in the House, responded to a reporter's questions about exceptions to the ban by saying "if a qualified doctor, a physician *believes* that the pregnant mother's life is at risk, then they would be able to make a medical decision in that particular instance."[54]

495. When Governor Greg Abbott was asked about the Emergent Medical Condition Exception during his re-election campaign for governor, he said the following: "[S]omething that really does need to be done and that is clarify what it means to protect the life of the mother. There've been some comments and even maybe some actions by some doctors that are not taking care of women who have an ectopic pregnancy or who have a miscarriage. And that is wrong because neither of those two are abortions. But that said, I've even seen some other situations that some women are going through where they're not getting the health care they need to protect their life. . . . [T]he point is this, our goal is to make sure we protect the lives of both the mother and the

[53] Elizabeth Cohen & John Bonifield, *Texas Woman Almost Dies Because She Couldn't Get an Abortion*, CNN (Nov. 16, 2022), https://www.cnn.com/2022/11/16/health/abortion-texas-sepsis/index.html.

[54] *Texas' 'Trigger Law' on Abortion Set to Go into Effect in 30 Days*, KLTV (June 24, 2022), https://www.kltv.com/2022/06/24/texas-trigger-law-abortion-set-go-into-effect-30-days/ (emphasis added).

baby. And there's been too many allegations that have been made about ways in which the lives of the mother are not being protected. And so that must be clarified."[55]

496. When Jonathan Mitchell, a former Texas Solicitor General who helped draft S.B. 8, was asked if he was concerned about the patient stories told in this case, he said the following: "It concerns me, yeah, because the statute was never intended to restrict access to medically necessary abortions, and the statute specifically says that it's not restricting access to medically necessary abortions. So that shouldn't be happening. The statute was written to draw a clear distinction between abortions that are medically necessary and abortions that are purely elective. Only the purely elective abortions are unlawful under SB 8."[56] Mitchell was sitting next to Senator Hughes in Senator Hughes's office when he made this statement.

497. Defendant Paxton sued Secretary of Health and Human Services Xavier Becerra over legal guidance that the Biden administration's HHS issued after *Roe v. Wade* was overturned. That guidance reiterated that the federal EMTALA law obligates hospitals and physicians to provide abortion care to a patient who presents to the hospital's emergency department if a physician or other qualified medical provider determines that the patient has an emergency medical condition and that an abortion is needed to prevent serious jeopardy to the patient's health. The guidance states that physicians and hospitals have a legal obligation to follow EMTALA even if doing so involves providing treatment—including abortion—that is prohibited in the state where the hospital is located. After receiving a preliminary injunction blocking part of the guidance in

[55] Michael McCardel, *Race for Texas Governor: Full interview with Governor Greg Abbott*, WFAA (Oct. 16, 2022) at 1:42-2:26, https://www.wfaa.com/article/news/politics/inside-politics/texas-politics/inside-texas-politics-governor-greg-abbott-full-interview/287-e3aa0d2f-d204-46a9-8d4e-7dc442e5e6fa

[56] Sarah McCammon, *He Helped Craft the 'Bounty Hunter' Abortion Law in Texas. He's Just Getting Started*, NPR (May 8, 2023), https://www.npr.org/2023/05/08/1174552727/jonathan-mitchell-abortion-texas-sb8-roe-v-wade-dobbs.

Texas, Paxton issued a press release lauding the decision, stating: "We're not going to allow left-wing bureaucrats in Washington to transform our hospitals and emergency rooms into walk-in abortion clinics" and "I will fight back to defend our pro-life laws and Texas mothers and children."[57]

498. As Plaintiffs' experiences show, Texas law is not "pro-life" when it comes to pregnant people's lives, and the State of Texas has failed to give physicians any meaningful guidance on how to interpret its laws consistent with that goal.

II. IN THE ABSENCE OF STATE GUIDANCE REGARDING THE EXCEPTION, TEXAS'S ABORTION BANS ARE HARMING PREGNANT PEOPLE WITH EMERGENT MEDICAL CONDITIONS AND THEIR PHYSICIANS

A. Impact of Texas' Abortion Bans on Pregnant People

499. Amanda, Lauren M., Lauren H., Anna, Ashley, Kylie, Jessica, Samantha, Dr. Dennard, Taylor, Kiersten, Lauren V., Elizabeth, Kristen, Amy, Kaitlyn, Aylen, Kimberly, Dr. Mathisen, and Cristina's experiences are not isolated. Reports from around Texas reveal that pregnant people with emergent conditions are being denied appropriate counseling and abortion care in Texas altogether or are being forced to wait until they are clearly hemorrhaging or showing active signs of infection before they will be offered abortions. Media reports of these incidents have continued to accumulate since Plaintiffs first filed this case. Each person's medical circumstances are unique, but in every case, Texas's abortion bans radically decreased the quality of their medical care during pregnancy, often with devastating results.

500. While some pregnant people have only shared their stories anonymously, many have used their names:

[57] Ken Paxton, Tex. Att'y Gen., *Paxton Secures Victory Against Biden Administration, Blocks HHS from Forcing Healthcare Providers to Perform Abortions in Texas* (Aug. 24, 2022), https://www.texasattorneygeneral.gov/news/releases/paxton-secures-victory-against-biden-administration-blocks-hhs-forcing-healthcare-providers-perform.

501. Kristina Cruickshank, a Houston resident, was 12 weeks pregnant with her first child when abdominal pain and heavy bleeding sent her to the emergency room. Kristina was told that her fetus had a cystic hygroma of unknown cause so large that her fetus was unlikely to survive. Yet because of S.B. 8, all her obstetrician was willing to offer her was weekly check-in appointments. Over the next three weeks, Kristina's condition dramatically deteriorated: she was in so much abdominal pain she could not walk; she had severe nausea and vomiting; she lost 15 pounds; she developed hyperthyroidism and was put on multiple thyroid medications. It was not until another emergency room visit at 15 weeks that she finally received a diagnosis: she had a partial molar pregnancy, a rare condition in which the fetus is not viable but that can cause the pregnant person to develop cancer. The condition had also led to massive cysts on her ovaries, explaining her pain. Yet because her fetus had cardiac activity, multiple ethics committees refused to provide her abortion care. Kristina lay in agony for three days until her obstetrician finally found a hospital that would accept her case and a doctor who would perform a D&E. Kristina continues to battle the physical and emotional impact of her pregnancy, including rapid heart rate, shortness of breath, anxiety, and concerns for developing cancer.[58]

502. Kailee DeSpain, a resident of Cleburne, was 19 weeks pregnant when she learned her baby had triploidy, or an extra set of chromosomes, leading to heart, lung, brain, and kidney anomalies that made it highly unlikely he would survive to birth. Kailee had already had two miscarriages, a stillborn, and uterine cancer, and was desperately hoping this pregnancy would "stick." She was counseled that continuing the pregnancy would put her at high risk of multiple complications including blood clots, preeclampsia, placental abnormalities, and cancer, but that

[58] Julian Gill, *Texas' Abortion Laws Led to 3-Day Delay for Houston Woman's Pregnancy Loss Treatment, Doctor Says*, Houston Chronicle (Sept. 7, 2022), https://www.houstonchronicle.com/news/houston-texas/health/article/Waiting-in-vain-Texas-abortion-laws-stymie-17424262.php.

her only option for abortion care was to leave the state. Kailee was docked pay at work because she had already taken too many sick days, and she and her husband struggled to find the money to travel and pay for an abortion in New Mexico. Kailee's obstetrician has now advised her not to get pregnant again, not in Texas.[59]

503. A League City resident was 15 weeks pregnant with her first child when she learned her baby had fetal hydrops condition, Turner syndrome, and other genetic conditions, and likely would not survive to birth. The woman was suffering from severe swelling, high blood pressure, severely elevated liver enzymes, and her doctors worried that she was also developing Mirror syndrome, a life-threatening condition involving severe hypertension and swelling. Yet she was told that anything short of liver failure or a stroke would not be enough to warrant an abortion procedure.[60]

504. Other accounts of anonymous pregnant people in Texas denied care include: a woman with a twin pregnancy delivered one stillborn at 15 weeks and continued pregnancy of the remaining baby put her at high risk of infection, but she was denied an abortion and returned two weeks later with sepsis and an acute kidney injury; a woman at a small rural hospital was 17 weeks pregnant when her water broke, and after being denied care, she was forced to travel to New Mexico for abortion care;[61] a woman whose cancer was in remission before pregnancy saw it come back aggressively after she got pregnant with her second child, and she was forced to travel out of

[59] Elizabeth Cohen & Danielle Herman, *Why a Woman's Doctor Warned Her Not to Get Pregnant in Texas*, CNN (Sept. 10, 2022), https://www.cnn.com/2022/09/09/health/abortion-restrictions-texas/index.html; Brian Scott, *'What About Women Like Me?': North Texas Couple's Post About Pregnancy Struggle, Abortion Goes Viral*, Spectrum News 1 (May 19, 2022), https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2022/05/18/tx-couple-shares-tough-time-under-new-abortion-law.

[60] Courtney Carpenter, *League City Family in 'Nightmare' Situation Under Texas Abortion Law*, ABC13 (Sept. 29, 2022), https://abc13.com/texas-abortion-laws-heartbeat-act-senate-bill-8-pregnant-woman/12277047.

[61] J. David Goodman & Azeen Ghorayshi, *Women Face Risks as Doctors Struggle with Medical Exceptions on Abortion*, N.Y. Times (July 20, 2022), https://www.nytimes.com/2022/07/20/us/abortion-save-mothers-life.html.

state for the abortion that would allow her to resume cancer treatments;[62] a woman in San Antonio started to miscarry and was denied care until the fetus's heartbeat stopped, but in the meantime, the woman developed a dangerous womb infection, lost multiple liters of blood, and was put on a breathing machine.[63]

505. These stories are not unique to Texas. Since *Roe v. Wade* was overturned last year, multiple state abortion bans have gone into effect, and pregnant people in these states with emergent health conditions are facing similar barriers to care:

506. Mayron Hollis, a Tennessee resident, was 8 weeks pregnant when she was diagnosed with a cesarean scar ectopic pregnancy. It was just days before Tennessee's trigger ban took effect. Mayron was told that continuing the pregnancy was extremely dangerous and could lead to hemorrhage or a life-threatening placenta disorder. Mayron's doctors offered an abortion before the new law took effect, but Mayron needed time to think. By the time she decided she wanted an abortion, Tennessee's abortion ban had gone into effect and there was nothing her doctors could do. Mayron had no choice but to continue the pregnancy. At 26 weeks, Mayron started bleeding. Doctors were able to save Mayron's life but had to remove her uterus in the process. Her baby survived but has been in and out of the hospital ever since with severe health problems. Mayron now struggles to balance her job, care for her older children, and the frequent hospital stays.[64]

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[62] Laura Ungar & Heather Hollingsworth, *Despite Dangerous Pregnancy Complications, Abortions Denied*, AP News (Nov. 20, 2022), https://apnews.com/article/abortion-science-health-business-890e813d855b57cf8e92ff799580e7e8.

[63] Lindsey Tanner, *Abortion Laws Spark Profound Changes in Other Medical Care*, AP News (July 16, 2022), https://apnews.com/article/abortion-science-health-medication-lupus-e4042947e4cc0c45e38837d394199033.

[64] Kavitha Surana, *Doctors Warned Her Pregnancy Could Kill Her. Then Tennessee Outlawed Abortion*, ProPublica (March 14, 2023), https://www.propublica.org/article/tennessee-abortion-ban-doctors-ectopic-pregnancy?utm_source=sailthru&utm_medium=email&utm_campaign=majorinvestigations&utm_content=feature.

507. Madison Underwood, a Tennessee resident, was nearly 17 weeks pregnant when, during a routine ultrasound, she was informed that her fetus had not formed a skull. She was advised that continuing the pregnancy could lead to sepsis, critical illness, or even death. Madison postponed her wedding to schedule her abortion. But while undergoing a pre-abortion ultrasound, Madison was informed that her procedure had been canceled because it had been determined that the legal risks in Tennessee were too high. Madison remembered wondering: "They're just going to let me die?" Madison was forced to travel hundreds of miles to receive care in Georgia, where, at the time, abortion was legal until 20 weeks.[65] Presently a 6-week ban is in effect in Georgia.

508. Allie Phillips, a Tennessee resident, was 19 weeks pregnant when her baby was diagnosed with holoprosencephaly, a congenital defect where the brain does not develop properly, and other structural abnormalities. Allie was told that her baby would not survive to birth, and that the problems would only get worse the longer she continued her pregnancy. Her doctor said that due to Tennessee's law, she could not offer Allie advice on abortion, and if it was something Allie wanted to do, she would have to do her own research. To make things worse, Allie and her husband had to explain the situation to their 5-year-old daughter. Allie has been documenting her journey on Tik Tok and is planning to travel to New York for an abortion.[66]

509. "Sarah," a Tennessee resident, went to the emergency room with severe abdominal pain. Even though she had an IUD, tests revealed that she had an ectopic pregnancy—a relatively common occurrence when an IUD fails—and was bleeding internally. Instead of receiving the immediate treatment she needed, however, Sarah was forced to endure hours of pain and severe

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[65] Neelam Bohra, *'They're Just Going to Let Me Die?' One Woman's Abortion Odyssey*, N.Y. Times (Aug. 1, 2022), https://www.nytimes.com/2022/08/01/us/abortion-journey-crossing-states.html?referringSource=articleShare.

[66] Michael Daly, *Tennessee Abortion Ban a 'Nightmare' for Woman With Doomed Pregnancy*, Daily Beast (Feb. 28, 2023), https://www.thedailybeast.com/tennessee-abortion-ban-a-living-nightmare-for-woman-with-doomed-pregnancy.

bleeding while hospital attorneys attempted to determine whether providing her with abortion care would be prohibited under the state's ban. Almost 10 hours later, after drafting 20 paragraphs of rationale for why an abortion was necessary, the hospital finally performed an abortion and was forced to remove part of one of her fallopian tubes to save her life.[67]

510. Kaitlyn Joshua, a Louisiana resident, was nearly 11 weeks pregnant when she started bleeding heavily, passing clots and tissue, and experiencing pain that she described as being worse than childbirth. Kaitlyn learned that her fetus had stopped growing past 7 or 8 weeks and that it only had faint cardiac activity, but despite two emergency room visits at two different hospitals, she was repeatedly denied a D&C due to fear regarding Louisiana's abortion bans. After this experience, she and her husband have decided not to have any more children for now.[68]

511. Nancy Davis, a Louisiana resident, was around 10 weeks pregnant when an ultrasound revealed that her fetus had acrania, a condition where the fetus is missing part of its skull. Nancy was counseled that her fetus would die shortly after birth but was refused abortion care because hospital officials were unsure whether the exceptions to Louisiana's abortion-bans applied to her case. Nancy was eventually forced to make an arduous, 1,400-mile journey to New York to receive the care she needed.[69]

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[67] Steve Cavendish, *Sarah Needed an Abortion. Her Doctors Needed Lawyers*, Nashville Scene (Dec. 20, 2022), https://www.nashvillescene.com/news/citylimits/sarah-needed-an-abortion-her-doctors-needed-lawyers/article_472a621e-7fdb-11ed-bf8d-0797b6012be2.html. Unlike Texas, Tennessee's abortion bans do not explicitly exclude ectopic pregnancy or miscarriage care from the definition of "abortion."

[68] Rosemary Westwood, *Bleeding and in Pain, She Couldn't Get 2 Louisiana ERs to Answer: Is It a Miscarriage?*, NPR (Dec. 29, 2022), https://www.npr.org/sections/health-shots/2022/12/29/1143823727/bleeding-and-in-pain-she-couldnt-get-2-louisiana-ers-to-answer-is-it-a-miscarria. There are multiple overlapping and inconsistent abortion bans currently in effect in Louisiana, contributing to the confusion regarding the scope of the state's abortion exceptions. *See June Med. Servs., LLC v. Landry*, No. C-720988, 2022 WL 2824316 (La. Dist. Ct. July 7, 2022).

[69] Ramon Antonio Vargas, *Louisiana Woman Carrying Unviable Fetus Forced to Travel to New York for Abortion*, The Guardian (Sept. 14, 2022), https://www.theguardian.com/us-news/2022/sep/14/louisiana-woman-skull-less-fetus-new-york-abortion.

512. Christina Zielke was visiting Ohio when she started bleeding. A few weeks earlier, doctors in Washington D.C. told her that she was likely miscarrying because her fetus had no cardiac activity, so when she started bleeding, she assumed that she was simply passing the pregnancy. The next day, however, she started bleeding profusely and passing large clots. In the emergency room, an ultrasound confirmed that the fetus had no cardiac activity, and even though she was informed that an abortion is often required to stop such bleeding, she was not offered an abortion procedure. Instead, she was discharged with blood running down her shoes.[70]

513. Tara George, an Ohio resident, was 20 weeks pregnant with her first child when she learned that her baby had multiple conditions in its bladder, heart, and kidneys, and likely would not survive to birth. She was advised that continuing her pregnancy put her at a higher risk of developing preeclampsia, placental abruption, and deadly blood clots. Yet, she was denied an abortion because the hospital said it was unsure whether her conditions satisfied Ohio's abortion-ban exceptions. She and her husband immediately scheduled an abortion at a hospital in Michigan. But, soon after, a Michigan appeals court allowed the state's 1931 abortion ban to go into effect and, as a result, Tara was denied abortion care for the second time in under a week. After struggling to find care in other states, she received a call from a doctor in Michigan who told her that they could go ahead with the procedure as a judge had issued a temporary restraining order, blocking the ban's enforcement. That same day, she rushed to Michigan where she was finally able to receive the care she needed.[71]

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[70] Selena Simmons-Duffin, *Her Miscarriage Left Her Bleeding Profusely. An Ohio ER Sent Her Home to Wait*, NPR (Nov. 15, 2022), https://www.npr.org/sections/health-shots/2022/11/15/1135882310/miscarriage-hemorrhage-abortion-law-ohio.

[71] Abigail Abrams, *'Never-Ending Nightmare.' An Ohio Woman Was Forced to Travel Out of State for an Abortion*, Time (Aug. 29, 2022), https://time.com/6208860/ohio-woman-forced-travel-abortion.

514. Beth Long, an Ohio resident, was around 17 weeks pregnant when she learned her baby had limb body wall complex, a rare condition where the baby's organs develop outside its body. Beth, who had undergone extensive and expensive fertility treatment to get pregnant, was told that the condition posed health risks for her too, including dangerous bleeding that could necessitate a hysterectomy. Beth was advised to terminate the pregnancy as soon as possible. But because her life was not "imminently in danger," her state-issued insurance would not cover the $20,000-$30,000 procedure in Ohio, and Beth was forced to delay abortion care for weeks and ultimately travel to an out of state hospital that would do the procedure for a discounted rate. Beth called it "the most dehumanizing experience of my life."[72]

515. Kayla Smith, an Idaho resident, was 20 weeks pregnant when she learned her baby had critical aortic stenosis and hypoplastic left heart syndrome, both serious heart defects. Kayla had been diagnosed with preeclampsia when she was pregnant with her older child and worried she would develop it again. Kayla ultimately decided to travel to Washington State for an induction abortion.[73]

516. Jennifer Adkins, an Idaho resident, was 12 weeks pregnant when she learned that her fetus had hydrops fetalis, a severe form of swelling, and likely had Turner syndrome. Jennifer was told that her fetus was unlikely to survive but due to Idaho's abortion bans, there was nothing her doctors could do. Seeking abortion care in another state made Jennifer feel like a criminal and a medical refugee, but she ultimately traveled to Oregon for an abortion.[74]

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[72] Elizabeth Cohen & Amanda Musa, *Ohio Abortion Law Meant Weeks of "Anguish," "Agony" for Couple Whose Unborn Child Had Organs Outside Her Body*, CNN (Feb. 8, 2023), https://www.cnn.com/2023/02/08/health/ohio-abortion-long/index.html.

[73] Abby Davis, '*I Don't Wish This on Anyone:' Idaho Couple Travel Out of State for Abortion*, KTVB7 (April 5, 2023), https://www.ktvb.com/article/news/local/capitol-watch/idaho-couple-travels-out-of-state-for-abortion-kayla-smith-james-smith-baby-brooks/277-f6d5cdca-7d1e-421b-8758-88495a1154d2.

[74] Kelcie Moseley-Morris, *Her Fetus Had 1% Chance of Survival. Idaho's Ban Forced Her to Travel for an*

517. Carmen Broesder, an Idaho resident, was 6 weeks pregnant when she began experiencing heavy bleeding and intense pain and cramps. Despite multiple trips to emergency rooms at different hospitals, Carmen was repeatedly denied abortion care, with her physicians citing trepidation regarding Idaho's abortion ban. Carmen documented her 19-day miscarriage on social media.[75]

518. Kelly Shannon, an Alabama resident, was midway through her pregnancy when she learned her baby had Down syndrome and further testing revealed swelling in the baby's head and body wall, a heart defect, and a tumor in the baby's abdomen. Kelly was told it was unlikely the baby would survive to birth. Her doctors tried to get permission to perform her abortion, but while one committee approved the procedure, a higher-level committee denied permission based on Alabama's laws. Kelly traveled to Virginia to access abortion care.[76]

519. Alyssa Gonzales, an Alabama resident, was heartbroken when her second baby was diagnosed with trisomy 18. Yet in her words, "the worst was yet to come," as Alabama's trigger law had taken effect weeks earlier and Alyssa was told she did not qualify for an exception. Alyssa did not have the money to travel for an abortion, but after connecting with an abortion fund who offered financial support, Alyssa loaded her infant son, her fiancé, and his parents in the car, and they drove 11 hours to an abortion provider in Washington, D.C.[77]

Abortion, Idaho Capital Sun (May 10, 2023), https://idahocapitalsun.com/2023/05/10/her-fetus-had-1-chance-of-survival-idahos-ban-forced-her-to-travel-for-an-abortion.

[75] Mary Kekatos, *Idaho Woman Shares 19-Day Miscarriage on TikTok, Says State's Abortion Laws Prevented Her from Getting Care*, ABC News (Jan. 21, 2023), https://abcnews.go.com/Health/idaho-woman-shares-19-day-miscarriage-tiktok-states/story?id=96363578.

[76] Nadine El-Bawab, *Alabama Mother Denied Abortion Despite Fetus' 'Negligible' Chance of Survival*, ABC News (May 2, 2023), https://abcnews.go.com/US/alabama-mother-denied-abortion-despite-fetus-negligible-chance/story?id=98962378.

[77] Alyssa Gonzales, *I Live in Alabama. Our Cruel New Abortion Law Has Made My Life Absolute Hell*, Huffpost Personal (Oct. 21, 2022), https://www.huffpost.com/entry/supreme-court-roe-v-wade-alabama_n_63486af5e4b0b7f89f546712.

520. Jill Hartle, a resident of South Carolina, was 22 weeks pregnant when her fetus was diagnosed with hypoplastic left heart syndrome, a condition where the fetal heart does not properly develop. But Jill was told there was nothing doctors could do for her at home because *Roe v. Wade* had been overturned weeks earlier and South Carolina's 6-week abortion ban was in effect. Jill was ultimately able to get an appointment for an abortion in Washington, D.C. but had to wait two weeks for an appointment due to the influx of patients.[78]

521. Mylissa Farmer, a Missouri resident, was nearly 18 weeks pregnant when her water broke. Her doctor diagnosed her with PPROM and advised her to terminate the pregnancy to protect her health. Due to Missouri's abortion ban, however, she was advised that doctors could only intervene if her vitals plummeted, infection set in, or the fetus's cardiac activity stopped. Mylissa worried that by the time there was an emergency, it would be too late for her, as she was already at higher risk of maternal thrombosis, infection, and severe blood loss. After struggling to find an abortion provider in three other states, she eventually found a clinic in Illinois and traveled hundreds of miles to receive the care she needed.[79] Upon information and belief, Mylissa is the first patient since *Roe* was overturned to submit an EMTALA complaint based on being denied an abortion for an emergent medical condition.[80] The U.S. Department of Health and Human Services recently cited hospitals in Kansas and Missouri for violating EMTALA by failing to provide Mylissa with proper abortion care.[81]

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[78] Andrea Michelson, *Former Ms. South Carolina Says She Was Forced to Carry Her Fetus Until 25 Weeks—2 Months After Doctors Detected a Deadly Heart Defect*, Insider (Nov. 14, 2022), https://www.insider.com/former-pageant-winner-describes-abortion-at-25-weeks-post-roe-2022-11.

[79] Susan Szuch, *After Missouri Banned Abortions, She Was Left 'With a Baby Dying Inside.' Doctors Said They Could Do Nothing*, Springfield News-Leader (Oct. 19, 2022), https://www.news-leader.com/story/news/local/ozarks/2022/10/19/missouri-laws-abortion-ban-left-her-with-a-baby-dying-inside-pprom/10366865002.

[80] *Admin. Compl. (Mylissa Farmer)*, U.S. Dep't of Health & Human Servs. (Nov. 8, 2022), https://nwlc.org/wp-content/uploads/2022/11/2022.11.08-Mylissa-Farmer-EMTALA-complaint.pdf.

[81] HHS Secretary Xavier Becerra Statement on EMTALA Enforcement (May 1, 2023),

522. "R," a Missouri resident, found out she was pregnant a week after *Roe v. Wade* was overturned. R had previously been diagnosed with a "bicornate uterus," a congenital abnormality that creates significant risks for carrying a child to term. R immediately knew that she wanted an abortion. Missouri's trigger ban had just taken effect, so R started calling clinics out of state, but they were all booked up. It took seven weeks before she was able to get an appointment in Illinois.[82]

523. Deborah Dorbert, a Florida resident, was 24 weeks pregnant when her fetus was diagnosed with Potter syndrome, a condition where the kidneys do not develop properly and do not produce a sufficient amount of amniotic fluid. Deborah was told that the condition is incompatible with life as babies born with Potter syndrome are both unable to breathe and go into renal failure at birth, and that the risks to Deborah will increase as her pregnancy continues. Deborah and her husband decided that they wanted an abortion as soon as possible due to concern for Deborah's physical and mental health, worries about the baby suffering, and their desire to begin the grieving process. But because no one in Florida would perform the abortion under the state's medical exception, and it was too difficult to leave the state, Deborah carried the pregnancy to term. Her baby lived for only 99 minutes. Florida has a 15-week abortion ban that has been in effect since shortly after *Roe* was overturned—it has been challenged but is in effect while appeals continue.[83]

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https://www.hhs.gov/about/news/2023/05/01/hhs-secretary-xavier-becerra-statement-on-emtala-enforcement.html; *Press Release: NWLC Applauds CMS' Action on Mylissa Farmer's Emergency Abortion Complaint, Finding Hospitals Violated Federal Law*, Nat'l Women's Law Ctr. (May 1, 2023), https://nwlc.org/press-release/nwlc-applauds-cms-action-on-mylissa-farmers-emergency-abortion-complaint-finding-hospitals-violated-federal-law.

[82] Carter Sherman, *She Feared Giving Birth Would Kill Her. She Fled Her State for an Abortion.*, Vice (Oct. 26, 2022), https://www.vice.com/en/article/m7gx4v/abortion-missouri.

[83] Frances Stead Sellers, Thomas Simonetti, & Maggie Penman, *The Short Life of Baby Milo* (May 19, 2023), https://www.washingtonpost.com/health/interactive/2023/florida-abortion-law-deborah-dorbert; Frances Stead Sellers, *Her Baby Has a Deadly Diagnosis. Her Florida Doctors Refused an Abortion*, Washington Post (Feb. 18, 2023), https://www.washingtonpost.com/health/2023/02/18/florida-abortion-ban-unviable-pregnancy-potter-syndrome; Maya Yang, *Florida Couple Unable to Get Abortion Will See Baby Die After Delivery*, The Guardian (Feb. 18, 2023), https://www.theguardian.com/world/2023/feb/18/florida-abortion-law-couple-birth.

524. Anya Cook and Shanae Smith-Cunningham, two close friends in Florida, were both pregnant at the same time when they experienced the same pregnancy complication just days apart. Anya was around 16 weeks pregnant when her water broke and Shanae was 19 weeks pregnant. Anya was diagnosed with PPROM at an emergency room then sent home to wait. She ultimately gave birth in the bathroom of a hair salon, started bleeding profusely, and was rushed to the hospital for emergency surgery. Shanae was in Jamaica when her water broke and took the risk to fly back to Florida, thinking she would get better care at home. But Shanae was sent home from the hospital multiple times before she eventually went into labor on her own. Both women are now suffering from fertility problems.[84]

525. Anabely Lopes, a Florida resident, was 15 weeks pregnant when her fetus was diagnosed with trisomy 18. Florida's 15-week ban had gone into effect just days earlier, and Anabely was forced to travel to Washington, D.C. for an abortion. The experience was so painful and devastating that Anabely had thoughts of suicide.[85]

526. Heather Maberry, a Kentucky resident, was 20 weeks pregnant when she learned her baby had anencephaly. Heather was already struggling with hyperemesis gravidarum and on bedrest. Now she must decide if she will travel out of state for an abortion or give birth to a child who will not survive. She is currently trying to raise the funds she needs on GoFundMe to travel for an abortion.[86]

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[84] Caroline Kitchener, *Two Friends Were Denied Care After Florida Banned Abortion. One Almost Died*, Washington Post (April 10, 2023), https://www.washingtonpost.com/politics/2023/04/10/pprom-florida-abortion-ban.

[85] Timothy Bella, *Fla. Woman Forced to Fly to D.C. for Abortion Returns for State of the Union*, Washington Post (Feb. 7, 2023), https://www.washingtonpost.com/politics/2023/02/07/state-of-union-abortion-florida-anabely-lopes.

[86] Kelsey Souto, *Powell Co. Woman Forced to Travel out of State for Abortion*, WKYT (May 8, 2023), https://www.wkyt.com/2023/05/08/powell-co-woman-forced-travel-out-state-abortion.

527. Amy English, a Kentucky resident, was 20 weeks pregnant when she learned her baby had acrania and anencephaly and would not survive to birth. Amy wanted an abortion but erupted into sobs when her doctor told her that it was illegal in Kentucky and she should call hospitals in Illinois. Amy remembers thinking, "Am I just supposed to Google the number, call the front desk and ask, 'How do I get an abortion at your hospital?'" Amy, her husband, and her sister-in-law called multiple clinics, but due to abortion laws in Indiana and Ohio, she had trouble finding a provider who could do a D&E. Eventually, she found a hospital 400 miles away in Illinois that agreed to give her an induction abortion.[87]

528. Leah Martin, a Kentucky resident, was 12 weeks pregnant when she learned her fetus had triploidy and she was diagnosed with a partial molar pregnancy. She was told that her pregnancy could give her cancer if she did not get an abortion. But Kentucky's abortion bans had taken effect two weeks earlier and the hospital told Leah that they could not perform the abortion while litigation of the abortion bans continued. But Leah got lucky. Shortly after her diagnosis, a Kentucky judge temporarily enjoined the abortion bans, and Leah got an appointment at Kentucky's sole abortion clinic. The injunction was lifted just days after her procedure and the abortion bans remain in effect today.[88]

529. Chloe, an Arizona resident, was 23 weeks pregnant when she learned her baby had holoprosencephaly. She was told her baby would only survive for days, if at all, but that due to the state's 15-week abortion ban, she could not receive an abortion in Arizona. Chloe considered traveling out of state, but the clinic where she was scheduled to receive care canceled her

[87] Alex Acquisto, *A 'Twisted' Experience: How KY's Abortion Bans Are Depriving Pregnant Patients of Health Care*, Lexington Herald Leader (Feb. 22, 2023), https://www.kentucky.com/news/politics-government/article271925592.html.

[88] *Id.*

appointment after they received threats to the clinic and to her safety based on a story regarding her experience that she had shared on social media. Chloe was forced to carry the pregnancy to term and her daughter lived for only 2 days.[89] Chloe continues to suffer mental health effects from the experience.

530. Jaci Statton, an Oklahoma resident, was in her first trimester when she learned she had a partial molar pregnancy. Heavy bleeding and severe nausea first sent her to the emergency room. She was told that continuing the pregnancy was extremely dangerous to her health and could lead to cancer. But three different hospitals turned her away, saying that due to Oklahoma's abortion laws, they could not provide her with abortion care. One hospital told her to wait in the parking lot of the hospital to see if she got worse. Jaci eventually traveled to Kansas for an abortion. She continues to suffer negative health effects form the pregnancy.[90] A study and associated commentary published in the *Lancet* shows that Jaci's experience is not unique: confusion about the state's abortions laws is widespread at the hospitals throughout Oklahoma.[91]

531. Additional stories of pregnant people not publicly named have appeared constantly in the news since *Roe v. Wade* was overturned. For example: a Texas woman whose fetus was diagnosed with acrania spent six weeks putting together the resources to travel out of state for an abortion, and she ended up needing a hysterectomy that likely would not have been necessary if

[89] Katie Kindelan, *Woman Has 44 Hours with her Baby Born After a Nonviable Pregnancy*, Good Morning America (May 11, 2023), https://www.goodmorningamerica.com/wellness/story/44-hours-baby-carried-nonviable-pregnancy-term-after-97451344.

[90] Selena Simmons-Duffin, *In Oklahoma, a Woman was Told to Wait Until She's 'Crashing' for Abortion Care*, NPR (April 25, 2023), https://www.npr.org/sections/health-shots/2023/04/25/1171851775/oklahoma-woman-abortion-ban-study-shows-confusion-at-hospitals.

[91] Michele Heisler et al., *US Abortion Bans Violate Patients' Right to Information and to Health*, Lancet (April 25, 2023), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(23)00808-5/fulltext; Physicians for Human Rights, the Oklahoma Call for Reproductive Justice, and the Center for Reproductive Rights, *No One Could Say: Assessing Emergency Obstetrics Information as a Prospective Prenatal Patient in Post*-Roe *Oklahoma* (April 2023), https://phr.org/wp-content/uploads/2023/04/Oklahoma-Abortion-Ban-Report-2023.pdf.

she had been able to get an abortion sooner;[92] a Tennessee woman whose fetus was diagnosed with a genetic condition putting her at risk of preeclampsia was forced to take a 6-hour ambulance ride to North Carolina where, on arrival, her blood pressure was dangerously high and she was showing signs of kidney failure;[93] a Tennessee woman was diagnosed with a cesarean scar ectopic pregnancy and traveled to Georgia which, though it has its own abortion ban, at least has an explicit exception for ectopic pregnancies, unlike Tennessee;[94] a Florida woman pregnant with twins was 20 weeks pregnant when her water broke and she partially delivered one of the fetuses, but she was forced to wait a week until both fetuses' hearts stopped to receive medical care;[95] people whose fetuses were diagnosed with fatal conditions like anencephaly, some of whom were able to travel out of state for abortion care, while others were forced to carry the pregnancies to term and suffer through the emotional trauma of a stillbirth;[96] and people who have been denied or delayed in receiving treatment for ectopic pregnancies or miscarriage despite intense pain and bleeding.[97]

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[92] Selena Simmons-Duffin, *3 Abortion Bans in Texas Leave Doctors 'Talking in Code' to Pregnant Patients*, NPR (March 1, 2023), https://www.npr.org/sections/health-shots/2023/03/01/1158364163/3-abortion-bans-in-texas-leave-doctors-talking-in-code-to-pregnant-patients.

[93] Susan Rinkunas, *A Tennessee Woman Had to Take a 6-Hour Ambulance Ride to Get an Abortion*, Jezebel (Oct. 17, 2022), https://jezebel.com/a-tennessee-woman-had-to-take-a-6-hour-ambulance-ride-t-1849668907.

[94] Poppy Noor, *'I Cried With Her': The Diary of a Doctor Navigating a Total Abortion Ban*, The Guardian (Feb. 22, 2023), https://www.theguardian.com/world/2023/feb/22/diary-doctor-navigating-total-abortion-ban-tennessee.

[95] Rachel Rapkin, *Here's the Harrowing Story of One of My Patients After Florida's 15-Week Abortion Ban*, Tampa Bay Times (Jan. 21, 2023), https://www.tampabay.com/opinion/2023/01/21/heres-harrowing-story-one-my-patients-after-floridas-15-week-abortion-ban-column.

[96] Nilo Tabrizy et al., *"Do No Harm": OB-GYNs Weigh the Legal Impact of Abortion Bans*, N.Y. Times (Sept. 10, 2022), https://www.nytimes.com/video/us/100000008489880/abortion-bans-maternal-health.html?searchResultPosition=14; Noor, *supra* n.94.

[97] *Confusion Post-Roe Spurs Delays, Denials for Some Lifesaving Pregnancy Care*, Washington Post (July 16, 2022), https://www.washingtonpost.com/health/2022/07/16/abortion-miscarriage-ectopic-pregnancy-care; Stephanie Wenger, *Tennessee Doctor Details Patient's Experience Being Unable to Get Pills to Complete Her Miscarriage*, People (July 8, 2022), https://people.com/health/tenn-doctor-details-patients-experience-being-unable-to-get-pills-to-complete-her-miscarriage.

B. Confusion and Fear Throughout the Medical Community Regarding Texas's Abortion Bans and Similar Bans Around the Country

532. The stories of pregnant people described above reflect the widespread confusion among the medical community regarding the proper application of the Emergent Medical Condition Exception, combined with fear that a physician's good faith reliance on the exception could nonetheless result in disciplinary sanctions, civil penalties, and/or a lengthy prison sentence.

533. After S.B. 8 took effect, researchers from Texas Policy Evaluation Project, the University of Texas at Austin, Baylor College of Medicine, and the Pegasus Health Justice Center interviewed 25 clinicians in general obstetrics and gynecology, maternal and fetal medicine, and genetic counseling regarding the impact S.B. 8 has had on their practice. The results of these interviews were published in the *New England Journal of Medicine*[98] and show that fear and confusion among the medical profession regarding abortion bans is widespread:

534. There is no consensus view among physicians on the meaning of the Emergent Medical Condition Exception, leading to significant chilling in the provision of pregnancy-related care that involves abortion.

535. Some physicians believe that "[p]eople have to be on death's door to qualify for maternal exemptions to SB8." Accordingly, some clinicians force patients with "pregnancy complications or preexisting medical conditions that may be exacerbated by pregnancy" to "delay an abortion until their conditions become life-threatening," *i.e.*, until the patient is in crisis, and thus "qualify as medical emergencies."[99] In other words, instead of being offered expectant

[98] Whitney Arey et al., *A Preview of the Dangerous Future of Abortion Bans – Texas Senate Bill 8*, 387 N. Engl. J. Med. 388, 388-89 (Aug. 4, 2022); *see also* Charlotte Huff, *In Texas, Abortion Laws Inhibit Care for Miscarriages*, NPR (May 10, 2022), https://www.npr.org/sections/health-shots/2022/05/10/1097734167/in-texas-abortion-laws-inhibit-care-for-miscarriages; María Méndez, *Texas Laws Say Treatments for Miscarriages, Ectopic Pregnancies Remain Legal But Leave Lots of Space for Confusion*, Tex. Tribune (July 20, 2022), https://www.texastribune.org/2022/07/20/texas-abortion-law-miscarriages-ectopic-pregnancies.

[99] Arey et al., *supra* n.98 at 389.

management *or* termination of pregnancy when the emergent conditions present themselves, pregnant people are given one option: wait to miscarry without medical intervention or until the emergent conditions have made them so horribly ill that they are at risk of imminent death.

536. For example, "[s]ome clinicians believe that patients with rupture of membranes before fetal viability are eligible for a medical exemption under SB8, while others believe these patients cannot receive an abortion so long as there is fetal cardiac activity." Physicians who believe they cannot intervene before a patient falls sick with infection will send patients home, "only to see them return with signs of sepsis." Another patient received an abortion only after her "severe cardiac condition" caused her to be admitted to the ICU.[100]

537. All of the hospitals where the interviewees practice prohibited fetal reduction, "even though in some cases (e.g., complications of monochorionic twins) failure to perform the procedure could result in the loss of both twins."[101] This reflects Lauren M. and Ashley's personal experiences.

538. Some of the interviewed clinicians reported that, based on legal guidance, they do not believe they can even counsel patients regarding "the availability of abortion in cases of increased maternal risks or poor fetal prognosis, although before SB8 they would have done so."[102] Again, this reflects the experiences of Amanda, Lauren M., Lauren H., Anna, Ashley, Kylie, Jessica, Samantha, Dr. Dennard, Taylor, Kiersten, Lauren V., Elizabeth, Kristen, Amy, Kaitlyn, Aylen, Kimberly, Dr. Mathisen, and Cristina who sensed that their medical providers felt muzzled.

[100] *Id.*

[101] *Id.*

[102] *Id.* at 388.

539. Fear of liability under the abortion bans is so great that some physicians have even changed their standard treatment methods from D&E to induction or hysterotomy (a procedure similar to caesarean).[103]

540. The confusion extends to physicians who do not perform abortions but are involved in advising on the appropriate treatment or in providing sedation, such as anesthesiologists who place epidurals during labor inductions. These physicians reportedly worry about potential liability for "aiding and abetting" an illegal abortion and thus decline to participate.[104]

541. Confusion over the Emergent Medical Condition Exception extends to ectopic pregnancies as well. At least one Texas hospital no longer treats patients with ectopic pregnancies implanted in cesarean scars, even though ectopic pregnancies are excluded from Texas's definition of abortion and leading experts at the Society for Maternal-Fetal Medicine recommend treating these "life-threatening pregnancies" with "surgical or medical" termination.[105]

542. Because of the law's severe restrictions on maternal health and wellbeing, some doctors have departed Texas for states without equally strict abortion bans. The result is fewer doctors who are fully equipped to treat patients suffering from serious pregnancy complications and challenges with training the next generation of doctors.[106]

543. Another study was conducted at two large hospitals in Dallas County, Parkland Hospital and the William P. Clements Jr. University Hospital after S.B. 8 took effect. The study

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[103] *Id.* at 390.

[104] *Id.* at 389-90.

[105] *Id.* at 389 (citing Russell Miller et al., *Society for Maternal-Fetal Medicine (SMFM) Consult Series #49: Cesarean Scar Pregnancy*, 222 Am. J. Obstetrics & Gynecology B2-B14 (May 2020); *see also* Patricia Santiago-Munoz, M.D., *Cesarean Scar Ectopic Pregnancy: Facts and Treatment Options*, U.T. Sw. Med. Ctr. (Aug. 23, 2022), https://utswmed.org/medblog/cesarean-scar-ectopic-pregnancy (explaining that a CSEP "may result in hemorrhage" and "potentially lead[] to a hysterectomy, damage to surrounding organs, or death of the pregnant patient").

[106] Arey et al., *supra* n.98 at 390.

documented a significant increase in maternal morbidity among patients with preterm labor who would have been promptly offered induction abortions before the law but, due to fear regarding S.B. 8, were not offered such treatment until their physicians determined that an emergent condition posed "an immediate threat to maternal life." The study followed 28 patients (26 with PPROM, 2 with pregnancy tissue prolapsed into the vagina). Among these patients, 43% (12 of 28) experienced infection or hemorrhage and one patient required a hysterectomy. Other maternal morbidities included ICU admissions, blood transfusions, postpartum emergency room visits, and postpartum readmission.[107]

544. The Dallas hospitals study concluded that "state-mandated expectant management" is associated with "significant maternal morbidity."[108]

545. State-mandated expectant management under Texas's abortion bans resulted in a lapse of nine days on average between first diagnosis and the development of "complications that qualified as an immediate threat to maternal life."[109]

546. The Dallas hospitals study examined practices prior to the overturning of *Roe* and the triggering of Texas's complete ban on abortion. It also examined practices at level IV designated maternal care facilities in large urban centers. On information and belief, delays and maternal morbidities are worse for patients who first present to non-level IV designated maternal care facilities, for patients who live far from large urban centers, and for patients after the Trigger Ban sprung into effect.

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[107] Anjali Nambiar, et al., *Maternal Morbidity and Fetal Outcomes Among Pregnant Women at 22 Weeks' Gestation or Less with Complications in Two Texas Hospitals After Legislation on Abortion*, 227 Am. J. Obstetrics & Gynecology 648 (2022), https://doi.org/10.1016/j.ajog.2022.06.060.

[108] *Id.*

[109] *Id.*

547. An additional study focused on patients with lethal or life-limiting fetal diagnoses in Texas after S.B. 8 took effect. The study documented self-censoring among health care providers regarding abortion because of a fear of potential liability under S.B. 8, and a resulting lack of information for patients about their pregnancy options, including abortion. The study followed 16 patients who received lethal or life-limiting fetal diagnoses in Texas after S.B. 8 took effect and ultimately pursued an abortion out of state. Patients reported feeling isolated after receiving their diagnoses as their health care providers were unable to speak openly with them about their options, including abortion. Instead, the study documented that patients were forced to rely on Google and their own knowledge about abortion, all the while stating that they would have preferred to receive information straight from their Texas doctor. The study concluded that restrictions like S.B. 8 "erode the patient–physician relationship, evoke fear and safety concerns, and create a significant burden on patients to understand pregnancy options and navigate the process of abortion alone."[110]

548. The patients study concluded that restrictions like S.B. 8 "erode the patient–physician relationship, evoke fear and safety concerns, and create a significant burden on patients to understand pregnancy options and navigate the process of abortion alone."

549. In the months since *Roe v. Wade* was overturned and other state bans have taken effect, confusion over the scope of exceptions to abortion bans has extended beyond Texas. For example, another article in *the New England Journal of Medicine* explained that physicians and other medical professionals nationwide have struggled to translate legislative exceptions to abortion bans into actionable clinical guidelines, with disastrous impacts on patient care. Without

[110] Courtney C. Baker et al., *Texas Senate Bill 8 and Abortion Experiences in Patients with Fetal Diagnoses*, 141 Obstetrics & Gynecology 602 (2023), https://pubmed.ncbi.nlm.nih.gov/36735418.

further explanation, physicians do not know if, for example, "a patient with pulmonary hypertension, for whom we cite a 30-to-50% chance of dying with ongoing pregnancy," is sufficiently at risk of death or substantial impairment of a major bodily function to permit abortion.[111]

550. Other studies of the impact on the medical profession of reversing *Roe v. Wade* are ongoing, including a study out of the University of California San Francisco designed to examine how making abortion illegal is forcing clinical care for pregnant patients to deviate from the usual standard of care.[112] Preliminary findings of this study document horrifying outcomes for patients with emergent medical conditions that, like the Plaintiffs here, were denied or delayed abortion care due to confusion in the medical profession regarding the exceptions to abortion bans nationwide.[113]

551. In legal challenges to state abortion bans since *Roe* was overturned, medical professionals around the country have testified about the challenges of complying with state abortion bans, telling harrowing stories about their patients. These include: a 16-year-old girl who had such debilitating hyperemesis that she lost over 20 pounds and was forced to travel out of state *twice* to receive the care she needed after being denied an abortion; a patient with stage III melanoma who could not receive treatment until her pregnancy was terminated but was told she would have to travel out of state to receive an abortion, causing her to break down and cry

[111] Lisa H. Harris, *Navigating Loss of Abortion Services—A Large Academic Medical Center Prepares for the Overturn of* Roe v. Wade, 386 N. Engl. J. Med. 2061, 2061 (June 2, 2022) (describing a Michigan hospital's efforts to interpret a state law permitting abortions to "preserve the life" of the pregnant person).

[112] *Dobbs Impact Study*, Univ. Cal. S.F., https://carepostroe.ucsf.edu.

[113] Daniel Grossman et al., *Preliminary Findings: Care Post*-Roe*: Documenting Cases of Poor-Quality Care Since the* Dobbs *Decision*, Advancing New Standards in Reproductive Health (ANSIRH) (May 2023), https://www.ansirh.org/sites/default/files/2023-05/Care%20Post-Roe%20Preliminary%20Findings.pdf.

inconsolably; and multiple patients diagnosed with PPROM but denied abortion care.[114] In one case, a PPROM patient was forced to endure an excruciating, hours-long delivery of a non-viable fetus that eventually caused her to hemorrhage.[115] Physicians have also testified about patients with mental health conditions that necessitated abortion care, including attempted suicide.[116]

552. These physicians have also testified about patients they treated before *Roe* was overturned who they may not be able to help under the new state abortion bans if the same patient presented for care today. For example: patients whose fetuses were diagnosed with triploidy, causing some to develop HELLP syndrome and others preeclampsia with severe features; a patient who developed disseminated intravascular coagulation ("DIC")—a condition that causes pregnant patients to lose large volumes of blood—due to placental abruption; a patient with preeclampsia with severe features that caused fluid to accumulate between the tissues lining her lungs and chest; a patient with preeclampsia with severe features caused by a partial molar pregnancy; a patient who experienced a septic abortion; a patient who went into hypovolemic shock after experiencing uncontrollable vaginal bleeding at 19 weeks of pregnancy; a patient with bipolar disorder at risk of developing postpartum psychosis; and patients with panic disorders that lead to attempted suicide.[117]

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[114] Aff. of Aeran Trick ¶¶ 6, 9, 11, *Preterm Cleveland v. Yost*, No. A2203203, 2022 WL 4279758 (Ohio Ct. Com. Pl. Sept. 2, 2022); Aff. of Valerie Williams, M.D. ¶¶ 10-11, *June Med. Servs., LLC v. Landry*, No. C-720988, 2022 WL 2902625 (La. Dist. Ct. July 13, 2022) (hereinafter "Williams Aff.").

[115] Williams Aff. ¶ 11.

[116] *See, e.g.*, Aff. of Dr. Sharon Liner ¶ 11, *Preterm Cleveland v. Yost*, No. A2203203 (Ohio Ct. Com. Pl. Sept. 2, 2022) ("We have had at least 3 patients threaten to commit suicide. Another patient stated that she would attempt to terminate her pregnancy by drinking bleach."); Aff. of David Burkons, M.D. ¶ 9, *Preterm Cleveland v. Yost*, No. A2203203, 2022 WL 4279758 (Ohio Ct. Com. Pl. Sept. 2, 2022).

[117] Decl. of Kylie Cooper, M.D. ¶¶ 6-12, *United States v. Idaho*, No. 1:22-cv-00329 (D. Idaho Aug. 8, 2022), ECF No. 17-7; Decl. of Dr. Emily Corrigan ¶¶ 20-30, *United States v. Idaho*, No. 1:22-cv-00329 (D. Idaho Aug. 8, 2022), ECF No. 17-6; Decl. of Stacy T. Seyb, M.D. ¶¶ 7-14, *United States v. Idaho*, No. 1:22-cv-00329 (D. Idaho Aug. 8, 2022), ECF No. 17-8; Aff. of Samantha Meltzer-Brody, M.D. ¶¶ 40-41, *SisterSong Women of Color Reprod. Just. Collective v. Georgia*, No. 2022CV367796, 2022 WL 3335938 (Ga. Super. Ct. July 23, 2022) ("I recall one

553. Physicians have also provided compelling hypotheticals in their testimony that highlight the practical ramifications of unclear abortion ban exceptions. For instance, one physician asked: "If a pregnant patient is experiencing renal failure, does she have to be on dialysis before a physician may perform an abortion that would otherwise be prohibited by the Ban? If a pregnant patient has a cardiac lesion, does a physician have to wait until she experiences heart failure to intervene? If a pregnant patient has a clogged blood vessel, does a physician have to wait until she experiences chest pain before terminating the pregnancy to prevent pulmonary embolism?" Aff. of Martina Badell, M.D. ¶ 30, *SisterSong Women of Color Reprod. Just. Collective v. Georgia*, No. 2022CV367796, 2022 WL 3335933 (Ga. Super. Ct. July 25, 2022). Another physician queried: "[I]f I and another physician judge that a woman's neurological condition is so complicated by pregnancy that she might lose entirely the ability to breathe, and I perform a procedure, could another physician look at the patient's chart after the fact and think that we overestimated the danger, or that we should have delayed the abortion to see whether the patient's condition deteriorated?" Decl. of Nikki Zite, M.D., M.P.H. ¶ 21, *Memphis Ctr. for Reprod. Health v. Slatery*, No. 3:20-cv-00501 (M.D. Tenn. June 22, 2020), ECF No. 8-3.

patient who came to me with debilitating postpartum psychosis, a condition related to bipolar disorder that is often characterized by delusional thinking, typically focused on the infant. . . . The symptoms are excruciating . . . and there is a strong association between postpartum psychosis and maternal suicide. This patient was still in my treatment—no longer experiencing postpartum psychosis but still navigating her bipolar disorder—when she learned of an accidental pregnancy. She was gravely concerned about either stopping her medication during pregnancy and experiencing a worsening of her bipolar disorder, or continuing her medication and exposing the fetus to serious teratogenic risks. But even more than that, she was terrified at the thought of experiencing postpartum psychosis again and potentially hurting her child or herself. This patient told me repeatedly that she felt such overwhelming distress at the thought of continuing the pregnancy that she would rather die than go on.").

III. THE TEXAS CONSTITUTION PROTECTS PREGNANT PEOPLE WITH EMERGENT MEDICIAL CONDITIONS AND THEIR PHYSICIANS FROM STATE DEPRIVATION OF THEIR RIGHTS

A. Pregnant People Have Fundamental and Equal Rights Under the Texas Constitution

554. The Supreme Court may have stripped pregnant people of their federal constitutional right to abortion, *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), but that does not mean that Plaintiffs are without Constitutional Rights.

555. The Texas Constitution guarantees its citizens certain fundamental rights, specifically: "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19. People do not lose these rights simply because they are pregnant. Moreover, Texas law cannot demand that a pregnant person sacrifice their life, their fertility, or their health for any reason, let alone in service of "unborn life," particularly where a pregnancy will not or is unlikely to result in the birth of a living child with sustained life.

556. The Texas Constitution also prohibits Texas law from excluding pregnant people with certain kinds of emergent conditions—for example, pregnant people whose health risks are not imminently "life-threatening"—from receiving appropriate and/or life-saving medical care.

557. The Texas Constitution also guarantees "equal rights" under the law and prohibits the law from "den[ying] or abridg[ing rights] because of sex." Tex. Const. art. I, §§ 3, 3a. To deny a "woman known to be pregnant" equal access to life-saving and health-preserving medical care, simply because she is pregnant, would violate this foundational premise of equality under Texas law.

558. To the extent Texas's abortion bans bar the provision of abortion to pregnant people to treat medical conditions that pose a risk to the pregnant person's life or a significant risk to their

health, the bans violate pregnant people's fundamental rights under § 19 and their rights to equality under the law under §§ 3, 3a.

559. Indeed, Texas's abortion bans fail any level of constitutional review when applied to such pregnant people. "If the Texas [pre-*Roe* ban] statute were to prohibit an abortion even where the mother's life is in jeopardy, I have little doubt that such a statute would lack a rational relation to a valid state objective under the test stated in *Williamson* . . . ." *Roe v. Wade*, 410 U.S. 113, 173 (1973) (Rehnquist, J., dissenting). Because the abortion bans force pregnant people with emergent medical conditions to surrender their lives, health, and/or fertility, they have no rational relationship to protecting life, health, or any other legitimate state interest.

B. Texas-Licensed Physicians Have Liberty and Property Rights to Provide Care to Pregnant People with Emergent Conditions

560. The Texas Constitution guarantees that "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19. The threatened enforcement of the abortion bans against physicians who in good faith provide abortions for pregnant people suffering emergent medical conditions infringes this constitutional guarantee.

561. Section 19 guarantees Texas-licensed physicians the right to practice their profession by providing abortion to their pregnant patients to treat emergent medical conditions that the physician determines poses a risk to the patient's life or health.

562. To fulfill this guarantee, physicians must be able to exercise their good faith judgment in the care of their patients with emergent conditions without threat that the state will take their license and/or liberty if a prosecutor or jury second guesses their medical judgment.

563. Texas law authorizes Defendant TMB to institute disciplinary and licensing proceedings against any physician who performs an abortion that the TMB determines did not

meet the Emergent Medical Condition Exception. *See, e.g.*, Tex. Occ. Code §§ 165.001, 164.052(a)(5), 164.053(a), 164.055; Tex. Health & Safety Code § 170A.007. These proceedings may result in a provider losing their license to practice medicine. *See, e.g.*, Tex. Health & Safety Code § 170A.007.

564. Disciplinary actions are reported to the National Practitioner Data Bank[118] and can have collateral consequences on a physician's ability to practice in other U.S. states.[119] Defendant TMB, for example, requires physicians to make timely reports of any disciplinary actions taken by other jurisdictions against the physician, 22 Tex. Admin. Code § 173.3, and has taken disciplinary action against physicians based on conduct occurring in other states.[120] Upon information and belief, disciplinary sanctions may also result in loss of employment.

565. Physicians must make a substantial investment to obtain a medical license in Texas.

566. According to the TMB, to be eligible for a physician's license in Texas, individuals must: graduate from an accredited medical school, having gained admission through a highly competitive application process which often necessitates incurring significant amounts of debt (in 2019, an average of between $94,399 and $142,797 for students at medical schools in Texas);[121] complete at least one continuous year of graduate medical training or a fellowship; pass rigorous

[118] *See* 42 U.S.C. § 11132 (requiring state medical boards to report all revocations or suspensions of physician licenses); *see also* Nat'l Practitioner Data Bank, *Guidebook*, at Ch. E: Reports, Table E-1 (Oct. 2018), https://www.npdb.hrsa.gov/resources/aboutGuidebooks.jsp (explaining state medical boards and hospitals have mandatory reporting obligations).

[119] *See, e.g.*, Tex. Admin. Code § 173.3(d) (requiring reporting within 30 days of any actions issued by another state); Tex. Med. Bd. Press Release at 4-5, *TMB Disciplines 27 Physicians at June Meeting, Adopts Rule Changes* (June 30, 2022), https://www.tmb.state.tx.us/dl/2B28AF92-02B2-0425-2295-86E2DEAD1C51 (describing "other states' [disciplinary] actions").

[120] Tex. Med. Bd. Press Release at 4-5, *TMB Disciplines 27 Physicians at June Meeting, Adopts Rule Changes* (June 30, 2022), https://www.tmb.state.tx.us/dl/2B28AF92-02B2-0425-2295-86E2DEAD1C51.

[121] *See, e.g.*, *Medical School Debt Keeps Climbing*, Tex. Med. Ass'n (April 2020), https://app.texmed.org/tma.archive.search/files/53049/april_20_tm_educationinfographic.pdf.

state examinations; practice medicine full-time for one year; and, *inter alia*, have no relevant disciplinary or criminal history. 22 Tex. Admin Code § 163.2.

567. If physicians meet these requirements and incur the substantial associated costs, they are eligible for full licensure in Texas for which they must apply. 22 Tex. Admin Code §§ 163.2, 163.4. Once granted, a physician may practice medicine within Texas and has a vested property interest in their license.

568. Revoking or suspending a physician's license based on a flawed interpretation of the Emergent Medical Condition Exception is improper interference with the physician's vested property interest in their license.

569. Further, sending a physician to prison for up to 99 years for providing timely and appropriate medical care to a pregnant person with an emergent medical condition is improper interference with the physician's liberty.

570. Physicians have constitutional rights under § 19 of the Texas Constitution including rights to liberty, property, and substantive due course of law. Even for laws that only touch on economic rights, § 19 requires a rational relationship to the purpose of the law.

571. As applied to pregnant people with emergent medical conditions and the physicians treating them, Texas's abortion bans fail to comply with the Texas Constitution. They do not serve a proper legislative purpose because far from furthering life, they harm pregnant people's lives, and the lives of their children, without furthering potential life at all. Texas law also demands that there be a real and substantial connection between a legislative purpose and the language of the law as it functions in practice. For pregnant people with emergent medical conditions, there is none. Further, for patients with emergent conditions, Texas's abortion bans work an excessive

burden on physicians treating such patients relative to their purported purpose. *See, e.g.*, *Patel v. Tex. Dep't of Licensing & Reg.*, 469 S.W.3d 69, 80-81 (Tex. 2015).

CLAIMS

CLAIM I: DECLARATORY JUDGMENT

572. The allegations in paragraphs 1 through 571 above are incorporated as if fully set forth herein.

573. Plaintiffs hereby petition the Court pursuant to the UDJA.

574. Section 37.002 of the UDJA provides that it is remedial and its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

575. Under Section 37.003 of the UDJA, a court of proper jurisdiction has the power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect and the declaration has the force and effect of a final judgment or decree.

576. Plaintiffs thus seek a declaratory judgment that the exception to Texas's abortion bans, codified at Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, permits physicians to provide a pregnant person with abortion care when the physician determines, in their good faith judgment and in consultation with the pregnant person, that the pregnant person has a physical emergent medical condition that poses a risk of death or a risk to their health (including their fertility).

577. Plaintiffs also seek a declaratory judgment that, at a minimum, Texas's abortion bans do not preclude a physician from providing abortion care where, in the physician's good faith judgment and in consultation with the pregnant person, a pregnant person has: a physical medical condition or complication of pregnancy that poses a risk of infection, bleeding, 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.

578. Plaintiffs have sued the State and the relevant state agencies, and that they seek to have this Court determine the validity of Texas's abortion bans as applied in circumstances arising from emergent medical conditions. Therefore, the State and its agencies are necessary parties to this suit and governmental immunity does not apply.

CLAIM II: ULTRA VIRES

579. The allegations in paragraphs 1 through 578 above are incorporated as if fully set forth herein.

580. A state office may not act without legal authority. *See, e.g.*, *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

581. 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 a physical 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 the Emergent Medical Condition Exception to Texas's abortion bans and therefore would be *ultra vires*.

582. Plaintiffs have sued the Defendant state officials in their official capacities, and they seek prospective relief other than the recovery of monetary damages. Therefore, governmental immunity does not apply.

CLAIM III: SECTION 19 RIGHTS OF PREGNANT PEOPLE

583. The allegations in paragraphs 1 through 582 above are incorporated as if fully set forth herein.

584. Under the Texas Constitution, "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19.

585. To the extent Texas's abortion bans bar the provision of abortion to pregnant people to treat emergent medical conditions that pose a risk to pregnant people's lives or health (including their fertility), the bans violate pregnant people's fundamental rights under Article I, § 19 of the Texas Constitution.

586. Thus applied, Texas's abortion bans do not serve a compelling or important state interest and are not sufficiently tailored to serve any compelling interest.

587. Thus applied, Texas's abortion bans also lack any rational relationship to protecting life, health, or any other legitimate state interest.

588. Plaintiffs seek a declaratory judgment that Article I, § 19 of the Texas Constitution guarantees a pregnant person the right to an abortion where the pregnant person has an emergent medical condition that poses a risk of death or risk to their health (including their fertility), and an abortion would prevent or alleviate such risk.

589. 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 Article I, § 19 of the Texas Constitution and therefore would be *ultra vires*.

CLAIM IV: EQUAL RIGHTS OF PREGNANT PEOPLE

590. The allegations in paragraphs 1 through 589 above are incorporated as if fully set forth herein.

591. Under the Texas Constitution, "[a]ll freemen, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services." Tex. Const. art. I, § 3.

592. Texas does not prevent non-pregnant people or people unable to get pregnant from accessing critical medical treatment nor force them to unnecessarily suffer severe illnesses and injuries and undergo mental anguish.

593. To the extent Texas's abortion bans bar or delay the provision of abortion to a pregnant person with an emergent medical condition that poses a risk of death or risk to their health (including their fertility), while allowing non-pregnant people and people unable to get pregnant to access medical treatment for emergent medical conditions, Texas's abortion bans violate pregnant people's right to equal rights.

594. Thus applied, Texas's abortion bans do not serve a compelling or important state interest and are not sufficiently tailored to serve any compelling interest.

595. Thus applied, Texas's abortion bans also lack any rational relationship to protecting life, health, or any other legitimate state interest.

596. Plaintiffs seek a declaratory judgment that Article I, § 3 of the Texas Constitution guarantees a pregnant person the right to an abortion where the pregnant person has an emergent medical condition that poses a risk of death or risk to their health (including their fertility), and an abortion would prevent or alleviate such risk.

597. 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 Article I, § 3 of the Texas Constitution and therefore would be *ultra vires*.

CLAIM V: EQUALITY BASED ON SEX FOR PREGNANT PEOPLE

598. The allegations in paragraphs 1 through 597 above are incorporated as if fully set forth herein.

599. Under the Texas Constitution, "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin." Tex. Const. art. I, § 3a.

600. To the extent Texas's abortion bans bar or delay the provision of abortion to a "woman known to be pregnant" to treat an emergent medical condition that poses a risk of death or risk to their health (including their fertility), while allowing other people to access medical treatment for emergent medical conditions, Texas's abortion bans deny pregnant women equality because of sex.

601. To the extent the Texas's abortion bans are based on gender stereotypes that a woman's primary role is to birth children and be a mother, they constitute discrimination because of sex.

602. Thus applied, Texas's abortion bans do not serve a compelling or important state interest and are not sufficiently tailored to serve any compelling interest.

603. Thus applied, Texas's abortion bans also lack any rational relationship to protecting life, health, or any other legitimate state interest.

604. Plaintiffs seek a declaratory judgment that Article I, § 3a of the Texas Constitution guarantees a pregnant person the right to an abortion where the pregnant person has an emergent medical condition that poses a risk of death or risk to their health (including their fertility), and an abortion would prevent or alleviate such risk.

605. 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 Article I, § 3a of the Texas Constitution and therefore would be *ultra vires*.

CLAIM VI: SECTION 19 RIGHTS OF PHYSICIANS

606. The allegations in paragraphs 1 through 605 above are incorporated as if fully set forth herein.

607. Under the Texas Constitution, "[n]o citizen of this State shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. art. I, § 19.

608. Section 19 guarantees Texas-licensed physicians the right to practice their profession by providing abortion to their pregnant patients to treat emergent medical conditions that the physician determines pose a risk to the pregnant person's life or health (including their fertility).

609. To the extent Texas's abortions bans bar or delay physicians from providing abortion to treat emergent medical conditions that pose a risk to a pregnant person's life or health (including their fertility), Texas's abortion bans violate Texas-licensed physicians' rights under Section 19.

610. Thus applied, Texas's abortion bans do not serve a proper legislative purpose, there is no real and substantial connection between a legislative purpose and the language of the abortion bans as those bans function in practice for patients with emergent medical conditions, and Texas's abortion bans work an excessive burden on Texas-licensed physicians treating such patients relative to their purpose.

611. Thus applied, Texas's abortion bans also lack any rational basis.

612. Plaintiffs seek a declaratory judgment that Article I, § 19 of the Texas Constitution guarantees Texas-licensed physicians the right to provide an abortion to a pregnant person to treat an emergent medical condition that the physician determines poses a risk to the pregnant person's life or health (including their fertility).

613. Any official's enforcement of Texas's abortion bans as applied to a Texas-licensed physician who provides an abortion to a pregnant person to treat an emergent medical condition that the physician determines poses a risk to the pregnant person's life or health (including their fertility) would be inconsistent with Article I, § 19 of the Texas Constitution and therefore would be *ultra vires*.

CLAIM VII: APPLICATION FOR TEMPORARY INJUNCTION

614. The allegations in paragraphs 1 through 613 above are incorporated as if fully set forth herein.

615. Pursuant to Texas Civil Practice and Remedies Code Section 65.011 *et seq.*, Plaintiffs are entitled to temporary injunctive relief against Defendants pending the full resolution of the merits.

616. Defendants' threatened enforcement of Texas's abortion bans is causing imminent, irreparable injury to Plaintiffs.

617. Plaintiffs are likely to prevail on the merits of this case and receive the requested declaratory judgment, as well as equitable relief.

618. Plaintiffs also have no adequate remedy at law for Defendants' threatened actions. Specifically, money damages are insufficient to redress the threatened injury to Plaintiffs.

619. The threatened injury to Plaintiffs far outweighs any possible damages to Defendants. Plaintiffs include women who are currently pregnant and physicians who treat

pregnant patients every day. There is no state interest that can outweigh the harm caused to patients by being denied or delayed in accessing abortion care that could save their lives, their fertility, or the health.

620. Accordingly, in order to preserve the status quo, Plaintiffs request that Defendants be cited to appear, and, after a full hearing, further request that the Court enter a temporary injunction pursuant to Texas Rule of Civil Procedure 680 *et seq.* and Texas Civil Practice and Remedies Code Section 65.011 *et seq*.

621. Plaintiffs are willing to post a bond for any temporary injunction if ordered to do so by the Court, but request that the bond be minimal because Defendants are acting in a governmental capacity, have no pecuniary interest in the suit, and no monetary damages can be shown. Tex. R. Civ. P. 684.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To enter a judgment against Defendants granting appropriate declaratory relief to clarify the scope of the exception to Texas's abortion bans consistent with the Texas Constitution;

B. To enter a judgment against the Defendant state officials that enforcing Texas's abortion bans contrary to the Court's declaration regarding their scope would be *ultra vires*;

C. To enter a judgment that Texas's abortion bans, as applied to pregnant people with emergent medical conditions and Texas-licensed physicians treating such patients, violate the Texas Constitution;

D. To issue temporary and permanent injunctive relief that restrains Defendants, their agents, servants, employees, attorneys, and any persons in active concert or

participation with Defendants, from enforcing Texas's abortion bans or instituting disciplinary actions related to alleged violations of the abortion bans in a manner violating the court's judgment;

E. To retain jurisdiction after judgment for the purposes of issuing further appropriate injunctive relief if the Court's declaratory judgment is violated; and

F. To such other and further relief as the Court deems just and proper.

Dated: November 14, 2023

Respectfully submitted,

/s/ Austin Kaplan

Austin Kaplan
(Texas Bar No. 24072176)
Kaplan Law Firm, PLLC
3901 S Lamar Blvd., Suite 260
Austin, TX 78704
(512) 843-5572
akaplan@kaplanlawatx.com

Attorney for Plaintiffs

Molly Duane*
Nicolas Kabat*
Astrid Ackerman*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3631
mduane@reprorights.org
nkabat@reprorights.org
aackerman@reprorights.org

Marc Hearron
(Texas Bar No. 24050739)
Center for Reproductive Rights
1634 Eye St. NW, Ste. 600
Washington, D.C. 20006
(202) 524-5539
mhearron@reprorights.org

Jamie A. Levitt*
J. Alexander Lawrence*
Claire N. Abrahamson*
Morrison & Foerster LLP
250 W. 55th Street
New York, NY 10019
(212) 468-8000
jlevitt@mofo.com

alawrence@mofo.com
cabrahamson@mofo.com

Aditya V. Kamdar*
2100 L Street NW
Suite 900
Washington, D.C. 20037
(202) 877-1500
akamdar@mofo.com

Attorneys for Plaintiffs

*Admitted Pro hac vice

Exhibit A

1400 Congress Avenue
Room 3E.8
Austin, Texas 78701
512.463.0101

110 North College Avenue
Suite 207
Tyler, Texas 75702
903.581.1776

The Texas Senate

Bryan Hughes

Committees on:
State Affairs, Chair
Education
Jurisprudence
Natural Resources & Economic Development
Nominations
Redistricting

August 4, 2022

Executive Director Brint Carlton, JD
Texas Medical Board
333 Guadalupe Street
Tower 3, Suite 610
Austin, Texas 78701

Re: Concerns over allegations received involving the potential corporate practice of medicine and patients experiencing pregnancy complications

Dear Executive Director Carlton:

It has come to my attention that the Texas Medical Association has received and notified the Texas Medical Board of complaints alleging potential violations of Texas' prohibition on the corporate practice of medicine.[1] Such complaints include the allegations that hospitals, their administrators, or even their lawyers may be wrongfully prohibiting or seriously delaying physicians from providing medically appropriate and possibly life saving services to patients who have various pregnancy complications.[2] These complaints arise from confusion or disregard of the law in Texas since the ruling by the United States Supreme Court on *Dobbs v. Jackson Women's Health Organization* and must be corrected.

One mentioned example involves the interference by at least two hospitals of care for premature ruptures of membranes and forcing these patients to be sent home to miscarry without proper pain management or care being provided at the hospital. Another egregious example involves the allegation that a hospital instructed a physician to turn away a pregnant mother diagnosed with an ectopic pregnancy until it ruptured. These disturbing allegations of the prohibited practice of medicine by laypersons and malpractice by acquiescent physicians must be investigated and if they are occurring, stopped.

Pregnancy complications such as these should be swiftly and reasonably treated to prevent or address a medical emergency determined by the physician.[3] "Medical emergency" is defined under Texas Health and Safety Code 171.002(3) to mean "a life-threatening physical condition aggravated by, caused by, or arising

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[1] See, e.g., 22 TAC §177.17(a) stating, in part, "The corporate practice of medicine doctrine is a legal doctrine, which generally prohibits corporations, entities, or non-physicians from practicing medicine. The prohibition on the corporate practice of medicine is based on numerous provisions of the Medical Practice Act, including §§155.001, 155.003, 157.001, 164.052(a)(8), (13), and 165.156."

[2] Letter sent to the Texas Medical Board on behalf of the Texas Medical Association on July 13, 2022 notifying the Board of these complaints.

[3] Other pregnancy complication that a physician could determine rise to the level of a "medical emergency" are ectopic pregnancies, preterm premature rupture of membranes, pre-eclampsia, hemorrhaging, strain on the mother's heart, or peripartum cardiomyopathy. This is a non-exhaustive list.

from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed." This definition has not changed.

Senate Bill 8, The Heartbeat Act, expressly allows for a physician to perform or induce an abortion "if a physician believes that a medical emergency exists...."[4] House Bill 1280, the Trigger Bill, also provides an express exemption to prosecution where a physician "in the exercise of reasonable medical judgment, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced."[5]

The definition of abortion also provides guidance as to what is not a violation of Texas law: "The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to save the life or preserve the health of an unborn child; remove a dead, unborn child whose death was caused by spontaneous abortion; or remove an ectopic pregnancy."[6]

Texas law makes it clear that a mother's life and major bodily function should be protected. Any deviation, such as these allegations, should be investigated as potential malpractice and a non-physician (including hospitals) instructing a physician to act should be investigated as a prohibition on the corporate practice of medicine.

I respectfully request that the Texas Medical Board issue guidance on this issue and investigate these allegations.

Sincerely,

Bryan Hughes

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[4] Texas Health and Safety Code Sec. 171.205(a), SB 8, 87th Leg.
[5] Texas Health and Safety Code Sec. 170A.002, HB 1280, 87th Leg.
[6] Under Texas Health and Safety Code Sec. 245.002(1): "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;
(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or
(C) remove an ectopic pregnancy.

VERIFICATION

STATE OF TEXAS §
COUNTY OF Collin §

Before me, the undersigned notary public, on this day personally appeared Kristen Anaya, who declares and states that she is authorized to make this affidavit, that she has read Plaintiffs' Second Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

Kristen Anaya

Sworn to and subscribed before me, the undersigned, this 10TH day of October 2023.

Notary Public, State of Texas
Commission Expires on 12/3/23

INDIRA R. WANSER
Notary Public, State of Texas
Comm. Expires 12-03-2023
Notary ID 130457156

VERIFICATION

STATE OF TEXAS §

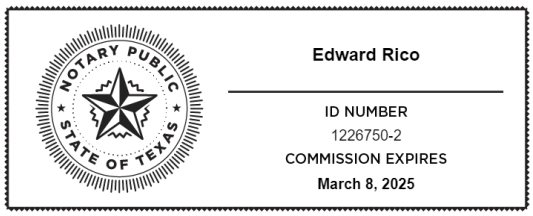
COUNTY OF Hays §

Before me, the undersigned notary public, on this day personally appeared Amy Coronado, who declares and states that she is authorized to make this affidavit, that she has read Plaintiffs' Second Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

Amy Lynn Coronado

Amy Coronado

Sworn to and subscribed before me, the undersigned, this 11th day of November 2023.



Notarized online using audio-video communication

Edward Rico

Notary Public, State of Texas
Commission Expires on 03/08/2025

VERIFICATION

STATE OF ~~TEXAS~~ IBN ~~XXXXXX~~ Virginia **§**

COUNTY OF Virginia Beach **§**

Before me, the undersigned notary public, on this day personally appeared Kaitlyn Kash, who declares and states that she is authorized to make this affidavit, that she has read Plaintiffs' Second Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

Kaitlyn Ann Kash

Kaitlyn Kash

Sworn to and subscribed before me, the undersigned, this 11th day of October 2023.

COMMONWEALTH OF VIRGINIA · N · ELECTRONIC NOTARY PUBLIC

Ian Barrett Nelson

REGISTRATION NUMBER
7943809
COMMISSION EXPIRES
December 31, 2025

Ian Barrett Nelson

Notary Public, State of ~~Texas~~ IBN ~~XXXX~~ Virginia
Commission Expires on 7943809

State of Virginia, County of Virginia Beach

Notarized online using audio-video communication

VERIFICATION

STATE OF ~~TEXAS~~ IBN Virginia §

COUNTY OF Virginia Beach §

Before me, the undersigned notary public, on this day personally appeared D. Aylen, who declares and states that she is authorized to make this affidavit, that she has read Plaintiffs' Second Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

D. Aylen

Sworn to and subscribed before me, the undersigned, this 8th day of November 2023.
By D. Aylen.

Ian Barrett Nelson

Notary Public, State of ~~Texas~~ IBN Virginia
Commission Expires on 12/31/2025

COMMONWEALTH OF VIRGINIA · ELECTRONIC NOTARY PUBLIC

Ian Barrett Nelson

REGISTRATION NUMBER
7943809
COMMISSION EXPIRES
December 31, 2025

State of Virginia, County of Virginia Beach

Notarized online using audio-video communication

VERIFICATION

STATE OF TEXAS §

COUNTY OF COLLIN §

Before me, the undersigned notary public, on this day personally appeared Kimberly Manzano, who declares and states that she is authorized to make this affidavit, that she has read Plaintiffs' Second Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

Kimberly Manzano

Sworn to and subscribed before me, the undersigned, this 7TH day of October 2023.

FAITH MILLER
Notary Public
STATE OF TEXAS
Notary ID # 1215687-3
My Comm. Exp. March 29, 2025

Notary Public, State of Texas
Commission Expires on 3/29/2025

VERIFICATION

STATE OF ~~TEXAS~~ Virginia **§**

COUNTY OF Chesapeake VA. 23323 USA **§**

Before me, the undersigned notary public, on this day personally appeared Danielle Mathisen, M.D., who declares and states that she is authorized to make this affidavit, that she has read Plaintiffs' Second Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

Danielle Mathisen, M.D.

Sworn to and subscribed before me, the undersigned, this 9th day of October 2023.

Notary Public, State of ~~Texas~~ Virginia
Commission Expires on 12/31/2026

Notarized online using audio-video communication

VERIFICATION

STATE OF TEXAS §

COUNTY OF El Paso §

Before me, the undersigned notary public, on this day personally appeared Cristina Nuñez, who declares and states that she is authorized to make this affidavit, that she has read Plaintiffs' Second Amended Verified Petition for Declaratory Judgment and Application for Temporary and Permanent Injunction against Defendants ("Petition") and knows the contents thereof; and, unless otherwise stated, that the factual statements contained in the Petition are based upon her personal knowledge, or obtained from others with personal knowledge or from documents, and are, to the best of her knowledge, true and correct.

Ante mí, el/la notaria presente, en este día compareció personalmente Cristina Núñez, quien declara y manifiesta que está autorizada para hacer esta declaración jurada, que ha leido la Segunda Petición Verificada Enmendada de Sentencia Declaratoria y la Solicitud de Sentencia Declaratoria de los Demandantes para una Medida Cautelar Temporal y Permanente contra los Demandados ("Petición") y conoce el contenido del mismo; y, a menos que se indique lo contrario, que las declaraciones de hecho contenidas en la Petición están basadas en su conocimiento personal, u obtenido de otros con conocimiento personal o de documentos y son, a su leal saber y entender, verdaderos y correctos.

Cristina Núñez

Sworn to and subscribed before me, the undersigned, this 10th day of November 2023.

NATALIE CARBAJAL
Notary Public, State of Texas
Notary ID#: 13427622-6
My Commission Expires 03-29-2027

Notary Public, State of Texas
Commission Expires on 03-29-2027