
June 2022

The Implication of Texas Abortion Law SB8 on At-Risk Populations in Texas and Other States

Kelly Zielinski

DePaul University College of Law, kellyzielinski20@gmail.com

Follow this and additional works at: <https://via.library.depaul.edu/jhcl>



Part of the [Health Law and Policy Commons](#)

Recommended Citation

Kelly Zielinski, *The Implication of Texas Abortion Law SB8 on At-Risk Populations in Texas and Other States*, 23 DePaul J. Health Care L. 52 (2022)

Available at: <https://via.library.depaul.edu/jhcl/vol23/iss2/3>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Journal of Health Care Law by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.

The Implication of Texas Abortion Law SB8 on At-Risk Populations in Texas and Other States

Cover Page Footnote

I would like to dedicate this comment to my husband, Jason, for his love and support throughout law school. I'd also like to thank my beloved pets, Queen, Duke, and Viceroy, thank you for providing me a plethora of unconditional love and companionship. Additionally, I would like to thank my entire family for supporting my dreams and being so understanding and patient. I love you all more than you will ever know.

The Implication of Texas Abortion Law SB8 on At-Risk Populations in Texas and Other States.

Kelly Zielinski

I. Introduction

On May 19, 2021, Texas Governor Greg Abbott signed into law the Texas Heartbeat Act, commonly known as SB8.¹ The law was dated to take effect on September 1, 2021.² SB8 bans a woman from getting an abortion after the detection of a heartbeat in the unborn child, which typically occurs after about six weeks of pregnancy.³ SB8 also allows private citizens to enforce the ban.⁴ On July 13, 2021, the American Civil Liberties Union of Texas (ACLU of Texas) filed a lawsuit challenging the act on behalf of abortion providers.⁵ The challenge made its way to the United States Supreme Court three times before the Court issued a ruling on December 10, 2021, dismissing what would have been the most promising pathway to block the ban.⁶ As of the date of this article, SB8 is still good law in Texas.

SB8 has policy implications for underserved communities and will empower other states to limit abortion rights, which have the potential to affect large numbers of American women. There are avenues for expanding abortion rights in the wake of SB8, including actions that can be taken by both the federal government and state governments, and reproductive rights advocates can help to end the stigma. Part II of this article discusses the complicated historical background of abortion in the United States. Part III discusses Texas-specific challenges to abortion. Part IV discusses SB8 in general and the overall implications for women in Texas. Part

¹ Timothy Bella, *Texas Governor Signs Abortion Bill Banning Procedure as Early as Six Weeks into Pregnancy*, WASH. POST (May 19, 2021), <https://www.washingtonpost.com/nation/2021/05/19/texas-abortion-law-abbott/>.

² *Id.*

³ *Whole Women's Health v. Jackson*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/cases/whole-womans-health-v-jackson> (last updated Jan. 21, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

V discusses SB8's implication for underserved communities and how to combat the stigma of abortion.

II. Historical Background of Abortion in the United States

Regardless of the legality of the procedure, abortions have been around for centuries.⁷ Women have used abortion as a means to control reproduction throughout history and in every society.⁸ Abortion was an accepted practice in both ancient Rome and ancient Greece, and even the Old Testament has several legal passages that refer to abortion in terms of the loss of property and not with the sanctity of life.⁹ Throughout much of Western history, abortion was not a criminal activity if it was carried out before “quickening,” or before the fetus moved in the womb, which typically occurs between eighteen and twenty weeks of gestation.¹⁰ Additionally, in the history of many Native American cultures, matters pertaining to women are traditionally seen as the business of women.¹¹ All decisions concerning a women's reproductive health were left up to her, and whatever decision she made was respected.¹² Thus, even in pre-colonial America, a woman's right to choose was her choice.

In America's first century, abortion was not banned in a single state in the United States.¹³ Early on, even the definition of abortion was different; for instance, it was believed that

⁷ Jessica Ravitz, *The Surprising History of Abortion in the United States*, CNN (June 27, 2016), <https://www.cnn.com/2016/06/23/health/abortion-history-in-united-states/index.html>.

⁸ Carrie N. Baker, *The History of Abortion Law in the United States*, OUR BODIES OURSELVES (Sept. 14, 2020), <https://www.ourbodiesourselves.org/book-excerpts/health-article/u-s-abortion-history/>.

⁹ *Ethics Guide: Historical Attitudes to Abortion*, BBC, (last visited Dec. 1, 2021), https://www.bbc.co.uk/ethics/abortion/legal/history_1.shtml; Brian Bolton, *What Does the Bible Really Say About Abortion*, FREEDOM FROM RELIGION FOUND., <https://ffrf.org/component/k2/item/25602-abortion-rights> (last visited May 13, 2022).

¹⁰ *Id.*

¹¹ KATI SCHINDLER ET AL., NATIVE AM. WOMEN'S HEALTH EDUC. RES. CTR., INDIGENOUS WOMEN'S REPRODUCTIVE RIGHTS 2 (2002), https://www.prochoice.org/pubs_research/publications/downloads/about_abortion/indigenous_women.pdf.

¹² *Id.*

¹³ Irin Carmon, *A Brief History of Abortion Law in America*, BILL MOYERS (Nov. 14, 2017), <https://billmoyers.com/story/history-of-abortion-law-america/>.

a human life did not exist before a pregnancy quickened and if a pregnancy ended in its early stages, it had simply “slipped away.”¹⁴ The popular viewpoint regarding abortion and common law were grounded in the female experience of their bodies.¹⁵ However, that attitude towards abortion in the United States began to change in the late 1800s.¹⁶ By 1900, abortion was illegal everywhere in the United States, except to save the life of the mother.¹⁷

Surprisingly, the move to make abortions illegal was not due to any social or religious conservative pressure; rather, it was largely due to pressure from the medical community.¹⁸ In the nineteenth century, the American Medical Association (AMA) began a crusade to make abortion illegal.¹⁹ Dr. Horatio Storer, a Harvard Medical School graduate, led the effort behind this campaign.²⁰ The movement was largely fueled by the observation that efforts to manage the timing of pregnancy resulted in falling birth rates among white women while an increasing number of immigrants entered the United States.²¹ By 1880, most states had enacted restrictive abortion laws, and in 1873, Congress passed the Comstock Law that banned items including abortion drugs.²² However, even with abortions being illegal, women still had them done, and at times, such as during the Great Depression, abortion rates seemed to increase despite the law.²³ During this period, women with means could travel to get abortions by leaving the country or paying a physician a lot of money to do the procedure illegally.²⁴ Unfortunately, underserved women did not enjoy the same access and often resorted to “back-alley” abortions that took place

¹⁴ *Id.* (citing “When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973”).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Baker, *supra* note 8.

¹⁸ Ravitz, *supra* note 7.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

using knitting needles, coat hangers, or the ingestion of chemicals.²⁵ In the 1950s and 1960s, the estimated number of illegal abortions in the United States was somewhere between two-hundred thousand and the low millions.²⁶ Then, in 1973, through the landmark case *Roe v. Wade*, abortion was legalized across the United States.²⁷

Roe v. Wade guaranteed that women would have the right to choose whether to have an abortion.²⁸ In the case, the Court struck down a Texas abortion law from 1859 that prohibited abortions.²⁹ The Court reasoned that the Ninth and Fourteenth Amendments' constitutional right to privacy applied to a woman's decision to terminate her pregnancy.³⁰ Thus, a woman was allowed to have an abortion up to the third trimester of pregnancy or up to when the fetus would be able to live outside the womb.³¹ Furthermore, abortions could be conducted after the third trimester only if the woman's life or health was at risk.³² Women's health was defined in *Doe v. Bolton*, where the Court held that in terms of abortion, the definition of a woman's health must include both physical and mental health.³³ Not long after this decision, state and federal lawmakers began enacting policies and laws that placed limits on abortion and abortion funding.

Following the Court's decision in *Roe v. Wade*, Congress enacted the Hyde Amendment, which blocks federal funds from being used to pay for abortion unless the abortion falls under one of the listed exceptions: rape, incest, or a determination that the pregnancy endangers the

²⁵ *Id.*

²⁶ *Id.*; Rachel B. Gold, *Lessons from Before Roe: Will Past be Prologue?*, 6 GUTTMACHER POL'Y REV. 8, 8 (2003).

²⁷ Nina Totenberg, *As the Supreme Court Considers Roe v. Wade, A Look At How Abortion Became Legal*, NAT'L PUB. RADIO (Nov. 29, 2021), <https://www.npr.org/2021/11/29/1056129045/as-the-supreme-court-considers-roe-v-wade-a-look-at-how-abortion-became-legal>.

²⁸ *Roe v. Wade*, 93 S. Ct. 705, 732 (1973), *modified by* Planned Parenthood of Southeastern Pennsylvania v. Casey, 112 S. Ct. 2791 (1992).

²⁹ *Id.* at 733.

³⁰ *Id.* at 727.

³¹ *Id.*

³² *Id.*

³³ *Summary of Roe v. Wade and Other Key Abortion Cases*, U.S. CONFERENCE OF CATHOLIC BISHOPS, <https://www.usccb.org/issues-and-action/human-life-and-dignity/abortion/upload/Summary-of-Roe-v-Wade-and-Other-Key-Abortion-Cases.pdf> (last visited Dec. 5, 2021).

woman’s life.³⁴ The enactment of the Hyde Amendment resulted in dramatically limited coverage of abortion under Medicaid and other federal healthcare programs.³⁵ The Amendment is attached to the Congressional appropriations bill for the Department of Health and Human Services (HHS) and has been renewed annually by Congress.³⁶ Initially, the Amendment only affected abortion funding under Medicaid, but because Congress reauthorizes it annually as an attachment to the appropriations bill for HHS, it also restricts abortion funding under the Indian Health Service, Medicare, and the Children’s Health Insurance Program.³⁷ Furthermore, language similar to that of the Hyde Amendment’s has been incorporated into several other federal programs that pay for health care, including: the TRICARE program for the military, federal prisons, the Peace Corps, and the Federal Employees Health Benefits Program.³⁸ Additionally, the Affordable Care Act also included a provision that applied similar abortion coverage limits to plans sold through the HealthCare.gov Marketplace.³⁹ Thus, funding for abortions is still extremely limited and therefore limits women’s access at the federal level.

Since the legalization of abortions, some states have enacted abortion laws that regulate and limit a woman’s access to an abortion.⁴⁰ This is due to the significant amount of power that the United States Constitution grants states to make their own laws, including those that apply to abortion.⁴¹ Some of the major provisions that are included in these state limitations are physician and hospital requirements, gestational limits, “partial-birth” abortion, public funding for

³⁴ Alina Salganicoff et al., *The Hyde Amendment and Coverage for Abortion Services*, KAISER FAMILY FOUND. (Mar. 5, 2021), <https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services/>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *An Overview of Abortion Laws*, GUTTMACHER INST., <https://www.guttmacher.org/state-policy/explore/overview-abortion-laws> (last updated Apr. 14, 2022).

⁴¹ Baker, *supra* note 8.

abortions, coverage by private insurance, refusal for individual health care providers and institutions, state-mandated counseling, waiting periods, and parental involvement.⁴² Thus, although abortions are legal in the United States under *Roe v. Wade*, it appears that is in name only.

a. Abortions Impact on Women’s Healthcare

Roe v. Wade did not “invent” abortion; it merely made it so that women had access to safe abortions, considering that history has shown that making abortions illegal does not stop them.⁴³ There are demonstrable physical, emotional, and social health benefits from safe and legal abortions.⁴⁴ The most obvious benefit is the end of a period in American history where abortions were unsafe, sometimes medically incomplete, and left many women dead or injured.⁴⁵ Furthermore, when abortions are legal, physicians are free to conduct safe abortions without fear that their medical license would get revoked or fear of being imprisoned.⁴⁶

In the twenty years before *Roe v. Wade*, it was estimated that the annual number of illegal abortions in the United States ranged from 200,000 to 1.2 million.⁴⁷ One research study that extrapolated data from North Carolina estimated that in 1967, 829,000 illegal or self-induced abortions occurred.⁴⁸ In 1969, a year before New York legalized abortion, complications from illegal abortions accounted for twenty-three percent of all pregnancy-related admissions to municipal hospitals in New York City.⁴⁹ After California legalized abortion in 1967, the number

⁴² GUTTMACHER INST., *supra* note 40.

⁴³ Ravitz, *supra* note 7.

⁴⁴ *Medical and Social Health Benefits Since Abortion Was Made Legal in the U.S.*, PLANNED PARENTHOOD, https://www.plannedparenthood.org/uploads/filer_public/eb/38/eb38bdf9-7ebb-4067-8758-13d28afa1d51/pp_med_soc_benefits_abortion_final_1.pdf (last updated Jan. 2015).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Rachel B. Gold, *Lessons from Before Roe: Will Past be Prologue?*, 6 GUTTMACHER POL’Y REV. 8, 8 (2003).

⁴⁹ PLANNED PARENTHOOD, *supra* note 44.

of admissions to Los Angeles County/University of Southern California Medical Center for infections as a result of illegal abortions fell by almost seventy-five percent.⁵⁰ These percentages alone are strong evidence of how having access to safe abortions can profoundly impact a woman's health and prevent her from suffering a severe infection or dying because of an incomplete and dangerous procedure done by someone who may or may not be medically trained.

Since the legalization of abortion, women could make family planning decisions much earlier in their pregnancy. In 1973, after *Roe v. Wade*, women who wanted or needed to get an abortion were getting them much earlier in their pregnancy.⁵¹ For instance, in 1973, only thirty-six percent of abortions were performed at or before eight weeks of pregnancy.⁵² Similarly, in 2019, 92.7 percent of abortions were performed before thirteen weeks of pregnancy, 42.3 percent occurred at or around nine weeks of pregnancy, and 6.2 percent occurred between fourteen to twenty weeks of pregnancy.⁵³

Since the legalization of abortions, pregnancy-related deaths have also declined dramatically.⁵⁴ In 1965, seventeen percent of all deaths due to pregnancy and childbirth were because of illegal abortions.⁵⁵ After *Roe v. Wade*, deaths from illegal abortions decreased to nineteen in 1973, six in 1974, and from “1979 to 2017, the number of women who died in a year was never higher than two.”⁵⁶ Pregnancy-related death rates did not drop for all women after the

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *CDCs Abortion Surveillance System*, CDC, https://www.cdc.gov/reproductivehealth/data_stats/abortion.htm (last updated Nov. 22, 2021).

⁵⁴ Madison Czopek, *Deaths from Abortions Still Happen, But They Declined Sharply After Roe v. Wade*, POLITIFACT (Oct. 21, 2021), <https://www.politifact.com/factchecks/2021/oct/13/viral-image/deaths-abortion-still-happen-they-declined-sharply/>.

⁵⁵ Gold, *supra* note 48.

⁵⁶ Czopek, *supra* note 54.

legalization of abortion⁵⁷. For some, especially minority women, a legal abortion was still out of reach. The Centers for Disease Control and Prevention (CDC) estimates that from 1972 to 1974, the mortality rate due to illegal abortion for nonwhite women was twelve times that of white women.⁵⁸

Aside from a decrease in death rates due to illegal abortions, access to medically safe abortions has other far-reaching, profound impacts on American women. According to the American Psychological Association (APA), “women who are denied an abortion are more likely to initially experience higher levels of anxiety, lower life satisfaction, and lower self-esteem when compared to women who received an abortion.”⁵⁹ Additionally, “unwanted pregnancy has been associated with cognitive, emotional, and social processes deficits to the resulting child.”⁶⁰ Furthermore, “access to safe and legal abortion is central to attaining social equality for women.”⁶¹ Thus, it’s obvious that having access to safe abortions is not only mentally beneficial to women, but has social equality impacts as well.

1. Underserved Communities

The illegality of abortions has disproportionately impacted poor women and their families.⁶² A study done in the 1960s of low-income women living in New York City found that almost one in ten had attempted to terminate a pregnancy by illegal abortion, and nearly four in ten said that they knew someone who had attempted to obtain an illegal pregnancy.⁶³ Of the women studied who said they had had an illegal abortion, eight in ten said that they had

⁵⁷ Gold, *supra* note 48

⁵⁸ *Id.*

⁵⁹ *Abortion and Mental Health*, AM. PSYCHOLOGICAL ASS’N, <https://www.apa.org/pi/women/programs/abortion> (last updated June 2018).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Gold, *supra* note 48.

⁶³ *Id.*

attempted a self-induced abortion, and only two percent said that a physician was involved in some way.⁶⁴ There was also a clear racial disparity in the data pertaining to mortality because of abortion.⁶⁵ In New York City in the 1960s, one in four childbirth-related deaths among white women was because of abortions, whereas, one in two childbirth-related deaths among nonwhite and Puerto Rican women were due to illegal abortions.⁶⁶

Women of underserved communities have not benefited equally in the progress following the legalization of abortions. Women of lower socioeconomic status and women of color have a higher abortion rate than women of higher socioeconomic status and white women.⁶⁷ For instance, in 2011, the unintended pregnancy rate among women who had an income below the federal poverty level was more than five times that among women with an income at or above the poverty level.⁶⁸ Many factors contribute to this disparity, including access to affordable healthcare.⁶⁹ For instance, Black women struggle to afford birth control that best meets their personal needs, which in turn results in a higher rate of unintended pregnancies.⁷⁰ Unfortunately, for a woman who is struggling financially, the cost of an abortion may be more than she is able to afford on her own.⁷¹ Thus, the impact that the right to a safe abortion has had on women in underserved communities is complicated and involves a number of factors. On the one hand, it has provided more family planning opportunities. On the other hand, this benefit can be stifled

⁶⁴ *Id.*

⁶⁵ *Id.* at 10.

⁶⁶ *Id.*

⁶⁷ Christine Dehlendorf et al., *Disparities in Abortion Rates: A Public Health Approach*, 103 *Am. J. Pub. Health*, 1772, 1772 (2013).

⁶⁸ Heather D. Boonstra, *Abortion in the Lives of Women Struggling Financially: Why Insurance Coverage Matters*, 19 *GUTTMACHER POL'Y REV.* 46, 47 (2016).

⁶⁹ Nambi Ndugga & Samantha Artiga, *Disparities in Health and Health Care: 5 Key Questions and Answers*, KFF, (May 11, 2021) <https://www.kff.org/racial-equity-and-health-policy/issue-brief/disparities-in-health-and-health-care-5-key-question-and-answers/>.

⁷⁰ *AM. PSYCHOLOGICAL ASS'N*, *supra* note 59.

⁷¹ Boonstra, *supra* note 68.

depending on whether women can afford an abortion and, if the state they live in is restrictive, whether they can afford to travel to another state for the procedure.

III. Texas' Legislative History of Restricting Abortion

Texas has had a complicated relationship with the legalization of abortion. Since *Roe v. Wade*, Texas law has required that only doctors perform abortions, regulated abortion clinics, and limited third-trimester abortions to only rare and severe medical cases.⁷² However, over the past two decades, anti-abortion politicians have tried to stop people from accessing abortions by imposing new restrictions.⁷³

The Texas legislature has passed a number of laws throughout the years that aim to limit access to abortion. In 2003, Texas passed the “Women’s Right to Know Act” that inadvertently resulted in doctors giving their patients misleading information about abortion procedures, doctors providing alternatives to the procedure, and making patients wait twenty-four hours before the procedure.⁷⁴ The law also required abortions at sixteen weeks or later to be performed in an ambulatory surgical center, which none of Texas’ fifty-four abortion providers met the standard for.⁷⁵ In 2005, the Texas legislature banned abortions after twenty-four weeks and enacted a requirement of parental consent for people under eighteen who are seeking an abortion.⁷⁶ In 2011, they enacted a mandatory sonogram law that requires a sonogram to be performed at least twenty-four hours before an abortion procedure and for the doctor to display the sonogram with an audible heartbeat and explain the results.⁷⁷ In 2017, Texas banned insurers from including coverage for abortion in health plans which means people were required to

⁷² *A recent History of Restrictive Abortion Laws in Texas*, AM. CIV. LIBERTIES UNION OF TEX., <https://www.aclutx.org/en/recent-history-restrictive-abortion-laws-texas> (last visited Dec. 1, 2021).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

purchase separate coverage for abortions.⁷⁸ In 2019, the Texas House of Representatives passed House Bill 16, which criminalized abortion providers who do not provide medical care to a fetus that is born after abortion, and Senate Bill 22, which banned government affiliation with abortion providers or their affiliates.⁷⁹ Senate Bill 22 is particularly troublesome because it bans government entities from entering into partnerships or providing assistance to clinics that are affiliated with abortion providers, even if they do not provide abortions.⁸⁰ This cuts off funding for communities that rely on low-cost clinics for health care other than abortions.⁸¹

IV. Texas Senate Bill 8

SB8, sometimes referred to as the “Heartbeat Bill,” is one of the most restrictive abortion bans in the United States.⁸² Generally, a fetal heartbeat becomes detectable around the sixth week of pregnancy.⁸³ Banning abortion at six weeks in pregnancy is essentially banning the procedure at a time when many women may not know that they are pregnant.⁸⁴ Additionally, the law has no exception for rape, sexual abuse, incest, or fetal anomaly diagnoses.⁸⁵ In essence, this law almost entirely eliminates abortion access and imposes an unconstitutional ban on abortion in the state of Texas.⁸⁶

a. Bill Structure and What Makes It So Unique

The structure of SB is unique in that it contains a “private cause of action” provision,

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *What You Need To Know About Texas’ New Abortion Ban Effective Sept. 1, 2021*, PLANNED PARENTHOOD OF GREATER TEX., <https://www.plannedparenthood.org/planned-parenthood-greater-texas/senate-bill-8> (last visited Jan. 5, 2022).

⁸³ Peter N. Salib, *Ban Them All; Lets the Courts Sort Them Out*, 100 Tex. L. Rev. 13, 15 (2022).

⁸⁴ AM. CIV. LIBERTIES UNION OF TEX., *supra* note 72.

⁸⁵ PLANNED PARENTHOOD OF GREATER TEX., *supra* note 82.

⁸⁶ AM. CIV. LIBERTIES UNION OF TEX., *supra* note 72.

making it hard to challenge this abortion ban in court.⁸⁷ This provision allows private citizens to enforce the law rather than the state.⁸⁸ Essentially, this provision allows private citizens to sue abortion providers and anyone who aids a woman in getting access to abortion care.⁸⁹ This basically creates a bounty system which, if plaintiffs are successful in their suit against the abortion providers, allows them to collect cash judgements of \$10,000 (plus legal fees) from the provider they are suing, but if they lose, they do not have to pay the defendants' legal costs.⁹⁰ It is also written so that abortion providers cannot obtain pre-enforcement relief against state officials. Because state officials are not permitted to enforce the Act, they have sovereign immunity, and state court judges also have immunity under the *Ex Parte Young* exception and Fifth Circuit precedent.⁹¹ Any person who wants to challenge the constitutionality of the Act must wait to be sued and then assert their constitutional claims in the private enforcement action.⁹²

SB8 entirely removes enforcement from state jurisdiction and expands who can sue and be sued over abortions.⁹³ The statute permits even people who live outside of Texas to file a complaint in any court in the state if they believe an abortion has been performed.⁹⁴ Additionally, it holds almost everyone involved in the abortion procedure, except for the woman who gets the abortion, liable.⁹⁵ A \$10,000 fine will be imposed on anyone who performs, aids, or abets an

⁸⁷ *Everything You need To Know About SB8, Texas' Latest Extreme Abortion Restriction*, PLANNED PARENTHOOD OF GULF COAST, <https://www.plannedparenthood.org/planned-parenthood-gulf-coast/sb8> (last visited Jan. 11, 2022).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Alan Feuer, *The Texas Abortion Law Creates a Kind of Bounty Hunter. Here's How It Works*, N.Y. TIMES (Sept. 10, 2021), <https://www.nytimes.com/2021/09/10/us/politics/texas-abortion-law-facts.html>.

⁹¹ Ed Whelan, *A Quick Primer On Litigation Over Texas Heartbeat Act*, NAT'L REVIEW (Aug. 30, 2021), <https://www.nationalreview.com/bench-memos/a-quick-primer-on-litigation-over-texas-heartbeat-act/>.

⁹² *Id.*

⁹³ Feuer, *supra* note 90.

⁹⁴ *Id.*

⁹⁵ *Id.*

abortion of any fetus with a detectable heartbeat.⁹⁶ This means that doctors, nurses, insurance companies, and even the person that provides transportation to the abortion procedure, such as Uber and Lyft drivers, could be named in the suit.⁹⁷

Essentially, the law is constructed in such a way that it outright bans all abortions because providing the procedure is illegal at a time when women barely know they are pregnant and prohibits states officials from enforcing the Act in any way since it authorizes private citizens to bring civil actions against abortion providers.⁹⁸

i. Undue Burden Clause

The statute also includes a clause that allows defendants to escape liability by showing that imposing liability would place an undue burden on women seeking abortions.⁹⁹ This section seeks to prevent people who are sued under the law from challenging its constitutionality and tries to dictate how courts are to interpret Supreme Court precedents such as *Roe v. Wade* and *Planned Parenthood v. Casey*.¹⁰⁰ The statute borrows the language “undue burden” from *Casey*, a case where the Supreme Court held that abortion laws imposing undue burdens are unconstitutional.¹⁰¹ This clause essentially provides an affirmative defense to liability if “the defendant demonstrates that the relief sought by the claimant will impose an undue burden on a woman – seeking an abortion.”¹⁰² The statute narrowly defines “undue burden” and provides conditions under which a “defendant may not establish an undue burden.”¹⁰³

⁹⁶ Salib, *supra* note 83..

⁹⁷ Feuer, *supra* note 90.

⁹⁸ *Id.*

⁹⁹ Salib, *supra* note 83.

¹⁰⁰ Maggie Astor, *Here’s What the Texas Abortion Law Says*, N.Y. TIMES (Sept. 9, 2021), <https://www.nytimes.com/article/abortion-law-texas.html>.

¹⁰¹ Salib, *supra* note 83, at 17.

¹⁰² *Id.*

¹⁰³ *Id.*

Texas legislators tried to set the terms by which the undue burden standard can be interpreted by judges.¹⁰⁴ A judge cannot find that an undue burden exists unless the defendants prove certain facts.¹⁰⁵ The law also places limitations on who has standing to sue by asserting that only the United State Supreme Court can determine if someone has standing.¹⁰⁶ Additionally, it says that if *Roe v. Wade* or *Planned Parenthood v. Casey* gets overturned, then people who are sued under SB8 can “no longer defend themselves based on abortion right principles,” even if they are being sued in connection with an abortion performed while *Roe v. Wade* and *Planned Parenthood v. Casey* are still good law.¹⁰⁷

b. Lack of Judicial Intervention

Several cases have been filed challenging SB8, including cases brought by abortion providers and the Biden Administration, in attempts to thwart enforcement of the restrictive law. On September 1, 2021, the Supreme Court denied Whole Woman’s Health’s application for injunctive relief.¹⁰⁸ The providers who brought the suit argued that if the law went into effect, it would be detrimental to all abortion providers in the state.¹⁰⁹ The petition made it all the way to the Supreme Court, where the Court refused to intervene, letting SB8 go into effect.¹¹⁰ The majority reasoned that an application for a stay “presents complex and novel antecedent procedural questions” that should be resolved in the lower courts.¹¹¹

¹⁰⁴ Astor, *supra* note 100.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 112 S. Ct. 2791 (1992).

¹⁰⁸ *Whole Woman’s Health v. Jackson*, 142 S. Ct. 522 (2021).

¹⁰⁹ Diego Zambrano, *Maneuvering Around the Court: Stanford’s Civil Procedure Expert Diego Zambrano on the Texas Abortion Law*, STANFORD LAW SCH. BLOG (Sept. 8, 2021), <https://law.stanford.edu/2021/09/08/maneuvering-around-the-court-stanfords-civil-procedure-expert-diego-zambrano-on-the-texas-abortion-law/>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

On July 13, 2021, the American Civil Liberties Union, the ACLU of Texas, and a number of partners filed a federal lawsuit on behalf of abortion providers.¹¹² This case challenges whether Texas can insulate itself by effectively outsourcing the enforcement of the abortion ban to the public.¹¹³ This challenge made its way to the Supreme Court three times, and on December 10, 2021, the Supreme Court issued a ruling that ended the most promising pathway to blocking the abortion ban.¹¹⁴ A 5-4 majority opinion held that the plaintiffs could not bring suit against the classes of judges, clerks, or the state attorney general but that a narrow portion of the case may proceed against the Texas Medical Board and other licensing authorities.¹¹⁵ The case was remanded back to the Fifth Circuit Court of Appeals, which sent the case back to the district court so it could proceed against the licensing officials.¹¹⁶

Not only did private entities file suit against Texas in an attempt to stop the enactment of the bill, but the Justice Department also filed a lawsuit against the state of Texas, attempting to prevent it from enforcing SB8.¹¹⁷ The complaint sought a declaratory judgement, arguing that SB8 is invalid under the Supremacy Clause and the Fourteenth Amendment, is preempted by federal law and violates the doctrine of intergovernmental immunity.¹¹⁸ Additionally, the lawsuit brought by the United States sought an order to permanently, enjoin the State of Texas and anyone who would bring suit under the law, from implementing or enforcing it.¹¹⁹ The complaint alleged that “Texas was in open defiance of the constitution by banning abortion at

¹¹² AM. CIV. LIBERTIES UNION, *supra* note 3.

¹¹³ Jennifer Gerson, *The 19th Explains: How 3 Lawsuits Could Potentially Stop the Texas Abortion Ban*, 19TH NEWS (Oct. 1, 2021), <https://19thnews.org/2021/10/how-3-lawsuits-could-stop-the-texas-abortion-ban/>.

¹¹⁴ AM. CIV. LIBERTIES UNION, *supra* note 3.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Press Release, U.S. Dep’t of Justice, Justice Department Sues Texas Over Senate Bill 8 (Sept. 9, 2021), <https://www.justice.gov/opa/pr/justice-department-sues-texas-over-senate-bill-8>

¹¹⁸ *Id.*

¹¹⁹ *Id.*

approximately six weeks in nearly all cases” because it violated an individual’s right to have an abortion prior to viability.¹²⁰ On December 10, 2021, the Supreme Court dismissed this challenge to SB8 in an unsigned order stating that the case was “improvidently granted,” meaning that it should not have been accepted by the Supreme Court in the first place.¹²¹ Justice Sotomayor was the only dissenting justice, stating that the Court’s decision is an invitation to states to follow and “refine SB8’s model for nullifying federal rights.”¹²²

c. Fall out of SB 8

The fact that the Supreme Court has refused to intervene in the passing of or strike down the most restrictive abortion law in the United States poses a major issue for our system of government since it is basically a road map for states and localities that are looking to dismantle constitutional rights.¹²³ The law puts forth a blueprint for states that want to target federal rights that they do not agree with.¹²⁴ For example, states that oppose guns could ban gun sales, or states that do not agree with same sex-marriage can make it so that same-sex couples could be sued for obtaining a marriage license.¹²⁵ SB8’s attempt to evade judicial review poses a serious threat to our democracy.¹²⁶

Looking squarely at what SB8 will mean for abortion laws around the country, some states are following in the footsteps of Texas. Republican Arkansas state senator Jason Rapert

¹²⁰ *Id.*

¹²¹ Lisa Hagen, *Supreme Court Allows Texas Abortion Lawsuit to Proceed, Declines to Halt Enforcement*, U.S. NEWS (Dec. 20, 2021), <https://www.usnews.com/news/politics/articles/2021-12-10/supreme-court-allows-texas-abortion-lawsuit-to-proceed-declines-to-halt-enforcement>.

¹²² Deepa Shivaram, *Read: Key Excerpts From the Supreme Court Ruling on SB8, the Texas Abortion Case*, NAT’L PUB. RADIO (Dec. 10, 2021), <https://www.npr.org/2021/12/10/1063025466/read-key-excerpts-supreme-court-ruling-texas-abortion-case-sb-8>.

¹²³ Julia Kaye & Marc Hearron, *Even People Who Oppose Abortion Should Fear Texas’s New Ban* (July 19, 2021), <https://www.washingtonpost.com/outlook/2021/07/19/texas-sb8-abortion-lawsuits/>.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

tweeted that he “ordered a bill to be filed in Arkansas to update our law to mirror the Texas SB8 bill.”¹²⁷ A federal judge temporarily blocked the law that would ban nearly all abortions in July 2021.¹²⁸ In South Dakota, Governor Kristi Noem introduced two pro-life bills that would adopt similar legislation to SB8 in that they would have prevented abortions after a fetal heartbeat is detected and would have blocked telemedicine abortions.¹²⁹

However, Arkansas and South Dakota are not the only states to pass restrictive abortion laws in the wake of SB8; Florida also introduced a bill seeking to ban abortion after fifteen weeks of pregnancy, with exceptions for cases where there is a medical emergency for the mother or fatal fetal abnormalities.¹³⁰ A fifteen-week ban would directly violate the Supreme Court’s precedent in *Roe v. Wade* that established a woman’s right to terminate her pregnancy before the fetus is viable, which is around twenty-four weeks.¹³¹

On December 1, 2021, the Supreme Court heard oral arguments regarding the Mississippi law that makes most abortions illegal after fifteen weeks.¹³² This law bans abortions at about two months earlier than *Roe v. Wade*’s twenty-four-week limit.¹³³ The Mississippi law was enacted in 2018 but never went into effect because of immediate legal challenges that blocked its enforcement.¹³⁴ There is a narrow exception for medical emergencies or for “severe fetal abnormality,” but generally the law bans abortions if the “probable gestational age of the unborn

¹²⁷ Oren Oppenheim, *Which States’ Lawmakers Have Said They Might Copy Texas’ Abortion Law*, ABC NEWS (Sept. 3, 2021), <https://abcnews.go.com/Politics/states-lawmakers-copy-texas-abortion-law/story?id=79818701>.

¹²⁸ Maria Cramer, *Federal Judge Blocks Ban on Nearly All Abortions in Arkansas*, N.Y. TIMES (Sept. 1, 2021), <https://www.nytimes.com/2021/07/21/us/arkansas-abortion-ban.html>.

¹²⁹ Nicole Ki, *South Dakota Gov. Kristi Noem Announces Proposal to Ban Most Abortions in the State*, USA TODAY (Jan. 23, 2022), <https://www.usatoday.com/story/news/nation/2022/01/23/south-dakota-kristi-noem-abortion-ban/6630393001/>.

¹³⁰ Reuters, *Florida Lawmakers Introduce Bill to Ban Abortion After 15 Weeks*, NBC NEWS (Jan. 12, 2022), <https://www.nbcnews.com/news/us-news/florida-lawmakers-introduce-bill-ban-abortion-15-weeks-rcna11885>.

¹³¹ *Id.*

¹³² Adeel Hassan, *What to know About the Mississippi Abortion Law Challenging Roe v. Wade*, N.Y. TIMES (Dec. 1, 2021), <https://www.nytimes.com/article/mississippi-abortion-law.html>.

¹³³ *Id.*

¹³⁴ *Id.*

human” is determined to be more than fifteen weeks.¹³⁵ A federal court of appeals affirmed a lower court’s ruling blocking the law because of a lack of medical evidence supporting the law and found that abortion is a woman’s right until a fetus is considered viable.¹³⁶ Mississippi appealed the lower court’s ruling, and the case has been on the Supreme Court’s docket since the fall of 2020.¹³⁷ After arguments on December 1, 2020, it seemed as though the Supreme Court was going to uphold Mississippi’s law and effectively overturn *Roe v. Wade*.¹³⁸

d. Trigger Bans and Pre-Roe v. Wade bans

If *Roe v. Wade* is overturned or weakened, there are twenty-one states that have laws on the books that indicate that those states would certainly attempt to ban abortion.¹³⁹ Trigger laws express an intent to ban all or most abortions as soon as it is legal to do so.¹⁴⁰ Twelve states currently have trigger bans in place: Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma, South Dakota, Tennessee, Texas, and Utah.¹⁴¹ Not all of these bans are the same.¹⁴² Some are all-out bans on abortion, like the Tennessee trigger ban, and contain no exceptions for rape or incest.¹⁴³ Some trigger bans include exceptions for medical emergencies, rape, and incest, like North Dakota.¹⁴⁴ Some only have exceptions for medical

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Elizabeth Nash & Lauren Cross, *26 States Are Certain Or Likely To Ban Abortion Without Roe: Here’s Which Ones And Why*, GUTTMACHER INST., (Oct. 28, 2021), <https://www.guttmacher.org/article/2021/10/26-states-are-certain-or-likely-ban-abortion-without-roe-heres-which-ones-and-why>.

¹⁴⁰ Amy Morona, *What Are Trigger Laws? Examining States’ Preemptive Legislative Bans On Abortion*, PBS (Mar. 26, 2019), <https://www.pbs.org/weta/washingtonweek/blog-post/what-are-trigger-laws-examining-states-preemptive-legislative-bans-abortion>.

¹⁴¹ Madeline Fitzgerald et al., *The States Likely To Ban Abortion If Roe v. Wade Is Overturned*, U.S. NEWS (Dec. 10, 2021), <https://www.usnews.com/news/best-states/articles/2021-12-10/the-states-likely-to-ban-abortion-if-roe-v-wade-is-overturned>.

¹⁴² *Id.*

¹⁴³ Anita Wadhvani, *In Tennessee, Roots of Expected Ban on Abortion Date 20 Years Back*, TENNESSEE LOOKOUT (May 4, 2022), <https://tennesseelookout.com/2022/05/04/in-tennessee-roots-of-expected-ban-on-abortion-date-20-years-back/>.

¹⁴⁴ H. B.1466, 60TH LEG. ASS. OF NORTH DAKOTA, § 1(3), <https://ndlegis.gov/assembly/60-2007/bill-text/HBEU0600.pdf>.

emergencies, like Oklahoma.¹⁴⁵ In addition to trigger bans, Alabama, Arizona, Arkansas, Michigan, Mississippi, New Mexico, Oklahoma, West Virginia, and Wisconsin still have pre-*Roe* abortion bans on the books. If *Roe v. Wade* were overturned, abortions would be illegal in these states.¹⁴⁶

These laws will have a detrimental effect on people who live in these states and are seeking medically safe abortions. Women who live in any of the states poised to ban abortion if *Roe v. Wade* is overturned will face long travel distances in order to get the procedure.¹⁴⁷ For instance, women who live in a state where a total ban would go into effect would have to drive 11.5 times as many miles on average to reach a clinic where they can get an abortion.¹⁴⁸ Illinois, North Carolina, and Kansas would see the largest influx of patients seeking abortions from individuals who are able to travel.¹⁴⁹

V. Abortion Access and What It Means for Underserved Communities

Over the last couple of decades, progress has been made to enable women and their partners to take control of their reproductive choices.¹⁵⁰ Not all women have shared equally in this increased access to reproductive healthcare.¹⁵¹ Because the rate of unintended pregnancies is five times more likely among low-income women, there are higher abortion rates among the poor.¹⁵² The reasons provided by women who seek abortions underscore their understanding of

¹⁴⁵ Julia Natfulin & Oma Seddiq, *12 States Have 'Trigger' Laws That Will Automatically Ban Abortion If the Supreme Court Overturns Roe v. Wade*, INSIDER (Nov. 30, 2021), <https://www.insider.com/abortion-trigger-laws-states-ban-abortion-if-roe-overturned-2021-11>.

¹⁴⁶ *Pre-Roe Abortion Bans*, BIRTHRIGHT: A WAR STORY, <https://www.birthrightfilm.com/key-issue-areas/pre-ro-abortion-bans> (last visited Jan. 15, 2022).

¹⁴⁷ Nash & Cross, *supra* note 139.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Boonstra, *supra* note 68, at 46.

¹⁵¹ *Id.* at 47.

¹⁵² *Id.*

the economic impact that unplanned children will have on them and their families.¹⁵³ The majority of abortion patients say that they cannot afford an unplanned child and say that having a child would interfere with their work, school, or ability to care for their other children.¹⁵⁴ Access to abortion allows women to control family timing and size, which can also be key to unlocking opportunities for economic success, education, and equality.¹⁵⁵

a. The Potential Impact of SB8 on Underserved Communities

SB8 will disproportionately harm Black and Latino women who live in Texas by making getting an abortion nearly impossible for low-income individuals.¹⁵⁶ In Texas, women seeking an abortion will have to drive approximately two hundred and forty-eight miles on average to get the procedure out of state.¹⁵⁷ While people with money can fly out of state to get abortions, for those with lower incomes, work obligations, lack of transportation, or financial struggles, leaving the state to get an abortion is not as simple as getting on a plane.¹⁵⁸ According to the Texas Policy Evaluation Project of the University of Texas at Austin, as many as eight out of ten people who seek abortions could be forced to see their pregnancy to term.¹⁵⁹

Deciding if and when to have a child is central to a woman's economic and psychological well-being and has implications for her education.¹⁶⁰ Laws like SB8 perpetuate poverty in low-income populations and create generational poverty.¹⁶¹ A study done in 2018 found that women

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ ADAM SONFIELD ET AL., GUTTMACHER INST., THE SOCIAL AND ECONOMIC BENEFITS OF WOMEN'S ABILITY TO DETERMINE WHETHER AND WHEN TO HAVE CHILDREN, 3(2013), https://www.guttmacher.org/sites/default/files/report_pdf/social-economic-benefits.pdf.

¹⁵⁶ Char Adams, *Experts Say Texas' Abortion Law GOP Policies Have An Outsize Effect on the Poor*, NBC NEWS (Sept. 5, 2021), <https://www.nbcnews.com/news/nbcblk/experts-say-texas-abortion-law-gop-policies-outsize-effect-poor-rcna1897>.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Manuella Libardi, *Anti-Abortion Laws: A War Against Poor Women*, EQUAL TIMES (Oct. 22, 2021), <https://www.equaltimes.org/anti-abortion-laws-a-war-against#.YfNf4VjMJJU>.

¹⁶¹ Adams, *supra* note 156.

who were denied abortions were more likely to be in poverty within six months of the denial. compared to women who had access to them.¹⁶² Additionally, women who were denied abortions were less likely to have full-time work and more likely to depend on some form of public assistance.¹⁶³ Although many legislators that pass such restrictive legislation claim that it is intended to save lives, research has shown that unintended pregnancies prevent people from completing their education, getting and keeping jobs, and can even lead to poor health and economic outcomes for children.¹⁶⁴ Thus, people who are denied access to abortions are more likely to live in poverty, with economic instability, and poor physical health.¹⁶⁵ Restricting access to safe abortions keeps poor women in poverty and perpetuates the cycle that prevents social mobility.¹⁶⁶ In the United States, Black women have the highest abortion rates in the country, which is a consequence of the wealth gap.¹⁶⁷ Thus, it is obvious that restrictive abortion laws not only keep women in poverty but also restrict the ability of women who live in underserved communities the ability to move up in society.

b. Expanding Abortion Access and Ending the Stigma

Regardless of what politicians say, abortion is healthcare, and women require access to safe and legal abortions.¹⁶⁸ Abortion has been around for centuries and has been utilized by women for family planning purposes regardless of its illegality. There are a number of things that can be done to ensure the availability of safe, legal, and accessible abortion services.

¹⁶² Libardi, *supra* note 160.

¹⁶³ *Id.*

¹⁶⁴ Boonstra, *supra* note 68.

¹⁶⁵ *Id.*

¹⁶⁶ Libardi, *supra* note 160.

¹⁶⁷ *Id.*

¹⁶⁸ *Facts Are Important: Abortion Is Healthcare*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, <https://www.acog.org/advocacy/facts-are-important/abortion-is-healthcare> (last visited Jan. 18, 2022).

Ideally, both the federal and state governments would repeal legislation that creates barriers to abortions. At the federal level, the Hyde Amendment should be eliminated and abortion care should be considered essential healthcare.¹⁶⁹ The Hyde Amendment restricts federal money from being used for abortions except in cases of rape, incest, or when a patient's life is endangered.¹⁷⁰ Additionally, any legislation that creates barriers to abortion access should be abolished – this includes any bans on abortion at arbitrary gestational stages, requirements that only physicians can provide abortion care, telemedicine abortion care bans, mandatory counseling requirements, ultrasound requirements, and parental involvement for those under the age of majority.¹⁷¹ Eliminating any of these restrictions will both increase access to abortion and make it safer for women.

Another way that access to abortion can be increased is to expand the scope of those who can provide abortion care.¹⁷² For instance, giving nurse practitioners full practice rights by revising current legislations to let them evaluate patients, make diagnoses, order and interpret tests, initiate and manage treatment, and prescribe medication without a physician's supervision would not only increase access to abortion care, but also provide legal protection to the workforce that provides abortions.¹⁷³ Additionally, abortion must be supported and integrated within the full scope of reproductive health care services.¹⁷⁴ Abortion care should be integrated

¹⁶⁹ AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, ACOG COMMITTEE OPINION NO. 815: INCREASING ACCESS TO ABORTION e107, e107 (2020).

¹⁷⁰ Alina Salganicoff, Laurie Sobel, & Amrutha Ramaswamy, *The Hyde Amendment and Coverage for Abortion Services*, KFF (Mar. 5, 2021), <https://www.kff.org/womens-health-policy/issue-brief/the-hyde-amendment-and-coverage-for-abortion-services/>.

¹⁷¹ AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, *supra* note 169.

¹⁷² DONNA BERRY & JULIA RUGG, CTR. FOR AM. PROGRESS, IMPROVING ABORTION ACCESS BY EXPANDING THOSE WHO PROVIDE CARE 8 (2015), <https://www.americanprogress.org/article/improving-abortion-access-by-expanding-those-who-provide-care/>.

¹⁷³ JAMILLE ALLSBROOK & NORA ELLMAN, CTR. FOR AM. PROGRESS, A Proactive Abortion Agenda, 1, 5 (2021), <https://www.americanprogress.org/article/proactive-abortion-agenda/>.

¹⁷⁴ *Id.*

in the greater scheme of reproductive health care, along with contraception, maternal health care, gender-affirming services, and HIV treatment.¹⁷⁵

Ideally, the right to abortion would be codified into law and not left up to the courts to determine. On the federal level, the right to have an abortion should be codified into a federal statute that goes beyond *Roe v. Wade*.¹⁷⁶ The federal government should enact a law that makes clear that there is a fundamental right to abortion in the United States and that the government should not interfere with a woman's ability to exercise this right pre- or post-viability. This law should extend to all women with the ability to give birth and not just those that identify as women.¹⁷⁷ With regards to the states, any state lawmaker that has not as of yet codified the right to an abortion should do so and not wait for the federal government.¹⁷⁸ Any form of state legislation to help access to abortion would be helpful, but amending state constitutions would possibly provide the strongest legal protection for a woman's right to have an abortion.¹⁷⁹

VI. Conclusion

Abortion is health care. The right to a safe abortion is something all women should enjoy and states should not be able to restrict this and put a pregnant woman's health in danger. Limiting the right to an abortion severely impacts women of lower-income communities and only perpetuates racial and socioeconomic hardships on the women most affected. SB8 is potentially just the beginning of bills that would create extreme restrictions on access to abortion to be passed by states. The federal government should recognize a woman's right to choose by codifying it and thus eliminating states' power to restrict it.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 8.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 9.