THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF TEXAS, Defendant.	§ § § § § § § § § §	Civil No. 1:21-cv-796

COMPLAINT

The United States of America, by and through its undersigned counsel, brings this civil action for declaratory and injunctive relief, and alleges as follows:

PRELIMINARY STATEMENT

1. It is settled constitutional law that "a State may not prohibit any woman from making the ultimate decision to terminate her pregnancy before viability." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 879 (1992); *accord Roe v. Wade*, 410 U.S. 113 (1973). But Texas has done just that. It has enacted a statute banning nearly all abortions in the State after six weeks—months before a pregnancy is viable. *See* Senate Bill 8, 87th Leg., Reg. Sess. (Tex. 2021) (S.B. 8) (to be codified at Tex. Health & Safety Code §§ 171.203(b), 171.204(a)). *See also*, *e.g.*, *Jackson Women's Health Org. v. Dobbs*, 951 F.3d 246, 248 (5th Cir. 2020).

2. Texas enacted S.B. 8 in open defiance of the Constitution. The statute prohibits most pre-viability abortions, even in cases of rape, sexual abuse, or incest. It also prohibits any effort to aid—or, indeed, any *intent* to aid—the doctors who provide pre-viability abortions or the women who exercise their right to seek one. Because S.B. 8 clearly violates the Constitution, Texas adopted an unprecedented scheme "to insulate the State from responsibility," *Whole Woman's Health v. Jackson*, No. 21A24, 2021 WL 3910722, at *1 (U.S. Sept. 1, 2021) (Roberts, C.J., dissenting), by making the statute

harder to challenge in court. Instead of relying on the State's executive branch to enforce the law, as is the norm in Texas and elsewhere, the State has deputized ordinary citizens to serve as bounty hunters who are statutorily authorized to recover at least $10,000 per claim from individuals who facilitate a woman's exercise of her constitutional rights. And Texas has mandated that its state judicial officers enforce this unconstitutional attack by requiring them to dispense remedies that undeniably burden constitutionally protected rights.

3. It takes little imagination to discern Texas's goal—to make it too risky for an abortion clinic to operate in the State, thereby preventing women throughout Texas from exercising their constitutional rights, while simultaneously thwarting judicial review. Thus far, the law has had its desired effect. To date, abortion providers have ceased providing services prohibited by S.B. 8, leaving women in Texas unacceptably and unconstitutionally deprived of abortion services. Yet, despite this flagrant deprivation of rights, S.B. 8 remains in effect.

4. The United States has the authority and responsibility to ensure that Texas cannot evade its obligations under the Constitution and deprive individuals of their constitutional rights by adopting a statutory scheme designed specifically to evade traditional mechanisms of federal judicial review. The federal government therefore brings this suit directly against the State of Texas to obtain a declaration that S.B. 8 is invalid, to enjoin its enforcement, and to protect the rights that Texas has violated.

5. The Government also brings this suit to protect other federal interests that S.B. 8 unconstitutionally impairs. S.B. 8 conflicts with federal law by purporting to prohibit federal agencies from carrying out their responsibilities under federal law related to abortion services. Because S.B. 8 does not contain an exception for cases of rape or incest, its terms purport to prohibit the federal government and its employees and agents from performing, funding, reimbursing, or facilitating abortions in such cases. Moreover, S.B. 8's unconstitutionally broad terms purport to subject federal

employees and nongovernmental partners who carry out those responsibilities to civil liability and penalties.

6. The United States therefore seeks a declaratory judgment that S.B. 8 is invalid under the Supremacy Clause and the Fourteenth Amendment, is preempted by federal law, and violates the doctrine of intergovernmental immunity. The United States also seeks an order preliminarily and permanently enjoining the State of Texas, including its officers, employees, and agents, including private parties who would bring suit under the law, from implementing or enforcing S.B. 8.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345.

8. This Court has authority to provide the relief requested under the Supremacy Clause, U.S. Const. art. VI, cl. 2, the Fourteenth Amendment to the U.S. Constitution, 28 U.S.C. §§ 1651, 2201, and 2202, and its inherent equitable authority.

9. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because Defendant resides within this judicial district and because a substantial part of the acts or omissions giving rise to this action arose from events occurring within this judicial district.

PARTIES

10. Plaintiff is the United States of America.

11. Defendant, the State of Texas, is a State of the United States. The State of Texas includes all of its officers, employees, and agents, including private parties who would bring suit under S.B. 8.

FEDERAL LAW

I. The Constitutional Right to an Abortion

12. Nearly fifty years ago, the Supreme Court held that the Constitution protects "a woman's decision whether or not to terminate her pregnancy." *Roe*, 410 U.S. at 153.[1] Thirty years ago, the Court "reaffirmed 'the most central principle'" of *Roe*— "a woman's right to terminate her pregnancy before viability." *June Med. Servs. L.L.C.* v. *Russo*, 140 S. Ct. 2103, 2135 (2020) (Roberts, C.J., concurring in the judgment) (quoting *Casey*, 505 U.S. at 871 (plurality opinion)). *Casey* confirmed *Roe*'s "essential holding" recognizing the "right of a woman to choose to have an abortion before viability and obtain it without undue interference from the state, whose previability interests are not strong enough to support an abortion prohibition or the imposition of substantial obstacles to the woman's effective right to elect the procedure." *Casey*, 505 U.S. at 846. State laws that prohibit abortion prior to viability or impose an "undue burden" on a woman's right to obtain an abortion before viability violate the Due Process Clause of the Fourteenth Amendment. *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2298 (2016) (citation omitted).

II. The Sovereign Interests of the United States

13. Where, as here, a State seeks to strip individuals of their ability to challenge state action that indisputably violates their federal constitutional rights, the United States has a profound sovereign interest in ensuring that those constitutional rights remain redeemable in federal court. The United States may sue to challenge such constitutional violations that "affect the public at large." *In re Debs*, 158 U.S. 564, 583-85 (1895) ("Every government, entrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient

[1] The allegations of this complaint encompass any individuals who become pregnant and seek an abortion, regardless of gender identity.

answer to its appeal to one of those courts that it has no pecuniary interest in the matter."); *see Wyandotte Transp. Co. v. United States*, 389 U.S. 191, 201-02 (1967).

14. The prerogative of the United States to seek injunctive and declaratory relief "to restrain violations of constitutional rights . . . has long been recognized." *United States v. City of Jackson*, 318 F.2d 1, 11 (5th Cir. 1963). "The Constitution cannot mean to give individuals standing to attack state action inconsistent with their constitutional rights but to deny to the United States standing when States jeopardize the constitutional rights of the Nation." *Id.* at 15-16; *see also Fla. E. Coast Ry. Co. v. United States*, 348 F.2d 682, 685 (5th Cir. 1965) (finding United States possessed standing under *In re Debs*), *aff'd,* 384 U.S. 238 (1966).

15. The United States therefore may sue a State to vindicate the rights of individuals when a state infringes on rights protected by the Constitution. And such an effort is particularly warranted where, as here, private citizens are—by design—substantially burdened in vindicating their own rights. In light of the attempt by Texas to strip its own citizens of the ability to invoke the power of the federal courts to vindicate their rights, the United States not only has a "quasi-sovereign interest in the health and well-being . . . of its residents in general" but also a "quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. Rel. Barez,* 458 U.S. 592, 601–02 (1982) (the sovereign maintains an "interest in the health and well-being—both physical and economic—of its residents").

III. The Supremacy Clause and Preemption

16. The Supremacy Clause of the U.S. Constitution mandates that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2.

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