

Supreme Court Will Hear Texas Abortion Ban Cases

SCOTUS did not grant a request to immediately block the ban, but will hear two cases against the ban on November

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10.22.2021 – (PRESS RELEASE) Today, the U.S. Supreme Court [announced](#) it will hear two cases challenging Texas' ban on abortion after six weeks of pregnancy ([S.B. 8](#)). The court declined to rule on a request to block the ban until it hears the cases on November 1. Since Sept. 1, when the ban took effect and the Supreme Court initially declined to block the law, nearly all Texans have been unable to access abortion in the state.

The two cases the court will weigh in on include:

- **United States v. Texas:** a lawsuit challenging S.B. 8 filed by the U.S. Department of Justice. Earlier this month, a federal district court granted the DOJ's request to temporarily block the law, but an appellate court let the law take effect again less than 48 hours later. The Supreme Court will decide whether to block the law again and whether the DOJ has the authority to bring this case
- **[Whole Woman's Health v. Jackson](#):** a case filed against S.B. 8 by a broad coalition of plaintiffs, including Texas abortion providers, abortion funds, and doctors. In this case, the Supreme Court will decide whether federal courts have the power to block Texas' abortion ban. The ban was specifically designed to evade court review. In August, plaintiffs asked the Supreme Court to block the ban before it took effect on Sept. 1, but the court refused, citing "complex and novel" procedural questions about whether it has the authority to do so. Today's order means that the Supreme Court has agreed to hear arguments on those procedural questions.

In a [dissent](#) to today's order, Justice Sonia Sotomayor commented on the Court's decision to not block the law immediately, writing: "I cannot capture the totality of this harm in these pages. But as these excerpts illustrate, the State (empowered by this Court's inaction) has so thoroughly chilled the exercise of the right recognized in *Roe* as to nearly suspend it within its borders and strain access to it in other States. The State's gambit has worked. The impact is catastrophic."

In [another case](#) being heard this term, the state of Mississippi is asking the court to overturn *Roe v. Wade* and uphold the state's ban on abortion after 15 weeks of pregnancy. The court will also determine this term whether Kentucky Attorney General Daniel Cameron will be able to [attempt to revive an abortion ban](#) that two courts have held is unconstitutional.

Clinics in neighboring states have reported huge upticks in patients traveling from Texas. For instance, an Oklahoma clinic [reported](#) that two-thirds of the phone calls they've received since S.B. 8 took effect are from Texas patients. U.S. Attorney General Merrick Garland called the ban a "scheme to nullify the Constitution."

S.B. 8 bans abortion after six weeks into a pregnancy—before many people even know they're pregnant—and creates a bounty-hunting scheme that encourages the general public to bring costly and harassing lawsuits against anyone who they believe has violated the ban. Anyone who successfully sues a health center worker, an abortion provider, or any person who helps someone access an abortion after six weeks in Texas will be rewarded with at least \$10,000, to be paid by the person sued. Lawsuits may be filed against a broad range of people, including: a physician who provides an abortion; a person who drives their friend to obtain an abortion; abortion funds providing financial assistance to patients; health center staff; and even a member of the clergy who assists an abortion patient.

The plaintiffs in *Whole Woman's Health v. Jackson* are represented by the [Center for Reproductive Rights](#), Planned Parenthood Federation of America, the [Lawyering Project](#), the American Civil Liberties Union (ACLU), the [ACLU of Texas](#), and Morrison & Foerster LLP. The defendants include a class of state court trial judges and county clerks in Texas, the Texas Medical Board, the Texas Board of Nursing, the Texas Board of Pharmacy, the Texas attorney general, and the Director of Right to Life East Texas, who has already openly called for people to sue their local abortion providers under S.B. 8.

Timeline of *Whole Woman's Health v. Jackson*:

- May 19: Texas Gov. Greg Abbott [signed](#) Senate Bill 8 into law.

- July 13: Plaintiffs [filed](#) the case in federal district court.
- August 4-5: The defendants filed four motions to dismiss, asking the district court to end the case.
- August 12: The federal district court judge scheduled a preliminary injunction hearing for August 30 to determine whether to block the law before it would take effect on September 1.
- August 25: The federal district court judge [denied](#) the defendants' motions to dismiss the case. Defendants immediately filed a notice of appeal with the Fifth Circuit, as well as a motion to stop all proceedings in the district court, including canceling the district court's preliminary injunction hearing.
- August 27: The Fifth Circuit Court of Appeals issued [an order](#) stopping all proceedings in the district court, including canceling the district court's preliminary injunction hearing. The court also denied the plaintiffs' request to expedite the appeal of defendants' motions to dismiss.
- August 29: The plaintiffs filed for emergency relief with the Fifth Circuit, which was quickly [denied](#).
- August 30: The plaintiffs filed [an emergency request](#) with the U.S. Supreme Court, asking it to block the law before it could take effect on September 1 or allow district court proceedings to resume.
- September 1: S.B. 8 took effect after the Supreme Court did not respond to plaintiffs' request before the law's effective date. Late that same day, the Supreme Court [denied](#) the plaintiffs' emergency request to block the law and allowed Texas's six-week abortion ban to remain in effect. The case returned to the Fifth Circuit for briefing on defendants' appeal of the district court's denial of their motions to dismiss.
- September 10: The Fifth Circuit issued an order explaining its refusal to block the law, and expedited the defendants' appeals to "the next available oral argument panel."
- September 22: The Fifth Circuit issued a briefing schedule that will not allow the case to be heard until at least December.

- September 23: Plaintiffs [filed](#) a petition for writ of certiorari before judgment with the U.S. Supreme Court asking it to hear defendants' appeal on an expedited basis and bypass further proceedings in the Fifth Circuit.
- October 6: In a separate case filed by the DOJ, a federal district court judge temporarily blocked the law. The state appealed this to the Fifth Circuit.
- October 8: The Fifth Circuit stayed the district court's injunction in the DOJ case, allowing the law to take effect once more. The DOJ asked the Supreme Court to lift the Fifth Circuit's stay on October 18 and to also hear defendants' appeal on an expedited basis, bypassing further proceedings in the Fifth Circuit.
- October 22 (Today): The Supreme Court agreed to hear the DOJ's case and *Whole Woman's Health v. Jackson* on November 1 but did not grant the DOJ's request to immediately block the law.

Quotes from plaintiffs and litigators:

Rupali Sharma, Senior Counsel and Director at the Lawyering Project:

"Abortion bans hurt people, their families, and communities, compelling patients to flee the state for health care or carry a pregnancy to term. SB8 is unconstitutional, not to mention cruel, and we are hopeful the Supreme Court will reaffirm its decades of precedent protecting the fundamental right to abortion access for all."

Amy Hagstrom Miller, president and CEO of Whole Woman's Health and Whole Woman's Health Alliance:

"The legal limbo is excruciating for both patients and our clinic staff. Lack of access to safe abortion care is harming our families and communities and will have lasting effects on Texas for decades to come. We've had to turn hundreds of patients away since this ban took effect, and this ruling means we'll have to keep denying patients the abortion care that they need and deserve. The Supreme Court has said that abortion is protected by our Constitution, yet they are allowing Texans to be deprived of their rights. We are hopeful that the Justices will do the right thing at the hearing. To all the Texans who are with us, who have been speaking up, and to those who may need abortion care, let us be clear: just as we have been in the past, Whole Woman's Health is here for you, and we are here for the long haul."

Nancy Northup, president and CEO of the Center for Reproductive Rights:

"The Supreme Court's action today brings us one step closer to the restoration of Texans' constitutional rights and an end to the havoc and heartache of this ban. We are enormously disappointed that the Court has left the law in effect for now, forcing those with means to leave the state to access constitutionally protected abortion services and leaving others with no options at all. However, we are confident that when the Court ultimately rules in these cases, it will reject the state of Texas' cynical ploy to enact a brazenly unconstitutional abortion ban."

Brigitte Amiri, deputy director of the ACLU Reproductive Freedom Project:

"By refusing once again to block Texas' horrific abortion ban, the Supreme Court is sending an alarming signal that it will stand idly by while our reproductive rights are violated, a reality Texans are too familiar with after living under the nation's most extreme abortion ban for nearly two months. We hope that after the Court hears the case on November 1, that it will act immediately to correct its earlier mistake, and will issue a decision that restores abortion

access in Texas. This cruel law has had devastating consequences, with the impact hitting marginalized communities the hardest. This is a dire moment, and we'll do everything in our power to fight back against attacks on our reproductive rights before it's too late."

Alexis McGill Johnson, president and CEO, Planned Parenthood Federation of America:

"S.B. 8 is a heinous and blatantly unconstitutional abortion ban that never should have been allowed to take effect—and it's devastating that it remains in place. For nearly two months, we've seen the catastrophic impact of S.B. 8 in Texas and beyond. Patients who have the means have fled the state, traveling hundreds of miles to access basic care, and those without means have been forced to carry pregnancies against their will. Every day S.B. 8 is in place is one more day of cruelty, and it cannot stand. We look forward to our patients and providers finally having their day in court on November 1, when the Supreme Court will hear the cases. And we are hopeful the Court will step in and block S.B. 8 from continuing to wreak havoc."

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