

Supreme Court Refuses to Block Texas Abortion Ban, Greenlights Bounty-Hunting Scheme

SCOTUS largely dismisses federal challenges to Texas ban, ending most promising pathways to blocking law

12.10.2021 – (PRESS RELEASE) Today, the U.S. Supreme Court [issued](#) decisions in two cases challenging Texas’ ban on abortion after six weeks of pregnancy ([S.B. 8](#)), ending two of the most promising pathways to blocking the ban. In a 5-4 majority, the Court ruled that the most significant part of [a case](#) filed by a coalition of abortion providers and others impacted by the ban, led by Whole Woman’s Health, must be dismissed, ruling that the health care providers could not bring suit against the classes of state judges and clerks or the state Attorney General. The Court also ruled that a narrow portion of the case may proceed against the Texas Medical Board and other licensing authorities, but this would not prevent bounty-hunter lawsuits from being filed.

Dissenting Justices mourned the impact this decision will have on the Constitution itself. Chief Justice Roberts wrote, **“The nature of the federal right infringed does not matter; it is the role of the Supreme Court in our constitutional system that is at stake.”** In a separate dissent, Justice Sotomayor wrote, **“By foreclosing suit against state-court officials and the state attorney general, the Court effectively invites other states to refine S. B. 8’s model for nullifying federal rights. The Court thus betrays not only the citizens of Texas, but also our constitutional system of government.”**

Since Sept. 1—when the ban first took effect after the Supreme Court refused to block it—most Texans who are past the earliest stages of pregnancy have been unable to access abortion in the state. Today’s decision comes after exactly 100 days of legal back-and-forth that have wreaked havoc on abortion access in Texas and the surrounding region. The impact has fallen harshest on marginalized communities, including people living on low incomes, and Black and brown communities. People who are unable to leave the state have been forced to continue their pregnancies, and those with resources were forced to flee the state. Clinics in neighboring states reported huge upticks in Texas patients, resulting in weeks-long wait times for all patients. For instance, an Oklahoma clinic [reported](#) that two-thirds of the phone calls it received since S.B. 8 took effect were from Texas patients.

While these Texas cases were heard to answer procedural questions, the Court heard another abortion case on Dec. 1 that directly challenges *Roe v. Wade*. In that case, [Dobbs v. Jackson Women’s Health Organization](#), the state of Mississippi asked the Court to overturn *Roe* and eliminate all constitutional protections for abortion. If the Court grants Mississippi’s request, half the states in the U.S. would likely take immediate action to ban abortion entirely.

Today’s ruling allows the abortion providers’ lawsuit to continue against a narrow number of defendants, including the Texas Medical Board. In a [separate ruling](#) on the U.S. Department of Justice’s challenge to the law, the Court denied the DOJ’s request to block the law and sent the case back to the Fifth Circuit Court of Appeals, which already wiped out emergency relief to restore abortion access.

Several state court challenges seeking to declare S.B. 8 unconstitutional remain ongoing. Yesterday, in a case brought by Planned Parenthood affiliates in Texas and

others, a Texas state-court judge held S.B. 8's private enforcement scheme unconstitutional. That decision has been appealed. In October, the Center for Reproductive Rights [filed a lawsuit](#), *Braid v. Stille*, on behalf of Dr. Alan Braid, a Texas doctor who provided abortion services in violation of the ban.

Since S.B. 8 took effect, the average one-way driving distance for Texans to reach an abortion clinic has [increased from 17 miles to 247 miles](#)—a 14-fold increase. In October, the Guttmacher Institute [released startling new data](#) showing how far people in each state will need to travel for abortion care if *Roe v. Wade* is overturned.

S.B. 8 bans abortion after about six weeks of 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 an abortion provider, a health center worker, 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, the [ACLU of Texas](#), Morrison & Foerster LLP, and Austin attorney Christen Mason Hebert. The defendants included 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.

Timeline of *Whole Woman's Health v. Jackson* available [here](#).

Quotes from plaintiffs and litigators:

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

“This is a disheartening ruling, not only for Texans and abortion rights, but for those who value the rule of law. Our legal system forbids politicians from skirting judicial review of laws attacking fundamental rights and today's ruling provides a narrow path forward. Texans seeking abortion care are entitled to the same liberty, equality, and dignity as every other resident of this country, and we will continue to stand with our partners until this cruel law is invalidated.”

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

“Texans deserve better than this. This ban will have lasting effects on Texan communities for decades to come. We've had to turn hundreds of patients away since this ban took effect, and there is no end in sight. For nearly 50 years, the Supreme Court has said that abortion is protected by our Constitution, yet they are allowing Texans to be denied that right. This is not okay.”

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

“It’s stunning that the Supreme Court has essentially said that federal courts cannot stop this bounty-hunter scheme enacted to blatantly deny Texans their constitutional right to abortion. The Court has abandoned its duty to ensure that states do not defy its decisions. For 100 days now, this 6-week ban has been in effect, and today’s ruling means there is no end in sight. Pregnant people will continue to live in a state of panic and uncertainty.

This bounty-hunting scheme could be used by other states not only to deny abortion access, but also to deny any court rulings they disagree with from marriage equality to voting rights and more. We will continue to seek justice in the shred of the case that the Court has allowed to go forward and seek every other legal means to stop this catastrophic law. The Senate needs to pass the Women’s Health Protection Act immediately to restore the constitutional right to abortion in Texas and stop it before it spreads to other states.”

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

“Once again, the Supreme Court has abandoned the people of Texas. This has gone on far too long — as Justice Sotomayor said today, the Supreme Court should have put an end to this months ago and failed to do so again today. While the Court did not put a complete end to our legal challenge, its failure to stop Texas’s deliberate nullification of the constitutional right to abortion within its borders makes the Court complicit in widespread chaos and harm to Texans, and responsible for giving the green light for other states to circumvent the constitution through copycat laws. Planned Parenthood will continue to stand by our patients and fight against this law with movement partners — no matter how long it takes.”

Julia Kaye, staff attorney at the ACLU Reproductive Freedom Project:

“The Supreme Court has again turned its back on the Constitution and permitted Texas’s bounty-hunter scheme to continue, leaving only a thin legal path forward for Texas abortion providers desperate to care for their patients. The impact of this betrayal will stretch far beyond Texas, where lawmakers are already introducing copycat bounty-hunter bills designed to eliminate all abortions within their borders. There is no doubt that, because of this ruling, thousands more people will be forced to flee their home states in pursuit of vital medical care, and countless others will be forced to continue pregnancies against their will—especially communities of color and those with fewer resources. But make no mistake: Today it’s abortion rights that have been targeted; tomorrow it could be any other freedom people hold dear.”

Adriana Piñon, policy counsel and senior staff attorney at the ACLU of Texas:

“A dark cloud hangs over the U.S. Constitution and the state of Texas today as the Supreme Court once again allowed extremist lawmakers to continue imposing their ideologies onto Texans’ private health care decisions. We are particularly devastated by the implications of this ruling for Black Texans, who account for a shocking 31% of maternal deaths, and the broader fight for reproductive justice in our Black and Brown communities. Despite this heartbreaking ruling, we will continue to fight this unconstitutional law through our work in the courts, at the state and federal legislatures, and most importantly, in our local communities.”