



citizens, allowing “any person” other than a government official to bring a civil lawsuit against anyone who provides an abortion in violation of the statute, “aids or abets” such an abortion, or intends to do so. S.B. 8 § 3 (codified at Tex. Health & Safety Code § 171.208) (hereinafter S.B. 8 citations are to newly created sections of Tex. Health & Safety Code only). The only conduct that S.B. 8 explicitly identifies as aiding or abetting is “paying for or reimbursing the costs of an abortion.” Tex. Health & Safety Code § 171.208(a)(2). S.B. 8 authorizes private suits regardless of whether the person suing has any connection to the abortion or person sued. If a claimant in an S.B. 8 case prevails, they are entitled to (1) “injunctive relief sufficient to prevent” future violations; (2) “statutory damages” of *at least* \$10,000 per abortion, with no apparent maximum amount; and (3) costs and attorney’s fees. *Id.* § 171.208(b). In effect, S.B. 8 places a bounty on people who facilitate abortion access, inviting random strangers to sue them. Moreover, S.B. 8’s rules for enforcement proceedings sharply diverge from those normally applicable to Texas litigants and undermine the ability to mount a fair defense.

3. Texas has admitted that the goal of S.B. 8’s enforcement scheme is to prevent federal courts from holding the State accountable for the statute’s unconstitutional provisions.<sup>1</sup> This is the case even though—or perhaps because—the law has long recognized that federal courts play a crucial role in “vindicat[ing] federal rights and hold[ing] state officials responsible to ‘the supreme authority of the United States.’” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105 (1984) (quoting *Ex parte Young*, 209 U.S. 123, 160 (1908)). Indeed, more than a century of precedent “has permitted the Civil War Amendments to the Constitution to serve as a sword, rather than merely as a shield, for those whom they were designed to protect.” *Edelman v. Jordan*,

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<sup>1</sup> See Video of Oral Arg. at 17:48-18:07, *Whole Woman’s Health v. Jackson*, 65 Tex. Sup. Ct. J. 625 (Mar. 14, 2022) (Cause No. 22-0033), <https://www.texasbarcle.com/cle/SCPlayer5.asp?sCaseNo=22-0033&bLive=&k=&T=17>.

415 U.S. 651, 664 (1974). Those Civil War Amendments led to the enactment of 42 U.S.C. § 1983, which authorizes this lawsuit.

4. Plaintiffs bring this lawsuit against Defendant Mistie Sharp because she has sworn under penalty of perjury that she intends to sue abortion funds that pay for abortions in violation of S.B. 8. Likewise, Plaintiffs bring this suit against Defendants Sadie Weldon and Ashley Maxwell because they have initiated proceedings to sue certain Texas abortion funds and their donors, employees, and volunteers under S.B. 8, and publicly threatened all Texas abortion funds and their associates with civil lawsuits under S.B. 8.

5. Plaintiffs urgently need this Court to stop S.B. 8's brazen defiance of the rule of law and restore the ability of abortion funds and their associates to serve Texans seeking legal abortion care.

#### **JURISDICTION AND VENUE**

6. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. This is a civil rights action arising under 42 U.S.C. § 1983 and the U.S. Constitution.

7. Plaintiffs' claims for declaratory relief are authorized by 28 U.S.C. §§ 2201-2202, Rule 57 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of the Court, including the Court's inherent authority to enforce the supremacy of federal law as against contrary state law.

8. Venue is appropriate in this district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this district. *See Trois v. Apple Tree Auction Ctr., Inc.*, 882 F.3d 485, 492–94 (5th Cir. 2018) (discussing the requirements for venue under 28 U.S.C. § 1391(b)). Plaintiff Stigma Relief Fund serves clients who reside in this district. The individual Plaintiffs seek to continue donating money to Stigma Relief Fund and other abortion funds that serve clients who reside in this district. Ms. Sadler and

Mr. Mehl also serve on the Board of Directors of Stigma Relief Fund. In addition, Defendant Sharp has intervened in a lawsuit pending in this district based on her declared intention to sue Texas abortion funds under S.B. 8. Defendant Weldon has taken steps to enforce S.B. 8 against an abortion fund based in this district.

9. This case is related to two open cases in this district that are assigned to the Honorable Robert Pitman: *Whole Woman's Health v. Jackson*, No. 1:21-CV-616-RP and *United States v. Texas*, No. 1:21-CV-796-RP. Both cases involve challenges to the constitutionality of S.B. 8. Marva Sadler is also a plaintiff in *Whole Woman's Health v. Jackson*.

#### **PLAINTIFFS**

10. Plaintiff Wendy Davis is a Texas resident who strongly supports abortion rights. She currently donates money to the abortion fund targeted by Defendant Weldon. Ms. Davis works in coalition with that abortion fund and others to send a message to pregnant Texans seeking abortions that they are not alone, they are not doing anything wrong, and that they deserve access to safe abortion care regardless of their background or financial circumstances. She also works in coalition with Texas abortion funds to inform legislative and judicial decisions about laws affecting abortion access and affordability. Defendants' public threats against abortion funds and their associates have had a chilling effect on some of those organizations and individuals, including the other Plaintiffs, which intrudes upon Ms. Davis' ability to associate with like-minded people to express her views and achieve her advocacy goals.

11. Plaintiff Marva Sadler is a Texas resident who has worked in abortion care for over fifteen years. She currently serves as the Chair of the Stigma Relief Fund's Board of Directors, and she regularly donates money to that organization. Ms. Sadler sometimes donates money to other Texas abortion funds, as well. Ms. Sadler engages in these activities to send a message to abortion patients that they are not alone, their community supports them, and that they are entitled

to end a pregnancy with dignity. Ms. Sadler also engages in these activities to convey to policymakers and the general public that Texans deserve safe abortion care regardless of their circumstances. She is aware of Defendants' threats to enforce of S.B. 8 against Texas abortion funds and their donors, employees, and volunteers. Because of those threats, she intends to forgo making additional donations to Texas abortion funds until the Court clarifies whether and to what extent she can face liability for doing so.

12. Plaintiff Sean Mehl is a Virginia resident who has worked in abortion care for nearly a decade. He currently serves on Stigma Relief Fund's Board of Directors, and he regularly donates money to that organization. Mr. Mehl sometimes donates money to other Texas abortion funds, as well. He engages in these activities to send a message to abortion patients that they are not alone, they should not be stigmatized for their reproductive health decisions, and that the Stigma Relief Fund supports them. Mr. Mehl also engages in these activities to promote abortion rights and equitable abortion access. He is aware of Defendants' threats concerning enforcement of S.B. 8 against Texas abortion funds and their donors, employees, and volunteers. Because of those threats, he intends to forgo making additional donations to Texas abortion funds until the Court clarifies whether and to what extent he can face liability for doing so.

13. Plaintiff Stigma Relief Fund is a nonprofit organization incorporated under the laws of Texas. The mission of Stigma Relief Fund is to ensure that everyone who needs an abortion receives the compassionate, high-quality abortion care they deserve. To that end, Stigma Relief Fund provides informational, financial, and practical support to abortion patients seeking care at allied clinics, including Texans seeking abortion care in states where it is legally permitted. The Stigma Relief Fund also provides these services to express the message to abortion patients that they are not alone, their community supports them, and that they are entitled to end a pregnancy

with dignity. Additionally, the Stigma Relief Fund seeks to convey to policymakers and the general public that Texans deserve safe abortion care regardless of their circumstances. The Stigma Relief Fund reasonably fears that Defendants' threats to enforce S.B. 8 against Texas abortion funds and their associates will have a chilling effect on its donors, employees, and volunteers.

## **DEFENDANTS**

14. Defendant Mistie Sharp is a Texas resident. S.B. 8 deputizes her to enforce the statute, and she has sworn under penalty of perjury that she intends to sue abortion funds that pay for abortions in violation of S.B. 8.

15. Defendant Sadie Weldon is a Texas resident. S.B. 8 deputizes her to enforce the statute. She has commenced legal proceedings against at least one Texas abortion fund and publicly threatened all Texas abortion funds and their associates with civil lawsuits under S.B. 8.

16. Defendant Ashley Maxwell is a Texas resident. S.B. 8 deputizes her to enforce the statute. She has commenced legal proceedings against at least one Texas abortion fund and publicly threatened all Texas abortion funds and their associates with civil lawsuits under S.B. 8.

## **FACTUAL ALLEGATIONS**

### **I. ABORTION IN THE UNITED STATES**

17. Legal abortion is one of the safest medical interventions performed in the United States. In recent years, the abortion-related mortality rate has been 0.44 abortion-related deaths per 100,000 abortions.<sup>2</sup> Abortion-related mortality is lower than that for colonoscopies, plastic surgery, dental procedures, and adult tonsillectomies.<sup>3</sup>

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<sup>2</sup> Katherine Kortzmit et al., *Abortion Surveillance—United States, 2018*, MMWR Surveillance Summaries, Nov. 27, 2020, at 7, <https://www.cdc.gov/mmwr/volumes/69/ss/pdfs/ss6907a1-H.pdf>.

<sup>3</sup> Nat'l Acads. of Scis., Eng'g, & Med., *The Safety and Quality of Abortion Care in the United States* 74-75 (2018), <https://doi.org/10.17226/24950> ("NASEM Report").

18. Notably, abortion entails significantly less medical risk than carrying a pregnancy to term and giving birth. Maternal mortality is a serious problem in the United States. We have the highest maternal mortality rate among developed countries, and it has increased during the COVID-19 pandemic.<sup>4</sup> Pregnancy-related deaths disparately impact communities of color: Black and Indigenous people die from pregnancy-related causes at a much higher rate than white people.<sup>5</sup>

19. Overall, the risk of death from carrying a pregnancy to term is approximately fourteen times higher than that from having an abortion, and every pregnancy-related complication is more common among people giving birth than among those having abortions.<sup>6</sup> Additionally, although abortion is safe throughout pregnancy, the risk, complexity, and duration of abortion care increase with gestational age.<sup>7</sup> Thus, delaying or preventing people from accessing wanted abortion care increases their risks of complication and death.

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<sup>4</sup> Roni Caryn Rabin, *Maternal Deaths Rose During the First Year of the Pandemic*, N.Y. Times (Feb. 23, 2022), <https://www.nytimes.com/2022/02/23/health/maternal-deaths-pandemic.html?smid=url-share>.

<sup>5</sup> *Id.*

<sup>6</sup> Elizabeth G. Raymond & David A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 *Obstetrics & Gynecology* 215, 216-17 (2012).

<sup>7</sup> NASEM Report, *supra* note 3, at 10.

20. In addition to being safe, abortion is also common: approximately one in four women<sup>8</sup> in the United States will have an abortion by age forty-five.<sup>9</sup>

21. People seek abortions for a variety of deeply personal reasons, including familial, medical, and financial ones. Deciding whether to end a pregnancy or give birth implicates a person's core religious beliefs, values, and family circumstances. Some people have abortions because it is not the right time to have a child or add to their families. Others want to pursue educational or professional goals; lack the economic resources needed to raise children; lack support from their partners or have abusive partners; have medical conditions that heighten the risks of pregnancy or receive a diagnosis of fetal anomaly; are pregnant as a result of rape or incest; or simply do not want to have children. Many people have multiple, intersecting reasons for deciding to have an abortion.

22. Nearly 60% of abortion patients in the United States have already had a child.<sup>10</sup>

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<sup>8</sup> Although most people with the capacity to become pregnant are women, some transgender men and nonbinary people also have the capacity to become pregnant. *See, e.g.*, Heidi Moseson et al., *Development of an affirming and customizable electronic survey of sexual and reproductive health experiences for transgender and gender nonbinary people*, PLoS ONE, May 4, 2020, at 2-3, <https://doi.org/10.1371/journal.pone.0232154>; Juno Obedin-Maliver & Harvey J. Makadon, *Transgender men and pregnancy*, 9 *Obstetric Med.* 4, 4–6 (2016). The language used in the scientific literature and caselaw does not always reflect this reality. *See, e.g.*, *Reprod. Health Servs. v. Strange*, No. 17-13561, 2021 WL 2678574, at \*1 n.2 (11th Cir. June 30, 2021) (“Although this opinion uses gendered terms, we recognize that not all persons who may become pregnant identify as female.”). Nevertheless, the Constitution protects the fundamental right of all pregnant people, regardless of gender identity, to access pre-viability abortion care.

<sup>9</sup> Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 *Am. J. Pub. Health* 1904, 1907-08 (2017).

<sup>10</sup> Kortsmmit et al., *supra* note 2, at 6.



23. Most abortion patients have religious affiliations. Nationwide, 24% are Roman Catholics; 17% are mainline Protestants; 13% are evangelical Protestants; and 8% belong to other faith traditions.<sup>11</sup>

24. Three-quarters of U.S. abortion patients have low incomes, with nearly half living below the federal poverty level.<sup>12</sup>

## **II. STATUTORY FRAMEWORK**

25. As enacted, S.B. 8 has ten sections. Its operative provisions are set forth in Sections 3 and 4, which include an abortion ban, civil enforcement mechanism, and fee-shifting scheme. These provisions are described in detail below.

### **A. Section 3 of S.B. 8: The Six-Week Ban and Civil Enforcement Mechanism**

#### **(i) *The Abortion Ban***

26. Section 3 of S.B. 8 requires physicians who perform abortions in Texas to first determine whether “a detectable fetal heartbeat” is present. Tex. Health & Safety Code § 171.203(b); *see id.* § 171.201(1). It prohibits the physician from providing an abortion after “detect[ing] a fetal heartbeat” or if the physician “failed to perform a test to detect a fetal heartbeat.” *Id.* § 171.204(a). S.B. 8 defines “physician” as “an individual licensed to practice medicine in [Texas].” *Id.* § 171.204(4). S.B. 8 contains no exception for pregnancies that result from rape or incest, or for fetal health conditions that are incompatible with sustained life after birth. The only exception is for a medical emergency. *Id.* §§ 171.204(a), 171.205(a). Sections 7

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<sup>11</sup> Jenna Jerman et al., *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008* 7 (May 2016), [https://www.guttmacher.org/sites/default/files/report\\_pdf/characteristics-us-abortion-patients-2014.pdf](https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf).

<sup>12</sup> *Id.*

and 9 of S.B. 8 impose additional reporting requirements on abortions performed because of a medical emergency. *Id.* §§ 171.008, 245.011(c).

27. S.B. 8 defines “fetal heartbeat” as “cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.” *Id.* § 171.201(1). In a typically developing pregnancy, ultrasound can generally detect cardiac activity beginning at approximately six weeks LMP.

28. S.B. 8 thus prohibits virtually all abortions after approximately six weeks LMP—before many patients even know they are pregnant. Accordingly, Plaintiffs refer to the prohibition against providing an abortion after the detection of a “fetal heartbeat” as a “six-week ban.”

**(ii) *Civil Liability for Providing Prohibited Abortions and Aiding or Abetting Prohibited Abortions***

29. S.B. 8 creates civil liability for “perform[ing] or induc[ing] an abortion in violation of” the six-week ban. *Id.* § 171.208(a)(1).

30. S.B. 8 also creates civil liability for “knowingly engag[ing] in conduct that aids or abets the performance or inducement of” an abortion that violates the six-week ban. *Id.* § 171.208(a)(2). Although S.B. 8 does not define aiding or abetting, it expressly prohibits “paying for or reimbursing the costs of an abortion.” *Id.* Further, S.B. 8 makes someone liable for aiding or abetting a prohibited abortion “regardless of whether the person knew or should have known that the abortion would be performed or induced in violation of” S.B. 8. *Id.*

31. Finally, S.B. 8 creates civil liability for anyone who “intends to” perform, induce, aid, or abet a prohibited abortion, regardless of whether they actually commit those acts. *Id.* § 171.208(a)(3).

(iii) *Enforcement Actions and Penalties for Non-Compliance*

32. S.B. 8 expressly precludes government officers from directly enforcing the six-week ban. *Id.* § 171.207(a). Instead, the statute creates a private, civil enforcement mechanism: “Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person” who performs a prohibited abortion, aids or abets a prohibited abortion, or intends to engage in these activities. *Id.* § 171.208(a)(1)-(3).

33. Besides government officers, the only people barred from initiating an S.B. 8 enforcement action are those “who impregnated the abortion patient through an act of rape, sexual assault, incest,” or certain other crimes. *Id.* § 171.208(j). However, because the six-week ban itself contains no exception for pregnancies resulting from rape, sexual assault, or incest, anyone *other* than the perpetrator could still sue a healthcare provider, abortion fund or family member who helps a patient end a pregnancy that resulted from the offense.

34. S.B. 8 does not permit suits against abortion patients. *Id.* § 171.206(b)(1). But it provides a ready tool for abusive partners or family members who wish to thwart a patient’s abortion. Under S.B. 8, if such individuals know about a patient’s plan to obtain an abortion, they can sue the patient’s abortion provider, or anyone else who “intends” to assist with that abortion, to prevent the patient from accessing care. *Id.* § 171.208(a)(1)-(3).

35. S.B. 8 imposes draconian penalties. Where an S.B. 8 claimant prevails, “the court shall award”: (1) “injunctive relief sufficient to prevent” future violations or conduct that aids or abets violations; (2) “statutory damages” to the claimant “in an amount of not less than \$10,000 for each abortion” that was provided, aided, or abetted; and (3) the claimant’s “costs and attorney’s fees.” *Id.* § 171.208(b). S.B. 8 does not require the claimant to allege or prove any injury to obtain an award.

(iv) ***The Rigged Nature of the Enforcement Proceedings***

36. At every turn, the rules governing S.B. 8 enforcement proceedings sharply diverge from the rules that normally apply to Texas litigants in ways that undermine the ability of those sued to fairly defend themselves.

37. ***Statewide venue:*** S.B. 8 allows “any person”—including people with no connection to the abortion or patient, and those who are motivated by hostility to abortion rights or a desire for financial gain—to file lawsuits in their home counties and then veto transfer to a more appropriate venue. As a result, those targeted by S.B. 8 lawsuits can be forced to defend themselves in multiple, simultaneous enforcement proceedings in courts across the State. *See id.* § 171.210(a)(4) (permitting suit in the claimant’s county of residence if “the claimant is a natural person residing in” Texas); *id.* § 171.210(b) (providing that an S.B. 8 “action may not be transferred to a different venue without the written consent of all parties”). In contrast, venue in Texas is generally limited to where the events giving rise to a claim took place or where the defendant resides, *see* Tex. Civ. Prac. & Rem. Code § 15.002(a), and a Texas state court may generally transfer venue “[f]or the convenience of the parties and witnesses and in the interest of justice,” *id.* § 15.002(b).

38. ***One-way fee-shifting in favor of S.B. 8 claimants:*** S.B. 8 provides that, in enforcement proceedings, anyone who brings an S.B. 8 claim and prevails is entitled to recover costs and attorney’s fees. Tex. Health & Safety Code § 171.208(b)(3). Meanwhile, those sued under S.B. 8 cannot be awarded costs or attorney’s fees if they prevail, regardless of how many times they are sued or in how many venues. *Id.* § 171.208(i).

39. ***Elimination of defenses:*** S.B. 8 purports to bar people who are sued from raising seven defenses under the statute, including that they believed that S.B. 8 was unconstitutional; that they relied on a court decision, later overruled, that was in place at the time of the acts underlying

the suit; or that the patient consented to the abortion. *Id.* § 171.208(e)(2), (3), (6). S.B. 8 also states that people who are sued may not rely on any “state or federal court decision that is not binding on the court in which the action” was brought. *Id.* § 171.208(e)(4), (5). The clear import of these provisions is to undermine the supremacy of federal law, force supporters of abortion patients to defend themselves over and over again, and hamstring that defense.

40. The rigged nature of S.B. 8 enforcement proceedings sharply curtails Plaintiffs’ ability to vindicate their federal constitutional rights in state court.

**B. Section 4 of S.B. 8: The Fee-Shifting Provision Applicable to All Lawsuits Challenging the Validity of Texas Abortion Restrictions**

41. Section 4 of S.B. 8 creates an unprecedented one-way fee-shifting provision designed to deter all legal challenges to Texas abortion restrictions and penalize anyone who tries to bring such a challenge. This provision applies to any person—including a party’s lawyers—who seeks injunctive or declaratory relief to prevent enforcement of S.B. 8 or any other “law that regulates or restricts abortion,” or any law that excludes those who “perform or promote” abortion from participating in a public funding program. Tex. Civ. Prac. & Rem. Code § 30.022(a).

42. This fee provision purports to apply in state and federal court, and to any state or federal claim, including Section 1983 claims brought to vindicate federal constitutional rights.

43. Under this provision, civil-rights plaintiffs and their attorneys can be forced to pay defendants’ attorney’s fees unless they prevail on all of their claims. If a court dismisses a claim brought by the civil-rights plaintiff, regardless of the reason, or enters judgment in the other party’s favor on that claim, the party defending the abortion restriction is deemed to have “prevail[ed].” *Id.* § 30.022(b)(1)-(2). That is presumably true even if the court ultimately enjoins the challenged abortion restriction in full after, for example, rejecting one claim pleaded in the alternative or dismissing another rendered moot by circumstance.

44. According to Section 4 of S.B. 8, the party seeking fees need not even have asked for them in the underlying litigation. Rather, that party can file a new lawsuit against the plaintiffs and/or their attorneys at any time within three years of the claim resolution. Further, the party seeking fees can choose to litigate their application in a new venue before a judge who did not preside over the initial case. *Id.* § 30.022(c), (d)(1)-(2).

45. State courts resolving such fee applications are directed to start from scratch. According to S.B. 8, they may not consider whether the court in the underlying case already denied fees to the party defending the abortion restriction, or already considered the application of S.B. 8 Section 4 and held it “invalid, unconstitutional, or preempted by federal law.” *Id.* § 30.022(d)(3). Nor does S.B. 8 explicitly limit fees to what is reasonable, unlike other fee-shifting statutes such as 42 U.S.C. § 1988.

### III. DEFENDANTS’ THREATS OF CIVIL LAWSUITS

46. On September 22, 2021, Defendant Sharp moved to intervene in a challenge to S.B. 8 pending in this district “to defend and preserve [her] state-law right to sue abortion funds that pay for post-heartbeat abortions in violation of Senate Bill 8.” Sharp Decl. ¶ 12, *United States v. Texas*, No. 1:21-cv-00796-RP, Dkt. 28-1; *see* Mot. to Intervene at 3, *United States v. Texas*, No. 1:21-cv-00796-RP, 2021 WL 4593319 (W.D. Tex. Sept. 22, 2021), Dkt. 28. In support of her motion, she declared under penalty of perjury that she “intend[s] to sue . . . abortion funds who pay for other people’s abortions in violation of Senate Bill 8.” Sharp Decl. ¶ 9, *United States v. Texas*, No. 1:21-cv-00796-RP, Dkt. 28-1. The Court granted Ms. Sharp’s motion to intervene on September 28, 2021. Order, *United States v. Texas*, No. 1:21-cv-00796-RP, Dkt. 40.

47. In February 2022, Defendants Weldon and Maxwell respectively filed in state court verified petitions to take depositions and investigate a lawsuit (“Rule 202 Petitions”) against two Texas abortion funds—Lilith Fund for Reproductive Equity and North Texas Equal Access Fund.

Redacted copies of the Rule 202 Petitions are attached hereto as Exhibits 2 and 3. These petitions assert that Defendants’ “goal is to . . . ascertain the identity of all individuals and organizations who are subject to liability under [Texas Health & Safety Code] section 171.208.” Ex. 2 at 3; Ex. 3 at 3.

48. On February 14, 2022, Defendants Weldon and Maxwell issued a press release through their lawyers stating that they filed the Rule 202 Petitions “to determine which individuals are subject to civil liability and criminal prosecution for paying [for] illegal abortions, which will include employees, volunteers, and donors” of the respondent abortion funds.<sup>13</sup> On February 21, 2022, Defendants Weldon and Maxwell issued another press release through their lawyers stating that the respondent abortion funds “exposed their employees, volunteers, and donors to civil lawsuits and potential criminal prosecution.”<sup>14</sup> That same day, in response to a tweet by one of the abortion funds announcing its goal to “raise \$20k for Texans who need abortions,” Defendants’ lawyers tweeted a warning to potential “donors” that they “could get sued under S.B. 8.”<sup>15</sup> A copy of this exchange is attached hereto as Exhibit 4. Two days later, on February 23, 2022, Defendants’ lawyers tweeted that “[i]t is illegal to donate to abortion funds that pay for abortions performed in

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<sup>13</sup> *AFL Files Petitions Against Two Abortion Funds in Texas Who Violated the Texas Heartbeat Act*, America First Legal (Feb. 14, 2022), <https://www.aflegal.org/news/afl-files-petitions-against-two-abortion-funds-in-texas-who-violated-the-texas-heartbeat-act>; see also America First Legal (@America1stLegal), Twitter (Feb. 14, 2022, 2:18 PM), <https://twitter.com/America1stLegal/status/1493349001386770433?cxt=HHwWgoC-labAuLkpAAAA>.

<sup>14</sup> *Abortion Funds to Face Pre-Suit Discovery over Violations of the Texas Heartbeat Act*, Thomas More Society (Feb. 21, 2022, 9:00 PM), <https://thomasmoresociety.org/abortion-funds-to-face-pre-suit-discovery-over-violations-of-the-texas-heartbeat-act/>.

<sup>15</sup> Thomas More Society (@ThomasMoreSoc), Twitter (Feb. 21, 2022, 4:45 PM), <https://twitter.com/ThomasMoreSoc/status/1495922599704121352>.

Texas. Violators are subject to civil lawsuits and criminal prosecution.”<sup>16</sup> A copy of this statement is attached hereto as Exhibit 5.

49. Because of Defendants’ threats concerning enforcement of S.B. 8 against Texas abortion funds and their associates, Plaintiffs Sadler and Mehl intend to cease donating money to Texas abortion funds, including the Stigma Relief Fund, until the Court confirms that S.B. 8 is unenforceable because it violates the U.S. Constitution and/or is preempted by federal law.

### **CLAIMS FOR RELIEF**

#### **CLAIM I** **(Due Process Clause)**

50. The allegations in paragraphs 1 through 49 above are incorporated as if fully set forth herein.

51. By failing to provide adequate procedural safeguards to defendants in S.B. 8 enforcement actions and imposing excessive, mandatory penalties, Section 3 of S.B. 8 violates the right to procedural due process protected by the Due Process Clause of the Fourteenth Amendment.

#### **CLAIM II** **(Equal Protection Clause)**

52. The allegations in paragraphs 1 through 49 above are incorporated as if fully set forth herein.

53. By singling out people who provide or facilitate access to abortion care for unequal treatment without sufficient justification, Sections 3 and 4 of S.B. 8 violate the Equal Protection Clause of the Fourteenth Amendment.

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<sup>16</sup> Thomas More Society (@ThomasMoreSoc), Twitter (Feb. 23, 2022, 4:20 PM), <https://twitter.com/ThomasMoreSoc/status/1496641113305886725>.



**CLAIM III**  
**(First Amendment)**

54. The allegations in paragraphs 1 through 49 are incorporated as if fully set forth herein.

55. By threatening to chill abortion funds' relationships with their donors, employees, and volunteers, Section 3 of S.B. 8 violates the freedom of expressive association protected by the First Amendment.

56. By threatening to chill speech about abortion, Section 3 of S.B. 8 violates the freedom of speech protected by the First Amendment.

57. By subjecting Plaintiffs and their attorneys to liability based on the viewpoint they express in litigation, Section 4 of S.B. 8 violates the First Amendment.

**CLAIM IV**  
**(Supremacy Clause)**

58. The allegations in paragraphs 1 through 49 above are incorporated as if fully set forth herein.

59. With respect to claims brought under 42 U.S.C. § 1983, the fee-shifting scheme set forth in Section 4 of S.B. 8 is preempted by 42 U.S.C. § 1988.

**REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment that S.B. 8 is unenforceable because it is unconstitutional and/or preempted by federal law;

B. Award Plaintiffs their reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988; and

C. Pursuant to Federal Rule of Civil Procedure 54(b) and the Court's inherent powers, grant such other and further relief as the Court may deem just, proper, and equitable.

Dated: July 25, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2022, I electronically filed the foregoing First Amended Complaint with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ Rupali Sharma  
Rupali Sharma