

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF TEXAS,

Defendant.

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Civil No. 1:21-cv-796

EXHIBIT 5

**Declaration of Rebecca Tong in Support of Plaintiff's
Motion for Temporary Restraining Order and/or
Preliminary Injunction**

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

United States of America,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	CASE NO. 1:21-cv-796
)	
The State of Texas,)	
)	
Defendant.)	

DECLARATION OF REBECCA TONG
IN SUPPORT OF PLAINTIFF’S MOTION FOR A TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION

REBECCA TONG hereby declares under penalty of perjury that the following statements are true and correct:

1. I am the Acting Co-Executive Director of Trust Women Foundation (“Trust Women”).

2. Trust Women operates clinics offering high-quality reproductive healthcare, including abortion, transgender care, STI testing, well woman care, gynecological care, and contraceptive services. We provide this medical care for people in underserved communities. Trust Women opened its first clinic, Trust Women South Wind Women’s Center (d/b/a “Trust Women Wichita”), in Wichita, Kansas in 2013. Trust Women opened a second clinic, Trust Women Oklahoma City, in Oklahoma City, Oklahoma in 2016.

3. As the Acting Co-Executive Director of Trust Women, I oversee operations at both Trust Women Wichita and Trust Women Oklahoma City. I am responsible for managing and supporting the directors at both clinics, including with scheduling and physician and staff hiring. I am familiar with the policies and procedures at the clinics and am in frequent contact with Trust Women’s directors, clinical staff, and physicians.

4. I provide the following testimony based on my personal knowledge from Trust Women's operations.

Provision of Abortion Care at Trust Women Oklahoma City

5. Trust Women Oklahoma City provides medication abortion up to 11 weeks as measured from the first day of the patient's last menstrual period ("LMP") and procedural abortions through 21.6 weeks LMP, which is the legal gestational limit in Oklahoma. Trust Women Oklahoma City is the only clinic in Oklahoma that provides abortions after approximately 18 weeks LMP.

6. The vast majority of abortion patients at Trust Women Oklahoma City are in the first trimester.

7. Due to Oklahoma's burdensome anti-abortion restrictions, there are only four abortion clinics in the state, all of which are located in Oklahoma City and Tulsa. Pregnant people in rural areas of Oklahoma, including the panhandle and southwestern corner of the state, must travel hundreds of miles to reach the nearest abortion provider.

8. Very few doctors who live in Oklahoma are willing to provide abortion care. The regulatory requirements are extremely burdensome, and physicians who do provide abortions are subject to discrimination in the medical and local communities, harassment, and threatened and actual violence. Trust Women Oklahoma City regularly has protestors outside their doors attempting to intimidate both providers and patients. Harassment, stigma, and security concerns contribute to the reluctance of physicians located in Oklahoma to provide abortions.

9. Trust Women Oklahoma City is therefore staffed entirely by Oklahoma-licensed physicians based in other states who travel to Oklahoma City to provide abortion care. These physicians have professional and personal commitments in their home states. As a result, Trust Women Oklahoma City is able to offer abortion appointments only two days each week.

10. Before S.B. 8 took effect on September 1, 2021, Trust Women Oklahoma City provided abortions for approximately 40 patients each week. Typically, only about a quarter of those patients are from Texas—generally the Texas Panhandle region.

11. Trust Women Oklahoma City has experienced a dramatic increase in patient volume since Texas Senate Bill 8 went into effect. Since August 31, 2021, the clinic’s call volume has more than doubled from approximately 15 patient appointment calls per day to 30 to 40. About two-thirds of our patient appointment calls now come from Texas patients seeking abortions that are unavailable throughout their home state.

12. Trust Women Oklahoma City is scheduling as many abortion appointments as it can accommodate, but due to our staffing constraints, we have had to cap the volume at 40 patient appointments scheduled per clinic day, or 80 patients per week.

13. Even now, less than two weeks since S.B. 8 took effect, Trust Women Oklahoma City has been forced to delay patients’ abortions because of the volume of appointments needed. Before September 1, if a patient called on Monday for an appointment, the clinic would generally be able to schedule the patient for an abortion on a Thursday or Friday of the same week (with the mandatory 72-hour delay required by Oklahoma law). Now, the clinic is scheduling patients for appointments three weeks in advance—a significant delay for a time-sensitive medical procedure, and a delay that was extremely rare before September 1.

Provision of Abortion Care at Trust Women Wichita

14. Trust Women Wichita provides abortion care to approximately 1500 patients per year.

15. Trust Women Wichita provides medication abortion up to 11 weeks LMP, and procedural abortions through 21.6 weeks LMP, which is the legal gestational limit in Kansas.

16. The vast majority of abortion patients at Trust Women Wichita are in the first trimester.

17. Trust Women Wichita provides critical abortion care in Kansas that might otherwise be unavailable for many of our patients. There are only four abortion clinics in Kansas, serving the state's nearly three million residents, and all four clinics are in the Wichita or Kansas City metropolitan areas.

18. Trust Women Wichita currently schedules patients for abortions two days each week. Our schedule is limited by the availability of our physicians, nearly all of whom fly into Wichita from out of state to perform abortions and have other practices in their home states, and the capacity of our nurses and our staff.

19. Before S.B. 8 took effect on September 1, 2021, Trust Women Wichita provided abortions for approximately 20 to 40 patients each week. Very few of these patients were from Texas. Indeed, in 2019, Kansas abortion providers cumulatively provided abortions for only 25 patients from Texas. *See* Kansas Department of Health and Environment, *Abortions in Kansas, 2019* at 7 (May 2020).¹ In 2020, that number soared to 289 because many abortions were unavailable in Texas and Oklahoma for approximately one month. *See* Kansas Department of Health and Environment, *Abortions in Kansas, 2020*, at 7 (May 2021).²

20. Trust Women Wichita immediately felt the impact of Texas's near total ban on abortions. Since August 31, 2021, the clinic's total call volume has doubled, and approximately half of our calls now come from Texas patients seeking abortions that they are no longer able to obtain in their home state. Trust Women Wichita is scheduling as many abortion procedures as it can—approximately 30 patients per clinic day, or 60 patients per week.

21. Whereas Trust Women Wichita previously served mostly patients living in Kansas, the clinic is now providing abortions for many out-of-state pregnant people. About half of our patients

¹ https://www.kdheks.gov/phi/abortion_sum/2019_Preliminary_Abortion_Report.pdf.

² https://www.kdheks.gov/phi/abortion_sum/2020_Preliminary_Abortion_Report.pdf.

since September 1 are from Texas, including from as far away as San Antonio and Houston. Some patients are now traveling 600 miles each way for a medication abortion, which involves taking pills. We are also now serving patients from Louisiana who previously would have traveled to a clinic in Texas for their abortion.

22. As a result, Trust Women Wichita is now having to schedule patients farther out than we typically would, forcing patients to delay their abortion care. Although we generally try to schedule patients for the first available appointment we have, we are having to prioritize appointments for patients who are approaching the legal gestational limit.

Delayed Abortion Care

23. Both of Trust Women's clinics are now unable to serve patients as quickly as they normally would. This means that, unless patients are able to find appointments at other out-of-state clinics and make the necessary logistical and financial arrangements, most or all of our patients are now being delayed in obtaining an abortion.

24. Although abortion is an extremely safe medical procedure, the risks increase as the pregnancy progresses. Pregnancy is painful for some women, so delay extends this experience. Delays also increase the stress and burdens of maintaining an unwanted pregnancy. This is particularly true for pregnant people who have a medical condition that makes pregnancy a significant health risk or who are pregnant as a result of sexual assault or incest. Delays can result in adverse mental health consequences for pregnant people who are forced to carry their pregnancies longer than they desired or intended.

25. Delays in accessing abortions can push pregnant people beyond the limit for obtaining a medication abortion. Since medication abortion is available only in the first 10 to 11 weeks of pregnancy, patients who are delayed beyond this limit can no longer choose this option. Medication abortion may be preferred over procedural abortion for medical reasons, and many patients strongly

prefer medication to a procedural abortion. Because most of Trust Women Wichita's patients are in the first trimester, a delay of a few weeks will make medication abortion unavailable for many.

26. Additionally, although abortions at any gestational age are very safe, delays will push patients towards more complicated procedural abortions in their second trimester. Later-stage procedural abortions carry increased medical risks, may involve multiple visits to the clinic over two days, and involve significantly more financial cost to patients—creating even more hardship for the economically and medically vulnerable populations we serve.

27. Most alarmingly, delays in abortion care might prevent some pregnant people from obtaining an abortion altogether. Although we are working to mitigate that possibility, the need to accommodate so many additional patients will mean that Trust Women may become unable to see some patients before they reach the legal gestational limit for abortion in Kansas.

28. Almost all of our patients pay for their procedures out of pocket. We work with abortion funds that provide financial assistance, but now patients are also having to scrape together the means to travel hundreds of miles each way for an abortion—further delaying patient care.

29. Patients are calling several clinics, panicking, and trying to find the clinic where they can be seen the soonest. In the past two weeks, we have seen large increases in minor patients, survivors of sexual assault, patients with a maternal or fetal diagnosis, and patients with later gestational ages.

Difficulty Managing Influx of Patients

30. I am extremely concerned about Trust Women's ability to provide abortion care to all pregnant people who contact us. Based on my experience, the increased numbers we have seen so far in September are only a small fraction of the numbers we will see if S.B. 8 remains in effect.

31. We have direct experience with abortion bans in neighboring states and know that the influx of patients in Kansas and Oklahoma will require capacity we do not have. For example, during the COVID-19 emergency in 2020, when both Texas and Oklahoma had executive orders preventing pregnant people in those states from accessing abortions, Trust Women Wichita provided abortions to 200 Texans. Both of those abortion bans were short-lived but taught us that we do not have the capacity to accommodate large numbers of out-of-state patients in addition to the patients living in the communities we typically serve.

32. Both clinics are providing abortions to as many patients as they can, given physician and support staff availability. We are also working hard to expand our capacity and increase the number of patients we can serve at both clinics. In order to meet the current and anticipated demand, we are working toward adding more clinic days at both locations. Hiring and scheduling physicians and other support staff is no simple feat, though. In both Kansas and Oklahoma, it is difficult to find in-state physicians who are willing to provide abortion care because of the documented stigma, harassment, and violence abortion providers face. As a result, we must recruit doctors from other states who will travel to our clinics. These physicians work with us on a part-time basis and maintain medical practices and personal lives in their home states. It is challenging to find out-of-state abortion providers willing to travel to our clinics, and even when we do find them, they must become licensed in Kansas or Oklahoma before they can provide there.

33. Our clinics also have a critical need for additional support staff. In particular, we need more nurses on our staff in order to provide abortions for more patients on more clinic days. Hiring this medical staff during a pandemic is challenging to do.

34. Trust Women Oklahoma City has already asked its physicians to increase their clinic days to provide abortions three days each week. Some doctors are able to make this arrangement, but others cannot. If S.B. 8 is not blocked, we will work toward providing abortions four days per week

(up from two days), but such a move is entirely dependent on our ability to hire and schedule new physicians and staff.

35. But even if the two Trust Women clinics do expand their capacity, I fear that we still will not be able to serve Texans and other out-of-state patients affected by S.B. 8. That is because Oklahoma has passed five anti-abortion laws, all of which will take effect on November 1, 2021, unless blocked by court order. At least two of those laws would decimate abortion access in the state: (1) H.B. 1102, which is essentially a total ban on abortion that declares provision of abortion to be unprofessional conduct by physicians that carries a penalty of, at a minimum, suspension of medical licensure for one year, and (2) H.B. 2441, which bans abortion at approximately six weeks LMP.

36. In the less than two weeks the law has been in effect, S.B. 8 has strained resources in Kansas and Oklahoma and forced Kansas and Oklahoma patients to delay their abortions. I am worried that Trust Women Wichita and Trust Women Oklahoma City will not be able to keep up with the volume of patients and will be forced to turn away patients, including the patients we normally serve in Kansas and Oklahoma.

Dated: September 14, 2021

A handwritten signature in black ink that reads "Rebecca Tong". The signature is written in a cursive style and is positioned above a horizontal line.

REBECCA TONG