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December 7, 2023

Mr. Blake Hawthorne
Clerk of the Texas Supreme Court
P.O. Box 12248
Austin, Texas 78711

Re: Case No. 23-0629; *State of Texas et al. v. Zurawski et al.* – Appellees' Notice of Supplemental Authorities

Dear Mr. Hawthorne:

We write to inform the Court of recent filings in a case, *Cox et al. v. State of Texas et al.*, Cause No. D-1-GN-23-008611 (Travis Cnty. Dist. Ct.), that involve issues relevant to the case before this Court. *Cox* is a case filed two days ago by a pregnant plaintiff undergoing a medical crisis, as well as her husband and her physician, against the State of Texas, the Attorney General, and the Texas Medical Board and its Executive Director. As set forth in the verified petition, Ms. Cox received a diagnosis of full trisomy 18, and her physicians confirmed that her pregnancy may not reach term, and even if it does, the baby is likely to be stillborn or to live at most minutes, hours, or days. Ms. Cox is at high risk if she continues the pregnancy due to underlying health conditions and her prior two C-sections, and a third C-section would make it less likely she would be able to have children in the future.

Earlier today, the 459th District Court in Travis County entered a Temporary Restraining Order in *Cox* restraining the defendants from enforcing Texas's abortion bans with respect to Ms. Cox's case. A copy of the Temporary Restraining Order is attached.

In that case, the defendants filed a Plea to the Jurisdiction challenging the *Cox* plaintiffs' standing, asserting sovereign immunity, and claiming that Ms. Cox is not sufficiently "near death" to qualify for an abortion or for her claim to be "ripe." That plea is also attached.

Notwithstanding arguments that the Defendants made in oral argument last week in *Zurawski*, the same defendants in *Cox* are making inconsistent arguments:

1. Standing. Last week in *Zurawski*, the Defendants conceded that "for example," a patient-plaintiff who is currently pregnant and receives a fatal fetal diagnosis, "bringing a lawsuit in that specific circumstance [of a fetal diagnosis] to challenge whether or not the statute encompasses that [diagnosis and accompanying health conditions]" against "either the attorney general or the executive director of TMB" would suffice for standing purposes. Oral Arg., *State of Texas v. Zurawski*, at 12:24–13:28. Defendants similarly stated that "I think if the doctor had any specific circumstance in front of them, they could perhaps bring that lawsuit." *Id.* at 13:55–14:03. Despite those representations, in *Cox*, the defendants challenge Ms. Cox's standing on grounds that she is not at "imminent" loss of her life or fertility, the risk that she "*might* experience complications while delivering her child to term is insufficiently concrete," and her emergency amounts to "generalized grievances indistinguishable from every other pregnant Texan." *Cox* PTJ 12–14. The defendants similarly challenge the standing of her physician, Dr. Karsan (who is also a plaintiff in *Zurawski*). *Id.* 14–24.

2. Sovereign Immunity. At oral argument in *Zurawski*, Defendants said that a patient-plaintiff in circumstances identical to Ms. Cox's "would sue either the Attorney General or the Executive Director of TMB, perhaps under an *ultra vires* theory." Oral Arg. at 13:07–35. Likewise, the State Defendants stated that "I think if a doctor had a specific circumstance in front of them, they could perhaps bring that lawsuit." *Id.* at 13:36–14:04. That would be a lawsuit "under the UDJA" that names "either the TMB or the Attorney General." *Id.* at 11:30–50. Notwithstanding what they just told this Court, in *Cox*, the Defendants continue to assert complete sovereign immunity against suit under either the UDJA or an *ultra vires* theory. *Cox* PTJ 27–43.

3. Scope of Medical Exceptions. Before this Court in *Zurawski*, Defendants agreed that if a "fatal fetal anomaly" was "accompanied by evidence of a serious risk of substantial impairment of a major bodily function of the mother," then it would "fall[] within the exception." Oral Arg. 9:40. In *Cox*, however, the State Defendants have asserted that the medical exceptions require "imminent" risk of death, and that threats to future fertility and other health risks do not suffice under the medical exceptions. *Cox* PTJ 5–7, 12–14.

Defendants' position in *Cox* thus contradicts the position they took before this Court regarding standing, sovereign immunity, and under what circumstances a pregnant patient can obtain an abortion in Texas.

Hours after the District Court entered the Temporary Restraining Order, Defendant Attorney General Ken Paxton published and posted to X (Twitter) a letter addressed to three hospitals where he believes Ms. Cox might receive an abortion in accordance with the Temporary Restraining Order. Defendant Paxton's letter states: "Today, an activist Travis County Judge signed a Temporary Restraining Order ('TRO') *purporting* to enjoin" himself and the Texas Medical Board (emphasis added). The letter threatened those hospitals with "first degree felony prosecutions" and private actions by citizens under S.B. 8, notwithstanding the text of the Temporary Restraining Order. The letter also threatened disciplinary action against the hospitals for employing a physician willing to perform an abortion for a patient in a medical crisis. Finally, the letter claims that the medical exceptions require that Ms. Cox have a current "life-threatening physical condition," and warns the hospitals against "rel[ying] upon" the Temporary Restraining Order. Defendants later emailed a copy of the letter to Plaintiffs' counsel "to make sure that y[']all received a copy." A copy of Defendant Paxton's letter is attached.

Sincerely,

/s/ Molly Duane

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Encl.: Temporary Restraining Order, *Cox v. Texas* (Exhibit A)
Defendants' Plea to the Jurisdiction and Response to Plaintiffs' Application for a Temporary Restraining Order, *Cox v. Texas* (Exhibit B)
Attorney General Paxton Letter, dated December 7, 2023 (Exhibit C)

Certificate of Service

A true and correct copy of the foregoing has been served on counsel of record for Defendants-Appellants via electronic service on this 7th day of December, 2023.

/s/Molly Duane
Molly Duane

EXHIBIT A

CAUSE NO. D-1-GN-23-008611

KATE COX; JUSTIN COX; and DAMLA KARSAN, M.D., on behalf of herself, her staff, nurses, pharmacists, agents, and patients,

Plaintiffs,

v.

STATE OF TEXAS; ATTORNEY GENERAL OF TEXAS, KEN PAXTON, in his official capacity as Attorney General of Texas; TEXAS MEDICAL BOARD; and STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200 JUDICIAL DISTRICT

[redacted] TEMPORARY RESTRAINING ORDER

On the 7 day of December, 2023, the Court considered Plaintiffs Kate Cox, Justin Cox, and Dr. Damla Karsan's Application for Temporary Restraining Order ("Application") seeking to restrain Defendants State of Texas, Attorney General of Texas, Ken Paxton, Texas Medical Board, and Stephen Brint Carlton ("Defendants"), their agents, servants, employees, attorneys, and all persons in active concert and participation with Defendants from enforcing Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002 (the "Trigger Ban"), Tex. Health & Safety Code §§ 171.002(3), 171.203-205 ("S.B. 8"), and 1925 Tex. Penal Code arts. 1191-96 (the "pre-*Roe* Ban"), and certain Texas abortion laws utilizing the same medical exception, Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202, against Plaintiffs Kate and Justin Cox and Plaintiff Dr. Karsan and her staff, nurses, pharmacists, agents, and patients. After consideration of the Application and pursuant to the Texas Rule of Civil Procedure 680, the Court hereby finds:

FINDINGS

The Court finds that Ms. Cox's life, health, and fertility are currently at serious risk, and she needs a dilation and evacuation ("D&E") abortion immediately to preserve her life, health, and fertility. Ms. Cox's circumstances meet the medical exception to Texas's abortion bans and laws.

Ms. Cox is currently 20 weeks pregnant. Ms. Cox has two young children already, both delivered by cesarean surgery ("C-section"). Her third child has been diagnosed with full trisomy 18. After multiple screenings, ultrasounds, and diagnostic testing, Ms. Cox's physicians have confirmed that her baby may not survive to birth and, if so, will only live for minutes, hours, or days.

The longer Ms. Cox stays pregnant, the greater the risks to her life. Ms. Cox has already been to three emergency rooms with severe cramping, diarrhea, and leaking unidentifiable fluid. If she is forced to continue this pregnancy, Ms. Cox is at a particularly high risk for gestational hypertension, gestational diabetes, fetal macrosomia, post-operative infections, anesthesia complications, uterine rupture, and hysterectomy, due to her two prior C-sections and underlying health conditions. If she is forced to carry this pregnancy to term, she will likely need a third C-section. Undergoing a third C-section would make subsequent pregnancies higher risk and make it less likely that Ms. Cox would be able to carry another child in the future.

Dr. Karsan has met Ms. Cox, reviewed her medical records, and believes in good faith, exercising her best medical judgment, that a D&E abortion is medically recommended for Ms. Cox and that the medical exception to Texas's abortion bans and laws permits an abortion in Ms. Cox's circumstances. Dr. Karsan, however, cannot risk liability under Texas's abortion bans and laws for providing Ms. Cox's abortion absent intervention from the Court confirming that doing so will not jeopardize Dr. Karsan's medical license, finances, and personal liberty.

Mr. Cox is married to Ms. Cox and is the father of her children. He is ready to assist Ms. Cox in obtaining an abortion in Texas but needs assurances from this Court that doing so will not violate Texas's abortion bans and laws.

The Court finds that (1) Dr. Karsan is a Texas-licensed physician, and (2), consistent with Dr. Karsan's good faith belief and medical recommendation, that Ms. Cox has a life-threatening physical condition aggravated by, caused by, or arising from her current pregnancy that places her at risk of death or poses a serious risk of substantial impairment of her reproductive functions if a D&E abortion is not performed. Ms. Cox's circumstances thus fall within the medical exception to Texas's abortion bans and laws. Texas law therefore permits Dr. Karsan to perform, induce, or attempt an abortion for Ms. Cox, and permits Mr. Cox to assist Ms. Cox in obtaining that abortion.

This Court further finds that a D&E abortion is the method of abortion medically necessary to preserve Ms. Cox's life, health, and future fertility, and poses far fewer risks than an induction or a C-section.

The Court further finds that the risks to Ms. Cox's life, health, and fertility do not arise from a claim or diagnosis that Ms. Cox would engage in conduct that might result in her own death or self-harm.

Money damages are insufficient to remedy the injuries to Plaintiffs that will result if Defendants are not enjoined from instituting civil, criminal, or disciplinary investigations or actions under Texas's abortion bans and laws related to the abortion Ms. Cox is currently seeking. Conversely, Defendants will not be harmed if the Court restrains them and anyone in active participation or concert with them from enforcing Texas's abortion bans and laws as applied to the abortion Ms. Cox is currently seeking.

Defendants are responsible for enforcing Texas's abortion bans and laws. Defendant State of Texas enforces all Texas laws and includes persons acting under color of state law who could potentially enforce S.B. 8 and the pre-*Roe* ban. Defendants Attorney General Paxton, the Texas Medical Board, and Stephen Brint Carlton are statutorily empowered to assess civil penalties and disciplinary sanctions against anyone who violates the Trigger Ban and other Texas abortion laws. Defendants have not disavowed enforcement of these laws in circumstances like Ms. Cox's, nor have they provided any clarity as to how physicians like Dr. Karsan or persons like Mr. Cox should interpret the medical exception to Texas's abortion bans and laws that Defendants enforce. Violations of Texas's abortion bans and laws are subject to heavy penalties, including lifetime imprisonment, hundreds of thousands of dollars in fines and penalties, and loss of professional license. The Court finds that Plaintiffs are reasonably chilled from performing or aiding in the performance of an abortion for Ms. Cox without issuance of temporary relief restraining Defendants.

Defendants were provided notice of the cause of action, the Application, and the hearing conducted. Unless Defendants are restrained, Plaintiffs face an imminent threat of irreparable harm under Texas's abortion bans and laws. Judicial intervention is necessary to preserve Plaintiffs' legal right to obtain, provide, aid, or abet the abortion Ms. Cox is currently seeking.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

A. A Temporary Restraining Order is entered enjoining Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active participation or concert with them, from enforcing Texas's abortion bans and laws, codified at Tex. Health & Safety Code §§ 170A.001-002, 171.002(3), 171.203-205, 171.152, 171.0124, 285.202 against Plaintiffs and their staff, nurses, pharmacists, agents, and patients, as applied to Ms. Cox's current pregnancy.

B. Defendants shall provide notice of this Temporary Restraining Order to their officers, agents, servants, employees, and attorneys, and all other persons in active participation or concert with them.

C. The matter is scheduled for a permanent injunction hearing on the 20 day of December, 2024, at 9:00am

D. Plaintiffs' bond is set at $10.00. A law firm check or credit card is sufficient to post bond. Upon the filing of the bond required herein, the Clerk of this Court shall issue a Temporary Restraining Order in conformity with the law and the terms of this Order Granting Plaintiffs' Application for Temporary Restraining Order.

E. All parties may be served with notice of this Temporary Restraining Order and of the hearing on the request for Permanent Injunction in any matter provided under Rule 21a of the Texas Rules of Civil Procedure.

F. This Temporary Restraining Order shall expire on 12-21, 2023, at 5:00 p.m.

SIGNED this 7 day of December, 2023, at 10:09 a.m. ~~p.m.~~

PRESIDING JUDGE

MAYA GUERRA GAMBLE
459th DISTRICT COURT

EXHIBIT B

CAUSE NO. D-1-GN-23-008611

KATE COX; JUSTIN COX; AND DAMLA KARSAN, M.D.; on behalf of herself, her staff, nurses, pharmacists, agents, and patients, *Plaintiffs*,	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS
v.	§	
STATE OF TEXAS, et al., *Defendants.*	§	200th JUDICIAL DISTRICT

DEFENDANTS' PLEA TO THE JURISDICTION AND RESPONSE TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER

Defendants the State of Texas, Ken Paxton, in his official capacity as Attorney General of Texas, the Texas Medical Board ("TMB"), and Stephen Brint Carlton, in his official capacity as Executive Director of the Texas Medical Board, file this PLEA TO THE JURISDICTION AND RESPONSE TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER with the attached Appendix and respectfully offer the following in support:

Plaintiffs' claim that "Kate Cox needs an abortion, and she needs it now" through relief from this Court is demonstrably false. Pls.' Pet. ¶ 1. The Cox's purport to be Dallas residents seeking to obtain an abortion in Houston. *Id.* at ¶ 6. Yet, at this very moment, they reside in **Florida**. *See id.* at Pls.' Ver. Pgs. Florida's medical exception to its abortion prohibition expressly includes pregnancies where a baby has a fatal fetal abnormality like trisomy 18. *See* Fla. Stat. § 390.0111(c). So, if Ms. Cox "needs an abortion and she needs it now," she can do just that—in Florida, the state where she is currently located. No relief is necessary from this Court or any other.

This suit is a transparent end-run around the mandatory stay in the *Zurawski* matter, that has the same defendants, the same plaintiff (Dr. Karsan), the same facts (Dr. Karsan's purported confusion about the scope of the medical exception), the same constitutional claims, and was argued last week before the Supreme Court of Texas. Pls. Pet. ¶ 2; *Zurawski v. St. of Tex.*, Cause No. D-1-GN-23-000968 (353rd Dist. Ct., Travis Cty., Tex.).

A TRO, if granted, would *not* preserve the status quo of the parties until a TI hearing; it would instead provide Plaintiffs with the ultimate relief they seek—an abortion—without the benefit of the Court considering any evidence and with permanent effect on the life of Ms. Cox's baby.

To obtain a temporary injunction, a plaintiff must plead and prove "(1) a cause of action against the defendant, (2) a probable right to the relief sought, and (3) a probable, imminent, and irreparable injury in the interim." *In re Turner*, 558 S.W.3d 796, 799 (Tex. App.—Houston [14th Dist.] 2018) (no pet.). When the record demonstrates that "an applicant cannot show a probable right to the relief sought, then the applicant is not entitled to a temporary restraining order." *Id.*; *see also In re Abbott*, 628 S.W.3d 288, 292 (Tex. 2021).

By Plaintiffs' own pleadings, they are not entitled to the relief they seek. Plaintiffs' allegations fall far short of demonstrating that she is entitled to any medical exception to Texas's statutory prohibitions on abortion.

Ms. Cox has *not* alleged that she has been diagnosed with a life-threatening medical condition aggravated by, caused by, or arising from a pregnancy. *See generally* Pls.' Pet. Nor has Ms. Cox alleged that any medical condition places her at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced. *Id.*

While she alleges that an abortion is safer than delivering the baby, she pleads no facts to support this contention. *See, e.g.*, Pls.' Pet. at 35.

Texas law does not permit abortions solely because the unborn child is unlikely to have sustained life outside the womb. There is no textual argument that fatal fetal conditions or fetal conditions incompatible with life are included within the medical emergency exceptions, which focus only on the woman's life. The Legislature knows how to draft such exemptions. *See, e.g.*, Tex. Health & Safety Code §§ 171.0122(d)(3) (referring to unborn children who have an "irreversible medical condition or abnormality"), 171.046(c) (referring to unborn children who have a "severe fetal abnormality"). It did not do so here.

Moreover, Plaintiffs fail entirely to plead the requisite elements of the medical exception. To fall within the medical exception, there must "exist[] a condition that, in the physicians *reasonable medical judgment*, so complicates the medical condition of the woman that, to avert the woman's death or a serious risk of substantial and irreversible physical impairment of a major bodily function, other than a psychological condition, it necessitates" an abortion. Tex. Health & Safety Code § 171.046 (emphasis added). Here, Plaintiffs have alleged only that the physician, Dr. Karsan, "*believes in good faith*" that "abortion is medically recommended." Pls.' Pet. at ¶ 138. This "good faith belief" is a subjective standard not sufficient under the law. By Plaintiffs' own pleadings, their allegations are insufficient to place them within the scope of any exception to Texas's abortion laws. *See id.* at ¶ 130 (admitting that Ms. Cox's life is not imminently at risk from any medical condition related to her pregnancy). Having failed to even barely allege the requirements of the statute, Plaintiffs' have not demonstrated a probable right to the relief they seek, and their Motion for Temporary Restraining Order should be denied.

What's more, Ingrid Skop, M.D., a medical expert relied on *by both parties* in this suit, *see id*. at ¶¶ 115-27, has reviewed Plaintiffs' petition and determined that, as pled, Plaintiffs have not alleged facts sufficient to show that they fall within the medical exception, App'x 2. Plaintiffs have failed to plead that Ms. Cox qualifies for the medical exception to Texas' abortion prohibition and are consequently not entitled to any relief. Tex. Health & Safety Code § 170A.002(b)(2).

Plaintiffs' suit and request for emergency relief requires them to establish—at a minimum—that they face an imminent threat of enforcement. Yet they fail to even allege as much. Plaintiffs' purported fear is not based on any statement or action taken by the Attorney General, the Texas Medical Board, the Executive Director, or any other person in the State of Texas, and their orchestrated attempts to manufacture standing where there is none are insufficient. Plaintiffs do not satisfy standing requirements—nor can they show a threat of imminent harm-by complaining about purported injuries that arise from the mere *existence* of Texas's abortion laws, rather than any threatened action by Defendants. Plaintiffs do not have standing against statutes. Plaintiffs' verification pages demonstrate that Plaintiffs Kate and Justin Cox are currently residing in Florida. That they are not even within the State belies the notion that they face any imminent threat of harm from Defendants in Texas. Finally, Plaintiffs' claims are barred by sovereign immunity, and they are unlikely to succeed on the merits. This Court should dismiss Plaintiffs' claims for lack of subject matter jurisdiction and the Court should deny their TRO Application.

BACKGROUND

A medical exception exists to Texas' general prohibition on abortion when a physician, in their reasonable medical judgment, concludes that a pregnant female "has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the

abortion is performed or induced." Tex. Health & Safety Code § 170A.002(b)(2). When this exception applies, the physician is required to perform "the abortion in a manner that, in the exercise of reasonable medical judgment, provides the best opportunity for the unborn child to survive unless" that manner would create "a greater risk of the pregnant female's death" or "a serious risk of substantial impairment of a major bodily function of the pregnant female." Tex. Health & Safety Code § 170A.002(b)(3). Texas law removes from its definition of abortion any act done "with the intent to (A) save the life or preserve the health of an unborn child; (B) remove a dead, unborn child whose death was caused by spontaneous abortion; or (C) remove an ectopic pregnancy." Tex. Health & Safety Code § 245.002(1). It is an affirmative defense that the physician exercised their reasonable medical judgment when choosing to perform the abortion in response to an ectopic pregnancy or a previable premature rupture of membranes ("PPROM"). Tex. Civ. Prac. & Rem. Code § 74.552 (eff. Sept. 1, 2023), Tex. Occ. Code § 164.055(c) (eff. Sept. 1, 2023), Tex. Penal Code § 9.35 (eff. Sept. 1, 2023) (collectively, H.B. 3058).

Kate Cox

Plaintiff Kate Cox is a pregnant female who claims to reside in Dallas, Texas. Pls.' Pet. ¶¶ 1, 6. However, the Cox's Verification pages of Plaintiffs' Original Petition show that they are *currently* residing in sunny Saint Lucie County, Florida. *Id.* at Ver. Pg. Ironically and particularly relevant to this cause of action, Florida expressly permits abortions in the case of pregnancies where the child has a fatal fetal abnormality. Fla. Stat. § 390.0111(c).

On November 28, 2023, Ms. Cox allegedly learned that her child was diagnosed with the life limiting condition of Trisomy 18. Pls.' Pet. ¶¶ 2, 17. Ms. Cox wishes to terminate her pregnancy because her child was diagnosed with Trisomy 18. *Id.* at ¶ 21. However, Ms. Cox has not alleged

that *she* "has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced" as is required to qualify for an abortion under Texas' emergency medical exception. Tex. Health & Safety Code § 170A.002(b)(2); *see generally* Pls.' Pet.

Ms. Cox allegedly had elevated glucose in October but did not receive a diagnosis of gestational diabetes. *Id.* at ¶ 13. It is not without import to note that Ms. Cox also reported elevated glucose levels in a prior pregnancy during which she unsurprisingly did not seek an abortion because that child did not have the same diagnoses. There are no facts pled which indicate that Ms. Cox's elevated glucose levels in October are a life-threatening physical condition, nor that they place her at risk of death of substantial impairment of a major bodily function. To the contrary, her decision to seek an abortion during this pregnancy based on "elevated glucose" when she had not similarly sought in the past, merely supports the assertion that there is no true medical emergency.

Ms. Cox also alleges she experienced intermittent cramping, diarrhea, and mild fluid leaking earlier in November. *Id.* at ¶¶ 15, 16. Each time Ms. Cox was allegedly examined for these complaints, she was sent home without further incident and because both she and the baby were stable. *Id.* There are no facts pled which demonstrate that these symptoms were life-threatening physical conditions, that they are currently happening, nor that they place Ms. Cox at risk of death of substantial impairment of a major bodily function.

Finally, Ms. Cox allegedly has a *slightly* elevated risk of uterine rupture if she delivers the baby vaginally because she's had two prior C-sections. *Id.* at ¶ 18; *see also* Habak PJ, Kole M., *Vaginal Birth After Cesarean Delivery*, StatPearls Publishing (Jul 17, 2023), available online from

https://www.ncbi.nlm.nih.gov/books/NBK507844/ ("[T]he rate of uterine rupture is felt to increase with increasing number of prior cesarean sections. With 1 prior [C-section], the rate of uterine rupture is less than 1%; whereas, the rate is slightly higher with 2 prior [C-]sections at 1% to 2%. Most practitioners consider patients with up to two prior [C-sections] deliveries to be candidates for [vaginal delivery], this recommendation is also endorsed by the American College of Obstetrics and Gynecology."). But the normality of C-sections is widely known,[1] as is the increasing commonality of vaginal birth following C-section.[2] There are no facts pled which demonstrate that Ms. Cox is at any more of a risk, let alone life-threatening, than the countless women who give birth every day with similar medical histories.

Justin Cox

Mr. Cox is married to Ms. Cox. *Id.* at ¶ 25. He alleges that he fears that he will face liability under S.B. 8 if he assists Ms. Cox with obtaining an abortion. ID. at ¶¶ 134-35.

Damla Karsan, M.D.

Dr. Karsan is a board-certified OB/GYN in private practice at Comprehensive Women's Healthcare in Houston, TX. *Id.* at ¶ 28. She is a physician plaintiff in *Zurawski* and has provided testimony that she holds privileges at Women's Hospital.[3]

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1 The Centers for Disease Control reported in 2021, 32.1% of all deliveries were by C-section. Centers for Disease Control and Prevention, National Center for Health Statistics, FastStats Homepage, Life Stages and Populations, Births. https://www.cdc.gov/nchs/fastats/delivery htm (last visited December 6, 2023).

2 The Centers for Disease Control and Prevention, National Center for Health Statistics, Publications and Information Products, Data Briefs, "Recent Trends in Vaginal Birth After Cesarean Delivery: United States, 2016-2018." https://www.cdc.gov/nchs/products/databriefs/db359.htm (last visited December 6, 2023).

3 Texas Medical Board, Look up a License, Damla Karsan, Hospital Privileges. https://profile.tmb.state.tx.us/PublicProfile.aspx?92c60440-6724-42cb-b06b-21f56847bc2a (last visited December 6, 2023).

Women's Hospital will only allow Dr. Karsan to perform abortions pursuant to the medical exception after she consults with a second physician, obtains their concurrence that the patient qualifies, and obtains approval from hospital administration.

Dr. Karsan allegedly met Ms. Cox and reviewed her medical records. Pls.' Pet. ¶ 36. There are no facts pled which demonstrate they established a physician-patient relationship, nor that Dr. Karsan has conducted any physical examination of Ms. Cox. *See generally* Pls.' Pet. Dr. Karsan *subjectively* believes that Ms. Cox qualifies for the medical exception, despite failing to identify Ms. Cox's life-threatening physical condition or explain how the condition places Ms. Cox at risk of death or poses a serious risk of substantial impairment to a major bodily function if an abortion is not performed. *Id.* at ¶ 139. There are no facts alleged that Dr. Karsan has determined Ms. Cox qualifies for the medical exception in the "exercise of [her] reasonable medical judgment" (an objective standard) as required by Texas law. Tex. Health & Safety Code § 170A.002(b)(2); *see generally* Pls.' Pet.

There are no facts pled which indicate that Dr. Karsan has consulted with any other physicians at Women's Hospital to obtain a second opinion (but if she had and they agreed with her determination then there would be no need to file this lawsuit), *see generally*, *id.*, although Dr. Karsan purports to have discussed Ms. Cox's case with Women's Hospital administration and they've advised that she may be able to perform an abortion on Ms. Cox if the Court enters a TRO. *Id.* at ¶ 142. Dr. Karsan purports to sue "on her own behalf, on behalf of herself, her staff, nurses, pharmacists, agents, and patients." *Id.* at ¶ 37.

RESPONSE TO THE APPLICATION FOR TEMPORARY RESTRAINING ORDER

I. Plaintiffs cannot obtain permanent relief through a TRO.

The purpose of a temporary restraining order ("TRO") is to preserve the status quo of the parties, which the Supreme Court of Texas has defined as "the last, actual, peaceable, non-contested status which preceded the pending controversy." *In re Newton*, 146 S.W.3d 648, 651–52 (Tex. 2004) (quoting *Janus Films, Inc. v. City of Fort Worth*, 163 Tex. 616, 358 S.W.2d 589, 589 (1962) (per curiam)). "A TRO is entered when a motion for temporary injunction is pending." *Fernandez v. Pimentel*, 360 S.W.3d 643, 646 (Tex. App.—El Paso 2012, no pet.) (holding that a TRO's purpose is to "preserve the status quo pending a ruling on the motion for a temporary injunction"); *see also Brines v. McIlhaney,* 596 S.W.2d 519, 523 (Tex.1980). A TRO is merely a precursor to a temporary injunction and does not constitute a ruling on the merits. *Pimentel*, 360 S.W.3d at 646 (citing *Iranian Muslim Org. v. City of San Antonio,* 615 S.W.2d 202, 208 (Tex.1981)). By its nature, temporary injunctive relief is intended to be just that—temporary—and "*may not be used to obtain an advance ruling on the merits*." *Iranian Muslim Org.,* 615 S.W.2d at 208 (emphasis added); *see also Pub. Util. Comm'n v. Water Servs., Inc.,* 709 S.W.2d 765, 767 (Tex.App.-Austin 1986, no writ) ("The ... recognition that a temporary injunction hearing is not the same as a hearing on the merits echoes throughout our jurisprudence."). In *Newton*, the Court found that the district court erred when it made a "final, non-appealable adjudication" by granting a TRO. *Id.* at 652. Further, they held that because TROs are "generally not appealable," and there is otherwise no "adequate appellate remedy," a mandamus was warranted. *Id.* at 652–53.

Here, Plaintiffs seek a temporary restraining order authorizing Dr. Karsan to perform an abortion on Ms. Cox. *See* Pls.' Pet. at ¶ 4; Pls.' Prop. TRO at 3. That is not temporary relief, nor does it fulfill the purpose of a TRO by preserving the status quo. Performance of an abortion on Ms. Cox constitutes the ending of a life; an action that cannot be undone—there is no other relief

which could possibly be more final or unappealable. Rather, the status quo here—in accordance with the Court's definition above—is prior to Dr. Karsan subjectively concluding that Ms. Cox qualified for the medical exception. That is the "last, actual, peaceable, non-contested status" and *that* is the status that must be preserved here pending a final determination on the merits. Instead, Plaintiffs ask this Court to determine whether Cox qualifies for an abortion under Texas' emergency medical exception—a determination as to the merits of the claim and asks this Court to do something even Dr. Karsan won't---make an objective medical determination that Ms. Cox qualifies for the medical exception. A request for such a determination is improper and is not in conformance with Texas law. Accordingly, the relief requested by Plaintiffs exceeds the scope allowable through the granting of a TRO and should be denied.

PLEA TO THE JURISDICTION

A plea to the jurisdiction challenges the court's authority to determine the subject matter of the controversy. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553–54 (Tex. 2000). Subject matter jurisdiction is "never presumed and cannot be waived." *Tex. Ass'n of Bus. v. Tex. Air Ctr. Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993). "When a plea to the jurisdiction challenges the pleadings, [the court] determine[s] if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause." *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). "If the pleadings affirmatively negate the existence of jurisdiction, then a plea to the jurisdiction may be granted without allowing the plaintiffs an opportunity to amend." *Id.* at 227.

I. Plaintiffs lack standing to bring this suit.

"Subject matter jurisdiction requires that the party bringing the suit have standing, that there be a live controversy between the parties, and that the case be justiciable." *State Bar of Tex.*

v. Gomez, 891 S.W.2d 243, 245 (Tex. 1994). "A court has no jurisdiction over a claim made by a plaintiff who lacks standing to assert it." *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 150 (Tex. 2012). Standing "require[s] an actual, not merely hypothetical or generalized grievance." *Brown v. Todd*, 53 S.W.3d 297, 302 (Tex. 2001). To the extent not contradicted by state law, Texas courts "look to the more extensive jurisprudential experience of the federal courts on the subject [of standing] for any guidance it may yield." *Id.*

To have standing, each plaintiff must meet three elements: (1) the plaintiff must have suffered an injury in fact—an invasion of a legally protected or cognizable interest that is both concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of—that is, the injury must be fairly traceable to the challenged action of the defendant and not the independent action of a third party not before the court; and (3) it must be likely, and not merely speculative, that the injury will be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); *Heckman*, 369 S.W.3d at 155.

A. Plaintiffs have suffered no injury in fact.

The first element of standing in an action seeking only declaratory and injunctive relief requires an alleged *continuing or threatened future* harm that is "concrete and particularized, actual or imminent, not hypothetical." *DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304–05 (Tex. 2008); *Stringer v. Whitley*, 942 F.3d 715, 721 (5th Cir. 2019) (injunctive relief "cannot conceivably remedy any past wrong"); *Etan Indus., Inc. v. Lehmann*, 359 S.W.3d 620, 624 (Tex. 2011) (declaratory relief is not available to address past harms).

1. Ms. Cox lacks standing because the alleged threatened injuries are not imminent.

Ms. Cox contends that she has standing in this suit because: (1) she is pregnant; (2) she might develop medical complications during delivery; and (3) abortion is *always* safer than delivering a baby. *Id.* at ¶ 18-19.

First, Ms. Cox's alleged threatened injuries—by her own admission—are not imminent. "A party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) (citing *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983)). Harm is imminent if it is relatively certain to occur rather than being remote and speculative. *Limon v. State*, 947 S.W.2d 620, 625 (Tex. Ct. App.—Austin 1997, no writ); *DaimlerChrysler Corp.*, 252 S.W.3d at 304–05. Here, Ms. Cox outright admits that her threatened injuries are *not imminent*. *See* Pls.' Pet. ¶ 130 ("While Ms. Cox's life *may not be imminently* at risk, she is at a high risk for many serious medical conditions that pose risks to her future fertility and can become suddenly and unexpectedly life-threatening.") (emphasis added). The Court need go no further. Ms. Cox does not face an imminent injury and therefore she lacks standing.

Second, Ms. Cox's alleged threatened injuries are not concrete. Ms. Cox contends that she faces a "high risk" of complications during delivery because she's had two prior C-sections. Pls.' Pet. ¶18. This is misleading. Ms. Cox's so-called "high risk" is *slight*—with at most a **4%** chance of occurring depending on the method of delivery. *See* Habak PJ, Kole M., *Vaginal Birth After Cesarean Delivery*, StatPearls Publishing (Jul 17, 2023), available online from https://www.ncbi.nlm.nih.gov/books/NBK507844/ ("With 1 prior [C-section], the rate of uterine rupture is less than 1%; whereas, the rate is slightly higher with 2 prior [C-]sections at 1% to 2%. Most practitioners consider patients with up to two prior [C-sections] deliveries to be

candidates for [vaginal delivery], this recommendation is also endorsed by the American College of Obstetrics and Gynecology."); *see also* Rebecca Klahr, et al., *Maternal Morbidity with Repeated Cesarean Deliveries*, Am J Perinatol (Oct 2023), available online from https://pubmed.ncbi.nlm.nih.gov/34583410/ (showing C-section complication rates of up to 4% for women with two prior C-sections without a placenta previa diagnoses and concluding that "maternal morbidity increases with increase [C-sections] but the absolute risks *remain low*." (emphasis added)). A 4% chance that Ms. Cox *might* experience complications while delivering her child to term is insufficiently concrete to establish standing. *Cf. Lujan v. Defenders of Wildlife*, 504 U.S. at 564 (holding that plaintiffs' "someday" intentions to return to locations where they might be deprived of the opportunity to observe endangered animals did not support a finding of the actual or imminent injury required.).

Third, Ms. Cox's alleged threatened injuries are not particularized. "In general, regardless of the claim asserted, a plaintiff must show that [s]he has suffered a particularized injury distinct from the general public." *Perez v. Turner*, 653 S.W.3d 191, 198 (Tex. 2022), *reh'g denied* (Oct. 21, 2022) (quoting *Andrade v. Venable*, 372 S.W.3d 134, 137 (Tex. 2012)). Ms. Cox claims that she is threatened with injury because delivering a baby is *always* riskier than aborting a pregnancy. But this threatened injury is indistinct from every other pregnant woman in Texas. *See generally* Pls. Pet. ¶¶ 6-24, 129-133; *S. Texas Water Auth. v. Lomas*, 223 S.W.3d 304, 307 (Tex. 2007) (plaintiff lacked standing where he did not allege that he was treated differently than any other city resident); s*ee also Garcia v. City of Willis*, 593 S.W.3d 201, 206–08 (Tex. 2019) (holding appellant lacked standing to bring prospective claims regarding the constitutionality of red-light traffic cameras because he "st[ood] in the same shoes as any other citizen who might potentially be fined for

running a red light" and therefore "lack[ed] the particularized interest for standing that prospective relief requires"). Ms. Cox has, therefore, failed to show standing where she has alleged only generalized grievances indistinguishable from every other pregnant Texan.

Fourth, Ms. Cox's alleged threatened injuries are purely hypothetical. District Courts "do not give advice or decide cases upon speculative, hypothetical or contingent situations." *Camarena v. Texas Emp. Comm'n*, 754 S.W.2d 149, 151 (Tex. 1988) (citing *Coalson v. City Council of Victoria*, 610 S.W.2d 744 (Tex.1980)). Ms. Cox cannot conjure standing by imagining that she will experience complications at some point during her pregnancy or delivery. *Id.* She is not experiencing any medical complications and there are no allegations that she is *likely* to experience complications from carrying her pregnancy to term. Because the alleged threatened injuries are hypothetical, this Court should find that Ms. Cox lacks standing. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993).

2. Dr. Karsan lacks standing because "confusion" is not a harm.

Dr. Karsan contends that she subjectively believes Ms. Cox qualifies for the medical exception to Texas' abortion laws, but "is unsure how close to death her patients need to be before abortion is permitted under Texas law." Pls. Pet. ¶ 138-40. There are no allegations that Ms. Cox is near death. She is, instead, enjoying a sunny vacation in Florida—which is a remote from near death as one can imagine.

The Texas Supreme Court has held that "confusion" is not an actionable harm sufficient to confer standing. *In re Abbott*, 601 S.W.3d 802 (Tex. 2020). In *Abbott*, a group of judges challenged an executive order suspending statutes authorizing trial judges to release jail inmates with violent histories. *Id.* at 805 (Tex. 2020). The judges argued that they were injured because the challenged executive order "sowed confusion" among the parties in their courts. *Id.* at 811. The

Texas Supreme Court rejected this contention, holding that "if the parties who appear before a judge are confused about the law that applies to their case, the remedy lies in the judge, whose job is to resolve such confusion to the best of his or her ability, based on the applicable law." *Id.* The Texas Supreme Court continued, "[t]hat the judge *may also be confused* about applicable law does not give the judge standing to sue the lawmaker. The judge's job is to determine and apply the law to individual cases, even if doing so is difficult." *Id.* (emphasis added).

Similarly, that Dr. Karsan may be confused about the scope of the medical exception does not give her standing to challenge the law because it is her job to determine whether Ms. Cox qualifies—even if doing so is difficult. Tex. Health & Safety Code §170A.002. Making difficult medical decisions is a part of practicing medicine and, irrespective of abortion, *always* has the potential to result in civil liability, Tex. Civ. Prac. Rem. Code Ch. 74, criminal penalties, *see Duntsch v. State*, 568 S.W.3d 193, 198 (Tex. App. 2018), or administrative discipline, Tex. Occ. Code § 164.001. Abortion is no different.

No medical exception involving discretion can eliminate all ambiguity. The medical exception contained in Texas' abortion laws is intentionally crafted with an appropriate broadness, to give physicians the discretion to perform abortions that they have determined, based on their education, experience, and expertise, are medically necessary. Dr. Karsan has previously testified that, as written, the medical exception is confusing because it is *too broad*. App'x 56-57 at 50:2-51:11. She's admitted that there is no medical exception that can be crafted without leaving some degree of confusion. App'x 62–63, 56:23–57:4 (testifying that no matter how the medical exception is written, "I think it's near impossible to assure there won't be some confusing or unclear

cases."). This Court should find, as the Texas Supreme Court did in *Abbott*, that "confusion" is not a sufficient harm to establish standing.

Finally, Dr. Karsan lacks standing where the evidence disproves the alleged threatened injuries. Dr. Karsan previously testified that she *first* became harmed by the medical exception in 2021 with the passage of S.B. 8—despite the same medical exception having existed for decades. *See* Tex. Health & Safety Code § 170.002 (1999); App'x 19 at 13:5-8. Karsan testified that she never used the medical exception prior to 2021, *id*. at 10:11-12:1, that she does not know what the prior medical exception was before S.B. 8, *ibid*., nor whether it has changed, *id*. at 12:2-24. She testified that the medical exception was "irrelevant" to her, prior to S.B. 8. *Id*. at 63, 57:18-23. Since the passage of S.B. 8, she has not performed an abortion because she "was able to find alternate care for [her] patients, most of whom have means" and "do[es] not want to get crossways with the law." App'x 19-20, 13:16-14:2. She was unable to identify a single instance where her fear of enforcement or her confusion about the law actually prevented her from performing an abortion; instead, she testified that she has only encountered a handful of cases she thought *might* qualify and, in the *one case* she thought did qualify, she did not perform an abortion because her colleague disagreed. *See id*. *generally*. In other words, Dr. Karsan's testimony demonstrates that she is not confused, and therefore is not likely to encounter a case— certainly not imminently— where she is confused and is subsequently unable to provide medically necessary care due to the threat of repercussion.

Dr. Karsan contends that she has identified a case that she subjectively believes qualifies for the medical exception, but she claims that she is uncertain how close to death Ms. Cox must be before she can perform the abortion. Pls. Pet. ¶ 140. This is a *ludicrous* claim. There are no

allegations in this suit indicating *any* degree of closeness to death by Ms. Cox on account of her pregnancy. This frivolous assertion of harm is insufficient to establish standing.

B. Plaintiffs cannot show that the alleged threatened injuries are fairly traceable to Defendants.

The second element of standing requires that the plaintiff's alleged injury be "fairly traceable" to the defendant's conduct because "a court [can] act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 485 (Tex. 2018) (quoting *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 155 (Tex. 2012)).

Women's Hospital policy is that Dr. Karsan can perform an abortion pursuant to the medical exception only after obtaining a second opinion from a physician who must also agree that the patient qualifies for the medical exception, and subsequent approval from hospital administration is obtained. App'x 25-28, 19:3-22:13.

This testimony is fatal to Plaintiffs' claims. Plaintiffs cannot show that Dr. Karsan's "confusion" about how when she can perform an abortion is "fairly traceable" to Defendants because it is self-inflicted and any causal connection is broken by the independent actions of third-party hospitals, hospital attorneys, and Dr. Cox's physician colleagues.

First, Dr. Cox's so-called "confusion" is self-inflicted. An injury is self-inflicted so as to defeat standing if 'the injury is so completely due to the plaintiff's own fault as to break the causal chain.'" *Backer ex rel. Freedman v. Shah*, 788 F.3d 341, 344 (2d Cir. 2015). The Supreme Court has held that a plaintiff "cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending." *Clapper v. Amnesty Int'l.*

USA, 568 U.S. 398, 416-18 (2013). "If the law were otherwise, an enterprising plaintiff would be able to secure a lower standard for Article III standing simply by making an expenditure based on a nonparanoid fear." *Id.* at 416. Here, Dr. Karsan claims that she is confused about how close to death Ms. Cox must be before she can perform an abortion. Pls. Pet. ¶ 140. Yet her "confusion" is self-inflicted. She previously testified that, other than reading the law, the only other source she's "relied on" for guidance about the medical exception is "the hospital attorneys." App'x 29-30, 23:23-24:4. Yet she went on to testify that she's *never* spoken with *any* hospital attorneys about the medical exception, either generally, or in the two cases she thought might qualify. *Id.* at 30:1-19; 47, 41:2-5. Women's Hospital has attorneys and other administrative staff available to provide guidance to medical providers about the scope and parameters of current laws, and to provide them with clarification, specifically, in individual cases. In this suit, there are no facts pled which illustrate that Dr. Cox attempted to resolve her confusion by consulting with Women's Hospital's attorneys to determine whether Ms. Cox qualified for the medical exception. *See generally* Pls.' Pet.

Second, even if Plaintiffs *could* show a link between Dr. Karsan's "confusion" and Defendants' enforcement authority, this chain is broken by the independent actions of third parties not before this Court. Specifically, the hospitals' policies and procedures, hospital attorneys, and the required second opinions of colleagues are *the reason* that Dr. Karsan cannot perform an abortion on Ms. Cox pursuant to the medical exception—not any threatened enforcement action by Defendants. App'x 25-27, 19:3-22:13. If any of Dr. Karsan's colleagues at Women's Hospital agreed with her that Ms. Cox qualified for the medical exception, there would be no need to file this suit since Women's Hospital would permit her to perform the abortion pursuant to their

policy. Consequently, Plaintiffs have failed to establish the necessary traceability element of standing.

C. Plaintiffs alleged harms will not be redressed by a favorable decision.

Even if Plaintiffs alleged an imminent, concrete and particularized, injury that was fairly traceable to Defendants, they still lack standing because the requested relief would not redress their alleged injuries. *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 155 (Tex. 2012) (the third element of standing requires that the plaintiff's alleged injury be "likely to be redressed by the requested relief…").

First, the Court cannot issue an advisory opinion addressing Ms. Cox's hypothetical future injuries. The distinctive feature of an advisory opinion is that rather than remedying an actual or imminent harm, the judgment addresses only a hypothetical injury. *See Allen v. Wright*, 468 U.S. 737, 751 (1984). Texas courts have no jurisdiction to render such opinions. *Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). Ms. Cox is not currently experiencing any ongoing complications that are life-threatening. She has a *slight*, perhaps 4% chance, of experiencing *some* a medical complication during delivery which is nearly five months away. Her alleged threatened harm is wholly conjectural and this Court does not have the power to rule on hypothetical scenarios by issuing advisory opinions.

Second, Plaintiffs alleged injuries are not redressable by a favorable decision because the Court cannot *rewrite* state law. The UDJA, in pertinent part, allows a person whose rights are affected by a statute to "have determined any question of construction or validity arising under the [statute] and obtain a declaration of rights, status, or other legal relations thereunder." Tex. Civ. Prac. & Rem. Code § 37.004(a). Plaintiffs ask this Court to ignore the objective reasonableness standard in state law and, instead, adopt a subjective good faith standard. Plaintiffs have not and

cannot cite to any legal authority permitting the Court to enter such an order. The decision, instead, is binary; the medical exception is either valid or invalid as applied to Plaintiffs. *Jennings v. Rodriguez*, 138 S. Ct. 830, 843 (2018) ("Spotting a constitutional issue does not give a court the authority to rewrite a statute as it pleases."). Plaintiffs' alleged injuries are not redressable because the Court cannot grant the relief requested by changing the law's objective standard to a subjective standard.

Third, Plaintiffs alleged injuries are not likely to be redressed by a favorable decision rewriting the medical exception because it would still leave medical providers confused and uncertain. There is no guarantee, or even likelihood, that this Court can issue a judgment "clarifying" the medical exception in a manner that will be any less confusing to medical providers.

No medical exception adopted by this Court will satisfy Plaintiffs. The new medical exception sought by Plaintiffs is *even broader* than the current medical exception that Dr. Karsan previously testified is already *too broad*. App'x 56-57 at 50:2-51:11. Dr. Karsan previously admitted that no matter what medical exception is adopted, "it's near impossible to assure there won't be some confusing or unclear cases." *Id.* at 62, 57:4. This Court need go no further. The relief sought is impossible to grant; therefore, Plaintiffs lack standing.

Fourth, Plaintiffs alleged injuries will not be redressed because the Court cannot issue declaratory nor injunctive relief relating to the enforcement of the Texas Penal Code. The law is well-settled that generally a court exercising equitable jurisdiction in a suit (as opposed to criminal jurisdiction) cannot render naked declarations of rights, status, or other legal relationships arising under a penal statute or ordinance. *See, e.g., State v. Morales*, 869 S.W.2d 941, 945 (Tex.1994) (holding that trial court exercising equitable jurisdiction in civil declaratory judgment action did

not have jurisdiction to declare penal code section unconstitutional); *City of La Marque v. Braskey*, 216 S.W.3d 861, 863 (Tex.App.-Houston [1st Dist.] 2007, pet. denied). So, this Court lacks jurisdiction to render a decision in this case because any ruling will necessarily impact the enforcement of Texas' criminal laws relating to abortion.

Finally, the criminal provisions of the pre-*Roe* statutes and the Human Life Protection Act are enforced by local prosecuting attorneys, not any of the Defendants. Neither the Attorney General nor the Texas Medical Board nor the Executive Director enforce S.B.8. *See Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 539 (2021); *Whole Woman's Health v. Jackson*, 642 S.W.3d 569 (Tex. 2022).

D. Dr. Karsan cannot assert third-party standing on behalf of their patients or other physicians.

The standing requirement in Texas "derives from the Texas Constitution's separation of powers among the departments of government, which denies the judiciary the authority to decide issues in the abstract, and from the Open Courts provision, which provides court access only to a 'person for an injury done him.'" *DaimlerChrysler Corp.*, 252 S.W.3d at 304 (quoting Tex. Const. art. I, § 13). Thus, to demonstrate standing under Texas law, a plaintiff must be *personally* aggrieved, and his alleged injury must be concrete and particularized, actual or imminent, not hypothetical. *Id.* at 304–05. If a plaintiff lacks an actual or threatened injury, he is not "personally aggrieved," has no personal stake in the litigation, and lacks standing. *M.D. Anderson Cancer Ctr. v. Novak*, 52 S.W.3d 704, 707–08 (Tex. 2001).

Injuries to others—who are not plaintiffs—typically do not suffice to create standing. As the Supreme Court has stated, "the standing inquiry begins with determining whether the plaintiff has personally been injured, that is, 'he must plead facts demonstrating that he, himself (rather

than a third party or the public at large), suffered the injury.'" *Meyers v. JDC/Firethorne, Ltd.*, 548 S.W.3d 477, 485 (Tex. 2018) (quoting *Heckman*, 369 S.W.3d at 155); *accord Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) (noting that to have standing in a typical lawsuit, a litigant must assert his own rights, not those of a third party). When challenging the constitutionality of a statute a plaintiff must (1) "suffer some actual or threatened restriction under that statute," and (2) "contend that the statute unconstitutionally restricts the plaintiff's rights, not somebody else's." *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 (Tex. 1995); *see also Barshop v. Medina Cnty. Underground Water Conservation Dist.*, 925 S.W.2d 618, 626 (Tex. 1996) (stating "the plaintiff must contend that the statute unconstitutionally restricts the plaintiff's own rights").

The few instances in Texas law in which someone is permitted to sue for another's injuries are supported by statute or rule. Texas law gives parents the right to represent their children in court. Tex. Fam. Code § 151.001(a)(7). Certain personal injury actions survive in favor of heirs or an estate's legal representative. Tex. Civ. Prac. & Rem. Code § 71.021(b). The Legislature has also provided for derivative standing in some circumstances involving corporations. *See, e.g.*, Tex. Bus. Org. Code §§ 20.002(c)(1), 21.552, 153.402. And Texas law recognizes class actions, Tex. R. Civ. P. 42, although the named plaintiff must still be personally injured, *Heckman*, 369 S.W.3d at 151.

None of those situations exist here. Thus, under Texas law, Dr. Karsan cannot assert the rights of her patients and coworkers. To the extent she is attempting to assert that Texas' abortion laws restrict their rights, they have no legal right to perform abortions. Tex. Health & Safety Code Chs. 170-71. Furthermore, Defendants have not taken nor threatened any enforcement action against either of them individually. Because they have not been personally injured by Defendants, Plaintiffs lack standing to bring those claims, and the claims must be dismissed.

The federal third-party standing doctrine is inapplicable. The United States Supreme Court has created an exception to the general article III requirement in the U.S. Constitution that a litigant must assert his own injury: litigants may assert the rights of third parties when (1) the litigant has "a close relationship" with the third party; and (2) some "hindrance" affects the third party's ability to protect her own interests. *Kowalski*, 543 U.S. at 130 (citations omitted). But unlike its federal counterpart, the Texas Supreme Court has never recognized a general third-party standing doctrine that parties may (attempt to) apply to any given situation. And doing so here would be contrary to the Texas Supreme Court's repeated statements that standing requires an injury to the plaintiff—not to someone else. *Meyers*, 548 S.W.3d at 485.

Regardless, even if the Court were to apply the federal third-party standing doctrine here, Dr. Karsan would still lack standing to bring claims on behalf of her patients. They do not have a close relationship with their hypothetical future patients, and women in Texas are capable of bringing lawsuits themselves to challenge the abortion statutes— as the Patient Plaintiffs have done here.

Dr. Karsan does not have the requisite "close relationship" with their hypothetical future patients—a point on which The United States Supreme Court's decision in *Kowalski* is instructive. There, the Court held that attorneys lacked third-party standing to bring constitutional claims on behalf of criminal defendants who would be their future clients. 543 U.S. at 131. The Court contrasted an "*existing* attorney-client relationship," which could support third-party standing under federal law, with a "*hypothetical* attorney-client relationship," which could not. *Id.* The Court ultimately concluded that the attorneys "d[id] not have a 'close relationship' with their alleged 'clients'; indeed, they ha[d] no relationship at all." *Id.*

There is no appreciable difference between the hypothetical attorney-client relationship that was insufficient in *Kowalski* and the hypothetical provider-patient relationship in this litigation. Here, Dr. Karsan seeks temporary and permanent relief by bringing suit on behalf of hypothetical future patients who would be affected by Texas's law. *Kowalski* rejects this nonexistent relationship as grounds to permit third-party standing.

Dr. Karsan has also not shown a "hindrance" to women bringing their own lawsuit challenging the medical exception. As a factual matter, women can and do bring suits to challenge abortion regulations. *See, e.g., Leavitt v. Jane L.,* 518 U.S. 137 (1996) (per curiam); *Hodgson v. Minnesota*, 497 U.S. 417 (1990); *Matheson*, 450 U.S. 398; *Harris v. McRae*, 448 U.S. 297 (1980); *Bellotti v. Baird*, 428 U.S. 132 (1976); *Poelker v. Doe*, 432 U.S. 519 (1977) (per curiam); *Maher v. Roe*, 432 U.S. 464 (1977); *Roe v. Wade*, 410 U.S. 113 (1973).

This Court should, for all the foregoing reasons, find that Plaintiffs lack standing because their alleged injuries will not be redressed by a favorable ruling.

II. Plaintiffs' claims are not ripe.

Like standing, ripeness emphasizes the need for a concrete injury to have a justiciable claim. *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851 (Tex. 2000). The ripeness inquiry focuses on when the action may be brought, rather than on who may bring it, and seeks to conserve judicial time and resources for real and current controversies rather than hypothetical or remote disputes. *Id*. The plaintiff must show that "at the time a lawsuit is filed, the facts are sufficiently developed 'so that injury has occurred or is likely to occur, rather than being contingent or remote.'" *Patel v. Texas Dep't of Licensing & Regul.*, 469 S.W.3d 69, 75-76 (Tex. 2015) (quoting *Gibson*, 22 S.W.3d at 851-52). When a plaintiff's injury depends on contingent or hypothetical facts, or upon events that

not yet come to pass, a case is not ripe. *Gibson*, 22 S.W.3d at 851. Ripeness is based in part on "the constitutional prohibition against advisory opinions, which in turn stems from separation-of-powers principles." *Tex. Bd. of Chiropractic Examiners v. Tex. Med. Ass'n*, 270 S.W.3d 777, 781 (Tex. App.—Austin 2008, no pet.).

Plaintiffs' claims of injury rest on speculation and conjecture. The alleged threatened injuries are hypothetical and contingent on future events; therefore, their claims are not yet ripe. "The essence of the ripeness doctrine is to avoid premature adjudication ... [and] to hold otherwise would be the essence of an advisory opinion, advising what the law would be on a hypothetical set of facts." *Robinson v. Parker*, 353 S.W.3d 753, 756 (Tex. 2011) (cleaned up). Plaintiffs adduce no evidence—and plead no facts—demonstrating that they are likely to suffer from an enforcement action. Their fear or apprehension of future and speculative enforcement is insufficient to support their claim for injunctive relief. *See, e.g.*, *Frey v. DeCordova Bend Estate Owners Ass'n*, 647 S.w.2d 246, 248 (Tex. 1983); *Bruington v. Chesmar Homes, LLC*, 2023 WL 6972987, at *11 (Tex. App.—El Paso, Oct. 20, 2023).

Here, Ms. Cox contends that she *might* experience complications while giving birth that are so severe she qualifies for the medical exception. This contingency, which may or may not happen, mean that the claims are not yet ripe for review.

Plaintiffs' threat of future injury depends on whether the Attorney General will eventually enforce Texas's abortion laws to prohibit the abortion Plaintiffs seek. Plaintiffs' rest their claim of injury against the Attorney General on a press statement made 16 months ago concerning a lawsuit brought by the Attorney General against the United States Secretary of Health and Human Services Xavier Becerra, Pls.' Pet. at 31, and on a press statement made after the *Dobbs* opinion

was issued in eighteen months ago, Pls.' Pet. at 10. Plaintiffs fail to plead facts establishing a link between these statements and threatened enforcement against any of their contemplated actions. *See generally* Pls.' Pet.

While the Attorney General is authorized to assist local prosecutors in the prosecution of a criminal case at the request of the district or county attorney, several prerequisites would need to occur before that authority could threaten harm to Plaintiffs: (1) Plaintiffs would have to undertake proscribed activity, (2) the local prosecutor would have to decide to prosecute, (3) the local prosecutor would need to request assistance from the Attorney General, and finally (4) the Attorney General must agree to assist. "[F]ear or apprehension of the possibility of injury alone is not a basis for injunctive relief." *Frey*, 647 S.W.2d at 248.

Plaintiffs' claims against the Texas Medical Board and the Executive Director are even more specious. For their threat of injury, Plaintiffs rely on letters sent by Senator Bryan Hughes and the Texas Medical Association to the Texas Medical Board requesting the agency to issue "guidance" on the state of the law. Pls.' Pet. at 29. These letters were sent sixteen and seventeen months ago, respectively, and Plaintiffs claim the agency's alleged failure to respond demonstrate an imminent threat of enforcement. *Inaction* for seventeen months hardly suffices to support a finding of an imminent threat of enforcement this week. And Plaintiffs fail to allege any facts at all demonstrating that the Executive Director has ever considered taking enforcement actions against Plaintiff Karson's license. *See generally* Pls.' Pet. This elementary pleading failure requires dismissal.

III. Plaintiffs' Claims are Barred by Sovereign Immunity.

Sovereign immunity deprives a court of subject-matter jurisdiction in suits against the State. *Miranda*, 133 S.W.3d at 224. A suit against a state official lawfully exercising his governmental functions is considered a suit against the State. *Dir. of Dep't of Ag. & Env't v. Printing Indus. Ass'n of Tex.*, 600 S.W2d 264, 265–66, 270 (Tex. 1980). Public officials sued in their official capacities are protected by the same sovereign or governmental immunity as the governmental unit they represent. *See Tex. A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 843–44 (Tex. 2007) (holding that "an official sued in his official capacity would assert sovereign immunity[,]" and that "[w]hen a state official files a plea to the jurisdiction, the official is invoking sovereign immunity from suit held by the government itself").

For a plaintiff to overcome a defendant's assertion of sovereign immunity, "the plaintiff must affirmatively demonstrate the court's jurisdiction by alleging a valid waiver of immunity." *Dall. Area Rapid Transit v. Whitley*, 104 S.W.3d 540, 542 (Tex. 2003). Plaintiffs have not sufficiently pled facts to show an exception to sovereign immunity applies. Therefore, all of Plaintiffs' claims are barred by sovereign immunity.

A. Ultra Vires

An exception to sovereign immunity is the *ultra vires* doctrine. To fall within the *ultra vires* exception, a suit must not complain of a government officer's exercise of discretion, but rather must allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act. *See Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017); *see also City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). Thus, *ultra vires* suits do not seek to alter government policy, but rather to enforce existing policy. *Heinrich*, 284 S.W.3d at 372. If a plaintiff has not actually alleged such an action, the claims remain jurisdictionally barred. *Hall*, 508 S.W.3d

at 240–41 (holding the official capacity defendant acted within legal discretion and therefore was entitled to sovereign immunity).

Merely asserting legal conclusions or labeling a defendant's actions as "*ultra vires*," "illegal," or "unconstitutional" does not suffice to plead an *ultra vires* claim—what matters is whether the facts alleged constitute actions beyond the governmental actor's statutory authority, properly construed. *Tex. Dep't of Transp. v. Sunset Transp., Inc.*, 357 S.W.3d 691, 702 (Tex. App.—Austin 2011, no pet.).

The Supreme Court of Texas recently clarified what it means for an official to act "without legal authority." *Hall*, 508 S.W.3d at 238. The court stated, "a government officer with some discretion to interpret and apply a law may nonetheless act 'without legal authority,' and thus *ultra vires*, if he exceeds the bounds of his granted authority or if his acts conflict with the law itself." *Id.* "Ministerial acts," on the other hand, are those "where the law prescribes and defines the duties to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." *Id.* (citing *Sw. Bell Tel., L.P. v. Emmett*, 459 S.W.3d 578, 587 (Tex. 2015) (quoting *City of Lancaster v. Chambers*, 883 S.W.2d 650, 654 (Tex. 1994))).

1. Plaintiffs cannot assert *ultra vires* claims against either the State or the Texas Medical Board.

Plaintiffs *ultra vires* claims against the State and the Texas Medical Board are barred as a matter of law. Pls. Pet. ¶¶ 170–73. "[*U*]*ltra vires* suits . . . cannot be brought against the state, which retains immunity, but must be brought against the state actors in their official capacity." *City of El Paso v. Heinrich*, 284 S.W3d 366, 373 (Tex. 2009). Governmental entities remain immune from suit and are not proper parties in an *ultra vires* action. *Id.* at 372–73. Thus, Plaintiffs' *ultra vires*

claims against both the State of Texas and the Texas Medical Board are barred by sovereign immunity.

2. Plaintiffs fails to state *ultra vires* claims against the Attorney General and Executive Director.

Plaintiffs contend Defendants must enforce the medical exception as rewritten by this Court, and any effort the enforce the medical exception as written by the legislature is *ultra vires*. Pls.' Pet. ¶ 170-73.

i. Plaintiffs cannot challenge the validity of the medical exception through an *ultra vires* action against the Attorney General and Executive Director.

Plaintiffs cannot challenge the constitutionality of the medical exception in a suit against the Attorney General and Executive Director in their official capacities. It is well-settled law in Texas that *ultra vires* claims against state officials in their official capacities are improper mechanisms to challenge the constitutionality of a statute. *Patel*, 469 S.W.3d at 76–77 ("[B]ecause the [plaintiffs] challenge the validity of the [] statutes and regulations . . . the *ultra vires* exception does not apply."). To challenge the constitutionality of a statute, the challenger must sue the relevant state entity—*not* an official capacity defendant and *not* through an *ultra vires claim*. *Id.*; *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621–22 & n.3 (Tex. 2011). Plaintiffs' *ultra vires* claims necessarily require a finding that the medical exception as it currently exists is unconstitutional. This Court should, accordingly, dismiss the *ultra vires* claims against the Attorney General and Executive Director.

ii. Plaintiffs fail to allege the Attorney General and the Executive Director threaten to imminently violate the Texas Constitution.

An *ultra vires* claim will lie against an official when he: (1) exceeds the bounds of his granted authority or acts in conflict with the law itself; or (2) fails to perform a purely ministerial act, one

that is defined by the law with such precision and certainty that it affords the official no discretion or room for judgment. *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017); *Honors Acad., Inc. v. Texas Educ. Agency*, 555 S.W.3d 54, 68 (Tex. 2018). But if the official's act was not on its face beyond his authority or in conflict with the law, the plaintiff has not stated a valid *ultra vires* claim that bypasses the official's governmental immunity. *Matzen v. McLane*, 659 S.W.3d 381, 388 (Tex. 2021).

Plaintiffs have not alleged that either the Attorney General or the Executive Director intend to enforce the medical exception in a manner inconsistent with the Texas Constitution. *See generally* Pls. Pet. The sole basis for their claims against the Attorney General is an advisory stating that he will "strictly enforce" the law. *Id*. at ¶ 39. Yet, nothing about this statement implies any action by the Attorney General that would exceed the scope of his authority under the Texas Constitution. Plaintiffs claims against the Executive Director, similarly, are based solely on his "capacity serv[ing] as the chief executive and administrative officer" of the Texas Medical Board. Pls.' Pet. at ¶ 41. Plaintiffs do not allege that the Executive Director intends to enforce the law in a manner inconsistent with the Texas Constitution. *Id*. Plaintiffs attempt to plead around this problem by claiming that "any official" enforcing the medical exception, as written, would act *ultra vires*. *Id*. at ¶ 172. But this lawsuit isn't against "any official."

Plaintiffs fail to allege a valid *ultra* vires claim where they have not pled any factual allegations showing the Attorney General and the Executive Director enforced the medical

exception in the past in a manner inconsistent with the Texas Constitution—nor that they threaten to imminently do so in the future.[4]

iii. Plaintiffs cannot use *ultra vires* claims to exert control over the State.

Ultra vires suits do not attempt to exert control over the state—they attempt to reassert the control of the state. *Heinrich*, 284 S.W.3d at 372. Stated another way, these suits do not seek to alter government policy but rather to enforce existing policy. *Id.*

Plaintiffs seek to alter State policy. They ask this Court to: (1) *wholly rewrite* the statutory language of the medical exception to exempt any circumstance where a physician determines that a "pregnant person has a physical emergent medical condition for which abortion would prevent or alleviate a risk of death or risk to their health (including their fertility);" and (2) rule that Defendants act *ultra vires* if they enforce the medical exception as written, instead of using the rewritten one they've asked this Court to adopt. Pls.' Pet. ¶ 199. This is a bald attempt to seize control of state government. Plaintiffs ask this Court to exert control over the Legislature by rewriting the medical exception. *Id.* And then they ask this Court to exert control over the Executive by compelling Defendants to enforce the newly rewritten law. *Id.* This Court should find that Plaintiffs cannot state an *ultra vires* claim seeking to alter state policy, rather than enforce existing policy.

iv. Plaintiffs lack standing to challenge the constitutionality of S.B. 8.

[4] Plaintiffs also fail to state an *ultra vires* claim because their constitutional claims are facially invalid. *See Klumb v. Houston Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015); *see, e.g., Caleb v. Carranza*, 518 S.W.3d 537, 545 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (*ultra vires* claims pleaded did not defeat official's governmental immunity because plaintiff's pleaded constitutional claims were facially invalid).

The United States and Texas Supreme Courts have ruled that plaintiffs cannot challenge the constitutionality of S.B. 8 by suing the Attorney General and Executive Director because they lack the authority to enforce it. *See Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 539 (2021); *Whole Woman's Health v. Jackson*, 642 S.W.3d 569 (Tex. 2022).[5] To the extent Plaintiffs seek to challenge the constitutionality of S.B. 8 through *ultra vires* claims against the Attorney General and Executive Director—such claims are barred as a matter of law. *Id*. Finally, Plaintiffs lack standing against challenge the constitutionality of S.B. 8 against the State of Texas, because S.B. 8 is not enforced by the State. It is "enforced exclusively through the private civil actions" of private citizens. Tex. Health & Safety Code § 171.207(a).

B. Declaratory Judgment Act.

The Uniform Declaratory Judgment Act ("UDJA") does not contain a general waiver sovereign immunity. *See Acosta v. Univ. of Tex. at El Paso*, No. 3:06-cv-408, 2007 WL 9701442, at *2 (W.D. Tex. 2007) ("A litigant cannot circumvent [sovereign immunity] by pleading a claim under the Declaratory Judgment Act."); *Beacon Nat'l Ins. Co. v. Montemayor*, 86 S.W.3d 260, 266 (Tex. App.—Austin 2002, no pet.) ("[T]he UDJA does not establish subject-matter jurisdiction."). It is "merely a procedural device for deciding cases already within a court's jurisdiction." *Abbott v. Mex. Am. Legislative Caucus, Tex. House of Representatives*, 647 S.W.3d 681, 708 (Tex. 2022). The UDJA provides only a limited waiver of sovereign and governmental immunity for challenges to the validity of a statute or ordinance. *See Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 552 (Tex. 2019). "UDJA claims requesting other types of declaratory relief are barred absent a legislative waiver of immunity with respect to the underlying action." *Id*.

[5] For the same reason, any injury alleged caused by S.B. 8 cannot be traced to any Defendant, leaving Plaintiffs' without standing to challenge S.B. 8.

at 553; *see Heinrich*, 284 S.W.3d at 370.

1. Plaintiffs UDJA claims are barred by sovereign immunity.

The Legislature explicitly provided that the UDJA *does not waive* sovereign immunity for challenges to the validity of Texas' abortion laws. Tex. Health & Safety Code § 171.211 ("This section prevails over any conflicting law, including: (1) the Uniform Declaratory Judgments Act…. This state has sovereign immunity, a political subdivision has governmental immunity, and each officer and employee of this state or a political subdivision has official immunity in any action, claim, or counterclaim or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise."). Plaintiffs fail to identify any other vehicle through which they purport to bring their claims against Defendants. The Court need go no further in its analysis of Plaintiffs' claims. *Id.* The Legislature did not waive sovereign immunity for challenges to the validity of Texas' abortion laws; consequently, this Court lacks subject matter jurisdiction to consider them.[6] *Id.*

2. Plaintiffs failed to join all interested parties.

Plaintiffs cannot bring a UDJA claim challenging the validity of S.B. 8 because they've failed to join every citizen of Texas. "The UDJA requires all with an interest who would be affected by a declaration be made parties to any declaratory judgment action." *Montemayor*, 86 S.W.3d at

[6] Similarly, to the extent Plaintiffs ask the Court to "clarify" the scope of the medical exception—not strike it down as invalid—they cannot state a UDJA claim. PLS.' AM. PET. PRAYER ("To enter a judgment against Defendants granting appropriate declaratory relief to *clarify* the scope of the exception to Texas's abortion bans consistent with the Texas Constitution." (emphasis added)); PLS.' TEMP. INJ. APPL. at 9 ("Plaintiffs seek a declaration clarifying the scope of the medical exception to Texas's abortion bans…."). The UDJA does not waive sovereign immunity for "bare statutory construction" claims. *McLane Co., Inc. v. Texas Alcoholic Beverage Comm'n*, 514 S.W.3d 871, 875 (Tex. App. 2017). This is one of the reliefs sought by Plaintiffs. PLS.' TEMP. INJ. APPL. at 13 ("if the Court disagrees with all or part of Plaintiffs' *construction of the statute*…." (emphasis added)). Plaintiffs UDJA claims are barred to the extent they assert bare statutory construction claims asking the Court to declare their rights under the scope of the medical exception.

268; Tex. Civ. Prac. & Rem. Code § 37.006(a) ("When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties."). Senate Bill 8 expressly states that the statute "shall be enforced exclusively through the private civil actions" of private citizens. Tex. Health & Safety Code § 171. 207(a). Here, Plaintiffs purport to sue *every citizen of Texas in their individual capacities* by suing that State and claiming that "the State" "includes private citizens that could potentially enforce S.B. 8." Pls. Pet. ¶ 8. Plaintiff has not and cannot cite to any legal authority allowing them to bring individual capacity claims against every citizen of Texas through a suit against the State.

3. Plaintiffs cannot bring UDJA claims against the Attorney General and the Executive Director.

The UDJA provides a narrow waiver of sovereign immunity for declaratory judgment actions that challenge the constitutionality of a statute, which only applies to "the relevant governmental entities," not state officials. *Tex. Dep't of Transp. v. Sefzik*, 355 S.W.3d 618, 621–22 & n.3 (Tex. 2011); *Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 446 (Tex. 1994); *Gant v. Abbott*, 574 S.W.3d 625, 633–34 (Tex. App.—Austin 2019, no pet.). So, to the extent Plaintiffs assert UDJA claims against the Attorney General and Executive Director, their claims are barred as a matter of law by sovereign immunity.

4. Alternatively, Plaintiffs fail to state viable UDJA claims against the State and TMB.

To the extent that Plaintiffs seek declaratory relief from the State or TMB, their claims must meet the requirements laid out in the UDJA. Plaintiffs' claims do not. First, any declaratory relief only applies to "challenges to the validity of an ordinance or statute." *Town of Shady Shores v. Swanson*, 590 S.W.3d 544, 552 (Tex. 2019). To overcome sovereign immunity in such a suit, Plaintiffs must establish a viable constitutional claim. *See Abbott*, 647 S.W.3d at 699; *Tex. Tech*

Univ. Health. Sci. Ctr. v. Enob, 545 S.W.3d 607, 624 (Tex. App—El Paso 2016, no pet.) Additionally, "[t]he UDJA requires all with an interest who would be affected by a declaration be made parties to any declaratory judgment action." *Montemayor*, 86 S.W.3d at 268. Here, as discussed *infra*, Plaintiffs have not asserted viable constitutional claims, nor made party to this suit all who would be affected. Thus, their request for declaratory relief is barred by sovereign immunity.

C. Constitutional Claims

Sovereign immunity is only waived for constitutional claims that are viable. *See General Servs. Comm'n v. Little–Tex Insulation Co.*, 39 S.W.3d 591, 598 (Tex. 2001); *Klumb v. Houston Mun. Emps. Pension Sys.*, 458 S.W.3d 1, 13 (Tex. 2015); *see also Abbott*, 647 S.W.3d at 686; *Combs v. Webster*, 311 S.W.3d 85 (Tex. App. – Austin 2009, pet. denied); *Combs v. B.A.R.D. Industries, Inc.*, 299 S.W.3d 463 (Tex. App. – Austin 2009, no pet.).

Here, none of Plaintiffs' constitutional claims are viable because the medical exception passes rational basis review.

1. Plaintiffs fail to state a viable due course of law claim.

To overcome sovereign immunity, a plaintiff must establish a viable due course of law claim. *Tex. Tech Univ. Health.*, 545 S.W.3d at 624. "The Texas due course clause is nearly identical to the federal due process clause," and, though textually different, Texas courts analyze these clauses without substantive distinction. *Univ. of Tex. Med. Sch. v. Than*, 901 S.W.2d 926, 929 (Tex. 1995); Tex. Const. art. I, § 19. "A claimant prevails on a substantive due process claim by establishing it holds a constitutionally protected property right to which the Fourteenth Amendment's due process protection applies and by establishing that the challenged governmental action is not rationally related to furthering a legitimate state interest." *Edwards Aquifer Auth. v.*

Day, 274 S.W.3d 742, 757 (Tex. App.—San Antonio 2008), *aff'd*, 369 S.W.3d 814 (Tex. 2012).[7] Furthermore, "the government may not infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Zaatari v. City of Austin*, 615 S.W.3d 172, 192 (Tex. App.—Austin 2019, pet. denied) (citing *Reno v. Flores*, 507 U.S. 292, 301–02 (1993)).

i. Patients fail to state a viable due course of law claim because the medical exception passes rational basis review.

Patients' claims are subject to rational basis review. They contend that the medical exception violates the fundamental rights of "pregnant people." Pls.' Pet. ¶¶ 174–81. The Supreme Court, however, has held that the "provision of abortion," "*is not a fundamental constitutional right*." *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2283 (2022) (emphasis added). Because Texas courts analyze due course of law claims like the federal due process clause, "a law that does not affect fundamental rights or interests . . . is valid if it merely bears a rational relationship to a legitimate state interest." *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 525 (Tex. 1995) (citing *Williamson v. Lee Optical Co.*, 348 U.S. 483, 491 (1995)). Thus, Patients claims are unquestionably subject to rational basis review.

It is not the Courts' duty to second guess legislative factfinding, "improve" on, or "cleanse" the legislative process by relitigating the facts that led to the passage of a law. *Heller v. Doe*, 509 U.S. 312, 320 (1993) (providing that a state "has no obligation to produce evidence to sustain the rationality of a statutory classification"). Under rational basis review, courts must

[7] Several Justices on the Texas Supreme Court have recently questioned the scope of the rights protected by the due-course clause. *Tex. Dep't of State Health Servs. v. Crown Distrib. LLC*, 647 S.W.3d 648, 664 (Tex. 2022) (Young. J., concurring). But as was the case in *Crown Distributing*, there is no formulation of the due-course clause that would support Plaintiffs' claims.

presume that the law in question is valid and sustain it so long as the law is rationally related to a legitimate state interest. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440, 105 (1985). As the Supreme Court has often stressed, the rational basis test seeks only to determine whether any conceivable rationale exists for an enactment. *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993) (citing cases); *see also Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 748 F.3d 583, 594 (5th Cir. 2014).

A law "based on rational speculation unsupported by evidence or empirical data" satisfies rational basis review. *Beach Commc'ns*, 508 U.S. at 315. There is "never a role for evidentiary proceedings" under rational basis review. *Abbott*, 748 F.3d at 596 (quoting *Nat'l Paint & Coatings Ass'n. v. City of Chicago*, 45 F.3d 1124, 1127 (7th Cir.1995)). The fact that reasonable minds can disagree on legislation, moreover, suffices to prove that the law has a rational basis. *Id.*

The medical exception passes rational basis review because it is rationally related to a legitimate government interest. Texas has a legitimate interest "in respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability." *Dobbs*, 142 S. Ct. at 2284; *see also* Tex. Health & Safety Code § 171.202(3) ("Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child . . . ."). The medical exception is rationally related to these interests by permitting abortions in instances where continuing the pregnancy poses a risk to the life of the pregnant woman.

Patients cannot credibly claim otherwise. To the extent they cite to Rehnquist's dissent in

Roe, 410 U.S. at 173, the quoted language states the *prohibiting* abortions where the mother's life is in jeopardy would likely lack a rational relation to a valid state objective. Pls.' Pet. ¶ 150. But Texas's medical exception does exactly the opposite, it *does not* prohibit abortions when the mother's life is in jeopardy.

This Court should find that Patients fail to state viable due course of law claims because the medical exception passes rational basis review.

ii. Dr. Karsan fails to state a viable due course of law claim because she does not have a vested property interest in performing abortions.

Liberty or property interests protected under the Due Process Clause "attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law...." *Paul v. Davis*, 424 U.S. 693, 710–11 (1976). "The due-course clause is not so broad as to protect *every* form and method in which one may choose to work or earn a living, and some work-related interests do not enjoy constitutional protection at all." *Tex. Dep't of State Health Servs. v. Crown Distrib., LLC*, 647 S.W.3d 648, 654 (Tex. 2022) (emphasis in original). In order for a "work-related interest" to be constitutionally protected, the interest must be "vested" and, thus, not subject to "the legislature's right to change the law and abolish the interest." *Id.* at 655 (internal quotations omitted). A professional license is a property right, but it is one that has been created by statute and is subject to the state's power to impose conditions upon the granting or revocation of the license for the protection of society. *Scally v. Texas State Bd. of Med. Examiners*, 351 S.W.3d 434, 446 (Tex. App. 2011). "Maintaining a medical license is not a fundamental right, and physicians are not a suspect class." *Id.* at 448.

Dr. Karsan cannot state a viable due course of law claim because she does not have a vested interest in performing abortions whenever they see fit. The "medical profession is extensively

regulated and has licensure requirements." *Zadeh v. Robinson*, 928 F.3d 457, 465 (5th Cir. 2019). When an interest "is predicated upon the anticipated continuance" of an existing law and is "subordinate to" the legislature's right to change the law and "abolish" the interest, the interest is not vested. *Crown Distrib.*, 647 S.W.3d at 654. It is beyond dispute that the performance of abortions is a work-related interest that is subordinate to the Legislature's right to limit, or even abolish. *See Dobbs*, 142 S. Ct. at 2239. Thus, it is not a constitutionally protected interest subject to the due process of law clause.

Even assuming, *arguendo*, that Dr. Karsan did have a vested work-related property interest in performing abortions whenever they see fit, they still fail to state a viable due course of law claim because the medical exception passes rational basis review and is not oppressive. A "party making an as-applied challenge to an economic regulation under the Due Course of Law provision must make a showing under either of the two *Patel* prongs: (1) the statute's purpose could not arguably be rationally related to a legitimate governmental interest; or (2) when considered as a whole, the statute's actual, real-world effect as applied to the challenging party could not arguably be rationally related to, or is so burdensome as to be oppressive in light of, the governmental interest."[8] *Garrett v. Texas State Bd. of Pharmacy*, No. 03-21-00039-CV, 2023 WL 376900, at *3–4 (Tex. App. Jan. 25, 2023); *Patel v. Texas Department of Licensing and Regulation*, 469 S.W.3d 69, 90 (Tex. 2015).

Plaintiffs seemingly do not dispute that "Texas has compelling interests from the outset of a woman's pregnancy in protecting the health of the woman and the life of the unborn child . . . ." Tex. Health & Safety Code § 171.202(3).

[8] Alternatively, Dr. Karsan's due course clause claims fail under traditional rational basis review for the same reasons as Patients, discussed *supra.*

The medical exception is rationally related to this interest by permitting abortions in instances where continuing the pregnancy poses a substantial risk to the health of the woman. *See Mauldin v. Texas State Bd. of Plumbing Examn'rs*, 94 S.W.3d 867, 873 (Tex. App.—Austin 2002, no pet.) (explaining that "[a] legislative choice ... may be based on rational speculation unsupported by evidence or empirical data" (quoting *Heller*, 509 U.S. at 320–21)). Dr. Karsan contends that the medical exception is poorly worded such that she is confused about its scope. But the relevant test under the due course clause is whether the governmental action is "rational," not whether an alternative wording would be "superior" or even "perfect." *Garrett*, 2023 WL 376900, at *5-6 ("At most, Doctors have demonstrated that states have undertaken different approaches to regulating the dispensing of prescription medication, and that there may be benefits and detriments associated with either physicians or pharmacists having final authority over dispensing medication. But picking between such alternatives is a policy decision of the Legislature."). Dr. Karsan has not and cannot state a viable due course clause claim based on the contention that the medical exception could have been better worded. *Id.* Accordingly, this Court should find that Dr. Karsan has failed to satisfy the high burden of demonstrating that the medical exception is not rationally related to the legitimate governmental interest in protecting the health of the woman and the life of the unborn child.

Dr. Karsan also fail the second *Patel* factor because she cannot show that the medical exceptions actual, real-world effect, as applied to her, could not be rationally related to a government interest or is so burdensome as to be oppressive. In *Patel*, eyebrow threaders had to undertake 320 hours of irrelevant training as part of an esthetician license to legally practice eyebrow threading in Texas. 469 S.W.3d at 89; *see also Live Oak Brewing*, 537 S.W.3d at 656

(explaining that eyebrow threaders in *Patel* were "entirely shut out from practicing their trade" until they completed training, including paying for training and losing the opportunity to make money while actively practicing their trade). Conversely, in *Garrett*, a group of physicians were required to attend pharmacy school, complete a 1,000-hour internship, and pass two exams before being allowed to dispense medication at cost. *Garrett*, 2023 WL 376900, at *6. The Third Court of Appeals found that regulation on the scope of the physicians' practice in *Garrett* did not serve as a barrier to entry into the medical profession, therefore it did not deprive them of their occupational freedom under the second *Patel* factor. *Id.* The same is true for Abortionists like Dr. Karsan. Unlike *Patel*, the challenged medical exception does not serve as a *barrier to entry* into the medical profession, instead, like the regulation in *Garrett*, it merely serves as a limit on the scope of their practice. *Id.* This Court should, accordingly, find that Dr. Karsan has not and cannot show that the medical exception is "so burdensome as to be oppressive."

2. Plaintiffs fail to state a viable equal protection claim.

Plaintiffs sex-based equal protection claims similarly fall flat. Pls.' Pet. ¶¶ 193–200. The United States Supreme Court held in *Dobbs* that abortion regulations are not sex-based classifications subject to heightened scrutiny under the equal protection clause. *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2245 (2022). It went on to hold that sex-based equal protection claims, like those made by Plaintiffs, are "***squarely foreclosed by our precedents***, which establish that a state's regulation of abortion is not a sex-based classification and is thus not subject to the heightened scrutiny that applies to such classifications." *Id.* (emphasis added). The regulation of a medical procedure that only one sex can undergo does not trigger heightened constitutional scrutiny unless the regulation is a "mere pretex[t] designed to effect an invidious discrimination against members of one sex or the other." *Id.* at 2245-46 (citing *Geduldig v. Aiello*,

417 U.S. 484, 496, n. 20 (1974). "Accordingly, laws regulating or prohibiting abortion are not subject to heightened scrutiny. Rather, they are governed by the same standard of review as other health and safety measures." *Id*. at 2246.

The Texas Supreme Court has held that "[i]n this world there are certain immutable facts of life which no amount of legislation may change. As a consequence there are certain laws which necessarily will only affect one sex." *Bell v. Low Income Women of Tex.*, 95 S.W.3d 253, 260 (Tex. 2002). "The biological truism that abortions can only be performed on women does not necessarily mean that governmental action restricting abortion funding discriminates on the basis of gender." *Id*. at 263.

Plaintiffs do not allege that the medical exception is pretext designed to effect invidious discrimination against members of one sex or another. *See generally* Pls' Pet. As a matter of fact, the word "pretext" does not appear anywhere in Plaintiffs' pleadings. *Id.* "Abortion is inherently different from other medical procedures, because no other procedure involves the purposeful termination of a potential life." *Harris v. McRae*, 448 U.S. 297, 325 (1980). The "goal of preventing abortion" does not constitute "invidiously discriminatory animus" against women. *Dobbs*, 142 S. Ct. at 2246 (citing *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 273–274 (1993) (internal quotation marks omitted). So, rational basis review applies to Plaintiffs equal protection claims.

The medical exception, as discussed *supra*, passes rational basis review because permitting abortions in instances where continuing the pregnancy poses a risk to the health of the woman is rationally related to the State's legitimate interests "in respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of

particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability." *Dobbs*, 142 S. Ct. at 2284; *see also* Tex. Health & Safety Code § 171.202(3).[9]

Plaintiffs have not and cannot assert a sex-based discrimination claim, rational basis applies and, for the reasons above, they fail to plead a viable equal protection claim. Thus, sovereign immunity bars these claims.

CONCLUSION

For these reasons, Defendants respectfully request this Court to grant their Plea to the Jurisdiction and dismiss Plaintiffs' claims, including their Application for a Temporary Restraining Order, in their entirety.

Dated: December 6, 2023.

Respectfully submitted,

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[9] It is difficult to see how Plaintiffs' equal protection challenge would benefit them. If the medical exception violates equal protection remedy would be to strike down completely. *See Downs v. State*, 244 S.W.3d 511, 519 n.3 (Tex. App. 2007).

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CERTIFICATE OF SERVICE

I certify that on December 6, 2023, I filed this pleading through the Court's efiling system, which served it on all counsel of record.

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Special Counsel

CAUSE NO. D-1-GN-23-008611

KATE COX; JUSTIN COX; AND DAMLA KARSAN, M.D.; on behalf of herself, her staff, nurses, pharmacists, agents, and patients, *Plaintiffs*,	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS
v.	§	
STATE OF TEXAS, et al., *Defendants.*	§	200th JUDICIAL DISTRICT

DEFENDANTS' PLEA TO THE JURISDICTION, RESPONSE TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER

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Dated: December 6, 2023.

Respectfully submitted,

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ATTORNEYS FOR TEXAS

CERTIFICATE OF SERVICE

I certify that on December 6, 2023, I filed this pleading through the Court's efiling system, which served it on all counsel of record.

/S/ JOHNATHAN STONE
JOHNATHAN STONE
Special Counsel

CAUSE NO. D-1-GN-23-008611

KATE COX; JUSTIN COX; AND DAMLA KARSAN, M.D.; on behalf of herself, her staff, nurses, pharmacists, agents, and patients, *Plaintiffs*,	§	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS
v.	§	
STATE OF TEXAS, et al., *Defendants.*	§	200th JUDICIAL DISTRICT

DECLARATION OF INGRID SKOP, M.D.

I, Ingrid Skop, M.D., hereby declare as follows:

1. I am over the age of eighteen and am competent to offer testimony. I submit this expert declaration based on my personal knowledge and experience.

2. I have been a board-certified obstetrician and gynecologist (OB-GYN) since 1998. I received my undergraduate degree from Oklahoma State University and my medical degree from Washington University School of Medicine. I completed my residency in obstetrics and gynecology at the University of Texas Health Science Center at San Antonio.

3. I practiced obstetrics and gynecology at a private practice in San Antonio from 1996 to 2022. I continue to practice as an obstetric hospitalist today.

4. I've attached a copy of my C.V. detailing my experience, training, and knowledge.

5. I am familiar with Texas' abortion laws and previously provided expert testimony on the medical exception in *Zurawski v. St. of Tex.*, Cause No. D-1-GN-23-000968 (Travis Ct'y Dist. Ct. 353rd Jud. Dist., March 6, 2023).

6. A medical exception exists to Texas' general prohibition on abortion when a physician, in their reasonable medical judgment, concludes that a pregnant female "has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced." Tex. Health & Safety Code § 170A.002(b)(2).

7. I have reviewed the pleadings in this matter.

8. Ms. Cox alleges that her child has been diagnosed with trisomy-18.

9. Ms. Cox alleges that she has intermittently experienced the following symptoms during her pregnancy: elevated glucose levels, cramping, diarrhea, and leakage from an unknown source.

10. Ms. Cox also alleges that she is at increased risk of complications during birth due to her two prior C-section births.

11. In my expert opinion, as pled, Ms. Cox has *not* alleged that she has been diagnosed with a life-threatening physical condition aggravated by, caused by, or arising from her pregnancy as required to qualify for the medical exception.

12. Further, in my expert opinion, as pled, Ms. Cox has *not* alleged that she has been diagnosed with a condition that places her at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced as required to qualify for the medical exception.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bexar County, TX, on December 6, 2023.

Ingrid Skop, M.D.

SWORN TO AND SUBSCRIBED before me on December 6, 2023.

_____

Notary Public, State of Texas

Ingrid Skop, M.D.

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Arlington, VA 22206
210-274-0777 (cell)
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Work Experience:

- Vice President of Medical Affairs, Charlotte Lozier Institute
  March 2023-Current.
- Senior Fellow and Director of Medical Affairs, Charlotte Lozier Institute
  April 2022-March 2023.
- Obstetric Hospitalist, OB Hospitalist Group
  April 2022-Current.
- Hospital Appointment, Baptist Hospital System, San Antonio, TX
  July 1996-Current.
- Partner, Northeast OB/GYN Associates
  July 1998-March 2022.
- Employed physician, Northeast OB/GYN Associates
  July 1996-June 1998.
- Chairman, Department of OB/GYN, Northeast Baptist Hospital
  2003-2005.

Board Certification and Licensure:

- Texas Medical License J4524, 1992-Current.
- Board Certified, American Board of Obstetrics and Gynecology, 1998-Current.
- Fellow, American College of Obstetrics and Gynecology, 1998-Current.

Education:

- Obstetrics and Gynecology Postdoctoral Training:
  University of Texas Health Sciences Center at San Antonio. July 1992-1996.
  Chief Resident. July 1995-June 1996.
- Medical Doctorate:
  Washington University School of Medicine. August 1988-May 1992.
- Batchelor of Science, Physiology:
  Oklahoma State University. August 1984-May 1988.

Publications/Presentations/Professional (past six years)

- Reviewer for peer-reviewed journals:
  - Annals of Internal Medicine 2022-current
  - Issues in Law and Medicine 2021-current
- Studnicki J, Longbons T, Reardon D, Fisher J, Harrison D, Skop I, et al. *The enduring association of a first pregnancy abortion with subsequent pregnancy outcomes: A longitudinal cohort study*. Health Services Research and Managerial Epidemiology. 2022;9:1-9.

- Skop I. *Chemical abortion: Risks posed by changes in supervision.* Journal of the American Association of Physicians and Surgeons. 2022;27(2):56-61.
- Studnicki J, Longbons T, Harrison D, Skop I, et al. *A post hoc exploratory analysis: Induced abortion complications mistaken for miscarriage in the emergency room are a risk factor for hospitalization.* Health Services Research and Managerial Epidemiology. 2022;9:1-4.
- Studnicki J, Harrison D, Longbons T, Skop I, et al*. Longitudinal cohort study of emergency room utilization following mifepristone chemical and surgical abortions, 1999-2015*. Health Services Research and Managerial Epidemiology. 2021;8:1-11.
- National Institute of Health Fetal Tissue Research Ethics Advisory Board, member. 2020.
- Marmion P, Skop I*. Induced abortion and the increased risk of maternal mortality*. Linacre Quarterly. 2020;87(3):302-310.
- Skop I. *Medical abortion: What physicians need to know*. Journal of the American Association of Physicians and Surgeons. 2019;24(4):109-113.
- Studnicki J, Reardon D, Harrison D, Fisher J, Skop I. *Improving the metrics and data reporting for maternal mortality: A challenge for public health surveillance and effective prevention.* Online Journal of Public Health Informatics. 2019;11(2):E17.
- Skop I. *Abortion safety: At home and abroad*. Issues in Law and Medicine. 2019;34(1):43-75.
- Studnicki J, Longbons T, Fisher J, Harrison D, Skop I, Mackinnon S. *Doctors who perform abortions: Their characteristics and patterns of holding and using hospital privileges*. Health Services Research and Managerial Epidemiology. 2019;6:1-8.
- "Complications and mortality from abortion." Oral presentation at the United Nations Global Commission on the Status of Women. March 2018.
- Texas Women's Healthcare Coalition, member. 2016-2019.
- San Antonio Maternal Morbidity and Mortality Task Force. 2016-2019.

Expert Witness Testimony:

- South Carolina written expert witness testimony, September 2023.
- Zurawski v Texas oral expert witness testimony. July 2023.
- Louisiana written legislative testimony. May 2023.
- U.S. Senate Committee on the Judiciary invited oral and written legislative testimony. April 26, 2023.
- Wyoming written legislative testimony. March 2023.
- West Virginia written legislative testimony. February 2023.
- Nebraska oral and written legislative testimony. February 2023.
- Georgia written litigation testimony and trial testimony case #2022-CV-367796. HB 481: Living infants' fairness and equality act. August 2022.
- Florida written litigation testimony, deposition and trial testimony case #2022-CA-912. HB 5: An act relating to reducing fetal and infant mortality. June 2022.
- Ohio written litigation testimony. SB 260: An act to amend…and enact…regarding abortion inducing drugs. May 2022.
- Kentucky oral legislative testimony. December 2021.
- U.S. House Oversight Committee invited oral legislative testimony. September 2021.
- Oklahoma written litigation testimony. SB 778: An act relating to OK abortion inducing drugs risk protocol act, SB 779: An act creating the OK abortion inducing drugs certification program act, HB 1904: An act relating to public health. September 2021.
- Texas oral legislative testimony. March 2021.

- South Carolina written legislative testimony. SB 1: South Carolina fetal heartbeat and protection from abortion act. February 2021.
- Montana oral and written legislative and litigation testimony. HB 136: An act adopting the MT pain capable unborn child protection act, HB 140: An act requiring…ultrasound. January 2021.
- Utah written litigation testimony and deposition. HB 136: An act…enacts and modifies provisions relating to abortion. 2020.
- Georgia written legislative testimony. HB 481: Living infants' fairness and equality act. 2020.
- Expert witness for the defense in medical malpractice lawsuit: Mary Ann De La Garza v. Carolina Praderio, M.D., Cause No. 2015DCV-3922-H (347th Judicial District Court). 2018.
- Vermont written legislative testimony. 2018.
- Texas oral legislative testimony. June 2013.

Charitable Organizations:

- Save the Storks Medical Advisory Board 2023-current.
- Involved for Life Medical Advisory Board 2022-current.
- Impact San Antonio Women's Charitable Organization, founding member. 2004-Current.
- The Source Houston and Austin, medical director. 2021-2022.
- The Source Texas, board member. 2019-2022.
- AWC Clinics, ob/gyn medical director. 2020-Current.
- Any Woman Can, board member. 2015-2022.
- Any Woman Can, board chairman. 2018-2022.
- American Association of Pro-Life Obstetricians and Gynecologists, board member. 2018-2020.
- The Contraceptive Initiative, founding member and chairman. 2015-2019.
- Healthy Futures of Texas, board member. 2016-2019.
- Keystone School, board member. 2014-2015.
- Keystone School, Parent Teacher Organization president. 2014-2015.
- San Antonio AIDS Foundation, medical volunteer. 2012-2016.

CAUSE NO. D-1-GN-23-000968

AMANDA ZURAWSKI, et al., Plaintiffs,	*	IN THE DISTRICT COURT OF
v.	*	TRAVIS COUNTY, TEXAS
STATE OF TEXAS, et al. Defendants.	*	353RD JUDICIAL DISTRICT

VIDEOTAPED ORAL DEPOSITION

OF

DAMLA KARSAN, M.D.

Thursday, July 6, 2023

(REPORTED REMOTELY)

VIDEOTAPED ORAL DEPOSITION OF DAMLA KARSAN, M.D., produced as a witness at the instance of the Defendants, and duly sworn, was taken in the above-styled and numbered cause on Thursday, July 6, 2023, from 9:38 a.m. to 12:04 p.m., before Debbie D. Cunningham, CSR, remotely reported via Machine Shorthand, pursuant to the Texas Rules of Civil Procedure and/or any provisions stated on the record or attached hereto.

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Amelia Christopher

ALSO PRESENT:

Astrid Ackerman
Lauren Gonzalez
Rehan Chaudhuri

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EXHIBIT INDEX

(Thursday, July 6, 2023 9:38 a.m.)

P R O C E E D I N G S

THE REPORTER: Today's date is Thursday, July 6, 2023. The time is 9:38 a.m. Central Standard Time. This is the videotaped oral deposition of Damla Karsan M.D.; and it is being conducted remotely. The witness is located in Houston, Texas.

My name a Debbie Cunningham, CSR Number 2065. I am administering the oath and reporting the deposition remotely by stenographic means from Austin, Texas.

Would Counsel please state their appearances and locations for the record, beginning with Plaintiffs' counsel?

MR. KABAT: Nicolas Kabat in New York, New York for the Plaintiffs.

THE REPORTER: Mr. Stone, we can't hear you.

MR. STONE: Can you hear me now?

THE REPORTER: Yes.

MR. STONE: Okay. Jonathan Stone on behalf of Defendants. I'm joined by my cocounsel, Amy Pletscher; and I am located in Austin, Texas.

MR. KABAT: And, for the record, joining me today is Molly Duane, in New York, New York, as well.

DAMLA KARSAN, M.D.,

having been duly sworn, testified as follows:

EXAMINATION

BY MR. STONE:

Q. Good morning, Dr. Karsan.

Before we begin, let me just kind of go over some of the rules of depositions for you. Do you understand that during the course of the deposition you'll need to answer verbally so that the court reporter can record your answer?

A. I do.

Q. And during the course of the deposition, do you understand that if you need to take a bathroom break or any other kind of break, you can simply ask?

A. I do.

Q. And do you understand that before you take that break, if there's a pending question, you'll need to answer the question before we take the break?

A. I do.

Q. And do you understand that if during the course of the deposition if any of my questions are vague or I speak too fast or you have any kind of difficulty understanding me, you can stop and ask me to clarify?

A. I do.

Q. And, lastly, do you understand that during the course of the deposition, you'll hear objections made; but you'll still have to answer the question until specifically instructed not to by your attorney?

A. I do.

Q. Have you ever been deposed before?

A. Once.

Q. How long ago was that?

A. Probably about ten years or more.

Q. Have you ever testified in a case before?

A. I have not.

Q. You are bringing this case on behalf of yourself and your patients, right?

A. Correct.

Q. What harm has the medical exception to Texas' abortion laws specifically caused you?

MR. KABAT: Objection, form.

A. It has made it more difficult for me to do my job.

Q. (BY MR. STONE) Let's start with your job. What is your job?

A. I am an OB/GYN. I practice general obstetrics and gynecology.

Q. How has Texas' medical exception to its abortion laws made it more difficult for you to do your

job?

MR. KABAT: Objection, form.

MR. STONE: State your objection.

MR. KABAT: The foundation. You haven't explained which exception you're referring to at this point.

A. So I go ahead.

So it has made it more difficult for me to provide appropriate care to pregnant patients with complications of pregnancy that may require an abortion to protect the health of the mother.

Q (BY MR. STONE) How has it made it more difficult?

A. There are lots of questions and anxiety about what can legally be performed in the state of Texas, a lot of fear about risk of losing my license, being imprisoned, facing tremendous fines; and it has also delayed care because it has required me to scramble to try to figure out how those patients can get the care they need elsewhere.

Q. So if I understand you correctly, it's made it -- the medical exception to Texas' abortion law has harmed you because it has caused you to have lots of questions, anxiety, fear of being imprisoned, fines -- or being fined, and has caused a delay in care as you

are required to scramble for how to get care for patients elsewhere. Is that accurate?

A. That's fair.

Q. Is there any other harms that have been specifically caused to you by the medical exception to Texas' abortion laws?

A. Yes. It has required me to spend large amounts of time, uncompensated time, in trying to assist these patients in what was previously a more simple decision.

Q. What do you mean, it was previously a more simple decision?

A. Prior to S.B. 8 and the Dobbs decision, I was able to plan for the care of my patients without fear of litigation and other previously stated concerns; and I could proceed without having to second-guess or having to find alternate pathways.

Q. Prior to the Dobbs decision and the passage of S.B. 8, did you perform abortions in Texas?

MR. KABAT: Objection, form.

A. Yes.

Q (BY MR. STONE) Did you perform -- prior to the passage of -- or prior to the Dobbs decision and the passage of S.B. 8, did you perform elective abortions in Texas?

A. Yes.

MR. KABAT: Objection, form.

Q. (BY MR. STONE) Prior to the Dobbs decision and S.B. 8, did you perform abortions in Texas pursuant to the medical exceptions to Texas' abortion laws?

MR. KABAT: Objection, form.

A. Yes -- I'm sorry. Let me ask for clarification. You said "prior to" or "after"?

Q. (BY MR. STONE) Prior.

A. Yes.

Q. So you have experience before the passage of S.B. 8 in applying the medical exception to Texas' abortion laws in your practice?

MR. KABAT: Objection, form.

(Simultaneous speakers.)

MR. KABAT: Restating my objection to form.

Q. (BY MR. STONE) I'm sorry. Did you answer?

A. I said yes.

Q. Okay. Yes.

As you understand it, what was the medical exception to Texas' abortion laws prior to the passage of S.B. 8 and the Dobbs decision?

A. I believe abortion was legal up to 20 weeks from conception; and I did not perform abortions beyond

that gestation, so I did not have concerns about the exact exceptions beyond that. I mean, I -- because abortion was legal up to 20 weeks from conception, I did not have to concern myself with whether I was crossing a line with a medical exception or not.

I did terminate pregnancies by delivery beyond that gestation, but not with the intent of terminating the life of the fetus. I can give you an example if that would help.

Q. Well, I'm just asking about -- let's -- I'm -- let's focus on the definition as you understood it, though.

So you testified that prior to the S.B. 8 and Dobbs, you performed abortions pursuant to the medical exception that existed at that time to Texas' abortion laws, right?

MR. KABAT: Objection, form.

A. I'm not sure that I know what the medical exceptions were, and I didn't concern myself with that because my understanding is that abortions were legal up to 20 weeks from conception. And I always filled out the appropriate paperwork and submitted it to the State. I was never advised by any of the authorities at any of the facilities where I worked that I needed to qualify for any exception. So I cannot tell you what those

exceptions were exactly.

Q (BY MR. STONE) Okay. Let me ask this a little differently. Do you know what the medical exception to Texas' abortion laws were prior to the passage of S.B. 8 and the Dobbs decision?

MR. KABAT: Objection, form.

Q. (BY MR. STONE) I'm sorry. I couldn't hear your answer.

A. I do not.

Q. Okay. Do you believe that Texas' abortion -- the medical -- strike that.

In your opinion, did the medical exception to Texas' abortion laws change after the Dobbs decision?

A. It's hard for me to say since I don't know what it is -- what it was. I know what the current exceptions are.

Q. Do you have any reason to believe that the current medical exception to Texas' abortion laws is any different than it was prior to the S.B. 8 and the Dobbs decision?

MR. KABAT: Objection, form.

A. Again, I don't know since I don't have a point of comparison.

Q (BY MR. STONE) So is it fair to say that the

medical exception to Texas' abortion laws, in your opinion, did not harm you prior to the Dobbs decision?

MR. KABAT: Objection, form.

A. I think that's fair to say.

Q (BY MR. STONE) At what point did the medical exception to Texas' abortion laws first begin to harm specifically you?

A. With the passage of S.B. 8.

Q. And what about the passage of S.B. 8 caused the medical exception to Texas' abortion laws to first begin causing harm specifically to you?

A. Because it became -- it came into play at that point prior to 20 weeks from conception, where it had not come into play in any cases or in almost any cases that I had experience with.

Q. Have you performed any abortions in Texas since the passage of S.B. 8?

A. I have not.

Q. Why not?

A. Because I was able to find alternate care for my patients, most of whom have means.

Q. Are there any other reasons other than that you were able the find alternate care for your patients, most of whom have means, that you have not performed any abortions since the passage of S.B. 8 in Texas?

A. Yes, I do not want to get crossways with the law. I don't want to have to defend myself.

Q. If you are successful in this lawsuit, will you resume performing abortions in the state of Texas?

A. If the situation necessitates it, I will feel more comfortable taking care of my patients here in Houston.

Q. Have any -- so is it fair to say that if you're suc- -- the difference between now and if you're successful in this lawsuit is that you'll feel more comfortable performing abortions pursuant to the medical exception to Texas' abortion laws if the situation necessitates it?

MR. KABAT: Objection, form.

A. I will feel more protected and less persecuted in my efforts.

Q (BY MR. STONE) How will you feel more protected?

A. I will feel like the risk of losing my license and being imprisoned for life and having major financial fines or hardships placed on me is less likely.

Q. How are you being persecuted?

A. I feel like the legislator [sic] has inserted itself into my relationship with my patients when trying to make decisions about their care.

Q. So is it fair to say that you believe the Legislature is persecuting you?

A. That the State is with the Legislature as the representative of the constituents.

Q. Are there any particular legislators that are persecuting you?

MR. KABAT: Objection, form.

A. No.

Q (BY MR. STONE) And you said that the State -- just the State is persecuting you as well; is that correct?

A. Yes.

Q. Is there any particular person in the state that is persecuting you?

A. I would say all of the elected representatives who have made these -- who have passed these laws.

Q. And is that only the elected representatives that voted for the laws, or do you include all the legislators in the legislature?

A. I guess, technically, it's those that voted for the law which caused it to pass.

Q. And can you name any of them?

A. No, I cannot.

Q. How has the medical exception to Texas' abortion laws specifically harmed your patients?

A. It has restricted their access to medically reasonable and, often, necessary care.

Q. How has it restricted their access to necessary care?

MR. KABAT: Objection, form.

A. It has created an environment of confusion and fear where their ability to access an abortion has been seriously restricted, almost completely negated.

Q. (BY MR. STONE) Well, if it's often necessary care -- strike that.

Can you give me an example of a patient that you've treated that required necessary care that included an abortion who was unable -- who was unable to do so because of the exception -- the medical exception to Texas' abortion laws?

MR. KABAT: Objection, form.

A. Sure. I have a patient who was pregnant with her second child and at her first ultrasound beyond the initial confirmation that she was pregnant and that there was a heartbeat, the maternal-fetal medicine physician reading the ultrasound images described an anomaly called body-stalk anomaly, where many of the organs were outside the fetal body and the fetus was connected to the placenta by its liver.

This is, in my understanding, universally

fatal; and the patient had to travel 14 hours by car with her partner and her toddler, all the while suffering a kidney stone attack, which also was dangerous, in order to get an abortion, 14 hours there and 14 hours back, because the abortion could not be performed here in Houston.

Q. Why couldn't the abortion be performed in Houston?

A. Because the law -- the exceptions are very vague and the patient's life was not in imminent danger and I was advised by my maternal-fetal colleagues that it did not meet the exception, in their opinion.

Q. Wait. So you didn't make a determination whether or not this patient that we're talking about here met the medical exception to Texas' abortion laws. Is that accurate?

MR. KABAT: Objection, form.

A. I was very confused. I was not sure that she met the exception or did not meet the exception. It was very unclear to me.

Q (BY MR. STONE) So is it fair to say that you didn't make a determination as to whether or not the patient met the medical exception?

A. Did or didn't? I'm sorry. I couldn't hear.

Q. Yeah, let me rephrase. Did you make a

determination, you, make a determination that the patient did not -- that this patient did not qualify for the medical exception?

A. Yes, but that was in consultation with my high-risk obstetrical colleagues.

Q. You didn't consult with an attorney when making that decision. Is that accurate?

A. I have been advised -- I did not in that specific case.

Q. I don't want to know what you specifically said back and forth with the attorney. I'm just asking if you consulted or spoke with an attorney about it.

A. Not in that specific case.

Q. Okay. So is it fair to say that you relied on the advice of your colleagues when determining that this patient did not meet the medical exception to Texas' abortion laws?

MR. KABAT: Objection, form.

MR. STONE: State your objection.

MR. KABAT: I think you're mischaracterizing her prior testimony.

A. I have been told that -- or I have been required by the facility where I practice that I can perform an abortion; but I must have a second physician, preferably a high-risk obstetrician, write in the

patient's chart that they agree that the abortion is necessary.

Q (BY MR. STONE) Ah, okay. What is the name of the facility where you work that we're talking about right now?

A. It's the Woman's Hospital of Texas.

Q. Woman's Hos- -- can I just refer to it as Woman's Hospital?

A. Sure.

Q. Okay. Now, Woman's Hospital has a policy explaining under what conditions a medical condition would qualify for the medical exception to Texas' abortion laws. Is that accurate?

A. Yes. I also have privileges at two other facilities.

Q. What are those facilities?

A. The Pavil- -- Texas Children's Hospital and the Methodist Hospital.

Q. Does Children's Hospital have a policy explaining under what circumstances a medical condition qualifies for the medical exception to Texas' abortion laws?

A. Not that I'm aware of. We've been told we cannot do abortions there.

Q. Does -- the same question, but for Methodist.

Does Methodist have a policy detailing under what circumstances you can perform an abortion pursuant to the medical exception in Texas?

A. I'm not sure; but, again, we've been told we cannot perform abortions.

Q. And to be clear, Children's and Methodist told -- let me start with Children's.

To be clear, if I'm understanding you correctly, Children's told you that you cannot perform an abortion under any circumstances. Is that accurate?

A. Not without counsel from the hospital attorneys.

Q. Okay. So the policy at Children's is that you -- in order to perform an abortion pursuant to the medical exception to Texas' abortion laws, you have to first consult with the hospital's attorneys. Is that accurate?

A. (No audible response.)

Q. And is it the same policy at Methodist?

A. I believe so.

THE REPORTER: I'm sorry. I missed the last answer before this.

THE WITNESS: "Yes."

THE REPORTER: Thank you.

THE WITNESS: Thank you.

Q (BY MR. STONE) Have you had a cir- -- any circumstances at Children's Hospital where you had to consult with the hospital's counsel on whether or not a patient met the medical exception to Texas' abortion laws?

A. No.

Q. What about at Methodist?

A. No.

THE REPORTER: Excuse me, Counsel. I'm sorry. I'm hearing some background noise, and it's causing me to have difficulty hearing the witness' answers.

MR. STONE: Do you know who -- is everybody muted? I'm not sure who it is. I hear it, too.

And it's gone. That's good.

THE WITNESS: Okay.

Q. (BY MR. STONE) Okay. So let's go back to Woman's then. What is the policy at Woman's Hospital before performing an abortion pursuant to the medical exception in Texas?

A. The policy was that we could perform an abortion as long as it met the legal requirements at the time. There were no restrictions other than those placed by the law.

Q. Does the -- I'm asking about currently. At Woman's Hospital, are you also required to check with counsel prior to performing an abortion pursuant to the medical exception?

A. My understanding, the last that I've heard, is that we need to document in the chart, in the patient's chart, that we believe that it is necessary in order to keep -- to preserve the patients health; and we need to have a second physician on staff at the hospital, preferably a high-risk obstetrician, document the same.

Q. Is that a written policy?

A. I have not seen it in writing. I was advised at a meeting.

Q. So going back to the patient that we were talking about a few minutes ago, who was pregnant with her second child and she had a body-stalk anomaly; is that acc- -- did I say that correctly?

A. I believe so, yes.

Q. Body-stalk anomaly. Back to that patient, so a second physician was not willing to sign off on the -- that it was medically necessary for that patient to have an abortion at Woman's Hospital. Is that accurate?

A. Yes.

Q. Setting aside that second physician, you -- as the treating physician, were you willing to sign off in

the charts that an abortion was medically necessary for that patient?

A. No.

Q. So both you and your colleague agreed that this patient did not qualify for the medical exception to Texas' abortion laws?

MR. KABAT: Objection, form.

A. I was unsure. I had doubt.

Q (BY MR. STONE) Have there been any other -- strike that.

How long ago was -- how long ago -- strike that.

When was this decision made with respect to the patient that we're talking about with the body-stalk anomaly?

A. It's probably been about six months or more.

Q. Since the passage of S.B. 8, have there been any patients at Woman's Hospital that you were willing to sign off on their chart that they met the exception to -- the medical exception to Texas' abortion laws?

A. None that I was involved in, no, and none that I know of.

Q. Have you read the statutes creating the medical exception to Texas' abortion laws?

A. I have.

Q. Other than reading the statutes themselves, are you relying on any other sources for guidance as to what qualifies under the medical exception?

A. The hospital attorneys.

Q. Has -- what is ACOG?

A. ACOG is the American College of OB/GYN.

Q. Have they issued any guidance to physicians in Texas about what qualifies for the medical exception to Texas' abortion laws?

A. Not that I'm aware of.

Q. What about the Texas Medical Association?

A. Not that I'm aware of.

Q. If they issued guidance, would that be something -- explaining what the -- what conditions might qualify under the medical exception to Texas' abortion laws, would that be helpful to you?

A. To some degree.

Q. When you perform -- prior to S.B. 8, did you perform abortions at Woman's Hospital?

A. Yes.

Q. Children's Hospital?

A. Yes.

Q. Methodist Hospital?

A. No, not that I can recall.

Q. Other than those three -- I'm sorry -- those

two hospitals, was there any other facility where you performed abortions prior to S.B. 8?

A. Yes, St. Luke's Hospital and Planned Parenthood and in my residency in North Carolina.

Q. Ah. I may have asked a question without any time restrictions. So let me -- when did you stop -- do you currently hold privileges at St. Luke's?

A. No.

Q. How long has it been since you held privileges at St. Luke's?

A. I let them expire maybe a couple -- a few years ago.

Q. Years ago. Okay.

And Planned Parenthood, is Planned Parenthood still open, the facility that you previously performed abortions at?

A. Yes.

Q. Do they still offer abortion services at that facility?

A. Not that I'm aware of.

Q. So is it fair to say that since the passage of S.B. 8, the reason that you have not performed an abortion in Texas is because you have not had a case that qualified for the medical exception at Woman's Hospital or at Children's Hospital?

MR. KABAT: Objection, form.

A. I have had a couple of cases that needed an abortion; but due to the vagueness of the law, I did not feel comfortable performing an abortion.

Q. (BY MR. STONE) Okay. How many cases, approximately?

A. A handful, two that I can recall the details of. I think there were maybe a couple of others.

Q. Let's talk about those two that you can recall the details of. What was the circumstances in the first case -- we'll call them Case One and Case Two.

What were the circumstances in Case One that made you believe that it might qualify for the medical exception to Texas' abortion laws?

A. Well, the case we talked about, because the -- every pregnancy has risk; and the patient takes a risk in the hopes of having a viable child. And since that fetus did not have a chance of survival, there was risk -- there's always risk -- without any potential gain.

Q. In Case Number One, with the body-stalk anomaly, in your opinion, did the -- did that involve a life-threatening physical condition that, in your reasonable medical judgment, regardless of the provision of lifesaving medical treatment, would be incompatible

for life outside the womb for the fetus?

A. Could you repeat that?

Q. Sure. In your opinion, in Case Number One, involving the body-stalk anomaly, did that involve a severe fetal abnormality such that it was a life-threatening physical condition that, in your reasonable medical judgment, regardless of the provision of lifesaving medical treatment, would have been incompatible with life outside the womb for that child?

A. Yes.

Q. If -- here's what I don't understand, Doctor: If you were confused in Case Number One as to whether or not it qualified for the medical exception to Texas' abortion laws, why didn't you ask Woman's Hospital's attorneys?

A. (No audible response.)

Q. Am I muted?

A. No.

Q. Oh, okay. You can hear me. Okay.

A. Was that the whole question?

Q. Yes.

A. Why didn't I ask the hospital's attorneys for...

Q. If you were uncertain whether Case Number One

met the medical exception to Texas' abortion laws, why didn't you ask Woman's Hospital's attorneys for clarification?

MR. KABAT: Objection, form.

A. Well, for one, they're the hospital's attorneys and they are not my attorneys and I did not -- I do not have the means to go out and hire an attorney every time I need to make a medical decision. And the hospital attorneys might give me permission to do the procedure, but they're not going to protect me or argue my case if I am found -- or dragged into court if the State wants to prosecute me for something they think does not meet the qualifications or the requirements.

There's also a vigilante component. So it's not just the State; it's also any person who gets wind of the fact that an abortion was performed.

Q. (BY MR. STONE) So is it fair to say that you didn't check -- strike that.

Is it fair to say that you didn't ask the hospital attorneys for Woman's Hospital whether or not Case Number One qualified for the medical exception because they wouldn't represent you if you were subsequently prosecuted for violating Texas' abortion laws?

A. That's one of many reasons.

Q. Okay. What were the -- what are the other reasons?

A. I didn't have a maternal-fetal medicine specialist willing to stick their neck out and document that it was necessary, medically necessary.

Q. Why would you need an M -- when you say "maternal-fetal medicine," can I call them "MFM"?

A. Sure.

Q. Why would it matter if an MFM was willing to stick their neck out for you to ask -- strike that.

Have you ever asked counsel at Woman's Hospital to provide you with guidance in any other cases before?

MR. KABAT: Objection. I'm going to instruct the witness not to answer and possibly reveal the conversations she may or may not have had with her hospital attorneys.

MR. STONE: I'm not asking for the contents of the conversation. I'm asking if she's ever consulted with them on a case before. It's privileged, the contents of the communication, but not the existence of the conversations.

MR. KABAT: If you'd like to, restate the question in that way.

MR. STONE: Sure, sure.

Q (BY MR. STONE) Without disclosing the contents of the conversations, have you ever consulted with the attorneys for Woman's Hospital on a case in the past?

A. Not directly, no.

Q. Why would an MFM not being willing to stick their neck out and say that Case Number One was medically necessary hinder you from consulting with the attorneys at Woman's Hospital on whether or not, in their opinion, it met the medical exception to Texas' abortion laws?

MR. KABAT: Objection, form.

A. Well, that was based on the guidance I had received when S.B. 8 came out that the hospital attorneys said that they would back us up or that they would -- that the Hospital, itself, would support or open the door to us performing an abortion if we had a second consultant who was willing to document their agreement with the decision.

MR. KABAT: Before we go any further, I do want to --

MR. STONE: Yeah.

MR. KABAT: -- caution Dr. Karsan that any communications that are with the hospital attorneys, the substance of those communications are privileged and

should not be disclosed. And so I'm instructing you not to answer any questions that go to the content of any conversations you have had with the hospital attorneys, either that they -- information they have told to you or information --

THE WITNESS: Passed on to us by leadership, yeah.

A. Sorry. That was a one step removed.

Q. (BY MR. STONE) I see. So the attorneys didn't tell you this. Somebody else at the hospital told you this?

A. The leadership at the hospital, the administration.

Q. The leadership.

But going along with what Nicolas said, in none of the questions I'm asking you do I want you to tell me anything an attorney, you know, had -- told you, okay, just to be clear. That information's going to be privileged, and I'm not asking that specific -- for that specific information in my questions. Do you understand?

A. Yes.

Q. So other than -- other than an MFM not being willing to stick their neck out to say that it was medically necessary and the fact that the attorneys for

the hospital would not defend you if you were prosecuted for violating Texas abortion laws, were there any other reasons that you didn't check with the attorneys for Woman's Hospital in Case Number One to determine whether or not it met the medical exception to Texas' abortion laws?

A. I also felt that it would potentially be less of a barrier to try to expedite the care for the patient and not take additional steps to delay her care since the later an abortion is performed, the more risky it is for the mother.

Q. But is it fair to say that you don't know how long it would have taken for the hospital attorneys to give you an answer, right?

MR. KABAT: Objection, form.

A. I can only have an opinion based on prior experience.

Q (BY MR. STONE) But didn't you testify earlier that you hadn't actually directly consulted with the attorneys at Woman's Hospital on any prior cases?

A. My prior experience is with the chain of command, which is usually how this works in the hospital. So I would go to the chief of obstetrics, who would go to the CMO, who would then go to the attorneys. Whenever we have a concern, we are to work through the

chain of command.

Q. And, in your prior experience, how long does the -- how much of a delay is caused by having to work through the bureaucracy of the chain of command?

A. A few days. Honestly, it was kind of a Plan A/Plan B. I mean, if the patient hadn't been able to find her own way and fund it, then I would have been forced to pursue that.

Q. And who would have forced you to pursue it?

A. My ethics. I would say I'm in the minority in being willing to fight for my patients. I'm probably in the -- in the extreme.

Q. When you say that your ethics would have forced you to -- strike that.

Okay. So in Case Number One, Plan A was to do what?

A. To connect her with resources out of state to support her in figuring out -- her and her partner in figuring out how and where they could get the necessary care.

Q. Ah. And did that patient eventually -- strike that.

So the patient drove 14 hours to the location where she had an abortion and 14 hours back. So that is 28 hours in a car, right?

A. Yes.

Q. Okay. And how long after you presented Plan A to the patient did she wait before getting the abortion?

A. I don't remember exactly, but it might have been all done within a week. There was a delay because she had kidney stones that she might need to be hospitalized for.

Q. So Plan A took about a week; and Plan B could have taken, based on your prior experience with the bureaucracy of the chain of command at Woman's Hospital, a couple of days. Is that accurate?

A. I would say --

MR. KABAT: Objection, form.

THE WITNESS: Sorry.

A. I would say a few days, but that was just to get clarification. That's not to have the procedure scheduled and performed and completed.

Q (BY MR. STONE) Do you know how long it would take, just if you know, between getting approval and then scheduling and performing the abortion at Woman's Hospital?

A. Typically, a few days.

Q. So it might have taken a few days to get through the bureaucracy and then a few days to get it scheduled and performed. Is that accurate?

A. I think that's fair.

Q. So, in your opinion -- strike that.

Did you present in Case -- the patient in Case Number One with options, with Plan A and Plan B?

A. I told her that we could try to get it approved, but I wasn't sure that we would get approval.

Q. What did she say when you told her that you could try to get approval through the hospital, but you weren't sure if you would get approval?

A. I -- I don't know that she said much. She -- I advised her to go ahead and start looking at her options herself.

Q. So the patient never actually declined Plan B?

A. Not that I recall, no.

Q. Is that because -- strike that.

Let's talk about Case Number Two.

A. Okay.

Q. What do you recall about Case Number Two?

A. I was on call. I was called to the ER to see a patient of one of my partner's who had come in bleeding more than just spotting. She had reportedly passed some clots, and she was 15 weeks pregnant. And the ER physician had ordered an ultrasound, which revealed a living 15-week fetus with anencephaly and a large subchorionic hemorrhage.

Q. What was the word right before hemorrhage?

A. Subchorionic.

Q. And what does that mean?

A. It means that there was an area of bleeding from the placenta that had accumulated outside the bag that the fetus is in, the sac, the amniotic sac.

Q. Why did you think that Case Number Two might qualify for the medical exception to Texas' abortion laws?

A. Because the patient had an increased risk of hemorrhage above that that any patient has and the fetus had no possibility of survival.

Q. So would you agree that -- strike that.

When you say that the fetus had no possibility of survival, do you mean that it had a life-threatening physical condition that, in your reasonable medical judgment, regardless of the provision of lifesaving medical treatment, was incompatible with life outside the womb?

A. Yes.

Q. So why didn't you perform -- strike that.

Were you willing to sign off on the charts in Case Number Two that the patient met the medical exception to Texas' abortion laws?

A. Yes.

Q. Did you, in fact, sign off on the medical records for Case Number Two indicating that you believed it met the medical exception to Texas' abortion laws?

A. I did not document it in the chart. I had that conversation.

Q. Was there a second physician at Woman's Hospital -- strike that.

Was Case Number Two at Woman's Hospital?

A. Yes, it was.

Q. Was there a second physician at Woman's Hospital willing to sign off on the patient's chart documenting that she met the medical exception to Texas' abortion laws?

A. No.

Q. How many physicians did you speak with -- sorry. Strike that.

How do you know that there wasn't a second physician willing to sign off on Case Number Two?

A. I am confident of that because the physician that I consulted with is the physician at our hospital who takes care of the highest of the highest risk patients and is involved in hospital leadership.

Q. So, for the record, because, you know, we're just lawyers; we don't work in a hospital environment, how does the process work when you consult with -- when

you say that you consulted with a physician on the case at the hospital?

A. I asked for a maternal-fetal medicine consult from this physician who is my go-to for my highest risk patients because she's so responsive and proactive. And she actually agreed to see the patient right then and there, even though it was the weekend. I put the patient in a wheelchair from the ER and took her up to the ultrasound room, where the physician met me; and she performed an ultrasound and provided her opinion.

Q. What was her -- was that when the patient received the anencephaly diagnosis?

A. I shared the results of the radiology ultrasound with her, so that's when she found out.

Q. Okay.

A. And shortly after, she went for another ultrasound performed by the maternal-fetal medicine specialist.

Q. Did you discuss with the -- well, who is the MFM that we're talking about in Case Number Two?

A. Am I required to share that? It's part of the patient's protected --

MR. KABAT: I'm going to request that she not answer that unless we have a Protective Order in place to make sure that confidential information like

that is governed by a Protective Order.

MR. STONE: So...(laughing.)

So we sent you a -- Nicolas, we sent you a Protective Order last week. Have you guys had an opportunity to review the Protective Order that we sent?

MR. KABAT: We're still reviewing it. If you understand, Jonathan, we've had depositions. It's also been a holiday weekend. So we're still in the process of reviewing it. We also have to discuss it with 15 individual Plaintiffs. So that, of course, will take time; but we are promising to get back to you on it.

MR. STONE: Okay.

Q. (BY MR. STONE) So let's call this -- we'll just call them the physicians.

Okay. So did you speak with the MFM that you were consulting with specifically about whether or not Case Number Two met the medical exception to Texas' abortion laws?

A. Yes.

Q. And what did that provider say?

A. That since the patient was not actively hemorrhaging, that she did not feel that the patient qualified.

Q. How did you respond when the MFM told you

that?

A. I don't know that I said anything. I mean, what am I supposed to say? I mean, that -- I was frustrated; but I didn't say or document anything to that effect.

Q. Did you consult with any other providers at Woman's Hospital to see if they thought that Case Number Two would meet the medical exception to Texas' abortion laws?

A. I did not. Since one opinion had already been given and the facts of the case were not in question, it didn't require a medical opinion.

Q. What do you mean, it didn't require a medical opinion?

A. A medical opinion was already given, and I didn't feel that I would get a different consultation from any other physician.

Q. So you didn't feel like any other physician at the hospital would have given you a different answer as to whether Case Number Two would meet the medical exception to Texas' abortion laws. Is that accurate?

A. Correct. It's very difficult for a general OB/GYN, in particular, to go against the recommendations of a maternal-fetal medicine and it was the weekend and there weren't -- you know, there were only a certain

number of people available on call.

Q. Did you consult with the attorneys for Woman's Hospital in Case Number Two to determine whether they believed it met the medical exception?

A. I did not.

MR. KABAT: Objection.

I just always want to clarify before these questions about her conversations or possible consultations with attorneys to remind Dr. Karsan that any conversations with the hospital attorneys, including conversations that are mediated through the hospital administrators, should be not -- should not be disclosed, as privileged.

THE WITNESS: Thank you.

Q (BY MR. STONE) Did you send -- did you send Case Number 2 up through Woman's Hospital's chain-of-command bureaucracy to check if anyone else thought that it meet the medical exception to Texas' abortion laws?

A. I did not.

Q. In Case Number Two was it also a Plan A/ Plan B type situation, as was the case with Case Number One?

A. Yes.

Q. In other words, in Case Number Two, if the patient had any difficulty obtaining an abortion, then

you would have sent it up through the chain of command to check with counsel to see if it would have qual- -- if they thought that it qualified?

A. Potentially, yes.

Q. Okay. Did you present Plan A and Plan B to the patient in Case Number Two?

A. Yes, and Plan C.

Q. Oh, and what was Plan C?

A. To go home and come back if she starts hemorrhaging and that I would provide her an abortion on the spot.

Q. If -- so when you say "abortion on the spot," if she was hemorrhaging, would you still have needed a second doctor to sign off on that at Woman's Hospital?

A. It depends how dire the situation was. I mean, I would have tried to get that as quickly as I could; but it wouldn't keep me from trying to save her life.

Q. So if she was hemorrhaging and she came back, you would perform an abortion regardless -- for her regardless of whether a second physician signed off on it, depending on the severity?

MR. KABAT: Objection. I think that's not -- that's misstating her testimony.

A. I mean, yes, it would depend on -- this is a

very -- these can be very fluid situations. So it would -- I would have to make a decision in the moment, as we often do.

Q (BY MR. STONE) A decision on whether or not to get a second signature?

A. Well, a decision how to proceed in the moment, depending on the urgency of the clinical situation.

Q. Doctor, I'm confused. A moment ago you said Plan C was that you would send her home and if she started hemorrhaging, that she should come back and you would perform an abortion on the spot, right?

A. That's what I said.

Q. Okay. Are you saying that it's actually more nuanced than that; it would have depended on presentation and other circumstances on whether or not you would have performed an abortion on the spot?

A. Well, it depends how you define "on the spot." I mean, there are times when we roll straight from the ER to the OR because the patient's life is in imminent danger in the moment; and there are more -- it's a continuum. So, you know, I may make calls, make consultations, as we are moving in that direction.

Q. Got it. So what do you mean when -- strike that.

What did you mean when you said "on the

spot"?

A. At the -- when she came back to the hospital, you know, on that admission.

Q. Okay. So at some point during that admission is what you meant by "on the spot"?

A. Correct.

MR. STONE: We've been going for almost an hour and a half. Do you mind if we take a quick coffee break to refill and bathroom break, Doctor?

THE WITNESS: No, not at all.

MR. STONE: Okay. If it's okay with you Nicolas, why don't we go off the record?

MR. KABAT: Sounds good.

THE REPORTER: We're going off the record at 10:52 a.m.

(Off the record from 10:52 to 11:00 a.m.)

THE REPORTER: We're going back on the record at 11:00 a.m.

Q (BY MR. STONE) In Case Number Two, did the patient obtain an abortion?

A. I don't know.

Q. Other than Cases Number 1 and 2, are there any other cases that you can recall the details of since the passage of S.B. 8 where you believed a patient may have qualified for the -- that you were treating at Woman's

Hospital, may have qualified for the medical exception to Texas' abortion laws?

A. There may have been a couple of anomalies, but none that had such pressing medical conditions.

Q. I want to share with you in the chat what I'm marking as Exhibit A.

(Exhibit A marked.)

Q (BY MR. STONE) It's your affidavit in this case. Do you see Exhibit A in the chat?

A. I'm pulling it up now.

Yes, I see it.

Q. I would like to start with a question about Paragraph -- let me step back. Strike that.

Did you write Exhibit A?

A. It was -- it was the result of consultation with my attorneys.

Q (BY MR. STONE) Did you -- and I don't want to get into any of the contents of your conversations with your attorneys. I'm just asking, like: Who drafted up Exhibit A that has your signature on it?

A. I provided the content. The actual draft was provided by legal counsel.

Q. Okay. I want to ask about Paragraph Number 8 on page 2 of Exhibit A. Could you turn to that and let me know when you have it on the screen?

A. I'm looking at it.

Q. Okay. I want to ask about the first sentence. Could you read the first sentence, since it's really short, for the record?

A. Sure. "This uncertainty regarding Texas' abortion bans has delayed or barred the provision of important obstetrical care, including abortion care for our patients, and put our patients' lives and health (including their fertility) at risk."

Q. Have you delayed the provision of important obstetric care to patients because of your uncertainty about Texas' abortion ban -- sorry -- the medical exception to Texas' abortion laws?

A. Yes.

Q. How many patients have you delayed the provision of important obstetric care because of your uncertainty about Texas' -- the medical exception to Texas' abortion laws?

UNKNOWN SPEAKER: Do you want this shut?

THE WITNESS: Yes. Sorry.

Sorry. Somebody was closing my door. I hadn't closed it all the way.

A. The two are the most -- the two cases we discussed are the most clear-cut cases, in my mind.

Q. (BY MR. STONE) Okay. So let's talk about

Case Number One. How much of a delay did your uncertainty about the medical exception to Texas' abortion law result in the provision of important obstetric care to the patient?

MR. KABAT: Objection, form.

A. I would say a week or two, but that's only because she could travel because she actually was able to do that on her own without my assistance.

Q. (BY MR. STONE) I guess I'm confused because didn't you testify that in Case Number One, the issue was that a second physician, the MFM, was unwilling to sign off in the medical records that the case met the medical exception to Texas' abortion laws, right?

A. Correct.

Q. So how -- I guess I'm trying to understand: Where's the week or two delay?

A. Previously, I would have scheduled the procedure if the patient wished to proceed; and I would have performed it here in Houston without her having to make an appointment out of state, having to take the time and expense of travelling. And I could have also addressed the other surrounding issues, like her kidney stones. It took that much time for her to make the appointment, make the arrangements, and to go, none of which she would have had to have done; she wouldn't have

had to get the same exact care elsewhere had there not been than a concern about the abortion ban in Texas.

Q. I think I understand. Is the issue -- the issue's the abortion ban, not the medical exception to the abortion ban. Is that accurate as to what you're describing here in Paragraph 8?

A. Well, the ban and the exceptions are very unclear. I think there's a lot of confusion and fear.

Q. In Case Number Two, how long was the delay in the provision of important obstetric care to the patient due to the medical exception to Texas' abortion law?

A. I don't know since I did not have ongoing care with that patient. That was an emergency call coverage situation. All I know is that she could have gotten care while she was there on that visit to the hospital, and that did not happen. Therefore, she continued to have a heightened risk for hemorrhage when she left the hospital.

Q. I want to ask you about Paragraph Number 10 in Exhibit A. It's short. Could you read it, for the record, out loud?

A. You said Paragraph 10?

Q. Yes, ma'am -- or Doctor. I'm sorry.

A. "I have also personally treated pregnant patients with emergent medical conditions since S.B. 8

took effect and consulted with colleagues about the care of such patients. In my experience, an emergency [sic] condition or emergency situation cannot be formulaically defined and will always depend on the patient's unique situation."

Q. So it's your opinion that the medical exception cannot be -- to Texas' abortion laws cannot be formulaically defined; is that correct?

MR. KABAT: Objection, form.

Q. (BY MR. STONE) I'm sorry. I couldn't hear your answer.

A. Yes.

Q. And just to remember, we're going to wait a beat so that Nicolas has an opportunity to unmute and object, okay?

What do you mean by "formulaically defined"?

A. I mean that every situation is unique and nuanced, that medical conditions are often a continuum; and it's very difficult to put each one in a box.

Q. In your opinion, would it be impossible for Texas to have an emergency medical condition definition to its abortion laws?

A. I would say it would be very, very, very difficult to have legislation that covered every

scenario.

Q. So would you agree that having a broad definition -- strike that.

Do you agree with me that the medical exception to Texas' abortion laws is written broadly?

A. Yes.

Q. And it can encompass a whole host of different presentations that have -- that -- strike that.

It's written broadly enough to cover many different scenarios or presentations that patients may present with?

A. Or exclude --

MR. KABAT: Objection, form.

THE WITNESS: Sorry.

A. Which is why it can also -- yes, which is why it can also exclude a lot of situations, like not cover but...

Q. (BY MR. STONE) So because it's written so broadly, it excludes a lot of situations. Is that what you're saying?

A. Well, I think it leaves room for confusion, debate, liability.

Q. So you want -- so, ideally, we would have not a -- strike that.

So, ideally, what we would want is a very

specific definition of "medical emergencies" in -- for the medical exception to Texas' abortion laws. Is that accurate?

MR. KABAT: Objection, form.

A. Ideally, we would allow physicians to use their medical judgment without fear of liability.

Q. (BY MR. STONE) And is it your testimony that they can't use their medical judgment without fear of liability if there's a broad definition of "medical emergencies"?

A. Yes.

Q. So, conversely, would they not have the fear of liability if there was a more specific definition of "medical emergency"?

A. It's an impossible situation.

Q. Okay. So you want a definition of "medical emergency" that is both broad but also specific, and it's impossible to craft something like that. Is that fair?

MR. KABAT: Objection, form.

A. It's very, very, very difficult.

Q. (BY MR. STONE) Before we switch to a different document, I want to -- well, let's finish with this one.

So I want to ask about Paragraph 11 of

Exhibit A. Could you just read the first sentence out loud?

A. Let me pull it up again.

Q. Okay.

A. I put it down so I could see people's faces. So Paragraph 11.

Q. Yes, just the first sentence.

A. "Since Roe versus Wade was overturned, I have treated patients with emergent medical conditions, including patients carrying pregnancies with lethal fetal conditions who need [sic] treatment for complications like kidney stones, bipolar disorder, and hemorrhage."

Q. So I had a couple of questions. Is the lethal fetal condition the kidney stones?

A. No.

Q. Okay. So is it -- so -- I'm trying to parse the sentence and understand it. So you've treated patients with emergency medical conditions, including patients who carry pregnancies with lethal fatal [sic] conditions. Is that accurate?

[Indiscernible interruption.]

THE WITNESS: I'm so sorry. I don't know how to turn that off. I gave my phone to my office manager, but it's linked to my laptop. And since I

couldn't get on from the desktop, it's still sending messages. I apologize.

MR. STONE: Yeah. No problem -- or the court reporter can tell us if it's a problem if she's having difficulty reading [sic.]

Q. (BY MR. STONE) I just wanted to parse this sentence, but I didn't entirely understand it as written.

So since Roe versus Wade was overturned, you've treated patients with emergent medical conditions, including patients carrying pregnancies with lethal fetal conditions, right?

A. Right, but that's in addition. That's the first part; but then, lethal fetal conditions who need treatment for conditions or complications. So emergent medical conditions are the kidney stones, bipolar disorder, and hemorrhage.

Q. Okay. Okay. I see. So the emergent medical conditions are kidney stones, bipolar disorder, and hemorrhage; and, separately, those pregnancies also involved a pregnancy with a lethal fetal condition, correct?

A. Correct.

Q. Is it your -- is it your understanding of the law that a lethal fetal condition, in and of itself,

does not qualify for the medical exception to Texas' abortion laws?

MR. KABAT: Objection, form.

A. I'm not certain. Again, I'm not an attorney; and the language is confusing.

Q (BY MR. STONE) Right. I understand you're not an attorney and I'm not asking for a legal conclusion; but you determined in each of these cases that these patients did not qualify for the medical exception to Texas' abortion laws, right?

MR. KABAT: Objection, form.

MR. STONE: State your objection.

MR. KABAT: I think it's mischaracterizing her prior testimony.

Q (BY MR. STONE) Go ahead.

A. I think that the complicating factor is that when a patient has a lethal fetal anomaly and they have another condition where the treatment would be easier if they weren't pregnant and they have no chance of gaining a child from continuing that pregnancy, that it complicates the treatment and makes the decision about the pregnant -- continuing the pregnancy more complicated. It's just another layer of complication that confuses what's covered, what's not.

I mean, I think everybody would agree

that an uncomplicated pregnancy that then develops kidney stones, I feel like we're all clear that that does not meet the exception.

Q. So there's certain circum- -- there's certain presentations that we're all clear on that they don't meet the medical exception to Texas' abortion laws?

A. I think in the two extremes, it's clear; but there's a large area in between that is very murky.

Q. Were the patients that you're talking about in paragraph -- in this first sentence in Paragraph 11 in Exhibit A, were those patients that were in the gray or murky area in between you just described?

A. Yes.

Q. In those cases, did you make a determination as to whether or not the patient met the medical exception to Texas' abortion laws?

A. I did not make a legal judgment. I decided to avoid liability and look for alternative options for the patient to get the care they needed.

Q. What do you mean by "legal judgment"?

A. I mean the possibility of being dragged into a courtroom, missing work, having to pay for legal representation and facing the risk of all those consequences that we talked about previously.

Q. Do you think determining whether a patient

qualifies for the medical exception to Texas' abortion laws is a medical judgment or a legal judgment?

MR. KABAT: Objection, form.

A. I think it's a legal judgment. We're asked to follow the law.

Q (BY MR. STONE) Are you familiar with EMTALA?

A. I am.

Q. What is EMTALA?

A. It has to do with emergency care. In my case, I know it has to do with women in labor.

Q. Are there any other scenarios other than the medical exception to Texas' abortion laws where you believe you're called upon to make legal judgments?

A. Not in areas that I have found to be murky, vague.

Q. If the medical exception to Texas' abortion laws was reworded in a way that you found clearer, would you still have to make a legal judgment, in your opinion?

MR. KABAT: Objection, form.

A. Could you -- could you re- -- repeat that question?

Q (BY MR. STONE) Sure. No matter how the medical exception to Texas' abortion laws is worded, do you believe it would still require you to have to make a

legal judgment as to whether or not a patient qualified?

A. I think that there may be fewer confusing situations. I think it's near impossible to assure that there won't be some confusing or unclear cases.

Q. Okay. So -- strike that.

If the medical exception to Texas' abortion laws was reworded in the manner that you're seeking in this lawsuit, would you still be required to make a legal judgment as to whether or not patients qualified?

A. Potentially in some cases.

Q. Going back to Paragraph 11 of Exhibit A, in the second sentence you say, "Before S.B. 8, I would have offered abortion care to these patients. Now, I...have to give them information about where to seek abortion care out of state," right?

A. Yes.

Q. But isn't it fair to say that before the passage of S.B. 8, you would have offered abortion care to those patients but not under the medical exception to Texas' abortion laws?

A. It was irrelevant. The exceptions were irrelevant.

Q. I'm going to show you what I'm marking as Exhibit B.

(Exhibit B marked.)

Q (BY MR. STONE) This is a copy of your verified Petition in the case. Just let me know when you're able to open it.

A. I'm downloading it now.

Q. Okay.

A. Okay. I've opened it.

Q. Could you turn to Paragraph 343 of Exhibit B?

A. Oh, gosh, can you give me a page number?

Q. Yeah, it's on page 71.

A. Okay. Getting there.

Okay. All right. Which paragraph?

Q. 343.

A. Okay. I have it in front of me.

Q. Excellent. Could you read it to yourself and let me know when you finish?

A. (Witness silently reading documenting.)

Okay. I've read it.

Q. Do you agree with the statement in your Complaint that the medical emergency exception to Texas' abortion laws is broader than the type of medical conditions that physicians would consider emergencies under, for example, EMTALA?

A. I believe so. I mean, the legal language sometimes trips me up; but I believe so.

Q. Do you agree that physicians every day have to make decisions about whether a particular presentation meets the definition of an emergency under EMTALA?

A. Really, that happens at the hospital more than in our offices. So we're not as responsible for following that, I guess. There are procedures and protocols at the hospital that are in place to assure that we don't go afoul of EMTALA.

Q. And is it similarly true that Woman's Hospital has policies and procedures in place to ensure that you don't run afoul of Texas' abortion laws?

A. I have not read any policies or procedures. I'm assuming they have them. All I know is what I told you previously that was shared with us about the trigger ban.

Q. Okay. So let's read -- if you could, could you read Paragraph 344 out loud for the record? It's not very long.

A. Sure. "An analysis of Texas' Emergent Medical Condition Exception and similar exceptions in other states' abortion bans shows that Texas' language is comparatively broad. Some states do not contain 'emergency,'" quote, unquote, "exceptions at all, but only provide affirmative defenses to be used in prosecutions. Some states do not explicitly exclude

ectopic pregnancies and/or treatment for miscarriage from their definitions of abortion. Some states mention," quote, "'impairment of a major bodily function,'" quote, "but require such impairment to be," quote, "'irreversible' in addition to," quote, "'substantial,' while...states limit their exception to life-threatening conditions -- while other states limit their exception to life-threatening conditions. And some states require a second physician to confirm that an exception applies."

Q. Now if I -- if I understand you correctly, your contention is that it's a bad thing that the Texas language is comparatively broad. Is that accurate?

MR. KABAT: Objection, form.

A. I think it's a bad thing that physicians are not being allowed to exercise their medical judgment without fear of retribution.

Q. (BY MR. STONE) What does that mean, that they cannot exercise their medical judgment without fear of retribution?

A. Well, first of all, there's the vigilante component of S.B. 8. So everybody and anybody can bring a civil suit against a physician for providing an abortion. And, secondly, the trigger ban penalties are so extreme that it leads physicians to doubt their

judgment, not medically, but legally because no matter what our medical judgment is, we are bound by the laws of the state we live in.

Q. Would you agree with me that every medical decision that you make has the potential to have retribution in the form of medical malpractice lawsuits or disciplinary action by the Texas Medical Board?

MR. KABAT: Objection, form.

A. In those situations, we are protected by the standards of care as they are set forward from our professional societies, and there is not legislation that specifically makes those activities illegal.

Q (BY MR. STONE) So, yes, there's a potential for retribution for every medical decision that you make in the form of medical malpractice lawsuits or action by the Texas Medical Board; but that's different than abortion cases because they're illegal and there is a criminal aspect to them. Is that fair?

A. Yes.

Q. What if a patient presented -- you know, what? Let's -- sorry. I'm a little scattered, so strike all that.

Could you read -- and this might be the last time I ask you to read -- could you read Paragraph 345 in Exhibit B out loud? I want to ask some

follow-up questions.

A. Okay. "Reading" --

MR. KABAT: Johnathan, I just want to clarify before she reads it, there are footnotes to -- there were footnotes -- excuse me -- to Paragraph 344; and it looks like there are footnotes to Paragraph 345. You are not asking her to read those, but we are agreeing that those are incorporated into what's being read into the record?

MR. STONE: Sure, absolutely.

MR. KABAT: Okay.

A. Okay. "Reading the provisions of the Emergency [sic] Medical Condition Exception together, they permit physicians to provide an abortion to a patient where, in the physician's good faith judgment, the patient has a physical condition posing a risk of death or a serious risk to the patient's health. Such conditions include, but are not limited to, the following: conditions that can lead to dangerous bleeding or hemorrhage, including placental conditions; dangerous forms of hypertension; conditions that can lead to dangerous infection, including premature rupture of membranes; and [sic] other medical conditions that can become emergent during pregnancy, either because being pregnant causes or exacerbates a chronic condition

or increases other health risks, or because treatment for the chronic condition is unsafe while pregnant," open parentheses, "(with the exception of conditions whose emergent nature stems from the risk of self-harm, which are statutorily excluded); and certain fetal conditions or diagnoses that can increase the risks to a pregnant person's health such that, when combined with the patient's other comorbidities, a patient's medical provider may determine that the patient has an emergent condition necessitating abortion."

Q. (BY MR. STONE) Would you agree with me that that is a fairly straightforward definition?

A. Relatively.

Q. Applying that definition to Case Number One that we discussed earlier, would Case Number One qualify for the medical exception to Texas' abortion laws, as described in Paragraph 345?

A. I mean, again, I have to -- that's a lot.

(Witness silently reading document.)

I don't think it's clear. I really don't think it's clear.

(Witness silently reading document.)

Q. And so you're not sure if body-stalk anomaly would fall under any of these -- under any of the categories described in Paragraph 345?

A. I mean, you could argue either way. I could argue it either way.

Q. Okay. Let's argue for. What is the argument for it meeting -- for it falling under one of the categories of 345?

A. So, as I said before, every pregnancy has risks and this patient also had a kidney stone flare or attack and she was carrying a fetus that did not have any chance of survival. And the patient was taking on these risks that every pregnancy has for no potential gain, but that's not really spelled out here in this exception.

Q. At the end of the exception, the final couple of lines, it says, "...certain fetal conditions or diagnoses that can increase the risks to a pregnant person's health such as that -- such that, when combined with the patient's other comorbidities, a patient's medical provider may determine that the patient has an emergent condition necessitating abortion." Do you think it might fall under -- that Case Number One might fall under -- under that category?

A. Again, there are arguments for and against. I think it's very unclear.

Q. What would be the argument against the Case Number One falling within any of the categories

described in Paragraph 345?

A. Well, it's -- you know, a lot of people would argue that plenty of women take the risk of hemorrhage, infection, premature rupture of membranes. Well, and then you could argue that, for instance, in her case, her kidney stones could be treated without terminating the pregnancy and that the risks of those complications from pregnancy were not significant enough to meet the risk of -- oh, where does it say -- I mean, define -- oh, what's the word -- unsafe.

You know, driving a car is unsafe, in some people's mind. So, you know, you can argue how unsafe is unsafe enough to meet the qualifications, I guess.

Q. How unsafe is unsafe enough to meet -- strike that.

What about Case Number Two, do you believe that Case Number Two would meet any of the exceptions, categorical exceptions, described in Paragraph 345 of Exhibit B?

A. That one I'm a little more comfortable with, which is why I would have offered her an abortion if I had gotten someone else to agree with me. But, again, it can be called into question because maybe she will hemorrhage; maybe she won't. What percentage risk of

hemorrhage is a high enough risk of dangerous -- quote, unquote, "dangerous bleeding" or hemorrhage? You know, is needing a transfusion dangerous enough; or is risk of death danger- -- the qualifier for dangerous and what percentage risk of death?

Q. Well, that's left to the individual physician's good faith judgment, right?

A. And that of the Courts and the juries and the legislators.

Q. But, Doctor, you use your judgment every day in making medical decisions, right?

A. Yes, and I hope that I will not be prosecuted for that.

Q. And sometimes physicians just reach different conclusions based on their medical judgment, right?

A. Yes.

Q. Looking at Paragraph 345, it says, "Conditions that could -- or can lead to dangerous bleeding or hemorrhage." In --

A. Well it's a continuum, yeah. Sorry. I interrupted you.

Q. Yeah. So in Case Number Two, I guess I'm trying to understand the counterargument because it seems to me if they had -- based on your prior testimony, they had significantly increased risk of

hemorrhage, right, in Case Number Two?

A. Yes.

Q. So --

A. Above that of any other pregnancy or the average pregnancy.

Q. Is a hemorrhage -- I mean, again, we're lawyers, so help us out here; we're not physicians. Is a hemorrhage during a pregnancy always dangerous?

A. Again, that depends how you define "dangerous." Ten percent of deliveries will have a hemorrhage. Probably one to maybe three percent of deliveries will require a blood transfusion, which has its own risks, although less than it used to be in our -- at least in this country. And, you know, our maternal mortality rate is the highest of any developed country. So, you know, pregnancy, in and of itself, is dangerous.

Q. So if you were trying to determine whether or not -- strike that.

In Patient Number 2 -- sorry. Strike that.

In Case Number Two, when evaluating the patient, what sorts of things would you be looking for to determine whether or not the patient's condition involved a risk of -- that could lead to a dangerous

hemorrhage?

A. Well, there's a significant risk of hemorrhage in any pregnancy beyond eight, nine weeks, I would say. I discourage anyone having a miscarriage beyond eight weeks to have a D&C so that they're not at home when -- when it happens. So that was my concern for that patient; but since she wasn't actively bleeding when I saw her, that was the reason the maternal-fetal medicine said that I could not terminate the pregnancy at that moment in time. But any pregnancy that is bleeding is a threatened miscarriage, by definition, prior to viability.

Q. Do you believe that Patient -- in your opinion, did Patient Number 2 -- Patient -- strike all that.

Do you believe that the patient in Case Number Two had a condition that could lead to a dangerous infection?

A. No.

Q. Okay. I've got about --

MR. STONE: Do you want to go off the record?

MR. KABAT: Sure.

THE REPORTER: We're going off the record at 11:54 a.m.

(Off the record from 11:54 to 12:01 p.m.)

THE REPORTER: We're back on the record at 12:01 p.m.

Q (BY MR. STONE) Doctor, is it fair to say that what you want out of this lawsuit is for Texas to create a medical exception where it's left entirely up to the medical provider to determine whether an abortion is medically necessary pursuant to the standard of care?

A. That would be great.

Q. And is it your opinion that the laws that exist right now doesn't accomplish that same goal?

A. Correct.

MR. STONE: I'll pass the witness.

MR. KABAT: Thank you, Johnathan. I have no questions for the witness.

MR. STONE: Thank you so much, Dr. Karsan. We really appreciate your help today.

THE WITNESS: Of course.

THE REPORTER: Counsel, would you please state your orders on the record for the video and the transcript?

MR. STONE: On our end, we would love to get a rush order on the transcript and we just need a digital copy and we also want a copy of the video as well, please.

THE REPORTER: And by "rush," I need a date certain, please.

MR. STONE: Oh, how soon could you get it to us?

THE REPORTER: I mean, I can get it to you by tomorrow; but there is an upcharge.

MR. STONE: How much of an upcharge?

THE REPORTER: That's out of my wheelhouse.

MR. STONE: Oh, okay.

THE REPORTER: I would have to let you talk to my office.

MR. STONE: Okay. Yeah, I don't want to get in trouble; but I -- yeah, if we could get it tomorrow, I think we would like that, ideally. So, yes, I'm ordering if for tomorrow, please.

MR. KABAT: And, Ms. Cunningham, Plaintiffs would also appreciate a copy of the rush order and, of course, copies of the digital and final transcript.

THE REPORTER: Do you need a copy of the video?

MR. KABAT: Yes, please.

THE REPORTER: Okay. This concludes the deposition at 12:04 p.m.

(Deposition concluded at 12:04 p.m.)

CHANGES AND SIGNATURE

WITNESS NAME: DAMLA KARSAN, M.D.

DATE OF DEPOSITION: July 6, 2023

PAGE/LINE	CHANGE	REASON

I, DAMLA KARSAN, M.D., have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted herein.

_____
DAMLA KARSAN, M.D.

THE STATE OF _____)

BEFORE ME, _____, on this day personally appeared DAMLA KARSAN, M.D., known to me (or proved to me under oath or through _____) (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that they executed same for the purposes and consideration therein expressed.

Given under my hand and seal of office on this, the _____ day of _____, _____.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____
My Commission Expires:_____

CAUSE NO. D-1-GN-23-000968

AMANDA ZURAWSKI, et al., Plaintiffs,	*	IN THE DISTRICT COURT OF
v.	*	TRAVIS COUNTY, TEXAS
STATE OF TEXAS, et al. Defendants.	*	353RD JUDICIAL DISTRICT

REPORTER'S CERTIFICATION

VIDEOTAPED ORAL DEPOSITION

OF

DAMLA KARSAN, M.D.,

Taken on July 6, 2023

(Reported Remotely)

I, Debbie D. Cunningham, Certified Shorthand Reporter in and for the State of Texas, hereby certify to the following:

That the witness, DAMLA KARSAN, M.D., was duly sworn by me, and that the transcript of the oral deposition is a true record of the testimony given by the witness;

That the deposition transcript was submitted on July 7, 2023 to the witness or to the attorney for the witness for examination, signature, and return to me by July 27, 2023;

That the amount of examination time used

by each party at the deposition is as follows:

BY MR. STONE: 02:10:43

BY MR. KABAT: 00:00:00

BY MS. DUANE: 00:00:00

That pursuant to information given to the deposition officer at the time said testimony was taken, the following includes counsel for all parties of record:

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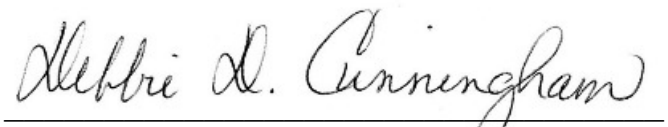
I further certify that I am neither counsel for, related to, nor employed by any of the

parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

Further certification requirements pursuant to Rule 203 of TRCP will be certified to after they have occurred.

Certified to by me this day, July 7, 2023.



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FURTHER CERTIFICATION UNDER RULE 203, TRCP

The original deposition/errata sheet was / was not returned to the deposition officer on _____;

If returned, the attached Changes and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. STONE, Esq., Custodial Attorney;

That $_____ is the deposition officer's charges to the Defendants for preparing the original deposition transcript and copies of exhibits, if any;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on _____ and filed with the Clerk.

Certified to by me on _____.

_____
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CAUSE NO. D-1-GN-23-008611

KATE COX; JUSTIN COX; and DAMLA KARSAN, M.D., on behalf of herself, her staff, nurses, pharmacists, agents, and patients, *Plaintiffs*,	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
STATE OF TEXAS; ATTORNEY GENERAL OF TEXAS, KEN PAXTON, in his official capacity as Attorney General of Texas; TEXAS MEDICAL BOARD; and STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board, *Defendants.*	§	200TH JUDICIAL DISTRICT

[PROPOSED] ORDER

Before the Court is Plaintiffs' Application for Temporary Restraining Order and Permanent Injunction. After hearing and argument, the Court orders the Application for Temporary Restraining Order be DENIED.

Signed this _____ day of December, 2023.

_____
THE HONORABLE JUDGE

CAUSE NO. D-1-GN-23-008611

KATE COX; JUSTIN COX; and DAMLA KARSAN, M.D., on behalf of herself, her staff, nurses, pharmacists, agents, and patients, *Plaintiffs*,	§	IN THE DISTRICT COURT OF
v.	§	TRAVIS COUNTY, TEXAS
STATE OF TEXAS; ATTORNEY GENERAL OF TEXAS, KEN PAXTON, in his official capacity as Attorney General of Texas; TEXAS MEDICAL BOARD; and STEPHEN BRINT CARLTON, in his official capacity as Executive Director of the Texas Medical Board, *Defendants.*	§	200TH JUDICIAL DISTRICT

[PROPOSED] ORDER

Before the Court is the Defendants' Plea to the Jurisdiction. For good cause shown, Defendants' Plea to the Jurisdiction is GRANTED and this matter is dismissed.

Signed this _____ day of December, 2023.

_____
THE HONORABLE JUDGE

EXHIBIT C

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ATTORNEY GENERAL OF TEXAS

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December 7, 2023

Via email

Re: *Cox v. St. of Tex.*, Cause No. D-1-GN-23-008611, pending in the 200th Judicial District Court, Travis County, Texas.

To Whom It May Concern:

It has come to our attention that Damla Karsan, M.D., a physician holding privileges at your hospital, intends to perform a dilation and evacuation abortion on Ms. Katelynn "Kate" Cox. Today, an activist Travis County Judge signed a Temporary Restraining Order ("TRO") purporting to enjoin the Attorney General's Office (the "OAG") and the Texas Medical Board ("TMB") from enforcing some of the state's abortion laws against Dr. Karsan if she performs an abortion on Ms. Cox. We feel it is important for you to understand the potential long-term implications if you permit such an abortion to occur at your facility.

First, the TRO will not insulate you, or anyone else, from civil and criminal liability for violating Texas' abortion laws, including first degree felony prosecutions, Tex. Health & Safety Code § 170A.004, and

civil penalties of not less than $100,000 for each violation, Tex. Health & Safety Code §§ 170A.005, 171.207-211. And, while the TRO purports to *temporarily* enjoin actions brought by the OAG and TMB against Dr. Karsan and her staff, it does not enjoin actions brought by private citizens. Tex. Health & Safety Code § 171.207; *Whole Woman's Health v. Jackson*, 590 U.S. 30, 44 (2021). Nor does it prohibit a district or county attorney from enforcing Texas' pre-*Roe* abortion laws against you, Dr. Karsan, or anyone else. We remind you that the TRO will expire long before the statute of limitations for violating Texas' abortion laws expires.

Second, it is the hospitals—not the courts—that have the training, responsibility, and discretion to "determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff." 25 Tex. Admin. Code § 133.41(f)(4)(F) (2021). Your hospital may be liable for negligently credentialing the physician and failing to exercise appropriate professional judgment, among other potential regulatory and civil violations, if you permit Dr. Karsan to perform an unlawful abortion. *Garland Cmty. Hosp. v. Rose*, 156 S.W.3d 541, 546 (Tex. 2004).

Third, it appears that Dr. Karsan failed to follow your hospital's procedures for determining whether Ms. Cox qualifies for the medical exception to Texas' abortion laws. It appears she has not sought a second opinion from a colleague at your hospital to determine whether they agree with her that Ms. Cox qualifies for the medical exception. Nothing in the TRO compels you to waive your hospital's long-standing policies for determining whether a patient, including Ms. Cox, qualifies for the medical exception to Texas' abortion laws.

Fourth, the TRO and the allegations in this lawsuit, on their face, fail to establish that Ms. Cox qualifies for the medical exception to Texas' abortion laws. To fall within the medical exception, the physician must determine "in the exercise of *reasonable medical judgment*, the pregnant female on whom the abortion is performed, induced, or attempted has a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that places the female at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced." Tex. Health & Safety Code § 170A.002(b) (emphasis added). The TRO states that Dr. Karsan "*believes in good faith*" that "abortion is medically recommended" for Ms. Cox. But that is not the legal standard—reasonable medical judgment and a life-threatening physical condition are. The TRO is further deficient because it fails to identify what "life-threatening" medical condition that Ms. Cox purportedly *has* that is aggravated by, caused by, or arising from a pregnancy, nor does it state with specificity how this unidentified condition places Ms. Cox at risk of death or poses a serious risk of substantial impairment of a major bodily function unless the abortion is performed or induced. The *temporary* ruling fails to show that Dr. Karsan meets all of the elements necessary to fall within an exception to Texas' abortion laws. Judge Guerra Gamble is not medically qualified to make this determination and it should not be relied upon. A TRO is no substitute for medical judgment.

Thank you for your prompt attention to this matter.

Sincerely,

Ken Paxton

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Molly Duane		mduane@reprorights.org	12/7/2023 4:11:03 PM	SENT
Nicolas Kabat		nkabat@reprorights.org	12/7/2023 4:11:03 PM	SENT
David Barrett		dbarrett@BSFLLP.com	12/7/2023 4:11:03 PM	SENT
Lindsey Ruff		LRuff@BSFLLP.com	12/7/2023 4:11:03 PM	SENT
Stefanie Burns		sburns@hrkslaw.com	12/7/2023 4:11:03 PM	SENT

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rchaudhuri@reprorights.org
Envelope ID: 82361296
Filing Code Description: Letter/Notice
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Case Contacts

Stefanie Burns		sburns@hrkslaw.com	12/7/2023 4:11:03 PM	SENT
Valeria Alcocer		valeria.alcocer@oag.texas.gov	12/7/2023 4:11:03 PM	SENT
Astrid MariselaAckerman		aackerman@reprorights.org	12/7/2023 4:11:03 PM	SENT
Allison Kempf		akempf@milbank.com	12/7/2023 4:11:03 PM	SENT
Carmit Patrone		cpatrone@milbank.com	12/7/2023 4:11:03 PM	SENT
James Cavoli		jcavoli@milbank.com	12/7/2023 4:11:03 PM	SENT
Mark Stahl		mstahl@gdhm.com	12/7/2023 4:11:03 PM	SENT
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Carrie Flaxman		cflaxman@democracyforward.org	12/7/2023 4:11:03 PM	SENT
Maher Mahmood		mmahood@democracyforward.org	12/7/2023 4:11:03 PM	SENT
Molly Meegan		mmeegan@acog.org	12/7/2023 4:11:03 PM	SENT

Associated Case Party: National Network of Abortion Funds

Name	BarNumber	Email	TimestampSubmitted	Status
Alex Wolf		awolf@skv.com	12/7/2023 4:11:03 PM	SENT
Kristin Adler		kadler@skv.com	12/7/2023 4:11:03 PM	SENT
Drew Padley		dpadley@skv.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: State of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Beth Klusmann		beth.klusmann@oag.texas.gov	12/7/2023 4:11:03 PM	SENT
Lanora Pettit		lanora.pettit@oag.texas.gov	12/7/2023 4:11:03 PM	SENT
Sara Baumgardner		sara.baumgardner@oag.texas.gov	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Women's and Children's Advocacy Project

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Associated Case Party: Women's and Children's Advocacy Project

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Smith		courtfiling@letsgotocourt.com	12/7/2023 4:11:03 PM	SENT
Wendy JMurphy		wmurphy@nesl.edu	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Equal Means Equal

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Smith		courtfiling@letsgotocourt.com	12/7/2023 4:11:03 PM	SENT
Wendy JMurphy		wmurphy@nesl.edu	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Elizabeth Cady Stanton Trust

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Smith		courtfiling@letsgotocourt.com	12/7/2023 4:11:03 PM	SENT
Wendy JMurphy		wmurphy@nesl.edu	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Zilker Properties

Name	BarNumber	Email	TimestampSubmitted	Status
Sarah Cummings		scummings@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: National Council of Jewish Women

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Associated Case Party: National Council of Jewish Women

Name	BarNumber	Email	TimestampSubmitted	Status
James (Jim) R.Dunnam		jimdunnam@dunnamlaw.com	12/7/2023 4:11:03 PM	SENT
Debbie L.Berman		dberman@jenner.com	12/7/2023 4:11:03 PM	SENT
Michelle SKallen		mkallen@jenner.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Bumble Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Amalgamated Bank

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Argent

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: ATX TV Festival

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Associated Case Party: ATX TV Festival

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Biscuit Home

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Blue Sky Partners

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Brentwood Social House

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Central Ceremonies

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Associated Case Party: Central Ceremonies

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: CHA Law Group, PC

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Civitech

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Cybele Diamondopoulos

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Doctors for Fertility

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Associated Case Party: Doctors for Fertility

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Eco-Stylist

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT
James C. Martin		jcmartin@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Elevate Bartending

Name	BarNumber	Email	TimestampSubmitted	Status
Emily Harbison		eharbison@reedsmith.com	12/7/2023 4:11:03 PM	SENT
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Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Central Presbyterian Church

Name	BarNumber	Email	TimestampSubmitted	Status
Sarah B.Johansen		sjohansen@reedsmith.com	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Good Work Austin

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Associated Case Party: Good Work Austin

Name	BarNumber	Email	TimestampSubmitted	Status
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Associated Case Party: Texas Civil Rights Project

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Rochelle MGarza		rochelle@texascivilrightsproject.org	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Disability Rights Education & Defense

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Claudia Center		ccenter@dredf.org	12/7/2023 4:11:03 PM	SENT

Associated Case Party: Women Enabled International

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Suzannah Phillips		s.phillips@womenenabled.org	12/7/2023 4:11:03 PM	SENT