

Dept. of Justice: AG Kaul joins effort in U.S. Supreme Court to stop unconstitutional Texas abortion ban

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Multistate Amicus Brief Urges the Court to Allow Challenges to Abortion Ban to Go Forward

MADISON, Wis. – Following a decision by the U.S. Supreme Court that it will hear two challenges to Texas' unconstitutional six-week abortion ban, Senate Bill 8 (S.B. 8), Attorney General Josh Kaul joined a coalition of 24 attorneys general in asking the Court to block the ban from going into effect and allow challenges to the ban to proceed.

The amicus [brief](#), filed with the Supreme Court in *United States of America v. State of Texas et al.* and *Whole Woman's Health v. Jackson*, calls on the Court to rule that challenges brought by the United States and Texas abortion providers to S.B. 8 can go forward. Today's brief argues that Texas should not be allowed to evade judicial review of its unconstitutional ban by purporting to grant enforcement authority solely to private bounty-hunters. The brief further argues that S.B. 8 is blatantly unconstitutional under binding Supreme Court precedent and is causing significant harm to patients in and outside of Texas.

"Leaving S.B. 8 in effect would send a deeply troubling signal about the future of reproductive freedom and the importance of abiding by Supreme Court precedent," said Attorney General Josh Kaul. "This unconstitutional law puts the health of women in Texas at risk and must be enjoined."

According to the brief, S.B. 8 represents a "new and dangerous frontier" when it comes to state legislatures restricting or eliminating abortion access. As the attorneys general have argued, S.B. 8 not only imposes a ban on almost all abortions in Texas in open disregard of the Supreme Court's longstanding precedent, but also attempts to thwart judicial review and insulate Texas from accountability by purporting to create only a private enforcement scheme. S.B. 8 requires Texas courts to award at least \$10,000 as well as injunctive relief to claimants who bring cases against anyone who provides an abortion in violation of S.B. 8 and those who "aid or abet" such constitutionally protected care. As such, the law threatens potential liability for anyone who so much as gives a patient a ride to an abortion provider.

Today, as a result of the ban, abortion is completely unavailable to many people in Texas who do not even know they are pregnant yet. These patients now must travel out of state, which makes abortion for many people too difficult, too time-intensive, and too costly. Consequently, many will now be forced to delay care or carry unwanted pregnancies to term, resulting in negative health and socioeconomic consequences for both them and their children. And the harms caused by S.B. 8 are rippling well beyond Texas into other states, as people are forced to seek care elsewhere, in many places overwhelming capacity and threatening residents' access to care. In New Mexico, in particular, all abortion clinics were reportedly booked for weeks just one day after S.B. 8 went into effect. And patients traveling from Texas have accounted for close to a third of the total abortion patients in New Mexico since September 1.

Similar to the [brief](#) filed by attorneys general earlier this month in the Supreme Court, today's filing cites back to past examples from our Nation's history, particularly related to some states' resistance to desegregation, in arguing that the Court should not permit states to violate constitutional rights through state laws ostensibly enforced only by private parties. The Court "should not permit Texas to 'nullif[y] indirectly' the constitutional rights recognized in *Roe* and *Casey* through the 'evasive scheme' that it has created in S.B. 8," the brief argues.

In September, the coalition of attorneys general filed an amicus [brief](#) in support of the United States' challenge to Texas' ban on abortions, specifically the United States' motion for a preliminary injunction of the law. On Oct. 6, the U.S. District Court for the Western District of Texas granted the injunction and blocked S.B. 8 while the court adjudicated the United States' case. At Texas' request, however, the U.S. Court of Appeals for the Fifth Circuit stayed that injunction and allowed S.B. 8 to go back into effect during Texas' appeal of the preliminary injunction.

The Fifth Circuit also stayed all proceedings in the case brought by Texas abortion providers, while defendants sued in that case pursued an appeal from the District Court's denial of their motion to dismiss the case. Both cases are now before the Supreme Court on writs of certiorari to the Fifth Circuit before judgment and will be argued before the Court on November 1. Joining today's brief are the attorneys general of California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and Washington.