

WisDOJ: AG Kaul joins coalition in support of DOJ's lawsuit against Texas abortion ban

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Amicus Brief Filed in Federal District Court Rejects Texas Law Banning Abortions After Six Weeks

MADISON, Wis. – Attorney General Josh Kaul today joined a coalition of 24 attorneys general in filing an [amicus brief](#) in support of the U.S. Department of Justice's (DOJ) challenge to Texas' new unconstitutional six week ban on abortions. The brief specifically supports DOJ's motion for a temporary restraining order and preliminary injunction of the law, which went into effect earlier this month.

"This Texas law drastically restricts reproductive freedom and relies on a disturbing and likely unworkable bounty system to enforce it," said Attorney General Josh Kaul. "This unconstitutional law treats the rule of law like a game and, if left in effect, will not only violate the rights of women in Texas but also spur harmful copycat legislation that would further infringe upon reproductive freedom. This law must be struck down."

The brief, filed today in the United States District Court for the Western District of Texas, argues that by banning nearly all pre-viability abortions within Texas's borders, the law, Senate Bill 8 (S.B. 8), violates nearly 50 years of Supreme Court precedent affirming the constitutional right to terminate a pregnancy before viability. The brief further contends that the Texas Legislature sought to circumvent prior Supreme Court rulings and to prevent judicial review of the law by delegating enforcement authority to private individuals instead of the government and, as such, S.B. 8 is an "unprecedented attack on our constitutional order" and the rule of law.

The coalition contends that the clear purpose of S.B. 8's private enforcement scheme is to produce an "across-the-board ban on constitutionally protected activity," and that the private enforcement mechanism does not shield Texas's unconstitutional law from judicial review. The brief describes how Texas created a structure within its state court system that requires courts to provide monetary and injunctive relief to claimants who bring cases against providers and those who "aid and abet" such constitutionally protected care. The coalition argues that the federal district court should not allow Texas to render the constitutionally protected rights recognized in *Roe v. Wade* legally void through the law's transparent scheme.

The brief describes how the law is already significantly impacting abortion provider clinics in Texas and beyond. Clinics in nearby states are already reporting a rise in calls from Texas patients seeking abortions, and one day after the law went into effect, all abortion clinics in New Mexico were reportedly booked for weeks. The law also threatens the many people who help patients in Texas obtain access to an abortion by creating a more than \$10,000 potential liability for anyone who so much as gives a patient a ride to an abortion provider or otherwise "aids or abets" an abortion. The amici states, the brief explains, are committed to shielding their residents and clinicians from these harms when they help a patient in Texas obtain constitutionally protected care.

Finally, the brief argues that it is essential for the federal district court to enjoin the law immediately to stop the irreparable harm that S.B. 8 is inflicting on people in Texas and across the country including the amici states. Forcing a patient to carry an unwanted pregnancy to term, the brief argues, will lead to negative health and socioeconomic consequences, including placing people who are forced to carry a pregnancy to term at greater risk of life-threatening illnesses and harming their ability to maintain full-time employment.

Joining Attorney General Kaul in 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.

Press Release:

<https://www.doj.state.wi.us/news-releases/ag-kaul-joins-coalition-support-doj%E2%80%99s-lawsuit-against-texas-abortion-ban#overlay-context=>

Brief:

<https://www.doj.state.wi.us/sites/default/files/news-media/Amicus%20Brief%20of%20Massachusetts%20et%20al.%20in%20U.S.%20v.%20Texas%2C%20W.D.%20Tex.%209-15-2021.pdf>