Exhibit B

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

WHOLE WOMAN'S HEALTH, et al., *Plaintiffs*, v. AUSTIN REEVE JACKSON, et al., *Defendants*.	Civil Action No. _____

DECLARATION OF BHAVIK KUMAR, M.D., M.P.H., IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Bhavik Kumar, declare as follows:

1. I am a board-certified family medicine physician, licensed to practice in the State of Texas. I obtained my medical degree from Texas Tech University in 2010, completed my residency in family and social medicine in 2013, obtained my master's degree in public health in 2015, and completed a fellowship in family planning in 2015.

2. I am the Medical Director for Primary and Trans Care at Planned Parenthood Gulf Coast ("PPGC"). I am also a staff physician at Planned Parenthood Center for Choice ("PPCFC"), where I provide abortions.

3. Before coming to PPGC and PPCFC, I was the Texas medical director of Whole Woman's Health, another provider of abortion in Texas.

4. I currently provide abortion services through 21 weeks and 6 days of pregnancy as measured from the first day of the patient's last menstural period ("LMP") at PPCFC's Houston ambulatory surgical center. In addition, I train other physicians in the provision of abortion services.

5. I submit this declaration in support of Plaintiffs' Motion for Summary Judgment. I understand that Texas Senate Bill 8 ("S.B. 8" or the "Act") would ban the provision of abortion in Texas after embryonic cardiac activity can be detected, which occurs at approximately 6 weeks LMP.[1]

6. The information in this declaration is based on my education, training, practical experience, information, and personal knowledge I have obtained as a physician and an abortion provider; my attendance at professional conferences; review of relevant medical literature; and conversations with other medical professionals. If called and sworn as a witness, I could and would testify competently thereto.

Abortion in Texas

7. Legal abortion is one of the safest procedures in contemporary medical practice.[2] Abortion is also very common: approximately one in four women in this country will have an abortion by age 45.[3]

8. Medication abortion involves the use of mifepristone and misoprostol, two medications taken to safely and effectively end an early pregnancy in a process similar to a miscarriage. Procedural abortion involves the use of suction and/or the insertion of instruments through the vagina and cervix to empty the contents of a patient's uterus. Although sometimes known as "surgical abortion," abortion by procedure does not involve surgery in the traditional

[1] S.B. 8's only exception is for a "medical emergency," which is defined in Texas law as "a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed." Tex. Health & Safety Code § 171.002(3).

[2] Nat'l Acads. of Scis., Eng'g, & Med. ("Nat'l Acads."), *The Safety & Quality of Abortion Care in the United States* 77–78, 162–63 & tbl. 5-1 (2018).

[3] Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014*, 107 Am. J. Pub. Health 1904, 1907 (2017).

sense: it does not require an incision into the patient's skin or a sterile field. PPCFC offers medication abortions and procedural abortions.

9. As I noted above, cardiac activity generally can be detected starting at approximately 6 weeks LMP with ultrasound, but it may be detected as early as 5 weeks. Because of the ultrasound technology, it is generally not possible to locate a pregnancy in the uterus using ultrasound until sometime between 4 and 5 weeks LMP; before that time, the gestational sac is simply too small for the ultrasound to detect.

10. In my roles, I know how important abortion access is to our patients. Patients' lives are complicated, and their decisions to have an abortion often involve multiple considerations. The majority of PPCFC's patients (and abortion patients nationwide[4]) already have one or more children. Our patients with children understand the obligations of parenting and decide to have an abortion based on what is best for them and their existing families, which may already struggle to make ends meet. Other patients decide that they are not ready to become parents because they are too young or want to finish school before starting a family. Some patients have health complications during pregnancy that lead them to conclude that abortion is the right choice for them. In some cases, patients are struggling with substance abuse and decide not to become parents or have additional children during that time in their lives. Others have an abusive partner or a partner with whom they do not wish to have children for other reasons. In all of these cases, our patients seeking abortion have decided that abortion is the best option for themselves and their families.

[4] *See id.* at 1906 (in 2014, 59.3% of all abortions in the United States were performed for patients who already had at least one child).

11. Regardless of the reasons that bring a patient to us, PPCFC is committed to providing high-quality, compassionate abortion services that honor each patient's dignity and autonomy. PPCFC trusts its patients to make the best decisions for themselves and their families, taking into account the full complexity of their lives, something that only they can fully grasp.

12. Most patients obtain an abortion as soon as they are able, and the vast majority of abortions in the United States and in Texas take place in the first trimester of pregnancy. According to data from the Texas Health and Human Services Commission from 2020, approximately 84% of all abortions performed in Texas for Texas residents occurred at 10 weeks LMP (8 weeks post-fertilization) or less, and approximately 95% occurred before 15 weeks LMP (13 weeks post-fertilization).[5] However, most patients are at least 6 weeks LMP into their pregnancy by the time they make an abortion appointment.

13. Even after patients learn that they are pregnant and decide they want an abortion, arranging an appointment for an abortion may take some time. For patients living in poverty or without insurance, travel-related and financial barriers also help explain why the vast majority of our patients do not—and realistically could not—obtain abortions before 6 weeks LMP, even assuming they learn they are pregnant before that time. Texas has the twelfth highest rate of poverty among women: nearly 15% of women in Texas live in poverty, exceeding the national average of 12%,[6] and that rate rises to more than 19% among Black women and 20% among Latina

[5] Tex. Health & Hum. Servs. Comm'n, *2020 ITOP Statistics* (March 15, 2021), *available at* https://www.hhs.texas.gov/about-hhs/records-statistics/data-statistics/itop-statistics.

[6] Nat'l Women's L. Ctr., *Poverty Rates by State, 2018* (2019), *available at* https://nwlc.org/wp-content/uploads/2019/10/Poverty-Rates-State-by-State-2018.pdf.

women in Texas.[7] Approximately 37% of female-headed households in Texas live in poverty, and Texas has the twelfth highest rate of children living in poverty, at more than 21%.[8]

14. Some patients are delayed because they may need time to consider their options and/or consult their partner, family, friends, clergy, and others in deciding to have an abortion.

15. The lack of comprehensive insurance coverage also poses a barrier to patients' ability to confirm they are pregnant and obtain abortion coverage when they need it. Notably, Texas is one of just 12 states that have not expanded Medicaid under the Affordable Care Act,[9] and the rate of uninsured Texas women of reproductive age (24.7%) is far worse than the national average (11.9%).[10] Unsurprisingly, more than 23% of women in Texas reported not receiving health care in the prior 12 months due to cost.[11] Even those patients who *do* have health insurance rarely have access to abortion coverage. With very narrow exceptions, Texas bars coverage of abortion in its Medicaid program, 1 Tex. Admin. Code § 354.1167, and it prohibits coverage of abortion in private insurance plans offered on the state's Affordable Care Act exchange, Tex. Ins. Code § 1696.002,[12] an important source of health insurance for individuals who do not have access to employer-sponsored health coverage, and in other private insurance plans, *id.* §§ 1218.001 et seq. In any event, I understand that S.B. 8 prohibits "reimbursing the costs of an abortion through insurance." S.B. 8, § 3 (adding Tex. Health & Safety Code § 171.208(a)(2)).

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[7] *Id.*

[8] *Id.*

[9] Kaiser Fam. Found., *Status of State Medicaid Expansion Decisions: Interactive Map*, https://www.kff.org/medicaid/issue-brief/status-of-state-medicaid-expansion-decisions-interactive-map/ (updated July 9, 2021).

[10] Nat'l Women's L. Ctr., *Texas*, https://nwlc.org/state/texas/ (last accessed July 7, 2021).

[11] *Id.*

[12] Guttmacher Inst., *Regulating Insurance Coverage of Abortion*, https://www.guttmacher.org/state-policy/explore/regulating-insurance-coverage-abortion (updated July 1, 2021).

16. Texas's lack of investment in health care is reflected in access indicators. In 2020 Texas ranked 50th in the United States for women's access to clinical care and 49th for the quality of women's clinical care, 46th for cervical cancer screening, and 40th for well-woman visits.[13]

17. Patients living in poverty and without insurance must often make difficult tradeoffs of other basic needs to pay for their abortions, even with assistance from PPCFC to those patients in need. Many patients must seek financial assistance from extended family and friends to pay for care, as well, which is a process that takes time. Many patients must navigate other logistics, such as inflexible or unpredictable job hours and child care needs that may delay the time when they are able to obtain an abortion.

18. In addition to the medical and practical impediments I have just described to patients' obtaining an abortion before 6 weeks of pregnancy, Texas has also enacted numerous medically unnecessary statutory and regulatory requirements that must be met before a patient may obtain an abortion. Texas generally requires patients to make two visits to a health center to obtain an ultrasound and certain state-mandated information designed to discourage them from having an abortion at least 24 hours in advance of an abortion. Tex. Health & Safety Code § 171.012. Practically speaking, the effect of this 24-hour delay law lasts far longer than one day, which may push even patients who have discovered they are pregnant, decided to have an abortion, and scheduled an appointment prior to 6 weeks LMP past that point by the time they actually arrive at the health center for their abortion appointment.

[13] Am.'s Health Rankings, *Texas: 2020 Health of Women and Children*, at 4 (2020), https://www.americashealthrankings.org/api/v1/render/pdf/%2Fcharts%2Fstate-page-extended%2Freport%2F2020-health-of-women-and-children%2Fstate%2FTX/as/AHR-2020-health-of-women-and-children-TX-full.pdf?params=mode%3Dfull.

19. The near impossibility of obtaining an abortion within the time permitted by the Act is all the more clear for our minor patients. Minor patients without a history of pregnancy may be less likely to recognize early symptoms of pregnancy than older patients who have been pregnant before. In addition, some of these patients cannot obtain written parental authorization for an abortion as required by state law and must obtain a court order permitting them to receive care. Tex. Fam. Code §§ 33.001–33.014. A court may take up to five business days to rule on a patient's petition to bypass the state's parental-consent law for abortions, *id.* § 33.003, not including any time that may be necessary for a minor patient to appeal an unfavorable decision. That process cannot realistically happen before a patient's pregnancy reaches 6 weeks LMP.

20. Texas law also prohibits the use of telemedicine for the provision of medication abortion, Tex. Health & Safety Code § 171.063, closing off a safe and effective option that would enable some patients to obtain an abortion earlier in pregnancy.

21. Patients whose pregnancies are the result of sexual assault or who are experiencing interpersonal violence may need additional time to access abortion services due to ongoing physical or emotional trauma. For these patients, too, obtaining an abortion before 6 weeks LMP is exceedingly difficult, if not impossible.

22. For all these reasons, the vast majority of PPCFC's abortion patients in Texas do not and could not obtain an abortion until after 6 weeks LMP.

The Impact of S.B. 8's Abortion Ban

23. I understand that S.B. 8 would require me to attempt to detect cardiac activity in a pregnancy before performing an abortion, and it would ban the abortion if cardiac activity is detected. S.B. 8 bans previability abortion because no embryo is viable at 6 weeks LMP, or at any other point when cardiac activity can first be detected by ultrasound.

24. By banning previability abortion, S.B. 8 seriously harms my patients by depriving them of access to safe and legal abortions. If Texas abortion providers are forced to stop providing abortions after approximately 6 weeks LMP, some patients will not be able to access abortion at all because travel to another state is simply not possible for them. Even those patients who are able to travel may have to go hundreds of miles to find an abortion provider. The need to travel such long distances can significantly delay patients in accessing care, as they need to raise additional funds for travel and arrange for child care and time off work. Delay also increases the costs associated with the procedure itself, as it becomes more expensive later in pregnancy. Patients can find themselves in a vicious cycle of delaying while gathering the necessary funds, but then finding the procedure has gotten more expensive and needing to further delay. Some patients may be so delayed that they are pushed too far into pregnancy and are no longer able to have an abortion.

25. Delays in accessing abortion, or being unable to access abortion at all, also pose risks to patients' health. While abortion is a very safe procedure throughout pregnancy, the risks of abortion increase with gestational age.[14] If an individual is forced to carry a pregnancy to term against their will, it can pose a risk to their physical health, as childbirth poses far more risks than abortion,[15] as well as their mental and emotional health and the stability and wellbeing of their family, including existing children. Some patients who are unable to access legal abortion may turn to methods that may potentially be unsafe.

26. These burdens will particularly harm patients who are poor or have low incomes, rural patients living in counties without adequate prenatal care and obstetrical providers, and Black patients. Texas has higher rates of people living on low incomes than the United States as a

[14] Nat'l Acads., *supra* note 2, at 77–78, 162–63 & tbl. 5-1.
[15] *Id.* at 75 tbl. 2-4.

whole.[16] And nationwide, three out of four abortion patients are poor or live on low incomes (up to 200% of the federal poverty level).[17] A majority of Texans who had an abortion in 2019 identified as Black or Latina/Hispanic[18]—communities that already face inequities in access to medical care. Black and Latinx populations with low incomes seek abortions at a higher rate than wealthier and white populations (both in Texas and nationally) due to inadequate access to contraceptive care, income inequity, and other facets of structural racism. These patients are the hardest hit by the expenses and logistical difficulties of travel, including being forced to miss work and/or child-care obligations. These patients already struggle to reach us for the care they need, and they face even more severe barriers to accessing care elsewhere.

27. Although patients who obtain abortions demonstrate a strong level of certainty with respect to the decision, some patients take longer to make a decision than others. Even if there were some way in theory for patients to have an abortion in compliance with the Act and in light of all the other legal and logistical barriers, the Act would force patients to race to a health center for an abortion, even if they did not yet feel confident in their decision.

28. The Act will also add to the anguish of patients and their families who receive fetal diagnoses later in pregnancy. There is no prenatal testing for fetal anomalies available at 6 weeks

[16] In 2019, 32.6% of Texans were living under 200% of the federal poverty level, compared to 28.9% nationwide. That same year, 13.6% of Texans were living in poverty (compared to 10.5% nationwide). Kaiser Fam. Found., *Distribution of the Total Population by Federal Poverty Level (Above and Below 200% FPL)*, https://www.kff.org/other/state-indicator/population-up-to-200-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D (last accessed July 12, 2021); U.S. Census Bur., *QuickFacts: Texas* (2019), https://www.census.gov/quickfacts/fact/table/TX/RHI125219; U.S. Census Bur., *QuickFacts: United States*, https://www.census.gov/quickfacts/fact/table/US/PST045219 (2019).

[17] Jones & Jerman, *supra* note 3, at 1906.

[18] Tex. Health & Hum. Servs., *2019 Induced Terminations of Pregnancy for Texas Residents* 2 (Dec. 23, 2020), https://www.hhs.texas.gov/sites/default/files/documents/about-hhs/records-statistics/research-statistics/itop/2019/2019-itop-narrative-texas-residents.pdf.

LMP or earlier. Indeed, some anomalies cannot be identified until closer to 18 to 20 weeks LMP. Often these pregnancies are very much wanted throughout the first trimester of pregnancy and into the second. S.B. 8 would deny patients in these circumstances the ability to access an abortion in Texas.

29. Given the narrow definition of "medical emergency," *see* Tex. Health & Safety Code § 171.002(3), patients with medical conditions that do not fall within that definition under S.B. 8 will be forced to travel out of state or wait and see if their health deteriorates to the point that the pregnancy places them "in danger of death or a serious risk of substantial impairment of a major bodily function" in order to obtain an abortion in Texas. *Id.*

30. S.B. 8 will also have a devastating impact on survivors of sexual assault, rape, or incest. While S.B. 8 prevents the perpetrators of these crimes from suing, it does not authorize an abortion, forcing the patients to carry the pregnancy to term or arrange the complex logistics of traveling out of state for their care.

31. These fears are not theoretical. After the Texas governor temporarily banned abortion during the COVID-19 pandemic, *see* Executive Order No. GA-09, PPCFC and other providers sued. After we obtained a temporary restraining order from this Court, we began offering services again to patients, but that victory was short lived. The Fifth Circuit stayed the order, which meant that patients we had already counseled, and who had already obtained an ultrasound and waited for 24 hours, had to be suddenly turned away. PPCFC's ambulatory surgical center was forced to cancel appointments for abortion services for 170 people. By the time the executive order expired, some of those patients were beyond the gestational age limit to have an abortion in Texas. Others could not use referrals to out-of-state providers because they knew they could not make such a lengthy trip.

32. Turning patients away was traumatic for me and other PPCFC staff. Serving patients, particularly those from marginalized communities who have historically been denied access to quality health care, is my passion. I and other staff choose to work at PPCFC because we support Planned Parenthood's mission to ensure all individuals have the right and ability to manage their health by providing them with comprehensive reproductive health services and advocating for them.

33. For these reasons, I believe S.B. 8 will deprive PPCFC's patients of access to critical health care and will threaten their health, safety, and lives.

34. I also worry about the impact that S.B. 8 will have on me as a physician and on my colleagues, including PPCFC's nurses and other staff, without whom I could not provide abortion services to our patients. As in other areas of medicine, these professionals provide several essential aspects of the health care services we provide. We already face harassment because of our jobs. Texas has now set vigilantes loose to come after us in court, all for providing critical health care to patients who seek and expressly consent to it. I also understand that in addition to this state-sponsored harassment, S.B. 8 would still subject me to the possibility of an investigation and disciplinary proceedings by the Texas Medical Board over S.B. 8 lawsuits against me. It is simply inconceivable that Texas would treat any other medical professionals this way, and S.B. 8's impact is an insult to me and my committed colleagues as we work tirelessly to serve Texans in need of health care.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 12th, 2021, in Houston, Texas.

Bhavik Kumar, M.D., M.P.H.