

# Exhibit C

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

WHOLE WOMAN’S HEALTH, et al.,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION
v.	)	
	)	CASE NO. _____
AUSTIN REEVE JACKSON, et al.,	)	
	)	
Defendants.	)	

**DECLARATION OF ANDREA FERRIGNO IN SUPPORT OF PLAINTIFFS’ MOTION  
FOR SUMMARY JUDGMENT**

ANDREA FERRIGNO hereby declares under penalty of perjury that the following statements are true and correct:

1. I am the Corporate Vice-President with Whole Woman’s Health (“WWH”), a plaintiff in this case.
  
2. WWH currently operates three licensed abortion facilities in Texas, in Fort Worth (the “Fort Worth Clinic”), McAllen (the “McAllen Clinic”) and McKinney (the “North Texas Clinic”). WWH also operates abortion clinics in Baltimore, Maryland; Bloomington, Minnesota; and Alexandria, Virginia.
  
3. My responsibilities as Corporate Vice-President include ensuring that each clinic complies with all statutes and regulations concerning the provision of the health services they offer, including abortion care, as well as recruiting physicians. I also lead Growth and Acquisitions for WWH, which involves incorporating new models of care into our clinics and expanding to new areas of care.

4. I have worked at WWH in a variety of roles since 2004, when I first joined as a Patient Advocate. As a result, I am well-versed in abortion clinic operations and patient care.

5. I provide the following testimony based on personal knowledge and review of WWH's business records.

#### **Provision of Abortion Care at the WWH Clinics in Texas**

6. Both the Fort Worth and McAllen clinics offer procedural abortions up to 17.6 weeks gestation, as measured from the first day of a patient's last menstrual period ("LMP"). All three clinics also offer medication abortions up to 10 weeks LMP.

#### **Impact of Senate Bill 8 on WWH Physicians and Staff**

7. My understanding of Senate Bill 8 (S.B. 8) is that it prohibits a physician from providing an abortion if they have detected fetal or embryonic cardiac activity or if they have failed to test for cardiac activity. Cardiac activity is typically detectable in an embryo around 6 weeks LMP.

8. It is my understanding that after September 1, 2021, if any person believes that a physician at the clinics has violated S.B. 8, they can bring a civil action against them.

9. Furthermore, because the penalties also apply to anyone who aids or abets the performance of an abortion, it seems possible that the clinics or members of the clinics' staffs could also be sued.

10. We have a number of protesters who regularly gather outside the clinics. On slower days, we have 5-25 protesters, but we have had over 100 protesters when they have marches or rallies in front of the clinics. These protesters have also filed false complaints against our physicians, attempting to provoke an investigation by the Texas Medical Board. We typically have one complaint filed against a physician at each clinic every year. Though these complaints have

always been found to be without merit and dismissed, they are still disruptive to our clinics' operations and a means of threatening our physicians.

11. Because lawsuits under S.B. 8 can be filed by any person, including the protesters and other individuals with no relationship to the patients, it is very likely that lawsuits will be filed against our clinics, physicians, and/or staff members. They will have to hire lawyers, travel to the counties where the lawsuits are filed, and spend months, or even years, defending themselves against the lawsuits.

12. If our clinics, physicians and/or staff members are found to have violated S.B. 8, they will be banned from providing abortions or assisting in the performance of an abortion in violation of S.B. 8 and will have to pay a minimum of \$10,000 per prohibited procedure, as well as costs and attorney's fees. I also understand that they may be subject to disciplinary action by the Texas Medical and Nursing Boards.

13. These lawsuits would be enormously burdensome for the individual physicians and staff members, financially, logistically, and emotionally, but they would also be disastrous for the clinics. We cannot continue to operate if our physicians and staff are being sued around the state and are barred from doing their jobs.

14. Further, there is no practical way for us to comply with S.B. 8 and continue providing abortion care for most of our patients. Currently, only around 10% of our patients obtain an abortion before six weeks LMP. This is because medically, there is very little time between when a pregnancy can be detected and when cardiac activity is detectable by ultrasound. In that small window, few patients are able to make the necessary two trips to the clinic, first for a mandatory ultrasound and counseling, and second for their abortion (which must be at least 24 hours later for patients who live fewer than 100 miles from the closest abortion provider). In addition, many

of our patients do not even know they are pregnant before six weeks. Thus, S.B. 8 is effectively a prohibition on the vast majority of abortions we currently provide.

15. Ultimately, this law puts our clinics in an impossible situation. We can either turn away a majority of our patients seeking care, which will eventually cause us to go out of business, or we can continue providing abortions in violation of S.B. 8, knowing that our physicians and staff will be sued and potentially barred from providing care after 6 weeks LMP anyway, again making it difficult for us to keep our doors open. Either way, S.B. 8 is designed to put us out of business entirely.

16. WWH has been subjected to clinic shut-down laws in Texas before. In 2013, Texas passed House Bill 2, a law that required all abortion facilities to be licensed ambulatory surgical facilities and all abortion providers to have local hospital admitting privileges. Because WWH lacked sufficient physicians with admitting privileges in Beaumont and Austin, we had to shut those clinics down. Additionally, our clinic in McAllen was shut down for eleven months and was only reopened because of an injunction awarded by the United States District Court for the Western District of Texas. Ironically, one of our physicians in Austin was able to obtain admitting privileges in Fort Worth, and so he commuted by plane in order to keep our clinic in Fort Worth open. The cost of flights put further economic pressure on WWH.

17. While HB 2 was ultimately struck down in 2016 as unconstitutional by the Supreme Court, WWH was severely strained by the litigation. And things have only gotten worse since 2013, as WWH has been forced to litigate three additional severe abortion restrictions since 2016.

18. Because the regulatory environment in Texas is so hostile, the clinics shuttered by HB 2 have largely not reopened. In fact, the WWH clinic in Austin (now operated by Whole Woman's

Health Alliance) is the only WWH clinic closed by HB 2 to have reopened since the Supreme Court struck it down.

### **Impact on WWH Patients**

19. A majority of patients at our Fort Worth Clinic are people of color and Spanish speakers. They hail from all over Texas.

20. A majority of patients at our McAllen Clinic are Spanish speakers and many face immigration-related restrictions on traveling outside of the Rio Grande Valley.<sup>1</sup>

21. The patients at the clinics seek abortion care for a variety of reasons. Many have low incomes, are uninsured, and are the parents of dependent children. Having access to abortion care in their community is incredibly important for our patients.

22. Our patients regularly rely on friends, family members, and social support networks to aid them in obtaining an abortion. Under S.B. 8, any friend, family member, or other person who helps the patient could open themselves up to the threat of lawsuits. Some patients will have to choose between being forced to remain pregnant or subjecting their loved ones to the risk of a lawsuit with serious financial consequences.

23. If the clinics are not able to continue providing abortions after six weeks LMP, it will be devastating for the patients we serve. It will be impossible for most of these patients to obtain an abortion before six weeks LMP.

24. Our patients already have to overcome many obstacles and navigate complicated logistics simply to get to us. Traveling to our clinics twice to have their abortion, as required by Texas's 24-hour delay law, is expensive and difficult for these patients. They have to arrange for

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<sup>1</sup> The North Texas Clinic opened so recently that we have not yet identified patient trends.

transportation back and forth from our clinics twice, secure childcare if they already have another child, and take time off work. If they lack paid sick leave, they also lose wages. For patients who have to travel longer distances to obtain care, some need to pay for lodging for a multiple-day stay, which then requires additional, costly logistical arrangements, including being away from home and work for longer and needing more childcare. We offer funding and transportation assistance to these patients, but the need is still significant. All of these costs and logistical challenges often force patients to delay obtaining care by weeks after they have already decided to have an abortion. It will be nearly impossible for them to overcome these challenges in the limited time between when they discover they are pregnant and six weeks LMP. And again, many patients do not even discover they are pregnant until after six weeks LMP.

25. The challenges are heightened for younger patients. Texas requires patients under the age of eighteen to obtain written parental authorization for an abortion or get a court order. We see minor patients at our clinics and this restriction often delays them in obtaining care.

26. We see patients at our clinics who are victims of rape or incest. These patients are sometimes delayed getting care due to ongoing physical or emotional trauma, making it difficult for them to obtain an abortion before six weeks LMP.

27. If they cannot obtain an abortion in Texas, some of our patients may be able to access care out of state. They will be further delayed and forced to live with an unwanted pregnancy for an indefinite amount of time—which, in addition to the profound stress and anxiety of being in such limbo, also subjects patients to the physical and mental health symptoms and risks of continuing pregnancy, and for some, the increased possibility that an abusive partner or family member will learn of the pregnancy.

28. However, most of our patients will not be able to travel out of state. It is simply too logistically challenging and expensive. It is also very risky for those who are undocumented. I have heard from many patients that there is an immigration checkpoint in Falfurrias, Texas, about 75 miles north of McAllen, that makes it very difficult for those in the southern part of Texas to travel north for care if they are undocumented or on a restricted visa.

29. These patients will be forced to carry pregnancies to term against their will or seek ways to end their pregnancies without medical supervision, which may be unsafe. Forcing our patients to continue pregnancies against their will poses risk to their physical, mental, and emotional health, and even their lives, as well as to the stability and wellbeing of their families, including their existing children.

30. In these ways, S.B. 8 will cause WWH patients to suffer in significant and lasting ways.

### **S.B. 8's Fee Shifting Provision**

31. I further understand that S.B. 8 makes parties and their attorneys liable to pay the costs and attorney's fees in cases challenging Texas laws that restrict abortion.

32. WWH has frequently litigated cases challenging Texas's abortion restrictions, including *Whole Woman's Health v. Hellerstedt*, the case in which the Supreme Court struck down as unconstitutional the two provisions of HB 2 that threatened to close our clinics. The cases we have been involved with include: *In re Abbot*, 954 F.3d 772 (5th Cir. 2020), *cert. granted, judgment vacated as moot by Planned Parenthood Ctr. for Choice v. Abbott*, 141 S. Ct. 1261 (2021) (mem.) (COVID abortion ban); *Whole Woman's Health v. Paxton*, 978 F.3d 896 (5th Cir. 2020), *reh'rg en banc granted, vacated, and argued*, 978 F.3d 974 (5th Cir. 2020) (ban on common method of abortion); *Whole Woman's Health v. Smith*, 338 F. Supp. 3d 606 (W.D. Tex. 2018), *appeal docketed and argued*, No. 18-50730 (5th Cir.) (requirement for interment or



cremation of embryonic and fetal tissue); *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) (decision on admitting-privileges and ASC requirements); and *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 748 F.3d 583 (5th Cir. 2014), *reh'rg en banc denied*, 769 F.3d 330 (5th Cir. 2014) (decision on admitting-privileges, medication-abortion regulations)

33. Litigation is critical not only to keeping our doors open, but to fulfilling our mission to serve patients seeking abortion in Texas. I am concerned that the fee-shifting provision of S.B. 8 is intended to intimidate us and discourage us from using litigation to vindicate the constitutional rights of our patients and keep the doors of our clinics open.

Dated: 7/9/2021

A handwritten signature in black ink, appearing to read 'Andrea Ferrigno', written over a horizontal line.

Andrea Ferrigno  
Corporate Vice-President  
Whole Woman's Health