

Exhibit E

**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 KEN LAMBRECHT IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

I, Ken Lambrecht, declare as follows:

1. I am over the age of 18. I make this declaration based on personal knowledge of the matters stated herein and on information known or reasonably available to my organization. If called to do so, I am competent to testify as to the matters contained herein.

2. I am President and CEO of Planned Parenthood of Greater Texas (“PPGT”). PPGT is a Texas not-for-profit corporation headquartered in Dallas, and is the parent corporation to two separate entities that provide reproductive health care services throughout central, east, north, and west Texas. One of those entities, Planned Parenthood of Greater Texas Family Planning and Preventative Health Services, provides a range of family planning and other health services at 18 health centers throughout our service areas. Those services include physical exams; contraception and contraceptive counseling; clinical breast exams; HIV testing; pre-exposure prophylaxis (“PrEP”) and post-exposure prophylaxis (“PEP”) HIV prevention; screening and prevention for cervical cancer; testing for certain sexually transmitted infections; pregnancy testing and counseling; gender-affirming hormone therapy; and certain procedures such as biopsies and colposcopies. The other entity, Planned Parenthood of Greater Texas Surgical Health Services

(“PPGTSHS”) provides abortion, miscarriage management, and contraception at ambulatory surgical centers licensed by the Texas Health and Human Services Commission (“HHSC”) in Austin, Dallas, and Fort Worth and HHSC-licensed abortion facilities in Waco, El Paso, and Lubbock, Texas.¹

3. I am responsible for the management of these organizations and therefore am familiar with our operations and finances, including the services we provide and the communities we serve.

4. 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 of pregnancy, as measured from the first day of a patient’s last menstrual period (“LMP”).² Therefore, without relief from the Court, we will be legally prohibited from providing abortions after approximately 6 weeks of pregnancy at our health centers throughout Texas on September 1, 2021, the Act’s effective date.

5. By banning abortion at a point in pregnancy before many patients even realize they are pregnant, the Act will make it virtually impossible to access abortion in Texas. I anticipate that patients who can scrape together the resources will be forced to travel out of state for medical care, and many others who cannot do so will be forced to carry a pregnancy to term against their will or

¹ Abortion services are temporarily unavailable in El Paso due to the COVID-19 pandemic, and are currently unavailable in Lubbock due to a City ordinance banning abortion that is subject to an ongoing legal challenge. *Planned Parenthood of Greater Tex. Surgical Health Servs. v. City of Lubbock*, No. 5:21-CV-114-H, 2021 WL 2385110 (N.D. Tex. June 1, 2021) (dismissing case for lack of jurisdiction), *mot. for reconsideration filed* (June 29, 2021), ECF No. 52.

² 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).

seek ways to end their pregnancies without medical supervision, some of which may be unsafe. I am gravely concerned about the effect that the Act will have on Texans' emotional, physical, and financial wellbeing and the wellbeing of their families.

PPGTSHS and Its Services

6. As noted above, PPGTSHS provides abortion, miscarriage management, and contraception to patients. It provides both medication abortion and procedural abortion.

7. PPGTSHS's Austin health center is licensed as an ambulatory surgical center and offers medication abortion through 10 weeks LMP and procedural abortion through 21 weeks 6 days LMP; our Dallas health center is licensed as an ambulatory surgical center and offers medication abortion through 10 weeks LMP and procedural abortion through 18 weeks 6 days LMP; our Fort Worth health center is licensed as an ambulatory surgical center and offers medication abortion through 10 weeks LMP and procedural abortion through 13 weeks 6 days LMP; and our Waco health center is licensed as an abortion facility and offers medication abortion through 10 weeks LMP and procedural abortion through 15 weeks 6 days LMP. Each of these centers also operates a pharmacy licensed by the Texas Pharmacy Board that is utilized in the provision of abortion and related services, including through the dispensing of mifepristone, misoprostol, and other drugs used in abortion and post-abortion contraceptives. *See* 25 Tex. Admin. Code § 135.12(a) (requiring ASCs to be licensed as required by the Texas Pharmacy Board); *id.* § 139.60(g) (requiring abortion facilities that provide pharmacy services to be obtain a pharmacy license).

8. PPGTSHS's staff who are involved in the provision of abortions include physicians and physician assistants licensed by the Texas Medical Board, nurses licensed by the Texas Nursing Board, and pharmacists licensed by the Texas Pharmacy Board.

9. Although most patients obtain an abortion as soon as they are able, most are at least 6 weeks LMP into their pregnancy by the time they contact us seeking an abortion. In 2019, PPGTSHS performed 6,984 abortions, and approximately 93.4% were performed at 6 weeks LMP or later.

10. Patients likely reach us at or after 6 weeks LMP because they do not learn they are pregnant before that time, and even after a patient learns that she is pregnant and decides she wants to terminate the pregnancy, arranging an appointment for an abortion may take some time. Even assuming an appointment is available at a health center that is accessible to a patient, they need to come in for at least two visits, and have to take time off work, arrange child care, and deal with other logistical issues that can result in some delay. For patients living in poverty or without insurance, which is most, 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.

Effects of S.B. 8's Abortion Ban

11. My understanding of S.B. 8 is that it bans abortions in Texas by exposing PPGTSHS and its doctors, nurses, and other staff members to substantial liability for providing or assisting with abortion services and by mandating that courts enjoin future violations of the law. Specifically, I understand that S.B. 8 allows “any person” to bring a lawsuit against anyone who performs an abortion after approximately 6 weeks LMP, aids or abets the performance of a prohibited abortion, or intends to perform (or aid or abet) a prohibited abortion. S.B. 8, § 3 (adding Tex. Health & Safety Code § 171.208(a)). I further understand that, where an S.B. 8 plaintiff is successful, Texas state courts must impose substantial monetary penalties of at least \$10,000 per abortion, as well as injunctions forcing abortion providers to stop providing constitutionally

protected health care. *Id.* (adding Tex. Health & Safety Code § 171.208(b)). I also understand that anyone who is sued and loses is responsible to pay the claimant's attorney's fees, *id.* (adding Tex. Health & Safety Code § 171.208(b)), but they cannot recover their own attorney's fees if they prevail, *id.* (adding Tex. Health & Safety Code § 171.208(i)).

12. S.B. 8 will force us to shut down abortion services after detection of embryonic cardiac activity, i.e., at approximately 6 weeks of pregnancy. It threatens liability for anyone who assists in the provision of abortion prohibited by the Act. That applies not only to PPGTSHS and each health center's physicians, but also to all of the health center's staff who have critical roles in the provision of this care and without whom we cannot provide abortion.

13. PPGTSHS, our physicians, and our staff cannot afford the monetary damages that would be owed, and therefore we simply cannot take the risk of facing civil liability and damages. Additionally, because S.B. 8 requires courts to issue injunctions against any person found to have violated S.B. 8, we could be ordered to stop providing abortions for an extended period of time while we challenge S.B. 8 defensively, even if we were willing to go forward with performing abortions banned by S.B. 8. I also understand our licensed staff may face professional consequences for violating S.B. 8, which could jeopardize our facility and pharmacy licenses.

14. Our staff and I believe that, given the strong anti-abortion sentiments held by some Texans and others outside of Texas, lawsuits would inevitably and imminently be brought against us under S.B. 8. Indeed, after our Lubbock health center opened, Lubbock voters approved a blatantly unconstitutional ordinance banning abortions in the city, which—like S.B. 8—could be directly enforced only through private lawsuits. As the June 1, 2021, effective date approached, we learned of several threats to sue us if we continued to provide abortions in Lubbock. Ex. B to Br. in Supp. of Pls.' Mot. for Reconsideration, *Planned Parenthood of Greater Tex. Surgical*

Health Servs. v. City of Lubbock, No. 5:21-CV-114-H (N.D. Tex. June 29, 2021), ECF No. 052-2 (social media post showing one such threat from Mark Lee Dickson) (attached as Ex. 1). In addition, a lawyer representing the ordinance's proponent in a hearing in our case challenging the ordinance told the judge presiding over the case that litigants and attorneys were prepared to sue us on June 1 if we continued to provide abortions. Tr. of Hr'g on Jurisdictional Issue at 44:8–45:11, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. City of Lubbock*, No. 5:21-CV-114-H (N.D. Tex. May 28, 2021) (attached as Ex. 2). And on the day that the Ordinance took effect, two individuals (including one who had previously directly threatened to sue us) posted online a video of themselves calling our call center and pretending to need an abortion to determine whether we would provide one despite the City ban. Mark Lee Dickson, Facebook (June 1, 2:07 PM), <https://www.facebook.com/markleedickson/videos/10159259661094866>. We fully expect that these same individuals, along with many others, will target PPGT again to determine its compliance with S.B. 8 if the law is permitted to take effect, and would bring suits against us if we performed abortions barred by the statute.

15. As a result of the Lubbock ordinance taking effect, we have been forced to stop providing abortions at that health center while we litigate over the ordinance's constitutionality. In the meantime, patients in the Lubbock area who would have had access to a local abortion provider now have to travel roughly 300 miles each way to obtain the care they need, if they can afford to travel at all.

16. Even if we were to ultimately prevail in suits filed against us under S.B. 8, the cost to defend ourselves against an unlimited number of lawsuits, potentially in every county in Texas simultaneously, would be impossible for us to absorb.

17. I am also very concerned about the nature of these proceedings, which seem designed to make it hard, if not impossible, to bring defenses, including ones based on clear federal constitutional protection for abortion. S.B. 8 also makes it impossible for us to predict the costs and full scope of risks that the law threatens, and it opens us up to repeated frivolous lawsuits brought in bad faith.

18. Health care providers, like other organizations, need certainty in their operations. I cannot think of a single other instance in which a health care provider—or any other organization or individual—is subjected to this kind of unfair targeting. S.B. 8 clearly aims to bankrupt and harass us and our staff, and to eliminate abortion access in Texas that is protected by federal law. There is simply no other conceivable purpose for it.

19. Shutting down abortion services will seriously harm both PPGTSHS and our patients. The prospect of S.B. 8 taking effect has already harmed our staff. Staff are understandably frightened that they will be sued and forced into a Texas court far away from home to defend themselves, and they are deeply worried about the impact that these suits will have on themselves and their families.

20. Our staff deal with never-ending harassment from opponents of abortion. They pass through lines of protestors, yelling at them (and at patients), just to do their jobs.

21. Despite all this, they come to work because they believe in Planned Parenthood's mission. The provision of abortion services is essential to PPGTSHS's mission: providing comprehensive reproductive health care services, which are vital for public health, especially for medically underserved populations. Many staff members entered health care because serving patients was their calling. They have dedicated their lives and careers to providing high-quality

health care and advocating for their patients. S.B. 8 will prevent PPGTSHS and our dedicated team of medical professionals from fulfilling our mission.

22. Even staff who have no direct role in abortion services are worried about being named in harassing lawsuits. In fact, before the Lubbock abortion ban took effect, health center staff began expressing concerns about working, because they were worried about being named in a lawsuit and having their professional licenses and livelihoods put at risk.

23. Most fundamentally, S.B. 8 seriously harms our patients by depriving them of access to safe and legal abortions. If we are forced to stop providing abortions after approximately 6 weeks LMP, many patients will be forced to travel out of state to obtain care, which may involve hundreds of miles of travel (to Shreveport, Baton Rouge, New Orleans, Oklahoma City, or Albuquerque). This sort of travel will delay patients in accessing care (and pushing some into a later, more expensive abortion that carries greater risks) and will prevent others from accessing abortion altogether, because the travel is simply impossible for them.

24. Our patient population is comprised of a significant percentage of people with low incomes: of the patients who obtained abortions at our health centers in 2019, approximately 42% had incomes at or below the federal poverty line, and 68% had incomes at or below 200% of the federal poverty line. These patients are the hardest hit by the expenses and logistical difficulties of travel, including from being forced to miss work and/or child-care obligations. We know that these patients would face severe barriers to accessing care elsewhere.

25. Indeed, after the Texas governor banned abortion by executive order during the early days of the pandemic, we scrambled to help patients get care out of state, going as far as Colorado and Missouri. Executive Order No. GA-09; *In re Abbott*, 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.). We now know that while some were able to get care elsewhere, many were not.

26. I believe S.B. 8 will deprive PPGTSHS's patients of access to critical health care and will threaten their health, safety, and lives.

The Impact of S.B. 8's Fee-Shifting Provisions

27. I understand that S.B. 8 also makes parties and their attorneys liable to pay defendants' costs and attorney's fees in cases challenging Texas laws that restrict or regulate abortion, or that provide public funding to entities that perform abortion or promote abortion access. My understanding is that this fee provision purports to apply even if the case is brought in federal court and/or to assert a federal right; that it attempts to apply to challenges to covered local as well as state laws; and that it would extend to counterclaims that we make in defending against lawsuits filed against us under S.B. 8 by private individuals.

28. PPGT and its PPGTSHS (and their predecessor organizations) are regularly forced to bring court challenges to restrictions on abortion or laws targeting abortion providers in Texas. *See City of Lubbock*, 2021 WL 2385110 (Section 1983 and state-law claims) (local ban on abortion); *In re Planned Parenthood of Greater Tex. Fam. Planning & Preventative Health Servs., Inc.*, No. D-1-GN-21-000528 (Travis Cty. Dist. Ct., writ denied March 10, 2021) (petition for a state writ of mandamus) (Medicaid defunding decision); *Whole Woman's Health v. Paxton*, 978 F.3d 896 (5th Cir. 2020), *reh'rg en banc granted, vacated by* 978 F.3d 974 (5th Cir. 2020) (Section 1983 claims) (ban on common method of abortion); *In re Abbott*, 954 F.3d 772 (Section 1983) (COVID abortion ban); *Planned Parenthood of Greater Tex. Fam. Planning & Preventative Health Servs. v. Kauffman*, 981 F.3d 347 (5th Cir. 2020) (en banc) (Section 1983 claims) (Medicaid termination decision); *Tex. Dep't of State Health Servs. v. Balquinta*, 429 S.W.3d 726 (Tex. Ct.

App. 2014) (state-law claims) (Medicaid Women’s Health Program exclusion decision), *appeal filed & case dismissed as moot* (Tex. March 13, 2015) (No. 14-0270); *Tex. Health & Hum. Servs. Comm’n v. Planned Parenthood of Greater Tex. Fam. Planning & Preventative Health Servs., Inc.*, No. 03–12–00745–CV, 2014 WL 1432566 (Tex. Ct. App. Apr. 9, 2014) (state-law claims) (dismissing Texas Women’s Health Program exclusion challenge as moot); *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) (Section 1983) (decision on admitting-privileges, medication-abortion regulations); *Planned Parenthood of Hidalgo Cty. Tex., Inc. v. Suehs*, 692 F.3d 343 (5th Cir. 2012) (Section 1983 and other federal and state-law claims) (Women’s Health Program defund).

29. These litigation efforts are critical to fulfilling our mission to protect and expand access to comprehensive reproductive and sexual health care, including abortion, in Texas.

30. S.B. 8’s fee-shifting provision will make it extremely difficult for us to continue to protect our patients’ constitutional rights via the important tool of litigation, as nearly every case will bring with it the risk that we and our attorneys could be responsible for crushing attorney’s fees and costs. We routinely rely on pro bono or reduced-rate legal counsel to help us defend our rights and those of our patients. There is no doubt in my mind that S.B. 8 will make it more difficult for us to obtain legal counsel when we need it, particularly local counsel, and that this outcome is exactly what the Texas Legislature intended. The impact of the fee provision will be particularly harsh for us when we are forced to sue in the United States District Court of the Northern District

of Texas, which requires that local counsel reside or have their primary office within 50 miles of the courthouse, a substantial restriction in itself on the availability of counsel.

31. I am also concerned about the impact that S.B. 8 will have on the arguments we bring in litigation. It will force us and our attorneys to weigh the possibility of huge legal bills (and fights over legal bills years after a case is over) every time we bring a claim that is well-founded and in good faith. We will be forced to risk those penalties to defend our rights and those of our patients, while government officials and other individuals trying to restrict abortion or ban it outright—in clear disregard for the U.S. Constitution—would face no similar consequence under S.B. 8.

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

Executed on July 12, 2021, in Austin, Texas.


Ken Lambrecht

EXHIBIT 1

Exhibit B



Mark Lee Dickson is in Lubbock, Texas.

June 1 7:45 AM

It is June 1st. The Lubbock Ordinance Outlawing Abortion is in effect. According to Planned Parenthood's website "This center does not currently offer abortion services."

Let's hope it stays that way.

If abortions do end up being performed this week or next week or any week thereafter, I will be suing Planned Parenthood for the murder of unborn children under the provisions allowed in the Lubbock Ordinance Outlawing Abortion.

#therighttolife #thefightforlife #fromconceptiontillnaturaldeath #unbornlivesmatter #loveoneanother #sanctuarycitiesfortheunborn



Book Online



Planned Parenthood Lubbock Health Center

3716 22nd Place, Lubbock, TX, 79410

Reason

Abortion Consultation

MON 31 MAY	TUE 1 JUN	WED 2 JUN	THU 3 JUN	FRI 4 JUN
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This center does not currently offer abortion services. Please refer to other centers nearby to



103

20 Comments 21 Shares

Like

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EXHIBIT 2

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

PLANNED PARENTHOOD OF GREATER)
TEXAS SURGICAL HEALTH SERVICES,)
on behalf of itself, its staff,)
physicians and patients, et al.,)
PLAINTIFFS,) CAUSE NO. 5:21-CV-114-H
)
VS.)
)
CITY OF LUBBOCK, TEXAS,)
DEFENDANT.)

HEARING ON JURISDICTIONAL ISSUE
BEFORE THE HONORABLE JAMES WESLEY HENDRIX,
UNITED STATES DISTRICT JUDGE

FRIDAY, MAY 28, 2021
LUBBOCK, TEXAS

FEDERAL OFFICIAL COURT REPORTER: MECHELLE DANIEL, 1205 TEXAS
AVENUE, LUBBOCK, TEXAS 79401, (806) 744-7667.

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY; TRANSCRIPT
PRODUCED BY COMPUTER-AIDED TRANSCRIPTION.

1 on the books. Texas has not repealed its sodomy statute in
2 response to *Lawrence*.

3 THE COURT: Yeah, fair point. Those statutes
4 remain, even if unenforceable.

5 What about the deterrence piece of the argument?

6 MR. MITCHELL: The deterrence with respect to the
7 plaintiffs is also exceedingly--well, it's entirely
8 speculative, but also, in this case, 100 percent false. The
9 litigants and the attorneys who are prepared to sue on June 1st
10 are well aware that this Court has no power to formally nullify
11 or invalidate the ordinance, even though that may be how the
12 media will report it.

13 And I will agree with Mr. Lehn on this much. There
14 are people out there who are in the grips of what I'll call the
15 writ-of-erasure fallacy. There are some people who mistakenly
16 believe that when a federal court declares an ordinance
17 unconstitutional, that the ordinance has somehow been formally
18 revoked in a way that nobody can enforce it, even if they're
19 not a party to the case. That's certainly how most journalists
20 think, because that's how they report on decisions from federal
21 court district courts, incorrectly. And--

22 THE COURT: And the Fifth Circuit-- I'm familiar
23 with the author of that article. The Fifth Circuit has said as
24 much, correct, in the--

25 MR. MITCHELL: That is correct. So certainly, yes,

1 the Fifth Circuit understands that. But for Mr. Lehn to
2 suggest that the litigants who are prepared to sue Planned
3 Parenthood are going to fall for that idea, I can tell the
4 Court for sure they won't. And neither will the attorneys who
5 are prepared to litigate this issue on June 1st. I'm probably
6 the last person in the world who's going to be duped into
7 thinking that a ruling from a federal district court that
8 declares an ordinance to be unconstitutional is somehow erasing
9 the ordinance or formally revoking it in a way that will bind
10 nonparties to the lawsuit and prevent them from suing when the
11 ordinance actually takes effect on June 1st.

12 THE COURT: What of their argument that this is--it
13 is their burden, but it's an initial burden to establish
14 standing. And for redressability, they've argued they don't
15 have to show complete or perfect redressability; they just have
16 to show--I'm not sure exactly how they would put it, but some
17 redressability--

18 MR. MITCHELL: Yes.

19 THE COURT: --citing *Massachusetts vs. EPA* and a
20 second case that Massachusetts was cited itself. What's your
21 response to that piece?

22 MR. MITCHELL: The language from the Supreme Court
23 is that they have to show that it is likely, as opposed to
24 merely speculative, that the requested relief will redress the
25 injury. That's the actual language from the Supreme Court's