

US Supreme Court Ruling Allows Texas to Deputize Citizens as “Anti-Abortion Police”

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Donald Trump’s installation of three radical right-wing “justices” on the Supreme Court is paying off for the forces trying to overturn [Roe v. Wade](#). On September 1, in a 5-4 vote, the high court allowed the most restrictive anti-abortion law in the country to go into effect, in [Whole Woman’s Health v. Jackson](#). [SB 8](#), known as the “Texas Heartbeat Act,” bans all abortions after physicians detect, or should have detected, a fetal heartbeat. That generally occurs at six weeks of pregnancy, when most women don’t even know they’re pregnant.

The split vote on the Court signals the likelihood that the “justices” — who were so quick to allow Texas’s Machiavellian law to take effect — will seize the opportunity next term to overturn *Roe v. Wade* when it considers the constitutionality of a [Mississippi law](#) banning abortion after 15 weeks. That would open the floodgates to similar legislation in other states preventing women from having abortions.

About [85 percent to 90 percent](#) of Texas women who have abortions are at least six weeks into their pregnancy, which means the law will prohibit nearly all abortions in the state. There is no exception for rape or incest. Women in Texas will now have to travel to another state to secure an abortion or resort to life-threatening back alley coat-hanger abortions.

The drafters of SB 8 established a novel scheme to prevent lawsuits against state officials by privatizing enforcement and deputizing private persons to sue people who provide abortions. The bill gives any non-governmental person the right to sue abortion providers and those who “aid and abet” them, financially or otherwise. The defendants could include anyone — doctors, nurses, friends, spouses, parents, domestic violence counselors, clergy members or Uber drivers. Defendants must pay plaintiffs who win their lawsuits a \$10,000 bounty plus attorneys’ fees. In other words, Texas is bribing its residents to sue people who help women get abortions.

President Joe Biden [said](#) the Court’s action in *Woman’s Whole Health* “unleashes unconstitutional chaos and empowers self-anointed enforcers to have devastating impacts.” He added, “Complete strangers will now be empowered to inject themselves in the most private and personal health decisions faced by women.” Biden is launching a “whole-of-

government” response, directing the White House Counsel, Gender Policy Council, Health and Human Services and Justice Department to determine what “legal tools we have to insulate women and providers from the impact of Texas’ bizarre scheme of outsourced enforcement to private parties.”

Abortion providers in Texas challenged SB 8 in federal court. A U.S. district court judge scheduled a hearing about whether to block the Texas law. But the Fifth Circuit Court of Appeals canceled the hearing. The plaintiffs asked the Supreme Court to stop SB 8 from taking effect, or in the alternative, to permit the district court proceedings to continue.

In an unsigned one-paragraph [order](#), Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett left the Texas law in place with no analysis of the constitutional issues at stake. They wrote, “[I]t is unclear whether the named defendants in this lawsuit can or will seek to enforce the Texas law against the applicants in a manner that might permit our intervention.” The majority said they were not drawing “any conclusion about the constitutionality of Texas’s law,” and their order “in no way limits other procedurally proper challenges to the Texas law, including in Texas state courts.” Meanwhile, the law will prevent most women from seeking abortions in Texas.

John Roberts, Elena Kagan, Sonia Sotomayor and Stephen Breyer dissented and filed four separate opinions. Roberts wrote, “We are at this point asked to resolve these novel questions — at least preliminarily — in the first instance, in the course of two days, without the benefit of consideration by the District Court or Court of Appeals.” The Court was asked to do this, he added, “without ordinary merits briefing and without oral argument.” So, why rush to allow implementation of a law that may well be unconstitutional? Roberts emphasized that “the Court’s order is emphatic in making clear that it cannot be understood as sustaining the constitutionality of the law at issue.”

Breyer stated, “[A] woman has a federal constitutional right to obtain an abortion during that first stage,” citing *Roe v. Wade* and *Planned Parenthood v. Casey*. And, he wrote, “a State cannot delegate ... a veto power [over the right to obtain an abortion] which the state itself is absolutely and totally prohibited from exercising during the first trimester of pregnancy.”

Sotomayor declared, “The Court’s order is stunning. Presented with an application to enjoin a flagrantly unconstitutional law engineered to prohibit women from exercising their constitutional rights and evade judicial scrutiny, a majority of Justices have opted to bury their heads in the sand.” She wrote, “In effect, the Texas Legislature has deputized the State’s citizens as bounty hunters, offering them cash prizes for civilly prosecuting their neighbors’ medical procedures.”

Kagan objected to a lack of full briefing and argument before “this Court greenlights the operation of Texas’s patently unconstitutional law banning most abortions.”

The Women’s Health Protection Act of 2021 (WHPA), which would codify *Roe v. Wade*, is pending in the [Senate](#) and the [House](#). On June 8, the WHPA was [introduced](#) with 176 original co-sponsors in the House and 48 supporters in the Senate, a record-high amount of support for a bill at introduction. Speaker of the House Nancy Pelosi has pledged to bring the bill to the House floor when Congress returns from summer recess.

The WHPA protects the right to access abortion without medically unnecessary restrictions

and bans on abortion. It creates a statutory right for health care providers to provide abortion care, and a corollary right for patients to receive care, without medically unnecessary restrictions that single out abortion and impede access to it.

A Hart Research poll found [61 percent of voters nationally supported the WHPA](#) when it was introduced. "This poll sends a clear message to Congress: the majority of voters want abortion protected under federal law," Nancy Northup, President and CEO of the Center for Reproductive Rights, [said](#). "We cannot wait any longer. If Roe falls, many states will immediately take action to make abortion a crime."

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