TEXAS HOUSE
WOMEN'S HEALTH CAUCUS

Hearing before the House Committee on the Judiciary
Thursday, November 4, 2021

Written Testimony on behalf of the Texas Women's Health Caucus regarding
The Impact of Abortion Bans in Texas

Dear Chairman Nadler, Vice-Chair Dean, and distinguished members of the Committee:

Thank you for the opportunity to submit written testimony. Formed in 2005, the Texas Women's Health Caucus is an official caucus of the Texas House of Representatives and works to promote and defend women's health. The Caucus is currently composed of 52 Texas House members who work to ensure that all Texans have access to affordable, quality women's health services.

During the 87th Regular Session, the Texas Legislature endured many challenges. When we first arrived in Austin, the top priority was to address the COVID-19 pandemic. However, within weeks of convening, our state was faced with the failure of our power grid during a historic winter storm, resulting in hundreds of deaths. Amid these real and pressing issues, Republican leadership sought to divide the chamber in order to prioritize another unnecessary anti-abortion restriction. Senate Bill 8 (SB8), otherwise known as the "6-Week Ban," was passed in open defiance of the Constitution and upended decades of judicial and legislative precedent. In the weeks leading up to its final passage, the Caucus raised its concerns regarding the extreme nature of the bill. We tried to work with our Republican counterparts to fix these issues, but we could not convince the majority to sway from party lines. At this point, our only recourse is through federal action or a Supreme Court decision.

The Road to Senate Bill 8

Over the last decade, the members of our Caucus have been at the forefront of an unending legislative fight to protect access to women's health and reproductive services, including abortion care. Republican lawmakers who have held the majority of legislative seats for almost

two decades have enacted sweeping policy changes in every aspect of state government, particularly within women's healthcare.[1] In 2011, the state reduced funding for family planning services from $111 million dollars per year to $38 million dollars per year.[2] According to client-served data collected by the Department of State Health Services, in 2012, the fiscal year following this $73.6 million funding cut, clinics served 143,884 fewer Texans than they did in the previous fiscal year.[3] At the same time these funding cuts were going into effect, the Texas Health and Human Services Commission (HHSC) was in the process of renewing the state's 1115 Demonstration Waiver for its Women's Health Program (WHP). In the state's application, they included a provision which would ban any provider who chooses to "perform or promote elective abortions or that choose to be affiliates of entities that perform or promote elective abortions."[4] This change in policy, which came to be known as the "Affiliate Ban," would define women's health policy for years to come. The Ban allowed the state to block access to certain health care providers for reasons unrelated to the providers' ability to deliver quality women's health and family planning services.[5] The Centers for Medicaid and Medicare Services (CMS) ultimately denied Texas' request which prompted the state's exit from federal Family Planning programs and eventually led to the closure of more than 80 women's health and family planning clinics across the state.[6]

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[1] Ward, Mike. "Texas Tea Party: The Birth and Evolution of a Movement." *Houston Chronicle*, Houston Chronicle, 17 July 2017, https://www.houstonchronicle.com/news/houston-texas/houston/article/Texas-tea-party-the-birth-and-evolution-of-a-11292705.php.

[2] Potter, Joseph E, and Kari White. "The College of Liberal Arts the University of Texas at Austin." *UT College of Liberal Arts: TxPEP*, 27 Sept. 2021, https://liberalarts.utexas.edu/txpep/op-eds/washington-post.php.

[3] Potter, Joseph E. "The College of Liberal Arts the University of Texas at Austin." *UT College of Liberal Arts: TxPEP*, 27 Sept. 2021, https://liberalarts.utexas.edu/txpep/op-eds/statesman.php.

[4] *1115(a) Research and Demonstration Waiver, Texas Women's Health Program*. Texas Health and Human Services Commission, https://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/Waivers/1115/downloads/tx/Womens-Health-Waiver/tx-womens-health-waiver-research-demo-waiver.pdf.

[5] Pogue, Stacey. *Excluding Planned Parent Has Been Terrible For Texas Women*. Center for Public Policy Priorities, Aug. 2017, https://everytexan.org/images/HW_2017_08_PlannedParenthoodExclusion.pdf.

[6] Kari White, Kristine Hopkins, Abigail R. A. Aiken, Amanda Stevenson, Celia Hubert, Daniel Grossman, and Joseph E. Potter, 2015:
The Impact of Reproductive Health Legislation on Family Planning Clinic Services in Texas
American Journal of Public Health 105, 851_858, https://doi.org/10.2105/AJPH.2014.302515

In 2013, in response to the federal government's decision, the state launched the Texas Women's Health Program (TWHP)- a fully state funded women's health program- with the affiliate ban in place and without any additional federal dollars.[7] At the height of the program, TWHP served 176,577 Texans.[8] It operated for two years before the Sunset Advisory Commission recommended the state dissolve the program and combine it with other existing family planning programs. Overall, in the first three years of the implementation of the Affiliate Ban and a fully state-funded program, the number of clients served by TWHP declined by 14.7 percent. In addition, between 2012 and 2016, 15 percent of adult women in Texas reported that they did not see a doctor during the previous 12 months due to cost.[9] The 84th Legislature approved the consolidation of women's health programs and directed HHSC to use $50 million to create a women's health program with the purpose of increasing access to women's health and family planning services.[10] In July 2016, HHSC launched the final version of its women's health program--Healthy Texas Women (HTW). Within months of the program's launch, it was clear HTW was not prepared to meet the needs of Texans. The program's provider capacity was substantially lower than it was under the WHP and served 35,577 fewer clients than TWHP did in 2015.[11] In fact, HTW only recently reached the same level of clients that the WHP served in 2011. Over the years, HTW has struggled to meet the healthcare needs of Texas, and Texas leadership has refused to do anything to enact legislation to change these circumstances. Each year, instead of allocating state dollars to increase women's health funding to ensure more Texans have access to the care they need, Republican leadership has allocated millions of dollars to the Alternatives to Abortion Program (A2A). The A2A program is made up of "crisis

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[7] *Final Report of the Texas Women's Health Program: Fiscal Year 2015 Savings and Performance*. Texas Health and Human Services, Mar. 2017, https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2017/former-tx-womens-health-program-fy2015-savings-performance.pdf.

[8] *Final Report of the Texas Women's Health Program: Fiscal Year 2015 Savings and Performance*. Texas Health and Human Services, Mar. 2017, https://www.hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2017/former-tx-womens-health-program-fy2015-savings-performance.pdf.

[9] *Overview of Women's Health Program*. Legislative Budget Board Staff Report, Apr. 2019, https://www.lbb.state.tx.us/Documents/Publications/Staff_Report/2019/5098_WomensHealthPrograms.pdf.

[10] General Appropriations Act, HB 1, 2015

[11] Evans, Marissa. "Texas Works to Market Health Program Without Planned Parenthood." *The Texas Tribune*, The Texas Tribune, 5 May 2017, https://www.texastribune.org/2017/05/05/healthy-texas-women-program-billboards-are-not-enough/.

pregnancy centers" who do not provide any healthcare services to pregnant people.[12] Instead, the program is best known for its misguided informational pamphlets and its ability to elude public accountability measures. Every year, women's health providers ask for an increase in funding and each time they are told there is simply not enough in the budget. The evidence is clear - the state's cut to women's health funding, in conjunction with the implementation of the Affiliate Ban, led to a reduction in women's health and family planning clinics which in turn led to a decline in the number of Texans receiving reproductive health services.

In order to fully understand the state of women's health services in Texas, one must recognize the onslaught of anti-abortion policy changes that were being enacted in tandem with the changes mentioned above. In 2011, the same year as the funding cuts, the state passed House Bill 15, otherwise known as the "Sonogram Law," which requires a physician to perform a sonogram not more than 72 hours and not less than 24 hours before the abortion and before any sedative or anesthesia is administered.[13] That law is a coercive attempt to dissuade a pregnant person from choosing to have an abortion by requiring a doctor to display the sonogram, make the fetal cardiac activity audible, and give a verbal explanation of the result of the sonogram to the pregnant person. Two years later in 2013, the Republican leadership passed an omnibus abortion bill, House Bill 2 (HB2), which imposed several new and unnecessary restrictions on abortion care. Among other requirements, HB2 required doctors to have admitting privileges at a hospital within 30 miles of the abortion facility; restricted access to medication abortion by forcing physicians to follow a state-mandated protocol rather than current, evidence-based protocols; and required abortion facilities to meet the standards of ambulatory surgical centers regardless of the procedures offered at the clinic. In addition, HB2 banned abortions after 20 weeks post-fertilization unless a patient is at risk of death or the fetus has a severe fetal abnormality. Upon passage of HB2, reproductive rights groups challenged various provisions of

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[12] Astudillo, Carla, and Shannon Najmabadi. "An Anti-Abortion Program Will Receive $100 Million in the next Texas Budget, but There's Little Data on What's Being Done with the Money." *The Texas Tribune*, The Texas Tribune, 8 June 2021, https://www.texastribune.org/2021/06/08/texas-abortion-budget/.
[13] Miller, Sid. HB 15, 82nd Regular Session, *Texas Legislature Online - 82(R) Text for HB 15*, https://capitol.texas.gov/billlookup/Text.aspx?LegSess=82R&Bill=HB15.

HB 2 in *Whole Woman's Health v Hellerstedt*.[14] Eventually, the case made its way to the Supreme Court, where the admitting privileges and ambulatory surgical center requirements were deemed unconstitutional. Since 2015, Texas Republicans have passed an additional six pieces of legislation intended to stigmatize abortion care, pressure physicians into choosing to not perform the procedure, and, above all, erode a person's Constitutional right to access abortion, free from government interference. The restrictions include creating additional barriers for minors seeking abortion care and banning insurance companies from covering the procedure in their comprehensive health insurance plans, thus requiring people to purchase separate coverage for abortion care.[15] This year, the Texas Legisalture enacted further restrictions that will drastically reduce access to medication abortions - Senate Bill 4 (SB4) which, among other things, prohibits medication abortion beyond 49 days, despite current FDA safety guidelines that state the medicine can be used up to 70 days, and requires unrealistic reporting requirements for physicians. SB4 also punishes the prescribing physician with a state jail felony if they violate the law. Finally, just a few weeks before SB8 went into effect, the 5th Circuit Court of Appeals became the first federal court in the U.S. to uphold a ban on the standard method of abortion after about 15 weeks of pregnancy- dilation and evacuation commonly known as D&E.[16]

Each of these restrictions has only made accessing abortion care more difficult and dangerous to obtain, especially for the most vulnerable.[17] This is despite the fact that, according to data provided by HHSC, abortions continue to be among the safest procedures in Texas. In the 13 years it has been collecting data, the state has seen had one death from an abortion related complications.[18] In 2013, the Texas Legislature created the Maternal Mortality and Morbidity Review Committee (MMRC) within the Texas Department of State Health Services (DSHS) to study and provide recommendations regarding the high rate of maternal mortality among Texas

[14] "Whole Woman's Health v. Hellerstedt." *Oyez,* www.oyez.org/cases/2015/15-274. Accessed 26 Sep. 2021.
[15] "A Recent History of Restrictive Abortion Laws in Texas." *ACLU of Texas*, ACLU of Texas, 20 Sept. 2021, https://www.aclutx.org/en/recent-history-restrictive-abortion-laws-texas.
[16] 5th Circuit Court of Appeals. *Whole Women's Health v Paxton*. 18 Aug. 2021.
[17] Norwood, Candice. "Texas Law's Use of Surveillance Could Further Harm People of Color." *The 19th*, The 19th, 14 Sept. 2021, https://19thnews.org/2021/09/texas-abortion-law-people-of-color/.
[18] "ITOP Statistics." *Texas Health and Human Services*, https://www.hhs.texas.gov/about-hhs/records-statistics/data-statistics/itop-statistics.

mothers. The MMRC has provided the Legislature with a biennial report detailing the barriers facing pregnant people, the contributing factors to maternal mortality, and a list of policy recommendations intended to address their findings. Their most recent report indicated that in 2013 nearly 40% of the deaths they reviewed were pregnancy-related and 43 percent were pregnancy-associated but not related.[19] Of the pregnancy-related deaths, 31 percent were among Non-Hispanic Black women and 26 percent among Hispanic women. Whereas, that same year, only 11 percent of live births were among Non-Hispanic Black women and 48 percent were among Hispanic women. Unfortunately, this disparity is not new or surprising data in Texas because a common theme across reports and recommendations is the need to address health inequalities and disparities amongst communities of Black, Indigenous, and people of color (BIPOC) by increasing access to quality health education and services. While the Legislature has made some progress to address this critical issue, not nearly enough has been done to solve the problem and the situation has arguably been made worse by restricting access to quality women's health providers.

Senate Bill 8's Impact on Texas

In the years leading up to the passage of SB8, Texas Republicans have worked methodically to reduce access to reproductive health care throughout the state, including abortion care. We can confidently predict the number of unwanted pregnancies in the state will only increase causing a ripple effect throughout society and the state. And as we saw in the wake of HB2, there is a real threat that abortion clinics will close for good. As a result of the past anti-abortion pieces of legislation, the number of abortion clinics in the state has declined from 41 to 22.[20] Within days of SB8's implementation, three of the four Planned Parenthood clinics in San Antonio, one of our nation's and our state's largest cities, decided to stop offering abortion care for the time

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[19] Maternal Mortality and Morbidity Review Committee, 2020, *Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report*, https://www.dshs.texas.gov/legislative/2020-Reports/DSHS-MMMRC-2020.pdf. Accessed 29 Sept. 2021.
[20] Hurley, Lawrence. "Impact of Texas Clinic Law at Issue in Abortion Case before Supreme Court." *Reuters*, Thomson Reuters, 1 Mar. 2016, https://www.reuters.com/article/us-usa-court-abortion/impact-of-texas-clinic-law-at-issue-in-abortion-case-before-supreme-court-idUSKCN0W35H5.

being.[21] As more providers are forced to stop providing critical abortion care, the strain on the few abortion clinics left will only increase and leave larger parts of the state dependent on a handful of clinics or providers. For example, the Rio Grande Valley, which is home to around 1.3 million people and spanning about 4,250 square miles, is considered an abortion desert, meaning the majority of residents have little to no access to an abortion clinic.[22] In fact, Whole Women's Health in McAllen is the only clinic in the region. The next closest clinics are in San Antonio (a minimum four hour drive away) and Mexico City (a two hour plane ride or six hours by car). Limited access to abortion care is not the only barrier. If an undocumented immigrant is forced to travel outside of the Valley to receive care, they would have to pass through at least one of the 20 Immigration and Customs Enforcement (ICE) checkpoints and risk deportation. For undocumented Texans, Whole Women's Health is their only option. Otherwise they risk detention and deportation or are forced into parenting. If a patient is able to schedule their abortion, their procedure could cost upwards of $800, or $300-400 more than in other parts of the state.[23] This high cost of care makes accessing the procedure all but impossible in one of the poorest areas of the state.[24]

SB8 not only bans abortions after six weeks gestation, but it also empowers anti-abortion vigilantes to abuse our judicial system for their own personal gain. The bill's private cause of action allows anyone, from anywhere, to come into our state and sue anyone who aids or abets, or intends to aid or abet, in the performance of an abortion after any embryonic cardiac activity is detected. If the plaintiff is successful, the law guarantees them a minimum of $10,000 in

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[21] Bohra, Neelam. "Fearful of Being Sued under New Law, Three of Four San Antonio Abortion Facilities Stop Offering the Procedure." *The Texas Tribune*, The Texas Tribune, 7 Sept. 2021, https://www.texastribune.org/2021/09/07/texas-abortion-law-san-antonio/.

[22] Vagianos, Alanna. "Undocumented and in Need of an Abortion in Texas' Rio Grande Valley." *HuffPost*, HuffPost, 18 Oct. 2021, https://www.huffpost.com/entry/undocumented-abortion-texas-rio-grande-valley-sb8_n_616878a5e4b028316c93634

[23] "After New Law, a Look inside One of South Texas' Last Abortion Clinics." *The 19th*, 28 Sept. 2021, https://19thnews.org/2021/09/new-law-inside-south-texas-abortion-clinic/.

[24] *U.S. Census Bureau Quickfacts: Rio Grande City City, Texas*. https://www.census.gov/quickfacts/fact/table/riograndecitycitytexas/POP060210.

damages in addition to attorney's fees. At its core, the private cause of action is a deviant scheme to avoid judicial review and circumvent the system of governance our Founding Fathers created. In this way, SB8 is more than just another anti-abortion piece of legislation - it threatens the fabric of our nation by challenging our judicial system, our democracy, and our Constitution. After ten years of court battles, the anti-abortion movement has finally found a piece of legislation that avoids the normal avenues for government intervention. The 6-week Ban is unlike anything we have ever seen and must not be allowed to become the new normal in the United States.

On August 31, Whole Women's Health in Fort Worth performed 67 abortion procedures in 17 hours.[25] From the moment they opened their doors at 7 am, their lobby was full of Texans hoping to exercise their right to have an abortion before SB8's deadline. Even before the bill went into effect, every patient accessing abortion care was required to have an ultrasound, even if not medically necessary; to be given medically-inaccurate misinformation about supposed "risks" associated with abortion; and wait 24 hours before they could have their procedure. Only after completing all of these steps, none of which convey any medical benefit, would the state of Texas allow them to have an abortion. But now, for those patients who are past the 6-week mark and arrive at the clinic for their first appointment, the outcome is very different. For some Texans, arriving even the day before the law went into effect was already too late. *The 19th* shared the story of a Texan who arrived at the clinic on August 31 for her first appointment hoping she would be able to receive an abortion. The young woman, already a mother of three, was set to begin a five-year prison sentence later that week and did not want to give birth in jail. However, when she arrived at the clinic for the first appointment she was found to be 12 weeks pregnant. Despite being well within the Constitutional limit for abortion, the clinic had to turn her away because she would be too far along to get the procedure on September 1, which would have been the soonest she could have had the abortion due to the mandatory 24 hour waiting period. Upon hearing the news, the woman broke down in tears and begged the clinic to give her care. She was desperate and facing the possibility of carrying a child to term while

[25] Carrazana, Chabella. "67 Abortions in 17 Hours: Inside a Texas Clinic's Race to Beat New Six-Week Abortion Ban." *The 19th*, The 19th, 2 Sept. 2021, https://19thnews.org/2021/09/abortion-texas-whole-womans-clinic/.

incarcerated. Another clinic shared the story of a Texas woman who went to her first appointment on August 31 at which time there wasn't a heartbeat detected on the state mandated sonogram.[26] However, 24 hours later, on September 1, she arrived for her second appointment to actually have the procedure and her physician performed the second sonogram to verify there wasn't any cardiac motion, and to her horror there was an audible 'whoosh whoosh' sound coming from the machine. At only five weeks, she was too late to receive an abortion under the provisions of SB8. She was devastated. She already had a child at home and knew that bringing another child into their lives threatened her family's newfound financial security. In both of these situations, having an abortion was the right decision for their life and their family's well being, but arbitrary and unnecessary government interference denied them the ability to make that decision for themselves and their families.

If a person wants to terminate their pregnancy after the Texas deadline has passed, they must find other ways to do so. For nearly 80% of Texans seeking an abortion, accessing abortion out of state is the best option, even though it may take a drive of six to twelve hours each way to reach the closest clinics.[27] And neighboring states still have their own restrictions. Oklahoma, for example, has a required 72-hour waiting period between the first visit and the procedure. Even still, providers in Oklahoma and New Mexico have reported an exponential increase in the number of Texas patients receiving care at their clinics in just the four weeks that SB8 has been in effect. Trust Women Clinic in Oklahoma had 11 Texas patients in August; as of this week they have seen well over 100 since September 1.[28] Planned Parenthood Rocky Mountains in New Mexico has seen, and scheduled, more than triple the number of Texas patients they saw before the law went into effect.[29] For some Texans, traveling out of state is simply not an option.

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[26] Tavernise, Sabrina. "With Abortion Largely Banned in Texas, an Oklahoma Clinic Is Inundated." *The New York Times*, The New York Times, 26 Sept. 2021, https://www.nytimes.com/2021/09/26/us/oklahoma-abortion.html.
[27] White, Kari, et al. "The College of Liberal Arts the University of Texas at Austin." *UT College of Liberal Arts: TxPEP*, July 2021, https://liberalarts.utexas.edu/txpep/research-briefs/senate-bill-8.php.
[28] Tavernise, Sabrina. "With Abortion Largely Banned in Texas, an Oklahoma Clinic Is Inundated." *The New York Times*, The New York Times, 26 Sept. 2021, https://www.nytimes.com/2021/09/26/us/oklahoma-abortion.html.
[29] Nottrnott@sfnewmexican.com, Robert, and Jim Weber/The New Mexican. "New Mexico Abortion Clinics See Influx from Texas." *Santa Fe New Mexican*, 19 Sept. 2021, https://www.santafenewmexican.com/news/local_news/new-mexico-abortion-clinics-see-influx-from-texas/article_68e114a6-14bc-11ec-9060-6bf8aaa0e8cc.html.

Between the costs of transportation, lodging, child care, and the risks to their jobs if they don't have paid family leave, Texans with low incomes are left without options.[30] Immigrants, people with disabilities, and young people struggle with multiple barriers that do not allow them to seek care out of state.

SB8 does not only negatively impact Texans seeking abortion care; this bill has reverberated throughout the medical community. During the 87th Regular Session, physician groups such as the American College of Obstetricians and Gynecologists openly and adamantly opposed this bill. ACOG stated, "As ob/gyns, we take pride in the care we provide women in the most difficult of times and support the provision of unbiased counseling for informed consent for medical procedures. However, SB8 does not provide this. SB8 is an unnecessary intrusion in the physician-patient relationship and compromises compassionate conversations between doctors and patients."[31] This bill forces physicians to make an impossible decision - choose to do what is in the best interest of their patient or risk being sued for tens of thousands of dollars. In just a few short weeks, every legislative office has heard the outrage of the medical community. By opening them up to civil and criminal penalties, Texas doctors feel as though the Legislature has abandoned them. Recently, Dr. Charles Brown, a local doctor and professor at the University of Texas Southwestern School of Medicine, recounted the issues he and other medical school professionals are facing in regard to this bill. He stated that SB8 has called into question their ability to practice and teach medicine accurately and according to best practices. He said many are still unclear as to what they can do when it comes to situations in which the life of the mother is not in imminent danger, but carrying the pregnancy to term is not their best option. He stated that many in this kind of situation are left without treatment options and feel they are "waiting for women to die."

Conclusion

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[30] Supreme Court of the United States. *Thomas E. Dobbs, State Health Officer of the Mississippi Department of Health v. Jackson Women's Health Organization*.
[31] Dunn, Tony. "Texas-ACOG Opposes HB 1515 by Representative Slawson and SB 8 by Senator Hughes." The American College of Obstetricians and Gynecologists. Accessed 27 Sept. 2021.

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Texas has methodically and incrementally imposed more and more barriers to accessing abortions, culminating in the passage of SB8, a de facto ban on abortion, enforced by private citizens without standing. Texans are now being denied their constitutional right to abortion healthcare without judicial protection. The repercussions to women's health, freedom over one's own body and destiny, as well as to constitutional protections will have far-reaching impacts. Texans seeking abortion care do not have the luxury of time; the architects of SB 8 purposefully designed a law to avoid an immediate injunction and without any regard to the impact it would have on the lives of the people it affects. The 6 Week Ban is a cruel and unconstitutional piece of legislation that forces Texans seeking abortion care and Texas doctors into impossible situations. Everyday this law is allowed to remain in effect, Texans who are unable to terminate their pregnancy as a result will be forced to decide between parenthood and adoption. We may not agree on the issue of abortion, but certainly we can agree the state should not be trying to enforce healthcare regulations by inviting out of state activists to use our court system to harass doctors and other healthcare providers in Texas. Congress must protect abortion access and pass the Women's Health Protection Act. This right, as others, should not be subject to state boundaries and court decisions but, rather, should be guaranteed for all Americans. Thank you again for the opportunity to submit written comments. If there are any questions, please do not hesitate to reach out to our Executive Director, Kristen Ylana, at kristen.ylana@house.texas.gov. We look forward to working with you to ensure every American has access to the healthcare services they need.

Sincerely,

Donna Howard

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Texas Women's Health Caucus, Chairwoman

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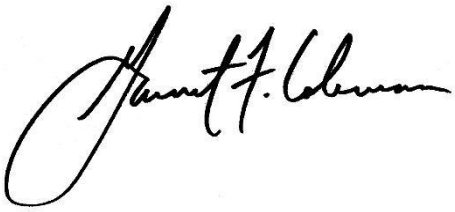

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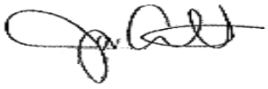

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