



**Statement of NARAL Pro-Choice America  
U.S. House Committee on the Judiciary  
The Texas Abortion Ban and its Devastating Impact on Communities and Families  
November 4, 2021**

Thank you for the opportunity to submit a statement to the U.S. House Committee on the Judiciary on the vital topic of Texas's unconstitutional abortion ban, Senate Bill 8 (SB 8), and its devastating impact on communities and families in Texas and around the country. NARAL Pro-Choice America (NARAL) is a national advocacy organization, dedicated to protecting and advancing reproductive freedom, including access to abortion, contraception, paid leave, and protection from pregnancy discrimination, as a fundamental right and value. Through education, organizing, and influencing public policy, NARAL and our 2.5 million members from every state and congressional district in the country work to guarantee every individual the freedom to make personal decisions about their lives, bodies, and futures, free from political interference. For this reason, we are submitting this statement to reiterate the harm state-level attacks on abortion have on reproductive freedom.

The right to abortion faces its greatest threat in decades. Despite overwhelming public support (8 in 10 Americans) for the legal right to abortion, we're in the midst of an all-out assault on reproductive freedom with *Roe v. Wade* hanging in the balance. Anti-choice lawmakers are emboldened in their attack on reproductive freedom by a decades-long strategy to capture the courts, resulting in an anti-choice supermajority on the Supreme Court. This year alone, state legislatures have introduced, advanced, or passed over 330 abortion restrictions, systematically chipping away at the right to abortion across the country and pushing access to abortion care out of reach for millions of people. We are now witnessing the effects of the anti-choice supermajority, who were put on the Supreme Court for an explicit purpose: to undermine legal abortion, access to contraception, and reproductive freedom more broadly as they advance an agenda of power and control.

On September 1st, the most restrictive and draconian abortion ban, Texas SB 8, went into effect in Texas, banning abortion before most people know they are pregnant and creating a bounty hunter system for private citizens to enforce the law with an incentive of a \$10,000 reward. The Supreme Court failed to intervene and subsequently rejected an emergency request to block SB 8, a blatantly unconstitutional ban on abortion. This law bans abortion at approximately six weeks—before many people even know they are pregnant. It also grants private citizens the power to sue abortion providers and anyone else who helps someone access abortion care; this includes clergy members or counselors, abortion funds that assist someone in paying for abortion care, and even someone who drives a patient to their appointment, like family members, friends, and rideshare drivers. An individual who successfully sues someone for

“aiding and abetting” a pregnant person seeking abortion care, would receive a financial reward of \$10,000.

In the nearly two months since the law has been allowed to remain in effect, Texans have already felt the overwhelming burden of trying to access abortion care. Texas patients now have to travel 14 times farther to get an abortion—increasing driving distance from the original average of 17 miles to 247 miles each way.<sup>i</sup> As a result, people in Texas who need to access abortion services must have the resources to travel hundreds of miles out of state, take time off work, and arrange child care and transportation. These costs reflect just one set of barriers; immigration status and checkpoint concerns may also inhibit travel. Based on recent data estimates, only 16% of Texans seeking abortion care are eligible to receive services under SB 8.<sup>ii</sup> The compounding effects of these barriers mean that many people seeking abortions in Texas will carry their pregnancies to term against their will. The impact of this unconstitutional abortion ban is devastating, overwhelmingly harming Black and Latinx people, people with low incomes, and people in rural areas, who already face steep barriers when accessing healthcare access.

The Supreme Court’s decision to allow SB 8 to go into effect essentially gave Texas the green light to render *Roe v. Wade* meaningless in the state and empowered anti-choice lawmakers to use this law as a blueprint to roll back reproductive freedom in their own states. Politicians in at least 13 states have already expressed intent to introduce similar versions of Texas’s abortion ban. In fact, just weeks after Texas’s SB8 went into effect, anti-choice lawmakers in Florida introduced their own version of the law, HB 167 and just days ago, Ohio introduced their own version of the law, HB 480, going even further to ban abortion outright.

Earlier this week on November 1st, SB 8 was back at the Supreme Court, as the Court heard oral arguments for cases brought by both the United States Department of Justice and a broad coalition of Texas abortion providers and advocates. These cases are about much more than abortion; everyone who cares about their constitutional rights should be concerned. This kind of vigilante-enforcement scheme could easily be used to ban free speech, marriage equality, or any other right. This all comes just one month before the Supreme Court will consider *Dobbs v. Jackson Women’s Health Organization*, a direct threat to *Roe v. Wade* on December 1st, 2021. The threat to the constitutional right to abortion is no longer prospective, it is here.

The looming threat to the future of legal abortion across the country is the result of a decades-long far-right strategy to advance a radical and out-of-touch ideological agenda. In the late 1970s, radical conservatives weaponized the formerly non-political, back-burner issue of abortion rights as political cover for their efforts to maintain white patriarchal control amidst diminishing support for racist policies like school segregation, which had previously been the backbone of their movement. In the years immediately preceding and following *Roe v. Wade*, Evangelical Christians, who now form the backbone of the GOP, were overwhelmingly indifferent on the issue of abortion. But through the carefully crafted messages of Paul Weyrich, Jerry Falwell, and other architects of the Radical Right, abortion became the political

tool of choice for a movement determined to maintain control in a changing world, and the trojan horse for a far-reaching array of ideologies meant to thwart social progress.<sup>iii</sup>

In the intervening years, opposition to abortion has become a litmus test in far-right circles for a host of political and judicial positions. In order to advance their agenda—one that stands in direct opposition to the values of the majority of Americans—they developed and implemented a strategy for capturing and maintaining minority rule. This strategy included pushing regressive boilerplate legislation chipping away at access to abortion through state legislatures and Congress, as well as stacking the federal judiciary with anti-choice ideologues.

Anti-choice activists have spent decades building their influence over the federal judiciary through well-funded, secretive networks like the Federalist Society. Conservative activists have never been shy about the fact that their takeover of the federal judiciary is part of a broad strategy to quell the majority and cement minority rule, but the election of Donald Trump took this tactic to new heights. In May 2016, Trump pledged to only nominate anti-choice judges, a promise he doubled down on in 2020.<sup>iv,v</sup> And with the help of Mitch McConnell, Trump installed anti-choice federal judges with lifetime appointments at a breakneck pace. More than a quarter of currently active federal judges are now Trump appointees, including Supreme Court justices Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett—tipping the balance of the Court to a supermajority unmistakably hostile to reproductive freedom.<sup>vi</sup> As Barrett's nomination and confirmation were rushed through in the midst of an ongoing election, many advocates cautioned that this was yet another part of the anti-choice strategy to ultimately overturn *Roe*. Now we have already seen this supermajority on the Court use the so-called “shadow docket” to undermine the right to abortion and abortion access.<sup>vii</sup>

With the Court poised to hear *Dobbs v. Jackson Women's Health Organization*, a case involving a Mississippi 15-week abortion ban that is a direct challenge to *Roe v. Wade*, there is no denying that the threat to the constitutional right to abortion is real. If *Roe* fell tomorrow, 24 states would likely take action to prohibit abortion outright. Twelve states already have “trigger bans” in place, which would ban abortion immediately if *Roe* is overturned.<sup>viii</sup> If the Supreme Court rolls back or overturns *Roe v. Wade* and states are able to outlaw abortion, there would be devastating consequences for real people. If abortion is banned, how would these bans be enforced? Will people be thrown in jail for having an abortion or miscarriage? What kind of interrogation would somebody be subjected to in order to investigate how a pregnancy ended? Would somebody who had an abortion or experienced a pregnancy loss serve jail time for it? Will doctors and other healthcare providers be jailed if they provide abortion care or assist someone during a miscarriage? Weakening or overturning *Roe* poses a threat to our fundamental rights to make personal decisions beyond abortion, including who to have intimate relationships with, who to marry, and to use contraception.

Anti-choice lawmakers, emboldened by the anti-choice supermajority on the Court, have accelerated their push to pass blatantly unconstitutional bans and restrictions on abortion.

The Supreme Court has further enabled this quest by allowing these laws to take effect causing millions of people suffer the loss of their constitutional right to abortion, evidenced now by the devastating consequences to Texans' ability to access abortion care. States should not be able to construct loopholes to deny citizens within their borders their constitutional rights. NARAL strongly urges the Committee to consider the harm these state-level attacks on millions of Americans as we work toward a world where *every* body is free to make the best decisions for themselves, their families, and their lives.

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<sup>i</sup> Elizabeth Nash, *Impact of Texas' Abortion Ban: A 14-Fold Increase in Driving Distance to Get an Abortion*, Guttmacher Institute (Sept. 15 2021) <https://www.guttmacher.org/article/2021/08/impact-texas-abortion-ban-14-fold-increase-driving-distance-get-abortion>.

<sup>ii</sup> Kari White et al, *Texas Senate Bill 8: Medical and Legal Implications*, Texas Policy Evaluation Project (July 2021) <https://liberalarts.utexas.edu/txpep/research-briefs/senate-bill-8.php>.

<sup>iii</sup> Randall Balmer, *The Real Origins of the Religious Right*, POLITICO MAGAZINE (May 27, 2014), <https://www.politico.com/magazine/story/2014/05/religious-right-real-origins-107133>.

<sup>iv</sup> *Trump Letter on Pro-Life Coalition*, Sept. 2016, <https://www.sba-list.org/wp-content/uploads/2016/09/Trump-Letter-on-ProLife-Coalition.pdf>.

<sup>v</sup> *Pro-Life Voices for Trump 2020*, Sept. 3, 2020, [https://cdn.donaldjtrump.com/public-files/press\\_assets/pro-life-letter-potus.pdf](https://cdn.donaldjtrump.com/public-files/press_assets/pro-life-letter-potus.pdf).

<sup>vi</sup> John Gramlich, *How Trump compares with other recent presidents in appointing federal judges*, PEW RESEARCH CENTER (Jan. 13, 2021), <https://www.pewresearch.org/fact-tank/2021/01/13/how-trump-compares-with-other-recent-presidents-in-appointing-federal-judges/>.

<sup>vii</sup> *Whole Woman's Health v. Jackson*, No. 21A24, 2021 WL 3910722 (U.S. Sept. 1, 2021); *Food & Drug Admin. v. American College of Obstetricians & Gynecologists*, 141 S.Ct. 578 (2021).

<sup>viii</sup> Center for Reproductive Rights, *What if Roe Fell?* (Nov. 1, 2021) <https://maps.reproductiverights.org/what-if-roe-fell>.