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. 1:21-CV-616-RP
AUSTIN REEVE JACKSON, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION AND MEMORANDUM OF LAW IN SUPPORT

Senate Bill 8, 87th Leg., Reg. Sess. (Tex. 2021) ("S.B. 8" or the "Act"), bans abortion in Texas at approximately six weeks of pregnancy, far in advance of the viability line established by the Supreme Court. *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 870 (1992). On July 13, 2021, Plaintiffs filed this case to challenge the Act's constitutionality, *see* Compl. (ECF No. 1), and immediately moved for summary judgment, Pls.' Mot. for Summ. J. & Mem. of Law in Supp. (ECF No. 19) ("Pls.' MSJ"). Plaintiffs filed this case under both (1) 42 U.S.C. § 1983, seeking prospective equitable relief against government officials in their official capacity, *see Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 n.10 (1989), and (2) under the equitable cause of action recognized in *Ex parte Young*, 209 U.S. 123 (1908), *see* Compl. ¶ 21 (invoking the "equitable powers of the Court, including the Court's inherent authority to enforce the supremacy of federal law" against state officials acting contrarywise). Plaintiffs now file this motion for a temporary restraining order ("TRO") and preliminary injunction as an alternative to summary judgment.

Should the Act take effect on September 1, 2021, as scheduled, Plaintiffs and abortion patients throughout Texas would immediately suffer irreparable harm in the form of deprivation of their constitutional rights. Indeed, one Defendant has admitted that he expects most if not all Texas abortion providers to stop providing constitutionally protected pre-viability abortion care after six weeks of pregnancy rather than expose themselves "to ruinous civil liability." Dickson Decl. ¶¶ 5-6 (ECF No. 50-1). Either preliminary injunctive relief or a final judgment on the merits is needed prior to September 1 to ensure that Texas residents can continue to exercise their constitutional right to access safe, pre-viability abortion care after the Act's effective date.

For the reasons set forth below, the requirements for entry of a TRO and preliminary injunction are satisfied on the record already before the Court.

STATEMENT OF FACTS

Plaintiffs provided a detailed recitation of the relevant facts—with citations to the evidentiary record—in their motion for summary judgment. *See* Pls.' MSJ at 5-22. In the interest of judicial economy, Plaintiffs incorporate that statement of facts by reference here.

ARGUMENT

I. STANDARD FOR GRANTING A TRO AND PRELIMINARY INJUNCTION

The Court should enter a preliminary injunction against enforcement of the Act because: (1) Plaintiffs are likely to succeed on the merits of their claims; (2) Plaintiffs are likely to suffer irreparable harm absent an injunction; (3) the balance of equities tips in Plaintiffs' favor; and (4) a preliminary injunction would serve the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 452 (5th Cir. 2014). District courts have "wide discretion" in granting preliminary injunctions. *Fed. Sav. & Loan Ins. Corp. v. Dixon*, 835 F.2d 554, 558 (5th Cir. 1987). "[A] preliminary injunction is customarily granted on the basis of procedures that are less formal and on evidence that is less complete than

a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). For example, a district court need not hold an evidentiary hearing before issuing a preliminary injunction, particularly where the "defendants do not point to any convincing factual disputes." *Dixon*, 835 F.2d at 558.

The standard for granting a TRO is identical to the standard for granting a preliminary injunction. *DeFranceschi v. Seterus, Inc.*, No. 4:15-CV-870-O, 2016 WL 6496323, at *1 (N.D. Tex. Aug. 2, 2016) ("A temporary restraining order ('TRO') is 'simply a highly accelerated and temporary form of preliminary injunctive relief,' which requires that party seeking such relief to establish the same four elements for obtaining a preliminary injunction" (quoting *Hassani v. Napolitano*, No. 3:09-cv-1201-D, 2009 WL 2044596, at *1 (N.D. Tex. 2009))). Generally, a TRO may last up to 14 days. Fed. R. Civ. P. 65(b)(2). The Court may extend it for another 14 days (for a total of 28 days) if it finds "good cause" or the party to be enjoined consents. *Pizza Hut LLC v. Pandya*, No. 4:19-CV-00726-RWS, 2019 WL 8331437, at *3 (E.D. Tex. Nov. 26, 2019) (granting a TRO and finding good cause to extend the TRO to 28 days). If (and only if) the Court extends a TRO beyond the time permissible under Federal Rule of Civil Procedure 65(b)(2) without consent of the enjoined party, it becomes an enforceable preliminary injunction that can be appealed. *See Sampson v. Murray*, 415 U.S. 61, 86 (1974); *see also Insight Direct USA, Inc. v. Kelleher*, No. 1:17-CV-252-RP, 2017 WL 1371252, at *2 (W.D. Tex. Apr. 10, 2017) (holding that a TRO that does not extend beyond the time permitted under FRCP 65(b)(2) is not appealable as a preliminary injunction).

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

A. This Court Has Subject Matter Jurisdiction

Defendants have filed a series of motions to dismiss for lack of subject-matter jurisdiction. *See* State Agency Defs.' R. 12(b)(1) Mot. to Dismiss (ECF No. 48); Def. Judge Jackson's R. 12(b)(1) Mot. to Dismiss (ECF No. 49); Def. Mark Lee Dickson's Mot. to Dismiss for Lack of Subject-Matter Jurisdiction (ECF No. 50); Def. Penny Clarkston's Mot. to Dismiss for Lack of Jurisdiction (ECF No. 51). In accordance with the Court's Scheduling Order (ECF No. 47), Plaintiffs will file opposition to these motions by August 11, 2021, at 5:00 p.m. Plaintiffs hereby incorporate by reference their forthcoming opposition to Defendants' motions to dismiss, which will make clear that the Court has subject-matter jurisdiction over this action.

B. Plaintiffs Are Likely to Succeed on the Merits of Their Due Process, Equal Protection, First Amendment, and Federal Preemption Claims

For the reasons set forth in Plaintiffs' motion for summary judgment, which are incorporated herein by reference, Plaintiffs are likely to succeed on the merits of their due process, equal protection, First Amendment, and federal preemption claims. *See* Pls.' MSJ at 22-48.

Should the Court determine that Plaintiffs are likely to prevail on the merits of their claim that the Act's abortion-ban provision, *id.* at 22-26, violates the Due Process Clause of the Fourteenth Amendment, it need not consider the merits of Plaintiffs' claims concerning the Act's enforcement provisions, *id.* at 26-42. Similarly, should the Court determine that Plaintiffs are likely to succeed on the merits of their claim that the Act's fee-shifting provision violates the First Amendment, *id.* at 42-45, it need not consider whether the fee-shifting provision is also preempted by federal law, *id.* at 46-48.

C. Plaintiffs Are Entitled to Injunctive Relief Against the Defendant Classes of Judges and Clerks

Section 1983 provides that, "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983. Here, with respect to the Defendant class of judges, Plaintiffs seek prospective injunctive relief from actions taken in the judges' official capacity as the state officials charged by the Texas Legislature with enforcing S.B. 8's abortion ban, rather than their official judicial capacity. Indeed, the class representative, Judge Jackson, acknowledged at a press conference that his role vis-à-vis S.B. 8 is to "enforce the law in east Texas." Lawrence Decl. Ex. A. Accordingly, the limitation on injunctive relief set forth in Section 1983 does not apply to the Defendant class of judges. *See LeClerc v. Webb*, 419 F.3d 405, 414 (5th Cir. 2005) ("[Section 1983] only precludes injunctive relief for suits against a judicial defendant acting in his 'judicial capacity.' Thus, to the extent that the plaintiffs seek declaratory and injunctive relief against the *enforcement* of Section 3(B) only, the court and its individual members are subject to the instant suits.").

Alternatively, should the Court conclude that the Defendant class of judges would be acting in their official judicial capacity when enforcing S.B. 8, Plaintiffs would be entitled to a TRO or preliminary injunction against the class if declaratory relief were unavailable as of the Act's effective date. *See* S. Rep. No. 104–366 at 37 (1996) ("[L]itigants . . . may obtain injunctive relief if a declaratory decree is violated or is otherwise unavailable."). Thus, if the Court is unable to resolve Plaintiffs' motion for summary judgment—which includes a request for declaratory relief against the judge class—by September 1, temporary injunctive relief until such time as declaratory relief is available would be both permissible and appropriate.

The Defendant class of clerks are not encompassed within Section 1983's limitation on injunctive relief because they are not "judicial officer[s]." *See, e.g.*, *United States v. Zamora*, 408 F. Supp. 2d 295 (S.D. Tex. 2006) (distinguishing between court clerk and "judicial officer"); *see* S. Rep. No. 104–366 at 37 (1996) (explaining that the limitation on injunctive relief in Section 1983 applies to "judicial officers," meaning "justices, judges and magistrates"). Even if the clerks were judicial officers, injunctive relief is appropriate against them for the same reasons it is appropriate against the Defendant class of judges.

III. ABSENT AN INJUNCTION, PLAINTIFFS AND TEXAS ABORTION PATIENTS ARE LIKELY TO SUFFER IRREPARABLE HARM

As Plaintiffs observe in their motion for summary judgment, threatened violation of constitutional rights constitutes irreparable harm. *See* Pls.' MSJ at 48; *see Elrod v. Burns*, 427 U.S. 347, 373 (1976) (threatened violation of First Amendment rights); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B 1981) (threatened violation of abortion rights); 11A Charles Alan Wright, et al., *Federal Practice & Procedure* § 2948.1 (3d ed. 2013) ("When an alleged deprivation of a constitutional right is involved, . . . most courts hold that no further showing of irreparable injury is necessary."). Thus, in demonstrating a likelihood of success on the merits of their constitutional claims, Plaintiffs have also demonstrated that, in the absence of an injunction, they and their staff are likely to suffer irreparable harm, as are abortion patients throughout Texas. *See* Pls.' MSJ at 22-48. Indeed, if allowed to take effect, S.B. 8 will prohibit nearly all abortions in the State of Texas, blocking tens of thousands of patients of reproductive age from access to this time-sensitive care.

IV. THE REMAINING FACTORS WEIGH IN FAVOR OF GRANTING AN INJUNCTION

As Plaintiffs demonstrate in their Motion for Summary Judgment, the other factors weigh in favor of granting an injunction. *See* Pls.' MSJ at 49–50. The balance of equities tips in Plaintiffs' favor because the injuries that Plaintiffs and abortion patients would suffer from deprivation of their constitutional rights while this case is pending far outweigh any injury to Defendants from having to delay enforcement. *See De Leon v. Perry*, 975 F. Supp. 2d 632, 664 (W.D. Tex. 2014) (holding that threatened injuries to individual constitutional rights outweighed any harm to state officials from enjoining enforcement of legislation), *aff'd sub nom. De Leon v. Abbott,* 791 F.3d 619 (5th Cir. 2015). Further, entry of a preliminary injunction would not disserve the public interest because it would protect Plaintiffs and their patients from enforcement of an unconstitutional law. *See Jackson Women's Health Org.*, 760 F.3d at 458 n.9 ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights." (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012))).

V. THE INJUNCTION SHOULD ISSUE WITHOUT SECURITY

In general, the party seeking a preliminary injunction must "give[ ] security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Here, entry of the preliminary injunction requested by Plaintiffs would not subject Defendants to any costs or damages. Accordingly, security is unnecessary in this case. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) ("In holding that the amount of security required pursuant to Rule 65(c) 'is a matter for the discretion of the trial court,' we have ruled that the court 'may elect to require no security at all.'" (quoting *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 303 (5th Cir. 1978))); *Franciscan All., Inc. v. Burwell*, 227 F. Supp. 3d 660, 696 (N.D. Tex. 2016).

CONCLUSION

For the reasons set forth above, if the Court is unable to grant Plaintiffs' motion for summary judgment by September 1, 2021, it should enter a TRO followed by a preliminary injunction enjoining enforcement of the Act prior to entry of final judgment. In particular, the Court should enjoin all Defendants from seeking to enforce or participating in the enforcement of S.B. 8 directly or indirectly and from seeking or awarding costs and attorney's fees under S.B. 8's fee-shifting provision with respect to any covered claim brought by Plaintiffs in this or other litigation.

Dated: August 7, 2021

Respectfully submitted,

/s/ Marc Hearron

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*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I certify that today, August 7, 2021, I electronically filed a copy of the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Marc Hearron
Marc Hearron

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. 21-cv-00616-RP
AUSTIN REEVE JACKSON, *et al.*,	)	
	)	
Defendants.	)	

DECLARATION OF J. ALEXANDER LAWRENCE

J. ALEXANDER LAWRENCE, declares under penalty of perjury that the following statements are true and correct:

1. I am a Partner in the law firm Morrison & Foerster LLP ("Morrison & Foerster").

2. On August 4, 2021, Judge Austin Jackson held a press conference at Living Alternatives, The AXIA Center (Pregnancy Resource Center) in Tyler, Texas.

3. The video of the press conference is available at https://www.ketk.com/news/local-news/judge-austin-jackson-east-texas-pro-life-activist-sued-in-effort-to-block-texas-abortion-heartbeat-bill/ (last visited August 7, 2021).

4. Attached hereto as Exhibit A is a true and correct copy of a transcription of the video of the press conference.

Dated: August 7, 2021

/s/ J. Alexander Lawrence
J. Alexander Lawrence

Exhibit A

JUDGE AUSTIN JACKSON, EAST TEXAS PRO-LIFE ACTIVISTS SUED IN EFFORT TO BLOCK TEXAS ABORTION HEART (AUGUST 4, 2021)

Judge Austin Jackson

Thank you so much for allowing us to be here today and to the rest of the folks here from Living Alternatives, I want you to know how much this means to me personally that you allowed us to not only come in here, but were willing to show the courage to stand with us on an issue like this.

As a judge, I like to think that every day I get to do a little justice and there's no doubt, looking at what you do here that every day you get to love a little mercy. And I think it's very exciting that today we get to come together and walk humbly together with our God. And so thank you so much for that opportunity.

For those of you who don't know, my name is Austin Reeve Jackson, and I'm the judge of the 114th District Court here in Smith County. And we're here today because I have been recently named as the number one target in Texas of Planned Parenthood and other pro-abortion activists. On the most basic level, we're here because these groups have filed a frivolous lawsuit against me down in Travis County in front of a liberal Obama-appointed federal judge for no reason other than that I am someone committed to the rule of law and biblical values. We're here because out-of-county, out-of-state, out-of-touch groups like Planned Parenthood and the ACLU have decided that if they can't silence the legislators down in Austin, maybe they can silence the judges who enforce the law in east Texas. You see, the left is so used to the idea of having an activist judge that they believe any judge can be bought, bullied, or beaten into submission or resignation.

Make no mistake; this lawsuit is a direct attack by far-left groups on the rule of law and the right of pro-life communities to elect people who share their values. This is cancel culture at its finest. But man, am I lucky to be from Smith County. The outpouring of support over this attack on me, on my job, on all of us who share these values has been met by an overwhelming show of support from people like Senator Hughes and the folks here at Living Alternatives. But more than that, I am incredibly thankful for the wonderful, wonderful support from average east Texans, who are not only proud to have a conservative judge who is willing to answer the fight that these groups started, but who are thrilled to be standing by me as we take on this challenge. With their support, I am one hundred percent committed to seeing this frivolous lawsuit dismissed, the attempts to run Christians out of elected office defeated, and the voice and the vote of pro-life Texans defended.

You see, when Planned Parenthood came for me, they didn't realize they were coming for a whole community of Texans who are unshakeable in our belief that there are certain and immutable rights with which we are all endowed not by our government, but by our God. Not by virtue of being out of the womb, but by virtue of having his spirit within us from the moment of conception. And chief among these rights is the unalienable right to life. And with the support of my community, I am here to today that I will not be scared by the vicious attacks and implicit threats of radical organizations. I will not allow the voice and the vote of any Texan to be silenced by the left, but I will stand for what is right. On this front of the culture war, I will yield no further. And regardless of what some organization like Planned

Parenthood threatens me with. No matter what some leftist judge down in Austin may do to me. As for me and my house, we will continue to serve the Lord. And I am thrilled to have by my side in this fight my friend and my lawyer Shane McGuire, who has taken up this cause and who is representing me at no cost to the Smith county taxpayer because he believes in me, but more importantly, because he believes this fight is a fight worth having.

Shane McGuire

Thanks, Reeve. Good morning. My name is Shane McGuire. I just wanted to say a couple of words about the lawsuit itself, he merit or lack thereof of the lawsuit, and why it is I think that Reeve has been sued in this case.

First, I've read this complaint in full. I've read all the motions filed by these special interest groups. And I have to say this lawsuit is frivolous on its face. It is black letter law that you cannot sue a sitting judge and just demand some advisory opinion, asking a court to ban people from filing lawsuits in his court. This—it is open season on judges in Texas if this lawsuit is allowed to go forward.

Now I want to say a word about why it is I think Judge Jackson has been sued in this case. There's a thousand judges in Texas. They could have sued anybody. Reeve came into my office last week and said, "Shane, why do you think it is they picked me?" I said, "Reeve, I've known you a long time. I know exactly why they picked you. They picked you because they know that you're a man who would rather read his bible than read Rules for Radicals by Saul Alinsky. They picked you because they know you're a man of character and integrity and a man of God. And they picked you because they knew you would engage in the fight."

So listen, we're going to file a motion to dismiss this lawsuit today or tomorrow. It's already been drafted. I was editing it as late as 11 o' clock last night. That's going to get on file. I'm sure ultimately the case against Judge Jackson is going to be dismissed if the rules of law are followed. But I would ask you all to pray for him and to pray for his—we've got a great legal team. Pray for all of us as we go forward in this case. And Senator Hughes, thank you for your leadership on the life issue. We appreciate everything that you've done. Thank you all.

Senator Bryan Hughes

It is so good to be here with you. The work you've done for all these years, quietly serving, helping those little babies come in life, alongside those moms, helping those moms in difficult times. Thank you. Our crisis pregnancy centers, the best kept secret of the pro-life movement in all the debate about the right to life. This work done by this place and places like it around Texas and around the country. This is where the real work is being done. Where moms are being helped. They're being encouraged. Where hearts are being changed, and little lives are being saved. So what a blessing to be here. Not my first time here, and is it great to be back here today.

I'm Bryan Hughes, and I'm blessed to represent northeast Texas in the Texas senate, and yes, I'm so honored to be the author of Senate Bill 8, the—we called it the heartbeat bill. It's now the heartbeat law, signed by Governor Abbott. Governor Abbott signed that bill and gave me the pen he used to sign, and I will cherish that forever. That bill says—that law says that little baby growing inside her mother's womb—when there's a heartbeat detected. Every one of us here has a heartbeat. I can tell from looking at you. That heartbeat, that universal sign of

life—they tell us to follow the science. We are following the science. When there is a heartbeat, there is a human life worthy of protection, and that's what the heartbeat law does in Texas.

Now, it takes a different approach. You may have seen this many places in Texas. They are not blessed with wonderful district attorneys like we have in Jacob Putman. We have a strong constitutional concerted district attorney. Many DAs around the state and around the country publicly told us last year, "If you pass a heartbeat bill, we will not enforce it." These are district attorneys sworn to enforce the law who said, "We will not enforce a heartbeat bill." And so that's why Senate Bill 8 doesn't need their help. Senate Bill 8 doesn't require any action by the district attorney, by the state, or any government actor. It's driven by private individuals who want to stand up for the right to life.

And so any Texan who is aware of an illegal abortion can bring an action against the doctor committing the illegal abortion. Let me be clear. The mother is not affected by the heartbeat law. This is about doctors performing illegal abortions. And any Texan has the right to bring that suit, to right that wrong, to protect that innocent human life. Now the radical abortion industry is upset about this law, and that's why they've taken the extreme step of suing Judge Jackson and every judge in the state of Texas.

I can't underscore enough what you've heard. This lawsuit is radical. It clearly violates the law. And we're confident the judge will do the right thing. The court system will work as it should. And at the end of the day—at the end of the day, we look forward to this lawsuit being successful on the right side. This law moving forward, and little babies—that little baby growing inside her mother's womb—inside her mother's womb ought to be the safest place on earth. That little unborn baby—the most innocent, the most helpless, and the most deserving of protection a human will ever be. We're so thankful the heartbeat law has been signed by Governor Abbott, and we look forward to its taking effect and being upheld by the courts. Thank you for being here today. God bless you.

Unidentified

Alright, thank you all so much for being here. This concludes the press release. If anyone wants to stay and offer any interviews for Reeve, then you're welcome to. He'll be available. Thank you so much.

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AUSTIN DIVISION

WHOLE WOMAN'S HEALTH, et al.,	)	
	)	
Plaintiffs,	)	
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v.	)	
	)	CASE NO. 1:21-CV-616-RP
AUSTIN REEVE JACKSON, et al.,	)	
	)	
Defendants.	)	

[PROPOSED] TEMPORARY RESTRAINING ORDER

Plaintiffs have moved for a temporary restraining order ("TRO") and preliminary injunction to enjoin Defendants from enforcing Senate Bill 8, 87th Leg., Reg. Sess. (Tex. 2021) ("S.B. 8" or the "Act"). The Court, having considered the arguments and legal authority presented in connection with Plaintiffs' motion, as well as the evidentiary record, has found and concluded, for the specific reasons required under Federal Rule of Civil Procedure 65(d) and in accordance with Local Rule 65, that a TRO should be entered. As detailed below, Plaintiffs have shown that (1) they have a likelihood of success on the merits of their claims; (2) they are likely to suffer irreparable harm absent a TRO; (3) the balance of equities tip in Plaintiffs' favor; and (4) a TRO would serve the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

As an initial matter, the Court finds that Plaintiffs have established the requirements for subject-matter jurisdiction. In particular, the requirements for Article III standing are satisfied, *see Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992), and the Eleventh Amendment does not bar Plaintiffs' claims against any of the named Defendants or Defendant classes, *see Ex parte Young*, 209 U.S. 123 (1908).

The Court further finds that Plaintiffs have established a substantial likelihood of success on the merits of their claim that Section 3 of S.B. 8 violates the Due Process Clause of the Fourteenth Amendment because it bans abortion at approximately six weeks of pregnancy, far in advance of the viability line established by the Supreme Court. *See Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 870 (1992).

The Court further finds that Plaintiffs have established a substantial likelihood of success on the merits of their claim that Section 4 of S.B. 8 violates the First Amendment rights to freedom and speech and petition the courts by discriminating against litigants on the basis of their viewpoint. *See Barr v. Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020); *City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 196 (2003); *S. Christian Leadership Conf. v. Sup. Ct. of La.*, 252 F.3d 781, 792 (5th Cir. 2001).

The Court further finds that, absent a TRO, Plaintiffs and abortion patients throughout Texas will suffer irreparable harm in the form of deprivations of their constitutional rights. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B 1981).

The Court further finds that the balance of equities tips in Plaintiffs' favor because the injuries that Plaintiffs and abortion patients would suffer from deprivation of their constitutional rights while this case is pending far outweigh any injury to Defendants from having to delay the Act's enforcement, s*ee De Leon v. Perry*, 975 F. Supp. 2d 632, 664 (W.D. Tex. 2014), *aff'd sub nom. De Leon v. Abbott*, 791 F.3d 619 (5th Cir. 2015), and that entry of a TRO would not disserve the public interest because it would protect Plaintiffs and their patients from enforcement of an unconstitutional law, *see Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014).

WHEREFORE, it is hereby **ORDERED** that Plaintiffs' application for a TRO is **GRANTED**. Defendants and their employees, agents, successors, and all others acting in concert or participating with them are **TEMPORARILY RESTRAINED** from attempting to enforce, enforcing, or participating in the enforcement of S.B. 8 directly or indirectly, including through docketing or prosecution of cases filed under S.B. 8 in Texas courts, and from seeking or awarding costs and attorney's fees under Section 4 of S.B. 8 with respect to any covered claim brought by Plaintiffs in this or other litigation.

IT IS FURTHER ORDERED that this temporary restraining order shall expire on August_____, 2021, at _____. This order may be extended for good cause, pursuant to Federal Rule of Civil Procedure 65.

Plaintiffs shall not be required to post a bond. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996).

SIGNED at _____, this _____ day of August 2021

_____
Honorable Robert Pitman
United States District Judge