

**Statement by the New York State Bar Association’s Women in Law Section
Regarding Texas Law S.B. 8.**

The Women in Law Section of the New York State Bar Association (“NSYBA”) issues this statement to express (i) its grave disappointment that the U.S. Supreme Court, in its decision dated December 10, 2021, left in place Texas anti-abortion law Senate Bill 8 (“S.B. 8”); and (ii) its strong opposition to S.B. 8. *Whole Woman’s Health et al. v. Jackson*, 595 U.S. ____ (2021); S.B. 8, 87th Leg., Reg. Sess. (2021).

Texas law S.B. 8 prohibits physicians from performing abortions once the fetus has a detectable heartbeat, which is approximately the sixth week of pregnancy, and makes no exception for cases of rape or incest. The law allows private citizens to act as bounty hunters and bring civil lawsuits against anyone who provides an abortion or assists someone in obtaining an abortion after six weeks. Successful litigants may recover at least \$10,000 per violation from the defendants.

The Supreme Court should have held that S.B. 8 is unconstitutional. The law denies to women in Texas their rights as protected by the U.S. Constitution. See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U. S. 833 (1992); *Roe v. Wade*, 410 U. S. 113 (1973).

Chief Justice Roberts agrees. In his opinion, joined by Justices Breyer, Sotomayor and Kagan, concurring in part and dissenting in part, Chief Justice Roberts wrote that S.B. 8 “is contrary to this Court’s decisions” in *Roe* and *Planned Parenthood*, and “has had the effect of denying the exercise of what we have held is a right protected under the Federal Constitution.” 595 U.S. at ____.

Justice Sotomayor agrees. In her opinion, joined by Justices Breyer and Kagan, concurring in part and dissenting in part, Justice Sotomayor wrote: “For nearly three months, the Texas Legislature has substantially suspended a constitutional guarantee: a pregnant woman’s right to control her own body. . . . The Court should have put an end to this madness months ago, before S. B. 8 first went into effect. It failed to do so then, and it fails again today.” *Id.* at ____.

S.B. 8 and the Court’s decision threaten the primacy of the U.S. Constitution and the Court’s authority to interpret the law. Chief Justice Roberts admonishes the Court against allowing a state law such as S.B. 8 to “nullify this Court’s rulings” and warns: “The nature of the federal right infringed does not matter; it is the role of the Supreme Court in our constitutional system that is at stake.” *Id.*, at ____.

Justice Sotomayor also warns that the majority’s opinion “leaves all manner of constitutional rights more vulnerable than ever before, to the great detriment of our Constitution and our Republic.” *Id.*, at ____.

S.B. 8, which makes no exception for cases of rape or incest and encourages vigilante justice, is misguided and cruel.

According to the National Sexual Violence Resource Center, one in five women in the United States were either raped or the subject of an attempted rape. Data from the Rape, Abuse & Incest National Network (RAINN), is alarming, reporting that there are “claims of child sexual abuse every 9 minutes-10% of all girls and 2% of boys are abused, but 80% of all sexual assault victims under the age of 18 are female. Girls 16 to 19 are 4 times more likely to experience rape or assault, than the general population...Sadly, 34% of the perpetrators are family members. 93% of children know their perpetrators, and only 7% of perpetrators are strangers.”

These are not just numbers. These are real people: women and girls in our own communities and in our families. They require real time medical assistance. The Texas law and the Supreme Court’s decision will cause (and is causing) irreversible harm to girls and women when they are most vulnerable, including when they are victims of violent sexual crimes.

As lawyers, we have all sworn an oath to uphold the Constitution of the United States. A deliberate violation of women’s constitutional rights in one state is an attack on women in all states.

Accordingly, NYSBA’s Women In Law Section opposes Texas S.B. 8 and the Court's decision to let it stand. We recognize that the Court authorized pre-enforcement actions against certain state court officials, and we hope that such lawsuits will lead to a final decision that S.B. 8 and any similar laws are unconstitutional.

Read & Learn More About this Issue:

Read the US Supreme Court’s Decision dated December 10, 2021, here:
Whole Woman’s Health et al. v. Jackson, 595 U.S. ____ (2021),
https://www.supremecourt.gov/opinions/21pdf/21-463_3ebh.pdf

Read the US Supreme Court’s unsigned 5-4 decision not to enjoin or block S.B. 8, dated September 1, 2021, here:
Whole Woman’s Health et al. v. Jackson, 594 U.S. ____ (2021),
https://www.supremecourt.gov/opinions/20pdf/21a24_8759.pdf

Appeals court allows Texas abortion law to resume, stopping federal judge’s order to block its enforcement
<https://www.texastribune.org/2021/10/08/texas-abortion-appeal/>

Federal judge issues order blocking Texas' 6-week abortion ban
<https://www.cnn.com/2021/10/06/politics/texas-abortion-ban-federal-judge-order-block/index.html>

A Texas Doctor Says He Defied the Abortion Law, Risking Lawsuits

<https://www.npr.org/2021/09/19/1038717122/a-texas-doctor-says-he-defied-the-abortion-law-risking-lawsuits>

Learn More about Child Sexual Abuse

<https://news.fit.edu/archive/438-child-sexual-abuse-statistics/>

Read About Women, Children Sexual Violence and its Impact

<https://www.cdc.gov/injury/features/sexual-violence/index.html#:~:text=Nearly%201%20in%205%20women,it%20occurred%20before%20age%2010>

Address Misconceptions

Read Why do Women Have Abortions?

<https://www.verywellhealth.com/reasons-for-abortion-906589>

Learn about the Attorney Behind Texas S.B. 8 Law

<https://www.nytimes.com/2021/09/12/us/politics/texas-abortion-lawyer-jonathan-mitchell.html>