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USA

Texas Anti-Abortion Law Authorizes Vigilantes

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Bounty hunters are back, deputized by the majority of the U.S. Supreme Court. In a 5-4 vote that dissenting Justice Sonia Sotomayor calls "stunning," the Court majority declared that they had no choice but to allow an unconstitutional Texas law to go into effect so that a "complex and novel antecedent procedural question" could play out.

What's the innovation? Simply that the law empowers any private individual to bring lawsuits against all who might aid a woman seeking an abortion beyond her sixth week of pregnancy. Texas Right to Life has already set up tip lines to activate those interested in pursuing such abettors, be they the woman's family, staff at an abortion clinic or the taxi driver who took her to a clinic.

Since the Texas law, SB8, also provides any vigilante who proves the charge in court with a \$10,000 reward plus legal fees, the law intimidates those who might help a woman who does not want to continue her pregnancy. Texas clinics have already announced that they have no choice but to comply with this deliberately unconstitutional law by ending their abortion practices.

The anti-choice justices on the Court used the excuse that because SB8 empowers vigilantes rather than public officials, it is an "unprecedented" approach that should be tested in decisions by the lower courts. While the law winds its way through the system, Texas clinics will be forced to close. Even if the Supreme Court eventually overturns it, much damage will have been done.

For almost fifty years the right wing has attempted to overturn the Roe v. Wade decision. They have won partial victories through allowing laws that imposed demeaning rules on abortion procedures and demonized women, particularly those who needed late-term abortions. Over the years anti-abortion fanatics have picketed clinics, set up phony clinics to attract and then intimidate women seeking abortion, lied about the safety of abortion, and written those untruths into propaganda providers must distribute before the medical procedure is performed.

The Texas law sets abortion at a six-week limit and builds a network of bounty hunters. Written to circumvent constitutional challenge, it has an immediate impact on millions of Texan women. Although Texans seeking to obtain an abortion can journey across state lines, this raises the cost of the procedure in terms of both time and money. Given that African American women seek abortion at a higher rate than white women, SB8 has a greater impact on more vulnerable women.

SB8 penalizes anyone who performs or induces abortion. Medical abortion had been allowed in Texas following the FDA protocol that it may be used up to 10 weeks of pregnancy. However, a previous state law banning Telemedicine for doctors to prescribe the abortion medications, already limited access for people who do not live near an abortion provider. A new law, SB4, explicitly limiting medication abortion to 49 days into the pregnancy is on its way to the Governor's desk. As a way to circumvent this new restriction on medication abortion in Texas, pregnant people could access the medications through Telemedicine with providers in other states. Attempting to cut off this avenue, SB4 bans the delivery of abortifacients through the mail in Texas. It is unclear how this can be enforced; but it does represent another barrier to access.

Beyond Texas

SB8 will affect not just women in Texas but will be copied by other rightwing state legislatures. Florida Senate President Wilton Sampson has already indicated this law will be on their agenda in 2021.

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In practice, SB8 provides a rightwing model on how to deal with progressive laws by circumventing legal challenges until vigilante action has rendered them meaningless. In fact, U.S. history offers a model for how this can be carried out! Passage of the 14th, 15th and 16th amendments abolished slavery as a legal institution and guaranteed the rights of citizenship to those who had been dehumanized. Yet within a dozen years a relentless counterattack resulted in "redeeming" the white elites, smashing what multi-racial democracy had been built and reducing the rights of former slaves through vigilante murder and intimidation.

Can this happen now? Of course. We should be aware of the danger SB8 represents not just for Texas women, but for everyone. And laws empowering vigilantes around limiting voting rights are already in the pipeline.

The Supreme Court decision is one more nail in the coffin of this supposedly public institution, as it flaunts the needs and aspirations of women and those who support us. Why should nine individuals have such power? It's absurd.

What can we do? Take a lesson from past movements in U.S. history that have forced public officials to take positions they'd rather not. Our immediate demand is that Congress guarantee reproductive rights through emergency legislation and not permit the Senate to block it by filibuster. Second, do not allow federal courts to duck their obligation to rule SB8 unconstitutional on the absurd procedural pretext that it establishes vigilantes as law enforcers instead of public officials.

Today's crisis opens up an opportunity to assert the right to a full program of reproductive justice. This begins with sex education based on science not superstition, an accessible public health system and a healthy environment to raise children. Such a program commits us to building a movement that draws on our strength, creativity and determination. It commits us to ally with other social justice movements that face the same bullying enemies, from Black Lives Matter and Indigenous rights to environmental justice.

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