

Amicus Brief Argues Texas Anti-Abortion Law is Designed to Impose Overwhelming Costs on Defendants

Blog

February 23, 2023

On February 16, 2023, a Jenner & Block team filed a pro bono amicus brief in the United States Court of Appeals for the Seventh Circuit in a case challenging Senate Bill 8 in Texas. The law bans abortion once cardiac activity can be detected in the embryo, which typically occurs around the sixth week of pregnancy, and deputizes private individuals to sue anyone who performs or “aids and abets” the performance of an abortion. The minimum reward for a successful suit is \$10,000.

The brief argues that SB 8 is designed to encourage costly duplicative litigation and create conflicting claims to a limited fund. “Under SB 8, any person who performs or aids in the performance of an abortion in violation of the statute is subject to suit by *any* person in Texas state court, regardless of whether they have a personal stake in the abortion performed,” the brief says.

Congress devised a tool for federal courts to resolve such disputes: interpleader. This procedural device enables courts to consolidate conflicting claims in a single proceeding. According to the brief, “the turmoil unleashed by SB 8’s private enforcement scheme demands a uniform method of dispute resolution.” Federal interpleader meets that demand by “protecting stakeholders from the unjust expense of defending multiple lawsuits and preserving judicial resources through the efficient resolution of conflicting claims.”

In *Braid v. Stillely*, three strangers from three different states sued Dr. Braid in state court to collect statutory damages for an abortion he performed in 2021. Dr. Braid then filed a federal interpleader action in Illinois, asserting that SB 8 violates his Fourteenth Amendment due process and equal protection rights as well as his First Amendment rights to free speech and petition.

The team—which included Partner Lindsay Harrison, Associate Leslie Bruce, and Law Clerk Danny Li—filed the brief on behalf of three law professors with expertise in civil procedure, complex litigation, and civil remedies.

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