

THE TEXAS HEARTBEAT ACT: HOW PRIVATE CITIZENS ARE GIVEN THE POWER TO VIOLATE A WOMAN’S RIGHT TO PRIVACY THROUGH AN UNUSUAL ENFORCEMENT MECHANISM

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I. Introduction

Nearly fifty years ago, the Supreme Court held that a woman’s “decision whether or not to terminate her pregnancy” is a fundamental right to which she is guaranteed privacy.¹ The Texas Heartbeat Act (the “Act”) threatens to violate this right to privacy through its “unusual” and novel enforcement mechanism.² Unlike other anti-abortion laws, in which the government is the enforcer, the Act cedes enforcement power to private citizens.³ Under the Act, private citizens are allowed and encouraged to invade the private life of pregnant women and sue any person or organization who helps her get an abortion.⁴ If the private citizen claimant is successful, they can collect thousands of dollars in damages.⁵ Some other states, inspired by the creativity of the Act’s novel enforcement mechanism and determined to functionally overturn *Roe*, have begun drafting their own copycat anti-abortion laws.⁶

II. What’s In a Name?

Texas lawmakers acted strategically, but not scientifically, when naming the Texas Heartbeat Act. By referencing heartbeats and emphasizing the importance of what keeps humankind alive, the Texas Republican legislators who drafted the bill could advance their political agenda and promote the right to life.⁷ They also chose the name to spotlight the purpose of the law: banning abortions that occur at any point after an ultrasound can detect a “fetal heartbeat,” as defined in the statute,⁸ which can be detected “as early as six weeks.”⁹ When promoting the bill

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¹ *Roe v. Wade*, 410 U.S. 113, 153 (1973).

² See *Whole Woman’s Health v. Jackson*, 141 S. Ct. 2494, 2496 (2021) (Roberts, J., dissenting).

³ Shannon Najmabadi, *Gov. Greg Abbott Signs into Law One of Nation’s Strictest Abortion Measures, Banning Procedure as Early as Six Weeks into a Pregnancy*, TEX. TRIB. (May 19, 2021), <https://www.texastribune.org/2021/05/18/texas-heartbeat-bill-abortions-law/>.

⁴ *Id.*

⁵ Ryan Lucas, *A U.S. Judge Blocks Enforcement of Texas’ Controversial New Abortion Law*, NPR (Oct. 6, 2021), <https://www.npr.org/2021/10/06/1040221171/a-u-s-judge-blocks-enforcement-of-texas-controversial-new-abortion-law>.

⁶ See Adam Edelman, *Texas Abortion Decision Could be ‘Blueprint’ for Gutting Roe v. Wade, Experts Say*, NBC NEWS (Sept. 2, 2021), <https://www.nbcnews.com/news/amp/ncna1278410>.

⁷ See Bethany Irvine, *Why “Heartbeat Bill” is a Misleading Name for Texas’ Near-total Abortion Ban*, TEX. TRIB. (Sept. 2, 2021), <https://www.texastribune.org/2021/09/02/texas-abortion-heartbeat-bill/>.

⁸ Texas Heartbeat Act of 2021, TEX. HEALTH & SAFETY CODE ANN. §§ 171.201, 171.204 (defining fetal heartbeat as “cardiac activity...of the fetal heart within the gestational sac.”).

⁹ Irvine, *supra* note 7; Najmabadi, *supra* note 3.

in May 2021, State Senator Bryan Hughes, the author of the Act, stated, “the heartbeat is the universal sign of life.”¹⁰ On May 19th, the day the Act became law, Hughes posted a photograph of Texas GOP lawmakers posing with Governor Abbott all making a “heart” shape with their hands.¹¹ The tweet reads in part: “[I]f a #Heartbeat is detected, a life must be protected.”¹²

The name of the Act has been scrutinized by the scientific community as being inaccurate and misleading.¹³ Dr. Nisha Verma, an OB-GYN specializing in abortion care, said the activity detected during an ultrasound in the early stages of gestation is actually electrical impulses, not a real heartbeat.¹⁴ Further, she asserts that at six weeks of gestation the cardiac valves that produce the sound that you hear in a person’s heartbeat have not yet formed.¹⁵ The Act itself cites its own “contemporary medical research,” stating that a fetal heartbeat has become a critical medical predictor in determining whether an unborn child will achieve live birth, but physicians disagree.¹⁶ Dr. Jennifer Kerns, another OB-GYN, remarked that there is nothing “meaningful and relevant about detecting cardiac activity at this gestation stage” because the so-called ‘heartbeat’ is not actually a sign of a functional heart.¹⁷

III. The Unusual Enforcement Mechanism

According to the text of the Act, any person can bring a civil suit against any person or organization that “performs or induces an abortion” or “knowingly engages in conduct that aids or abets the inducement of an abortion.”¹⁸ Someone who intends to perform an abortion or aid or abet in the performance of an abortion is also liable under the statute.¹⁹ Aiding and abetting includes paying for or reimbursing the costs of an abortion even if the person did not know that the abortion would be performed or induced in violation of this Act.²⁰ If the claimant wins in court, there are two main forms of relief.²¹ The first form of relief is an injunction to prevent the defendant from performing the abortion or aiding and abetting in the performance or inducement of the abortion.²² The second, and

¹⁰ Irvine, *supra* note 7.

¹¹ Senator Bryan Hughes (@SenBryanHughes), TWITTER (May 19, 2021, 1:04 PM), <https://twitter.com/senbryanhughes/status/1395062796426035200?lang=en>.

¹² *Id.*

¹³ Irvine, *supra* note 7.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Texas Heartbeat Act § 171.202; See Selena Simmons-Duffin, *The Texas Abortion Ban Hinges on ‘Fetal Heartbeat.’ Doctors Call That Misleading*, NPR (Sept. 3, 2021), <https://www.npr.org/sections/health-shots/2021/09/02/1033727679/fetal-heartbeat-isnt-a-medical-term-but-its-still-used-in-laws-on-abortion>.

¹⁷ Simmons-Duffin, *supra* note 16.

¹⁸ Texas Heartbeat Act § 171.208(a)(2).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Texas Heartbeat Act § 171.208(b).

²² *Id.* at § 171.208(b)(1).

more troubling, form of relief is civil damages in excess of \$10,000 for each abortion that the defendant either performed or aided or abetted.²³

This unique enforcement mechanism is problematic for four major reasons: (a) the Act transfers enforcement power from the government to private citizens; (b) this newfound enforcement power in the hands of private citizens promotes vigilantism; (c) the private citizen claimant need not have a relationship to the person or organization that they are suing; and (d) liability extends to any person who assists a woman in getting an abortion. Under this enforcement “gimmick,”²⁴ a woman seeking an abortion no longer has a right to privacy: complete strangers can dig into her personal life and sue the friend who helped her book a medical appointment, the doctor with whom she consulted when determining whether to get an abortion, or the Uber driver who drove her to the appointment. This Act, and its enforcement mechanism specifically, makes it so that for a woman interested in getting an abortion, no part of her life can remain private.

a. Enforcement Power in the Hands of Private Citizens

First, the Act empowers private citizens to enforce the law.²⁵ Under a typical anti-abortion law, the government is the enforcer.²⁶ This means that an abortion provider like Planned Parenthood could sue the Texas Attorney General because his Office would be the arm of the government enforcing the statute.²⁷ In effect, abortion providers no longer have a way to challenge an unconstitutional law without first violating that law and then challenging it once they are sued.²⁸

There are not many preexisting laws that allow private citizens to sue complete strangers for violating an act in which they were not even involved.²⁹ State Senator Hughes modeled the Act after a local ordinance from Waskom, Texas.³⁰ This ordinance allowed Waskom residents to sue anyone who performed an abortion or aided or abetted in the performance of an abortion in the city.³¹ This ordinance did not have any real impact because Waskom did not actually have any abortion providers or clinics within city limits.³² The council that voted to

²³ *Id.* at § 171.208(b)(2).

²⁴ Shannon Najmabadi, *Texas Lawmakers Push Bill to Make it Easier to Sue Abortion Providers and Harder for New Anti-Abortion Laws to be Blocked by Courts*, TEX. TRIB. (Mar. 18, 2021), <https://www.texastribune.org/2021/03/18/texas-anti-abortion-bill-courts/>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ Najmabadi, *supra* note 3.

²⁸ Najmabadi, *supra* note 24.

²⁹ Alan Feuer, *The Texas Abortion Law Creates a Kind of Bounty Hunter. Here's How It Works.*, N.Y. Times (Oct. 8, 2021), <https://www.nytimes.com/2021/09/10/us/politics/texas-abortion-law-facts.html>.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

enact the ordinance was made of all white men, who wanted Waskom to be a “sanctuary city for the unborn.”³³

Although the Waskom ordinance had only a “symbolic” effect on the residents of Waskom, the Act is poised to have a much more real impact on Texans as a whole.³⁴ As of 2017, thirty-five facilities across Texas provided abortions, twenty-one of which were clinics.³⁵ The enactment of the Act caused women in Texas to panic and flee to neighboring states to get abortions before the near-ban in Texas could take effect.³⁶ Some women in Texas seeking abortions flocked to Louisiana, despite Louisiana having its own strict anti-abortion law.³⁷ The Louisiana law only permits abortion up to 20 weeks into a pregnancy.³⁸ This means that not every Texan woman traveling to Louisiana for an abortion will be able to receive one; if their pregnancy is past the 20-week mark, they will be turned away.³⁹

Many women in Texas seeking abortions do not have the means to travel to another state to receive an abortion.⁴⁰ Before the enactment of the Act, the average one-way driving distance to an abortion clinic for a Texas woman seeking an abortion was seventeen miles.⁴¹ A near total ban on abortions increases that driving distance to 247 miles.⁴² Put another way, someone making minimum wage, which is \$7.25/hour in Texas, would have to put several hours’ worth of earnings toward the cost of gas to travel to an out-of-state abortion appointment.⁴³ Women of color, young women, and women living in rural areas are less likely to be able to take off work and drive over two hundred miles to get an abortion outside of Texas.⁴⁴

³³ Jessica Glenza, *This All-male Council in Texas Just Voted to Ban Abortion*, GUARDIAN (June 14, 2019), <https://www.theguardian.com/world/2019/jun/14/abortion-texas-waskom-all-white-male-council>.

³⁴ See Jessica Gresko & Paul J. Weber, *Origin Story of the Texas Law that could Upend Roe v. Wade*, AP NEWS (Sept. 4, 2021), <https://apnews.com/article/texas-us-supreme-court-laws-185e383ba4aa6cfc558231dcabd4104a>.

³⁵ *State Facts About Abortion: Texas*, GUTTMACHER INST. (Jan. 2021), <https://www.guttmacher.org/fact-sheet/state-facts-about-abortion-texas>.

³⁶ See Jolie McCullough & Neelam Bohra, *As Texans Fill Up Abortion Clinics in Other States, Low-income People Get Left Behind*, TEX. TRIB. (Sept. 3, 2021), <https://www.texastribune.org/2021/09/02/texas-abortion-out-of-state-people-of-color/>.

³⁷ See Sarah McCammon et al., *A Louisiana Clinic Struggles to Absorb the Surge Created by Texas’ New Abortion Law*, NPR (Oct. 7, 2021), <https://www.npr.org/2021/10/07/1044045564/a-louisiana-clinic-struggles-to-absorb-the-surge-created-by-texas-new-abortion-l>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See McCullough & Bohra, *supra* note 36.

⁴¹ Elizabeth Nash et al., *Impact of Texas’ Abortion Ban: A 14-Fold Increase in Driving Distance to Get an Abortion*, GUTTMACHER INST. (Aug. 4, 2021), <https://www.guttmacher.org/article/2021/08/impact-texas-abortion-ban-14-fold-increase-driving-distance-get-abortion>.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See McCullough & Bohra, *supra* note 36.

The women who can afford to travel to another state to receive an abortion are forced to do so to escape the surveillance and watchful eyes of private citizens who are trying to report any person who helped them get an abortion.⁴⁵ The women who cannot afford to travel out-of-state for an abortion are forced to forego an abortion or risk their abortion providers getting sued. The enforcement mechanism of the Act has made it so that women cannot go about their private lives in peace. If a woman is traveling out-of-state, other private citizens who are monitoring her every move might be wondering if she is leaving Texas to receive an abortion.

b. From Private Citizens to Vigilantes

Second, the enforcement mechanism promotes vigilantism.⁴⁶ The law creates a bounty system for private citizens.⁴⁷ According to the text of the statute, “if a claimant prevails in an action...the court shall award...statutory damages in an amount of not less than \$10,000 for each abortion that the defendant performed or induced...”⁴⁸ If the abortion provider has performed or assisted in multiple abortions, the civilian-claimant can collect at minimum \$10,000 per abortion.⁴⁹ These vigilantes are not just motivated financially, but also morally. The Act’s unusual enforcement mechanism gives anti-abortion activists the opportunity to sue anyone they think might be performing or assisting someone in getting an abortion.⁵⁰ Texas Right to Life, an anti-abortion organization, created an anonymous website where whistleblowers could report any person they believe may have violated the Act.⁵¹ The whistleblowers remained anonymous while they were encouraged to provide as much detail and evidence as possible about potential suspects in violation of the Act.⁵²

There is hardly any precedent for the Act’s appeal to vigilantism – the only precedent with a similar vigilante component can be found in environmental law.⁵³ Under the Clean Air Act (“CAA”) and Clean Water Act (“CWA”) civilians

⁴⁵ See Brian Fraga, *Even Some Catholic Pro-Lifers Have Concerns About Texas’ Abortion Law*, NAT’L CATH. REP. (Sept. 16, 2021), <https://www.ncronline.org/news/justice/even-some-catholic-pro-lifers-have-concerns-about-texas-abortion-law>.

⁴⁶ See generally Jon Michaels & David Noll, *We Are Becoming a Nation of Vigilantes*, N.Y. TIMES (Sept. 4, 2021), <https://www.nytimes.com/2021/09/04/opinion/texas-abortion-law.html>.

⁴⁷ See Feuer, *supra* note 29.

⁴⁸ Texas Heartbeat Act § 171.207(b)(2).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ BeLynn Hollers, *Texas Right to Life Says it Plan to Restart Abortion Whistleblower Website*, DALL. NEWS (Sept. 9, 2021), <https://www.dallasnews.com/news/2021/09/09/texas-right-to-life-says-it-plans-to-restart-abortion-whistleblower-website-tomorrow/>.

⁵² Michaels & Noll, *supra* note 46.

⁵³ Erin Douglas, *Texas Abortion Law a “Radical Expansion” of Who Can Sue Whom, and an About-Face for Republicans on Civil Lawsuits*, TEX. TRIB. (Sept. 3, 2021), <https://www.texastribune.org/2021/09/03/texas-republican-abortion-civil-lawsuits/>.

could sue the federal government for failing to enforce the law.⁵⁴ However, unlike the enforcement provision in the Act, the enforcement mechanisms in the CAA and CWA were meant to be a way for private citizens to sue the government, not other private citizens.⁵⁵ The other major difference between these laws is that the CWA and CAA require claimants to show damages; in other words, demonstrate how the claimant was directly affected by the laws.⁵⁶ The Act does not have any requirement that the litigant must prove that they were directly impacted by or involved in the alleged abortion.

On September 18, 2021, Dr. Alan Braid, a Texas OB-GYN, admitted to performing an abortion on a woman in Texas on September 6, 2021, just days after the Act went into effect.⁵⁷ Dr. Braid stated that he performed the abortion because he has a “duty of care to this patient” and “[the patient] has a fundamental right to receive this care.”⁵⁸ After reading Braid’s opinion piece, Oscar Stilley, a disgraced former lawyer, sued Braid – becoming the first claimant to sue under the Act.⁵⁹ Stilley admitted that his motivation for suing Braid was twofold: first, he believes the law is unconstitutional and wants to challenge its constitutionality, and second, he wants \$10,000.⁶⁰ Felipe Gomez, who considers himself pro-choice, also sued Braid because he believes the law is illegal and wants to challenge it in court.⁶¹

While Dr. Braid’s opinion piece was brave and commendable in many ways, he ultimately violated the privacy of one of his patients in the process. He did not use her name but he provided the date of the abortion performed and the article mentions that he provides abortions in San Antonio. This narrows down who the woman receiving the abortion that day could be. These details give another claimant, who is anti-abortion and/or financially motivated, more than enough information to uncover the identity of the women who received the abortion in addition to others who helped in the operation.⁶² Even though under the Act a woman receiving an abortion cannot be subject to suit, her life, and the people

⁵⁴ *Id.*

⁵⁵ See Bill Hutchinson, *Texas ‘Heartbeat Act’ Part of Wave of Red-State Laws Encouraging Vigilantes: Experts*, ABC NEWS (Oct. 1, 2021), <https://abcnews.go.com/US/texas-heartbeat-act-part-wave-red-state-laws/story?id=80245484>.

⁵⁶ *Id.*, Douglas, *supra* note 53.

⁵⁷ See generally Alan Braid, *Why I Violated Texas’s Extreme Abortion Ban*, WASH. POST (Sept. 18, 2021), <https://www.washingtonpost.com/opinions/2021/09/18/texas-abortion-provider-alan-braid/>.

⁵⁸ *Id.*

⁵⁹ *Texas Abortion: Doctor Sued in First Known Challenge of New Law*, BBC NEWS (Sept. 21, 2021), <https://www.bbc.com/news/world-us-canada-58633515>.

⁶⁰ Ronak Patel, *Who is Oscar Stilley, Former Arkansas Attorney Suing Texas Doctor Who Performed Abortion*, SW. TIMES REC. (Sept. 21, 2021), <https://www.swtimes.com/story/news/local/2021/09/21/oscar-stilley-former-attorney-fort-smith-challenging-texas-law/5796512001/>.

⁶¹ BBC NEWS, *supra* note 59.

⁶² See *id.*

with whom she communicates and leans on, are potentially liable.⁶³ The Act's encouragement of vigilantism through its private-citizen-led enforcement mechanism violates a woman's guaranteed right to privacy.

c. No Relationship Needed Between Claimant and the Person Sued

Third, under the Act, the plaintiff is not required to have any relationship with or connection to the person who had the abortion or the person who facilitated the abortion.⁶⁴ The text of the statute reads: "any person, other than an officer or employee of a state or local governmental entity... may bring a civil action against any person..."⁶⁵ "Any person" is not defined in the statute, but there is no requirement stated that the person who brings the suit must have a relationship with, or even know, the person or entity they are bringing the case against.⁶⁶ This is another unique feature of the Act as most laws require someone to have a connection to the problem in which they are suing. Even someone living outside of Texas can bring a suit if they think the abortion occurred in Texas.⁶⁷ Both Oscar Tilley and Felipe Gomez, who sued Dr. Braid, were from Arkansas and Illinois, respectively.⁶⁸

Melissa Murray, a law professor, provides an illustrative example of who can sue under this statute.⁶⁹ According to Murray, if a Starbucks barista overhears a woman talking about her abortion, that barista can then sue the clinic where the woman obtained the abortion and anyone else who helped her get to her appointment.⁷⁰ Not only can strangers who have no connection to the woman seeking an abortion sue, but abusive ex-boyfriends or controlling parents can also sue under the Act.⁷¹ A woman's ex- or current partner may not want her to go through with the abortion and are now empowered to trample on the woman's fundamental right to privacy by suing the people who are providing the abortion.⁷²

Anti-abortion activists and pro-lifers can also file a suit under this statute. Many Catholics, who are generally pro-life, support the Act.⁷³ However there are other

⁶³ Feuer, *supra* note 29.

⁶⁴ Najmabadi, *supra* note 24.

⁶⁵ Texas Heartbeat Act § 171.208(a).

⁶⁶ See generally Texas Heartbeat Act.

⁶⁷ Feuer, *supra* note 29.

⁶⁸ BBC NEWS, *supra* note 59.

⁶⁹ Sabrina Tavernise, *Citizens, Not the State, Will Enforce New Abortion Law in Texas*, N.Y. TIMES (July 9, 2021), <https://www.nytimes.com/2021/07/09/us/abortion-law-regulations-texas.html>.

⁷⁰ *Id.*

⁷¹ See Miriam Berg, *WTF? An Abortion Bounty Law in 2021?*, PLANNED PARENTHOOD (Oct. 13, 2021), <https://www.plannedparenthoodaction.org/blog/wtf-an-abortion-bounty-law-in-2021>.

⁷² See Texas Heartbeat Act § 171.208.

⁷³ See David Crary, *Some Abortion Foes Question Tactical Wisdom of New Texas Ban*, ASSOCIATED PRESS (Sept. 15, 2021), <https://apnews.com/article/religion-texas-abortion-law-d73bcb965d70b9bccf3f75b4f91ce31e>.

Catholics who believe that the private-citizen enforcement mechanism of the Act is “not the way” to advance their anti-abortion cause.⁷⁴ Charles Camosy, a Catholic theology professor at Fordham University who is against abortion, remarked that the Texas law gives the public the impression that anti-abortion activists will engage in “desperate and extremist tactics” to file suits under the statute.⁷⁵ Michael Sean Winters, a reporter for the National Catholic Reporter and a staunch pro-lifer, has also come out against the law for being “problematic” and introducing a “vigilante justice” system.⁷⁶

Under the Act, women seeking abortions have to constantly watch what they say and do, as “any person” can sue an abortion provider or anyone else who assists someone in getting an abortion. Once again, a Texas woman’s right to privacy is violated because she cannot go about her life without worrying that anyone with whom she comes into contact will be eavesdropping on her conversations or digging into her personal life for clues of a planned abortion.

d. Liability Extended to Everyone Involved in Abortion

Fourth, under the Act, the defendant can be any person a pregnant woman contacts during the process of getting an abortion.⁷⁷ This means that a Lyft or Uber driver can be sued for dropping off or picking up passengers at abortion clinics for their appointments.⁷⁸ Knowing that their drivers can be liable under the Act, Lyft released a statement on September 3, 2021 stating that it is “unacceptable” that a driver could be unknowingly breaking the law by picking up or dropping off a rider that is getting an abortion.⁷⁹ The statement goes on to say that it is also “unacceptable” that a pregnant woman trying to get a healthcare appointment may have her ride canceled because the driver is worried that they are violating the law.⁸⁰

Lyft took two actions in response to the Texas law: 1) donating \$1 million to Planned Parenthood and 2) covering all of the legal fees for drivers sued under the Act while driving for Lyft.⁸¹ Uber followed Lyft’s lead and created a defense fund

⁷⁴ Fraga, *supra* note 45.

⁷⁵ Crary, *supra* note 73.

⁷⁶ Michael Sean Winters, *New Texas Abortion Law is a Pyrrhic Victory for Pro-life Cause*, NAT’L CATH. REP. (Sept. 3, 2021), <https://www.ncronline.org/news/opinion/distinctly-catholic/new-texas-abortion-law-pyrrhic-victory-pro-life-cause>.

⁷⁷ Feuer, *supra* note 29.

⁷⁸ Jordan Williams, *Uber, Lyft to Pay Legal Fees for Drivers Sued Under Texas Abortion Law*, HILL (Sept. 4, 2021), <https://thehill.com/policy/technology/570841-uber-lyft-to-pay-legal-fees-for-drivers-sued-under-texas-abortion-law>.

⁷⁹ Logan Green et al., *Defending Drivers and Women’s Access to Healthcare*, LYFT BLOG (Sept. 3, 2021), <https://www.lyft.com/blog/posts/defending-drivers-and-womens-access-to-healthcare>.

⁸⁰ *Id.*

⁸¹ *Id.*

for their own for their drivers.⁸² The CEO of Uber replied to Lyft's statement on Twitter with the following: "drivers shouldn't be put at risk for getting people where they want to go. Team Uber... will cover legal fees in the same way."⁸³

Lyft's statement emphasized the importance of privacy for both their drivers and riders.⁸⁴ They said that Lyft drivers do not have a duty to monitor where their riders go or try to find out why they are going to that location.⁸⁵ A rider has a right to privacy concerning where she is going and why she is going there.⁸⁶ This right to privacy extends to women who call a rideshare service to take them to their medical appointments. Even though destination monitoring should not occur, a driver who is financially or morally motivated to do so can sue the provider violating the statute after transporting and dropping a woman off at the facility.⁸⁷ This is a violation of a woman's right to privacy.

Abortion care providers and doctors are also at risk of being sued if they performed an abortion or aided and abetted in the performance of one.⁸⁸ The law can, and most likely has, made doctors fearful or worried about the consequences if they perform an abortion in defiance of the statute. When doctors are afraid to treat women, it puts a woman's life in danger.⁸⁹ The Act, and specifically its unusual private-citizen driven enforcement mechanism, endanger a woman's safety and also her right to privacy that is guaranteed under *Roe*.⁹⁰

IV. Conclusion: How the Act and Replicate Laws Could Impact a Woman's Right to Privacy protected under *Roe*

The Act's private citizen enforcement scheme creates a dangerous precedent for other states to draft their own replicate bills.⁹¹ Republican Florida legislators proposed a bill that is basically identical to the Act: claimants, who can be anyone except for members of the government, can win \$10,000 in civil damages if they prevail in their lawsuits against medical providers who performed an abortion or

⁸² Shannon Bond, *Lyft and Uber Will Pay Drivers' Legal Fees if they're Sued Under Texas Abortion Law*, NPR (Sept. 3, 2021), <https://www.npr.org/2021/09/03/1034140480/lyft-and-uber-will-pay-drivers-legal-fees-if-theyre-sued-under-texas-abortion-la>.

⁸³ Dara Khosrowshahi, (@dkhos), TWITTER (Sept. 3, 2021, 4:46 PM), <https://twitter.com/dkhos/status/1433894081487273987>.

⁸⁴ Green et al., *supra* note 79.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Lyft, Uber Will Pay Drivers' Legal Fees if They're Sued Under Texas Abortion Law*, NPR (Sept. 8, 2021), <https://www.npr.org/2021/09/08/1035045952/lyft-uber-will-pay-drivers-legal-fees-if-theyre-sued-under-texas-abortion-law> (interview between NPR's A. Martinez and Lyft's President, John Zimmer).

⁸⁸ See Texas Heartbeat Act § 171.208.

⁸⁹ See Fraga, *supra* note 45.

⁹⁰ See *Roe v. Wade*, 410 U.S. 113, 152 (1973).

⁹¹ See Michaels & Noll, *supra* note 46.

defendants who aided and abetted in the performance of an abortion.⁹² It is possible that the Act, combined with other laws with the same novel enforcement mechanism, will succeed in their goal of overturning *Roe*.⁹³ The Act's private enforcement mechanism violates a woman's private life by allowing private citizens to enforce the law, encouraging vigilantism, allowing complete strangers to sue with no connection to the abortion, and extending liability to anyone involved in the performance of an abortion. If *Roe* is overturned, women will no longer be guaranteed a right to privacy over their decision whether or not to terminate their pregnancies.⁹⁴ Further, if *Roe* is overturned, the effects that the Act has had in Texas will extend to the rest of the country: women will have to drive long distances to receive an abortion, women will live in fear that their private lives are being surveilled by private citizens, and some women may even forego having an abortion to prevent their friends, family, and doctors from being sued.⁹⁵

⁹² Brendan Farrington, *New Florida Bill Replicates Texas' Sweeping Abortion Ban*, ASSOCIATED PRESS (Sept. 22, 2021), <https://apnews.com/article/abortion-health-texas-florida-laws-ce46baccd56943066d488c218b268bbe>.

⁹³ *Id.*

⁹⁴ *See Roe*, 410 U.S. at 153.

⁹⁵ *See* Quoc Trung Bui et al., *What Happens if Roe v. Wade is Overturned?* N.Y. TIMES (Oct. 15, 2020), <https://www.nytimes.com/interactive/2020/10/15/upshot/what-happens-if-roe-is-overturned.html>.