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LDF Media
212-965-2200 / media@naacpldf.org

LDF Issues Statement on Supreme Court Decision Regarding Texas Abortion Law

Today, the United States Supreme Court permitted Texas abortion care providers the ability to challenge the state's abortion law (S.B. 8) in federal court, but only on the narrowest grounds against state licensing officials. In addition, the Court denied a stay of the law, thereby allowing its enforcement to continue. S.B.8 prohibits doctors from providing abortion care more than six weeks into a pregnancy and encourages any individual to act as de facto bounty hunters by suing anyone who provides abortion care, or aids in the provision of such care, after six weeks. The law is plainly unconstitutional, but by purporting to delegate enforcement authority to private citizens rather than state officials, it was designed to circumvent federal judicial review.

On November 1, the Court heard two cases challenging S.B. 8, including *Whole Women's Health v. Austin Reeve Jackson*, in which the NAACP Legal Defense and Educational Fund, Inc. (LDF) filed an amicus brief. The brief emphasized the existential danger S.B. 8's unusual enforcement mechanism poses to the rule of law.

In response to the Court's ruling, LDF President and Director-Counsel Sherrilyn Ifill issued the following statement:

"While the Court's decision today allows abortion care providers in Texas to proceed with their legal challenge against S.B. 8, it severely limits the scope of who may be sued. The ability to proceed is important and will allow for the District Court to rule on the unconstitutionality of S.B. 8. As Justice Sotomayor noted in today's decision, 'I trust the District Court will act expeditiously to enter much-needed relief.'

"It is important to note, however, that by narrowing the scope of the lawsuit so dramatically, the Court's decision fails to fully respond to Texas' efforts to circumvent federal judicial review. As Justice Sotomayor added, by narrowing the scope 'the Court effectively invites other states to refine S.B. 8's model for nullifying federal rights. The Court thus betrays not only the citizens of Texas, but also our constitutional system of government.'

"Historically, the Court has intervened when states and localities have attempted to circumvent the constitution and deny rights to their residents. When states attempted to ignore the Court's decision in *Brown v. Board of Education*, it ruled that under no circumstances were states allowed to nullify constitutional rights. Given today's ruling, states can now take advantage of the 'private bounty' loophole to nullify constitutional rights for unspecified periods of time. We find this alarming.

"And we must not forget that by denying the U.S. Department of Justice's request to block enforcement of S.B. 8, the Court has allowed a constitutional right held by women since 1973 to remain suspended for individuals living in the most populous state in the nation. This is an emergency, but the Court not only took months to address the matter, it has also

now done so in a manner that prolongs this dangerous crisis for Texas residents – especially women of color, young women, and women who are low-income.”

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation’s first civil and human rights law organization. LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF. Follow LDF on [Twitter](#), [Instagram](#) and [Facebook](#).