



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
October 12, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (Author), Councilmember Taplin (Co-Sponsor), Councilmember Kesarwani (Co-Sponsor), Councilmember Hahn (Co-Sponsor)

Subject: Adopt a Resolution Denouncing Texas Anti-Abortion Law (SB 8) and Reaffirming Reproductive Freedom in Berkeley

RECOMMENDATION

Adopt a resolution to denounce the Texas abortion law, Senate Bill (SB) 8, banning most abortions after six weeks of pregnancy. The resolution will also reaffirm the City of Berkeley's commitment to reproductive freedom.

FINANCIAL IMPLICATIONS

None.

BACKGROUND

A Texas law, known as Senate Bill (SB) 8, banning most abortions after about six weeks of pregnancy went into effect on September 1, 2021 after the Supreme Court formally denied a request from Texas abortion providers to freeze the new law. The law prohibits abortion once a fetal heartbeat can be detected, which is often before a woman is aware of her pregnancy. SB 8 is nearly a complete ban on abortions and is one of the most restrictive in the United States and the entire developed world. The law bars state officials from actually enforcing it, a design intended to make it difficult to challenge in the courts. Usually a lawsuit aiming to block such a law as unconstitutional names state officials as defendants. Instead, the Texas law deputizes private citizens – including those from outside Texas – to sue clinics and anyone who performs an abortion or “aids and abets” a procedure.

Plaintiffs who have no connection to the patient or the clinic may sue and recover legal fees, as well as \$10,000 if they are successful. The law allows doctors, staff, and anyone else involved to be potential defendants; however, patients cannot be sued. Teenagers, who often don't realize they are pregnant until later in a pregnancy, low-income people, who may need to find \$550 to cover the cost of the procedure, and people of color and undocumented immigrants are some of the most vulnerable individuals who will be impacted by this law, disproportionately. With a 5-4 vote the Supreme Court refused to block SB 8.

The Supreme Court's decision not to block the unconstitutionally restrictive law appears in direct opposition to past precedents. The Biden Administration is suing Texas over the new state law, arguing that it was enacted "in open defiance of the Constitution" and asking a judge to quickly declare the law invalid. The case filed by the Department of Justice will likely reach the Supreme Court, but without any additional court action at this point, the law remains in effect.

Opposition to Texas's SB 8 and similar anti-abortion legislation that serves to eliminate a woman's right to choose and hinder the availability of reproductive healthcare is in line with the City's longstanding values and legislative priorities. In addition to denouncing the anti-abortion law in Texas, the proposed resolution declares the City of Berkeley as a safe harbor for reproductive freedom.

The City of Berkeley has a well-established record of supporting women's rights and reproductive health. In 1985, the City of Berkeley adopted a resolution in support of Roe v Wade. The City has continually supported state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services. As opponents of reproductive freedom continue their attempts to strike down decades of precedent, Berkeley has an opportunity to be a model of a city committed to the defense of reproductive freedoms. Ensuring access to autonomy in reproductive decisions and access to care will enhance our residents' quality of life.

#### ENVIRONMENTAL SUSTAINABILITY

The right to reproductive freedom and choice is compatible with our goals for environmental sustainability.

#### CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

RESOLUTION NO. ##,###-N.S.

DENOUNCING TEXAS ANTI-ABORTION LAW (SB 8) AND REAFFIRMING  
REPRODUCTIVE FREEDOM IN BERKELEY

WHEREAS, a Texas law, known as Senate Bill (SB) 8, banning most abortions after about six weeks of pregnancy went into effect on September 1, 2021 after the Supreme Court formally denied a request from Texas abortion providers to freeze the new law; and

WHEREAS, the law prohibits abortion once a fetal heartbeat can be detected, which is often before a woman knows that she is pregnant, effectively amounting to a nearly complete ban on abortions in the state; and

WHEREAS, rather than naming state officials as defendants, the Texas law deputizes private citizens – including those from outside Texas – to sue clinics and anyone who performs an abortion or “aids and abets” a procedure. Plaintiffs who have no connection to the patient or the clinic may sue and recover legal fees, as well as \$10,000 if they are successful; and

WHEREAS, the Supreme Court refused to block the Texas law, with the 5-4 conservative majority saying the abortion providers who had challenged the law in an emergency application to the court had not made their case in the face of “complex and novel” procedural questions; and

WHEREAS, the law will have unequal consequences on women and people of child-bearing age in Texas, with certain vulnerable populations facing potentially dire consequences, including teenagers, low-income people, people of color and undocumented immigrants; and

WHEREAS, autonomy and agency in reproductive matters are central to secure gender, economic, and racial equity in all aspects of life; and

WHEREAS, in 1969 the California Supreme Court recognized that the U.S. Constitution protects the fundamental right to choose whether to carry a pregnancy to term or seek an abortion; and

WHEREAS, in 2002, California enacted the Reproductive Privacy Act, which prevents the state from interfering with the right to choose between carrying a pregnancy to term or to obtain an abortion; and

WHEREAS, the City of Berkeley has a well-established record of supporting women’s rights and reproductive health for all; and

WHEREAS, in 1985, the City of Berkeley officially declared its support of reproductive rights and commemorated Roe v. Wade and the City has continually taken action to support state and federal legislation protecting and advancing reproductive rights, access to healthcare, and funds for preventative health care services.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Berkeley hereby denounces SB 8, the Texas law banning most abortions after six weeks of pregnancy, and denounces the Supreme Court's decision not to block this restrictive law.

BE IT ALSO RESOLVED, that the City of Berkeley will defend and advocate for health equity and reproductive freedom, so that every resident in our community may have safe access to the reproductive services they need.