



## ABOLISH ABORTION TEXAS

# LEGISLATIVE ANALYSIS

**RE:** TEXAS HEARTBEAT ACT – TEXAS 87R SB 8 (HUGHES, R- MINEOLA)

**DATE:** MARCH 15, 2021

### BACKGROUND

Among other things, SB 8 generally prohibits a physician from performing an abortion if the physician detects a fetal heartbeat or fails to perform a test to detect a fetal heartbeat. The bill takes an unusual approach by prohibiting public enforcement and providing that the prohibition shall be “enforced exclusively” through private civil enforcement. The ban would not apply to the mother of the child.

### ASSESSMENT

- **✗ Ineffective** – Because the bill has no provision to treat *Roe v. Wade* as void, it is unlikely to ever be enforceable. Private civil suits must still be enforced by government courts. Of the many heartbeat bills passed in other states, none are being enforced. All have been enjoined by the federal courts, including by our own Fifth Circuit.
- **✗ Dehumanizes Persons Without a Detectable Heartbeat** – Texas Republicans generally believe in “the sanctity of innocent human life, created in the image of God, which should be equally protected from fertilization to natural death” (2020 Texas GOP Principles). Nevertheless, this bill does not recognize and protect life from fertilization, but from detectable heartbeat (and not equally). This is discriminatory and dehumanizes preborn persons who do not yet have a detectable heartbeat.
- **✗ Denies Equal Protection** – This bill does not apply the same laws protecting born persons to persons not yet born. Additionally, the bill provides an exception to the ban for the mother of the child aborted (P5, L8-11). By giving mothers a license to kill, it harms and degrades women and denies the preborn person the equal protection of the laws that protect born persons. Among other things, this violates the Fourteenth Amendment to the Constitution of the United States, which provides, “No state shall... deny to any person within its jurisdiction the equal protection of the laws.” Furthermore, this exception perpetuates the rationale of *Roe* by implicitly affirming the concept that a woman has a right to an abortion of her own child and by denying the personhood of the preborn.
- **✓ Protects Pre-*Roe* Statutes** – Texas pre-*Roe* laws were never repealed and provide a ban on abortion (*see* Tex. Rev. Civ. Stat. Art. 4512.1 through 4512.4 and 4512.6). Coupled with changes to the Homicide chapter of the Penal Code made in 2003, these laws generally make it homicide for anyone but the mother to perform or participate in an abortion. If the state were to cease erroneously treating *Roe v. Wade* as the law of the land, these existing laws would outlaw abortion immediately for everyone but the mother. This bill expressly finds that these statutes have never been repealed.