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ADVISORY ON TEXAS LAW UPON REVERSAL OF *ROE V. WADE*

For nearly half a century, Americans have lived under a legally incorrect and morally bankrupt court decision that created, out of thin air, a constitutional “right” to abortion. *Roe v. Wade* was an act of raw, partisan political will of unelected judges, and it had no basis in the text of the U.S. Constitution then or now. Today we celebrate *Roe*’s reversal, mindful that nothing can bring back the millions of lives lost since the Supreme Court federalized abortion policy and prohibited States from fully protecting their most vulnerable citizens. Thankfully, the current Court has finally acted to overturn this egregious act of unconstitutional judicial activism.

Texans want to know what to expect now that *Roe* is overturned. The answer is that without further action by the Texas Legislature, abortion will soon be clearly illegal in Texas. In 2021, the Texas Legislature passed the Human Life Protection Act of 2021 (“the Act”), which prohibits abortions in most circumstances and takes effect on the 30th day after “issuance of a United States Supreme Court judgment in a decision overruling, wholly or partly, *Roe v. Wade*, 410 U.S. 113 (1973), as modified by *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), thereby allowing the states of the United States to prohibit abortion.”¹

Today, the Court issued its *opinion* reversing *Roe*, but it has yet to issue its *judgment*. A judgment is a legal document distinct from the Court’s opinion. The Court will issue its judgment only after the window for the litigants to file a motion for rehearing has closed. A judgment can issue in about a month, or longer if the Court considers a motion for rehearing. So while it is clear that the Act *will* take effect, we cannot calculate exactly *when* until the Court issues its judgment. My office will publicly announce an effective date for the Act as soon as possible—and we look forward to doing so.

Upon taking effect, the Act provides that a person “may not knowingly perform, induce, or attempt an abortion” except under limited circumstances, such as a life-threatening condition to the mother caused by the pregnancy.² A person who violates the Act commits a first-degree felony if an unborn child dies as a result³ and incurs

¹ [H.B. 1280](#), 87th Reg. Session (2021).

² Tex. Health & Safety Code § [170A.002\(a\), \(b\)](#).

³ *Id.* § [170A.004](#).

civil penalties of not less than \$100,000 for each violation.⁴ My office is specifically authorized to pursue and recover those civil penalties, and I will strictly enforce this law. Further, we will assist any local prosecutor who pursues criminal charges.⁵ Additionally, state licensing authorities are required to revoke any applicable license or permit of a health care professional who performs or attempts to perform an abortion in violation of the Act.⁶

What's more, some prosecutors may choose to immediately pursue criminal prosecutions based on violations of Texas abortion prohibitions predating *Roe* that were never repealed by the Texas Legislature.⁷ Although these statutes were unenforceable while *Roe* was on the books, they are still Texas law. Under these pre-*Roe* statutes, abortion providers could be criminally liable for providing abortions starting today.

Texas law in a post-*Roe* world has already been written. Now that the Supreme Court has finally overturned *Roe*, I will do everything in my power to protect the unborn and uphold the state laws duly enacted by the Texas Legislature.



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⁴ *Id.* § [170A.005](#). A pregnant woman, however, cannot be held criminally or civilly liable under the Act. *Id.* § [170A.003](#).

⁵ Tex. Gov't Code § [402.028](#).

⁶ Tex. Health & Safety Code § [170A.007](#).

⁷ See Tex. Rev. Civ. Stats. Ann. Art. 4512.1 (“Abortion”), previously codified at Tex. Pen. Code art. 1191 (1925) (“If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall be doubled. By ‘abortion’ is meant that the life of the fetus or embryo shall be destroyed in the woman’s womb or that a premature birth thereof be caused.”); Tex. Rev. Civ. Stats. Ann. Art. 4512.2 (“Furnishing the means”), previously codified at Tex. Pen. Code art. 1192 (1925) (“Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.”); Tex. Rev. Civ. Stats. Ann. Art. 4512.3 (“Attempt at abortion”), previously codified at Tex. Pen. Code art. 1193 (1925) (“If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.”); Tex. Rev. Civ. Stats. Ann. Art. 4512.4 (“Murder in producing abortion”), previously codified at Tex. Pen. Code art. 1194 (1925) (“If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.”); Tex. Rev. Civ. Stats. Ann. Art. 4512.6 (“By medical advice”), previously codified at Tex. Pen. Code art. 1196 (1925) (“Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.”).