

# **Durbin: Texas Abortion Ban Is A Five-alarm Fire For Due Process And Constitutional Rights**

September 30 2021 11:09 AM



WASHINGTON, D.C. – In a speech on the Senate floor, U.S. Senate Majority Whip Dick Durbin (D-IL), Chair of the Senate Judiciary Committee, today highlighted the Senate Judiciary Committee’s hearing entitled “Texas’s Unconstitutional Abortion Ban and the Role of the Shadow Docket,” which examined the consequences of Texas’s S.B. 8 abortion ban law and the increasing use of the Supreme Court’s “shadow docket” to make drastic changes to legal and constitutional rights without full briefing, deliberation, or transparency.

“What we witnessed during today’s hearing was the opening salvo on the fate and future of *Roe v. Wade*,” Durbin said. “This law has effectively banned abortion after six weeks in the nation’s second-largest state, even in cases of rape and incest... The architects behind S.B. 8 took an extreme proposal that clearly violated Supreme Court precedent

and paired it with a new, disturbing private bounty hunter enforcement scheme, and they did so in the hope that the courts would not block the law because it wasn't clear who should be sued. At midnight on September 1, the Supreme Court allowed S.B. 8 to go into effect. As a result, millions of Texas women have had their constitutional rights challenged and suspended. This attack on women has already caused irreparable harm to countless women who lost their right to reproductive care in Texas.”

Durbin discussed how the law turns ordinary citizens into bounty hunters who can receive at least \$10,000 in damages and recover costs and attorney’s fees if they are successful with their lawsuit. Durbin also highlighted how Texas lawmakers designed the law in a way that could use the Supreme Court’s shadow docket to avoid judicial scrutiny.

“Anyone from any state can file a lawsuit against any physician, but when we include the categories of people who aid and abet the person receiving the abortion, the categories go wide afield—from the people who gave her advice, the folks who gave the transportation to the clinic, the minister who counseled her. All of these things make them eligible to be sued for a minimum of \$10,000 in Texas,” Durbin said. “There's a reason why the Texas legislators designed the law this way. They sensed an opportunity at the Supreme Court. They knew an emergency legal challenge to this Texas law had a good chance of coming all the way to the Supreme Court and they knew the Supreme Court showed a willingness to allow sweeping changes in the law to take place through orders made on the shadow docket, on a short timetable without detailed explanation...That's exactly what happened with S.B. 8, when...a majority of Supreme Court justices, late at night, allowed it to take effect. The next day the Court issued a one-paragraph opinion to explain it. And it said it would not stay Texas's abortion ban because of the law's ‘complex and novel procedural questions.’”

“This is a five-alarm fire for due process as well as our constitutional rights and as I expressed during today's hearing, I hope every member of the Senate, Democrat or Republican, will join together to protect and preserve independent, transparent, and reasoned judicial decision-making based on the rule of law. At a time when the public's confidence in our governmental institutions has been greatly eroded, we must restore it,” Durbin concluded.

Video of Durbin’s floor speech is available [here](#).