



For Immediate Release
March 18, 2021

**State Representative Briscoe Cain Sends
Cease-And-Desist Letters to Citigroup**

Representative Briscoe Cain (R - Deer Park) has demanded that Citigroup rescind its recently announced policy to pay the travel costs and related expenses of women who leave the state of Texas to abort their unborn children. Cain also warned Citigroup that its officers and employees will face criminal prosecution if Citigroup does not immediately terminate coverage of elective abortions performed in Texas in its employee-benefit plans.

In a letter to Citigroup CEO Jane Fraser, Cain described Citigroup's decision to pay for out-of-state abortions as a "grotesque abuse of the fiduciary duty that you owe to the many shareholders of your company that oppose abortion." Cain informed Fraser that he will introduce legislation next session that bars local governments in Texas from doing business with any company that pays the abortion-related expenses of its employees or that provides abortion coverage as an employee benefit. This bill, if enacted, will prevent Citigroup from underwriting municipal bonds in Texas unless it rescinds its abortion-reimbursement policy.

Cain also warned Citigroup that existing Texas law imposes felony criminal liability on any person who "furnishes the means for procuring an abortion knowing the purpose intended." This prohibits Citigroup from paying for elective abortions performed in Texas or covering those abortions in its employee-benefits plan. Cain's letter demands that Citigroup immediately halt all payments and coverage of elective abortions performed in Texas, and warns that its officers and employees will face felony criminal prosecution if it continues in-state abortion coverage.

Finally, Cain said he would introduce legislation next session that will empower district attorneys from throughout the state to prosecute violations of the state's abortion laws when the local district attorney fails or refuses to do so. This will ensure that Citigroup and others who violate the state's abortion laws are prosecuted for their crimes even when they reside in counties where the local district attorney refuses to bring charges.

"Citigroup decided to pander the woke ideologues in its C-suite instead of obeying the laws of Texas," said Cain. "We will enact the laws necessary to prevent this misuse of shareholder money and hold Citigroup accountable for its violations of our state's abortion laws."

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TEXAS HOUSE *of* REPRESENTATIVES

Briscoe Cain
District 128

CHAIR, HOUSE COMMITTEE ON ELECTIONS
MEMBER, HOUSE COMMITTEE ON BUSINESS & INDUSTRY

March 18, 2022

Jane Fraser
Chief Executive Officer, Citigroup
388 Greenwich Street
New York, New York 10013
jane.fraser@citigroup.com

Dear Ms. Fraser:

It has come to my attention that your company has decided to pay the travel costs and related expenses of women who leave the state of Texas to murder their unborn children. Your decision to divert corporate resources to this end is unacceptable and will not be tolerated. Your responsibility as a CEO is to maximize return to the shareholders, not to divert shareholder resources toward ideological causes in an effort placate the woke liberals in your C-suite. The money that you are using to pay for out-of-state abortions belongs to the shareholders of the company—not to you, and not to the directors or officers of Citigroup. Your actions are a grotesque abuse of the fiduciary duty that you owe to the many shareholders of your company that oppose abortion, as well as to shareholders who want that money used to maximize returns on their investment rather than to commit acts of violence against the most vulnerable members of the human family.

The state of Texas has already taken action in response to Citigroup's use of corporate resources to further the anti-gun and anti-Second Amendment ideologies of your corporate officers. Last session, we enacted a law that prohibits local government in Texas from doing business with companies that discriminate against firearm businesses or trade groups. We will again take swift and decisive action if you do not immediately rescind your recently announced policy to pay the expenses of Citigroup employees who kill their unborn children.

First, I intend to introduce legislation next session that bars local governments in Texas from doing business with any company that pays the abortion-related expenses of its employees or that provides abortion coverage as an employee benefit—regardless of where the employee is located or where the abortion is performed. If the Supreme Court overrules *Roe v. Wade*, 410 U.S. 113 (1973), this term, as many expect, then it will become impossible for Citigroup to pay for abortions performed in Texas. But the legislation that I plan to introduce will prevent Citigroup from paying for any employee's abortion if it wishes to



continue doing business with Texas municipalities, even if the employee is located out of state and even if the abortion is performed out of state.

Second. You should know that the existing law of Texas imposes felony criminal liability on any person who “furnishes the means for procuring an abortion knowing the purpose intended.” West’s Texas Civil Statutes, article 4512.2 (1974).¹ Violations of article 4512.2 are punishable by two to five years imprisonment for each abortion that was paid for, and the statute of limitations is three years. The only exception is for abortions “procured or attempted by medical advice for the purpose of saving the life of the mother.” West’s Texas Civil Statutes, article 4512.6 (1974). The State of Texas has never repealed this statute, and the legislature re-affirmed the continuing vitality of article 4512.2 last session when it enacted Senate Bill 8. *See* Senate Bill 8, 87th Leg., § 2.

To the extent that Citigroup is paying for elective abortions performed in Texas as part of its employee benefits, it is committing criminal acts and exposing every person involved to criminal prosecution and imprisonment. *Roe v. Wade*, 410 U.S. 113 (1973), is no defense because Citigroup and its officers lack standing to assert the third-party rights of women seeking abortions as a defense to criminal prosecution. *See Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004) (“A party ‘generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.’” (citation omitted)).² And in all events, a woman seeking an abortion has no constitutional right to have her employer pay for it, *see Harris v. McRae*, 448 U.S. 297, 325 (1980), so no abortion patient will suffer an “undue burden” if Citigroup officers and employees are prosecuted for violating article 4512.2.³ There is also no constitutional right to perform or pay for another

1. The full text of the statute says: “Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.” West’s Texas Civil Statutes, article 4512.2 (1974). A copy of the statute is attached to this letter.
2. The Supreme Court has allowed abortion doctors and abortion providers to assert the third-party rights of abortion patients, but no court has ever held that an abortion fund (or a donor to such a fund) has the necessary “close relation” needed to establish third-party standing. *See, e.g., Singleton v. Wulff*, 428 U.S. 106, 117 (1976) (plurality opinion) (allowing *physicians* to assert third-party rights of their patients seeking abortions on account of the “patent” “closeness of the relationship”); *June Medical Services LLC v. Russo*, 140 S. Ct. 2103, 2118 (2020) (plurality opinion) (“We have long permitted abortion *providers* to invoke the rights of their actual or potential patients in challenges to abortion-related regulations.” (emphasis added)).
3. *See also Planned Parenthood of Kansas and Mid-Missouri v. Moser*, 747 F.3d 814, 826 (10th Cir. 2014) (“There is a qualitative difference between prohibiting an activity and refusing to subsidize it. The Supreme Court, for instance, has drawn that line in rejecting state laws prohibiting certain abortions but not laws refusing to provide funds for the practice.”).



TEXAS HOUSE *of* REPRESENTATIVES

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CHAIR, HOUSE COMMITTEE ON ELECTIONS
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person's abortion; that is why abortion providers who challenge abortion regulations must invoke the third-party rights of their patients rather than assert their own constitutional rights. *See, e.g., Planned Parenthood of Greater Ohio v. Hodges*, 917 F.3d 908, 912 (6th Cir. 2019) (en banc) ("The Supreme Court has never identified a freestanding right to perform abortions. To the contrary, it has indicated that there is no such thing."). Nor will the abortionist's immunity from prosecution on account of *Roe* preclude the imposition of accomplice liability on employer and others who violate section 4512.2 by paying for another person's abortion. *See* Tex. Penal Code § 7.03(2).

Citigroup may not be aware that it is a crime to pay for another person's abortion in Texas, because its offices in Texas are located in areas where the local district attorney is unwilling to bring charges in response to these criminal acts. But I will be introducing legislation next session that will empower district attorneys from throughout the state to prosecute abortion-related crimes—including violations of article 4512.2 of the Revised Civil Statutes—when the local district attorney fails or refuses to do so. The bill will also eliminate the three-year statute of limitations that currently applies to violations of article 4512.2.

Citigroup must immediately cease and desist all activities that aid or abet elective abortions performed in Texas. This includes paying for elective abortions performed in Texas, defraying or reimbursing the costs of such abortions, and providing any coverage of in-state elective abortions as part of an employee's benefits. The only abortions performed in Texas that Citigroup may pay for or cover are abortions "procured or attempted by medical advice for the purpose of saving the life of the mother." West's Texas Civil Statutes, article 4512.6 (1974). The state of Texas will ensure that your company is held accountable for any in-state abortions that you illegally assisted.

Sincerely,

Briscoe Cain
Texas State Representative
House District 128

Enclosure: West's Texas Civil Statutes, articles 4512.1 – 4512.6 (1974)

deformity or injury, by any system or method, or to effect cures thereof.

2. Who shall diagnose, treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with and in view of Article 740, Penal Code of Texas¹ and Article 4504, Revised Civil Statutes of Texas as contained in this Act.

[1925 P.C.; Acts 1949, 51st Leg., p. 160, ch. 94, § 20(b); Acts 1953, 53rd Leg., p. 1029, ch. 426, § 11.]

¹ See, now, article 4504a.

Art. 4510b. Unlawfully Practicing Medicine; Penalty

Any person practicing medicine in this State in violation of the preceding Articles of this Chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than Fifty Dollars (\$50), nor more than Five Hundred Dollars (\$500), and by imprisonment in the county jail for not more than thirty (30) days. Each day of such violation shall be a separate offense.

[1925 P.C.; Acts 1939, 46th Leg., p. 352, § 10.]

Art. 4511. Definitions

The terms, "physician," and "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners," "practitioners of medicine," and, "practice of medicine," as used in this law, shall be construed to refer to and include physicians and surgeons.

[Acts 1925, S.B. 84.]

Art. 4512. Malpractice Cause for Revoking License

Any physician or person who is engaged in the practice of medicine, surgery, osteopathy, or who belongs to any other school of medicine, whether they used the medicines in their practice or not, who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or shall, by any untrue or fraudulent statement or representations made as such physician or person to a patient or other person being treated by such physician or person, procure and withhold, or cause to be withheld, from another any money, negotiable note, or thing of value, may be suspended in his right to practice medicine or his license may be revoked by the district court of the county in which such physician or person resides, or of the county where such conduct or malpractice or false representations occurred, in the manner and form provided for revoking or suspending license of attorneys at law in this State.

[Acts 1925, S.B. 84.]

CHAPTER SIX ½. ABORTION

Article

- 4512.1 Abortion.
- 4512.2 Furnishing the Means.
- 4512.3 Attempt at Abortion.
- 4512.4 Murder in Producing Abortion.
- 4512.5 Destroying Unborn Child.
- 4512.6 By Medical Advice.

Art. 4512.1 Abortion

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.

[1925 P.C.]

Art. 4512.2 Furnishing the Means

Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

[1925 P.C.]

Art. 4512.3 Attempt at Abortion

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.

[1925 P.C.]

Art. 4512.4 Murder in Producing Abortion

If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.

[1925 P.C.]

Art. 4512.5 Destroying Unborn Child

Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years.

[1925 P.C.]

Art. 4512.6 By Medical Advice

Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

[1925 P.C.]