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Standing Up to Bounty Laws: Examining State Standing Jurisprudence and Its Effect on Laws Enforced Through Private Rights of Action

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Standing Up to Bounty Laws: Examining State Standing Jurisprudence and Its Effect on Laws Enforced Through Private Rights of Action

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Abstract

The Texas Heartbeat Act (SB 8) adopted a unique enforcement scheme that succeeded in circumventing Roe v. Wade's protection of a woman's right to abortion before viability. By prohibiting enforcement of the Act by public officials and instead authorizing enforcement solely through civil actions by "any person," SB 8 effectively ended a women's right to abortion after a fetal heartbeat is detected. The passage of this law placed the protection of other constitutionally endowed rights in jeopardy and facilitated the passage of similarly constructed legislation, such as California's Senate Bill 1327, which authorizes "any person" to sue anyone who manufactures or distributes illegal firearms. Recent articles have examined various avenues for defeating these bounty laws but have fallen short of reaching a pathway to combat this legislation and its harmful effects. This article specifically examines how standing doctrine in Texas and California enables the success of bounty laws, and potential strategies for challenging these laws through state standing jurisprudence.

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I. *Introduction*

When Anna's water broke 19 weeks into her pregnancy in December of 2021, her doctors informed her that her baby would not survive.[1] As a result, Anna was at a high risk of sepsis and potential hemorrhaging which led her doctors to recommend termination of her pregnancy.[2] Unfortunately, they were also forced to deliver the reality that because of Texas's new bounty

1. *See* Sarah McCammon & Lauran Hodges, *Doctors' Worst Fears About the Texas Abortion Law Are Coming True*, NAT'L PUB. RADIO (last updated Mar. 1, 2022) (explaining that Anna's water had broken too early for the baby to survive even with the best neonatal intensive care in the world) [perma.cc/6KFQ-9L4J].

2. *Id.*

law, they would be unable to perform an abortion.[3] The doctors could not provide her an abortion because to do so would expose them to significant liability to lawsuits by anyone who discovered that they had performed the operation.[4] Her physicians were afraid to even say the word abortion aloud and resorted to typing their advice out on their phones for fear of the ramifications of being overheard.[5] This left Anna to travel hours by plane while at risk of a life-threatening hemorrhage or infection in order to receive an abortion elsewhere.[6]

In 2021, Texas passed Senate Bill 8 ("SB 8"),[7] which prohibits abortions as early as six weeks into pregnancy, as soon as a fetal heartbeat is detected.[8] However, unlike previous abortion legislation, SB 8 prevents the state from enforcing the law and instead provides a private right of action for citizens to sue anyone who performs or assists with an abortion after a fetal heartbeat is detected.[9] The law's cession of enforcement power to private citizens shielded SB 8 from the legal protection of abortion before

3. *See id.* (conveying that while the doctors recommended termination of Anna's pregnancy, they were unable to provide her with an abortion due to the recent passage of SB 8).

4. *See id.* ("[P]roviders also are 'extremely and understandably fearful' of providing abortions even in medical emergencies because of the law's design, which allows individuals to enforce it through civil suits.").

5. *See id.* (relaying Anna's husband's description of how the doctors typed things out on their phones and showed it to the couple because the doctors were afraid to be overheard helping plan or provide advice to Anna regarding an abortion).

6. *See id.* (describing the deadly risk and expenses Anna assumed by traveling to Colorado or Oklahoma via plane while in labor).

7. *See* TEX. HEALTH & SAFETY CODE ANN. § 171.208 (2021) (creating a private right of action for any person to sue anyone who performs or aids an abortion after a fetal heartbeat is detected).

8. *See* TEX. HEALTH & SAFETY CODE ANN. § 171.204(a) (2021) ("[A] physician may not knowingly perform or induce an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child . . . ."); *see also* Neelam Bohra, *Texas Law Banning Abortion as Early as Six Weeks Goes into Effect as the U.S. Supreme Court Takes No Action*, TEX. TRIB. (last updated Sep. 1, 2021) (explaining that SB 8 prohibits abortions whenever an ultrasound can detect what lawmakers define as a fetal heartbeat) [perma.cc/XZ3L-UWTR].

9. *See* Bohra, *supra* note 8 (highlighting the unique private enforcement mechanism prescribed by SB 8).

viability under *Roe v. Wade*[10] at the time.[11] The law took effect on September 1, 2021, effectively ending access to safe abortions in Texas well before the Supreme Court's overturn of *Roe v. Wade* in 2022.[12]

In addition to creating a chilling effect on the right to abortion, the unique structure of SB 8 called into question potential implications of the law with respect to other constitutionally protected rights.[13] Enforcement of a law solely through private rights of action prevents pre-enforcement challenges to the law, because there is no apparent government official to sue for pre-enforcement relief.[14] The insulation of such laws from pre-enforcement challenges has motivated other states, such as California, to pursue policy objectives with respect to individual rights such as gun rights.[15] In July 2022, California Governor Gavin Newsom signed Senate Bill 1327,[16] which creates a private right of action for individuals to sue gun manufacturers and distributors of illegal assault weapons and ghost guns (untraceable

10. *See* 410 U.S. 113, 166–67 (1973) (holding that a woman has the right to have an abortion before a fetus reaches viability), *overruled by* Dobbs v. Jackson Women's Health, 597 U.S. 215 (2022).

11. *See* Meredith Johnson, *The Texas Heartbeat Act: How Private Citizens Are Given the Power to Violate a Women's Right to Privacy Through an Unusual Enforcement Mechanism*, 23 GEO. J. GENDER & L. 1, 1 (2021) (pointing out SB 8's functional overturn of *Roe v. Wade* through the law's use of private enforcement through civil suits).

12. *See* KARI WHITE ET AL., TEX. POL'Y EVALUATION PROJECT, TEXAS SENATE BILL 8: MEDICAL AND LEGAL IMPLICATIONS (July 2021) (describing the widespread impact of SB 8 on access to abortion care in Texas).

13. *See* Michael Morley, *Constitutional Tolling and Preenforcement Challenges to Private Rights of Action*, 97 NOTRE DAME L. REV. 1825, 1831 (2022) (recognizing how laws enforced solely through private rights of action can have a chilling effect on constitutional rights).

14. *See id.* at 1828 ("[B]ecause the statutes are enforced by private plaintiffs rather than a particular government official, there is usually no obvious defendant for a person to sue in a preenforcement action.").

15. *See* Nigel Duara, *Bounty Hunting: Foes of Guns and Abortion Resurrect an Old Idea*, CALMATTERS (Aug. 9, 2022) (highlighting California's use of SB 8's structure to construct an identical law creating a bounty against illegal manufacturers and distributors of firearms) [perma.cc/78VU-HU9X].

16. *See* CAL. BUS. & PROF. CODE § 22949.60 (2023) (creating a private right of action for any person to sue manufacturers and distributors of illegal firearms).

firearms which can be bought online and assembled at home).[17] Senate Bill 1327 is modeled after Texas's SB 8, and provides a means of enforcing gun laws which is tough to challenge due to its enforcement by individuals and not state officials.[18]

As a result of the proliferation of such laws, legal scholars have provided a variety of potential avenues for challenging "bounty laws" modeled after SB 8 that are solely enforceable through private suits. Such avenues include constitutional tolling and abrogating sovereign immunity.[19] One potential avenue for challenging bounty laws which has yet to be explored in detail is state standing jurisprudence.

Federal standing doctrine, as set forth in Article III of the Constitution, requires an actual "case" or "controversy" to exist between parties for a plaintiff to have standing to sue.[20] In *Lujan v. Defenders of Wildlife*,[21] the Supreme Court provided the three elements required to establish standing, including: 1) an actual and concrete injury, 2) a causal connection between the injury and the defendant's conduct, and 3) likelihood that a favorable decision by the court will redress the injury.[22] State standing doctrine, however, varies from federal standing doctrine and varies among states, resulting in differential effects on litigants' access to courts across the United States.[23] This Note will examine standing

17. *See* Erwin Chemerinsky, *Op-Ed: Is California's New Gun Law, Modeled After the Texas Abortion Law, Constitutional?*, L.A. TIMES (July 23, 2022, 9:03 AM) (outlining California Senate Bill 1327, which authorizes citizens to file civil suits against gun manufacturers and distributors and is modelled after Texas's SB 8) [perma.cc/H949-R32F].

18. *See id.* (citing the difficulty in challenging laws solely enforceable through private suits because government officials have no role in enforcing the law, meaning plaintiffs lack a defendant to sue).

19. *See id.* (pointing out potential ways to address the proliferation of bounty laws in the United States).

20. *See* U.S. CONST. art. III, § 2, cl. 1. (setting forth the case or controversy requirement that a plaintiff must fulfill to have standing to sue).

21. *See* Lujan v. Defs. of Wildlife, 504 U.S. 555, 559 (1992) (holding that wildlife organizations lacked standing to sue the Secretary of the Department of Interior to enjoin a provision of the Endangered Species Act because they failed to establish the three requirements necessary for standing).

22. *See id.* (providing a three-prong test to establish judicial standing at the federal level).

23. *See* Theresa M. Gegen, *Standing on Constitutional Grounds in Texas Courts: Effect of* Texas Association of Business v. Texas Air Control Board, 47

jurisprudence in Texas and California, its effect on private enforcement of SB 8 and Senate Bill 1327, and recommend that states modify standing requirements to prevent the enforcement of bounty laws which endanger constitutionally protected rights. Part II will provide background with respect to Texas' SB 8, California's Senate Bill 1327, and the issues that prevent challenges to these laws.[24] Part III will introduce a discussion of standing as a prerequisite to the enforcement of bounty laws.[25] Part IV will examine standing jurisprudence in Texas.[26] Part V will examine standing jurisprudence in California.[27] Part VI will analyze the potential for states to challenge bounty laws by adopting standing doctrine that prevents the possibility of enforcing these laws through the courts.[28] Part VII will conclude and provide recommendations for additional research.[29]

II. Background

A. *Texas Senate Bill 8*

Texas SB 8 took effect on September 1, 2021, and immediately resulted in a chilling effect on the right to abortion in Texas.[30] The law provides a private right of action for "any person" to sue anyone who performs or assists with an abortion after a fetal heartbeat is detected, which can be as early as six weeks. [31] The specific provision of the statute reads: "Any person, other than an officer or employee of a state or local governmental entity in this

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BAYLOR L. REV. 201, 201 (1995) (depicting how standing jurisprudence in Texas affects litigants' access to the court system).

24. *See* discussion *infra* Part 0.

25. *See* discussion *infra* Part 0.

26. *See* discussion *infra* Part 0.

27. *See* discussion *infra* Part 0.

28. *See* discussion *infra* Part 0.

29. *See* discussion *infra* Part 0.

30. *See* Johnson, *supra* note 11, at 1 (explaining that the Texas Heartbeat Act threatens to violate a woman's right to privacy endowed by *Roe v. Wade* through the Act's enforcement solely by private citizens).

31. *See* TEX. HEALTH & SAFETY CODE ANN. § 171.208 (2021) (granting any person with a private right of action to sue any individual who performs or aids an abortion in the state of Texas).

state, may bring a civil action against any person who (1) performs or induces an abortion in violation of this subchapter . . . ."[32] The law specifies a $10,000 minimum award for plaintiffs for each abortion.[33]

Within the first month after SB 8 went into effect, abortions at Whole Women's Health clinics in Texas dropped 70% as women looked to travel out of state or obtain abortion-inducing pills through the mail.[34] The financial, legal, and staffing risk faced by abortion clinics as a result of SB 8 deterred exercise of the right to abortion protected by *Roe v. Wade*.[35] While SB 8 accomplishes the same deterrent effect as a criminal or administrative restriction, it was shielded from injunctions under *Roe* because SB 8 is not enforceable by the government, meaning abortion providers lack an entity to sue.[36] The structure of SB 8, which functions to insulate the legislation from pre-enforcement litigation, immediately drew the attention of lawmakers in other states, not only to restrict abortion but to restrict other constitutional rights such as gun rights.[37]

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32. *Id.*

33. *See id.* ("[S]tatutory damages in an amount of not less than $10,000 for each abortion that the defendant performed or induced in violation of this subchapter, and for each abortion performed or induced in violation of this subchapter that the defendant aided or abetted . . . .").

34. *See* Julia Harte, *Texas Abortion Clinics Struggle to Survive Under Restrictive Law*, REUTERS (Sep. 30, 2021, 9:56 PM) (emphasizing the impact of SB 8 on women's ability to obtain an abortion in Texas) [perma.cc/LEL2-R2TR].

35. *See id.* (pointing out that SB 8, which bans abortions after approximately six weeks and empowers private citizens to enforce the law, exposes clinics to significant financial risks, legal risks and staffing risks).

36. *See* Morley, *supra* note 13, at 1830 (distinguishing SB 8 from other criminal and administrative restrictions on private conduct that are enforceable by the government).

37. *See id.* ("More broadly, several states have looked to the Texas law as a model, not only for their own anti-abortion statutes, but anti-gun laws and other measures that raise serious constitutional questions and would likely be quickly enjoined if they took the form of typical criminal or administrative prohibitions.")

B. California Senate Bill 1327

In July 2022, California Governor Gavin Newsom signed Senate Bill 1327, modeled after Texas's SB 8.[38] The bill creates a private right of action for individuals to sue gun manufacturers and distributors of illegal assault weapons and ghost guns.[39] Specifically, the bill reads:

This bill would create a private right of action for any person against any person who, within this state, (1) manufactures or causes to be manufactured, distributes, transports, or imports into the state, or causes to be distributed or transported or imported into the state, keeps for sale or offers or exposes for sale, or gives or lends any firearm lacking a serial number required by law, assault weapon, or .50 BMG rifle; (2) purchases, sells, offers to sell, or transfers ownership of any firearm precursor part that is not a federally regulated firearm precursor part; or (3) is a licensed firearms dealer and sells, supplies, delivers, or gives possession or control of a firearm to any person under 21 years of age, all subject to certain exceptions, as specified.[40]

The law provides awards of at least $10,000 per weapon for plaintiffs and includes a trigger that will automatically invalidate the law if the courts strike down Texas's SB 8.[41]

C. The Challenge in Challenging Bounty Laws

Bounty laws like SB 8 and Senate Bill 1327 prohibit enforcement of their provisions by public officials and instead

38. *See* Chemerinsky, *supra* note 17 ("SB 1327 was explicitly modeled after a Texas statute, known as SB 8, which bans abortions at around six weeks of pregnancy and allows private citizens to sue anyone who aids and abets an abortion for $10,000 in damages.").

39. CAL. BUS. & PROF. CODE § 22949.60 (2022).

40. *Id.*

41. *See* Soumya Karlamangla, *What to Know About California's Head-Turning Gun Control Law*, N.Y. TIMES (July 25, 2022) (noting Senate Bill 1327's trigger provision that would automatically invalidate Senate Bill 1327 if the courts strike down the Texas law) [perma.cc/QR5Z-TV95]; CAL. BUS. & PROF. CODE § 22949.60 (2022) ("This chapter shall become inoperative upon invalidation of Subchapter H (commencing with Section 171.201) of Chapter 171 of the Texas Health and Safety Code in its entirety by a final decision of the United States Supreme Court or Texas Supreme Court.").

provide for enforcement solely through private suits. This structure prevents such legislation from pre-enforcement actions challenging their constitutionality because parties opposing the legislation lack an obvious defendant to sue.[42] Additionally, sovereign immunity prevents state legislators and agencies from suits in state and federal court related to the performance of their official duties.[43]

The Supreme Court held in *Ex parte Young* that sovereign immunity does not preclude citizens from suing state officials for pre-enforcement relief to prevent future violations of constitutional rights.[44] However, to sue a government official for pre-enforcement relief under *Ex parte Young*, the official must be somehow related to the enforcement of the statute alleged to be unconstitutional.[45] Because laws like SB 8 and Senate Bill 1327 are enforceable only through private suits, the *Ex parte Young* exception to sovereign immunity does not permit pre-enforcement litigation of these statutes.[46]

In *Whole Women's Health v. Jackson*, abortion providers attempted to challenge the constitutionality of SB 8 in federal

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42. *See* Morley, *supra* note 13, at 1828 (clarifying that because bounty laws like SB 8 are enforced by private plaintiffs rather than a particular government official, there is no obvious defendant for a person to sue in a pre-enforcement action).

43. *See* Blatchford v. Native Vill. of Noatak, 501 U.S. 775, 779 (1991) (establishing states' exemption from suits in federal court on the basis of sovereign immunity); Alden v. Maine, 527 U.S. 706, 754 (1999) (extending the protection of sovereign immunity to suits against states in state court); Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989) (interpreting a suit against a state official acting in their official capacity as a suit against the state itself).

44. *See* 209 U.S. 123, 159 (1908).

> If the act which the state Attorney General seeks to enforce be a violation of the Federal Constitution, the officer in proceeding under such enactment comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct.

45. *See id.* at 157 (imposing the requirement that a state official can only be sued to enjoin enforcement of an act alleged to be unconstitutional if he has some connection to the enforcement of the act and is not merely a representative of the state to make the state a party to the action).

46. See Morley, *supra* note 13, at 1835 (noting how SB 8's private enforcement mechanism insulates public officials from lawsuits under *Ex parte Young* because public officials have no enforcement power under SB 8).

court by suing Texas state court officials and the Texas attorney general for an injunction to bar enforcement of the law.[47] After granting certiorari on the question of standing, the Supreme Court held that *Ex Parte Young* did not permit the petitioners to sue Texas state court officials or the attorney general for pre-enforcement relief because these officials are not enforcement authorities but rather serve to resolve disputes.[48] Additionally, the Court held that petitioners did not have standing to sue because state judicial officials are not "adverse litigants" as required by federal standing doctrine prescribed by Article III of the Constitution.[49] The Supreme Court's holding in *Whole Women's Health* exemplifies the challenge to obtaining pre-enforcement relief with regards to bounty laws like SB 8 and Senate Bill 1327.

The chilling effect of bounty laws on constitutional rights due to the substantial liability that potential defendants may incur and their inability to obtain pre-enforcement relief is apparent. Potential defendants to suits under SB 8 and Senate Bill 1327 therefore have the option of either complying with the statute by foregoing exercise of their constitutional rights or violating the statutes and potentially incurring significant liability if a court upholds the statute's validity.[50] While the barriers for persons subject to liability under these laws are therefore clear, the barriers for private plaintiffs charged with enforcing SB 8 and Senate Bill 1327 are scarcely examined. Specifically, the requirement that a private plaintiff have standing to sue a party

47. *See* Whole Women's Health v. Jackson, 595 U.S. 30, 35–37 (describing abortion providers' suit challenging the constitutionality of SB 8 and providing a list of named defendants, including a state court judge, a state court clerk, and the Texas attorney general).

48. *See id.* at 39 ("But as *Ex parte Young* explained, this traditional exception does not normally permit federal courts to issue injunctions against state-court judges or clerks. Usually, those individuals do not enforce state laws as executive officials might; instead, they work to resolve disputes between parties.").

49. *See id.* ("Clerks serve to file cases as they arrive, not to participate as adversaries in those disputes. Judges exist to resolve controversies about a law's meaning or its conformance to the Federal and State Constitutions, not to wage battle as contestants in the parties' litigation.").

50. *See* Morley, *supra* note 13, at 1825 (outlining the choice between assuming substantial liability and sacrificing the exercise of constitutional rights faced by persons subject to unconstitutional laws enforced solely through private civil suits).

who violates a bounty law such as SB 8 or Senate Bill 1327 begs increased attention, as standing may provide a pathway to challenge these laws.

III. Standing as a Prerequisite to the Enforcement of Bounty Laws

For SB 8 and Senate Bill 1327's deterrent effect on the exercise of individual rights to succeed, plaintiffs suing under these laws must have access to courts, meaning they must establish standing to sue. Article III of the Constitution limits a litigant's access to federal courts by requiring a "case" or "controversy" to exist between parties to a suit for a plaintiff to have standing.[51] As established by the Supreme Court in *Lujan v. Defenders of Wildlife*, to have federal standing a plaintiff must demonstrate 1) an actual and concrete injury, 2) a causal connection between the injury and the defendant's conduct, and 3) likelihood that a favorable decision by the court will redress the injury.[52] The triad of requirements set forth in *Lujan* strictly limited those eligible to sue in federal court.[53] Additionally, these requirements invalidated federal statutes providing citizens with the right to sue in federal court to enforce statutes without having experienced an "actual injury."[54] The "actual injury" requirement of *Lujan* mandates that

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51. *See* U.S. CONST. art. III, § 2.

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

52. *See id.* at 503 U.S. 555, 559 (listing the three requirements a plaintiff must meet to have standing in a federal court).

53. *See* Peter N. Salib & David K. Suska, *The Federal-State Standing Gap: How to Enforce Federal Law in Federal Court Without Article III Standing*, 26 WM. & MARY BILL RTS. J. 1155, 1162 (2018) (emphasizing that the case-or-controversy requirement of Article III places strict limits on who can sue in federal court so that in many cases, the class of individuals who have standing is dwarfed by the class of those who would like it).

54. *See* Cass R. Sunstein, *What's Standing After* Lujan*? Of Citizen Suits, "Injuries," and Article III*, 91 MICH. L. REV. 163, 165 (1992) ("Read for all it is

plaintiffs have incurred a concrete and particularized injury, not an abstract, speculative, or generalizable harm.[55] Thus, a federal bounty law structured like SB 8 and Senate Bill 1327 would likely not function to deter the exercise of rights at the federal level because federal standing doctrine under *Lujan* prevents plaintiffs from enforcing a law through private suits without an "actual injury."

State courts, on the other hand, are not bound by Article III's standing requirements and federal standing jurisprudence as set forth in *Lujan*.[56] Consequently, while the "actual injury" requirement to establish federal standing precludes bounty laws like SB 8 and Senate Bill 1327 at the federal level, states' standing doctrines vary significantly and often do not include straightforward "actual injury" requirements.[57] Some states have adopted more relaxed and expansive standing doctrines in which citizens are permitted to bring suits for generalizable grievances or suits in the public interest.[58] The result is a wide array of standing doctrines across states and a divergence in federal and state standing jurisprudence which affects litigants' access to courts, often making state courts more hospitable for litigants than

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worth, the decision invalidates the large number of statutes in which Congress has attempted to use the 'citizen-suit' device as a mechanism for controlling unlawfully inadequate enforcement of the law.")

55. *See* Salib & Suska, *supra* note 53, at 1164 ("First is an injury in fact. This means concrete and particularized harm, even intangible harm, but not harm in the abstract. And the harm must be actual or imminent, not speculative or conjectural."); Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016) (defining a particularized injury as one that affects the plaintiff in a personal and individualized way).

56. *See* ASARCO, Inc. v. Kadish, 490 U.S. 605, 617 (1989) (recognizing that the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability).

57. *See* Salib & Suska, *supra* note 53, at 1168 (attributing heterogeneity in standing doctrine among states to the absence of Article III's anchor which has allowed states to drift from federal standing requirements).

58. *See id.* ("Indeed, many states have adopted a comparatively lax doctrine that permits citizens to sue for generalized grievances."); John DiManno, *Beyond Taxpayers' Suits: Public Interest Standing in the States*, 41 CONN. L. REV. 639, 643–44 (2008) ("[A]lthough some states adhere solely to the strict federal system of standing, many state courts have developed, through common law, alternative standing doctrines that allow citizens or taxpayers to sue on behalf of the public interest.").

federal courts.[59] Thus, standing doctrine in many states may permit citizens to bring suits under bounty laws like SB 8 and Senate Bill 1327 when they have not suffered an actual injury. Comparing standing doctrine in Texas and California to federal standing doctrine provides an understanding of the federal-state standing gap that allows state statutes like SB 8 and Senate Bill 1327 to be enforceable by private individuals and effectively deter the exercise of constitutional rights.

IV. Standing in Texas

Standing requirements in Texas are historically looser than federal standing requirements.[60] Prior to 1993, Texas granted standing to political subdivisions, taxpayers, and plaintiffs under certain statutes who have not sustained a particularized injury.[61] Texas standing doctrine allowed the legislature to confer standing to individuals regardless of whether they sustained a particularized injury that differentiated them from the public at large.[62] For example, an early twentieth century statute allowed private citizens to bring suits to enjoin properties in their locality deemed "bawdy houses," meaning properties that were essentially brothels.[63] The statute did not require private citizens to demonstrate any personal harm in order to file suit under the statute, and the Texas Supreme Court upheld a property owner's

59. *See* Salib & Suska, *supra* note 53, at 1170 (examining standing doctrine in Michigan, New Jersey, and Ohio and highlighting courts' openness to non-traditional litigants in each of these states).

60. *See* Charles W. Rhodes & Howard M. Wasserman, *Solving the Procedural Puzzles of the Texas Heartbeat Act and its Imitators: The Potential for Defensive Litigation*, 75 SMU L. REV. 187, 230 (2022) (noting that pre-*Texas Association of Business* precedent departed from federal principles and has not been pulled back into the federal line in some areas).

61. *See id.* (providing the categories of people to whom the Texas Constitution provides standing).

62. *See id.* ("Within constitutional bounds, the Legislature may grant a right to a citizen or to a taxpayer to bring an action against a public body or a right of review on behalf of the public without proof of particular or pecuniary damage peculiar to the person bringing the suit." (quoting Scott v. Bd. Adjustment, 405 S.W.2d 55, 56 (Tex. 1966))).

63. *See* Spence v. Fletcher, 180 S.W. 597, 602 (Tex. 1966) (defining "bawdy house" within the meaning of the Texas statute and providing the parameters of the statute).

challenge to the statute in *Spence v. Fletcher*.[64] Similarly, in *Scott v. Board of Adjustment*, the Texas Supreme Court upheld standing authorized by a statute under which any local taxpayer can file a suit to challenge the legality of a zoning board decision without showing actual or particularized damage to their property.[65]

However, in 1993, in *Texas Association of Business v. Texas Air Control Board*, the Texas Supreme Court found a personal injury requirement implicit in the open courts provision of the Texas Constitution.[66] Specifically, the open courts provision of the Texas Constitution provides: "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."[67] The Texas Supreme Court's decision in *Texas Association of Business* resulted in a sharp turn towards alignment with federal standing doctrine as set forth in *Lujan*.[68] The majority also anchored this alignment with federal standing jurisprudence in the Texas Constitution's separation of powers provision and suggested that, "Because standing is a constitutional prerequisite to maintaining a suit under both federal and Texas law, we look to the more extensive jurisprudential experience of the federal courts on this subject for any guidance it may yield."[69]

While *Texas Association of Business* planted the seeds of federal standing doctrine in Texas standing jurisprudence, pre-

64. *See id.* at 602 (holding that private plaintiffs may obtain an injunction without demonstrating an actual injury).

65. *See* 405 S.W.2d 55, 57 (Tex. 1966) (upholding the authorization of suits "not only by the party or parties whose application was denied by the board of adjustment, but by, among others, 'any taxpayer'" (quoting City of Saint Angelo v. Boehme Bakery, 190 S.W.2d 67, 70 (Tex. 1945))).

66. *See* 852 S.W.2d 440, 444 (Tex. 1993) ("Under the Texas Constitution, standing is implicit in the open courts provision, which contemplates access to the courts only for those litigants suffering an injury.").

67. TEX. CONST. art. I, § 13.

68. *See* Thomas B. Bennett, *State Rejection of Federal Law*, 97 NOTRE DAME L. REV. 761, 794 (2022) ("In particular, the Texas Supreme Court took a sharp turn toward following federal standing doctrine in 1993, when it retconned federal standing doctrine into Texas law by marrying it to an unlikely pair of state constitutional provisions that bear little resemblance to Article III's case-or-controversy provision.").

69. *See Tex. Ass'n of Bus.*, 852 S.W.2d at 444 (anchoring judicial standing in the separation of powers doctrine of the Texas Constitution and looking to federal standing jurisprudence for guidance).

1993 cases as well as the dicta in *Texas Association of Business* have rendered the conferral of standing broader in Texas than at the federal level.[70] For example, following *Texas Association of Business*, the Texas Supreme Court continued to apply its holding in *Hunt v. Bass*, a pre-1993 case which provided that plaintiffs must demonstrate a particularized injury unless a statutory exception provides otherwise.[71] This statutory exception manifested itself in cases following *Texas Association of Business* which upheld legislative conferrals of standing based on the statutory exception provided in *Hunt v. Bass*.[72] Therefore, despite *Texas Association of Business*'s alignment of Texas standing doctrine with federal standing doctrine, the broader nature of Texas standing doctrine endures as a result of the state's continued recognition of statutory standing.

There is ongoing debate as to whether SB 8 plaintiffs have standing to sue in Texas under the statutory exception to the implied injury requirement. In the past, Texas granted standing to plaintiffs lacking an injury who are authorized to sue by a statute, which is the case with SB 8's provision authorizing "any person" to bring civil action against a person who provides or assists an

70. *See* Rhodes & Wasserman, *supra* note 60, at 320 (pointing out that pre-*Texas Association of Business* precedent departed from federal principles and has not been pulled into alignment in some areas such as statutory standing).

71. *See* 664 S.W.2d 323, 324 (Tex. 1984) ("Standing consists of some interest peculiar to the person individually and not as a member of the general public. This general rule of standing is applied in all cases absent a statutory exception to the contrary."); *see also* Williams v. Lara, 52 S.W.3d 171, 178 (Tex. 2001) ("As a general rule of Texas law, to have standing, unless it is conferred by statute, a plaintiff must demonstrate that he or she possesses an interest in a conflict distinct from that of the general public, such that the defendant's actions have caused the plaintiff some particular injury."); Sneed v. Webre, 465 S.W.3d 169, 180 (Tex. 2015) ("Generally, unless standing is conferred by statute, 'a plaintiff must demonstrate that he or she possesses an interest in a conflict distinct from that of the general public, such that the defendant's actions have caused the plaintiff some particular injury.'").

72. *See* Labrado v. Cnty. of El Paso, 132 S.W.3d 581, 587 (Tex. App. 2004) (upholding plaintiff's standing to sue based on a provision of the County Purchasing Act which allows any property tax paying citizen of the county to enjoin performance of a contract made in violation of the Act); Grossman v. Wolfe, 578 S.W.3d 250, 256–57 (Tex. App. 2019) (upholding plaintiff's standing to sue based on a provision of the Antiquities code which allows any Texas citizen to bring an action to enjoin violations or threatened violations of the code).

abortion.[73] However, SB 8 differs from other statutes providing "any person" with standing to sue because SB 8 authorizes civil actions against "any person," not solely government officials or to enjoin violations in the absence of government action.[74] The provision of SB 8 that bars government officials from enforcing the law means that, unlike other statutes providing plaintiffs with standing to sue without an injury, SB 8 does not serve as a check on government officials or on their lack of action because the law prevents government officials from enforcing the statute in the first place.[75] SB 8 serves only as a check on private conduct through a monetary bounty which deters the exercise of constitutional rights and results in an inability to challenge the law due to its lack of enforcement by public officials.[76] Consequently, the statutory standing conferred by SB 8 is arguably unlike any previous conferrals of statutory standing upheld by courts in Texas.[77]

SB 8's unique conferral of standing to private plaintiffs and prohibition of enforcement by public officials also interferes with the Texas Constitution's grant of enforcement power to executive officials. The Texas Constitution may permit statutes which

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73. *See* Rhodes & Wasserman, *supra* note 60, at 230 ("The legislature may confer standing on individuals lacking a particularized individual injury that differentiates them from the public at large."); TEX. HEALTH & SAFETY CODE ANN. § 171.208 (2021).

> Any person, other than an officer or employee of a state or local governmental entity in this state, may bring a civil action against any person who: (1) performs or induces an abortion in violation of this subchapter; (2) knowingly engages in conduct that aids or abets the performance or inducement of an abortion . . . .

74. *Compare* TEX. NAT. RES. CODE ANN. § 191.173 (1977) (permitting any citizen of Texas to bring an action in any court of competent jurisdiction for injunctive relief to restrain and enjoin violations of the statute), *with* TEX. HEALTH & SAFETY CODE ANN. § 171.208 (2021) (permitting any person, other than an officer or employee of a state or local governmental entity in this state, to bring a civil action against any other person involved in aiding an abortion).

75. TEX. HEALTH & SAFETY CODE ANN. § 171.208 (2021).

76. *See* Rhodes & Wasserman, *supra* note 60, at 231 ("SB 8 'any person' plaintiffs do not check government failure. They pursue a monetary bounty to act as the government and in the government's stead in enforcing the law.")

77. *See id.* (concluding that the conferral of statutory standing in SB 8 represents a new species of private state statutory standing that goes beyond anything Texas courts have allowed).

authorize a supplemental private enforcement system through citizen standing to sue because these statutes allow the executive branch to continue to be the executor of the laws.[78] However, statutes like SB 8 that confer expansive and unchecked authority to private citizens to enforce the law through statutory standing and prohibit the executive branch from enforcing the statute arguably transgress the executive's enforcement power.[79] Hence, whether SB 8's statutory conferral of standing would be upheld under the statutory standing exception to the implied injury requirement in Texas is an important point of debate in confronting bounty laws.

In addition, as previously mentioned, the open courts provision of the Texas Constitution implies an injury requirement.[80] While caselaw demonstrates that statutory standing provides an exception to the particularized injury requirement, previous cases in which statutory standing was upheld involved generalizable financial or property harms such as public nuisances, diminished property value, or misuse of public funds.[81] One Texas Court of Appeals pointed out that the legislature's previous conferrals of standing waived the particularized injury requirement of the open courts provision, but did not eliminate the requirement that a plaintiff suffer some sort of injury or harm to their interests.[82] Additionally, the Texas

78. *See* TEX. CONST. art. IV, § 10 (providing that the executive shall be responsible for faithfully enforcing the laws of the state of Texas).

79. *See* Rhodes & Wasserman, *supra* note 60, at 232 ("Delegating enforcement power responsibility—exclusively and unchecked—to random individuals defies that executive power . . . . And it is boundless, allowing the legislature to follow this approach with numerous laws, eliminating state and local executive officials' constitutionally mandated enforcement power.")

80. *See* TEX. CONST. art. I, § 13 (requiring that all courts be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law).

81. *See* Spence v. Fletcher, 180 S.W. 597, 599 (Tex. 1966) (upholding statutory standing to bring civil actions seeking an injunction to restrain "bawdy and disorderly" houses); Scott v. Bd. of Adjustment, 405 S.W.2d 55, 55 (Tex. 1966) (upholding statutory standing to bring civil actions challenging a violation of a zoning ordinance preventing large signs); Labrado v. Cnty. El Paso, 132 S.W.3d 581, 587 (Tex. App. 2004) (upholding statutory standing to bring a civil action to challenge unlawful expenditure of county funds).

82. *See* Best Buy Stores, Inc. v. Hegar, 2021 Tex. App. LEXIS 2882 at *4, n.5 (Tex. App. Apr. 16, 2021) ("When the Legislature confers citizen standing, it

Supreme Court recognized in *Scott v. Board of Adjustment* that statutory standing must operate within constitutional bounds.[83] SB 8's conferral of standing attempts to permit any private citizen to sue any other private citizen for providing or assisting with an abortion when the plaintiff has suffered no cognizable physical, financial, property, or legal harm at all as a result of the abortion.[84] Thus, the open courts provision of the Texas Constitution provides grounds for Texas courts to strike down the statutory standing conferred by SB 8 because plaintiffs under SB 8 have not suffered any injury.

While Texas standing doctrine is definitively broader than federal standing doctrine due to the state's recognition of statutory standing, it is unclear whether courts would uphold SB 8's unprecedented and expansive conferral of standing to plaintiffs who cannot demonstrate an injury or interest.

V. Standing in California

While the California Constitution does not impose the federal "case" or "controversy" requirement on litigants in California courts, it does require that plaintiffs have a cause of action in their own right under the applicable law.[85] Under the California Code of Civil Procedure, "every action must be prosecuted in the name of a real party in interest, except as otherwise provided by statute."[86] Generally, a real party in interest connotes a party that has a special or particularized interest to be preserved or protected

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waives the requirement that an injury be particularized, that is, distinct from the injury to the general public, but the Legislature does not waive the requirement that the plaintiff suffer any injury at all.").

83. *See* 405 S.W.2d at 56 ("Within constitutional bounds, the Legislature may grant a right to a citizen or to a taxpayer to bring an action against a public body or a right of review on behalf of the public without proof of particular or pecuniary damage peculiar to the person bringing the suit.").

84. *See* TEX. HEALTH & SAFETY CODE ANN. § 171.208 (2021) (allowing any person, other than a state or local government officer, to bring a civil action against any person who performs or aids an abortion without having suffered an injury or asserting a tangible interest in the litigation).

85. *See* Rossdale Grp., LLC v. Walton, 219 Cal. Rptr. 3d 605, 610–11 (2017) (distinguishing California standing requirements from federal standing requirements based on the standard of interest required to demonstrate standing).

86. CAL. CIV. PROC. CODE § 367 (1992).

which is unique from the public at large.[87] Thus, a standing issue arises in California if the party's cause of action belongs to someone other than the plaintiff, or if the plaintiff's interest is not distinguishable from the public's in general.[88] This being said, similar to federal standing requirements, plaintiffs in California must have a particularized interest at stake in the litigation in order to access California courts.

However, California diverges significantly from federal standing doctrine in that it recognizes a limited exception to the party in interest requirement in proceedings brought to enforce the public interest.[89] Under this exception, plaintiffs need not show that they have a particularized interest at stake in the litigation as their standing to sue is based on their interest as a citizen in having legislation enforced.[90] Specifically, the California supreme court held:

> Where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.[91]

California adopted this "public interest standing" exception to its party in interest requirement to ensure that citizens can hold

87. *See* San Diegans for Open Gov't. v. Pub. Fin. Auth. of the City of San Diego, 455 P.3d 311, 314 (Cal. 2019) (asserting that to have standing, a plaintiff must plead an actual justiciable controversy and have a special interest to be served or a particular right to be preserved or protected over and above the interest held in common with the public at large).

88. *See* Jim Wagstaffe & The Wagstaffe Group, *Parties, Capacity, and Standing (CA)*, LEXISNEXIS (last updated Jan. 13, 2023) ("But if the cause of action may belong to some person other than the plaintiff or if the plaintiff's interest cannot be easily distinguished from the interests of the public in general (e.g., where the plaintiff seeks to invalidate a generally applicable statute or regulation), a 'standing' issue may exist." (citing Weatherford v. City of San Rafael, 395 P.3d 274, 277 (Cal. 2017))) [perma.cc/HYZ6-WFMR].

89. *See* Save the Plastic Bag Coal. v. City of Manhattan Beach, 254 P.3d 1005, 1011 (Cal. 2011) (recognizing that a particularized interest is not required to achieve standing if a plaintiff is suing for enforcement of a law in which the public has a stake as citizens interested in seeing the law enforced).

90. *See* Bd. Soc. Welfare v. Cnty. of L.A., 162 P.2d 627, 628–29 (Cal. 1945) (setting forth the public interest exception to California's party in interest requirement).

91. *Id.*

governmental actors or bodies accountable for legislation intended to protect a public interest.[92]

The California Code of Civil Procedure allows courts to issue writs of mandate to public officials to compel them to enforce the laws upon petition of parties that are "beneficially interested" in the enforcement of the law.[93] The requirement that parties be "beneficially interested" broadly encompasses citizens and taxpayers as those entitled to statutory standing under this standard.[94] Under the statute, "beneficially interested" implies anyone who is interested in having a public duty enforced, an interpretation which allows citizens to see that public officials do not impair the purpose of a law or fail to protect a public right or interest.[95]

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92. *See Save the Plastic Bag Coal.*, 254 P.3d at 1012 ("This 'public right/public duty' exception to the requirement of beneficial interest for a writ of mandate 'promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right.'" (quoting Green v. Obledo, 624 P.2d 256, 266–67 (Cal. 1981))).

93. *See* CAL. CIV. PROC. CODE § 1085 (2011) (allowing courts to issue writs of mandate to "inferior tribunals, corporations, boards, and persons to compel performance" of acts enjoined by the law which a public official has overseen, precluded, or neglected); CAL. CIV. PROC. CODE § 1086 (1872) ("The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. It must be issued upon the verified petition of the party beneficially interested.").

94. *See* Edward Zelinsky, *Putting State Courts in the Constitutional Driver's Seat: Taxpayer Standing After Cuno and Winn*, 40 HASTINGS L. Q. 1, 43 (2012) ("The beneficial interest standard is so broad, even citizen or taxpayer standing may be sufficient to obtain relief in mandamus." (quoting Doe v. Albany Unified Sch. Dist., 118 Cal. Rptr. 3d 507, 520 (Ct. App. 2010))).

95. *See* Doe v. Albany Unified Sch. Dist., 118 Cal. Rptr. 3d 507, 520 (Ct. App. 2010) (quoting Mission Hosp. Reg'l Med. Ctr. v. Shewry, 168 Cal. Rptr. 3d 639, 651 (Ct. App. 2008)).

> [W]here a public right is involved, and the object of the writ of mandate is to procure enforcement of a public duty, a citizen is beneficially interested within the meaning of Code of Civil Procedure section 1086 if "he is interested in having the public duty enforced." This public interest exception "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right.

For example, in *Save the Plastic Bag Coalition v. City of Manhattan Beach*,[96] the California Supreme Court upheld public interest standing for a group of corporations seeking a mandate to stop a city from banning plastic bags until it produced an environmental impact statement.[97] The court found that while the plaintiff was not asserting a particularized interest, the plaintiff was permitted to seek a mandate to enforce the city's public duty to prepare an environmental impact report on the effects of the ban under the public interest standing exception.[98] Similarly, in *Madera Community Hospital v. County of Madera*, the Third District Court of Appeals upheld standing under the public interest exception for a hospital seeking a mandate to compel a county to adopt standards for care of the indigent under its public duty prescribed by the California Welfare and Institutions Code.[99] The court upheld standing on the basis that while the hospital did not have a particularized interest in financial support for indigent and incapacitated residents, the hospital asserted a public interest in the enforcement of the statute requiring the support.[100]

Still, California's public interest exception to the requirement that plaintiffs demonstrate a particularized interest only applies in mandate proceedings seeking to compel public officials to

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96. 254 P.3d at 1013 (upholding public interest standing for a group of corporations seeking a writ of mandate to compel the city to provide an environmental impact statement as required by law).

97. *See id.* at 1014 (agreeing with the Court of Appeals that plaintiff's CEQA arguments were appropriate for a citizen suit and noting that strict rules of standing that might be appropriate in other contexts have no application where broad and long-term environmental effects are involved).

98. *See id.* (reasoning that the plaintiff was not asserting a commercial or purely competitive interest, but rather a public interest in the enforcement of the city's duty to provide an environmental impact report regarding the impact of its ordinance).

99. *See* 201 Cal. Rptr. 768, 771–74 (reasoning that the trial court erred in its determination that the hospital lacked standing as a citizen, because the hospital only sought to compel the county to adopt standards for the aid and care of the indigent as was their duty under the California Welfare and Institutions Code); *see also* CAL. WELF. & INST. CODE § 17000 (1965) (providing that every county and city in California shall relieve and support all incompetent, poor, indigent, and incapacitated residents of the state when such persons are not supported by other means).

100. *See Madera Cnty. Hosp.*, 201 Cal. Rptr. at 773 (asserting that the hospital falls within California's standing exception permitting a citizen to seek through mandamus to have the laws executed and the duty in question enforced).

perform their duties.[101] For example, in *People* ex rel. *Becerra v. Superior Court*,[102] a group of physicians attempted to assert public interest standing when seeking a mandate to prevent the district attorney from recognizing any exceptions to the criminal law created by an assisted suicide act.[103] The Fourth District Court of Appeals rejected the physician's bid for public interest standing on the grounds that due to his prosecutorial discretion, the district attorney did not have a "public duty" to prosecute assisted suicide cases and therefore the public interest exception did not apply.[104]

California's public interest exception was further narrowed in *Reynolds v. City of Calistoga*,[105] when the First District Court of Appeals denied public interest standing to a plaintiff suing for breach of fiduciary duties because the suit was not a petition for mandate, but rather to correct past misfeasance.[106] Additionally, the court added that the plaintiff failed to demonstrate sufficient public interest in the issue and cited the court's discretion in applying public interest standing even in mandate proceedings.[107]

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101. *See* Wagstaffe, *supra* note 88 (clarifying that subsequent cases have held that public interest standing is available only in a mandate proceeding, which seeks to enforce a public official's ministerial duty to enforce the law and not in an ordinary civil action).

102. 240 Cal. Rptr. 3d 250, 267 (Ct. App. 2018), *as modified* (Nov. 28, 2018) (holding that California's public interest standing exception only applies in a suit seeking a mandate to require public officials to enforce the law).

103. *See id.* at 266 ("The Ahn parties sought to enjoin District Attorney Hestrin 'from recognizing any exceptions to the criminal law created by the Act . . . .' By virtue of his prosecutorial discretion, however, he has no ministerial duty to prosecute assisted suicide cases.").

104. *See id.* at 266 (distinguishing the plaintiff's cause of action, which is not entitled to public interest standing, from mandate proceedings alleging that the respondent is failing to perform a ministerial duty, which are entitled to public interest standing); s*ee also id.* at 267 ("Nevertheless, mandate cannot be used to compel a district attorney to exercise his or her prosecutorial discretion in any particular way. Thus, we see no way to construe the complaint as a mandate petition.").

105. 167 Cal. Rptr. 3d 591, 600 (Ct. App. 2014) (upholding previous courts' confinement of grants of public interest standing to plaintiffs in mandate proceedings).

106. *See id.* at 599 (explaining that the plaintiff does not seek writ relief or argue on appeal that his complaint should be construed as a mandate petition for performance of an official duty, but rather seeks to correct past misfeasance on the part of a government official).

107. *See id.* (quoting Green v. Obledo, 624 P.2d 256, 267 (Cal. 1981)).

The court drew on a limitation to the public interest exception set forth in *McDonald v. Stockton Metropolitan Transit District*, which stated:

> When the duty is sharp and the public need weighty, the courts will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced. When the public need is less pointed, the courts hold the petitioner to a sharper showing of personal need. Decisions of the latter sort declare that the applicant's right to the writ must be "clear and certain."[108]

This balancing test limits the public interest exception to California's particularized injury standing requirement and provides courts with discretion regarding the extent to which the exception should be applied.

With the application and limitations of California's public interest standing in mind, it is unlikely that the exception would grant citizens standing to sue under Senate Bill 1327. Rather, standing to sue under Senate Bill 1327 will most likely be granted through California's recognition of standing conferred by the statute itself. Like in Texas, statutory standing in California enables citizens who do not suffer a particularized injury to file suit in some cases. For example, the California Coastal Act allows "any person" to file an action for declaratory or equitable relief to restrain a violation of the Act.[109] In *Sanders v. Pacific Gas and Electric Co.*, the First District Court of Appeals interpreted the "any person" provision of the Act to indicate a broad conferral of standing to any person and not only those aggrieved by violations

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> [T]he policy underlying the [public interest] exception may be outweighed in a proper case by competing considerations of a more urgent nature . . . . The trial court found that Reynolds "does not have standing under the public right doctrine because the claim for improper spending of tax revenue within Napa County does not rise to such a level."

108. 111 Cal. Rptr. 637, 641 (Cal. Ct. App. 1973) (quoting Irvine v. Gibson, 118 P.2d 812, 813 (Cal. 1941)).

109. *See* CAL. PUB. RES. CODE § 30803(a) (1993) ("Any person may maintain an action for declaratory and equitable relief to restrain any violation of this division, of a cease-and-desist order issued pursuant to Section 30809 or 30810, or of a restoration order issued pursuant to Section 30811.").

of the Act.[110] Consequently, California recognizes standing granted by statutes to private citizens regardless of whether or not the citizen suffers an injury.[111]

Ultimately, California's standing doctrine is broader than federal standing doctrine, particularly with respect to its public interest exception and recognition of statutory standing.[112] Whether or not courts will recognize the expansive statutory standing granted to citizens to sue gun manufacturers under Senate Bill 1327 remains a subject of debate.

VI. Addressing Bounty Laws Through Standing Jurisprudence

A. *Narrowing Statutory Standing*

In both Texas and California, courts' expansive recognition of statutory standing provides the most viable way for plaintiffs to sue under the states' respective bounty laws, SB 8 and Senate Bill 1327. Broad permissions of statutory standing in Texas and California also present a significant diversion from federal standing doctrine. [113] The implications of statutory standing at the state level call for a more in-depth analysis of statutory standing, and of the potential to combat bounty laws by narrowing recognition of statutory standing in states.

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110. *See* 126 Cal. Rptr. 415, 425 (Cal. Ct. App. 1975) (reasoning that unrestricted statutory standing demonstrates the desire for proper enforcement of the Act and the legislature's intention to allow broad citizen participation in enforcing the provisions of the Coastal Act, and not solely those with an actual financial stake in the outcome).

111. *See* ROGER BEERS, 1 CALIFORNIA ENVIRONMENTAL LAW & LAND USE PRACTICE § 11.04 (2023) (noting that standing requirements specified by statute allow citizen suits to enforce laws without citizens having incurred an injury).

112. *See* Wyatt Sassman, *A Survey of Constitutional Standing in State Courts*, 9 KY. J. EQUINE AGRIC. & NAT. RES. L. 349, 357 (2015) (comparing California standing doctrine to federal standing doctrine and summarizing California's requirements for private citizen standing).

113. *See* Rhodes & Wasserman, *supra* note 60, at 230 (pointing out Texas' departure from federal standing principles); Rossdale Grp., LLC v. Walton, 219 Cal. Rptr. 3d 605, 610–11 (Ct. App. 2017) (highlighting the disparity in federal standing requirements and California standing requirements due to California's low standard for a party to claim interest).

Federal standing doctrine requires that plaintiffs suffer an "injury in fact" even if a legislature creates a cause of action under statute that authorizes a person to sue.[114] Therefore, unlike in Texas and California, federal standing doctrine does not recognize stand-alone statutory standing, wherein courts may hear a claim based on mere statutory violations in the absence of an actual personal harm.[115] This lack of pure statutory standing at the federal level is exhibited in *Nike, Inc. v Kasky*.[116] Despite a California law's authorization of "any person" to sue over consumer misinformation, the Supreme Court denied the plaintiff statutory standing and dismissed the case due the plaintiff's lack of a personal injury beyond the statutory violation.[117] The requirement of an actual and particularized injury was reaffirmed in *TransUnion LLC v. Ramirez*, in which the Supreme Court rejected the idea that Congress's creation of a cause of action negates the expectation that a plaintiff demonstrate a concrete injury as dictated by Article III.[118]

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114. *See* Rhodes & Wasserman, *supra* note 60, at 227 ("Even where a legislature creates a cause of action and authorizes a person to sue, federal plaintiffs must show they suffered an 'injury in fact,' meaning some personal injury, tangible or intangible, analogous to recognized common-law injuries."); *see also* Lujan v. Defs. of Wildlife, 504 U.S. 555, 559 (1992) (requiring that federal plaintiffs suffer an actual and particularized injury in order to have standing to sue).

115. *See* Rhodes & Wasserman, *supra* note 60, at 227 (explaining that a court lacks jurisdiction to hear a claim based on a mere statutory violation, absent further personal harm, and noting that ideological objections do not constitute sufficient injuries).

116. 539 U.S. 654, 661 (2003) (divesting the plaintiff of statutory standing to invoke the jurisdiction of a federal court based on his lack of a particularized injury).

117. *See id.* (Stevens, J., concurring).

> Without alleging that he has any personal stake in the outcome . . . he has not asserted any federal claim; even if he had attempted to do so, he could not invoke the jurisdiction of a federal court because he failed to allege any injury to himself that is 'distinct and palpable.'

118. *See* TransUnion LLC v. Ramirez, 594 U.S. 413, 427 (2021) (maintaining that Congress's creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III); *see also* Spokeo, Inc. v. Robins, 578 U.S. 330, 331 (2016) ("[A] plaintiff does not automatically satisfy the injury-in-fact requirement whenever a statute grants a

States' conferrals of standing through statutes that create causes of action for plaintiffs who have not sustained an injury therefore contrast with federal standing doctrine. This divergence from Article III through broad grants of standing without an injury requirement faces criticism from various scholars, particularly with respect to the expansive way statutory standing is now manipulated to facilitate the success of bounty laws.[119] Legal scholars Charles Rhodes and Howard Wasserman point out that statutory standing in Texas was previously granted to check government failure, presenting private citizens with a mechanism for ensuring laws are enforced.[120] Contrary to the Texas statutes in past cases like *Spence v. Fletcher* and *Scott v. Board of Adjustment*, the Texas legislature prohibited enforcement of SB 8 by government officials and instead left enforcement of the law entirely in the hands of civil suits by private citizens.[121] This represents a sharp departure from the state's precedent of granting private plaintiffs with the right to sue as a supplemental check on government enforcement of the law.[122] Rather, SB 8's enforcement mechanism divests state executive officials of their power to enforce the law by granting private citizens with exclusive

right and purports to authorize a suit to vindicate it. Article III standing requires a concrete injury even in the context of a statutory violation.").

119. *See* Rhodes & Wasserman, *supra* note 60, at 233 (explaining how SB 8's conferral of statutory standing to "any person" bypasses Texas precedent requiring plaintiffs to demonstrate at minimum a tangible interest in the litigation).

120. *See id.* at 232 (outlining the Texas legislature's previous use of statutory standing to allow citizens to check government officials by providing them with private rights of action to sue for enforcement of a law).

121. *Compare* Spence v. Fletcher, 180 S.W. 597, 602 (Tex. 1966) (permitting statutory standing for citizens to sue for enforcement of a law prohibiting bawdy houses), *and* Scott v. Bd. of Adjustment, 405 S.W.2d 55, 55–57 (Tex. 1966) (permitting statutory standing for citizens to file suit to challenge the legality of zoning board decisions), *with* TEX. HEALTH & SAFETY CODE ANN. § 171.208 (2021) (permitting anyone other than public officials to sue private citizens who assist with an abortion).

122. *See* Rhodes & Wasserman, *supra* note 60, at 232 (emphasizing that the Texas Constitution allows a supplemental private mechanism for checking abuse or failure by independent public officials because this mechanism reserves some enforcement authority to the executive and to state officials).

and unchecked enforcement power.[123] Therefore, "[SB 8] represents a new species of private statutory standing beyond anything Texas courts have allowed."[124]

Rhodes and Wasserman's argument is further supported by a Texas trial court's holding in *Van Stean v. Texas Right to Life*.[125] *Van Stean* involved the consolidation of fourteen state court challenges to SB 8 filed by various abortion providers against defendants allegedly preparing to bring lawsuits under the statute.[126] The court held that SB 8's standing provision allowing "any person" except state and local employees to sue anyone who aids an abortion is unconstitutional because it violates Texas's open courts provision, which requires that the plaintiff incur some sort of harm.[127] Specifically, the court points out:

The Supreme Court in Ramirez stressed that its standing rules rest on Article III's 'case or controversy' requirement. Though Texas has no such constitutional requirement, the Texas Constitution does have the open-courts provision, which opens the Texas courts for those who seek redress for injury, requiring proof of injury perhaps stronger than is found in Article III.[128]

In holding SB 8 unconstitutional at the state level, the court distinguished the statute from other statutes' standing provisions on the grounds that SB 8 grants standing to "any person" (regardless of whether they are a Texas citizen) to sue anyone in the state who aids with an abortion without requiring even a mere

123. *See id.* (concluding that delegating exclusive and unchecked enforcement power to private citizens defies the executive power of enforcement granted to state officials under the Texas Constitution).

124. *Id.*

125. *See* Order Declaring Certain Civ. Procs. Unconstitutional & Issuing Declaratory Judgment at 2, Van Stean v. Tex. Right to Life, No. D-1-GN-21-004179 (Tex. Dist. Ct. Dec. 9, 2021) [hereinafter Van Stean Order] (holding SB 8's statutory standing provision unconstitutional under the Texas Constitution).

126. *See id.* at 3–4 (documenting the fourteen lawsuits filed seeking declaratory and injunctive relief concerning SB 8, including a case filed by various Planned Parenthood organizations and thirteen cases filed by organizations and individuals involved in different aspects of providing abortions in Texas).

127. *See id.* at 36 (holding that SB 8's grant of standing to persons who have not been harmed to sue persons who have not harmed them, mandating a large award without proof of harm, is unconstitutional based on the open courts provision in the Texas Constitution).

128. *Id.* at 35.

geographic-proximity connection between the two parties, much less an injury.[129] Ultimately, the court rests its holding on the unprecedented and expansive power and incentive SB 8 grants private individuals to seek monetary judgements with no pretense of harm or a connection of any kind with the defendant.[130]

Other states have previously avoided such expansive grants of statutory standing exclusively to private citizens as well. Legal scholar Helen Herschkoff discusses the bases for states' broader standing doctrines in relation to federal standing doctrine in her article examining states' passive justiciability doctrines.[131] Beyond providing injured persons with statutory standing, states often grant standing to taxpayers on the basis of their interest in how public funds are spent[132] as well as standing to private citizens on the basis of a public interest in the enforcement and review of state and local laws.[133] As argued by Rhodes and Wasserman, SB 8's conferral of statutory standing to "any person," coupled with its lack of enforcement by public officials, does not fit within the states' previous taxpayer interest or public interest frameworks through which private citizens with no injury are typically granted

129. *See id.* at 33–35 (distinguishing SB 8 from the statute in *Spence v. Fletcher* which allowed private citizens to sue to enjoin bawdy houses as nearby property owners interested in maintaining their property value).

130. *See id.* at 33–34 ("None of the cases that mention statutory standing involved a statute that granted standing to 'any person.' And none authorized the claimant to win a significant, mandatory amount of money without showing any connection to, or harm from, the defendant or his conduct.").

131. *See* Helen Hershkoff, *State Courts and the "Passive Virtues": Rethinking the Judicial Function*, 114 HARV. L. REV. 1833, 1853–54 (2001) (analyzing states' grants of standing in comparison to federal standing requirements and the sources from which state standing is drawn).

132. *See id.* at 1854–55 ("Taxpayers in almost every state, however, can challenge the expenditure of public funds, without any individual or particularized showing of injury in fact, and sometimes without even a showing that the expenditure will affect their tax burdens."); *see also* City of Wilmington v. Lord, 378 A.2d 635, 637 (Del. 1977) (explaining that a taxpayer has a direct interest in the proper use and allocation of tax receipts, giving taxpayers a sufficient stake in the outcome of the suit to allow him to challenge improper uses of tax funds).

133. *See* Hershkoff, *supra* note 131, at 1856 ("[W]hen the issues sought to be litigated are of great importance and interest to the public, they may be resolved in a form of action that involves no rights or obligations peculiar to named parties.").

standing.[134] SB 8's standing provision is unique in that it provides plaintiffs standing to sue without any demonstrable injury, interest, or connection to the activities of abortion providers.[135]

SB 8's standing provision therefore represents an unprecedented conferral of statutory standing to private citizens who have not suffered an injury. The law's implications for individual rights beg the question of how state standing doctrine can be narrowed to provide citizens with necessary access to courts while preventing the deputization of citizens against one another as facilitated by SB 8's standing provision. One example is Connecticut's standing, or "aggrievement" doctrine, which provides plaintiffs with "classical aggrievement" wherein plaintiffs must demonstrate an actual and particularized injury,[136] as well as "statutory aggrievement" which is conferred by statute but limits standing to those who claim harm to an interest protected by the legislation.[137] Similarly, Kansas requires that plaintiffs provided with causes of action under statute still demonstrate a special and cognizable injury in addition to statutory authorization.[138] Similar to the mechanism of statutory standing

134. *See* Rhodes & Wasserman, *supra* note 60, at 232 (noting that SB 8's standing provision differs dramatically from previous grants of "any person" statutory standing in Texas which have conferred standing as a check on government officials and to support a public interest in the enforcement of the law).

135. *See id.* at 233 (criticizing the Texas legislature's boundless and unchecked grant of statutory standing to "any person" in disregard of Texas precedent requiring a cognizable harm or interest to obtain standing).

136. *See* Sassman, *supra* note 112, at 360 (describing the two-part test for classical aggrievement in Connecticut, including the requirement that plaintiffs show a specific, non-generalizable legal interest as well as an actual specialized injury).

137. *See id.* (defining statutory aggrievement as standing defined and conferred by statute with the limitation that the interest the plaintiff seeks to vindicate must be within the zone of interests protected by the applicable statute); Fort Trumbull Conservancy, LLC v. Alves, 815 A.2d 1188, 1194 (Conn. 2003) ("Statutory aggrievement exists by legislative fiat, not by judicial analysis of the particular facts of the case. In other words, in cases of statutory aggrievement, particular legislation grants standing to those who claim injury to an interest protected by that legislation.").

138. *See* Sassman, *supra* note 112, at 369 (drawing similarities between federal standing doctrine and Kansas standing doctrine which requires plaintiffs to demonstrate a particularized harm even if the plaintiff fulfills the statutory requirements to bring a cause of action); Sierra Club v. Moser, 310 P.3d 360, 367 (Kan. 2013) ("The parties agree that a multilevel analysis—(1) statutory standing

in *Spence v. Fletcher*,[139] these states' statutory standing mechanisms prevent citizens with no stake in or connection to a defendant's actions from asserting standing to sue.

Limiting statutory standing by requiring plaintiffs to demonstrate an injury or interest implicated by violations of a law would allow private citizens to continue to serve as a check on the government without authorizing citizens to control the behavior of other citizens through private suits. This would ensure that only those with a tangible interest in the enforcement of state laws have a means of redress. Additionally, narrowing statutory standing by requiring the legislature to identify the injury or interest it seeks to vindicate when it creates a statutory private right of action would prevent legislatures from taking advantage of statutory standing to deputize citizens against each other.[140] Under this narrower statutory standing regime, laws structured like SB 8 would arguably not survive because plaintiffs would have no actual injury or interest to assert. Plaintiffs could not claim an interest in the enforcement of SB 8's ban on abortions, because the ban is unenforceable by public officials. By solely granting statutory standing in connection with a specified interest or injury, states could halt the proliferation of bounty laws like SB 8 and Senate Bill 1327.

Broad recognition of statutory standing at the state level without an injury or interest requirement also leads to consequences related to the separation of powers.[141] This being said, separation of powers provisions in state constitutions could be used to strike down bounty laws as unconstitutional at the state

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and (2) common-law or traditional standing—applies to the determination of whether Sierra Club has standing to challenge the Holcomb 2 PSD permit.").

139. *See* 180 S.W. 597, 602–03 (Tex. 1966) (granting plaintiff standing under a local statute prohibiting bawdy houses on grounds that the statute authorized him to sue as a citizen interested in preserving his property value).

140. *See* Calvin Massey, *Standing in State Courts, State Law, and Federal Review*, 53 DUQ. L. REV. 401, 411 (2015) (discussing the necessity for legislatures to identify the injury or interest they are seeking to vindicate and relate the injury to the class of persons they are permitting to bring suit).

141. *See* Rhodes & Wasserman, *supra* note 60, at 232 ("The Supreme Court grounds federal standing limitations in the scope of executive power. Private enforcement of environmental laws, even to supplement public enforcement, interferes with the President's essential constitutional duty to 'take Care that the Laws be faithfully executed.'" (quoting U.S. CONST. art. II, § 3)).

level. In *Van Stean*, the court highlighted SB 8's unprecedented disregard for the separation of powers protected by the Texas Constitution in delegating enforcement power exclusively to private citizens.[142] Additionally, Rhodes and Wasserman acknowledge the dangers of extending unrestricted statutory standing to "any person" other than public officials.[143] These provisions effectively transform citizen suits from a supplemental enforcement mechanism to the sole enforcement mechanism.[144] This transfer of enforcement power to private citizen suits is an overreach by the legislature that empowers the judiciary at the expense of executive enforcement power.[145]

Ultimately, the enforcement mechanisms prescribed by SB 8 and Senate Bill 1327 disturb the protection of constitutionally protected rights through an unprecedentedly broad grant of statutory standing solely to private citizens. This weaponization of statutory standing in Texas and California transgresses the states' previous applications of statutory standing and upsets the separation of powers endowed by each state's Constitutions.[146] To prevent the proliferation of bounty laws, state courts should narrow their recognition of statutory standing to plaintiffs that demonstrate at minimum a tangible interest in the enforcement of the law. Additionally, legislatures should identify the interest that forms the grounds for standing conferred by statutes, such as the

142. *See* Van Stean Order, *supra* note 125, at 47 (sustaining the plaintiffs' contention that SB 8's grant of enforcement power to "any person" is an unlawful delegation of enforcement power to a private person that violates the Texas Constitution).

143. *See* Rhodes & Wasserman, *supra* note 60, at 232 (recognizing the consequences of delegating enforcement power solely to private individuals).

144. *See id.* at 232–33 ("Delegating enforcement power responsibility—exclusively and unchecked—to random individuals defies that executive power. And it is boundless, allowing the legislature to follow this approach with numerous laws, eliminating state and local executive officials' constitutionally mandated enforcement power.").

145. *See id.* at 232 (arguing that broad statutory standing provisions like the provision in SB 8 aggrandize the judicial power by authorizing claims by plaintiffs with no justiciable interest).

146. *See id.* (pointing out the consequences of delegating sole enforcement power to private citizens for executive enforcement power and judicial precedent).

geographic-proximity interest required by the statute in *Scott v. Board of Adjustment*.[147]

B. Public Interest and Taxpayer Standing

In addition to narrowing statutory standing, courts should consider implementing public interest and taxpayer standing to promote continued access to courts. A potential criticism courts are likely to face when narrowing recognition of statutory standing is the impact of this strategy on states' interest in providing citizens with sufficient access to the legal system. Specifically, Scott Kafker and David Russcol note states' interests in respecting their legislatures' broad grants of standing to ensure citizens can enforce laws through the courts if the government fails or neglects to do so.[148] Public interest standing and taxpayer standing provide a means of allowing citizens to continue to serve as a check on government enforcement of laws and ensure their rights and interests are protected amidst courts' narrower recognition of statutory standing.[149]

States can ensure interested citizens have access to courts while preventing statutory deputization through private suits by permitting citizens who do not suffer a particularized injury to sue in the public interest. Many states recognize public interest exceptions to the personal injury requirement of standing that

147. *See* 405 S.W.2d 55, 55–57 (Tex. 1966) (granting statutory standing to plaintiffs under a statute providing a private right of action to citizens of the locality to challenge local zoning board decisions).

148. *See* Scott L. Kafker & David A. Russcol, *Standing at a Constitutional Divide: Redefining State and Federal Requirements for Initiatives After* Hollingsworth v. Perry, 71 WASH. & LEE L. REV. 229, 253 (2014) (emphasizing the importance of courts' recognition of legislatures' broad grants of statutory standing in permitting citizens to enforce the laws and participate in the lawmaking process).

149. *See* Save the Plastic Bag Coal. v. City of Manhattan Beach, 254 P.3d 1005, 1011 (Cal. 2011) (allowing plaintiffs without a particularized interest to sue under California's public interest exception if the plaintiff is suing for enforcement of a law in which the public has a stake as citizens interested in seeing the law enforced).

resemble California's, such as Alabama,[150] Iowa,[151] Oregon,[152] Rhode Island,[153] and Utah.[154] Additionally, many states acknowledge the public interest at stake in the expenditure of public funds and therefore recognize taxpayer standing.[155] Incorporating public interest and taxpayer standing into states' standing doctrines provides a method of balancing access to courts with the prevention of bounty laws.

States' standing requirements are commonly broader than federal standing requirements due to states' interest in citizens' right to use the judicial process to facilitate enforcement of the law when confronted with government indifference or resistance.[156] Public interest and taxpayer standing provide citizens who have an interest in the enforcement of a law with standing to sue, without providing uninterested citizens standing to punish individual conduct in which they have no legitimate interest.[157]

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150. *See* Sassman, *supra* note 112, at 355 ("The Alabama Supreme Court has reaffirmed a public interest exception to its constitutional standing doctrine through an 'equally entrenched' standing rule that applies in mandamus cases seeking to compel performance of a public duty.").

151. *See id.* at 368–69 (distinguishing Iowa's standing requirements in public interest litigation from those when the plaintiff himself is the object of the action).

152. *See id.* at 388 ("Oregon's Constitution does not place any limits on the Oregon courts' power 'to hear public actions or cases that involve matters of public interest that might otherwise have been considered nonjusticiable under prior case law . . . .'" (quoting Couey v. Atkins, 355 P.3d 866, 901 (Or. 2015)).

153. *See id.* at 389 ("On rare occasions, Rhode Island courts will overlook the standing requirement by invoking the so-called 'substantial public interest' exception in order to decide the merits of a case of substantial public importance.").

154. *See id.* at 393 ("Nevertheless, a Utah '[c]ourt may grant standing where matters of great public interest and societal impact are concerned,' even if the plaintiff does satisfy the typical standing requirements." (quoting Gregory v. Shurtleff, 299 P.3d 1098, 1103 (Utah 2013))).

155. *See* Joshua Urquhart, *Disfavored Constitution, Passive Virtues? Linking State Constitutional Fiscal Limitations and Permissive Taxpayer Standing Doctrines*, 81 FORDHAM L. REV. 1263, 1266 (2013) (documenting that most other jurisdictions, though by no means all of them, allow state taxpayer lawsuits and have for decades).

156. *See* Kafker & Russcol, *supra* note 148, at 253–56 (noting states' interest in allowing the legislature to grant citizens with broad standing in some cases to facilitate participation in the lawmaking process and ensure the enforcement of state laws).

157. *See* Save the Plastic Bag Coal. v. City of Manhattan Beach, 254 P.3d 1005, 1011 (Cal. 2011) (conferring standing to a plaintiff suing for enforcement of

States concerned with allowing broader access to the courts than the actual injury requirement allows but limiting litigants to those seeking to fulfill a legally protected interest or check on government officials should consider the creation of a public interest exception modeled after California's.[158] Additionally, taxpayer standing allows citizens without a particularized interest but with an obvious generalized interest in how their tax money is spent to sue public officials for misfeasance related to public expenditures.[159] Public interest and taxpayer standing should be utilized to allow uninjured citizens to ensure that laws are enforced but prevent private citizens' enforcement of laws that would otherwise be unconstitutional if enforced by public officials.

VII. Conclusion

When *Roe v. Wade*[160] was overturned by the Supreme Court in 2022, women in Texas had already lost their right to an abortion due to the bounty placed on abortion providers under SB 8.[161] Despite the protections of the Second Amendment,[162] distributors and manufacturers of firearms in California saw their rights restricted through the bounty created by Senate Bill 1327 only months later.[163] The success of SB 8 and Senate Bill 1327 indicates that the disintegration of individual rights in the United States at the hands of bounty laws is far from over. Currently, there appears

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a law in which the public has a stake as citizens interested in seeing the law enforced).

158. *See* discussion *supra* Part 0.

159. *See* Hershkoff, *supra* note 131, at 1855 (noting taxpayers' interest in the proper use and allocation of tax receipts, giving taxpayers a sufficient stake in the outcome of the suit sufficient to achieve standing to challenge improper uses of tax funds).

160. *See* Roe v. Wade, 410 U.S. 113, 166–67 (1973) (holding that a woman has the right to obtain an abortion before a fetus reaches viability), *overruled by* Dobbs v. Jackson Women's Health, 597 U.S. 215 (2022).

161. *See* Harte, *supra* note 34 (summarizing the widespread effect of SB 8 on a woman's ability to receive an abortion in Texas).

162. *See* U.S. CONST. amend. II (protecting the right to keep and bear arms).

163. *See* Jon Healey, *Californians Have a Green Light to Sue the Gun Industry. How Will That Work?*, L.A. TIMES (Jan. 1, 2023, 3:36 PM) (breaking down how Senate Bill 1327 enables grassroots organizers to restrict the manufacture and distribution of firearms in California) [perma.cc/XCW7-LARD].

to be nothing stopping the passage of an identical bounty law providing a private right of action to sue individuals practicing their religion in public or individuals using contraceptives.

Bounty laws like Texas's SB 8 and California's Senate Bill 1327 have drastic implications for constitutionally protected rights in the United States. These laws deputize private citizens against one another to facilitate the enforcement of laws that would be otherwise unconstitutional but are shielded from challenges due to their unique enforcement mechanism. While a woman's right to an abortion is no longer constitutionally protected,[164] at the time SB 8 was passed, the law dispensed with this vital right regardless of fifty years of precedent solidifying its protection under *Roe v. Wade*.[165] The ripple effect of SB 8 on individual rights was immediately apparent as California passed an identical law deputizing private citizens to see to the enforcement of Senate Bill 1327 through lawsuits.[166] SB 8 and Senate Bill 1327 demonstrate the far-reaching consequences of bounty laws, which spare neither side of the political aisle with respect to their effects. The dangers of these laws for both right-leaning and left-leaning Americans are clear: bounty laws prohibit the free exercise of rights valued by both parties.

This newfound hazard to freedom in the United States warrants close examination and bipartisan collaboration to defeat bounty laws and the risks they pose. State standing requirements are one such obstacle through which laws like SB 8 and Senate Bill 1327 must pass to succeed in curtailing the exercise of individual rights.[167] By limiting recognition of statutory standing to plaintiffs with a tangible interest in the enforcement of a law, state courts can prevent plaintiffs from enforcing bounty laws and thus prevent these laws from depriving American citizens of their constitutionally protected individual rights.[168] Narrowing

164. *See* Dobbs v. Jackson Women's Health Org., 597 U.S. at 300–01 (holding that the right to an abortion before the fetus becomes viable is not protected by the Constitution).

165. *See* discussion *supra* subpart II.A.

166. *See* discussion *supra* subpart II.B.

167. *See* Salib & Suska, *supra* note 53, at 1168 (analyzing standing requirements across states and how they differ from federal standing requirements).

168. *See* discussion *supra* subpart VI.A.

recognition of statutory standing would also combat the legislative overreach inherent in laws like SB 8 and Senate Bill 1327, which interfere with executive enforcement power by deputizing private citizens to enforce these laws.[169] Implementing public interest exceptions and recognizing taxpayer standing would address states' potential concerns regarding citizens' access to assert their interests in court.[170]

Further research should examine other states' standing doctrines more thoroughly to understand how other states limit broad grants of statutory standing while ensuring interested citizens have access to courts. For example, standing jurisprudence in both Connecticut and Kansas requires plaintiffs to demonstrate some sort of interest on top of statutory standing in order to sue, which prevents litigants with no connection at all to the defendants from filing suits.[171] Additionally, many state constitutions offer far more expansive protections for individual rights than the federal Constitution, such as explicit protections of a right to privacy or a right to reproductive autonomy.[172] Scholars should consider how bounty laws implicate state protections of individual rights such as a right to privacy, and whether widespread divestment of such rights outside the realm of state action is reconcilable with these constitutional protections.

169. *See* discussion *supra* subpart VI.A.

170. *See* discussion *supra* subpart VI.B.

171. *See* Sassman, *supra* note 112, at 360–69 (summarizing the requirements for plaintiffs to have standing to sue in Connecticut and Kansas).

172. *See* Kevin Francis O'Neill, *The Road Not Taken: State Constitutions as an Alternative Source of Protection for Reproductive Rights*, 11 N.Y.L. SCH. J. HUM. RTS. 5, 39–43 (1993) (pointing out states with guaranteed Constitutional protections of a right to privacy and/or reproductive autonomy, including California, Florida, New Jersey, Connecticut, and Ohio).