

# Inside conservative activist Leonard Leo's long campaign to gut Planned Parenthood

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A federal lawsuit in Texas against Planned Parenthood has a web of ties to conservative activist Leonard Leo, whose decades-long effort to steer the U.S. court system to the right overturned *Roe v. Wade*, yielding the biggest rollback of reproductive health access in half a century.

Brought by an anonymous whistleblower and later joined by Texas Attorney General Ken Paxton, the suit alleges the Planned Parenthood Federation of America and three Planned Parenthood affiliates defrauded the Texas and Louisiana Medicaid programs by collecting \$17 million for services provided while it fought state efforts to remove it as an approved provider.

The suit claims violations of the False Claims Act, an obscure but powerful law protecting the government from fraud, and seeks \$1.8 billion in penalties from Planned Parenthood, according to a motion that lawyers for the whistleblower filed in [federal court](#) in 2023.

The lawsuit builds on efforts over years by the religious right and politicians who oppose abortion to deliver blows to Planned Parenthood—which provides sexual and reproductive health care at nearly 600 sites nationwide—now bolstered by Leo's work reshaping the American judiciary.

Anti-abortion groups and their allies secured a generational victory in 2022 when the Supreme Court overturned *Roe v. Wade*, which ended the constitutional right to abortion and paved the way for bans or severe restrictions in 20 states. The court challenge in Texas demonstrates how the forces behind the end of *Roe* threaten access to other health and family planning services.

The Planned Parenthood clinics being sued do not provide abortions. They are in Texas and Louisiana, which banned nearly all abortions, respectively, in 2021 and 2022.

Leo, an anti-abortion Catholic, is connected to the key players in the Texas lawsuit—the whistleblower plaintiff, an [attorney general](#), and the judge—according to a KFF Health News review of tax records, [court documents](#) from multiple lawsuits, statements to lawmakers, and website

archives.

Leo provided legal counsel to the anti-abortion group at its center, and he has financial and other connections to Paxton.

They filed the case in federal court in Amarillo, Texas, where Matthew Kacsmaryk is the only judge. He is a longtime member of the Federalist Society, the conservative legal juggernaut for which Leo has worked for over 25 years in various capacities and currently serves as co-chair.

Kacsmaryk's rulings have curtailed access to reproductive health since the Senate confirmed him in 2019. He suspended the FDA's approval of mifepristone, a drug used in medication abortion, propelling the issue to the Supreme Court, which ultimately threw out the case. In another case, Kacsmaryk ruled to limit young people's access to birth control through a federal family planning program.

Leo did not respond to questions for this article and a spokesperson declined to comment. Through a court spokesperson, Kacsmaryk declined to comment for this article.

The anonymous whistleblower in 2021 accused the Planned Parenthood Federation of America and Planned Parenthood affiliates of defrauding the Medicaid programs of Texas and Louisiana. Paxton, who has repeatedly acted to thwart abortion rights and joined the case in 2022, alleges in the lawsuit that clinics received payments they weren't entitled to from Texas Medicaid from early 2017 to early 2021 as the state was pushing to end Planned Parenthood's status as a Medicaid provider. Louisiana and the Department of Justice have not joined the complaint.

The lawsuit's origins go back a decade. The anonymous whistleblower, between 2013 and 2015, "conducted an undercover investigation to determine whether Planned Parenthood's fetal tissue procurement

practices were continuing, and if they were legal and/or ethical," according to the whistleblower's complaint filed in 2021.

The explanation mimics how the Center for Medical Progress, a California-based anti-abortion group founded by activist David Daleiden in 2013, has publicly described its work. "The Human Capital project is a 30-month-long investigative journalism study by The Center for Medical Progress, documenting how Planned Parenthood sells the [body parts](#) of aborted babies," the group states on its website.

In a November 2022 [court order](#), Kacsmatyk said the private party initiating the lawsuit is "the president of CMP," the title Daleiden held at that time, according to a Center for Medical Progress tax filing.

The Center for Medical Progress and Daleiden did not respond to requests for comment.

By law, federal funds can't pay for abortions unless the pregnancy threatens the life of a woman or is the result of rape or incest, but the program reimburses for other care such as contraception, screenings for sexually transmitted infections, and cancer screenings. Medicaid, which provides health coverage for people with low incomes, is jointly financed by states and the federal government.

According to its 2022–23 annual report, Planned Parenthood affiliate clinics provided 9.13 million health care services to 2.05 million patients nationally in 2022. Testing and treatment for sexually transmitted infections accounted for about half of those services, contraception amounted to a quarter, and abortions constituted 4%.

Planned Parenthood Gulf Coast, which operates clinics in Texas and Louisiana, is among the branches Paxton and the whistleblower are suing. From July 2022 to June 2023, its clinics provided patients with

more than 86,000 tests for sexually transmitted infections, 44,000 visits for birth control, and nearly 7,000 cancer screening and prevention services, CEO Melaney Linton told KFF Health News.

"All of these services and more are at risk in this politically motivated lawsuit," Linton said. The lawsuit's allegations "are false. Planned Parenthood did not commit Medicaid fraud."

Linton has said the lawsuit's purpose is clear: "trying to shut Planned Parenthood down."

Texas terminated Planned Parenthood's Medicaid participation in March 2021. Until then, affiliates "were entitled to receive reimbursement" for services to Medicaid patients because their provider agreements with Texas' Medicaid program were valid, attorneys for the Planned Parenthood clinics wrote in a February 2023 court filing in support of their motion for summary judgment.

Louisiana has not removed Planned Parenthood from its Medicaid program.

Leo served as legal counsel to the Center for Medical Progress, according to documents produced as part of a separate lawsuit Planned Parenthood filed in federal court in California against the anti-abortion group. Among those, a July 2018 document lists 25 emails Leo and Daleiden traded in June and July 2015, including in the days before the anti-abortion group released its first video.

Paxton's ties to Leo can be traced back at least a decade to when the former state senator and rising conservative star was about to begin his first term as attorney general.

In 2014, Leo, then executive vice president of the Federalist Society,

was a rare non-Texan named to Paxton's attorney general transition advisory team.

Tax filings show that the Concord Fund, one of several Leo-linked groups that spend money to influence elections and aren't required to disclose their donors, gave \$20.3 million from July 2014 through June 2023 to the Republican Attorneys General Association, the political nonprofit that works to elect Republicans as states' top law enforcement officers.

Known as RAGA, the group funneled more than \$1.2 million to Paxton's campaign over three election cycles from 2014 to 2022, Texas campaign finance records show.

Texas government officials knew the state was reimbursing Planned Parenthood clinics for medical services from 2017 to 2021, which renders the state's argument that clinics violated the False Claims Act "without merit," said Jacob Elberg, a professor at Seton Hall Law School and an expert in health care fraud.

The law is intended for situations "where essentially someone submits a claim for payment or keeps money that they're not entitled to where they have information that the government doesn't have," Elberg said. "And they essentially know that if the government knew the truth, the government wouldn't pay them or would be demanding money back."

But with Planned Parenthood, "everything involved here happened out in the open," Elberg said. "They were submitting bills and the government knew what was going on and was paying those bills."

The plaintiffs' arguments are a "tortured use" of the False Claims Act, said Sarah Saldaña, a former U.S. attorney for the Northern District of Texas.



"Things like this, which have these obvious political overtones, tend to undermine further the view of the public of the judicial courts system," Saldaña said.

The office of the attorney general did not respond to requests for comment.

Anti-abortion groups support the Paxton lawsuit even though abortion is essentially outlawed in the Lone Star State. Planned Parenthood "is still a pro-abortion organization," said John Seago, president of Texas Right to Life. Even though Planned Parenthood provides other care, "all of those services are tainted by their pro-abortion mindset," he said.

"Planned Parenthood is a danger to Texans. We wish that Planned Parenthood didn't have a single location within our state," Seago said. "Whenever the state pays Planned Parenthood to do something, even if it's a good service, we are building up their brand and giving them more reach into our Texas communities."

Roughly three dozen Planned Parenthood clinics in Texas continue to provide non-abortion services like birth control and STI screenings. The \$1.8 billion the whistleblower is seeking is equivalent to nearly 90% of Planned Parenthood's annual revenue, according to its most recent annual report.

## **The campaign against Planned Parenthood**

The Center for Medical Progress was little known in 2015 when it began releasing videos containing explosive allegations that Planned Parenthood was illegally selling tissue from aborted fetuses, which Planned Parenthood denies.

The group and Daleiden had ties to powerful anti-abortion organizations.

They include Live Action, where Daleiden worked before creating the Center for Medical Progress, and Operation Rescue, the Kansas-based group that staged demonstrations against George Tiller's abortion clinic in that state before a gunman killed the physician in 2009.

"The evidence I am gathering deeply implicates Planned Parenthood affiliates across the country in multiple felonies and can trigger severe legal and financial consequences for PP and their associates, while providing new justifications for state defunding efforts and turning public opinion against Planned Parenthood and abortion," Daleiden wrote in a May 2013 email produced as part of the litigation Planned Parenthood brought in California. The subject line: "Meeting to Take Down PP."

Texas tried to remove Planned Parenthood clinics from its Medicaid program following the center's release of the undercover videos, a move that was part of a larger political firestorm. Roughly a dozen states launched investigations into the reproductive health provider, and Republicans in Congress renewed calls to strip Planned Parenthood of government funding.

Paxton made his feelings clear about abortion as he pursued an investigation of Planned Parenthood in Texas. During a July 29, 2015, legislative hearing, he said "the true abomination in all of this is the institution of abortion."

"We are rightfully horrified by what we've seen on these videos," Paxton said. "However these videos also serve as a larger reminder that, as a society, we've turned a blind eye to the gruesome horrors that occur in abortion clinics across America every single day. They remind us that this industry as a whole has lost the perspective of humanity."

Planned Parenthood denied selling fetal tissue and other claims in the



videos, some of which contained graphic footage. It said the videos were "deceptive" and heavily edited to be misleading. A grand jury in Texas cleared Planned Parenthood of wrongdoing.

Daleiden worked on the center's "Human Capital Project" for years, receiving advice from Leo and his associates, according to the Center for Medical Progress' website, and Daleiden's email correspondence and other documents produced as part of the separate lawsuit in federal court in California.

The July 2018 document filed as part of the litigation in California describes emails between Leo and Daleiden as "providing legal communication with counsel regarding legal planning" and "for counsel to provide legal advice regarding investigative journalism methods and the legality of fetal tissue procurement practices," among other descriptions. Daleiden sent one email to Leo "regarding legal planning" on July 13, 2015, the day before the Center for Medical Progress released its first video.

A November 2018 letter from the Center for Medical Progress' lawyers stated "CMP was receiving legal advice" from Leo, as well as other conservative lawyers and organizations. Lawyers representing the center and Daleiden in a December 2018 legal filing said Leo "provided legal advice on how to ensure successful prosecutions of the criminal actors which CMP identified."

In its defense, Planned Parenthood has said it billed the Texas Medicaid program for reimbursement for "lawfully provided" services from February 2017 to March 2021 as a participating Medicaid provider in the state.

In 2015 and 2017, federal courts in Louisiana and Texas blocked those states from terminating Planned Parenthood's Medicaid provider

agreements. Judge John deGravelles of the U.S. District Court for the Middle District of Louisiana said the state was prohibited "from suspending Medicaid payments to [Planned Parenthood Gulf Coast] for services rendered to Medicaid beneficiaries."

The 5th Circuit Court of Appeals in November 2020 vacated the Texas and Louisiana injunctions, but the court never weighed in on clawing back Medicaid funds that had been paid to clinics. Texas terminated Planned Parenthood in March 2021, following a state court ruling.

Texas and the whistleblower argue that, once the court injunctions were lifted, Planned Parenthood's termination from each state's Medicaid program became effective years earlier—2015 in Louisiana and 2017 in Texas—due to the dates that state officials gave clinics final notice.

Planned Parenthood has argued that it is under no obligation to return payments received while injunctions were in place. Kacsmarky disagrees. In a recently unsealed summary judgment order in the case, the judge wrote that Planned Parenthood clinics "had an obligation to repay the government payments they received as a matter of law."

The order was unsealed after attorneys for the Reporters Committee for Freedom of the Press intervened. The committee argued the public has a presumptive and constitutional right to access judicial records, and that Kacsmarky's stated concerns—which included the tainting of a potential jury pool or jeopardizing the safety of those involved in the lawsuit—didn't justify keeping the document secret.

Kacsmarky's brief justification for sealing the document, contained in the order itself, "was very thin," said Katie Townsend, legal director for the Reporters Committee for Freedom of the Press.

She said his decision to seal such an important document was "highly

unusual" and "very troubling."

"Those orders are almost always completely public," she said.

## **What Paxton gains**

Paxton has publicly toyed with the idea of pursuing federal office, and former President Donald Trump has said he'd consider him for U.S. attorney general should Trump return to the White House.

For Republicans in Texas, there are political benefits to going after Planned Parenthood, said Mark Jones, a political scientist at Rice University in Houston.

"Doing anything punitive against Planned Parenthood and anything that would reduce the ability of Planned Parenthood to be active and effective in Texas is going to be greeted with near-universal consensus within the Republican primary electorate," Jones said. "There's no downside to it."

The Republican Attorneys General Association, which can accept unlimited political donations that it distributes to candidates, is a Paxton supporter. Campaign finance records show it gave more than \$730,000 to Paxton's attorney general campaigns in 2014 and 2018.

Tax filings show that the Marble Freedom Trust, a political nonprofit where Leo serves as trustee and chair, gave the Concord Fund \$100.9 million from May 2020 through April 2023. During the 2022 election cycle, the Concord Fund gave \$6.5 million to RAGA, which then contributed \$500,000 to Paxton's campaign.

It was tied as the highest contribution to the Texas attorney general, matched by a \$500,000 contribution from a political action committee

backed by conservative Texas billionaires, according to Transparency U.S., a nonprofit that tracks spending in state politics.

RAGA has praised Leo's role, calling him its "greatest champion."

"Leonard Leo has helped shape the trajectory of RAGA and the conservative legal movement more than anyone else. As RAGA's greatest champion, Leonard Leo reimagined the role of the state attorney general and promoted men and women dedicated to the persistence of the rule of law and the original meaning of the Constitution," reads a RAGA website post from 2019 that has since been deleted.

"You want access to Leo because Leo gives you access to money," said Chris Toth, former executive director of the National Association of Attorneys General.

In many conservative states like Texas, Toth said, "the issue is worrying about getting primaried. And that is where playing nice with Leonard Leo and the Concord Fund come in, because if you're on their side, basically, you're going to have no problem getting reelected."

Abortion rights supporters have warned that they anticipate ongoing reproductive health battles in Texas and beyond, with access to contraception, fertility services, and other types of care under threat.

As an example, some point to the *Griswold v. Connecticut* decision from 1965, in which the Supreme Court legalized the use of contraception among married couples. The high court ruled that a state law violated a constitutional right to privacy, a rationale that was central to *Roe v. Wade* eight years later.

In a 2017 speech at the Acton Institute, a conservative think tank, Leo criticized *Griswold* as a decision amounting to "the creation of rights

found nowhere in the text or structure of the Constitution."

The Planned Parenthood lawsuit in Texas is expected to go to trial, potentially this year. The central question is whether Planned Parenthood knowingly withheld money owed to the government.

All the while the public is expressing greater uncertainty about rights once considered constitutionally guaranteed. In a KFF poll conducted in February, one in five adults said the right to use contraception is threatened and likely to be overturned.

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