

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PLANNED PARENTHOOD CENTER FOR
CHOICE, *et al.*,

Plaintiffs,

v.

GREG ABBOTT, in his official capacity as
Governor of Texas, *et al.*,

Defendants.

No. 1:20-cv-00323-LY

**PLAINTIFFS' SUPPLEMENTAL STATEMENT IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiffs file this supplemental statement in support of their motion for a temporary restraining order to correct a factual misstatement by the Texas Attorney General's Office during the March 27, 2019, conference and to bring to the Court's attention additional evidence in support of Plaintiffs' motion.

During the March 27 conference, counsel with the Attorney General's Office stated that Plaintiffs were asking for an exemption from the Executive Order and Emergency Rule to use "thousands of N95 masks for their procedures that then are not able to be used by hospitals and health care providers to treat the crisis." Telephone Conf. Tr. at 11:4-6 (Stephens), Mar. 26, 2020. That statement is contrary to all evidence in the case. Four of the six institutional Plaintiffs reported that they neither have nor use N95 respirators. Barraza Decl. ¶ 8; Ferrigno Decl. ¶ 13; Hagstrom-Miller Decl. ¶ 16; Lambrecht Decl. ¶ 12; Schutt-Aine Decl. ¶ 27. The fifth institutional Plaintiff reported that it had a "small number" of N95 masks that it "generally does not use" and explained that a single provider there "has been wearing and reusing a single N95 mask during all face-to-

face interactions with patients” during the COVID outbreak. Klier ¶¶ 6, 13. The sixth institutional Plaintiff reported that although it had “a limited number of N95 masks at the clinic,” which is consistent with a recommendation it received from the Dallas County Health and Human Services, it “would only use them if [it] were treating a patient with a suspected or confirmed COVID-19 infection” and that it had not used any to date. *Id.* ¶¶ 16, 21. In sum, the facts show that a single clinician is reusing a single N95 mask for patient interactions, that only two of the six institutional Plaintiffs even have N95 masks in stock, and that, apart from the single mask that is being reused, that small supply of masks is not currently being used.

Plaintiffs also submit as Exhibit 10 in support of their Motion for a Temporary Injunction and a Preliminary Injunction the Declaration of Jane Doe. Ms. Doe is a Texas resident and was among those patients whose abortion appointments were cancelled last week because of the Executive Order in this case. Ms. Doe’s declaration supports Plaintiffs’ assertion that the Executive Order and Emergency Rule will only exacerbate the ongoing public health crisis and that any benefit from those challenged actions cannot possibly outweigh the burdens those actions are imposing and will continue to impose on patients. *See Mot. for TRO and/or Prelim. Inj. & Mem. of Law in Supp.* at 21–25.

CONCLUSION

For these reasons and those set forth in Plaintiffs’ previous submissions, this Court should grant Plaintiffs’ motion for a temporary restraining order and/or preliminary injunction to enjoin enforcement of the Executive Order and Emergency Rule, as interpreted by Defendants, to prohibit abortions.

Dated: March 30, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE AND NOTICE

I certify that on this 30th day of March, 2020, I filed a copy of the above document on CM/ECF, which will provide notice to Mr. Andrew Stephens, counsel for Governor of Texas; Ken Paxton, in his official capacity as Attorney General of Texas; Phil Wilson, in his official capacity as Acting Executive Commissioner of the Texas Health and Human Services Commission; Stephen Brint Carlton, in his official capacity as Executive Director of the Texas Medical Board; and Katherine A. Thomas, in her official capacity as Executive Director of the Texas Board of Nursing.

/s/ Patrick J. O'Connell
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I certify that on this 30th day of March, 2020, I emailed a copy of the above document to:

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EXHIBIT 10

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**DECLARATION OF JANE DOE IN SUPPORT OF PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Jane Doe declares the following:

1. I am a 24-year-old college student and reside in Arlington, Texas. My appointment for an abortion in Texas on March 23, 2020, was cancelled because of Governor Abbott's Executive Order No. GA-09.
2. I submit this declaration in support of Plaintiffs' motion for a temporary restraining order followed by a preliminary injunction, which seeks to enjoin the Executive Order, as interpreted by the Texas Attorney General to ban most abortions in Texas as well as the Texas Medical Board's emergency amendment to 22 TAC § 187.57 ("Emergency Rule"), which imposes the same requirements as the Executive Order.
3. The facts I state here are based on my personal experience.
4. I am studying to become a secondary school teacher. I am planning to graduate this spring, but I have not gotten a teaching position yet.

5. Throughout college, I have been waiting tables part-time to support myself. About three weeks ago, I lost my job. Because of the COVID-19 outbreak, my restaurant announced that it would close down for eight weeks. It gave my coworkers and me information about applying for unemployment.

6. The same week I lost my job waiting tables, I became worried that I might be pregnant, even though my partner and I had been using birth control. Even before I took the at-home pregnancy test, I knew what I was going to do if it was positive. My partner and I were on the same page: This wasn't the right time. I had just lost my job. I was still in school. And I would need to start applying and interviewing for new jobs, which I expected would be harder to get if schools knew I was pregnant. And the biggest factor for me was simply that I didn't want to become a parent right now.

7. Coronavirus was all over the news, but I wasn't panicked about getting an appointment until I started calling abortion clinics. That's when I realized it was going to be tough to be seen in a timely fashion. Clinics kept telling me they couldn't see me for three or four weeks. Eventually, I secured an appointment in Fort Worth for the following week.

8. On Friday, March 20, I went to the clinic alone. I wasn't allowed to bring my partner because of the social distancing rules in place. In order to limit the number of patients inside the clinic, they actually had us sign in and wait in our cars. I sat in my car in the clinic parking lot for two hours before I was able to enter the building. Lots of other patients were waiting in their cars, too. Meanwhile, anti-abortion protesters stood about 10 feet away with signs and screamed at me and other patients. Later, I heard some nurses talking about how one woman got intimidated and drove off.

9. The appointment took five hours. The clinic gave me a sonogram over my belly and took blood. I was under 10 weeks pregnant so I qualified for a medication abortion. But Texas has a 24-hour waiting period, so the clinic couldn't let me go forward with the medication abortion that day even though I was certain of my decision and did not want to expose myself or anyone else to further risk of infection by having to come in for a second appointment. I had to come back for a second appointment. The soonest they could see me was in four days, which was Tuesday, March 24.

10. I was experiencing severe pregnancy symptoms. I was throwing up every day throughout the day. I wasn't able to study or eat. I felt so tired I could barely get out of bed. But I had no choice except to wait.

11. The night of Monday, March 23, I got a phone call from the clinic. My second appointment the next day was cancelled. The staffer told me that Gov. Greg Abbott halted all abortions in the state, claiming that medical supplies needed to be saved for other patients. I started to cry, and she cried too. She told me my only option at that point was to go out of state or delay my abortion and possibly be forced to have a baby. I was dumbfounded. I had a plan and everything came crashing down.

12. My partner was with me during the call, and we cried together afterward. Waiting to see if I could get an abortion later in Texas was not an option. I felt so sick. I didn't want to be pregnant one day longer, and I couldn't risk the possibility that I would run out of time to have an abortion while the outbreak continued. It seemed to be getting more and more difficult to travel. I also wanted to have a medication abortion so that I could do it in the privacy of my own home with my partner. Because of the clinic's rules during the COVID-19 outbreak, support companions weren't allowed in the clinic at all during procedural abortions. The clinic told me that medication

abortion wasn't available after ten weeks of pregnancy in Texas, so I knew that if I wanted to obtain a medication abortion, I needed to act quickly.

13. After the call, my partner and I began researching abortion restrictions in the states nearest Texas. Oklahoma has a 72-hour waiting period so I didn't want go there. I would have had to make more than one trip during the pandemic to meet that requirement and spend even more than I already had to.

14. We also looked at clinics in New Mexico, which would have been about a nine-hour drive each way for me. One was closed, and the others told me they couldn't see me for three or four weeks.

15. So then we looked at Colorado. I made a bunch of calls. On Monday night at about 11 p.m., I finally was able to make an online appointment with a clinic in Denver that could see me for a medication abortion on Thursday.

16. It's a 12-hour drive from my house and roughly 780 miles on the road one-way to Denver. My partner couldn't afford to miss work to accompany me. We were worried that he would have to explain to his boss why he was taking three days away from work. We didn't want to reveal to his employer that I was having an abortion. Luckily, my partner still has a job.

17. I couldn't have done the drive alone, and I was scared. My best friend came up on Tuesday from Austin to go with me. She also lost her job at a restaurant a couple weeks ago, so she was free.

18. My partner packed a box of sanitizing supplies for us to take on our trip, and we brought food to help avoid the need to make stops and risk exposure to the virus. My friend and I started out early on Wednesday and drove throughout the day. I rented the cheapest AirBnB I could find in Denver, and we wiped it down with disinfectant when we got there before sleeping.

19. My appointment was in the afternoon on Thursday, March 26. I noticed when we arrived at the clinic that two other cars with Texas license plates were in the parking lot. I had to go through the sonogram, bloodwork, and counseling all over again. But since Colorado does not have a 24-hour waiting period, the clinic I went to was able to give me the medication for my abortion without further delay. I took the first pill there and they sent me home with the second pill.

20. My friend and I started the twelve-hour drive home at 3:30 p.m. It felt like we were in a race against time because the clinic recommended that I take the second pill 24 to 30 hours after the time I took the first pill. We didn't want to take breaks or rest because I was worried about having my abortion in the car.

21. We drove about six hours but had to stop. It was pitch black, and we were exhausted. It was too dangerous for us to keep going. We had to rent a hotel room and stay there until the morning.

22. I got home in the afternoon on Friday, March 27. The provider in Colorado had recommended that I try to get as comfortable as possible before taking the second pill. I wanted to make sure I could eat a meal before taking the medication because I worried I would feel too nauseous afterwards to eat anything. By the time I took the second pill, nearly thirty hours had passed since the first one.

23. I was exhausted, and only then was I able to have my abortion. I passed the pregnancy Friday night at home with my partner.

24. With the cost of the AirBnB, gas, food, and parking, I've had to pay a lot more money out of pocket to get this abortion than I should have had to. I've spent nearly \$1,000,

including the cost of the abortion itself, which is not covered by my health insurance. I've had to drain my savings to pay these costs.

25. Then there's the additional stress. Obviously, had this pregnancy not been a factor, I wouldn't be traveling during a pandemic. I already felt like it was risky for me to travel to a nearby clinic in Fort Worth to have my appointment. Instead, I was forced to drive across the country, to stop at dirty gas stations, to stay in an unfamiliar home, just to get health care. I feel like Texas put me, and my best friend, in danger.

26. With all of this stress and unexpected travel, I haven't been able to finish my application for unemployment benefits yet, so I probably won't get a check for at least another week. Even then the benefits will be a fraction of what I made working at a restaurant, and I now have fewer savings to cover the difference.

27. Despite everything I've been through this week, I feel incredibly grateful. I had savings. I have a partner with income. I don't already have kids. I had a best friend with a car who could go with me on a long, unexpected trip. So far I'm not sick. So many Texans don't have those things right now. And unlike me, many of them are much further along in pregnancy than I was. I have no idea how they're going to get the abortion care they need. Based on my own experience, I expect many will not. I know I was desperate, and desperate people take desperate steps to protect themselves.

28. I was born and raised in Texas. Right now, I feel let down by my government. I feel like Governor Abbott doesn't care about me or other patients who need essential abortion care. Why is my life not important enough to him and the other men making these decisions? Frankly, I feel like my constitutional rights were violated when I needed them the most.

29. I want to submit this declaration under a pseudonym because the information I am sharing in this action about my reproductive health care history is private and personal. I would not feel comfortable if this information and my name became public, especially because I will be looking for a job in the coming weeks. I also fear that if this information and my name became public, I would become a target for harassment by anti-abortion protestors.

30. I swear under penalty of perjury that the foregoing is true and correct.

Executed March 29, 2020

/s/ Jane Doe*
Jane Doe

*I have signed a copy of this declaration with my actual name and given it to Plaintiffs' attorneys for their records.