

**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

[PROPOSED] TEMPORARY RESTRAINING ORDER

Plaintiffs have moved for a temporary restraining order to enjoin Defendants' efforts to immediately ban most abortion during the COVID-19 pandemic through their application of Governor Greg Abbott's March 22, 2020, Executive Order GA 09, "Relating to hospital capacity during the COVID-19 disaster" and the Texas Medical Board's emergency amendment to 22 Tex. Admin. Code § 187.57, which imposes the same requirements as Executive Order GA 09.

The Court, having considered the pleadings, legal authority, and argument presented in support of Plaintiffs' Motion, as well as the Declarations submitted with that Motion, has found and concluded, for the specific reasons required under Federal Rule of Civil Procedure 65(d) and Local Rule 65.01, that Plaintiffs have shown (1) a likelihood of success on the merits, (2) that they will suffer irreparable harm if a preliminary injunction is not granted, (3) that the balance of equities tip in Plaintiffs' favor, and (4) that a temporary restraining order is in the public interest.

Specifically, the Court finds that Plaintiffs have established a substantial likelihood of success on the merits of their claim that the Executive Order, as interpreted by the Texas Attorney

General, violates Plaintiffs’ patients’ liberty rights under the Fourteenth Amendment by banning abortion before viability. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects a woman’s right to choose abortion, *Roe v. Wade*, 410 U.S. 113, 153–54 (1973), and prior to viability, a state has *no interest* sufficient to justify a ban on abortion, *id.* at 163–65; *see also Planned Parenthood of Se. Penn. v. Casey*, 505 U.S. 833, 846, 871 (1992) (reaffirming *Roe*’s “central principle” that “[b]efore viability, the State’s interests are not strong enough to support a prohibition of abortion.”); *Jackson Women’s Health Org. v. Dobbs*, 951 F.3d 246, 248 (5th Cir. 2020) (per curiam); *Jackson Women’s Health Org. v. Dobbs*, 945 F.3d 265, 268–69 (5th Cir. 2019). The Attorney General’s interpretation of the Executive Order would either ban all non-emergency abortions in Texas or ban all non-emergency abortions in Texas starting at ten weeks of pregnancy, and even earlier among patients for whom medication abortion is not appropriate. On either interpretation, it would amount to a previability ban, which contravenes decades of Supreme Court precedent, including *Roe*. Plaintiffs are likely to succeed on the merits of their Fourteenth Amendment substantive due process claim.

In addition, Plaintiffs’ patients will suffer serious and irreparable harm in the absence of a temporary restraining order. The Attorney General’s interpretation of the Executive Order prevents Texans from exercising their fundamental constitutional right to terminate a pregnancy. It is well established that, where a plaintiff establishes a constitutional violation, no further showing of irreparable injury is necessary. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of [constitutional] freedoms . . . unquestionably constitutes irreparable injury.”); *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012); *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. Unit B Nov. 1981). Plaintiffs’ requested relief will “essentially continue[] the status quo,” tipping the balance of equities toward Plaintiffs and serving the public

interest. *Jackson Women's Health Org. v. Currier*, 940 F. Supp. 2d 416, 424 (S.D. Miss. 2013), *aff'd*, 760 F.3d 448 (5th Cir. 2014); *United States v. Texas*, 508 F.2d 98, 101 (5th Cir. 1975).

THEREFORE, it is hereby ORDERED that the motion (Doc. ____) is GRANTED and that Defendants and their employees, agents, successors, and all others acting in concert or participating with them, are TEMPORARILY RESTRAINED from enforcing Governor Greg Abbott's March 22, 2020, Executive Order GA 09, "Relating to hospital capacity during the COVID-19 disaster," and the Texas Medical Board's emergency amendment to 22 Tex. Admin. Code § 187.57, as applied to medication abortion or procedural abortion.

This Temporary Restraining Order shall expire on _____, 2020 at _____ .m., unless extended by the parties and the Court.

Plaintiffs shall not be required to post bond.

IS SO ORDERED.

SIGNED this _____ day of _____, 2020.

HON. LEE YEAKEL
UNITED STATES DISTRICT JUDGE