

# EXHIBIT 3

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

PLANNED PARENTHOOD CENTER FOR CHOICE; <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	CIVIL ACTION
	)	
v.	)	CASE NO. 1:20-cv-323-LY
	)	
GREG ABBOTT, in his official capacity as Governor; <i>et al.</i> ,	)	
	)	
Defendants.	)	

**DECLARATION OF ANDREA FERRIGNO**

ANDREA FERRIGNO hereby declares under penalty of perjury that the following statements are true and correct:

1. I am the Corporate Vice-President with Whole Woman’s Health (“WWH”), a plaintiff in this case.
2. WWH is a consortium of limited liability companies, each incorporated under Texas law. The consortium includes a property management company, healthcare management company specializing in the management of abortion clinics, and a network of abortion clinics.
3. WWH currently owns and operates two abortion clinics in Texas, one in Fort Worth (the “Fort Worth Clinic”) and one in McAllen (the “McAllen clinic”). WWH also owns and operates an abortion clinic in Baltimore, Maryland; Minneapolis, Minnesota; and Alexandria, Virginia.

4. My responsibilities as Corporate Vice-President include ensuring that each clinic complies with all statutes and regulations concerning the provision of the health services they offer, including abortion care, as well as recruiting physicians.

5. I have worked at WWH in a variety of roles since 2004, when I first joined as a Patient Advocate. As a result, I am well-versed in abortion clinic operations and patient care.

6. I provide the following testimony based on personal knowledge and review of WWH's business records.

#### **Provision of Abortion Care at the WWH Clinics in Texas**

7. Both the Fort Worth and McAllen clinics offer surgical abortions up to 17.6 weeks gestation, as measured from the first day of a patient's last menstrual period ("lmp"). Texas law prohibits licensed abortion facilities from providing surgical abortions past this gestational age. *See* Tex. Health & Safety Code § 171.004.

8. Both clinics also offer medication abortions up to 10 weeks lmp. Texas law prohibits the provision of medication abortion past this gestational age. *See* Tex. Health & Safety Code § 171.063(a)(2).

#### **Use of PPE in WWH Clinics in Texas**

9. Texas law requires abortion patients who live within 100 miles of a licensed abortion facility to make two trips to obtain care. *See* Tex. Health & Safety Code § 171.012(a)(4), (b). During the first visit, we must provide the patient with State-mandated information and perform an ultrasound examination. *See id.* The physician cannot provide the patient an abortion until the second visit. *See id.*

10. There is minimal use of personal protective equipment ("PPE") at the WWH clinics in Texas. Physicians do not use it to provide medication abortions and use sterile gloves and

surgical gowns to provide surgical abortions. Some physicians also use surgical masks, disposable shoe covers and reusable goggles for dilation & evacuation (“D&E”) abortions.

11. Additionally, physicians do not use PPE to perform an abdominal ultrasound examination before an abortion and use only gloves to perform a transvaginal ultrasound examination before an abortion.

12. After a surgical abortion, a staff member examines the tissue removed from the patient in the pathology laboratory. To do so, the staff member may use gloves, a surgical gown, face shield, or disposable shoe covers.

13. The WWH clinics in Texas do not have or intend to acquire any N-95 respirators, which are face coverings designed to block at least 95 percent of very small test particles.

14. Our abortion patients rarely require hospitalization.

#### **WWH’s Response to the COVID-19 Public Health Crisis**

15. WWH has adopted certain policies to help ensure the safety of its patients and staff during the COVID-19 public health crisis.

16. We screen staff members for symptoms of COVID-19 and require anyone who is exhibiting them or has been exposed to someone with a confirmed case to self-quarantine for at least fourteen consecutive days.

17. Additionally, staff members screen all potential patients by phone for symptoms of COVID-19. If a patient is exhibiting symptoms, we ask them to self-quarantine, contact their primary care provider, and not visit the clinic unless they have been asymptomatic for at least fourteen consecutive days.

18. Further, we limit the number of people in a clinic at any given time and help ensure patients keep a safe distance from each other in the waiting room and recovery area.

19. We also train staff on best practices to prevent the spread of infection and require them to observe strict practices for handwashing and disinfecting surfaces. Texas law prohibits the provision of State-mandated information using telemedicine. *See, e.g.*, Tex. Occ. Code § 111.005(c); Tex. Health & Safety Code § 171.063(c); 25 Tex. Admin. Code § 139.53(b)(5).

### **Effect of the Governor's Executive Order**

20. On March 22, 2020, Governor Abbott issued Executive Order GA-09 (“Executive Order”), which concerns hospital capacity during the COVID-19 public health crisis, and applies until 11:59 p.m. on April 21, 2020, assuming it is not renewed. The Executive Order directs “all licensed health care professionals and all licensed health care facilities” to “postpone all surgeries and procedures that are not immediately medically necessary to correct a serious medical condition of, or to preserve the life of, a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient’s physician.” *Id.* at 1. The Executive Order clarifies that the prohibition does not apply to “any procedure that, if performed in accordance with the commonly accepted standard of clinical practice, would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 disaster.” *Id.*

21. The Executive Order does not define PPE. We at WWH understand PPE to include surgical masks, N-95 respirators, sterile and non-sterile gloves, disposable protective eyewear, surgical gowns, and disposable shoe covers.

22. Both the Fort Worth and McAllen clinics are willing and able to continue providing abortion care consistent with the Executive Order.

23. On March 23, 2020, however, WWH received a copy of an email from the Texas Office of the Attorney General announcing a press release by Attorney General Paxton, entitled

“Health Care Professionals and Facilities, Including Abortion Providers, Must Immediately Stop All Medically Unnecessary Surgeries and Procedures to Preserve Resources to Fight COVID-19 Pandemic.”

24. The press release states that the Executive Order applies to “all surgeries and procedures that are not immediately medically necessary,” including “most scheduled healthcare procedures that are not immediately medically necessary such as orthopedic surgeries or any type of abortion that is not medically necessary to preserve the life or health of the mother.” It states that a “[f]ailure to comply with an executive order issued by the governor related to the COVID-19 disaster can result in penalties of up to \$1,000 or 180 days of jail time” and warns that “[t]hose who violate the governor’s order will be met with the full force of the law.”

25. WWH’s clinics in Texas were concerned that they would be prosecuted given the Attorney General’s interpretation of the Executive Order as prohibiting “any type of abortion” even though the Executive Order permits abortions that physicians have determined are necessary to “correct a serious medical condition of ... a patient who without immediate performance of the surgery or procedure would be at risk for serious adverse medical consequences or death, as determined by the patient’s physician,” and/or those that “would not deplete the hospital capacity or the personal protective equipment needed to cope with the COVID-19 health disaster.”

26. On March 24, the Fort Worth Clinic cancelled appointments for 13 abortion patients, who now are unable to obtain care anywhere in Texas. The following day, the clinic cancelled another 18 appointments for abortion patients, who now are unable to obtain an abortion in the State.

27. On March 24, the McAllen Clinic cancelled appointments for two abortion patients, who now are unable to obtain care anywhere in Texas. The following day, the clinic cancelled

another two appointments for abortion patients, who now are unable to obtain an abortion in the State.

28. People continue to seek appointments at both clinics. We must turn them away unless we are certain that no aspect of their care will involve the use of PPE. Between today and April 21, 2020, we anticipate turning away over 100 patients from the Fort Worth Clinic and at least 40 patients from the McAllen Clinic.

29. Each of our abortion clinics has a maximum capacity based on the size of our facility and the availability of our physicians. The maximum capacity of the Fort Worth Clinic is 130 patients per week and the maximum capacity of the McAllen Clinic is about 60 patients per week. Even if we were able to resume abortion care on April 22, 2020, it would take us a significant amount of time to treat all of the patients that we will have to turn away between now and then, in addition to our regular patient load.

### **Impact on Patients**

30. A majority of the patients at the Fort Worth Clinic are people of color and Spanish speakers. They hail from all over Texas.

31. A majority of the patients at the McAllen Clinic are Spanish speakers and many face immigration-related restrictions on traveling outside of the Rio Grande Valley.

32. The patients at both clinics seek abortion care for a variety of reasons. Many are low-income, uninsured, and the parents of dependent children.

33. And many would suffer substantial burdens if they were forced to seek abortion care out-of-state ordinarily. Such long-distance travel is virtually impossible now due to travel restrictions, more severe financial constraints for those in need of abortion care, school closures, and the unlikelihood of finding childcare.

34. Consequently, our patients and would-be patients will be forced to live with an unwanted pregnancy for an indefinite amount of time—if they are able to obtain an abortion at all. This can involve physical symptoms, such as morning sickness, considerable stress and anxiety, and the increased possibility that an abusive partner or family member will learn of the pregnancy.

35. People who are delayed past ten weeks Imp will no longer be able to obtain a medication abortion. *See* Tex. Health & Safety Code § 171.063(a)(2). Similarly, those who are delayed past 14-16 weeks Imp will no longer be able to obtain an aspiration abortion, a type of surgical abortion, and will instead have to receive a D&E, which is a lengthier and more complex procedure. Those who are pushed past 18 weeks Imp, *see* Tex. Health & Safety Code § 171.004, will no longer be able to obtain an abortion at an abortion clinic, while those who are delayed past 22 weeks Imp will no longer be able to obtain an abortion in Texas at all, absent a medical emergency. *See* Tex. Health & Safety Code § 171.044.

36. The medical risks of abortion and pregnancy, as well as the costs of abortion care, increase with gestational age.

37. Thus, the patients that WWH will be forced to turn away for fear of prosecution will suffer in significant and lasting ways.

Dated: March 25, 2020

/S/Andrea Ferrigno

Andrea Ferrigno  
Corporate Vice-President  
Whole Woman's Health