

# EXHIBIT 4

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

PLANNED PARENTHOOD CENTER FOR CHOICE; <i>et al.</i> ,	)	
	)	
	)	CIVIL ACTION
Plaintiffs,	)	
	)	CASE NO. 1:20-CV-00323-LY
v.	)	
	)	
GREG ABBOTT, in his official capacity as Governor; <i>et al.</i> ,	)	
	)	
	)	
Defendants.	)	

**DECLARATION OF AMY HAGSTROM MILLER**

AMY HAGSTROM MILLER hereby declares under penalty of perjury that the following statements are true and correct:

1. I am the President and Chief Executive Officer (“CEO”) of Whole Woman’s Health Alliance (“WWHA”), a plaintiff in this case.

2. WWHA is a nonprofit organization incorporated under Texas law. Its mission is to provide abortion care in underserved communities and shift the stigma around abortion in our culture.

3. WWHA currently operates an abortion clinic in Austin, Texas (the “Austin clinic”), as well as abortion clinics in Indiana and Virginia. The Austin clinic opened in 2017 and is licensed in accordance with Texas law.

4. As President and CEO of WWHA, I oversee all aspects of the organization’s work.

5. I have been working in the abortion care field since 1989. Prior to my work at WWHA, I founded a consortium of limited liability companies involved in the provision of abortion care throughout the United States. These companies do business under the name “Whole

Woman's Health." I continue to serve as President and CEO of Whole Woman's Health, which opened its first abortion clinic in 2003.

6. I am thoroughly familiar with all aspects of abortion clinic operations and patient care.

7. I provide the following testimony based on my personal knowledge and review of WWHA's business records.

**Provision of Abortion Care at the Austin Clinic**

8. The Austin clinic provides surgical abortions up to 17.6 weeks of pregnancy as measured from the first day of a patient's last menstrual period ("lmp"). Under Texas law, licensed abortion facilities are not permitted to provide surgical abortions beyond this gestational age. *See* Tex. Health & Safety Code § 171.004.

9. The Austin clinic provides medication abortions up to 70 days lmp. Under Texas law, medication abortions are prohibited after this gestational age. *See* Tex. Health & Safety Code § 171.063(a)(2).

10. In a typical week, the Austin clinic provides surgical abortions to approximately 30 patients.

11. In a typical week, the Austin clinic provides medication abortions to approximately 30 patients.

12. Texas law requires abortion patients who reside within 100 miles of a licensed abortion clinic to make two separate visits to the clinic to obtain care. *See* Tex. Health & Safety Code § 171.012(a)(4), (b). During the first visit, we must provide the patient with certain state-mandated information and perform an ultrasound examination. *See id.* During the second visit, we provide abortion care. Most of our patients reside within 100 miles of the Austin clinic.

13. Providing abortion care requires minimal use of personal protective equipment (“PPE”). In fact, medical staff members at the Austin clinic do not utilize any PPE when providing medication abortion to patients. Doctors who provide surgical abortions at the Austin clinic typically wear sterile or non-sterile gloves that are discarded after each procedure but do not utilize other forms of PPE. If a patient is receiving sedation, a nurse is also present in the procedure room and will utilize sterile or non-sterile gloves. One or more surgical assistants may also be present for a procedure, but they do not utilize any PPE.

14. Likewise, pre-procedure ultrasound examinations require minimal PPE. Use of PPE is typically not required at all for abdominal ultrasound examinations. For vaginal ultrasound examinations, doctors and ultrasound technicians typically wear non-sterile gloves that are discarded after each scan. When laboratory testing is required, technicians likewise utilize only non-sterile gloves.

15. Following a surgical abortion procedure, the tissue removed from a patient is examined in the pathology laboratory. This task is typically performed by a single staff member who utilizes one washable gown per shift, either one disposable face shield per shift or one set of reusable goggles, one set of disposable shoe covers per shift, one disposable hair cap per shift, and one or more sets of non-sterile gloves.

16. WWHA does not use or have any N95 respirators.

17. Abortion patients seldom require hospitalization. The Austin clinic had only a single hospital transfer during all of last year. Further, we keep detailed complication logs that record, among other things, when a patient receives hospital treatment after being discharged from the clinic. This happens only a handful of times each year.

**WWHA's Response to the COVID-19 Outbreak**

18. In response to the COVID-19 outbreak, WWHA has adopted policies to protect its patients and staff members from exposure to the virus.

19. For example, staff members screen all patients by telephone before they come to the Austin clinic to determine if they have symptoms of COVID-19. Symptomatic patients are directed to self-quarantine and contact their primary healthcare providers. We will not schedule a patient for a clinic visit unless the patient has been symptom free for fourteen days. We are also limiting the number of people who enter the clinic and ensuring that patients maintain a safe distance from one another in the waiting room and recovery area. In addition, we are screening staff members for symptoms and directing everyone who is symptomatic or who has come in contact with someone who has a confirmed case of the virus to self-quarantine for at least fourteen days.

20. We have provided staff members with training on best practices to prevent the spread of infection, and we are vigilant about enforcing protocols for hand washing and disinfecting surfaces. In other states, we have begun using telehealth platforms for pre-abortion counseling, which reduces unnecessary trips to the clinic for patients and providers, but Texas law requires that certain mandatory disclosures be delivered in person prior to the abortion.

**Suspension of Services Following the Governor's Executive Order**

21. On March 22, 2020, Texas Governor Greg Abbott issued Executive Order GA-09 ("Executive Order"), relating to hospital capacity during the COVID-19 pandemic. It is in effect until 11:59 p.m. on April 21, 2020, although it may be extended. It 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 states that this 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.*

22. Although the order does not define PPE, I understand that term to refer to surgical masks, N95 respirators (a face covering that is designed to block at least 95 percent of very small test particles and which, when used appropriately, is a more effective filtration system than a surgical mask), sterile and non-sterile gloves, disposable protective eyewear, disposable gowns, and disposable shoe covers.

23. I believe that the Austin clinic can continue to provide abortion care in a manner consistent with the Executive Order, and WWHA has adopted policies and procedures to ensure that the care that we provide while the Executive Order remains in effect is fully compliant with its letter and spirit.

24. On Monday, March 23, 2020, WWHA received a copy of an email from the Texas Office of the Attorney General announcing a press release by Attorney General Ken Paxton. That press release was 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."

25. 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.”

26. WWHHA reasonably fears the Attorney General’s threat of enforcement, given that the Attorney General and other enforcement officials may understand the Executive Order to prohibit “any type of abortion” that entails the use of PPE even though the Executive Order expressly permits abortions that WWHHA’s 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.”

27. Based on this enforcement risk, WWHHA has cancelled appointments for more than 20 abortion patients since receiving the Attorney General’s press release. At least two of these patients were in the second-trimester of pregnancy and will be past the legal limit for abortion in Texas by the time the Executive Order expires.

28. Patients continue to call the clinic to schedule appointments. We have to turn them away unless we can be sure that no aspect of their care will require the use of PPE. We expect that, between today and April 21, 2020, we will have to turn away dozens of patients.

29. The Austin clinic’s capacity is limited by the size of the facility, doctor availability, and the need for most patients to make two trips to the clinic to obtain care. The maximum capacity of the Austin clinic is sixty to seventy patients per week. Even if we were able to resume providing

abortion care on April 22, 2019, which is uncertain, we would not be able to treat all the patients who had been previously been turned away within a week.

**Impact on Patients**

30. Our patients seek abortion care for a variety of reasons. Many do not have the resources to add an additional child to their family. Some are students who want to complete their education before having children. Some do not want to be tied financially or emotionally to the putative father, or fear abuse if their pregnancy is discovered.

31. Many of the patients who seek care at the Austin clinic are low-income, and many are parents of dependent children. The majority are uninsured.

32. It would be difficult for many of our patients to travel out of state to access abortion care even during normal times. But now, given the travel restrictions and business closures resulting from the COVID-19 crisis, it is nearly impossible. Moreover, in the current circumstances, long-distance travel is both risky and nerve-wracking.

33. Being forced to delay a wanted abortion is also nerve-wracking. Patients who are delayed from accessing abortion must continue to cope with the physical symptoms of pregnancy, which for many include morning sickness. Weight gain will require some to buy new clothes, which can be a financial strain. The longer a patient remains pregnant, the more likely it is that others will discover the pregnancy, including abusive partners or family members. Patients who are delayed from accessing abortion must also cope with the fear of not being able to obtain abortion care in time—and of the life-altering consequences of having to carry an unwanted pregnancy to term.

34. Patients who are delayed past 70 days lmp are no longer eligible for a medication abortion. *See* Tex. Health & Safety Code § 171.063(a)(2). Patients who are delayed past 14-16



weeks Imp are no longer eligible for an aspiration abortion, a type of surgical abortion available early in pregnancy, and must instead have a D&E abortion, which is a lengthier and more complex procedure. Patients who are delayed past 17.6 weeks Imp are no longer eligible for an abortion at the Austin clinic or any abortion clinic in Texas. *See* Tex. Health & Safety Code § 171.004. Patients who are delayed past 22 weeks Imp are no longer able to obtain an abortion in Texas at all, absent a medical emergency. *See* Tex. Health & Safety Code § 171.044.

35. The cost of abortion care (as well as the medical risks of pregnancy and abortion) increase significantly with gestational age.

36. The patients that the Austin clinic is forced to turn away because of the Attorney General's threat of enforcement will therefore be harmed in significant and irreparable ways.

Dated: March 25, 2020

Amy Hagstrom Miller  
AMY HAGSTROM MILLER