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WESTERN DISTRICT OF TEXAS  
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DEPUTY CLERK

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

FILED

APR 17 2020

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY [Signature]  
DEPUTY

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-323-LY

**PLAINTIFFS ALAMO CITY SURGERY CENTER'S AND HOUSTON WOMEN'S  
REPRODUCTIVE SERVICES' MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiffs Alamo City Surgery Center PLLC d/b/a Alamo Women's Reproductive Services ("Alamo") and Houston Women's Reproductive Services ("HWRS") recently joined the instant case via Plaintiffs' Second Amended Complaint, and respectfully seek a temporary restraining order allowing them to provide abortions consistent with the terms of this Court's Order Granting Plaintiffs' Second Motion for Temporary Restraining Order, ECF No. 63 (the "Second TRO") and Order Extending Order Granting Plaintiffs' Second Motion for Temporary Restraining Order, ECF No. 82 ("Order Extending TRO"); *see In re Greg Abbott*, No. 20-50296 (5th Cir. Apr. 10, 2020) (denying temporary administrative stay of district court's temporary restraining order as to "any patient who, based on the treating physician's medical judgment, would be past the legal limit for an abortion in Texas—22 weeks LMP—on April 22, 2020."); *In re Greg Abbott*, No. 20-50296 (5th Cir. Apr. 13, 2020) (dissolving the previously entered temporary administrative stay as applied to medication abortions).

Plaintiffs Alamo and HWRS join in all legal and factual contentions made by other Plaintiffs to date. As set out in the record; Plaintiffs' Second Amended Complaint; and the Declaration of Alan Braid, M.D., in Support of Plaintiffs' Motion for Temporary Restraining Order, attached hereto as Ex. 1, Plaintiffs Alamo and HWRS are similarly situated to the other Plaintiffs in this case and accordingly seek relief from the Court in order to, like the other Plaintiffs, provide abortions consistent with the Second TRO and Order Extending TRO.

Defendants oppose this motion.

Dated: April 17, 2020

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*Reproductive Services, and Houston Women's  
Reproductive Services*

\*admitted *pro hac vice*

**CERTIFICATE OF SERVICE**

I certify that on this 17th day of April, 2020, I filed a copy of the foregoing with this

Court's CM/ECF system, which will serve a copy on the following individuals:

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/s/ Patrick J. O'Connell  
Patrick J. O'Connell

**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

**DECLARATION OF ALAN BRAID, M.D., IN SUPPORT OF  
PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

ALAN BRAID, M.D., declares under penalty of perjury that the following statements are true and correct:

1. I am a board-certified obstetrician/gynecologist licensed to practice in Texas. I am the part owner of Alamo City Surgery Center PLLC d/b/a Alamo Women's Reproductive Services ("Alamo") in San Antonio and Houston Women's Reproductive Services ("HWRS") in Houston. I also provide abortion services at Alamo and HWRS.

2. I graduated from the University of Texas Health Science Center at San Antonio with an M.D. in 1972. I completed my internship in obstetrics and gynecology in 1973 at Bexar County Hospital District and my residency in obstetrics and gynecology in 1976. I have extensive experience and training in those fields and have provided reproductive health care, including abortions and obstetrical care, in San Antonio as a private practitioner since 1978.

3. I submit this declaration in support of Plaintiffs' motion for a temporary restraining order and preliminary injunction, which seeks to enjoin Executive Order No. GA-09 (the "Executive Order"), as interpreted by the Texas Attorney General to ban all previability abortion procedures in the state except where immediately necessary to protect the life or health of a pregnant person. I have reviewed the Executive Order.

4. The facts I state here are based on my experience, my review of Alamo's and HWRS's business records, information obtained in the course of my duties at Alamo and HWRS, and personal knowledge that I have acquired through my service at Alamo and HWRS.

Alamo Women's Reproductive Services and Houston Women's Reproductive Services

5. Alamo operates a licensed ambulatory surgical center in San Antonio, Texas, open since June of 2015. Alamo provides both medication and procedural abortion services.

6. Alamo provides medication abortion through 10 weeks of pregnancy as measured from the first day of the patient's last menstrual period ("LMP").

7. Alamo provides procedural abortion services through 21.6 weeks LMP. In rare instances in which a procedure comes under permitted exceptions in Texas's gestational limit, Alamo provides abortion services through 23.6 weeks LMP.

8. At Alamo, patients having an abortion between 14.0 and 17.6 weeks LMP typically have one-day procedures, in which they receive dilation procedure(s) on the same day as their evacuation procedure. This does not include the 24-hour delay for women who live within 100 miles of the clinic.

9. Under Alamo's protocols and typical practice, most patients having abortions at 18.0 weeks LMP or later have two-day procedures, in which they begin the dilation process the day before the procedure is completed.

10. In 2019, Alamo performed 6,270 abortions, 3,055 of which were medication abortions. In January, February, and March of 2020, Alamo performed 1,381 abortions, 697 of which of which were medication abortions.

11. HWRS operates a licensed abortion facility in Houston, Texas. HWRS provides medication abortion services through 10 weeks of pregnancy LMP.

12. HWRS started seeing patients in May of 2019. In 2019, HWRS provided 498 medication abortions. In January, February, and March of 2020, HWRS provided 389 medication abortions.

#### The Executive Order and Threatened Enforcement

13. On March 22, 2020, Texas Governor Greg Abbott issued the Executive Order, relating to hospital capacity during the COVID-19 pandemic. That order 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 [“PPE”] needed to cope with the COVID-19 disaster.” *Id.*

14. On March 23, 2020, the Texas Attorney General issued a press release explicitly stating that it interprets the Executive Order as applying to “any type of abortion that is not medically necessary to preserve the life or health of the mother.”

15. On March 23, 2020, Alamo and HWRS stopped seeing patients due in large part to concern about enforcement of the Executive Order.

#### Efforts to Conserve Resources

16. Alamo and HWRS are committed to doing their part to minimize the spread of COVID-19 and to otherwise help ensure that our public health system has sufficient resources to meet the challenge of responding to a potential surge of illness.

17. Although the Executive Order does not define PPE, I understand that term to refer to surgical masks, N95 respirators, sterile and non-sterile gloves, disposable protective eyewear, disposable gowns, and disposable shoe covers. Alamo and HWRS use non-sterile gloves, scrubs, and disposable gowns. Alamo and HWRS do not have or use any N95 respirators.

18. Neither medication nor procedural abortion requires extensive, if any, PPE or otherwise would deplete PPE necessary to address the current pandemic. Before the COVID-19 outbreak, neither Alamo nor HWRS used any PPE for medication abortions. Alamo used limited PPE for procedural abortion: For procedures under 18 weeks LMP, Alamo staff uses non-sterile gloves, and the clinic has surgical masks and disposable gowns available for use at the staff member’s discretion. For procedures at or over 18 weeks LMP, Alamo staff used non-sterile gloves, disposable gowns, surgical masks, booties, and hair coverings. Beginning in March, in



response to the COVID-19 outbreak, Alamo began providing surgical masks to all staff and, on request, to patients.

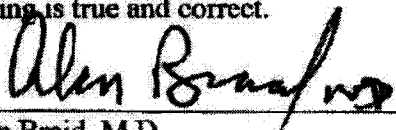
19. An ultrasound or laboratory exam, including one that accompanies medication or procedural abortion, requires only non-sterile gloves, similar to what are used in nearly all medical visits by health care providers.

20. Absent the Executive Order, Alamo and HWRS would encourage eligible patients to consider choosing medication abortion rather than procedural abortion, unless medically contraindicated, in order to further conserve PPE.

#### Burdens on Patients

21. The patients that Alamo and HWRS serve have already been, and will continue to be, significantly burdened by the delays in their access to care. If prevented from accessing abortion for the duration of COVID-19 pandemic, many will be unable to access abortion at all, while others will be forced to travel out of state. All will suffer increased risks to their health by the delay in access to abortion care. Many will also face increased costs related to abortion, as their abortion access is pushed to later gestational points when abortion is more expensive and may require a two-day surgical procedure, instead of one. Such procedures would involve more PPE.

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

  
Alan Braid, M.D.

Executed: April 15, 2020

**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-323-LY

**PROPOSED ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING  
ORDER**

Plaintiffs Alamo City Surgery Center PLLC d/b/a Alamo Women's Reproductive Services ("Alamo") and Houston Women's Reproductive Services ("HWRS") have moved for a temporary restraining order allowing them to provide abortions consistent with the terms of this Court's Order Granting Plaintiffs' Second Motion for Temporary Restraining Order, ECF No. 63 (the "Second TRO") and Order Extending Order Granting Plaintiffs' Second Motion for Temporary Restraining Order, ECF No. 82. Having considered the motion, the Second Amended Complaint, and the evidence in the record, the Court grants the motion.

The Court incorporates by reference the findings of fact and conclusions of law contained in the Court's March 30, 2020 Order Granting Plaintiffs' Request for Temporary Restraining Order, ECF No. 40. The Court also incorporates by reference the findings of fact and conclusions of law contained in the Court's April 9, 2020 Order Granting Plaintiffs' Second Motion for a Temporary Restraining Order, ECF No. 63.

Therefore,

**IT IS ORDERED** that Plaintiffs Alamo's and HWRS's Motion for Temporary Restraining Order (ECF No. \_\_\_\_), filed April 17, 2020, is GRANTED.

**IT IS FURTHER ORDERED** that Defendants and their employees, agents, successors, and all others acting in concert or participating with them are **TEMPORARILY RESTRAINED** from enforcing Executive Order GA-09, "Relating to hospital capacity during the COVID- 19 disaster," and the Texas Medical Board's emergency amendment to Title 22 Texas Administrative Code section 187.57, as a categorical ban on all abortions provided by Plaintiffs Alamo and HWRS.

**IT IS FURTHER ORDERED** that Defendants and their employees, agents, successors, and all others acting in concert or participating with them, are **TEMPORARILY RESTRAINED** from enforcing Executive Order GA-09 and the Emergency Rule adopted by the Texas Medical Board to enforce Executive Order GA-09 against Plaintiffs Alamo and HWRS or their agents who provide medication abortions.

**IT IS FURTHER ORDERED** that Defendants and their employees, agents, successors, and all others acting in concert or participating with them, are **TEMPORARILY RESTRAINED** from enforcing Executive Order GA-09 and the Emergency Rule adopted by the Texas Medical Board to enforce Executive Order GA-09 against Plaintiffs Alamo and HWRS or their agents who provide a procedural abortion to any patient who, based on the treating physician's medical judgment, would be past the legal limit for an abortion in Texas—22 weeks LMP—on April 22, 2020.

**IT IS FURTHER ORDERED** that this Temporary Restraining Order shall expire on May 1, 2020, at 5:00 p.m. This order may be extended for good cause, pursuant to Federal Rule of Civil Procedure 65.

Plaintiffs Alamo and HWRS shall not be required to post a bond. *See Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996).

SIGNED at \_\_\_\_\_, this \_\_\_\_\_ day of April, 2020.

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HON. LEE YEAKEL  
UNITED STATES DISTRICT JUDGE