IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SOUTH WIND WOMEN'S CENTER LLC, d/b/a/ TRUST WOMEN OKLAHOMA CITY, *et al.*,

Plaintiffs,

v.

J. KEVIN STITT, *in his official capacity as* Governor of Oklahoma, *et al.*,

Defendants.

Case No: 20-CV-277-G

DEFENDANTS' SURREPLY

I. PLAINTIFFS' VIEW OF THE COVID-19 EMERGENCY AND RELIEF EFFORTS IS MISTAKEN.

Plaintiffs admitted COVID-19 was a "worldwide pandemic" and "public health crisis" that had already killed tens of thousands, including Oklahomans, and was "likely to intensify in the coming weeks." Doc. 1, ¶¶ 4, 33, 64. Plaintiffs cited a news article where experts anticipated "widespread shortages that would strain … the nation's health care system," including "potentially critical shortages" of PPE.[1] Plaintiffs claimed to "understand that, like other healthcare providers, they have an important role to play in minimizing the spread of the virus and preserving needed medical resources … including PPE." Doc. 1, ¶ 40.

In their TRO motion, Plaintiffs also admitted the "rate of infection is skyrocketing," and admitted that state officials and medical professionals "expect a surge of infections that will test the limits of a health care system **already facing a shortage** of" PPE. Doc.16 at 4, 7 (emphasis added). Contradictorily, however, Plaintiffs also asserted in passing that "Oklahoma does not currently face a shortage" of PPE. Doc. 16 at 14. In response, Defendants provided copious evidence of the dangerous ongoing *and* projected PPE shortage in Oklahoma. Doc. 54-1, ¶¶ 10, 12; Doc. 54-2, ¶¶ 4-5; Doc. 54-3, ¶¶ 8-9; Doc. 54-8, ¶ 7; Doc. 82-1, ¶¶ 6-7. Ignoring this evidence—and one of their own reply affidavits[2]—Plaintiffs closed out their reply brief by embracing the idea that there is no risk of PPE shortage at all, citing a news article to claim that postponing elective abortions "cannot be justified" because Oklahoma officials admit the State has "plenty" of PPE. Doc. 84 at 10.

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[1] *See* Peter Baker & Eileen Sullivan, *U.S. Virus Plan Anticipates 18-Month Pandemic and Widespread Shortages*, NEW YORK TIMES, (Mar. 17, 2020) (cited in Doc. 1, ¶ 64 n.43).

[2] *See* Ex. 84-5, Decl. of Joshua Sharfstein, M.D., ¶ 14 ("With respect to personal protective equipment, shortfalls may be anticipated to continue for several months.")

Plaintiffs cannot, with a news article, overcome their own prior admissions and multiple sworn affidavits from front-line Oklahoma medical professionals attesting with personal knowledge that the elective procedure postponement was justified because PPE is in "very short supply." Doc. 54-3, ¶ 3. In any event, Plaintiffs' interpretation of that article is incorrect, as Dr. Blankenship testifies. *See* Suppl. Decl. of Dr. Blankenship, Exhibit 1. There is still an ongoing and projected PPE shortage that puts health care workers in jeopardy, and the cited statements don't contradict this. While the PPE situation has undoubtedly improved due to the State's efforts, this in part is *because of* the ongoing elective procedure postponement. *Id.* It simply cannot be that the elective procedure postponement meant to preserve PPE is unconstitutional because it is working.

Plaintiffs also ignore the infectious disease aspect of the emergency by repeating the line that the PPE required for abortion is "minimal." Doc. 84 at 4. In addition being yet another admission that they do use at least some PPE, this ignores the enormous problem of asymptomatic COVID-19 patients, which Defendants and their witnesses discussed in considerable depth. Doc. 54 at 25, 30; Doc. 54-1, ¶ 9; Doc. 54-2, ¶ 3; Doc. 54-3, ¶¶ 4, 10; Doc. 54-6, ¶¶ 6-8, 11-15, Doc. 54-8, ¶ 5; Doc. 82-1, ¶ 6; Doc. 82-2, ¶ 6. In short, up to 25 percent of COVID-19 carriers do not have symptoms, Doc. 82-1, ¶ 6, thus PPE use for every patient must be increased to prevent viral spread, *id.*; Doc. 54-3, ¶¶ 7, 10 ("even recovery room nurses need to wear full PPE"); Doc. 54-6, ¶¶ 12-13; Doc. 54-8, ¶ 5 ("extensive" PPE required).

Quite remarkably, despite all this testimony, neither Plaintiffs' reply nor any of their nine additional reply affidavits discuss the problem of asymptomatic COVID-19 patients. Plaintiffs pay lip service to the existence of an enormous emergency pandemic, but their arguments and

actions betray them. The state is not required to take the same myopic view. Plaintiffs are either consuming PPE in significant amounts, or they are endangering their patients in the middle of a pandemic—there is no other option. Plaintiffs' retort that they are not being reckless because dry cleaners and sporting goods stores are open, Doc. 84 at 7, is facile—those businesses do not remotely compare to the close interpersonal contact required in every abortion, such as physical examination, ultrasound, and blood draw (Doc. 84-3, ¶ 17), and the invasiveness of surgical abortions in particular.

II. PLAINTIFFS FAIL TO CONFRONT KEY PUBLIC POLICY ARGUMENTS AND EVIDENCE.

On a number of points, Plaintiffs simply ignore Defendants' evidence in the record. Plaintiffs now accuse Defendants of discrimination and pretext, for example, Doc. 85 at 8-9, but their reply and affidavits fail to interact with Secretary Loughridge, Dr. Haney, or Dr. Blankenship, whose combined testimony demonstrates that the elective procedure postponement originated from within the Oklahoma medical community, was implemented first by Oklahoma hospitals, was only adopted by Governor Stitt after he strongly urged to do so by those medical community, and was understood to cover *all* elective procedures, including abortion, without exception. Doc. 54-1, ¶ 14; Doc. 54-3, ¶¶ 4-12; Doc. 82-1, ¶ 10; *see also* Doc. 54-2, ¶ 8; Doc. 82-2, ¶ 13.

Plaintiffs are thus wrong in claiming that abortion providers are being treated differently than others, Doc. 84 at 9: on its face, the EO applies to all elective procedures, and the press statement cites numerous other specific procedures that are postponed in addition to abortion (*e.g.*, dermatological, ophthalmological, an dental procedures, as well as orthopedic surgeries). Doc. 1-1, ¶ 18; Doc. 1-2. Abortionists are still allowed to use their medical judgment to

determine whether the procedure is necessary—*i.e.* a medical emergency or require to avoid serious health risks—just like other providers.

Rather than address this head-on, Plaintiffs attempt to sidestep these facts in part by incorrectly arguing that medication abortion is not a "procedure" at all, Doc. 84 at n.4, but Plaintiffs refer to it as a "procedure" elsewhere in the reply. *See* Doc. 84 at 8 (Plaintiffs: "Weighing the minimal amount of PPE used in **medication abortion** and the safety of the **procedure** against the purported benefits of the Executive Order, the Court properly concluded …." (emphasis added)); *see also* Doc. 93, ¶ 78 & n. 15. Nor do Plaintiffs explain why, in the face of their own prior statements and nearly universal convention, they are denying that a surgical abortion should even be called surgical. *See* Doc. 54, at 9-10; *In re Abbott*, No. 20-50264, 2020 WL 1685929, at *4 (5th Cir. Apr. 7, 2020) (collecting cases and other sources referring to "surgical" abortion)

Instead of interacting with these witnesses, Plaintiffs cite to new affiants who believe that Oklahoma's "implementation" of a total elective procedure postponement is "profoundly misguided." Doc. 84 at 6. But it simply cannot be the case that Oklahoma public health officials and medical experts can be ignored or labeled "irrational" by cherry-picking of former health officials from other states with different opinions. Governor Stitt is not required by the Constitution, in making emergency decisions, to ignore Oklahoma experts and seek out New Yorkers and Marylanders.

Nor do the affiants do more than merely regurgitate Plaintiffs' prior arguments. Dr. Bassett, for example, admits that the "single most effective thing people can do to slow the spread of COVID-19 and 'flatten the curve' is to avoid unnecessary contact and travel," Doc.

84-6, ¶ 7—which is absolutely true—but then adds that the "prospect of large numbers of patients traveling from Oklahoma to other states during the current pandemic crisis is truly frightening from a public health perspective." Doc. 84-6, ¶ 8. However, as Defendants pointed out in their response brief, "allowing elective abortions to continue will cause travel from all parts of the State to the Oklahoma City metro and, as Plaintiffs admit, out-of-state persons will travel *to Oklahoma* to seek abortions." Doc. 54, at 25. Dr. Bassett gives no indication of being aware of this counter-point, nor does Plaintiffs' reply itself address it.

Plaintiffs claim that women who are delaying abortion are suffering "enormous burdens" from continued pregnancy, Doc. 84 at 3, but nowhere prove that these burdens exceed those suffered by all others with procedures being delayed, such as those suffering from chronic pain, cataracts, and future adverse health consequences from postponement, Doc. 54-3 ¶ 11; Doc. 82-1, ¶ 11. Moreover, Plaintiffs baldly speculate that pregnancy increases the risks from COVID-19, when the only study of which we are aware on the issues shows the exact opposite.[3] Delayed abortion simply does not pose significant risks based on Plaintiffs' own claims that, regardless when conduct, abortion is "extremely safe." Doc. 84 at 3, 10.

Finally, Plaintiffs never address, defend, or repeat, this Court's earlier finding that medication abortion is "safer" than surgical abortion. Doc. 70 at 10; *see also* Doc. 54-7, ¶ 18 (pointing out, among other things, that a key study relied upon by Plaintiffs, *see* Doc. 1 ¶ 27 & n.6, found that the overall complication rate for medication abortion was four times higher

[3] *See* Hollie Silverman and Jen Christensen, *Pregnant women with coronavirus don't experience more severe illness than others as they do with SARS and flu, study says*, CNN (April 7, 2020), https://www.cnn.com/2020/04/07/health/pregnant-women-coronavirus-ajog-study/index.html?fbclid=IwAR2GopJVIsZM-iGzllSjZ_TyLa6YziqoxNur2EWsyvXq6SQOQuTH-Ulz8IM

than surgical abortion at the same age). Instead, they claim it is "inaccurate" to say that medication abortion exposes women to significant risk of serious complications, Doc. 84 at 8, simply side-stepping Defendants' evidence from the FDA and medical studies to the contrary. *See* Doc. 54 at 11-12.

III. PLAINTIFFS' DIRE PREDICTIONS OF AN INTERMINABLE DELAY ARE UNSUBSTANTIATED, AND ARE DISPROVEN BY THE MOST RECENT DEVELOPMENTS.

Throughout this case, despite Governor Stitt's obvious desire not to shutter Oklahoma, *see* Doc. 59 at 4-5, Plaintiffs have painted hopelessly bleak pictures of the potential length of the temporary elective procedure postponement with no evidence. In their TRO motion, for example, they stated repeatedly that the postponement "will likely remain in effect for months, which would push many abortion patients past the legal limit in Oklahoma." Doc. 16 at 22, 27. Their reply and affidavits increased this rhetoric; indeed, Dr. Nichols criticized Dr. Valley for daring to "hope" that the resource shortages won't last months. Doc. 84-1, ¶ 56; *see also* Doc. 92, ¶ 20. Even more over-the-top, in response to Defendants' amici, Plaintiffs claimed their temporary ongoing plight was "exactly" equivalent to Chinese residents facing a racist quarantine in 1900. Doc. 85 at 9.

These accusations are baseless. The State's *temporary* postponement applied to all elective procedures and, though burdensome to many, was not pretextual or discriminatory, nor was it ever going to last as long as Plaintiffs claimed. Rather, as Defendants repeatedly explained, this was a short-term measure, based on science and data, to see us through the peak of infections and hospitalization. Despite Plaintiffs best efforts to fight it, the postponement has started to work. Accordingly, based on the latest data and developments, Governor Stitt announced today that he will begin lifting portions of the elective procedures postponement

as soon as April 24, six days *earlier* than originally planned.[4] The details of exactly which procedures will be allowed to go forward on that date, and which if any will remain postponed, are still being worked on and will be the subject of a future amendment to the challenged Executive Order. As the Governor warned, "there will still be difficult times ahead" and his team "will continue to monitor our hospitalizations and our PPE from around the State day and night."[5] The Governor's decisions will be based on the best available data and the advice of the Governor's health policy team.

Ultimately, this disproves Plaintiffs' theory that the elective procedure postponement was all pretext to target abortion, and instead shows it was a reasonable measure, based on data and expert health advice, to impose no more restrictions than necessary to allow the State to weather this crisis in a manner calculated to preserve the public health. The Governor's good faith EO will have lasted only as long as necessary, perhaps little more than a month total, and it will have been voluntarily complied with by nearly everyone except Plaintiffs.

IV. PLAINTIFFS MAKE MISLEADING AND BIASED ATTACKS ON DEFENDANTS' EXPERT WITNESSES.

Instead of interacting with Defendants' arguments, or addressing Defendants' experts, Plaintiffs resort to launching *ad hominem* against three of Defendants' witnesses—Dr. Harrison, Dr. Valley, and Dr. Marier. Citing a district court's criticism, they attack Dr. Marier for being ignorant on abortion and OBGYN issues, *see* Doc. 84 at 7 n.2, which is irrelevant because his written testimony here never even mentions abortion. *See* Doc. 54-6. Dr. Marier is a public

[4] *See* Governor's Press Conference, April 15, 2020, *available at* https://www.facebook.com/GovStitt/posts/2966027813483195.

[5] *Id.*

health and infectious disease expert with impeccable credentials who opined on COVID-19 infection and the need for PPE, an issue undoubtedly relevant to this case but not requiring expertise in obstetrics. *Id.* In any event, Plaintiffs claim that he has been "discredited" by citing a district court decision but hiding from this Court the fact that the cited decision *reversed* by the Fifth Circuit for numerous clear errors. *See June Med. Servs. v. Kliebert*, 250 F. Supp. 3d 27 (M.D. La. 2017), *reversed sub nom. June Med. Servs. v. Gee*, 905 F.3d 787 (5th Cir. 2018), *cert. granted*, *June Med. Servs. v. Gee*, 140 S. Ct. 35. Plaintiffs also neglect to mention that in the Texas litigation over elective procedure postponement, the Fifth Circuit cited Marier favorably. *In re Abbott*, 2020 WL 1685929, at *13 ("And the state's infectious disease expert said that the risk of spreading the virus is real, 'especially in the health care setting due to the proximity.' Marier Declaration ¶ 6, App. 240.").

Plaintiffs also attack Dr. Valley, a longtime Minnesota OBGYN who has taught at the University of Oklahoma, because he "espouses strong anti-abortion views." Doc. 84 at 7 n.2. Plaintiffs take a similar tack on Dr. Harrison, a former OBGYN who has written about and analyzed medication abortion for decades, Doc. 54-7, ¶ 1, pointing out that she has never herself provided a medication abortion. *Id.* But this Court should reject Plaintiffs' invitation to engage in rank prejudice by summarily excluding all pro-life individuals from testifying in a case involving abortion. Such viewpoint discrimination has no place in federal court. *Cf. June Med. Servs.*, 905 F.3d at 811 n.60 ("The district court also erroneously factored into its substantial-burden analysis that Louisiana is a strongly anti-abortion state.") As Dr. Valley observes, "this case is not about anyone's views on abortion, or at least, it shouldn't be. It's

only about whether abortion is an elective procedure that should be postponed along with all other elective procedures." Exhibit 2, ¶ 7.[6]

Finally, Plaintiffs claimed Dr. Harrison has been "discredited." Doc. 84 at 7-8. Yet one of the two district court cases they cite was vacated, with the case resolved in the favor of the party utilizing Dr. Harrison's testimony—a fact that Plaintiffs again deliberately obscured. *Planned Parenthood Arkansas & E. Oklahoma v. Jegley*, No. 4:15-CV-00784-KGB, 2018 WL 3816925, at *1 (E.D. Ark. July 2, 2018), *vacated*, No. 4:15-CV-00784-KGB, 2018 WL 9944527 (E.D. Ark. Nov. 9, 2018), *and appeal dismissed sub nom. Planned Parenthood of Arkansas & E. Oklahoma v. Jegley*, No. 18-2463, 2018 WL 9944528 (8th Cir. Nov. 9, 2018). Plaintiffs omit this critical information, as well as the fact that she has been favorably cited by the Fifth Circuit. *See Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 748 F.3d 583, 602 (5th Cir. 2014) ("As to the FDA-approved forty-nine day LMP limit, the State's expert, Dr. Donna Harrison, pointed out that the FDA's approval of mifepristone as an abortifacient hinged on the imposition of post-approval restrictions"). And in the very case in which her current testimony first appeared, an Oklahoma state court case concerning telemedicine abortion, the State prevailed at the injunction stage, despite the plaintiffs making the same attacks on her there as they do here. *See* Doc. 54 at 11 n.32; Doc. 84-1 at 53-68. She has hardly been "discredited."

[6] Two of Plaintiffs' reply affidavits also criticize Dr. Valley for, among other things, his view that prenatal care can be postponed, but as he notes in his supplemental affidavit, their positions seem to mirror his, at least broadly speaking. *Id.* ¶ 4. That is to say, they agree that postponing and using telemedicine for certain visits is possible and advisable. *Id.*

V. PLAINTIFFS MAKE A NUMBER OF ADMISSIONS COUNSELING AGAINST AN INJUNCTION

Planned Parenthood CEO Brandon Hill admits in his reply affidavit that, as a result of this Court's TRO allowing medication abortions, Plaintiff Planned Parenthood has significantly increased the rate of abortions performed at its clinic in Oklahoma. It has scheduled 145 abortions for the latter half of April, Doc. 84-3, ¶ 10, but it was only averaging approximately 107 abortions in an entire month before this litigation, Doc. 16-7 ¶ 9. If you multiply 145 abortions by three clinics, that means that 435 medication abortions will be performed by Plaintiffs for the rest of April. If they are using appropriately extensive PPE, *see supra*, that is in no way a *de minimis* amount of PPE, even if they're just using gloves and masks for every medication abortion. And that says nothing about the increased risk of viral spread through those interactions, as well as complications requiring further treatment.

In addition, President Hill admits that the medication abortion TRO has resulted in more women showing up to the clinic in person who do not get an abortion: "[S]ome patients will come into the health center seeking a medication abortion, but after having an ultrasound and bloodwork, will learn they are not eligible for a medication abortion." Doc. 84-2, ¶ 14. In other words, the TRO only *worsens* the situation because some women are showing up at clinics, risking increased spread of the virus and requiring use of PPE during examination, *without* ultimately obtaining the abortion. Plaintiffs echo this point in their reply. Doc. 84, at 5. Far better for these women, and for the public health, had Plaintiffs fully complied with the EO and waited until its expiration to begin performing the abortion. This counsels for removing the temporary restraining order, not expanding it into an injunction.

Respectfully Submitted,

s/ *Zach West*

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SOUTH WIND WOMEN'S CENTER LLC, *et al.*,

Plaintiffs,

v.

J. KEVIN STITT, *et al.*,

Defendants,

No. 20-cv-277-G

SUPPLEMENTAL DECLARATION OF DENNIS BLANKENSHIP, D.O.

I, Dennis Blankenship, D.O., declare the following:

1. It is my understanding that the Plaintiffs in this case are arguing that postponing an elective procedure like abortion cannot be justified by the State's goal to save personal protective equipment (PPE) because Oklahoma officials such as Gino Demarco stated a week or so ago that Oklahoma has plenty of personal protective equipment and more on its way.

2. I disagree with the Plaintiffs' assessment. Hospitals around the state are reporting an average of around 12 days supply of PPE, according to the Health Department. In normal times, hospitals like ours would probably have a month's or even a year's supply on hand, and we would have a much lower burn rate. So we have a current shortage.

3. Moreover, the only reason we have *any* supply on hand now is because of PPE reuse. In our hospital we have instituted a mask reuse policy. N95 masks are cleaned after each day and reused for up to 3 days. These masks were designed to be a single use mask. I should have used 20 masks over the past 5 or 6 shifts, but I have only used one. If we were to use a new mask for each patient as designed, the supply would likely only last a day or two. These measures are necessary to keep our supply intact for the current shortage and potential

worsening of the crisis. Of course, we are placing ourselves in some jeopardy by reusing PPE, but we are doing so in order to avoid completely running out two days or two weeks from now.

4. Any comments from state officials must be understood in this context. They are doing all they can to collect as much PPE as they can, and they are understandably hopeful that they have enough supply on hand for the short term as they constantly work towards more. But they're operating off the burn rate we are showing them, which is a burn rate calculated in part on emergency reuse policies that are not ideal. That can lead to the impression, as seems to be the case here, that the PPE shortage is not a problem, when it is.

5. Even more worrisome is whether planned purchases actually come through, for government officials or the hospitals. Our Institution has had difficulty in obtaining masks and other PPE for our providers. Purchases that are lined up and planned on may and have fallen through, for any number of reasons.

6. Thankfully, the PPE shortage has been alleviated to some extent by the ongoing elective procedure postponement. State officials are undoubtedly taking this into account when the speak as well.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 15th day of April, 2020 in Tulsa, Oklahoma.

Dennis Blankenship, D.O.

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

SOUTH WIND WOMEN'S CENTER LLC, *et al.*, *Plaintiffs,* v. J. KEVIN STITT, *et al.*, *Defendants,*	No. 20-cv-277-G

SUPPLEMENTAL DECLARATION OF MICHAEL T. VALLEY, M.D.

I, Michael T. Valley, M.D., declare the following:

1. I have reviewed the submitted declarations of Dr. Mark Nichols and Dr. Dana Stone, and offer the following brief opinions, in addition to my declaration from earlier.

2. Dr. Nichols disagrees with my assertion that abortion is "elective." (Para. 18.) The ACOG material he cites, however, does not actually say abortion is not elective. And in a very short amount of time, I found two fairly recent ACOG opinions that refer to abortion as "elective." One is a July 2013 Committee Opinion, Number 567, on Professional Liability and Gynecology-Only Practice that was reaffirmed in 2015. The other is an August 2012 Committee Opinion, Number 535, on Reproductive Health Care for Incarcerated Women and Adolescent Females. I also came across this accurate definition from the online Encyclopedia Britannica: "An elective abortion is the interruption of a pregnancy before the 20th week of gestation at the woman's request for reasons other than maternal health or fetal disease. Most abortions in the United States are performed for this reason."[1] And my search was by no means exhaustive. Abortion has long been considered elective in the

[1] https://www.britannica.com/science/elective-abortion.

medical profession and elsewhere, and I am perplexed by those arguing otherwise. How can a "choice" be a necessary procedure?

3. I also do not see how a choice can be an "essential" procedure, especially given that at least 85 percent of OBGYNs don't perform it, as I mentioned in my initial affidavit. This is where I differ from ACOG, who does not represent all of its members well on this issue.

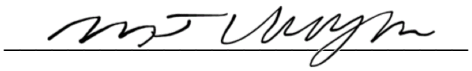
4. Also, despite their claims to strongly disagree with me, it doesn't seem that my position on prenatal care postponement in an emergency is different from Dr. Nichols or Dr. Stone, at least broadly speaking. Dr. Stone states that "due to COVID-19, I now combine some in-person visits and/or move some visits to telemedicine." (Para. 23) Dr. Nichols states that "some prenatal visits may be safely postponed or conducted via telemedicine in light of the COVID-19 public health emergency." (Para. 36) In my original affidavit, I wrote that "some prenatal visits during pregnancy can be temporarily postponed for a crisis or done through telehealth." (Para. 8) Dr. Nichols also notes that ACOG has issued "guidance to assist providers in postponing or reducing the number of in-person visits where possible and to shift certain care to telehealth," and that this guidance says that pregnant patients visit a clinic at least twice in the first 22 weeks. (Paras.45-46) We all agree that decreased visits mean less use of PPE. And, in most cases, these few visits will not use any additional PPE. For example, a mask used for an examination of one additional pregnant woman will also be used for other patients on the same day. Providers are using one mask for one day of seeing healthy pregnant patients.

5. I would also note that Dr. Nichols quotes, but does not explicitly disagree with, my point that the "majority of PPE isn't needed during pregnancy until the end of pregnancy, for childbirth." (Para. 56)

6. Finally, I understand that the Plaintiffs in this case attack me for espousing "strong anti-abortion views;" however, this case is not about anyone's views on abortion, or at least, it shouldn't be. It's only about whether abortion is an elective procedure that should be postponed along with all other elective procedures.

7. With more time, there is plenty more that I could address. As it stands, having read the opposing declarations, I still don't believe you can realistically say that a healthy woman remaining pregnant for weeks uses as much PPE as someone who undergoes an abortion procedure—at least not in the immediate sense. And that is what it all boils down to, for something like these elective procedure postponements. It's the here and now.

I state under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed this 15th day of April, 2020 in St. Louis Park, Minnesota.



Michael Valley, M.D.