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

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| SOUTH WIND WOMEN'S CENTER LLC, d/b/a TRUST WOMEN OKLAHOMA CITY, on behalf of itself, its physicians and staff, and its patients; LARRY A. BURNS, D.O., on behalf of himself, his staff, and his patients; and COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, INC., on behalf of itself, its physicians and staff, and its patients, | ) | No. CIV-20-277-G |
| Plaintiffs, | ) | |
| v. | ) | |
| J. KEVIN STITT in his official capacity as Governor of Oklahoma; MICHAEL HUNTER in his official capacity as Attorney General of Oklahoma; DAVID PRATER in his official capacity as District Attorney for Oklahoma County; GREG MASHBURN in his official capacity as District Attorney for Cleveland County; GARY COX in his official capacity as Oklahoma Commissioner of Health; and MARK GOWER in his official capacity as Director of the Oklahoma Department of Emergency Management, | ) | |
| Defendants. | ) | |

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

## INTRODUCTION

1. This is a constitutional challenge under 42 U.S.C. § 1983 to Oklahoma Governor J. Kevin Stitt's March 24, 2020, Fourth Amended Executive Order 2020-07 (the "Executive Order"), as applied to abortion. As expanded by the Governor on March 27, 2020 (the "March 27 Statement"), the Executive Order has the effect of banning nearly all pre-viability abortions in violation of Oklahomans' constitutional rights. *See Roe v. Wade*, 410 U.S. 113 (1973); *see also Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846, 871 (1992) (recognizing the "central principle" of *Roe* is that "[b]efore viability, the State's interests are not strong enough to support a prohibition on abortion"). The Executive Order is attached as Exhibit 1. The March 27 Statement is attached as Exhibit 2.

2. Citing the evolving COVID-19 pandemic, the Executive Order requires Oklahomans and medical providers in this state to postpone "all elective surgeries" and "minor medical procedures" until at least April 7, 2020. The Executive Order on its face does not apply to abortion services, but in the March 27 Statement, Governor Stitt publicly declared that abortions in Oklahoma are banned, with only rare exceptions. Abortion services in Oklahoma have ground to a halt.

3. Abortion is an essential component of comprehensive healthcare and is time-sensitive care. Just two weeks ago, in response to the COVID-19 pandemic, the American College of Obstetricians and Gynecologists ("ACOG") and other leading medical and health organizations made clear that abortion care cannot be delayed without risking the health and safety of patients. In recognition of this fact, a number of states (including California, Michigan, Montana, and New Mexico) have explicitly exempted pregnancy-

related care from health department guidelines and executive orders responding to COVID-19, including several (such as Illinois, Massachusetts, and New Jersey) that have explicitly exempted termination of pregnancies.

4. Plaintiffs are Oklahoma abortion providers who have been forced to turn away patients in need of time-sensitive abortion care. Like other healthcare providers, Plaintiffs understand that they have an important role to play in the COVID-19 pandemic, and each has taken steps to safeguard against the spread of the virus and to preserve medical resources. But the use of the Executive Order to effectively ban previability abortion in Oklahoma is a blatant effort to exploit this public health crisis to advance an unconstitutional anti-abortion agenda. Indeed, forcing patients to continue pregnancies or travel to other states to access abortion care will *undermine* the public health goals of the Executive Order by increasing demands on hospitals and the risks that Oklahomans may be exposed to the virus.

5. Without injunctive relief, Plaintiffs will be forced to continue turning away patients, resulting in immediate and irreparable harm for which no adequate remedy at law exists. Patients delayed in accessing abortion will suffer increased risks to their health, wellbeing, and economic security. Patients who are unable to access abortion at all will be forced to carry pregnancies to term, imposing far greater strains on an already-taxed healthcare system. Countless Oklahomans' fundamental constitutional right to abortion access prior to viability will have been violated.

## JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343.

7. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and the general legal and equitable powers of this Court.

8. Venue is appropriate under 28 U.S.C § 1391(b) because one or more of the Defendants resides in this judicial district and because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

## PLAINTIFFS

9. Plaintiff South Wind Women's Center LLC, d/b/a Trust Women Oklahoma City ("Trust Women") is a healthcare facility in Oklahoma City, Oklahoma that provides high-quality reproductive healthcare, including abortion care, well-woman exams, and contraceptive services. Trust Women is an abortion facility licensed by the Oklahoma State Department of Health and a member of the National Abortion Federation. Trust Women sues on behalf of itself, its physicians and staff, and its patients.

10. Plaintiff Larry A. Burns, D.O., is a physician licensed to practice medicine in Oklahoma since 1973. Dr. Burns operates a clinic in Norman, Oklahoma that provides first-trimester abortions and is licensed as an abortion facility by the Oklahoma State Department of Health. Dr. Burns sues on behalf of himself, his staff, and his patients.

11. Plaintiff Comprehensive Health of Planned Parenthood Great Plains, Inc. ("CHPPGP"), is a not for profit corporation organized under the laws of Kansas and

registered to do business in Oklahoma. CHPPGP operates a health center in Oklahoma City and provides comprehensive reproductive health care, including both medication and procedural abortion. CHPPGP's Oklahoma City health center is licensed as an abortion facility by the Oklahoma State Department of Health. CHPPGP sues on behalf of itself, its physicians and staff, and its patients.

**DEFENDANTS**

12. Defendant J. Kevin Stitt is the Governor of Oklahoma and the author of the Executive Order, which he issued pursuant to Section 2 of Article VI of the Oklahoma Constitution and the Oklahoma Emergency Management Act of 2003, Okla. Stat. Ann. tit. 63 § 683.8. Pursuant to the Oklahoma Emergency Management Act, the Governor has general direction and control of the Oklahoma Department of Emergency Management (OEM). He is sued in his official capacity.

13. Defendant Michael Hunter is the Attorney General of Oklahoma. The Attorney General is the "chief law officer of the state," Okla. Stat. Ann. tit. 74 § 18, whose duties include "appear[ing] in any action in which the interests of the state or the people of the state are at issue . . . ." Okla. Stat. Ann. tit. 74 § 18b(A)(3). He is sued in his official capacity.

14. Defendant David Prater is the District Attorney for Oklahoma County. He is responsible for prosecuting all criminal matters occurring within Oklahoma County pursuant to Okla. Stat. Ann. tit. 19 § 215.4. He is sued in his official capacity.

15. Defendant Greg Mashburn is the District Attorney for Cleveland County. He is responsible for prosecuting all criminal matters occurring within Cleveland County pursuant to Okla. Stat. Ann. tit. 19 § 215.4. He is sued in his official capacity.

16. Defendant Gary Cox is the Oklahoma Commissioner of Health. He oversees the Oklahoma State Board of Health, which issues licenses to abortion facilities, and is authorized to suspend or revoke a license for any illegal act or any conduct he deems "to be detrimental to the welfare of [the facility's] patients." Okla. Admin. Code. § 310:600-7-3. He is sued in his official capacity.

17. Defendant Mark Gower is the Director of the OEM. He is responsible for coordinating state agencies and departments to implement the Executive Order. OEM is authorized to refer violations of its orders to the Oklahoma Attorney General for civil enforcement. *See* Okla. Stat. Ann. tit. 63 § 683.23(A). He is sued in his official capacity.

## FACTUAL ALLEGATIONS

### A. Abortion Generally

18. Legal abortion is a vital, safe, and common form of healthcare. Nearly one in four women in the United States will obtain an abortion by age forty-five.

19. Pregnancy is commonly measured from the first day of the pregnant person's last menstrual period ("LMP"). A full-term pregnancy has a duration of approximately forty weeks LMP.

20. Up to eleven weeks LMP, patients wishing to terminate their pregnancies can choose either "medication abortion" (where a patient takes pills to end and expel the pregnancy) or "procedural abortion" (where a clinician uses gentle suction, sometimes

along with instruments, to empty the patient's uterus). After eleven weeks LMP, only procedural abortion is available in Oklahoma.

21. Trust Women and Dr. Burns provide medication abortion up to ten weeks LMP, and CHPPGP provides medication abortion up to eleven weeks LMP. Each Plaintiff provides procedural abortions up to different gestational points in pregnancy, but all comply with Oklahoma's law forbidding abortion except in narrow circumstances at or after 22 weeks LMP.[1]

22. Medication abortion involves a combination of two prescription pills taken orally: mifepristone and misoprostol. Patients take the first medication, mifepristone, in the health center and then, typically 24 to 48 hours later, take the second medication, misoprostol, at a location of their choosing. Most often a medication abortion is completed at home, where patients will expel the pregnancy similar to a miscarriage.

23. Despite sometimes being referred to as "surgical abortion," procedural abortion is not what is commonly understood to be "surgery," as it involves no incisions and no need for general anesthesia. Procedural abortions are generally performed outpatient, not in a hospital.

24. Most often, in a procedural abortion, the clinician uses only gentle suction from a thin, flexible tube to empty the contents of a patient's uterus. Before inserting the

[1] Okla. Stat. Ann. tit. 63 § 1-745.5 prohibits abortion when "the probable postfertilization age of the woman's unborn child is twenty (20) or more weeks." "'Postfertilization age' means the age of the unborn child as calculated from the fertilization of the human ovum;" *id*. § 1-745.2, which occurs approximately two weeks after the first day of a patient's last menstrual period. Thus, twenty weeks post-fertilization is twenty-two weeks LMP.

tube through the patient's cervix and into the uterus, the clinician may dilate the cervix using medication and/or small, expandable rods. After approximately fourteen to fifteen weeks LMP, the clinician generally uses instruments to complete the procedure, a technique called dilation and evacuation ("D&E"). Further in the second trimester, the clinician may begin cervical dilation the day before a D&E, resulting in a two-day procedure.

25. Both medication abortion and procedural abortion are safe and effective methods of terminating a pregnancy. For some patients, however, one method is medically indicated over the other. For example, a patient may be taking a medication that is contraindicated for those used in medication abortion, or may have medical conditions that make procedural abortion a safer option.[2] According to data from the Oklahoma State Department of Health, between 2002 and 2018, more than 65% of abortions in this state were procedural abortions.[3]

26. Leading medical authorities, including the ACOG, the American Medical Association ("AMA"), the American Academy of Family Physicians, the American

[2] Nat'l Acads. of Scis. Eng'g & Med., *The Safety & Quality of Abortion Care in the United States* 8 (2018) ("Few women are medically ineligible for abortion. There are, however, specific contraindications to using mifepristone for a medication abortion or induction.").

[3] Okla. State Dep't of Health, *Abortion Surveillance in Oklahoma 2002-2018 Summary Report* 6, https://www.ok.gov/health2/documents/2018%20ITOP%20Report.pdf.

Academy of Pediatrics, and the American Osteopathic Association have all concluded that legal abortion is one of the safest medical procedures in the United States.[4]

27. In a recent comprehensive report on the safety and quality of abortion care, the National Academies of Sciences, Engineering, and Medicine—nongovernmental entities established by Congress and by charter to provide independent, objective analysis of the nation's complex scientific problems and public policies—concluded that medication and procedural abortions "rarely result in complications" and do so at rates of "no more than a fraction of a percent."[5]

28. In one of the most comprehensive peer-reviewed studies to date, researchers found that the rate of major complications from abortion by any method is extremely rare: less than one-quarter of one percent (0.23%) of cases.[6] More specifically, major complications arise in just 0.31% of medication abortion cases (making medication abortion safer than aspirin, Tylenol, and Viagra); 0.16% of first-trimester procedural abortion cases; and 0.41% of second-trimester procedural abortion cases.[7] Abortion-

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[4] Brief for ACOG et al. Amici Curiae Supporting Petitioners on Petition for Writ of Certiorari 6, *Whole Woman's Health v. Cole*, No. 15-274 (Oct. 5, 2015) *cert granted*, 136 S. Ct. 499 (2015), *argued sub nom. Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016).

[5] *Id.* at 55, 60.

[6] Ushma D. Upadhyay et al., *Incidence of Emergency Department Visits and Complications After Abortion*, 125 Obstetrics & Gynecology 175, 181 (2015).

[7] *Id.* at 178–79.

related emergency room visits constitute just 0.01% of all emergency room visits in the United States.[8]

29. Abortion is far safer than the only alternative, which is carrying a pregnancy to term. The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion,[9] and complications such as hemorrhage are far more likely to occur with childbirth than following an abortion. In fact, even with an uncomplicated pregnancy in an otherwise healthy individual, carrying a pregnancy to term and giving birth pose serious medical risks and can have long-term medical and physical consequences. These risks are even higher for patients with pre-existing medical conditions, medical conditions caused or exacerbated by pregnancy, or who receive a diagnosis of severe or lethal fetal anomaly.

30. There is no "typical" abortion patient. People decide to end a pregnancy for a variety of reasons, including familial, medical, financial, and personal reasons. Some people end a pregnancy because they conclude it is not the right time in their lives to have a child; some do so because they already have one or more children and decide they cannot add to their families; some do so to preserve their life, health, or safety; some do so because

[8] Ushma D. Upadhyay et al., *Abortion-Related Emergency Room Visits in the United States: An Analysis of a National Emergency Room Sample*, 16 BMC Med. (2018).

[9] Elizabeth G. Raymond & Raymond A. Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics & Gynecology 216 (2012), http://unmfamilyplanning.pbworks.com/w/file/fetch/119312553/Raymond%20et%20al-Comparative%20Safety.pdf.

a fetal anomaly is diagnosed; some do so because they have become pregnant as a result of rape or incest; and some do so because they choose not to have biological children.

31. Access to abortion in Oklahoma is severely limited. In fact, there are only four licensed abortion facilities in Oklahoma to care for the approximately 4,500 patients who seek abortions in Oklahoma each year.[10] Together, Plaintiffs operate three of those facilities. Upon information and belief, the fourth is not currently accepting appointments for abortion patients.

32. Abortion access in Oklahoma is further constrained by state-imposed restrictions on abortion, which are some of the harshest in the country. For example, Oklahomans cannot obtain abortion care at public hospitals except in cases of rape, incest, or a life-threatening situation. *See* Okla. Stat. Ann. tit. 63 § 1-741.1(A). Outpatient abortion facilities are scarce because they are subject to onerous regulations and licensing requirements that do not apply to other healthcare providers. *See* Okla. Admin. Code §§ 310:600. Patients seeking abortion care are subject to a mandatory 72-hour waiting period. Okla. Stat. Ann. tit. 63 § 1-738.2(B). And telemedicine, which is used safely in other states to provide medication abortions, cannot lawfully be used in Oklahoma to provide abortion care. *See* Okla. Stat. Ann. tit. 63 § 1-729.1.

[10] According to the latest Oklahoma State Department of Health data, over 4,500 abortions took place in the state in 2018. Okla. State Dep't of Health, *Abortion Surveillance in Oklahoma 2002–2018 Summary Report* 9, https://www.ok.gov/health2/documents/2018%20ITOP%20Report.pdf.

**B. The COVID-19 Pandemic**

33. Since first identified in December 2019,[11] COVID-19 has grown to a worldwide pandemic. The disease has spread to almost 200 countries, infecting hundreds of thousands of people and killing more than 33,000.[12] In the United States, the virus has reached every state, including nearly 430 confirmed cases and 16 deaths in Oklahoma as of the time of filing.[13] Federal and state officials and medical professionals expect a surge of infections that may last for a year or eighteen months[14] and test the limits of the healthcare system.[15]

34. On March 13, 2020, the White House issued a proclamation declaring that the COVID-19 outbreak in the United States constitutes a national emergency. On March

[11] Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. Times (updated Mar. 24, 2020), https://www.nytimes.com/article/coronavirus-timeline.html.

[12] Johns Hopkins Univ. of Med., *Coronavirus COVID-19 Global Cases by the Centers for Systems Science and Engineering (CSSE) at John Hopkins University (JHU)* (last visited Mar. 29, 2020), https://coronavirus.jhu.edu/map.html.

[13] Okla. State Dep't of Health, *Current Situation, COVID-19 Oklahoma Test Results* (last updated Mar. 29, 2020 7:00 A.M.), https://coronavirus.health.ok.gov/.

[14] Denise Grady, *Not His First Epidemic: Dr. Anthony Fauci Sticks to the Facts*, N.Y. Times (Mar. 8, 2020), https://www.nytimes.com/2020/03/08/health/fauci-coronavirus.html.

[15] Ctrs. for Disease Control & Prevention, *Interim Guidance for Healthcare Facilities: Preparing for Community Transmission of COVID-19 in the United States*, (last updated Feb. 29, 2020), https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/guidance-hcf.html; Chris Casteel, *Coronavirus in Oklahoma; As hospitals tend to hundreds of patients, state officials plan for more,* The Oklahoma (updated Mar. 29, 2020), https://oklahoman.com/article/5658865/as-oklahoma-hospitals-tend-to-hundreds-of-patients-state-officials-plan-for-more.

16, 2020, the federal government instituted measures to control the spread of the virus through March 30, 2020. Just yesterday, the federal government extended those measures at least through April 30, 2020.[16]

35. On March 15, 2020, Governor Stitt declared a state of emergency "caused by the impending threat of COVID-19" in all 77 counties in Oklahoma.[17]

36. Abortion was essential healthcare before COVID-19, and the pandemic has only increased patients' needs for abortion care and made timely access more important.

37. Pregnancy is considered a significant risk factor in the event of COVID-19 infection. Leading health authorities have warned that "pregnant women are known to be at greater risk of severe morbidity and mortality from other respiratory infections such as influenza and SARS-CoV. As such, pregnant women should be considered an at-risk population for COVID-19."[18] Moreover, while the effect of COVID-19 on pregnancy outcomes is not completely understood, the CDC has cautioned that "[p]regnancy loss,

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[16] Sanya Mansoor, *President Trump Extends Federal Social Distancing Guidelines Until End of April*, Time (Mar. 29, 2020), https://time.com/5812313/trump-extending-social-distancing-guidelines-coronavirus/.

[17] Office of the Gov. J. Kevin Stitt, Executive Order 2020-07 (Mar. 15, 2020), https://www.sos.ok.gov/documents/executive/1913.pdf.

[18] ACOG, *Practice Advisory - Novel Coronavirus 2019 (COVID-19)* (last updated Mar. 13, 2020), https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2020/03/novel-coronavirus-2019; *see also* Ctrs. for Disease Control & Prevention, *Information for Healthcare Providers: COVID-19 and Pregnant Women* (last updated Mar. 16, 2020), https://www.cdc.gov/coronavirus/2019-ncov/hcp/pregnant-women-faq.html.

including miscarriage and stillbirth, has been observed in cases of infection with other related coronaviruses . . . during pregnancy. High fevers during the first trimester of pregnancy can increase the risk of certain birth defects."[19] Additional concerns have been raised that the virus may be capable of transmission to a fetus.[20]

38. In addition to the medical concerns, the economic hardships of pregnancy and childrearing have increased for many families. The pandemic has caused layoffs and other work disruptions.[21] Unemployment claims are skyrocketing.[22] People who receive health insurance through their employers are being laid off and left without insurance coverage for their families.[23]

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[19] Ctrs. for Disease Control & Prevention, *Information for Healthcare Providers: COVID-19 and Pregnant Women*, *supra* note 18; *see also* Nina Martin, *What Coronavirus Means for Pregnancy, and Other Things New and Expecting Mothers Should Know*, ProPublica (Mar. 19, 2020), https://www.propublica.org/article/coronavirus-and-pregnancy-expecting-mothers-q-and-a (quoting statement that there "may be a higher risk of miscarriage and premature delivery" by an OB-GYN on the CDC's COVID-19 emergency response team).

[20] Apoorva Mandavilli, *Shielding the Fetus From the Coronavirus*, N. Y. Times (Mar. 27, 2020), https://www.nytimes.com/2020/03/27/health/shielding-the-fetus-from-the-coronavirus.html.

[21] Christopher Rugaber, *U.S. jobless claims soar to 3.3 million, quadruple prior record as COVID-19 pandemic hits hard*, Tulsa World (Mar. 26, 2020), https://www.tulsaworld.com/news/national/u-s-jobless-claims-soar-to-million-quadruple-prior-record/article_b7ae0cf2-e245-5635-80fc-17021e9787ce.html (noting that the surge in weekly unemployment claims reflects the pace of layoffs).

[22] Jack Money, *Coronavirus in Oklahoma: Last week's record high for unemployment claims already eclipsed through three days this week*, The Oklahoman (Mar. 27, 2020) https://oklahoman.com/article/5658670/coronavirus-in-oklahoma-initial-claims-for-unemployment-set-state-and-national-records.

39. Yet the COVID-19 pandemic has made it even more difficult for people to access abortion care. In Oklahoma, where access to abortion care was already difficult, patients must now navigate the legal and practical barriers to abortion care against the backdrop of job insecurity and minimal public transit availability due to mandatory social-distancing and shelter-in-place orders. In addition, because most people who seek abortion already have one or more children,[24] many face extra burdens of childcare now that the COVID-19 pandemic has shuttered schools throughout Oklahoma.[25]

40. Plaintiffs are committed to ensuring that patients have access to essential and time-sensitive abortion care during the COVID-19 pandemic. Plaintiffs also 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. To that end, Plaintiffs have instituted procedures to reduce the risk of infection to patients and staff and conserve medical supplies, including PPE.

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[23] Dylan Scott, *How do 3 million newly unemployed people get health care? The uninsured rate is spiking in the middle of the pandemic*, Vox (Mar. 27, 2020), https://www.vox.com/policy-and-politics/2020/3/27/21197279/coronavirus-us-unemployment-health-insurance.

[24] Jenna Jerman, Rachel K. Jones & Tsuyoshi Onda, *Characteristics of U.S. Abortion Patients in 2014 and Changes Since 2008* at 7, Guttmacher Institute (May 2016), https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf.

[25] Okla. State Dep't of Educ., *Coronavirus/Covid-19 FAQs for Oklahoma Public Schools* (updated March 26, 2020), https://sde.ok.gov/sites/default/files/FAQS%20FOR%20PUBLIC%20SCHOOLS%20-%20COVID-19.pdf (explaining the State Board of Education ordered all public schools closed, effective March 17 through April 6, 2020).

41. For example, Plaintiffs screen patients for COVID-19 symptoms and take their temperatures before they are allowed into the clinics. Patients with any symptoms are told to reschedule their appointments when they are well. Only asymptomatic patients are allowed into Plaintiffs' clinics, and once inside, patients are required to maintain appropriate distance between each other and the staff. Plaintiffs' clinics are also cleaned and sanitized frequently, particularly hard surfaces touched by patients.

42. Plaintiffs that provide medical services in addition to abortion have reduced the number of those appointments or moved services to telemedicine to limit the volume of patients in the clinic and conserve PPE. Abortion cannot lawfully be provided through telemedicine in Oklahoma but generally does not require extensive use of PPE. Staff at Plaintiffs' clinics generally wear washable scrubs. When providing medication abortion, clinicians typically use only one pair of non-sterile gloves to perform the ultrasound and no other PPE. Procedural abortions are typically performed using only minimal PPE such as gloves, shoe covers, protective eyewear or a face shield, and sometimes a surgical mask and a gown. Staff at some of Plaintiffs' clinics have started wearing masks to minimize the risk of viral transmission. But N95 respirators (a face covering designed to block at least 95% of very small test particles that is different from a basic surgical mask), which are in short supply during the pandemic, are not used at all at Dr. Burns's clinic or CHPPGP. And Trust Women has only a residual supply of approximately fifty N95 respirators, which it is using sparingly. None of the Plaintiffs uses ventilators or maintains inpatient hospital beds.

**C. The Executive Order and March 27 Statement**

43. On March 24, 2020, Governor Stitt issued the Executive Order mandating that "Oklahomans and medical providers in Oklahoma shall postpone all elective surgeries, minor medical procedures, and non-emergency dental procedures until April 7, 2020." Ex. A ¶ 18.[26] At a press conference announcing the Executive Order, the Governor was asked whether the Executive Order applied to abortion services. The Governor indicated that the State had not considered abortion services when it published the Executive Order, stating that his office "ha[d] not gotten into the details yet."[27]

44. Three days later, Oklahoma revised the Executive Order to explicitly single out abortion care. On March 27, 2020, Governor Stitt issued the March 27 Statement in the form of a press release entitled "Governor Stitt clarifies elective surgeries and procedures suspended under Executive Order." Although the March 27 Statement

[26] The Executive Order also provides that, starting on March 26, 2020, "all business not identified as being within a critical infrastructure sector as defined by the U.S. Department of Homeland Security and located in a county experiencing community spread of COVID-19, as identified by OSH on its website, shall close" until April 16, 2020. Ex. A ¶ 20. On the same date, Governor Stitt issued an executive memorandum adding to the critical infrastructure sectors identified by the U.S. Department of Homeland Security businesses including, *inter alia*, "[h]ealth care providers (e.g. physicians, dentists, psychologist, mid-level practitioners, nurses and assistants . . .)." Office of the Gov. J. Kevin Stitt, Executive Memorandum 2020-01 (Mar. 24, 2020), https://www.sos.ok.gov/documents/executive/1920.pdf. The plain text of the executive memorandum includes abortion providers within the Oklahoma Governor's definition of critical infrastructure sectors.

[27] Gov. J. Kevin Stitt, *Press Briefing – Live Update on Oklahoma's Response to #COVID19* at 00:45:30, Facebook (Mar. 24, 2020), https://www.facebook.com/GovStitt/videos/vb.1961142690638384/347717132833192/?type=2&theater.

purported to "clarify" the Executive Order, the Executive Order in fact was revamped to encompass "any type of abortion services as defined in [Okla. Stat. Ann. tit. 63] § 1-730(A)(1)."

45. The definition of abortion cited in the March 27 Statement subsumes all methods of abortion performed in Oklahoma. Specifically, Okla. Stat. Ann. tit, 63 § 1-730(A)(1) defines abortion as "the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant . . . ." As a result, the March 27 Statement expands the Executive Order to medication abortions even though they are not "elective surgeries" or "minor medical procedures."

46. The March 27 Statement further stated that abortions are permitted in Oklahoma only in the rare situation of a "medical emergency as defined in [Okla. Stat. Ann. tit. 63] § 1-738.1" or when "otherwise necessary to prevent serious health risks to the unborn child's mother."

47. The definition of medical emergency referenced in the March 27 Statement is exceedingly narrow.[28] It applies only to a "physical condition, not including any emotional, psychological, or mental condition, which a reasonably prudent physician . . . would determine necessitates the immediate abortion of the pregnancy of the female to avert her death or to avert substantial and irreversible impairment of a major bodily

[28] The medical emergency statute cited in the March 27 Statement was repealed, but the same definition appears in other Oklahoma abortion statutes. *See, e.g.*, Okla. Stat. Ann. tit. 63 § 1-738.7(4).

function arising from continued pregnancy." Okla. Stat. Ann. tit. 63 § 1-738.7(4). Indeed, according to data published by the Oklahoma State Department of Health, no abortions performed in Oklahoma satisfied this definition in 2016 or 2017 (the most recent years for which data are publicly available).[29]

48. The exception for abortions "otherwise necessary to prevent serious health risks to the unborn child's mother" is not defined by the March 27 Statement or by reference to Oklahoma law. But the March 27 Statement grants no safe harbor if the State subsequently disagrees with a physician's determination that the exception applies.

49. The March 27 Statement indicated that the Executive Order was applied to abortion services in light of "increased demands for hospital beds" as a result of COVID-19 and "a shortage of personal protective equipment (PPE) needed to protect healthcare professionals and stop transmission of the virus." A quote attributed to Governor Stitt stated, "[w]e must ensure that our health care professionals, first responders and medical facilities have all of the resources they need to combat COVID-19."

50. The March 27 Statement was disseminated to medical facilities in Oklahoma via an email sent at 4:48 p.m. that afternoon. The email read, "[p]lease see below amendment issued today, 3/27/20 to the Oklahoma Governors [sic] Executive Order in response to Covid-19 measures," and included a copy of Governor Stitt's press release.

[29] Okla. State Dep't of Health, *Abortion Surveillance in Oklahoma 2002-2017 Summary Report* 31 (June 2018), https://www.ok.gov/health2/documents/2017ITOP Report.pdf; Okla. State Dep't of Health, *Abortion Surveillance in Oklahoma 2002-2016 Summary Report* 32 (June 2017) https://www.ok.gov/health2/documents/2016Abortion ReportFinal.pdf.

51. Oklahoma was not the first state to exploit the COVID-19 pandemic to ban previability abortions. Only days before, on March 23, 2020, Texas instituted a similar abortion ban when the Texas Attorney General issued a press release interpreting an Executive Order by the Governor of Texas in response to COVID-19 to apply to abortion services in that state.[30] A lawsuit challenging Texas's application of that state's Executive Order to abortion services was promptly filed by Texas abortion providers as a violation of patients' constitutional rights. *Planned Parenthood Ctr. for Choice v. Abbott*, No. 1:20-cv-323, 2020 WL 1465881 (W.D. Tex. Mar. 25, 2020).

**D. The Harm to Patients**

52. Oklahoma's application of the Executive Order to previability abortions violates nearly fifty years of Supreme Court precedent recognizing that state actions that ban abortion before viability violate a person's fundamental rights to dignity, bodily integrity, and autonomy. It also contravenes recommendations by preeminent medical authorities throughout the United States.

53. National medical organizations have issued a joint statement on "Abortion Access During the COVID-19 Outbreak."[31] That consensus statement instructs that "[t]o

[30] Att'y Gen. Ken Paxton, 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 (Mar. 23, 2020), https://www.texasattorneygeneral.gov/news/releases/health-care-professionals-and-facilities-including-abortion-providers-must-immediately-stop-all.

[31] The medical organizations issuing this joint guidance were ACOG, the American Board of Obstetrics & Gynecology, the American Association of Gynecologic Laparoscopists, the American Gynecological & Obstetrical Society, the American Society

the extent that hospital systems or ambulatory surgical facilities are categorizing procedures that can be delayed during the COVID-19 pandemic, abortion should not be categorized as such a procedure" because it "is an essential component of comprehensive health care" and "a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks [to patients] or potentially make it completely inaccessible."[32] These groups emphasized: "The consequences of being unable to obtain an abortion profoundly impact a person's life, health, and well-being."[33]

54. Additionally, the AMA, American Nurses Association, and American Hospital Association issued a statement that, while the public should obey recommendations to stay home "as we reach the critical stages of our national response to COVID-19," those individuals "with urgent medical needs, including pregnant women, should seek care as needed."[34]

55. Despite this medical and public health guidance, as a direct result of the Executive Order and March 27 Statement, Plaintiffs reasonably fear prosecution pursuant to the Executive Order and have ceased providing abortion care in Oklahoma. Abortion

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for Reproductive Medicine, the Society for Academic Specialists in General Obstetrics and Gynecology, the Society of Family Planning, and the Society for Maternal-Fetal Medicine.

[32] ACOG et al., *Joint Statement on Abortion Access During the COVID-19 Outbreak* (Mar. 18, 2020), https://www.acog.org/news/news-releases/2020/03/joint-statement-on-abortion-access-during-the-covid-19-outbreak.

[33] *Id.*

[34] AMA, Am. Hosp. Ass'n & Am. Nursing Ass'n, *AMA, AHA, ANA: #StayHome to confront COVID-19* (Mar. 24, 2020), https://www.ama-assn.org/press-center/press-releases/ama-aha-ana-stayhome-confront-covid-19.

access in this state has been virtually eliminated. Plaintiffs and their patients seeking abortion in Oklahoma are being irreparably harmed, and these harms will increase in number and intensity with each passing day.

56. Patients delayed in accessing abortion suffer increased risks to their health, wellbeing, and economic security. Delays in accessing abortion care impose unnecessary health risks to patients because, though abortion is very safe throughout pregnancy, health risks increase as pregnancy progresses. Delays cause anxiety and suffering for many people (for example patients who are pregnant as a result of rape or incest) who must remain pregnant for longer, and they require women to continue to endure the physical and psychological burdens of pregnancy despite their decision to terminate their pregnancies. Delays also can increase the costs of abortion care, as well as the costs of travel, childcare, and taking time off work, among other things. All these harms are made worse by the ongoing COVID-19 crisis.

57. Moreover, there are certain points in pregnancy at which abortion may become more complex or fewer medical options may be available. Some patients will be foreclosed from choosing the abortion method that is medically indicated for them or otherwise preferable, and others will be unable to access abortion at all. Even assuming that the COVID-19 crisis could be rapidly abated and the Executive Order promptly rescinded, patients delayed beyond eleven weeks LMP will be unable to access medication abortion in Oklahoma. Patients delayed beyond 22 weeks LMP will be unable to access any form of abortion in Oklahoma.

58. Patients unable to access abortion who instead remain pregnant face substantial health risks in carrying pregnancy to term. According to the CDC, 144 in 10,000 women who gave birth in a hospital in the United States in 2014 experienced unexpected outcomes of labor and delivery that resulted in significant short- or long-term consequences.[35] Such risks are especially a concern in Oklahoma where the maternal mortality rate is higher than the national average.[36]

59. In addition to the health risks, pregnancy, childbirth, and another child threatens the stability and wellbeing of the family, including their existing children. Research has found that women denied an abortion are four times more likely than women who received an abortion to experience economic hardship and insecurity lasting for years, with serious consequences for those women and their families.[37] These harms are even more acute now because unemployment rates are soaring as a result of the COVID-19 pandemic, reflecting massive losses in wages and employer-provided health insurance. Carrying an unwanted pregnancy to term may also exacerbate an already difficult situation for those who have suffered trauma, such as sexual assault or domestic violence.

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[35] Ctrs. for Disease Control & Prevention, *Severe Maternal Morbidity in the United States*, https://www.cdc.gov/reproductivehealth/maternalinfanthealth/severematernalmorbidity.html.

[36] Ctrs. for Disease Control & Prevention, *Maternal Mortality by State, 2018*, https://www.cdc.gov/nchs/maternal-mortality/MMR-2018-State-Data-508.pdf.

[37] Diana G. Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 108 Am. J. Public Health 407 (2018); *see also* Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, 107 Am. J. Pub. Health 1904, 1906 (2017); Jenna Jerman, Rachel K. Jones, & Tsuyoshi Onda, *supra* note 24 at 11.

60. To escape the harms inflicted by the Executive Order and March 27 Statement, some patients with the means and resources will seek abortion care in other states that have not banned it. But forcing patients seeking reproductive healthcare to travel to other states does nothing to protect or advance their health, particularly during a pandemic, and only imposes additional risks and burdens. Travel increases the risk of community transmission of COVID-19. Moreover, for many women, leaving the state for care is not an option. Women seeking abortion are disproportionately poor, and most are already caring for at least one child.[38] Oklahoma's poverty rate is well above the national average,[39] and the largest demographics living in poverty are women of reproductive age.[40]

61. While inflicting irreparable harm on countless patients, the Executive Order, as applied to abortion through the March 27 Statement, will not meaningfully advance the State's interests and, if anything, will undermine the State's stated objectives. Eliminating access to outpatient abortion care does nothing to reduce demand for hospital services, and little to reduce demand for PPE. In fact, patients who are forced to continue their pregnancies, especially those who carry to term, will place greater demands on the healthcare system than if they had obtained an abortion. These include prenatal visits,

[38] Jenna Jerman, Rachel K. Jones, & Tsuyoshi Onda, *supra* note 24, at 7.

[39] Craig Benson & Alemayehu Bishaw, U.S. Census Bureau, *Poverty: 2017 and 2018*, at 4 (Nov. 2019), https://www.census.gov/content/dam/Census/library/publications/2019/acs/acsbr18-02.pdf (indicating that Oklahoma had a poverty rate of 15.6% in 2018 compared to the nationwide poverty rate of 13.1% in 2018).

[40] Oklahoma, *Poverty by Age and Gender*, Data USA (last visited Mar 29, 2020), https://datausa.io/profile/geo/oklahoma ("The largest demographic living in poverty are Females 25–34 followed by Females 18–24 . . . .").

pregnancy-related screenings and tests (including repeat ultrasounds and blood tests at minimum), and ultimately childbirth. These contacts with the hospital system consume more PPE, hospital staff time, equipment, and inpatient beds than abortion care. And patients who develop gestational diabetes, preeclampsia, or other health conditions will place even more demands on the healthcare system.

62. Because the Executive Order and March 27 Statement inevitably will compel some patients to travel to other states to obtain abortion services no longer available in Oklahoma, the State's actions will only further undermine efforts to contain the virus. Long-distance travel is wholly inconsistent with public health guidelines and government directives to stay at home and shelter-in-place. In addition, such travel will require patients to have contacts with many individuals to obtain childcare, transportation, food, and lodging necessary to make the trip. These unnecessary contacts increase the risk of contracting COVID-19 and bringing the virus back to families and communities in Oklahoma.

63. As expanded by the March 27 Statement, the Executive Order, in its current iteration, expressly bans abortion until April 7, 2020. But Governor Stitt has already amended and extended the Executive Order numerous times, and there is every reason to believe that it will be extended again. [41]

[41] *Compare* Office of the Gov. J. Kevin Stitt, Executive Order 2020-07, *supra* note 17 *with* Fifth Amended Executive Order 2020-07 (Mar. 27, 2020), https://www.sos.ok.gov/documents/executive/1923.pdf.

64. The COVID-19 pandemic will not be resolved or contained in the next eight days. Indeed, the U.S Surgeon General has stated that such a short amount of time is "likely not going to be enough" to bring COVID-19 under control, and the federal government has extended its containment measures at least through April 30, 2020.[42] Experts believe that the crisis could last months, if not years.[43] And in recent days, Oklahoma officials have acknowledged that "the number of individuals testing positive for COVID-19 continues to rapidly grow each day" and that the crisis in Oklahoma is likely to intensify in the coming weeks.[44]

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[42] Quint Forgey, *Surgeon general: 15 days of social distancing 'likely not going to be enough' to halt coronavirus*, Politico (Mar. 18, 2020), https://www.politico.com/news/2020/03/18/surgeon-general-social-distancing-not enough-135377; Sanya Mansoor, *President Trump Extends Federal Social Distancing Guidelines Intil End of April*, *supra* note 16.

[43] Peter Baker & Eileen Sullivan, *U.S. Virus Plan Anticipates 18-Month Pandemic and Widespread Shortages*, N.Y. Times (Mar. 17, 2020), https://www.nytimes.com/2020/03/17/us/politics/trump-coronavirus-plan.html; *PanCAP Adapted U.S. Government COVID-19 Response Plan*, at 4 (Mar. 13, 2020), https://int.nyt.com/data/documenthelper/6819-covid-19-responseplan/d367f758bec47cad 361f/optimized/full.pdf#page=1 (assuming that the COVID-19 pandemic will last 18 months or longer and "could include multiple waves of illness").

[44] Okla. State Dep't of Health, *COVID-19 Resources: Current Situation* https://coronavirus.health.ok.gov/ (Mar. 28, 2020); *see also* Ctrs. for Disease Control & Prevention, *Coronavirus Disease 2019 (COVID-19) Situation Summary* (last updated Mar. 26, 2020), https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html ("CDC expects that widespread transmission of COVID-19 in the United States will occur. In the coming months, most of the U.S. population will be exposed to this virus.").

## CLAIMS FOR RELIEF

COUNT I

(Substantive Due Process)

65. Plaintiffs reallege and incorporate by reference the allegations contained above.

66. By banning all abortion except in rare circumstances, the Executive Order and March 27 Statement, as applied to previability abortion, violates Plaintiffs' patients' rights to privacy, liberty, bodily integrity and autonomy as guaranteed by the Fourteenth Amendment to the U.S. Constitution.

67. Unless enjoined, the Executive Order and March 27 Statement, as applied to previability abortion, will subject Plaintiffs' patients to irreparable harm for which no adequate remedy at law exists by delaying or preventing patients from obtaining an abortion in Oklahoma, thereby causing them to suffer significant constitutional, medical, emotional, and other harm.

COUNT 2

(Equal Protection)

68. Plaintiffs reallege and incorporate by reference the allegations contained above.

69. By selectively burdening patients' fundamental right to abortion without justification and singling out abortion providers and their patients for differential treatment from providers of other medical services and their patients, the Executive Order and March

27 Statement, as applied to abortion, violates Oklahomans' right to equal protection guaranteed by the Fourteenth Amendment to the U.S. Constitution.

70. Unless enjoined, the Executive Order and March 27 Statement, as applied to abortion, will subject Plaintiffs and their patients to irreparable harm for which no adequate remedy at law exists by preventing patients from or significantly delaying them in obtaining an abortion in Oklahoma, thereby causing them to suffer significant constitutional, medical, emotional, and other harm.

## ATTORNEY'S FEES

71. Plaintiff is entitled to an award of reasonable attorney's fees and expenses pursuant to 42 U.S.C. § 1988.

## REQUEST FOR RELIEF

WHEREFORE, Plaintiffs ask this Court:

A. To issue a temporary restraining order, a preliminary injunction, and ultimately a permanent injunction, restraining Defendants, their officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them, from enforcing or complying with the Executive Order and March 27 Statement, including future iterations or extensions, as applied to previability abortion;

B. To enter a judgment declaring that the Executive Order and March 27 Statement, including future iterations or extensions, as applied to previability abortion, violates the Fourteenth Amendment to the U.S. Constitution;

C. To award Plaintiffs their attorneys' fees and costs pursuant to 42 U.S.C. § 1988, and

D. To grant such other and further relief as the Court deems just and proper.

Dated: March 30, 2020

/s/ J. Blake Patton
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*Attorney for Plaintiff Comprehensive Health of Planned Parenthood Great Plains, Inc.*

# Exhibit 1

J. Kevin Stitt
Office of the Governor
State of Oklahoma

**EXECUTIVE DEPARTMENT**
**FOURTH AMENDED EXECUTIVE ORDER 2020-07**

On March 24, 2020, the 109th case of a novel coronavirus ("COVID-19"), was confirmed in the State of Oklahoma. As noted in a previous Executive Order, the United States Centers for Disease Control and Prevention has identified the potential public health threat posed by COVID-19 as "high" both globally and in the United States. In addition, on March 14, 2020, the President of the United States declared a national health emergency in the United States as a result of the national spread of COVID-19.

As COVID-19's impact continues to evolve, it is important to take measures to protect all Oklahomans against this threat. Therefore, I believe, after consultation with numerous health experts within my administration, it is now necessary to provide for the rendering of mutual assistance among the State and political subdivisions of the State and to cooperate with the Federal government with respect to carrying out emergency functions during the continuance of the State emergency pursuant to the provisions of the Oklahoma Emergency Management Act of 2003.

Therefore, I, J. Kevin Stitt, Governor of the State of Oklahoma, pursuant to the power vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby declare and order the following:

1. There is hereby declared an emergency caused by the impending threat of COVID-19 to the people of this State and the public's peace, health, and safety. The counties included in this declaration are:

   ***All 77 Oklahoma Counties***

2. The State Emergency Operations Plan has been activated, and resources of all State departments and agencies available to meet this emergency are hereby committed to the reasonable extent necessary to prepare for and respond to COVID-19 and to protect the health and safety of the public. These efforts shall be coordinated by the Director of the Department of Emergency Management with comparable functions of the federal government and political subdivisions of the State.

3. State agencies, in responding to this emergency, may make necessary emergency acquisitions to fulfill the purposes of this declaration. If using a P-Card to make

such acquisitions, agencies may purchase the necessary acquisitions without regard to the current P-Card policy limitation of $5,000.00 purchase limit. Agencies may make the necessary emergency acquisitions without the requirement to follow bidding requirement/limitations on such emergency acquisitions, without the need to purchase from State Use Vendors, or to purchase from mandatory State Wide contracts. Such necessary emergency purchases shall be capped at $250,000.00 per transaction. All such purchases must be readily identifiable as such, as following the conclusions of this threat, all such necessary emergency acquisitions will be audited to determine if they were made for emergency purposes.

4. State agencies, in responding to this emergency, may employ additional staff without regard to the classification requirements of such employment.

5. State agencies shall continue to follow guidance for interaction with the public provided by the Oklahoma Department of Health.

In addition, I direct as follows:

1. Transmit a clear delegation of authority for state agency directors and designate an Emergency Management Liaison by 5:00 p.m. on March 16, 2020;

2. Establish and, if necessary, implement a remote work policy that balances the safety and welfare of state employees with the critical services they provide;

3. Encourage Oklahomans interacting with agency services to utilize online options whenever possible;

4. Ensure continued compliance with Executive Order 2019-13, which limits non-essential out-of-state travel.

5. Promulgate any emergency rules necessary to respond to the emergency and to comply with the directives contained herein.

6. Any medical professional who holds a license, certificate, or other permit issued by any state that is a party to the Emergency Management Compact evidencing the meeting of qualifications for the practice of certain medical services, as more particularly described below, shall be deemed licensed to practice in Oklahoma so long as this Order shall be in effect, subject to the following conditions:

    a. This shall only apply to Medical (MD) and Allied Licenses issued by the Board of Medical Licensure and Supervision, Licenses issued by State Board of Osteopathic Examiners, and Licenses and Certificates issued by the Board of Nursing, all three shall collectively be referred to as "Boards";

    b. Any medical professional intending to practice in Oklahoma pursuant to

this Order, hereinafter referred to as "Applicant," shall first apply with and receive approval from appropriate Board;

c. It is the responsibility of each Board to verify the license status of any applicant and, upon verification of good standing, shall issue a temporary license to practice within this State; and

d. Any applicant licensed under this Order shall be subject to the oversight and jurisdiction of the licensing Board, which includes the ability of the Board to revoke said license and to initiate any administrative or civil proceeding related to any alleged misconduct of the applicant.

7. All occupational licenses issued by any agency, board, or commission of the State of Oklahoma that expire during this emergency shall be extended so long as this Order is in effect. All occupational licenses extended during this Order will expire fourteen (14) days following the withdrawal or termination of this Order.

8. Hospitals and Physician Clinics (collectively referred to as "hospitals") operating in the State shall cooperate with and respond to all requests for critical data from the Oklahoma State Department of Health ("OSDH"), as applicable to the services they provide. This shall include, but will not be limited to, the daily submission, no later than noon, of critical data in a manner and format prescribed by OSDH. Critical Data shall include, but not be limited to:

a. The number of available (i) ICU beds, (ii) medical surgery beds, (iii) operating room beds, (iv) pediatric beds, (v) PICU beds, (vi) ventilators, (vii) negative flow rooms, (viii) and overall occupancy status;

b. COVID-19 Test Availability, as measured by the number of COVID-19 testing kits available for use at the hospital;

c. The number of (i) positive patients and persons under investigation in the hospital receiving treatment and (ii) positive patients and persons under investigation sent home for self-quarantine; and

d. Days of essential Personal Protective Equipment stock on hand, as measured by the hospital's defined daily adjusted burn rate of PPE.

9. The OSDH shall provide daily an aggregated summary of the information requested in the preceding paragraph to the Office of the Governor by 3:00 p.m.

10. The OSDH and all private labs performing COVID-19 testing shall provide daily updates, by 3:00 p.m., to the Office of the Governor on (i) the daily number of COVID-19 tests they are capable performing that day and (ii) number of COVID-19 testing kits they have on hand for distribution to hospitals.

11. The preexisting patient relationship requirement for telemedicine, as required by 59 O.S. § 478.1, is hereby waived so long as this Order is in effect. Nothing in this Order shall waive 59 O.S. § 478.1(B) regarding HIPAA or (C) for the purpose of prescribing opiates and other controlled dangerous substances referenced therein.

12. The requirement that an individual be unemployed for a waiting period of one (1) week before benefits are paid, as required by 40 O.S. § 2-206, is hereby waived so long as this Order remains in effect.

13. Advanced practice registered nurses, registered nurses, licensed practical nurses and advanced unlicensed assistants who have lapsed or inactive licenses or certifications may have their single-state license or certification reinstated if they submit a reinstatement application and fee prescribed by the Board and meet the qualifications for licensure or certification established by the Board, provided such license shall only be valid as long as this Order is in effect. The continuing qualifications as required for licensure or certification by OAC 485:10-7-4 (h); 485: 10-7-5 (g); 485:10-9-4 (h); 485:10-9-5 (g); 485:10-10-8.1 (d) are hereby waived as long as this Order remains in effect. It is strongly recommended any required fees be waived to the fullest extent possible.

14. The requirements for Oklahoma Tax Commission compliance for any advanced practice registered nurse, registered nurse, licensed practical nurse and advanced unlicensed assistant application for renewal or reinstatement of a lapsed or inactive license or certification who is identified as being Oklahoma Tax Commission non-compliant, as set forth in 68 OS § 238.1 (E), is hereby waived as long as this Order remains in effect.

15. Oklahoma State regulations requiring Clinical Laboratory Improvement Amendment (CLIA) certification for testing laboratories are hereby suspended until further notice for the universities named below and for the narrow purposes described herein. During this suspension, laboratories operated by or through the University of Oklahoma and Oklahoma State University are authorized to conduct testing and testing-related activities in response to the COVID-19 pandemic. Further, the Oklahoma Commissioner of Health, acting through and on behalf of OSDH, is hereby authorized to contract with the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges, the Board of Regents for the University of Oklahoma, and/or their constituent agencies to perform laboratory tests and test-related activities, without regard to CLIA certification requirements, as necessary to detect and report COVID-19 infection in compliance with applicable law. The Commissioner of Health is authorized to negotiate and execute any and all agreements and terms necessary to execute and implement this provision.

16. No prescription for chloroquine or hydroxychloroquine may be dispensed unless all of the following apply:

a. The prescription bears a written diagnosis from the prescriber consistent with the evidence for its use.

b. The prescription is limited to no more than a fourteen (14) day supply, unless the patient was previously established on the medication prior to the effective date of this Order.

c. No refills may be permitted unless a new prescription is furnished.

If a scenario is not addressed in these medication limitations a pharmacy can use the waiver form provided by the Board of Pharmacy to request further consideration.

17. Adults over the age of sixty-five (65) and people of any age who have serious underlying medical conditions, collectively referred to as "vulnerable individuals," shall stay in their home or place of residence except for working in a critical infrastructure sector, as more particularly described herein, and the conduct of essential errands. Essential errands shall mean those errands which are critical to everyday life and includes obtaining medication, groceries, gasoline, and visiting medical providers. The vulnerable population is encouraged to use delivery and/or curbside services whenever available.

18. Oklahomans and medical providers in Oklahoma shall postpone all elective surgeries, minor medical procedures, and non-emergency dental procedures until April 7, 2020.

19. Social gatherings of more than ten people are prohibited. Businesses within a critical infrastructure sector, as more particularly described herein, shall take all reasonable steps necessary to comply with this Order and protect their employees, workers, and patrons.

20. Effective at 11:59 p.m. on March 25, 2020, all businesses not identified as being within a critical infrastructure sector as defined by the U.S. Department of Homeland Security and located in a county experiencing community spread of COVID-19, as identified by OSDH on its website, shall close. Additional sectors may be designated as critical by Executive Order or Memorandum. Nothing in this provision shall prevent restaurants and bars from providing pick-up, curbside, and delivery. This shall be effective until April 16, 2020.

21. Visitors are prohibited from entering and visiting patients and residents at nursing homes, long-term care facilities, and retirement homes.

Further, I hereby order the temporary suspension of the following as they apply to vehicles in the support efforts:

1. The cost and fees of oversize/overweight permits required of carriers whose sole purpose is transportation of materials, equipment, and supplies used for recovery/relief efforts which require an overweight permit under Title 47 of Oklahoma statutes;

2. By execution of this Order, motor carriers and drivers providing direct assistance in support of relief efforts related to the COVID-19 outbreaks are granted emergency relief from Parts 390 through 399 of Title 49 Code of Federal Regulations, except as restricted herein. Direct assistance means transportation and other relief services provided by a motor carrier or its driver(s) incident to the immediate restoration of essential services, such as medical care, or essential supplies such as food, related to COVID-19 outbreaks during the emergency.

   a. This Emergency Declaration provides regulatory relief for commercial motor vehicle operations that are providing direct assistance in support of emergency relief efforts related to the COVID-19 outbreaks, including transportation to meet immediate needs for: (1) medical supplies and equipment related to the testing, diagnosis and treatment of COVID-19; (2) supplies and equipment necessary for community safety, sanitation, and prevention of community transmission of COVID-19 such as masks, gloves, hand sanitizer, soap and disinfectants; (3) food for emergency restocking of stores; (4) equipment, supplies and persons necessary to establish and manage temporary housing, quarantine, and isolation facilities related to COVID-19; (5) persons designated by Federal, State or local authorities for medical, isolation, or quarantine purposes; (6) persons necessary to provide other medical or emergency services, the supply of which may be affected by the COVID-19 response; (7) fuels and petroleum products (to include fuel oil, diesel oil, gasoline, kerosene, propane, and liquid petroleum); and (8) livestock, poultry, feed for livestock and poultry, and crops and other agricultural products ready to be harvested.

   b. Direct assistance does not include routine commercial deliveries, or transportation of mixed loads that include essential supplies, equipment and persons, along with supplies, equipment and persons that are not being transported in support of emergency relief efforts related to the COVID-19 outbreaks.

   c. Direct assistance terminates when a driver or commercial motor vehicle is used in interstate commerce to transport cargo or provide services that are not in support of emergency relief efforts related to the COVID-19 outbreaks or when the motor carrier dispatches a driver or commercial motor vehicle to another location to begin operations in commerce. 49 CFR 390.23(b). Upon termination of direct assistance to emergency relief efforts related to the COVID-19 outbreaks, the motor carrier and driver are subject to the requirements of 49 CFR Parts 390 through 399, except that a driver may return empty to the motor carrier's terminal or the driver's normal work reporting location without complying with Parts 390 through 399. However, if the driver informs the motor carrier that he or she needs immediate rest, the driver must be permitted at least 10 consecutive hours off duty before the driver is required to return to

the motor carrier's terminal or the driver's normal reporting location. Once the driver has returned to the terminal or other location, the driver must be relieved of all duty and responsibilities and must receive a minimum of 10 hours off duty if transporting property, and 8 hours if transporting passengers.

3. The requirements for licensing/operating authority as required by the Oklahoma Corporation Commission; and

4. The requirements for licensing/registration authority as required by the Oklahoma Tax Commission.

Nothing contained in this Order shall be construed as an exemption from the Controlled Substance and Alcohol Use and testing requirements. (49 C.F.R. part 382), the Commercial Driver License requirements (49 C.F.R. part 383), the Financial Responsibilities requirements (49 C.F.R. part 387), or any other portion of the regulations not specifically identified herein. Motor carriers that have an Out-of-Service Order in effect cannot take advantage of the relief from regulation that this declaration provided.

***This Order shall be effective until the end of thirty (30) days after the filing of this Order.***

Copies of this Executive Order shall be distributed to the Director of Emergency Management, the Oklahoma State Health Commissioner, the Commissioner of the Department of Public Safety and the Director of the Office of Management and Enterprise Services who shall cause the provisions of this Order to be implemented by all appropriate agencies of State government.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, this 24th day of March, 2020.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

J. KEVIN STITT

ATTEST:

MICHAEL ROGERS, SECRETARY OF STATE

# Exhibit 2

# Press Release

March 27, 2020

## GOVERNOR STITT CLARIFIES ELECTIVE SURGERIES AND PROCEDURES SUSPENDED UNDER EXECUTIVE ORDER

OKLAHOMA CITY (March 27, 2020) – On Tuesday, Governor Stitt through his Executive Order 2020-07 (4th amended) postponed all elective surgeries and minor medical procedures until April 7.

Today, Governor Stitt clarified that any type of abortion services as defined in 63 O.S. § 1-730(A)(1) which are not a medical emergency as defined in 63 O.S. § 1-738.1 or otherwise necessary to prevent serious health risks to the unborn child's mother are included in that Executive Order.

This also includes routine dermatological, ophthalmological, and dental procedures, as well as most scheduled healthcare procedures such as orthopedic surgeries.

The rapid spread of COVID-19 has increased demands for hospital beds and has created a shortage of personal protective equipment (PPE) needed to protect health care professionals and stop transmission of the virus.

**"We must ensure that our health care professionals, first responders and medical facilities have all of the resources they need to combat COVID-19,"** said Gov. Stitt. **"I am committed to doing whatever necessary to protect those who are on the front lines fighting against this virus."**

JS 44 (Rev. 12/12)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

## I. (a) PLAINTIFFS

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

**(b)** County of Residence of First Listed Plaintiff Oklahoma
*(EXCEPT IN U.S. PLAINTIFF CASES)*

**(c)** Attorneys *(Firm Name, Address, and Telephone Number)*
J. Blake Patton, WALDING & PATTON PLLC, 518 Colcord Drive, Suite 100, Oklahoma City, OK 73102
(405) 605-4440, see attachment for additional attorneys

## DEFENDANTS

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

County of Residence of First Listed Defendant
*(IN U.S. PLAINTIFF CASES ONLY)*
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

## II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

## III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
*(For Diversity Cases Only)*

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ❒ 1 | ❒ 1 | Incorporated *or* Principal Place of Business In This State | ❒ 4 | ❒ 4 |
| Citizen of Another State | ❒ 2 | ❒ 2 | Incorporated *and* Principal Place of Business In Another State | ❒ 5 | ❒ 5 |
| Citizen or Subject of a Foreign Country | ❒ 3 | ❒ 3 | Foreign Nation | ❒ 6 | ❒ 6 |

## IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

**CONTRACT**
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

**REAL PROPERTY**
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

**TORTS**

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

**PRISONER PETITIONS**

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

**FORFEITURE/PENALTY**
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

**LABOR**
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

**IMMIGRATION**
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

**BANKRUPTCY**
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

**SOCIAL SECURITY**
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

## V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. § 1983

Brief description of cause:
Emergency Action to Enjoin Enforcement of Executive Order

## VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

**DEMAND $** TRO and preliminary injunction

CHECK YES only if demanded in complaint:
**JURY DEMAND:** ❒ Yes ☒ No

## VIII. RELATED CASE(S) IF ANY

*(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE 03/30/2020

SIGNATURE OF ATTORNEY OF RECORD /s/ J. Blake Patton

**FOR OFFICE USE ONLY**

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

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