

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

WOMEN’S HEALTH CENTER OF WEST
VIRGINIA,

Civil Action No.

Plaintiff,

v.

Hon.

PATRICK MORRISEY *et al.*,

Defendants.

DECLARATION OF KATIE QUINONEZ
IN SUPPORT OF PLAINTIFF’S EMERGENCY MOTION FOR
A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I, Katie Quinonez, declares as follows:

1. I am the Executive Director of Women’s Health Center of West Virginia (“WHC”), a nonprofit corporation organized under the laws of the State of West Virginia, which is the plaintiff in this case. I have held this position since January 2, 2020. Prior to becoming Executive Director at WHC, I was the Development Director of WHC. I held that position from September 5, 2017 to January 1, 2020.

2. WHC is the only outpatient abortion clinic in West Virginia. It was also the first abortion clinic in West Virginia and has been providing safe, legal abortion in Charleston since 1976. WHC sues on behalf of itself, its staff, its physicians, and its patients.

3. As Executive Director, I am ultimately responsible for WHC's administrative, financial, and clinical operations. Thus, I am responsible for developing and implementing WHC's policies and procedures.

4. I submit this declaration in support of Plaintiff's motion for a temporary restraining order and a preliminary injunction.

5. Under Defendants' interpretation of the Governor of West Virginia's Executive Order 16-20 (the "Order"), abortions are only permitted when the patient is at or near the legal limit for obtaining medication abortion or at or near the limit for obtaining procedural abortion at WHC. Because abortion is time-sensitive care that cannot be delayed, in many cases even for a few days or weeks, this severe restriction is causing our patients irreparable harm.

6. The facts I state here are based on my experience, my review of WHC's business records, information obtained in the course of my duties at WHC, and personal knowledge that I have acquired through my service at WHC. If called and sworn as a witness, I could and would testify competently thereto.

WHC's Provision of Abortion Care

7. WHC performs medication abortion from 28 days (4 weeks) through 77 days (or 11 weeks) of pregnancy,¹ as measured from the first day of a patient's last menstrual period ("LMP") and procedural abortion from 4 weeks and 0 days through 16 weeks and 0 days LMP. WHC provides abortion services three days per week: Mondays, Wednesdays and Thursdays. On Mondays we provide only medication abortion. On Wednesdays and Thursdays we provide both medication abortions and procedural abortions. Under normal circumstances, patients who are

¹ WHC began providing medication abortion through 77 days or 11 weeks in October of 2019; prior to this date we provided medication abortion through 70 days or 10 weeks.

eligible for medication or procedural abortion can choose the procedure they prefer, but there are several reasons that a patient at or before 11 weeks may not be eligible for medication abortion. All procedural abortions at WHC use the aspiration abortion method. WHC does not use general anesthesia for any abortions.

8. WHC performed 1,144 total abortions in 2019. Of those, 466 were medication abortion and 678 were procedural abortion.

9. In the first three months of this year (January 1 through March 31, 2020), WHC has performed 283 abortions. Of those, 121 were medication abortions and 162 were procedural abortions.

10. WHC does not use and does not have in supply any N-95 masks. WHC does not use or possess any disposable protective eyewear.

11. Abortion care requires minimal use of personal protective equipment (“PPE”). For procedural abortions, only a small number of staff are in the procedure room and therefore in need of PPE. WHC clinicians use surgical masks, gowns, reusable protective eyewear, gloves, and shoe coverings. Only the physician uses sterile gloves. Consistent with current CDC guidelines, gloves are changed between patients; all other PPE is reused unless soiled.

12. Medication abortion requires even less PPE. Only two clinicians are involved in the administration of medication abortion and each uses only non-sterile gloves and masks. Consistent with current CDC guidelines, the gloves are changed between patients and the masks are reused unless soiled.

13. WHC patients seek abortion for a multitude of complicated and personal reasons. For example, some patients decide that it is not the right time in their life to have a child or to expand their family. Others desire more financial, professional, or familial stability before

having a child or additional children. Still others may have preexisting medical conditions that put them at higher than average risks of complications from continuing a pregnancy.

14. While our patients generally seek abortion as soon as they are able, many face logistical obstacles that can delay access to care. Some patients may not discover they are pregnant until later in their pregnancies, others may experience difficulties navigating the medical system, including finding a provider and scheduling an appointment.² Many WHC patients are also struggling financially, indeed approximately 40% have Medicaid as their health insurance, which covers the cost of abortion only under extremely limited circumstances.

15. The COVID-19 pandemic has exacerbated these constraints. As a result of COVID-19, and associated social distancing measures, patients have been laid off work or faced other work disruptions, placing them in precarious financial situations that make it even harder to afford an abortion and associated costs, on top of their cost of living. This crisis has also resulted in the closing down of schools in West Virginia and has imposed restrictions on childcare facilities which will make it even harder to arrange childcare and may make it more difficult or risky to access public transportation in order to travel to the clinic.

WHC's Efforts to Prevent COVID-19 Spread and Conserve Needed Resources

16. WHC is committed to doing its part to reduce the spread of COVID-19 and to otherwise help ensure that our public health system has sufficient resources to meet the challenge of responding to a potential surge of illness.

17. Since the COVID-19 outbreak, WHC has taken steps consistent with CDC and National Abortion Federation guidelines to preserve much-needed medical resources, including

² Navigating this system is particularly confusing in West Virginia, where there is only one abortion provider and new federal law prohibits family planning providers in the Title X program (a federal program for those with low incomes) from helping their patients identify abortion providers.

PPE, that are in short supply during the pandemic and help prevent the spread of COVID-19 in our state. We are only offering time-sensitive and medically necessary care and have cancelled all routine appointments, including annual gynecological exams and pap smears, until further notice.

18. On March 12, I distributed a memo to all staff outlining the proactive steps WHC would take to reduce the risk of spread of COVID-19 among patients and staff. The memo is attached hereto as Exhibit 1.

19. Since then, we have taken several additional steps to reduce the spread of COVID-19. Although in normal times we welcome support people accompanying patients, we have decided not to allow such companions (except a parent or legal guardian accompanying a minor) to enter our health center in order to reduce the number of people in the clinic during the pandemic. We have also suspended our clinic escort program—through which volunteers help secure patient privacy and provide support and affirmation to patients as they navigate to the entrance of our clinic, which is often, even during this crisis, surrounded by anti-abortion protestors—to reduce, to the extent we can, the number of people in and around the clinic.

20. Patients are screened by phone for symptoms of COVID-19. If patients answer yes to any screening questions, they are referred to the West Virginia Department of Health or their primary care physician before they can schedule an appointment. At check-in, our staff again screens patients for symptoms and check them for fever.³ Staff screening patients use gloves and a surgical mask. Only those individuals whose screen as negative can receive

³ Additionally, staff must report if they experience any symptoms of COVID-19. Consistent with CDC guidelines, staff experiencing symptoms must not return to work until 3 days after improvement in respiratory symptoms and the resolution of any fever (without the use of fever-reducing medications) and 7 days after the first appearance of symptoms.

services. We have also increased the frequency of sanitation of high touch areas and put up signage about how to decrease the spread of COVID-19.

21. We have made changes to the flow of patient care. While we normally have capacity to see up to 20 abortion patients per day, we have reduced the maximum number of abortions per day to 14, so that we can enforce social distancing.⁴ We have rearranged the chairs in our waiting room to ensure appropriate space between patients and have made hand sanitizer, tissues, and trash cans readily available to patients in locations throughout the clinic.

WHC Compliance with Executive Order 16-20

22. Once aware of the Order—which became effective just hours after being released—WHC immediately began to assess how to best comply.

23. Because abortion is not an “elective procedure” and “cannot be postponed without compromising the patient’s life or long-term health,” our understanding was that they should continue under this Order. Further, because West Virginia restricts second-trimester abortion, abortion is a “procedure[] that cannot be performed consistent with other law at a later date.” In addition, a medication abortion is not a “procedure” at all, and so our understanding was that it should continue under the Order for that reason as well.

24. To confirm our understanding of the Order, WHC sent letters to the Director of the West Virginia Department of Health and Human Resources (“DHHR”), the President of the Board of Medical Licensure, and the Attorney General, by and through our attorney Loree Stark,

⁴ Although WHC has decreased the number of abortions per day, the demand on WHC providers had actually increased prior to the Order. Normally, WHC has one physician who travels in from out of state to provide abortion care. Because of the increased risk of travel due to COVID-19, that provider is unable to travel to provide care and WHC’s two remaining physicians were increasing their hours to compensate for the loss.

stating our intention to continue to perform abortions and our reasoning for why such procedures would be permitted under the Order.

25. The only responsive reply we received came from the Attorney General on April 2. He informed us of his position that medication abortions are “procedures” for the purposes of the Order and that some, if not most, abortions are prohibited under the Order.

26. It is well known that the West Virginia Attorney General is hostile towards abortion. Since the start of this public health crisis, he has signed on to several amicus briefs in support of states that have attempted to use the public health crisis to ban abortion. I understand that the Attorney General has enforcement authority over the Order. When asked about how the Order would impact the provision of abortion care in West Virginia, Governor Justice referred the question to the Attorney General.

27. Based on the Attorney General’s response and in consultation with our medical director, WHC adopted a policy that conformed to the Attorney General’s interpretation of the Order. Under this policy, abortion procedures can be performed when (1) the abortion is immediately medically necessary to preserve the patient’s life or long-term health; (2) when the physician determines that a procedure cannot be postponed without compromising the patient’s long-term health; (3) when the procedure cannot be performed consistent with law at a later date or (4) when the procedure is religiously mandated.

28. Because WHC typically does not perform abortions that are immediately medically necessary to preserve the patient’s life or health or abortions that are religiously mandated, WHC has restricted abortion care to those patients who are at or near the legal limit for obtaining abortion in West Virginia and those patients for whom the Attorney General would deem unable to be postponed without compromising the patient’s long-term health.

29. Medication abortion cannot be performed consistent with West Virginia law after 11.0 weeks (i.e., 11 weeks 0 days) LMP. W. Va. Code Ann. § 30-3-14(c)(13). Thus, WHC is currently providing medication abortion care to eligible patients who are at or nearing 11.0 weeks in pregnancy.

30. Our physicians evaluate each patient on a case-by-case basis to determine whether the patient's abortion will meet the Attorney General's interpretation of the Order's exception for procedures that cannot be postponed without compromising the patient's long-term health.

31. Because being forced to carry an unwanted pregnancy to term and give birth will compromise a patient's long-term health, WHC has provided procedural abortion care to patients who are at or nearing 16.0 weeks in pregnancy, which is the latest point at which WHC can provide procedural abortion care.

32. Thus, in practice, patients who seek care before 11.0 weeks LMP cannot access it for up to 6 weeks (the gap between 4 weeks LMP and 10 weeks LMP), and patients who seek care after 11.0 weeks LMP cannot access it for up to 4 weeks (the gap between 11 weeks LMP and 15 weeks LMP). Patients who have contraindications for medication abortion cannot access any abortion care for up to 11 weeks (the gap between 4 weeks LMP and 15 weeks LMP).

33. On April 16, about two weeks after the new policy went into effect, I received a call from representatives of DHHR asking about WHC's compliance with the Order. I told them that WHC was delaying patients as long as possible. When I asked the representatives what prompted the call, they said that the Governor's office had requested the inquiry. When I asked what would be done with the information I had shared, they said they would be sharing it with the Governor.

Harm to WHC Patients

34. I am concerned that WHC could lose its license, our staff could face civil penalties, and our physicians could lose their licenses and face civil penalties for providing abortion care. Although we have adopted an extremely restrictive policy that we believe complies with the Attorney General's interpretation of the Order, the Governor's inquiry into our clinic and the Attorney General's continued public statements indicate that WHC will be subject to increased scrutiny and our provider's decisions will not be treated with the same respect as other providers operating under the Order. Under these circumstances, WHC is at risk for even providing the small number of abortions we are currently providing. We certainly cannot take the risk of providing any abortions beyond these limits, even for patients in desperate circumstances and who face serious irreparable harm if denied timely abortion care.

35. Because most of our patients schedule procedures as early as possible in pregnancy (as health professionals recommend), the Order prohibits the vast majority of our patients from receiving timely care. For patients who are ineligible for medication abortion, the delay could be up to over two months.

36. Most patients recognize that they should schedule an abortion as early as possible. Because only a very small number of patients schedule their abortions at or near the limit for obtaining care, we had to reschedule approximately 45 of the 49 abortion appointments that patients had schedule before the Order was enacted. Before the Order, WHC had 27 patients scheduled for abortions the weeks of April 6, 12 medication abortions and 15 procedural abortions. As a result of the Order, we only saw three medication abortion patients that week. Similarly, out of all the patients who had abortion appointments scheduled last week (the week of April 13), we only saw four medication abortion patients and two procedural abortion patients.

Upon hearing that they would be denied timely care, patients were angry, confused, and upset. Some were devastated.

37. In addition to the patients we had to contact to cancel, and, if tenable, reschedule, their care since the Order went into effect, our phone counselors have spoken to approximately 46 patients attempting to schedule new appointments in April. These patients were equally distressed to learn they would be denied timely care.

38. Many patients said they believed that delaying their abortion would compromise their long-term health, but none so far have had medical conditions that, given the climate in West Virginia and the Attorney General's interpretation, our physicians felt safe asserting would fall under the Order's long-term health exception. Many patients identified economic, social and logistical reasons that they could not access care if delayed, but our clinicians do not feel safe taking these factors into account when performing the patient's case by case assessment.

39. A significant number of patients expressed the desire to seek care out of state, even though such travel can be difficult and, in current times, risky, rather than remain pregnant for weeks.

40. Based on the average number of abortion patients in April of 2017, 2018, and 2019, we would expect to provide abortion care to 105 patients this month. The vast majority of these patients—those who have been denied timely care, those who are attempting to travel out of state to obtain timely care, and those who have yet to attempt to schedule appointments—are or will be seriously and irreparably harmed by the Order.

41. The Order is indefinite; thus, we are unable to tell patients whether they might obtain care sooner than expected. However, even if the Order were lifted in May, it would be impossible for WHC to provide care for all the patients who were prevented from obtaining care

in April *and* all the patients needing new appointments in May. With our schedule reduced to allow for social distancing, we are only able to provide care to a maximum of 133 abortion patients in May 2020. If April's abortion patients—those who were not past 16 weeks—were forced to wait until May, we would expect a demand of approximately 200 patients needing care. Many of them will be further along in pregnancy and thus face higher medical costs, and therefore greater burdens. Additionally, there will be a number of patients we will have to refer out of state because they will be too far along to receive care at WHC.

42. Patients who are forced to remain pregnant against their will while the Order is in place face emotional, mental and financial distress, and medical risks. The costs of abortion increase as patients are pushed later into pregnancy. Moreover, since WHC is the only clinic in West Virginia, those patients who have the means to travel will necessarily be forced to travel out of state in the midst of a global pandemic. Many patients are unable to manage such travel under normal circumstances, but now patients face decreased travel options due to reduced transit schedules and increased risk to their health because of COVID-19.

43. For other patients, travel out of state will simply not be possible, particularly during the pandemic. Most WHC patients have low incomes and already struggle to raise the money to afford an abortion and related costs like travel and childcare. Some have been forced into even more precarious situations as the result of layoffs or reduced hours associated with COVID-19.

44. Some of these patients will not be able to overcome the obstacles imposed by the Order. Patients who have last minute changes in childcare or travel arrangements may be prevented from obtaining abortion at WHC. For patients with extremely limited means, being denied abortion in West Virginia will mean being denied abortion altogether.

45. In sum, the Order’s requirement that, until further notice, the vast majority of abortion patients must remain pregnant against their will for weeks, and in some cases months, before obtaining an abortion will not only inflict extreme and irreparable harm on our patients, it will also risk exacerbating the COVID-19 crisis—by forcing patients to either remain pregnant or travel out of state for timely abortion care, thus exposing themselves and their families to increased risk of COVID-19—thereby undermining the stated purpose of the Order.

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

Executed April 23, 2020

s/ Katie Quinonez
Katie Quinonez,
Executive Director
Women’s Health Center of West
Virginia

EXHIBIT 1

Women's Health Center of West Virginia

MEMORANDUM

To: All WHC Staff

From: Katie Quiñonez, Executive Director

RE: COVID-19

Date: March 12, 2020

As the COVID-19 outbreak evolves, Women's Health Center of West Virginia (WHC) aims to reduce exposure risks to patients and staff. Given the uncertainty of the virus, and the fact that the seasonal influenza (flu) virus is also widespread, we are taking proactive steps to address a number of concerns. First and foremost, we want to maintain a safe workplace and encourage practices of protecting the health of employees and patients.

We ask all employees to cooperate in taking steps to reduce the transmission of communicable diseases in the workplace. Please be reminded of the following:

1. Stay home if you are sick and only return to work when you are free of symptoms for 24 hours.
2. Wash hands frequently with warm, soapy water for at least 20 seconds.
3. Exercise proper cough and sneezing etiquette by coughing or sneezing into your elbow or a tissue. Discard used tissues in the trash. Tissues are available to you at your desk.
4. Clean and disinfect high touch areas frequently. Waiting room and patient areas should be disinfected more frequently than at the end of the day.
5. Clinical staff must wear gloves for all patient interactions. Change gloves and wash hands between patients.
6. Front office staff can wear gloves while taking payment or exchanging clipboards and pens with patients. Utilize alcohol-based hand sanitizer and wipes, and take time to use them between patient check-ins.
7. Ensure there are boxes of tissues in the waiting room and a bottle of hand sanitizer at the check-in window for patient use.

WHC will provide alcohol-based hand sanitizers throughout the workplace. Cleaning sprays and wipes will also be provided to clean and disinfect frequently touched objects and surfaces such as telephones and keyboards.

It is critical that employees do not report to work while they are experiencing respiratory symptoms such as fever, cough, shortness of breath, sore throat, runny or stuffy nose, body aches, headache, chills or fatigue. Currently, the Centers for Disease Control (CDC) recommends that employees remain at home until at least 24 hours after they are free of a fever (100 degrees F) or signs of a fever without the use of fever-reducing medications. Employees who report to work ill will be sent home in accordance with these health guidelines.