



June 12, 2015

VIA ECF

Lyle W. Cayce, Clerk of Court
U.S. Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130

Re: *Whole Woman's Health, et al. v. Kirk Cole, M.D., et al.*, No. 14-50928

Dear Mr. Cayce:

As counsel for Appellees and an officer of the Court, I provide the following information in response to the Court's directive of June 11, 2015.

Prior to the enactment of the challenged requirements, Texas had 41 licensed facilities providing abortion services on a regular basis. By the time of trial, that number had fallen to 20. Today, it stands at 19. The initial factor driving the reduction in abortion facilities was the admitting-privileges requirement. Shortly after its enactment, 8 facilities that could not comply ceased providing abortion services. Eleven more ceased providing abortion services after a pre-enforcement challenge to the admitting-privileges requirement was unsuccessful. Since then, several more facilities have had to cease providing abortion services permanently or during long intervals as hospitals have declined to renew their doctors' admitting privileges.

Of the 19 facilities currently providing abortion services in Texas on a regular basis, I am aware of 10 that would have to cease providing abortion services permanently and an eleventh that would have to cease providing abortion services for an indefinite period of time—likely months—if Appellees' motion for a stay were denied. In addition, a twelfth facility that is poised to reopen would be prevented from doing so.

Ten Additional Abortion Facilities Would be Forced to Close Permanently

If Appellees' motion for a stay were denied, the following 10 clinics would have to cease providing abortion services permanently because they are not able to meet the ASC requirement:

Lyle W. Cayce, Clerk of Court
 June 12, 2015
 Page 2 of 4

	<u>Facility Name</u>	<u>Facility Location</u>
1	Austin Women's Health Center	Austin
2	Hilltop Women's Reproductive Clinic	El Paso
3	Houston Women's Clinic	Houston
4	Planned Parenthood—Babcock Road	San Antonio
5	Routh Street Women's Clinic	Dallas
6	Suburban Women's Clinic NW	Houston
7	Suburban Women's Clinic SW	Houston
8	Whole Woman's Health of Forth Worth	Fort Worth
9	Whole Woman's Health of San Antonio	San Antonio
10	Women's Center of Houston	Houston

The McAllen Clinic Would be Forced to Close For an Indefinite Period of Time—Likely Months

The eleventh facility is Whole Woman's Health of McAllen. If Appellees' motion for a stay is denied, the McAllen clinic would have to comply with all aspects of the ASC requirement except 22 Tex. Admin. Code §§ 135.51-135.56 and § 135.41. It would not be possible for the facility to come into compliance with these requirements by July 1, 2015. Among other things, Whole Woman's Health would have to hire and train new nursing staff members; modify many of its existing policies, procedures, and forms; and train its existing staff on those new policies, procedures, and forms. Consequently, it would have to close for an indefinite period of time—likely months—as it attempted to achieve compliance. Further, pursuant to the Court's decision, only one of its physicians could continue to offer abortion services there, and only to women residing in four counties. As a result, if and when the McAllen clinic were able to reopen, it would only be able to provide services on a limited basis—not to the full extent of patient demand.

The El Paso Clinic Would be Prevented From Reopening

The twelfth facility is Reproductive Services of El Paso. As the parties explained in their merits briefing, this facility ceased providing abortion services on April 11, 2014, as a result of the admitting-privileges requirement, and surrendered its license on May 29, 2014, when its annual assessment was due, because the nonprofit organization that operates it could not afford to pay the required fee while not providing services. Following the Supreme Court's order of

Lyle W. Cayce, Clerk of Court
June 12, 2015
Page 3 of 4

October 14, 2014, which restored the district court's injunctions with respect to the El Paso clinic, Reproductive Services began taking the steps required for it to resume providing abortion services in El Paso, which included signing a new lease and hiring and training new staff members to replace those who had been laid off when the facility closed. On February 9, 2015, it filed an application for a new abortion facility license with the Texas Department of State Health Services ("DSHS"), together with the \$5,000 application fee. This application remains pending. Because the El Paso clinic cannot meet the ASC requirement, its licensure application will be denied unless the ASC requirement is enjoined. As a result, if Appellees' motion for a stay is granted, the El Paso clinic will be able to reopen as soon as DSHS finishes processing its application, but if the motion is denied, the El Paso clinic will be forced to remain closed.

Currently, There Are Eight ASC-Compliant Abortion Facilities in Texas

At trial, the parties stipulated that six abortion facilities—each a licensed ASC—would be able to satisfy the ASC requirement as of September 1, 2014. To the best of my knowledge, each of those six facilities is currently providing abortion services on a regular basis. In addition, the parties stipulated that Planned Parenthood had obtained an ASC license for a seventh abortion facility, located in Dallas. That facility is currently open and providing abortions on a regular basis. The parties further stipulated that Planned Parenthood had plans to open an eighth ASC-compliant abortion facility, located in San Antonio, and had announced its intention to begin offering abortion services there in September 2014. To date, Planned Parenthood has not obtained an ASC license for that facility and no abortions have been provided there.

I am aware of one other abortion facility that currently meets the ASC requirement: Alamo Women's Reproductive Services, a licensed ASC that opened in San Antonio earlier this month. The trial record includes testimony concerning the plans for this facility, *see* Designation of Deposition Testimony of Marilyn Eldridge at 105:20-107:16, but the parties did not include reference to it in any of their stipulations because, at the time, information concerning the facility was too speculative.

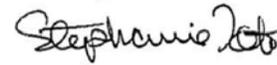
Conclusion

In sum, of the 19 facilities currently providing abortion services in Texas on a regular basis, only eight would be able to continue providing those services as of July 1, 2015, if Appellees' motion for a stay is denied. The others would be forced to cease providing abortions—the McAllen clinic for an indefinite period of time and the remaining facilities permanently. Further, denial of Appellees' motion would prevent the El Paso clinic from reopening.

Lyle W. Cayce, Clerk of Court
June 12, 2015
Page 4 of 4

Finally, given the time-sensitive nature of Appellees' motion and the likelihood that the losing party will seek relief from the Supreme Court, Appellees respectfully request that the Court rule on their motion on or before June 19, 2015. Appellees believe that a ruling by this date would permit the Supreme Court to consider the losing party's request for relief by July 1, 2015, or shortly thereafter.

Yours truly,

A handwritten signature in black ink, appearing to read "Stephanie Toti". The signature is written in a cursive, flowing style.

Stephanie Toti
Counsel for Appellees

cc: All Counsel of Record