

# **Exhibit 5**

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

SOUTH WIND WOMEN'S CENTER  
LLC, d/b/a TRUST WOMEN OKLAHOMA  
CITY, on behalf of itself, its physicians and staff,  
and its patients, et al.,

Plaintiffs,

v.

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

Defendants.

Case No. CIV-20-277-G

**DECLARATION OF JOSHUA SHARFSTEIN, M.D., IN SUPPORT OF  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Joshua Sharfstein, M.D., declare as follows:

1. I am Professor of the Practice in Health Policy and Management at the Johns Hopkins Bloomberg School of Public Health.
2. I am offering this declaration on my own behalf and not on behalf of Johns Hopkins University.
3. Prior to my current position, I served as Secretary of the Maryland Department of Health and Mental Hygiene (including during the Ebola pandemic in 2014), the Acting Commissioner and then the Principal Deputy Commissioner of the U.S. Food and Drug Administration (including during the H1N1 Flu pandemic of 2009), and Commissioner of Health for the City of Baltimore. I have been elected as a member of the

National Institute of Medicine and the National Academy of Public Administration. My complete curriculum vitae is attached.

4. My areas of teaching and research include public health crisis and response, healthcare payment, and the opioid epidemic. I teach a class entitled “Crisis and Response in Public Health Policy and Practice” and am the author of the Public Health Crisis Survival Guide: Leadership and Management in Trying Times, from Oxford University Press.

5. I am closely following the COVID-19 pandemic. I have written several articles about the pandemic in the Journal of the American Medical Association, USA Today, and the New York Times.

6. I understand that as part of its efforts to conserve personal protective equipment and hospital resources, Oklahoma has issued an executive order barring elective surgeries and minor medical procedures. Oklahoma later clarified that this order also includes “any type of abortion services.”

7. I further understand that if a patient is not able to obtain an abortion in Oklahoma while this prohibition remains in effect, they will be forced to either remain pregnant for the duration of the order or travel to another state to attempt to obtain an abortion.

8. Delaying non-essential procedures is a responsible act by public health officials and the healthcare system as a mitigation measure during a public health crisis.

However, multiple medical professional organizations,<sup>1</sup> led by the American College of Obstetricians and Gynecologists (“ACOG”), have stated that

Abortion is an essential component of comprehensive health care. It is also a time-sensitive service for which a delay of several weeks, or in some cases days, may increase the risks or potentially make it completely inaccessible. The consequences of being unable to obtain an abortion profoundly impact a person’s life, health, and well-being.

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

9. If Oklahoma is leaving to physicians the determination of whether a procedure is elective or routine, it does not make sense from a public health perspective to categorically exclude abortion services from this area of clinical judgment.

10. I am concerned that stopping abortion care will unnecessarily complicate the response to the coronavirus pandemic and, indeed, may worsen the public health crisis for three reasons.

11. First, if patients travel to attempt to obtain an abortion in another state, they will expose themselves and others they come in contact with to an increased risk of COVID-19 infection. According to a recent analysis conducted by the Guttmacher Institute, “[t]he average (median) one-way driving distance to an abortion clinic for a

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<sup>1</sup> These include: the American Association of Gynecologic Laparoscopists, the American Gynecological & Obstetrical Society, the American Society 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.

woman of reproductive age in Oklahoma would increase from 14 miles to 155 miles (or 1,007% longer) if legal abortion care in the state were shut down.”<sup>2</sup>

12. Second, I have reviewed the declaration of Dr. Gillian Schivone (Decl. of Gillian Schivone, M.D., in Supp. of Pls.’ Mot. for TRO & Prelim. Inj., attached as Ex. 4 to Pls.’ Mot. for TRO & Prelim. Inj., ECF No. 16-4) and understand from that declaration that if patients are delayed for weeks or more in obtaining an abortion, some will be required to have a two-day procedure instead of a one-day procedure, or a procedural abortion instead of a medication abortion, and that either of these changes results in the use of more personal protective equipment.

13. Third, I understand there is concern and uncertainty about whether coronavirus infection could be more severe in pregnant women. The CDC states the agency “do[es] not currently know if pregnant women have a greater chance of getting sick from COVID-19 than the general public nor whether they are more likely to have serious illness as a result. Pregnant women experience changes in their bodies that may increase their risk of some infections. With viruses from the same family as COVID-19, and other viral respiratory infections, such as influenza, women have had a higher risk of developing severe illness.”<sup>3</sup> In addition, the Oklahoma Department of Health states, “[p]regnant women experience immunologic and physiologic changes which might make them more

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<sup>2</sup> Jonathan Bearak et al., *COVID-19 Abortion Bans Would Greatly Increase Driving Distances for Those Seeking Care*, Guttmacher Institute (Apr. 2020), <https://www.guttmacher.org/article/2020/04/covid-19-abortion-bans-would-greatly-increase-driving-distances-those-seeking-care>.

<sup>3</sup> CDC, *Pregnancy and Breastfeeding FAQs* (last reviewed Apr. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html>.

susceptible to viral respiratory infections, including COVID-19.”<sup>4</sup> In other words, delaying a woman from being able to access abortion services may increase the risk for a severe infection that places her and the healthcare system at greater risk.

14. I understand that state officials are taking the position that prohibiting most or all abortion services in the state for some period of time is acceptable because services may be resumed in three or four weeks absent additional action. Given the trajectory of the pandemic, it is highly unlikely that the United States or Oklahoma will be in a substantially better position in three or four weeks. The White House recommendations for social distancing, which were extended on March 30, are in place until at least April 30 and may be extended further.<sup>5</sup> With respect to personal protective equipment, shortfalls may be anticipated to continue for several months.<sup>6</sup> It is thus foreseeable that the state will have no basis to change its position in three weeks, which will exacerbate the unintended consequences mentioned above.

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<sup>4</sup> Okla. State Dep’t of Health, *What You Should Know*, <https://coronavirus.health.ok.gov/what-you-should-know> (last accessed Apr. 6, 2020).

<sup>5</sup> Quint Forgey, *Social Distancing Guidelines Will Likely Be in Place Beyond April, Surgeon General Says*, Politico (Apr. 1, 2020, 10:28 AM), <https://www.politico.com/news/2020/04/01/jerome-adams-coronavirus-social-distancing-guidelines-158998>.

<sup>6</sup> See, e.g., Tyler Clifford, *Hospital Supplier Owens & Minor Is Expanding Capacity to Meet Personal Protective Equipment Demands*, CNBC (Mar. 27, 2020), <https://www.cnbc.com/2020/03/27/hospital-supplier-owens-minor-expanding-capacity-to-meet-ppe-demands.html> (CEO of U.S.-based hospital supplier saying that factory production is already “running 24/7” and will still need “probably 5 to 6 months” to be able to expand PPE production to meet demand); Farhad Manjoo, *How the World’s Richest Country Ran Out of a 75-Cent Face Mask*, N.Y. Times (Mar. 25, 2020), <https://www.nytimes.com/2020/03/25/opinion/coronavirus-face-mask.html> (COO of Canadian-based PPE manufacturer saying that production is already “at full capacity” and that “extending further will take anywhere between three to four months”).

15. Oklahoma has other public health measures available that are calculated to be more effective than prohibiting abortion. For example, Oklahoma has yet to impose more stringent social distancing measures equivalent to those many other states have taken and recommended by leading public health authorities, and which are showing results in reducing the number of coronavirus infections.

16. As another alternative to the current approach, Oklahoma could take steps to assure that all healthcare providers, including providers of abortion services, have specific plans to reduce spread of coronavirus infection.

17. These alternative steps would accomplish the goals of the state in the coronavirus pandemic, better than the policy at issue in this case.

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

  
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Joshua Sharfstein, M.D.

Executed on: April 8, 2020