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JANE DOE, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WHOLE WOMAN'S HEALTH;
PLANNED PARENTHOOD CENTER
FOR CHOICE; PLANNED
PARENTHOOD OF GREATER TEXAS
SURGICAL HEALTH SERVICES;
PLANNED PARENTHOOD SOUTH
TEXAS SURGICAL CENTER;
ALAMO CITY SURGERY CENTER
PLLC d/b/a ALAMO WOMEN'S
REPRODUCTIVE SERVICES;
SOUTHWESTERN WOMEN'S
SURGERY CENTER; and NOVA
HEALTH SYSTEMS, INC. d/b/a
REPRODUCTIVE SERVICES, each on
behalf of itself, its staff, physicians and
patients; and CURTIS BOYD, M.D.;
ROBIN WALLACE, M.D.; BHAVIK
KUMAR, M.D.; and ALAN BRAID,
M.D., each on behalf of himself and his
patients,

Plaintiffs,

MC CASE NO. 1:17-mc-00303

[Case No. 1:17-CV-00690-LY
Pending in the Western District of
Texas Austin Division]

***EX PARTE* MOTION FOR LEAVE
TO FILE UNDER SEAL PORTIONS
OF (1) MEMORANDUM IN
SUPPORT OF MOTION TO QUASH
DEPOSITION SUBPOENA ISSUED
BY DEFENDANTS PAXTON, ET
AL.; (2) DECLARATION OF JANE
DOE; (3) DECLARATION OF
MELISSA A. COHEN (4)
DECLARATION OF MICHAEL D.
BOPP; AND (5) EXHIBIT 1 TO THE
DECLARATION OF MICHAEL D.
BOPP; MEMORANDUM IN
SUPPORT OF *EX PARTE*
MOTION; DECLARATION OF
COUNSEL; [PROPOSED] ORDER**

vs.

KEN PAXTON, Attorney General of Texas; MARGARET MOORE, District Attorney for Travis County; NICHOLAS LAHOOD, Criminal District Attorney for Bexar County; JAIME ESPARZA, District Attorney for El Paso County; FAITH JOHNSON, District Attorney for Dallas County; SHAREN WILSON, Criminal District Attorney for Tarrant County; RICARDO RODRIGUEZ, JR., Criminal District Attorney for Hidalgo County; ABELINO REYNA, Criminal District Attorney for McLennan County; and KIM OGG, Criminal District Attorney for Harris County, each in their official capacities, as well as their employees, agents, and successors,

Defendants.

GRANTING EX PARTE MOTION FOR LEAVE TO FILE UNDER SEAL PORTIONS OF (1) MEMORANDUM IN SUPPORT OF MOTION TO QUASH DEPOSITION SUBPOENA ISSUED BY DEFENDANTS PAXTON, ET AL.; (2) DECLARATION OF JANE DOE; (3) DECLARATION OF MELISSA A. COHEN (4) DECLARATION OF MICHAEL D. BOPP; AND (5) EXHIBIT 1 TO THE DECLARATION OF MICHAEL D. BOPP; CERTIFICATE OF SERVICE

TRIAL DATE: None Set

EX PARTE MOTION FOR LEAVE TO FILE UNDER SEAL PORTIONS OF (1) MEMORANDUM IN SUPPORT OF MOTION TO QUASH DEPOSITION SUBPOENA ISSUED BY DEFENDANTS PAXTON, ET AL.; (2) DECLARATION OF JANE DOE; (3) DECLARATION OF MELISSA A. COHEN (4) DECLARATION OF MICHAEL D. BOPP; AND (5) EXHIBIT 1 TO THE DECLARATION OF MICHAEL D. BOPP

Nonparty Jane Doe, M.D. (“Dr. Doe”), by and through her attorneys, Goodsill Anderson Quinn & Stifel, LLP, a Limited Liability Law Partnership, hereby moves this Honorable Court, *ex parte*, for leave to file under seal portions of: (1) the Memorandum in Support of Motion to Quash Deposition Subpoena Issued by Defendants Paxton, et al. (the “Motion to Quash”) and supporting

documents, filed simultaneously herewith, that would divulge the identity of Dr. Doe.¹ In particular, Dr. Doe moves to seal the following pages, all of which contain personal information related to Dr. Doe that could identify her:

- Memorandum in Support of Motion to Quash: pages iii, 2-8
- Declaration of Jane Doe: page 1-5
- Declaration of Melissa A. Cohen: pages 2-3
- Declaration of Michael D. Bopp: pages 3-6
- Exhibit 1 to the Declaration of Michael D. Bopp (the Third Party Subpoena to Dr. Doe): page 5.

Good cause exists for filing those portions of the above-documents under seal because of the risk of harm to Dr. Doe if her name were to be publicly associated with the underlying Texas litigation in which Dr. Doe is otherwise uninvolved but for Defendants' issuance of a third-party deposition subpoena to her (which she simultaneously seeks to quash).

This *ex parte* motion for leave to file under seal is made pursuant to Rules 7.2 and 83.12 of the Local Rules of Practice for the United States District Court for the District of Hawaii, Rules 6(c) and 7(b) of the Federal Rules of Civil Procedure, and is based upon the accompanying declarations of Jane Doe, M.D.,

¹ Redacted versions of the Motion to Quash and supporting documents are being filed on the public docket.

Melissa A. Cohen, and Michael D. Bopp, the records and files in this case, and such further evidence and arguments that might be presented on this matter.

DATED: Honolulu, Hawai'i, October 23, 2017.

/s/ Nicole Y. Altman

LISA WOODS MUNGER

NICOLE Y. ALTMAN

Attorneys for Nonparty JANE DOE, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

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behalf of itself, its staff, physicians and
patients; and CURTIS BOYD, M.D.;
ROBIN WALLACE, M.D.; BHAVIK
KUMAR, M.D.; and ALAN BRAID,
M.D., each on behalf of himself and his
patients,

Plaintiffs,

vs.

KEN PAXTON, Attorney General of
Texas; MARGARET MOORE, District
Attorney for Travis County; NICHOLAS
LAHOOD, Criminal District Attorney
for Bexar County; JAIME ESPARZA,
District Attorney for El Paso County;
FAITH JOHNSON, District Attorney for
Dallas County; SHAREN WILSON,
Criminal District Attorney for Tarrant
County; RICARDO RODRIGUEZ, JR.,
Criminal District Attorney for Hidalgo
County; ABELINO REYNA, Criminal

MC CASE NO. 1:17-mc-00303

[Case No. 1:17-CV-00690-LY
Pending in the Western District of
Texas Austin Division]

**MEMORANDUM IN SUPPORT OF
EX PARTE MOTION**

District Attorney for McLennan County;
and KIM OGG, Criminal District
Attorney for Harris County, each in their
official capacities, as well as their
employees, agents, and successors,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION

Nonparty Jane Doe, M.D. is an obstetrician-gynecologist who provides, among other medical services, abortion procedures. Given her professional activities, Dr. Doe has recently been subjected to numerous death threats and other forms of harassment.

Defendants have issued a subpoena in connection with a litigation pending in the United States District Court for the Western District of Texas (the “Texas Litigation”), Defendants issued a subpoena commanding Dr. Doe to appear for deposition on October 26, 2017. The Texas Litigation presents a constitutional challenge to a Texas law by Texas Healthcare providers that provide second-trimester abortions. Dr. Doe does not practice in Texas and has no involvement in the Texas Litigation other than having been served with a deposition subpoena.

Because Dr. Doe is not involved in the Texas Litigation and has no relevant firsthand knowledge, simultaneously herewith, Dr. Doe is filing a motion to quash that subpoena (the “Motion to Quash”), on the grounds of undue burden and because it seeks unretained expert testimony. Given the significant risk of

harm to Dr. Doe and her family in being publicly associated with the Texas Litigation Dr. Doe seeks leave to file under seal those portions of the Motion to Quash and supporting documents that could identify her.

I. ARGUMENT

When applying to seal materials in connection with a non-dispositive discovery motion that is only tangentially related to the merits of a case, the moving party need only make a showing of “good cause” for the sealing. *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1101 (9th Cir. 2016) (holding that “public access to filed motions and their attachments . . . will turn on whether the motion is more than tangentially related to the merits of a case”); *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006) (distinguishing the “good cause” standard from the higher threshold “compelling reasons” standard applied to justify sealing records in connection with dispositive motions). In such cases, “the public has less of a need for access to court records,” *Kamakana*, 447 F.3d at 1179-80, and thus the court has “carved out an exception” to the “strong preference for public access” by applying the “good cause” standard. *Ctr. for Auto Safety*, 809 F.3d at 1097. The “good cause” standard “comes from Federal Rule of Civil Procedure 26(c)(1), which governs the issuance of protective orders in the discovery process,” and allows a district court to “issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue

burden or expense” upon a showing of good cause. *Id.*; Fed. R. Civ. Pro. 26(c)(1). This standard “gives this district court much flexibility in balancing and protecting the interests of private parties.” *Kamakana*, 447 F.3d at 1180.

The Motion to Quash is the quintessential type of “unrelated, or only tangentially related, to the underlying cause of action” filing for which the “good cause” standard is appropriate. *Id.* at 1179. The Texas Litigation is brought by Texas Healthcare providers that allege that Texas Senate Bill 8 violates their patients’ constitutional rights to an abortion. Dr. Doe does not practice in Texas and has no connection to the Texas Litigation other than having been served with a deposition subpoena. Accordingly, she brings a Motion to Quash to protect herself from being compelled to provide deposition testimony in a case in which she has no involvement, no relevant factual knowledge, and would risk being put in physical danger if she were required to participate. (Declaration of Jane Doe, M.D. ¶¶ 4-5; Declaration of Melissa Cohen ¶¶ 3-9, 11.)²

That risk of physical danger to Dr. Doe provides ample “good cause” to seal the portions of the Motion to Quash and supporting documents insofar as they could identify Dr. Doe. That risk is not merely hypothetical. The protection of Dr. Doe’s identity is of paramount importance given recent prior history of

² The Declarations of Jane Doe, M.D., and Melissa Cohen, are being filed concurrently herewith in support of Dr. Doe’s Motion to Quash. Both declarations contain confidential information that could divulge the identity of Dr. Doe. (Altman Decl. ¶ 3.)

harassment and death threats to Dr. Doe resulting from her profession as a physician and obstetrician-gynecologist who provides, among other medical services, abortion procedures, as detailed in her accompanying declaration. (Doe Decl. ¶¶ 1, 7-16.) Public association with the underlying Texas Litigation—a challenge to a statute of a state in which Dr. Doe does not practice, in litigation to which she is not a party and has no other connection—poses a legitimate and significant risk of re-opening the wounds from these prior events and threatening the security of Dr. Doe and her family. Good cause therefore exists to keep Dr. Doe’s name and identity out of these proceedings by sealing the portions of the Motion to Quash and supporting documents that identify her on the following pages:

- Memorandum in Support of Motion to Quash: pages iii, 2-8
- Declaration of Jane Doe: page 1-5
- Declaration of Melissa A. Cohen: pages 2-3
- Declaration of Michael D. Bopp: pages 3-6
- Exhibit 1 to the Declaration of Michael D. Bopp (the Third Party Subpoena to Dr. Doe): page 5.

II. CONCLUSION

For the foregoing reasons, Dr. Doe respectfully requests that the *Ex Parte* Motion for Leave to File Under Seal be granted in its entirety.

DATED: Honolulu, Hawai‘i, October 23, 2017.

/s/ Nicole Y. Altman

LISA WOODS MUNGER

NICOLE Y. ALTMAN

Attorneys for Nonparty JANE DOE, M.D.

IN THE UNITED STATES DISTRICT COURT
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REPRODUCTIVE SERVICES, each on
behalf of itself, its staff, physicians and
patients; and CURTIS BOYD, M.D.;
ROBIN WALLACE, M.D.; BHAVIK
KUMAR, M.D.; and ALAN BRAID,
M.D., each on behalf of himself and his
patients,

Plaintiffs,

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KEN PAXTON, Attorney General of
Texas; MARGARET MOORE, District
Attorney for Travis County; NICHOLAS
LAHOOD, Criminal District Attorney
for Bexar County; JAIME ESPARZA,
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MC CASE NO. 1:17-mc-00303

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**DECLARATION OF NICOLE Y.
ALTMAN**

District Attorney for McLennan County;
and KIM OGG, Criminal District
Attorney for Harris County, each in their
official capacities, as well as their
employees, agents, and successors,

Defendants.

DECLARATION OF NICOLE Y. ALTMAN

I, NICOLE Y. ALTMAN, declare as follows:

1. I am an attorney with the law firm of Goodsill Anderson Quinn & Stifel LLP, duly licensed to practice law in the State of Hawaii and in the United States District Court for the District of Hawaii, representing Nonparty Jane Doe, M.D. (“Dr. Doe”) in *Whole Woman’s Health, et al. vs. Ken Paxton, et al.*, Case No. 1:17-cv-00690-LY, which is pending in the Western District of Texas Austin Division. I make this declaration based upon information gained in that capacity and am competent to testify as to the matters herein.

2. All of the facts stated herein are true and correct and within my personal knowledge, except for matters stated to be true on information and belief, and as to those matters, I believe them to be true. If called and sworn I could and would testify to the truth thereof.

3. Submitted simultaneously with this *ex parte* Motion for Leave to File Under Seal are true and correct copies of (1) Memorandum in Support of Motion to Quash Deposition Subpoena Issued by Defendants Paxton, et al.; (2)

Declaration of Jane Doe; (3) Declaration of Melissa A. Cohen; (4) Declaration of Michael D. Bopp; and (5) Exhibit 1 to the Declaration of Michael D. Bopp. All of these documents contain highly confidential personal information that would divulge the identity of Nonparty Jane Doe, M.D.

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

DATED: Honolulu, Hawai'i, October 23, 2017.

/s/ Nicole Y. Altman
NICOLE Y. ALTMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

WHOLE WOMAN'S HEALTH;
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**[PROPOSED] ORDER GRANTING
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MELISSA A. COHEN (4)
DECLARATION OF MICHAEL D.
BOPP; AND (5) EXHIBIT 1 TO THE
DECLARATION OF MICHAEL D.
BOPP**

District Attorney for McLennan County;
and KIM OGG, Criminal District
Attorney for Harris County, each in their
official capacities, as well as their
employees, agents, and successors,

Defendants.

**[PROPOSED] ORDER GRANTING *EX PARTE* MOTION FOR
LEAVE TO FILE UNDER SEAL PORTIONS OF (1) MEMORANDUM
IN SUPPORT OF MOTION TO QUASH DEPOSITION SUBPOENA ISSUED
BY DEFENDANTS PAXTON, ET AL.; (2) DECLARATION OF JANE DOE;
(3) DECLARATION OF MELISSA A. COHEN; (4) DECLARATION
OF MICHAEL D. BOPP; AND (5) EXHIBIT 1 TO THE
DECLARATION OF MICHAEL D. BOPP**

Nonparty JANE DOE, M.D.’s *Ex Parte* Motion for Leave to File

Under Seal Portions of (1) Memorandum in Support of Motion to Quash

Deposition Subpoena Issued by Defendants Paxton, Et Al.; (2) Declaration of Jane

Doe; (3) Declaration of Melissa A. Cohen; (4) Declaration of Michael D. Bopp;

and (5) Exhibit 1 to the Declaration of Michael D. Bopp (the “Motion for Leave to

File Under Seal”), the Court having been fully apprised on the premises, and good

cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
Motion for Leave to File Under Seal is hereby GRANTED. The following shall be
sealed as requested:

- Memorandum in Support of Motion to Quash: pages iii, 2-8
- Declaration of Jane Doe: page 1-5
- Declaration of Melissa A. Cohen: pages 2-3
- Declaration of Michael D. Bopp: pages 3-6
- Exhibit 1 to the Declaration of Michael D. Bopp (the Third Party Subpoena to Dr. Doe): page 5.

DATED: Honolulu, Hawai‘i _____.

Whole Woman’s Health, et al. vs. Ken Paxton, et al. – 1:17-mc-00303 [Case No. 1:17-CV-00690-LY - Pending in the Western District of Texas Austin Division]

[PROPOSED] ORDER GRANTING *EX PARTE* MOTION FOR LEAVE TO FILE UNDER SEAL PORTIONS OF (1) MEMORANDUM IN SUPPORT OF MOTION TO QUASH DEPOSITION SUBPOENA ISSUED BY DEFENDANTS PAXTON, ET AL.; (2) DECLARATION OF JANE DOE; (3) DECLARATION OF MELISSA A. COHEN (4) DECLARATION OF MICHAEL D. BOPP; AND (5) EXHIBIT 1 TO THE DECLARATION OF MICHAEL D. BOPP

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CERTIFICATE OF SERVICE

and KIM OGG, Criminal District
Attorney for Harris County, each in their
official capacities, as well as their
employees, agents, and successors,

Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below
service of a copy of the foregoing document was made upon the parties below via
U.S. PRIORITY MAIL EXPRESS, postage prepaid, addressed as follows:

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DATED: Honolulu, Hawai'i, October 23, 2017.

/s/ Nicole Y. Altman

LISA WOODS MUNGER
NICOLE Y. ALTMAN

Attorneys for Nonparty JANE DOE, M.D.