

Abortion Provider Fears Prosecution After Alabama Covid-19 Order

DANIEL JACKSON April 6, 2020

(CN) — Ever since the federal government indicted Dr. Yashica Robinson in 2014 on charges claiming she engaged in health care fraud when she purchased misbranded intrauterine devices, the Alabama obstetrician and gynecologist believes she is singled out because she performs abortions.

Testifying in federal court Monday, Robinson said the charges were dismissed after her attorney's argued the government engaged in selective prosecution because other health care providers also purchased the devices.

But the experience makes her believe she would not be treated with the same deference as other physicians during the response to the Covid-19 pandemic.

In an effort to save as many masks and other personal protective equipment ahead of an expected surge of the coronavirus, the state [ordered](#) all medical



Protesters rally on the Alabama Capitol steps in 2019 over a law that made abortion a felony in nearly all cases with no exceptions for cases of rape or incest. (AP Photo/Butch Dill)

procedures, all dental work and all surgeries to be rescheduled until April 30, unless the procedure is necessary to treat an emergency medical condition, or to avoid “serious harm” from an underlying condition or part of a patient’s ongoing treatment.

While the state health officer for Alabama testified the order was intentionally vague to allow for the discretion of medical professionals, Robinson said she fears Alabama’s orders restricting nonessential medical procedures may open her up to prosecution if law enforcement believes abortions are not medically necessary.

Robison said she has “significant concerns” about whether her medical judgment will be “treated with

respect,” compared to the judgment of other physicians.

The physician spoke at an evidentiary hearing Monday presided over by Senior U.S. District Judge Myron Thompson in the Middle District of Alabama. Thompson, a Jimmy Carter appointee, will decide whether or not to issue an order permanently preventing Alabama from using its order to stop three abortion clinics in the state from performing the procedure during the Covid-19 epidemic.

It is a question rapidly developing across the country as states snap down stay-at-home orders: How far do emergency powers go in restricting and postponing the procedure during a health crisis?

Sixteen states filed an amicus brief into this case, just as they did in a similar case in Texas.

The court conducted the hearing with as much effort as possible to imitate a normal court proceeding, but the gallery consisted of a conference call feeding a stream of sometimes muffled audio, polluted with beeping sounds and nameless voices. The court directed the parties, who appeared via teleconference, to dress for court, drink only water and keep pets away.

After Alabama issued its order March 27, attorneys for the abortion clinics reached out to the Alabama Department of Public Health to ask if abortion was an

essential procedure under the emergency order. Their request was referred to Alabama's Office of the Attorney General.

According to the abortion clinics' [complaint](#) three days later, the Attorney General signaled at least some abortions would be criminal acts, per the emergency order, because they did not fall within the exceptions.

Canceling some of her abortion procedures over the unanswered questions, Robinson asked the court to weigh in on the reach of the state's order, filing the request in a lawsuit that challenged the constitutionality of Alabama's 2019 law severely restricting the procedure.

Thompson issued a temporary restraining [order](#) on March 30.

Under questioning by Meagan Burrows, an attorney with the Reproductive Freedom Project of the American Civil Liberties Union, Robinson said anti-abortion activists have used the coronavirus in an attempt to shut down the Alabama's Women's Center.

They called the local health department and took to social media to implore others to lobby Alabama's governor and the attorney general to use the emergency to close the doors of the abortion provider in Huntsville, Alabama, Robinson said.

During his cross examination of Robinson, Alabama Assistant Attorney General Brad Chynoweth pointed out it was the federal government – not the state nor activists – that brought Robinson’s prosecution for purchasing misbranded IUDs.

“The protesters have a lot of power and influence over the state officials that do have the power to bring a prosecution,” Robinson said.

In response to the coronavirus, Robinson said she got reusable, washable masks for her staff. They take the temperature of the patients who walk through their doors and limit guests to a minor’s parent or a non-native speaker’s translator. Gone are the magazines from the waiting room.

Robinson testified that the Covid-19 epidemic is tough for her patients. One, an employee at Waffle House, had her hours cut down one day a week. Others may struggle to juggle childcare because kids are out of school.

Robinson testified she has pushed off procedures such as hysterectomies and sterilizations. But abortion, she said, is different.

As the days and weeks go by, the risk of complications to pregnancies and abortion procedures rise.

“Delay increases the risk of harm to patients,” she said.

As Chynoweth questioned her, Robinson admitted some abortions could be put off for a short period of time.

She also said during cross examination she would postpone an abortion if a patient showed up to her clinic displaying the symptoms of Covid-19.

“If the risk outweighs the benefit, then it is reasonable to postpone,” Robinson said.

Earlier in the hearing, Dr. Scott Harris, state health officer, testified it is possible that it would take three to four months after the first cases popped up for the spike to pass and the number of Covid-19 cases in the state to subside.

As the hearing ended, Thompson said he wanted both sides to submit proposed orders, due at 8 a.m. Wednesday morning.

“I do want to get this out as quickly as I can,” Thompson said.

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