

Politics

# Federal judge grants restraining order, allows Alabama abortion clinics to stay open amid COVID-19

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By [Abbey Crain | acrain@al.com](#)

A federal judge has granted a temporary restraining order allowing Alabama abortion clinics to continue providing abortions during the COVID-19 crisis.

United States District Judge Myron Thompson, the same judge who blocked Alabama's abortion ban from going into effect in Nov. 2019, ordered in a court filing Monday night that the March 27th order by the Alabama Department of Public Health postponing non-emergency medical procedures would not apply to abortion clinics.

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“Despite the serious conditions described by defendants and the dire need for medical equipment across the United States, the benefits of some potential increase in the availability of equipment (some of which may be ill-suited to the task of disease containment) do not outweigh the serious, and, in some cases, permanent, harms imposed by the denial of an individual’s right to privacy.” Judge Myron

harm imposed by the denial of an individual's right to privacy, Judge Myron Thompson wrote in a court filing.

The temporary restraining order will last until April 13, 2020, at 5:00 p.m., when the court will reconsider the order in light of defendants' responses.

The American Civil Liberties Union of Alabama earlier Monday had filed an emergency request in federal court to prevent Alabama from using the the COVID-19 pandemic to prevent people from obtaining an abortion.

Representing Dr. Yashica Robinson, an abortion care provider in Huntsville and three independent abortion clinics, the ACLU of Alabama challenged the Alabama Department of Public Health's notice on March 27 mandating the postponement of all surgical and medical procedures not necessary to treat an "emergency medical condition" or "avoid serious harm from an underlying condition."

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The motion also seeks a temporary restraining order blocking the state from shutting down abortion services.

The plaintiffs believe the language used in the mandate would allow abortions to be performed, but as of Sunday, Attorney General Steve Marshall "refused to provide any further guidance as to how it is interpreting the scope of the order other than to make plain that in its view some—and perhaps most—abortions are not permitted," according to the court filing.

Because of the current interpretation of the ADPH guidelines, abortion clinics in Alabama have already been forced to start cancelling abortions scheduled for today, March 30. According to the court filing, if a court does not enter an injunction by 8 p.m. providers will be forced to cancel the more than 20 abortions scheduled for Tuesday, including one patient who will be pushed past the legal limit for abortion in

necessity, including the patient and those present past the regulation for abortion in Alabama.

“Government response to the spread of COVID-19 must be grounded in science and public health, not politics,” said Alexa Kolbi-Molinas, senior staff attorney at the ACLU Reproductive Freedom Project, in an emailed press release. “As leading medical experts have recognized, abortion is essential, time-sensitive health care. Alabama’s attempts to prevent patients from accessing abortion care does nothing to slow the spread of COVID-19, it just stops people from getting this essential care.”

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According to the court brief counsel for the plaintiffs talked to the counsel for the Alabama Department of Public Health on March 20 to confirm that the order to limit medical procedures was not intended to apply to abortions.

“The public health order currently in effect statewide does not require the full closure of any business, and even in Jefferson County, where “non-essential” businesses have been ordered closed, clinics in general are still open as essential,” Arrol Sheehan, director of public information at ADPH, said in an emailed statement to [AL.com](#) on March 25.

But on March 27, the State Public Health Officer issued a second amended order to postpone all medical or surgical procedures until further notice.

Alabama Attorney General Steve Marshall said Alabama abortion clinics will not be exempt from the March 27th ADPH order postponing all non-emergency surgical procedures.

“At a time when all Americans are making significant sacrifices to prevent the spread of the COVID-19 virus, it is remarkable that one class of providers demands to be treated differently than all others,” Marshall said in a press release. “Abortion clinics want an exemption, yet they are by no means exempt from the known risks of spreading the virus in crowded waiting rooms, depleting scarce personal protective

spreading the virus in crowded waiting rooms, depleting scarce personal protective equipment that should be reserved for those treating the virus, and transferring patients with complications to already overburdened hospitals.”

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Marshall also announced he is [joining an amicus brief](#) supporting Texas and Ohio as the two states attempt to outlaw abortion during the COVID-19 crisis.

Sixteen states, including Arkansas, Idaho, Indiana, Kentucky, Mississippi, Missouri, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah and West Virginia, signed an amicus brief in support of Alabama prohibiting abortions during the COVID-19 crisis to conserve personal protective equipment for the treatment of coronavirus patients.

Alabama voted to ban nearly all abortions, including pregnancies due to rape and incest, in May 2019. A [federal judge blocked the ban from going into affect](#) until after a lawsuit brought on by Planned Parenthood and the ACLU of Alabama played out in the courts.

Candace O’Brien, healthcare services programs manager for the Yellowhammer Fund, a reproductive rights organization in Alabama, said there has been an influx of people calling the fund seeking abortions because of job loss and financial instability amid the COVID-19 pandemic.

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“Declaring that abortion is not an essential healthcare service or that it can be put on hold for a few weeks or longer in the same way an elective surgery can be is both factually inaccurate and grossly cruel to those facing an unwanted pregnancy,” O’Brien said. “Unlike true elective procedures, an abortion cannot be put off indefinitely without adding health risks to the patient or hitting legal limitations enforced by the government.”

AL.com reached out to ADPH for clarification of the March 27 order, but has yet to receive a response.

[ACLU of Alabama V. Steve Marshall](#) by [Abbey Crain](#) on Scribd

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

YASHICA ROBINSON, M.D., et al.,

Plaintiffs,

v.

STEVEN MARSHALL, et al.,

Defendants.

CIVIL ACTION

Case No. 2:19-cv-365-MHT-JTA

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS’ EMERGENCY MOTION  
FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTIVE  
RELIEF**

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Yashica Robinson, M.D., Alabama Women’s Center, Reproductive Health Services, and West Alabama Women’s Center, on behalf of themselves and their patients, their clinic administrators, physicians, and staff, move for a temporary restraining order, followed by a preliminary injunction, to enjoin the application of the State Public Health Officer’s March 27, 2020 emergency order insofar as it prohibits pre-viability abortions in Alabama. *See* Scott Harris, M.D., M.P.H., State Health Officer, “Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19,” Mar. 27, 2020 (“March 27 Order”), attached to Pls.’ Supplemental and Partially Verified Compl. for Declaratory and Injunctive Relief as Ex. B.

Because of Defendants’ interpretation of the March 27 Order, Plaintiffs have already been forced to start cancelling abortions scheduled for today (March 30, 2020). **If this Court does not enter an injunction by 8:00 p.m. today (March 30, 2020), Plaintiffs will be forced to start**

**The CDC has recommended limiting contact with people to slow the spread of COVID-19. Outside of your household, how many people have you been physically within 6 feet of in the past week.**

0 (I rarely or never left my home)

1-5 (eg. I picked up food and paid the cashier or someone was in my space when I was walking)

6-10 (eg. I got close to several people in a grocery store and some other errands)

More than 10 (eg. I am not monitoring how close I get to people or I work in a high contact situation in an essential job)

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