

PLANNED PARENTHOOD OF HOUSTON §
AND SOUTHEAST TEXAS, INC. and §
PLANNED PARENTHOOD OF SOUTHEAST §
TEXAS SURGICAL AND COMPREHENSIVE §
HEALTH SERVICES, INC. §

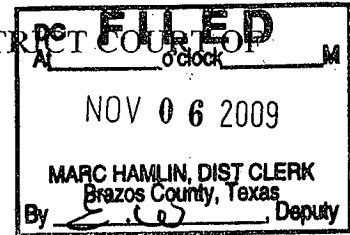
Plaintiffs, §

VS. §

ABBY JOHNSON and the BRAZOS VALLEY §
COALITION FOR LIFE, §

Defendants. §

IN THE DISTRICT COURT OF



BRAZOS COUNTY, TEXAS

85TH JUDICIAL DISTRICT

DEFENDANTS' ORIGINAL ANSWER, MOTION TO DISSOLVE TEMPORARY
RESTRAINING ORDER AND RESPONSE TO APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TEMPORARY INJUNCTION

TO THE HONORABLE JUDGE OF SAID COURT:

ABBY JOHNSON and the BRAZOS VALLEY COALITION FOR LIFE, Defendants in the above-styled and numbered cause, file this Original Answer, Motion to Dissolve Temporary Restraining Order and Response to Application for Temporary Restraining Order and Temporary Injunction and show the following:

I.
GENERAL DENIAL

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants assert a general denial to the allegations contained in Plaintiff's Verified Original Petition and Application for Temporary Restraining Order and Temporary Injunction ("Planned Parenthood's Petition") and demand strict proof thereof by a preponderance of the credible evidence.

II.

Defendants reserve the right to amend or supplement their Answer.

III.

REQUEST FOR DISCLOSURE

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Plaintiff is requested to disclose, within thirty (30) days after service of this request upon Plaintiff's counsel, the information or material described in Rule 194.2 (a) through (k).

IV.

FACTUAL BACKGROUND

Planned Parenthood of Houston and Southeast Texas, Inc. is a Texas non-profit corporation believed to be engaged in the business of providing family planning, reproductive and contraceptive counseling and related services. Plaintiff Planned Parenthood of Southeast Texas Surgical and Comprehensive Health Services, Inc. is a for profit corporation engaged in the business of providing abortions to expectant mothers (Plaintiff's are hereinafter collectively referred to as "Planned Parenthood"). Planned Parenthood operates a satellite clinic in Bryan, Texas, where Defendant Abby Johnson worked for eight years, the last two of which she worked as the Bryan clinic's director.

The Brazos Valley Coalition for Life (hereinafter the "Coalition"), formed in 1998, is a community based Christian pro-life organization made up of over 60 churches and thousands of individuals who are working to end abortion in the Brazos Valley, peacefully and prayerfully.

The non-profit arm of Planned Parenthood's business was struggling under the weight of a tough economy, and changed its business model from one that pushed prevention, to one that focused on abortion. Johnson, who was named the 2008 employee of the year for Planned

Parenthood's southeast Texas region, was told in August 2009 by Planned Parenthood's regional director to bring in more women who wanted abortions. Abortions are far more lucrative than any other service provided by Planned Parenthood. When Johnson protested and expressed a strong desire to promote more family planning and prevention services, the attitude shown towards her by the regional director and other superiors deteriorated, and Johnson's work at the clinic became more difficult. Johnson decided to leave her employment with Planned Parenthood when she was asked to participate or assist in an ultrasound guided abortion procedure.

Abby Johnson left Planned Parenthood and joined the Coalition's pro-life efforts. The Coalition assisted Abby Johnson in finding new employment. Apparently horrified by the prospect of Abby Johnson using her conversion story to assist the Coalition and other pro-life groups in their efforts to end abortion, Planned Parenthood filed its petition falsely claiming that "Johnson copied confidential personnel files and gave them to employees" (*Petition at ¶9, p.3*); "Johnson has disclosed the confidential information that she removed from Plaintiffs' offices in Bryan" (*Petition at ¶11, p.3*); and that Johnson might even disclose "information about [Planned Parenthood's] employees, clients, and service providers to the public . . ." (*Petition at ¶15, p.4*). For added measure, the petition further attempts to sensationalize an imminent harm—that such disclosure by Abby Johnson will somehow subject the unnamed employees, clients, and service providers "to protests, harassment, and perhaps physical violence from groups and individuals that oppose [Planned Parenthood's] activities." (*Petition at ¶15, p.4*).

V.
DEFENDANTS' MOTION TO DISSOLVE TRO

The Temporary Restraining Order is, in fact, an order granting a temporary restraining order. Defendants have not been served with, or even provided a copy of, a writ of temporary restraining order and therefore conclude that such writ has not issued. The TRO was granted ex parte but fails, at least with any degree of specificity, to explain why it was granted without notice; it does not define the injury it was designed to prevent nor explain why such injury would be irreparable. Rule 680 requires that “[e]very temporary restraining order granted without notice shall . . . define the injury and state why it is irreparable and why the order was granted without notice” Tex. R. Civ. P. 680; *see also* Rule 683 (“Every . . . restraining order . . . shall be specific in terms”). The TRO, presumably drafted by Planned Parenthood’s counsel and signed by the Court and filed on October 30, 2009, is lacking in all these respects and is conclusory. The requirements of Rule 683 are mandatory and must be strictly followed. *Quest Comm. V. AT&T Corp.*, 24 S.W.3d 334, 337 (Tex. 2000). An injunction order that does not comply with Rule 683 is subject to being declared void and dissolved. *Id.*

Moreover, Rule 684 of the Texas Rules of Civil Procedure requires that before the TRO may issue, the applicant must file a bond “with two or more good and sufficient sureties, to be approved by the clerk . . . conditioned that the applicant will abide the decision which may be made in the cause, and that he will pay all sums of money and costs that may be adjudged against him if the restraining order . . . shall be dissolved in whole or in part.” Tex. R. Civ. P. 684.

VI.
RESPONSE TO APPLICATION FOR INJUNCTIVE RELIEF

A. Standard for Injunctive Relief

In order to obtain the requested injunctive relief, Planned Parenthood must plead and prove three specific elements: "(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim." *TMC Worldwide, L.P. v. Gray*, 178 S.W.3d 29, 36 (Tex. App.—Houston [1st Dist.] 2005, no writ) (citing *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002)). Plaintiff cannot establish these elements, and the TRO signed by this Court on February 3, 2009 should be dissolved and the request for a temporary injunction denied.

B. Planned Parenthood can prove no valid cause of action against Defendants.

While it may be true that a former employee may not appropriate her employer's trade secrets or carry away confidential information, there is no cause of action for misappropriation of information that is not either secret, or at least substantially secret. *Abetter Trucking Co. v. Arizpe*, 113 S.W.3d 503, 512 (Tex. App.—Houston [14th Dist.] 2003, no writ); *Stewart & Stevenson Servs., Inc. v. Serv-Tech, Inc.*, 879 S.W.2d 89, 99 (Tex. App.—Houston [14th Dist.] 1994, writ denied). Thus, in order to support a claim for misappropriation of confidential information, Planned Parenthood must first and foremost prove that the information about which it complains is in fact "confidential." *Stewart & Stevenson Servs.*, 879 S.W.2d at 99; *Numed v. McNutt*, 724 S.W.2d 432, 435 (Tex. App.—Fort Worth 1987, no writ). To determine whether information shall be considered confidential, or protected as a trade secret, courts typically analyze the following six factors:

- (1) the extent to which the information is known outside the claimant's business;
- (2) the extent to which the information is known by employees and others involved in the claimant's business;
- (3) the extent of the measures taken by the claimant to guard the secrecy of the information;
- (4) the value of the information to the claimant and to its competitors;
- (5) the amount of effort or money expended by claimant in developing the information; and
- (6) the ease or difficulty with

which the information could be properly acquired or duplicated by others.

In re Bass, 113 S.W.3d 735, 739 (Tex. 2003).

Planned Parenthood's petition fails to identify with any degree of reasonable certainty what information it contends Abby Johnson stole and how it's confidential. Through several vague and unfounded assertions strewn across nine pages of an original petition, Planned Parenthood claims that Abby Johnson has taken or is in possession of several items of "confidential information" belonging to Planned Parenthood, yet is purposefully vague in stating exactly what the information is. For example, Planned Parenthood claims that Ms. Johnson "had access to all the health center's confidential information" (*Petition at ¶9, p.3*); "copied confidential personnel files and gave them to employees" (*id.*); "has disclosed the confidential information that she removed from "Planned Parenthood's] offices" (*id. at ¶11*); "told a nurse practitioner who works for [Planned Parenthood] that she had given the nurse practitioner's resume, with her home address and telephone number, to the Coalition" (*id. at ¶12*); that "[Planned Parenthood's] records contain sensitive confidential information, such as clients' medical records and information about doctors who provide birth control and family planning services that are opposed by [the Coalition] and other groups" (*¶14, p.4*); and that "[Planned Parenthood's] clients and these doctors and other service providers will be in serious danger if this information is disclosed." (*id. at ¶15*).

The closest description of *any* information allegedly taken by Abby Johnson from Planned Parenthood is a nurse practitioner's resumé (*Petition at ¶12, p.3*) and the *identity* of "[a] physician who works in another city but occasionally provides [abortion] services at [Planned Parenthood's] Bryan location" (*id. at ¶11*). Such information, even if possessed by Abby

Johnson, is hardly akin to the *Coca Cola*® recipe and is not confidential or entitled to trade secret protection. To be considered confidential, the information cannot be publicly available or readily ascertainable by independent investigation. *See Numed v. McNuff*, 724 S.W.2d 432, 435 (Tex. App.—Fort Worth 1987, no writ) (refusing to classify pricing structure, customer lists, and marketing research as trade secrets when evidence showed much of this information was distributed to customers, which in turn could be discovered by anyone).

Planned Parenthood's petition fails to identify with any specificity at all a single client whose medical record has been taken, a single employee whose confidential personnel file has been breached, or any other confidential document, report or trade secret that's been taken and inappropriately disclosed to a third party to the detriment of Planned Parenthood. Planned Parenthood's request for injunctive relief that purports to broadly prohibit the disclosure of ALL information Abby Johnson ever encountered while on the job goes well beyond the confines of proprietary information, business secrets, confidential client files and other secret information deemed worthy of protection.

Planned Parenthood's artfully worded claims for breach of contract, conversion and tortious interference all fail without pleading and proof that Defendant's took or even possess protectable confidential information.

C. **There is no probable, imminent, and irreparable injury that can be shown in this case.**

Planned Parenthood's bald fear or apprehension of the *possibility* of injury is not sufficient; Planned Parenthood must prove Defendants have attempted or intend to harm Planned Parenthood. *Jones v. Jefferson County*, 15 S.W.3d 206, 213 (Tex. App.—Texarkana 2000, writ denied); *EMSL Analytical, Inc. v. Younker*, 154 S.W.3d 693, 697 (Tex. App.—Houston [14th

Dist.] 2004, no writ). Texas law does not prohibit an employee from using her general knowledge, skill, and experience acquired during employment once that employment is terminated. *See Numed v. McNutt*, 724 S.W.2d 432, 434 (Tex. App.—Fort Worth 1987, no writ); *Executive Telecommunication Sys., Inc. v. Buchbaum*, 669 S.W.2d 400, 403 (Tex. Civ. App.—Dallas 1984, no writ).

The fact that Abby Johnson is now a friend of the Coalition or even that she visits the Coalition's office and talks to Coalition employees is not grounds for injunctive relief. To the contrary, Planned Parenthood must prove that *harm is imminent* and that Abby Johnson and the Coalition *will* engage in prohibited activity unless immediately enjoined. *See Frey v. DeCordova Bend Estates Owners Ass'n*, 647 S.W.2d 246, 248 (Tex. 1983) (holding that the fear or apprehension of the possibility of injury is not a basis for injunctive relief); *Camp v. Shannon*, 162 Tex. 515, 348 S.W.2d 517, 519 (Tex. 1961) (explaining that injunction should not issue on mere surmise of injury); *Transport Co. v. Robertson Transports, Inc.*, 152 Tex. 551, 261 S.W.2d 549, 552 (Tex. 1953) (requiring showing of a "probable injury" if respondent not restrained).

Moreover, the bare fact of an employee leaving employment and choosing another viewpoint is not sufficient to justify injunctive relief. Planned Parenthood has no evidence other than the fact that Abby Johnson is a former employee who now disagrees with the mission and work of Planned Parenthood. Court intervention and *ex parte* restraining orders are not appropriate every time a professional changes employment. Planned Parenthood's request for injunctive relief is pursued solely to punish and intimidate former employees against expressing non-confidential opinions that might be contrary to Planned Parenthood's political positions and as such is an abuse of the legal system.

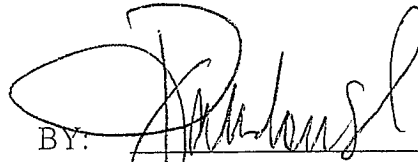
Finally, Plaintiffs' assertions that alleged disclosures by Johnson may subject Planned Parenthood to "protests" and "harassment" from "groups and individuals that oppose [Planned Parenthood's] activities" is an invitation to this Court to restrain First Amendment protected activity on the part of Johnson and the Coalition. Activity by the Coalition in praying for an end to abortion on the public ways in front of Planned Parenthood's facility, informing the public about the reality of abortion and what it does to women and unborn infants, and counseling women considering abortion to choose life for their unborn children, is core First Amendment protected activity that cannot be enjoined by this Court.¹ See *Mississippi Women's Medical Clinic v. McMillan*, 866 F.2d 788 (5th Cir. 1989).

WHEREFORE, PREMISES CONSIDERED, Defendants pray that the Temporary Restraining Order signed by this Court on October 30, 2009 be dissolved, that Plaintiff's application for temporary injunction be denied in all things and that judgment be entered in favor of Defendants, for costs of court, attorney's fees, and for such other and further relief, both legal and equitable, to which Defendants may be entitled.

Respectfully submitted,

LAW OFFICES OF W. JEFF PARADOWSKI, P.C.

¹ Planned Parenthood's intimation that Defendants, or those associated with them, may subject Planned Parenthood's employees, clients and service providers to unlawful "harassment, and perhaps physical violence" is a scurrilous and irresponsible assertion that Planned Parenthood offer no factual basis for whatsoever. The Coalition for Life peacefully and prayerfully prays and actively works to end abortion in the Brazos Valley. It has never employed or countenanced unlawful or violent means against abortion providers, and Planned Parenthood has no evidence to the contrary.



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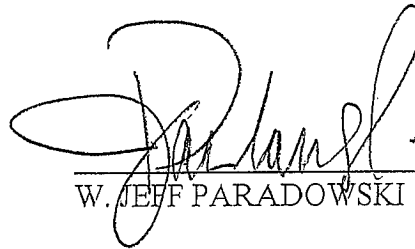
ATTORNEY FOR DEFENDANTS
ABBY JOHNSON and the BRAZOS VALLEY
COALITION FOR LIFE

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 6th day of November, 2009, a true and correct copy of the foregoing Defendant's Original Answer, Motion to Dissolve Temporary Restraining Order and Response to Application for Temporary Restraining Order and Temporary Injunction was served via facsimile upon the following counsel:

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