

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

PLANNED PARENTHOOD )  
SOUTHEAST, INC., et al., )

*Plaintiffs,* )

v. )

CIVIL ACTION NO.  
2:13-cv-405-MHT-TFM

LUTHER STRANGE, in his )  
official capacity as Attorney General of )  
the State of Alabama, et al., )

*Defendants.* )

**DEFENDANTS’ PRE-TRIAL BRIEF**

The Court directed the defendants to file a trial brief that explains how the defendants believe the facts are likely to fit with this Court’s view of the law as expressed in its opinion denying summary judgment to both parties. *See* Doc. 146. The plaintiffs’ substantive due process claim, which they bring on behalf of their patients, asserts that Section 4(c) of HB 57 has an unconstitutional effect and an unconstitutional purpose. This brief is the fifth legal brief the defendants have filed on this claim, and the defendants expressly incorporate those other briefs. *See* Docs. 41, 107, 123, 135. The defendants also incorporate their numbered statement of undisputed material facts filed in support of summary judgment, which they expect to establish at trial, and which they have attached to this filing in redacted form for the court’s convenience.

## DISCUSSION

### I. The defendants should win on the effects claim

With respect to the effects aspect of plaintiffs' claim, the Court has held that it must "determine whether, examining the regulation in its real-world context, the obstacle [presented by the law] is more significant than is warranted by the State's justifications for the regulation." Doc. 146 at 45. Under the court's formulation of the legal standard,<sup>1</sup> the plaintiffs will fail to establish that HB57 is unconstitutional.

#### A. The evidence will show that the staff privileges requirement serves the State's interest and confers substantial benefits.

The Court instructed the parties to provide evidence at trial that addresses "the extent of" and the "likelihood of the anticipated benefit" from HB57. Doc. 146 at 54-55. The defendants' evidentiary presentation will focus on these issues.

##### 1. The evidence will show that staff privileges enhance continuity of care, are important for credentialing, and provide other benefits.

Most of the defendants' case at trial will be of the same kind, and come from some of the same witnesses, that led the Fifth Circuit to reverse a trial court's finding that Texas's similar law was unconstitutional. *See Planned Parenthood of*

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<sup>1</sup> The defendants respectfully disagree with the court's formulation of the legal test, as explained in their prior briefing. The Supreme Court "has given state and federal legislatures wide discretion to pass legislation" furthering their legitimate interests, and medical uncertainty itself "provides a sufficient basis" to reject a facial challenge to an abortion-related regulation. *Gonzales v. Carhart*, 550 U.S. 124, 163-164 (2007). *See also Mazurek v. Armstrong*, 520 U.S. 968, 973 (1997) (per curiam) (upholding a restriction despite the respondents' contention that "all health evidence contradicts the claim that there is any health basis for the law").

*Greater Texas Surgical Health Services v. Abbott*, --- F.3d ----, 2014 WL 1257965 at \*5 (5th Cir. 2014) (recounting testimony from Dr. Thorp).

The evidence will show that abortion, like any other medical procedure, can be risky to the patients who request it. Potentially life-threatening, post-abortion complications include infection and profuse bleeding. The evidence will also show that the plaintiffs' patients are treated for complications at local hospitals several times a year.

Dr. John Thorp, Jr., of the University of North Carolina, will testify that the staff-privileges requirement has several patient benefits. It (a) provides a more thorough evaluation mechanism of physician competency which better protects patient safety, (b) acknowledges and enables the importance of continuity of care, (c) enhances inter-physician communication and optimizes patient information transfer and complication management, and (d) supports the ethical duty of care for the operating physician to prevent patient abandonment.

Dr. James C. Anderson of the Medical College of Virginia will provide testimony akin to Dr. Thorp's. He will explain that he believes that HB 57 helps ensure continuity of care and facilitates physician-to-physician communication. Dr. Anderson will explain that allowing a physician to perform an elective procedure and then not expecting the physician to manage complications encourages patient abandonment and is not the standard of care that is in the patient's best interest. For example, when Dr. Anderson has treated emergency-room patients for abortion-related complications in the past, the clinics' failures to convey information about

their patients' histories created time delays that were not in the patients' best interests.

Dr. Geoffrey Keyes is the head of the American Association of Accreditation of Ambulatory Surgery Facilities, Inc., which is the largest not-for-profit accrediting organization in the United States for ambulatory surgery centers. He will testify that the staff privileges requirement is a reasonable and prudent provision to address patient safety issues, and conforms to national accreditation standards. He will testify that the requirement that physicians performing abortions must have hospital staff privileges at a local hospital maintains continuity of care, enhances inter-physician communication, decreases the likelihood of medication errors and misdiagnosis, and maximizes patient safety.

The testimony of the defendants' witnesses will find support even among abortion providers. The administrator of the Tuscaloosa clinic will testify by either deposition or live testimony that it is preferable for an abortion patient to see a doctor with privileges as opposed to a doctor without privileges. The administrator of the Huntsville clinic will testify by either deposition or live testimony that his clinic advertises the fact that the clinic's doctors have privileges. And the evidence will show that the National Abortion Federation, which is a trade association of abortion clinics, at one time advised prospective abortion patients that they should "[m]ake sure the person performing the abortion has these qualifications . . . In the case of emergency, the doctor should be able to admit patients to a nearby hospital

(no more than 20 minutes away).” National Abortion Federation, *Having an Abortion? Your Guide to Good Care* (2000).

The plaintiffs’ witnesses will assert that staff privileges are “completely unnecessary, if not irrelevant” for patient care. *See* Doc. 173 at 11 & 10-13. But that testimony cannot be squared with the actions of state and federal regulators, ambulatory surgical centers, and accrediting agencies. The evidence will show that the Department of Public Health developed a regulatory staff-privileges requirement because it concluded that staff privileges assist in patient care and continuity of care. Similarly, the evidence will show that the federal centers for Medicaid and Medicare require ambulatory surgical centers to be staffed by physicians with privileges, unless the surgery center has a transfer agreement with a hospital. Jeff Hayes, the head of the Alabama Ambulatory Surgical Center Association, and other witnesses will testify by deposition that ambulatory surgical centers that perform elective procedures routinely require all of their associated doctors to have staff privileges.

The testimony of plaintiffs’ expert witnesses will also be unpersuasive because these witnesses are biased. They are *all* related to, and financially supported by, the abortion-clinic industry, which is the industry fighting the health-and-safety regulation at issue in this case. For example, Dr. Paul Fine has worked for Planned Parenthood since the 1980s, is the medical director of Planned Parenthood Gulf Coast in Texas, serves on Planned Parenthood’s National Medical Committee, and personally performs about 200 abortions a year. Dr. Mary Roe,

who plaintiffs' purport to call as an expert witness, is not only the medical director of the plaintiff Planned Parenthood Southeast, but she is one of the abortion doctors who would be compelled by HB 57 to obtain staff privileges.

Finally, the evidence will show, contrary to plaintiffs' assertions (Doc. 173 at 12), that the State has a legitimate need for additional credentialing for abortion doctors. There are immediate reasons to question the competence and ethics of at least two of the five doctors (40%) who work for plaintiffs as well as their employees more generally. Dr. A is currently being sued for malpractice arising from his misdiagnosis of a patient at a Birmingham abortion clinic. Dr. P2 is currently being prosecuted by the federal government for Medicaid fraud. And Planned Parenthood's Birmingham clinic was recently closed after an employee of Planned Parenthood unlawfully sold prescription drugs in the clinic's parking lot.

**2. The evidence will show that plaintiffs' practices are substandard in the abortion industry and as compared to other medical providers.**

The evidence will show that plaintiffs' doctors remain in the city of a clinic for as few as six hours, perform scores of elective procedures, and then leave. They automatically transfer the care of their patients to outside physicians, and their patients *must* go to the emergency room for care for complications. The defendants' experts will testify that this is a substandard practice. Dr. George C. Smith, the head of the Alabama Board of Medical Examiners, will testify by either deposition or as a live witness that plaintiffs' policies do not adhere to standard medical practice for elective procedures. Instead, it is standard medical practice for a physician to provide continuity of care to his or her own patients. Similarly,

administrators from other clinics in Alabama that are staffed with physicians with staff privileges at local hospitals will testify live or by deposition that they do not follow the practice of referring patients to an emergency room for effectively all follow-up care.

The plaintiffs say that the evidence at trial will show that Alabama has “singled out doctors who provide abortions,” (Doc. 173 at 13), but the evidence at trial will actually undermine the plaintiffs’ attempt to compare the practices of abortion clinics with the practices of other medical providers. The plaintiffs will produce no evidence that any, much less a plurality, of other health care providers employ itinerant physicians to perform elective procedures. The plaintiffs will produce no evidence that ambulatory surgery centers are staffed by physicians without staff privileges or that other physicians in Alabama who perform elective procedures do so without having staff privileges at local hospitals. The evidence will show that there are reasons to be concerned about the quality of care provided by abortion clinics that are not present with other kinds of healthcare facilities.

**3. The evidence will show that plaintiffs do not make use of their covering physicians, fragmenting care despite DPH’s current staff-privileges rule.**

The evidence will also show that the plaintiffs do not make use of the covering physicians that they contract with to meet DPH’s pre-existing staff-privileges requirement. The doctors at plaintiffs’ clinics do not regularly contact or consult with the local physicians with whom the clinics contract. And women with complications have continued to seek medical care at local emergency rooms for

abortion-related complications, without the assistance of these covering physicians, even though DPH enacted its staff-privileges requirement.

**B. The evidence will show that the staff-privileges requirement will not be a substantial burden on women who seek an abortion.**

When weighing the benefits of the law against its burdens, the Court instructed the parties that it would consider “the nature and circumstances of the women affected by the regulation,” “the availability of abortion services, both prior to and under the challenged regulation,” and “the kinds of harms created by the regulation.” Doc. 146 at 48-50. The defendants’ evidentiary presentation will address these issues.

**1. The evidence will establish that the plaintiffs will likely be able to comply with HB 57 but, if they cannot, it will be because they cannot provide continuous care with qualified physicians.**

The Court held at summary judgment that there is a genuine dispute of material fact about “whether current abortion doctors at the three plaintiff clinics will be able to gain admitting privileges at local hospitals.” Doc. 146 at 68. The evidence at trial will show either (1) that one cannot adequately predict whether a particular doctor can or cannot obtain privileges at a particular hospital or (2) that plaintiffs’ doctors can likely obtain privileges. The evidence will show that two of plaintiffs’ doctors, Dr. B and Dr. P2, both had privileges in two cities at the same time. The evidence will show that two of plaintiffs’ other doctors, Dr. Roe and Dr. A, have had privileges at Alabama hospitals in the past. The evidence will not show that there is anti-abortion prejudice on the part of hospitals that would cause them not to grant privileges. Finally, the evidence will show that Planned Parenthood is



actively expanding its range of services beyond abortion because UAB has suggested that such an expansion would make doctors at Planned Parenthood even more likely to get privileges.

The evidence at trial will also show that, to the extent plaintiffs' current physicians cannot obtain privileges at a particular hospital, it is because they cannot provide continuous care. All the expert witnesses will agree that is it important for doctors to provide continuous care to post-operative patients. The defendants expect witnesses from hospitals to testify that, if plaintiffs' doctors cannot obtain privileges, it will be because they cannot meet hospital requirements designed to ensure that physicians provide continuous care to patients. Requiring doctors to be able to provide continuous care to their patients is a benefit, not a burden, of HB 57.

**2. The evidence will show that plaintiffs can comply with HB 57 in other ways.**

The Court also held that there is a dispute of fact about "whether the plaintiff clinics can find other doctors who can gain" staff privileges. Doc. 148 at 68. The evidence will show that plaintiffs can comply with HB 57 in ways other than requiring their current doctors to obtain privileges.

First, the evidence will establish that there is support in Alabama's medical community for the provision of abortion services. This evidence will come from several witnesses and is largely undisputed. Dr. Roe first began working with Planned Parenthood because doctors at UAB encouraged her to. Dr. Roe and Dr. A were local doctors at one time. Dr. Payne, Dr. P2, and Dr. H1 are current local

doctors who perform abortions. Other local doctors were performing abortions at Planned Parenthood as recently as 2012. Doctors who used to work for Planned Parenthood currently work at UAB. The plaintiffs all have a covering physician in the local area, and most of these physicians are volunteering their time. The unpaid, volunteer covering physician for Planned Parenthood in Mobile has performed an abortion for the clinic before.

Second, the evidence will establish that there is no shortage of abortion doctors. The plaintiffs have been paying their abortion doctors roughly the same price per abortion for a long time, which is less than doctors are paid for performing comparable procedures. The evidence will show that the plaintiffs presently rely on a small pool of part-time doctors who are ideologically motivated to provide abortions, even if they do not need additional income. Despite the plaintiffs' assertions that doctors in Alabama refuse to provide abortions because of violence or other non-economic considerations, there will be no Alabama doctor who testifies that violence or other non-economic considerations prevented him or her from performing abortions.

Finally, the evidence will show that the abortion market can change to accommodate new health-and-safety regulations. Dr. Peter Uhlenberg will testify that the experience from other states that have similar laws, such as Texas and Tennessee, indicates that the abortion market can respond to regulatory changes. The evidence will show that in the past, June Ayers, the administrator of RHS, did not think she would be able to comply with DPH's staff-privileges regulations, but

she was, in fact, able to comply. And, when Planned Parenthood closed its clinic in Birmingham, the evidence will show that Planned Parenthood fired, and intends to replace, its entire clinic staff except for its physicians.

The plaintiffs will present testimony from themselves and unqualified experts to the effect that they cannot hire physicians for a market wage, but this testimony will be unpersuasive. For example, plaintiff June Ayers' supposed "efforts to reach out to every single OB/GYN in Montgomery" (Doc. 173 at 4) consist of a single form letter, which offered no compensation, that she mailed ten years ago to a list of OB/GYN's in preparation for a lawsuit over DPH's staff-privileges regulation. One of plaintiffs' supposed experts on this point, a retired FBI agent named Margie Moore, is no expert at all. Doc. 173 at 4. She is not a doctor, a labor market expert, or even an abortion-clinic manager, and she has no expertise or knowledge with respect to the employment decisions of Alabama's abortion clinics or Alabama doctors. *See* Doc. 135 at 25-26 (explaining that Moore's testimony cannot be considered under Rule 702). The plaintiffs' other expert, Dr. Lori Freedman, also expresses opinions about the effect of abortion violence on doctors, but she is not a doctor herself and her opinions are supported only by her interviews of the plaintiffs. *See* Doc. 135 at 27-30. The defendants have filed a separate pre-trial memorandum explaining in greater detail why Moore's and Freedman's testimony should not be considered under Rule 702 and *Daubert*.

- 3. The evidence will also show that the closure of plaintiffs' clinics will (1) put women in the same position as women in other states and (2) will not impose unreasonable travel distances accounting for clinic locations in neighboring states.**

Even if the plaintiffs stop providing abortions, HB 57 will not present a substantial obstacle to women in Alabama.

First, the evidence will show that two clinics in Alabama have physicians with privileges at a local hospital. The evidence will show that substantially more patients choose those clinics over the plaintiffs' clinics.

Second, the evidence will show that the closure of plaintiffs' clinics will impose no greater burden on women in Alabama than plaintiffs' own clinic-location decisions have imposed on women in other states. Planned Parenthood operates clinics in Georgia as well as Alabama, but it has clustered its abortion clinics in the Atlanta area such that women in Macon are approximately 80 miles from the nearest clinic. Other women in Georgia cities are even further away from an in-state clinic, and others are closer to clinics in Florida than to any in-state clinic. The evidence will also show that, when Planned Parenthood temporarily closed its clinic in Birmingham, it advised women to visit its clinics in Georgia and Mobile instead of the closer, non-Planned Parenthood clinic, in Tuscaloosa.

Third, the evidence will show that the plaintiffs actively compete with out-of-state clinics for patients and routinely refer patients across state lines to be treated at other clinics. Dr. Uhlenberg will explain that, if the abortion clinic in Mobile did in fact close, a Mobile resident could travel 56 miles to Pensacola, Florida to obtain an abortion at American Family Planning of Pensacola. Similarly, a Montgomery

resident desiring an abortion could travel 84 miles to the Columbus Women's Health Organization in Columbus, Georgia. If abortion clinics in Montgomery, Birmingham and Mobile were to close, women in any of these cities would need to travel less than 90 miles to the nearest abortion provider. *See Abbott*, 2014 WL 1257965 at \*11 ("an increase of travel of less than 150 miles for some women is not an undue burden under *Casey*").

On this point, the plaintiffs will present unpersuasive, internally inconsistent, and methodologically unreliable testimony from expert witnesses. *See* Doc. 173 at 8-9. For example, Dr. Stanley Henshaw and Dr. Sheila Katz both base their opinions on the assumption that, if plaintiffs stop providing abortions, women in Mobile and Montgomery would choose to travel a greater distance to an in-state abortion clinic in Tuscaloosa or Huntsville, instead of visiting closer clinics in neighboring states. Neither expert will be able to identify any "real-world" reason for making this assumption. Moreover, the assumption contradicts the referral and advertising practices of plaintiffs' clinics, as well as the plaintiffs' patient base. As Planned Parenthood's medical director explained, "the patients we care for usually will come from out of state or from two, three hours away from the clinic. So they could be anywhere in the state." (Mary Roe Depo 93:19-22).

Finally, like their other experts, plaintiffs' experts on this point are simply not credible. For example, Dr. Henshaw is employed by the Guttmacher Institute, which was founded and is funded by Planned Parenthood, he serves on the board of the National Abortion Federation, which is an abortion industry trade association,

and he has won awards for “promoting the availability of abortion services” from abortion industry groups that sell and market abortion-inducing devices.

## **II. The defendants should win on the purpose claim**

The plaintiffs cannot prove that HB 57 has an unlawful purpose. Despite the defendants’ arguments to the contrary,<sup>2</sup> this Court has held that a “law with the purpose of placing a substantial obstacle before a woman seeking an abortion would be unconstitutional even if it does not necessarily achieve that goal.” Doc. 141 at 80. The Court has instructed the parties that it will evaluate the purpose of HB 57 by applying the factors set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). Those factors include (1) the impact of the challenged decision; (2) the historical background of the official action; (3) the specific sequence of events leading up to the state action, including departures from normal procedures in making decisions; and (4) the legislative history where there are contemporary statements made by the governmental body who created the official action.

Under *Arlington Heights*, the plaintiffs lose. The evidence at trial will establish that the Legislature was reasonably concerned about the care provided by abortion clinics. Because abortion clinics were not providing appropriate follow-up

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<sup>2</sup> The defendants respectfully reassert and preserve their arguments that they are due judgment as a matter of law on this claim because, among other reasons, (1) a law is not unconstitutional merely because it is intended to be a substantial obstacle if it is not in fact a substantial obstacle and (2) in evaluating legislative purpose under *Casey*, the court should focus on the expressed purpose of the statute in its text, which is the only official statement of the legislative majority that enacted the law.

and post-procedure care to patients, the Department of Public Health imposed a rule that required abortion doctors to have staff privileges at a hospital unless the clinic had a contractual cross-coverage agreement with an OB/GYN doctor with staff privileges at a hospital. The evidence at trial will show that abortion clinics have continued to fail to provide appropriate care to their patients in line with industry standards and have not regularly used a contracted OB/GYN to provide follow-up care. As part of a package of reforms with the express intent to protect women's health, the Legislature strengthened DPH's pre-existing requirement for staff privileges along with other pre-existing DPH requirements. The bill was passed against the backdrop of the high-profile case of Kermit Gosnell, an abortion doctor who was prosecuted for unsafe practices that threatened women's health. *E.g. Planned Parenthood of Wisconsin, Inc. v. Van Hollen*, 738 F.3d 786 (7th Cir. 2013) (Manion, J., concurring) (recounting Gosnell scandal). The proponents of this measure in the Legislature identified women's health as the primary goal of the bill, which is also the stated goal in the title, legislative findings, and purpose section of the bill. The defendants' experts will testify that the law does, in fact, further the goal of women's health. At trial, the plaintiffs will fail to establish that the law's purpose was to "plac[e] a substantial obstacle before a woman seeking an abortion."

**III. The evidence will underscore that plaintiffs' substantive due process claim is not ripe and they do not have standing to make it.**

The defendants believe that the evidence at trial will establish that the effects of HB 57 are, at most, uncertain. The evidence at trial will not allow the court to confidently predict the contingent future actions of third-party hospitals,

such that the court will be able to conclude whether or why hospitals would deny privileges to plaintiffs' doctors (e.g. Dr. P2 could be denied privileges because she has been criminally indicted, as opposed to for any reason that plaintiffs assert). The evidence at trial will thus underscore that the Court should not entertain this facial, pre-enforcement challenge. See *Gonzales*, 550 U.S. at 168 ("The considerations we have discussed support our further determination that these facial attacks should not have been entertained in the first instance."); *A Woman's Choice-East Side Women's Clinic v. Newman*, 305 F.3d 684, 693 (7th Cir. 2002) ("[I]t is an abuse of discretion for a district judge to issue a pre-enforcement injunction while the effects of the law (and reasons for those effects) are open to debate.").

The evidence at trial will also establish that the plaintiffs lack standing to bring this claim on behalf of their patients. It will highlight the conflict of interest between businesses, which refuse even to attempt to comply with a health-and-safety regulation, and their customers, which are the intended beneficiaries of the health-and-safety regulation.

Respectfully submitted,

/s/ Andrew L. Brasher

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### Certificate of Service

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon all counsel of record on this day the 13<sup>th</sup> of May, 2014.

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**DEFENDANTS' STATEMENT OF UNDISPUTED FACTS  
IN SUPPORT OF SUMMARY JUDGMENT (REDACTED)**

Defendants Luther Strange, Ellen Brooks, Brandon Falls, Ashley Rich, and Donald Williamson respectfully file the following Statement of Undisputed Facts in support of their contemporaneously-filed motion for summary judgment. Each numbered fact cites to exhibits attached to Defendants' contemporaneously-filed Evidentiary Submission in Support of Summary Judgment ("Exh. \_\_\_") and/or to documents that are otherwise in the court record ("Doc. \_\_\_").

1. All plaintiffs' clinics advise their prospective abortion patients of a risk of death and a risk of hospitalization. Exh. 18 (Fox Depo) 69-70; Exh. 15 (Ayers Depo) 39:2-10.
2. Potential complications from abortion include an incomplete abortion (also known as retained products), fever, excessive bleeding, infection, and puncture of abdominal or uterine wall. Exh. 20 (Dr. A Depo) 46:18-48:14; Exh. 2 (Anderson Report) 14-18; Exh. 3 (Thorp Report) ¶20.
3. Continuity of care is the most important thing to ensure a good outcome for a patient with complications. Exh. 19 (Roe Depo) 64:19-23; Exh. 2 (Anderson Report) ¶7.
4. The plaintiffs' clinics generally perform abortion procedures one or two days a week. Exh. 17 (Brooks Depo) 24:2-8; Exh. 15 (Ayers Depo) 13:18-20.
5. Doctors who perform abortions at plaintiffs' clinics generally arrive in the metropolitan area of the clinic on the day of the procedures or the evening before the procedures. Exh. 15 (Ayers Depo) 77-78; Exh. 19 (Roe Depo) 17:17-18:3.
6. Doctors who perform abortions at plaintiffs' clinics generally leave the metropolitan area of the clinic the day of the procedures, after as little as four to six hours. Exh. 15 (Ayers Depo) 77-78; Exh. 19 (Roe Depo) 17:17-18:3; Exh. 16 (Buchanan Depo) 26-27 & errata sheet.
7. There were 9,523 abortions performed in Alabama during 2012. Doc. 42-2 (Donald Affidavit).
8. The American College of Surgeons proscribes itinerant surgery because surgeons have a moral, ethical, and legal obligation to give patients upon whom they have operated their personal attention, and to attend their patients postoperatively. Exh. 3 (Thorp Report) ¶46.

9. The rules promulgated by the Alabama Board of Medical Examiners to govern office-based surgery are intended to resolve problems that arise with respect to doctors who reside where they perform surgery. Exh. 12 (Smith Depo) 72:4-12.
10. It would concern the Alabama Board of Medical Examiners if physicians left the state after performing office-based surgery because that would make it more difficult to treat complications and provide follow-up care. Exh. 12 (Smith Depo) 71-72.
11. It is common for ambulatory surgical centers in Alabama to require that affiliated doctors maintain staff privileges at a local hospital. Exh. 10 (Hayes Depo) 81:11-23; 75:7-20; 76:2-15; 107:3-7; Exh. 6 (Hayes Declaration); Exh. 11 (Williamson Depo) 52-53; Exh. 12 (Smith Depo) 36:7-14.
12. The federal government, through the Centers for Medicare and Medicaid Services, requires that all doctors who perform procedures at an ambulatory surgical center have staff privileges at a local hospital, unless the center has a patient-transfer agreement with a local hospital. Exh. 2 (Anderson Report) ¶3; Exh. 10 (Hayes Depo) 88:18-89:13.
13. The National Abortion Federation is a trade association of abortion clinics that is concerned about making abortion services available as much as possible. Exh. 22 (Henshaw Depo) 26.
14. In 2000, the National Abortion Federation advised women seeking an abortion to “[m]ake sure the person performing the abortion has these qualifications . . . In the case of emergency, the doctor should be able to admit patients to a nearby hospital (no more than 20 minutes away).” Exh. 2 (Anderson Suppl. Report) ¶ 7; Exh. 22 (Henshaw Depo) 153-55.
15. It is the expert opinion of Dr. James Anderson that requiring abortion-performing physicians to have hospital staff privileges helps ensure that abortion-performing physicians are qualified. Exh. 2 (Anderson Report) ¶¶3, 7.
16. It is the expert opinion of Dr. James Anderson that the requirement that physicians performing abortions must have hospital staff privileges helps to ensure continuity of care and facilitates physician-to-physician communication. Exh. 2 (Anderson Report) ¶¶8, 10, 19-20.
17. It is the expert opinion of Dr. James Anderson that Alabama Administrative Code 420-5- 1.03(6)(b), which requires that an abortion clinic “have a valid written contract with an outside covering physician,” is insufficient and substandard because “transfer of care” should not be the “norm.” Exh. 2 (Anderson Report) ¶37.

18. It is the expert opinion of Dr. Geoffrey Keyes that the requirement that physicians performing abortions must have hospital staff privileges at a local hospital is “a reasonable and prudent provision to address patient safety issues, and conforms to national accreditation standards for ambulatory surgical centers (ASC).” Exh. 1 (Keyes Report) ¶6.
19. It is the expert opinion of Dr. Geoffrey Keyes that the requirement that physicians performing abortions must have hospital staff privileges at a local hospital maintains continuity of care, enhances inter-physician communication, decreases the likelihood of medication errors and misdiagnosis, and maximizes patient safety. Exh. 1 (Keyes Report) ¶10.
20. Physicians at ambulatory surgical centers accredited by the American Association of Accreditation of Ambulatory Surgery Facilities, Inc. must hold hospital privileges at an acute care hospital in the area of the facility, unless they fall within an exception. Exh. 1(Keyes Report) ¶¶ 2, 7.
21. The American Association of Accreditation of Ambulatory Surgery Facilities, Inc. is the largest not-for-profit accrediting organization in the United States. Exh. 1 (Keyes Report) ¶ 2.
22. It is the expert opinion of Dr. John Thorp that the requirement that physicians performing abortions must have hospital staff privileges at a local hospital (a) “provides a more thorough evaluation mechanism of physician competency which better protects patient safety,” (b) “acknowledges and enables the importance of continuity of care,” (c) “enhances inter-physician communication and optimizes patient information transfer and complication management,” and (d) “supports the ethical duty of care for the operating physician to prevent patient abandonment.” Exh. 3 (Thorp Report) ¶22.
23. It is the expert opinion of Dr. John Thorp that “women would be safer and better served driving greater distances to ensure their terminations are performed by licensed facilities with credentialed and privileged providers than seeking terminations at more convenient but substandard ones.” Exh. 3 (Thorp Report) ¶44.
24. When Texas first enacted a law requiring abortion clinics that performed abortions beyond 15 weeks in the gestational cycle to be certified as ambulatory surgical centers, no abortion clinic qualified. Exh. 4 (Uhlenberg Report) ¶7.
25. Four abortion clinics qualified in Texas within three years of the law going into effect. Exh. 4 (Uhlenberg Report) ¶7.
26. It is the expert opinion of Dr. James Anderson that Alabama abortion clinics will be able to comply with HB57’s privileges requirement, because when the appellate courts allowed Texas’s staff-privileges law to go into effect, at least

- one clinic that had sued over the law reopened after its physicians received staff privileges. Exh. 2 (Anderson Suppl. Report) ¶6.
27. After a Tennessee law requiring all physicians who perform abortions to have admitting privileges at a hospital in the same county or an adjacent county took effect in July 2012, only one of the nine clinics in the state closed. Exh. 4 (Uhlenberg Report) ¶6.
  28. A decrease in the number of abortion providers in a State does not necessarily result in a decrease in the abortion rate. Although the number of abortion providers in Alabama declined from 13 in 2005 to 8 in 2008, the abortion rate increased from 11.9 to 12.0. Exh. 4 (Uhlenberg Report) ¶ 16.
  29. Conversely, decreasing the distance to obtain an abortion does not necessarily increase abortion rates in a State. In 2008, the distance Iowa women had to travel to obtain a medical abortion decreased dramatically when Planned Parenthood in Des Moines allowed its doctors to dispense abortion pills to women using a video-conferencing system. Notwithstanding this increased access, the number of abortions in Iowa declined by 30 percent between 2007 and 2012 (from 6,649 to 4,648). Exh. 4 (Uhlenberg Report) ¶16.
  30. In the public debate in Iowa over whether to ban doctors from remotely dispensing abortion pills, Jill June, President of Planned Parenthood of the Heartland, predicted a ban would have little effect on the abortion rate. An article in *USA Today* quoted her as saying “Women will walk over hot coals to end a pregnancy that from their perspective is going to destroy their life.” Exh. 4 (Uhlenberg Report) ¶16.
  31. If abortion clinics in Montgomery, Birmingham, and Mobile were to close, women in any of these cities would need to travel less than 90 miles to the nearest presently operating abortion clinic. Exh. 4 (Uhlenberg Report) ¶17.
  32. Assuming a woman seeks an abortion within Alabama instead of going to the closest presently operating clinic, closure of the abortion clinics in Montgomery, Birmingham, and Mobile would add, at most, \$684.28 to the cost of an abortion for a woman. Exh. 23 (Katz Depo) at 98, 105-106.
  33. The plaintiffs’ experts can think of no reason why crossing a state line would be an independent impediment (beyond travel distance) to a woman in Alabama seeking an abortion. Exh. 23 (Katz Depo) 70-72, 97; *see also* Exh. 22 (Henshaw Depo) 126:5-18.
  34. If the clinic in Mobile closes, it is unreasonable to assume that Mobile women seeking an abortion would travel to Tuscaloosa rather than traveling to Pensacola. Exh. 22 (Henshaw Depo) 130:17-23.

35. “In general, [women seeking an abortion] would probably go to the nearest city with an abortion facility, assuming they could find out about it.” Exh. 22 (Henshaw Depo) 131:5-7.
36. OB/GYN practitioners in Alabama are paid around \$400 by insurance companies to perform a dilation and curettage (D&C). Exh. 7 (Duggar Declaration) ¶2.
37. An Alabama abortion clinic’s license was suspended in 2006 because ADPH determined that a patient presented to an abortion center where non-physician staff performed an ultrasound, informed the patient she was six weeks pregnant, and administered drugs for a medical abortion; the patient presented days later to a hospital emergency room, where she delivered a stillborn, macerated, six-pound, four ounce baby. Exh. 26 (Geary Declaration) (Summit Medical Center, Birmingham - 2006).
38. RHS’s license was suspended in 2006 because ADPH found that a patient presented to a hospital emergency room with complications following an abortion and neither the physician that had performed the abortion, nor a contracted back-up physician with local hospital staff privileges, were available to care for the patient when emergency-room staff called the center. Exh. 26 (Geary Declaration) (Reproductive Health Services, Montgomery – 2006).
39. An Alabama abortion clinic agreed to relinquish its license in 2010 when ADPH cited it for, among other things, delayed responses to patients’ calls reporting post-operative complications. Exh. 26 (Geary Declaration) (Beacon Women’s Center, Montgomery – 2010).
40. An Alabama abortion clinic was forced to close in 2012 when it was cited by ADPH for, among other things, failing to respond to patients’ calls, failing to document communications with hospital physicians and staff, and failing to document communications with outside physicians related to the transfer of patients with complications. Exh. 26 (Geary Declaration) (New Woman All Women Health Care, Birmingham – 2012).
41. The same clinic was cited for failing to respond to patients’ calls, including one instance in which a patient complained of excessive bleeding and was ultimately admitted to a hospital’s intensive care unit. Exh. 26 (Geary Declaration) (New Woman All Women Health Care, Birmingham – 2012).
42. Protests at Alabama abortion clinics are not meaningfully different from protests at clinics in other States. Exh. 19 (Roe Depo) 81:13-18; Exh. 21 (Dr. P1 Depo) 55-56.

- 43. Plaintiffs' current doctors have decided to live where they live for personal reasons unrelated to fear of abortion-related violence. Exh. 19 (Roe Depo) 9:1-12; Exh. 20 (Dr. A Depo) 14-15; Exh. 21 (Dr. P1 Depo) 7:13-17.
- 44. Plaintiffs' doctors have not applied for privileges at any local hospitals in Alabama to comply with HB57. Exh. 15 (Ayers Depo) 97:11-15; Exh. 19 (Roe Depo) 28-29; Exh. 21 (Dr. P1) Depo 57.

**Alabama Women's Center**

- 45. Dalton Johnson is the Administrator of the Alabama Women's Center for Reproductive Alternatives in Huntsville, Alabama. Exh. 14 (Johnson Depo) 12:14-20, 15:15-17.
- 46. In 2012, the Alabama Women's Center performed 1451 abortions. Doc. 42-2 (Donald Affidavit).
- 47. The Alabama Women's Center advertises in 30 to 40 phone books within a radius bounded by Memphis in the west, Nashville in the north, Chattanooga in the east, and Birmingham in the south, including books in Starkville, Mississippi and Nashville, Tennessee. Exh. 14 (Johnson Depo) 26:10-21.
- 48. Dr. P2<sup>1</sup> and Dr. H1 perform abortions at the Alabama Women's Center. Exh. 14 (Johnson Depo) 27:8-12, 30:17-19.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>1</sup> This document refers to all doctors who are associated with abortion clinics in Alabama, except for Dr. Payne, by pseudonyms according to an agreement among the parties. See Doc. 90 ¶2.



53. The clinic provides patients with an after-hours number that connects directly to Dr. H1 through an answering service. Exh. 14 (Johnson Depo) 47:18-23, 48: 1-20.
54. Dr. H1 has admitted two patients to the hospital to complete an abortion procedure because the patient could not tolerate the pain of an abortion under a low level of anesthesia. Exh. 14 (Johnson Depo) 52:11-23, 53:1-11.
55. In 2013, a patient returned to Alabama Women's Center with excessive bleeding and was admitted to the hospital for observation by Dr. P2. Exh. 14 (Johnson Depo) 50:8-23, 51:1-18.
56. Dr. P2 consulted with other physicians at the hospital about the patient. Exh. 14 (Johnson Depo) 51:19-23, 52:1-2.
57. The clinic regularly schedules a follow-up appointment for patients after a medical or surgical abortion. Exh. 14 (Johnson Depo) 20:3-20.
58. At the follow-up appointment after a surgical abortion, a physician examines the patient to ensure that her uterus is contracted down and cervix is closed. Exh. 14 (Johnson Depo) 21:11-17.
59. Two or three years ago, persons began protesting at Crestwood Hospital to encourage the hospital to end its relationship with [REDACTED]. Exh. 14 (Johnson Depo) 68:2-12.
60. Crestwood has renewed [REDACTED] privileges since those protests. Exh. 14 (Johnson Depo) 71:12-23, 72:1-5.
61. In reference to protests about [REDACTED] privileges, Crestwood Hospital said in a public statement: "We do not intend to -- nor can we legally -- revoke the medical staff privileges of any trained, licensed, lawful and duly credentialed physician for issues that have no bearing on his or her work or practice at the hospital." Exh. 14 (Johnson Depo) 68:13-23, 69:1-21, 70:1-8.

### **West Alabama Women's Center**

62. Gloria Gray is the administrator of the West Alabama Women's Center in Tuscaloosa, Alabama. Exh. 13 (Gray Depo) 12:13-15.
63. Dr. Payne performs abortions at the West Alabama Women's Center. Exh. 13 (Gray Depo) 17-23.
64. The West Alabama Women's Center performed 3,503 abortions at the clinic in 2012. Doc. 42-2 (Donald Affidavit).
65. Dr. Payne has staff privileges at Druid City Hospital in Tuscaloosa. Exh. 13 (Gray Depo) 25:2-7.
66. Dr. Payne maintains his staff privileges because of his work at the West Alabama Women's Center. Exh. 13 (Gray Depo) 26:14-17.

67. Gray believes that, as “a patient, I would want to go to a doctor that had the privileges of following me all the way through with whatever my problem was.” Exh. 13 (Gray Depo) 28:3-7.
68. Gray believes that it would be preferable for a patient to see a doctor with privileges if a patient were seeking an abortion. Exh. 13 (Gray Depo) 28:8-10.
69. Requiring abortion doctors to have staff privileges means that “they can admit a patient and be able to follow that patient’s complications, whether it’s surgery, excessive bleeding, whatever it is. . . . The doctor would have to be able to follow that patient, as Dr. Payne currently does.” Exh. 13 (Gray Depo) 24:12-19.
70. In the event of a complication that requires a patient to be admitted to the hospital, Dr. Payne “will call ahead to the emergency room and let them know that he is sending a patient but he will be the one that will be caring for the patient.” Exh. 13 (Gray Depo) 19:8-11.
71. The patient’s information would be sent to the hospital, and Dr. Payne would meet the patient at the hospital to take care of whatever the problem is. Exh. 13 (Gray Depo) 19:1-4.
72. Gray has not done anything to prepare to replace Dr. Payne when he retires because she plans to retire at the same time. Exh. 13 (Gray Depo) 31:13-18.
73. The West Alabama Women’s Center regularly schedules a follow-up appointment for patients after a medical or surgical abortion. Exh. 13 (Gray Depo) 41:5-21.
74. At the follow-up appointment after a surgical abortion, Dr. Payne examines the patient to ensure that she has had no complications, that the uterus is in its normal position, and that the patient’s blood count is at an acceptable level. Exh. 13 (Gray Depo) 41:11-21.
75. At the follow-up appointment for a medical abortion, an ultrasound is performed to ensure that the pregnancy was terminated. Exh. 13 (Gray Depo) 43:6-12.
76. Dr. Payne personally sees each patient at her follow-up appointment. Exh. 13 (Gray Depo) 42:13-21.
77. The clinic provides patients with an after-hours number that connects to Dr. Payne through an answering service. Exh. 13 (Gray Depo) 44:12-21.
78. Patients come to the clinic from “everywhere,” including Georgia, Mississippi, Florida, and Louisiana. Exh. 13 (Gray Depo) 46:2-14.
79. The clinic advertises in phone books throughout Mississippi and Alabama, including in cities that have local abortion clinics. Exh. 13 (Gray Depo) 50:5-17.

## Reproductive Health Services

80. June Ayers is the administrator of Reproductive Health Services (RHS) in Montgomery, Alabama. Exh. 15 (Ayers Depo) 8:11-18.
81. RHS performed 968 abortions at the clinic in 2012. Doc. 42-2 (Donald Affidavit).
82. RHS provides surgical abortion, not medication abortions. Exh. 15 (Ayers Depo) 24:6-13.
83. RHS pays physicians \$80 to \$85 for each abortion performed in which the fetus is at gestational age 12 weeks or less. Exh. 9 (RHS Second Amended Response to Defendants' First Discovery Requests) No. 1(f).
84. RHS has paid \$80 to \$85 per abortion for as long as Ayers can recall. Exh. 15 (Ayers Depo) 55:11-16.
85. RHS schedules a follow-up appointment for patients at which the patient is examined by a laboratory technician and nurse. Exh. 9 (RHS Response to Defendants' Second Discovery Requests).
86. RHS does not compete with local hospitals or OB/GYNs. Exh. 15 (Ayers Depo) 46-47.
87. RHS refers patients to other clinics, including clinics in Atlanta, Birmingham, and Tuscaloosa, if they seek a medication abortion. Exh. 15 (Ayers Depo) 30:9-18.
88. All regular full-time employees of RHS live in the Montgomery area. Exh. 15 (Ayers Depo) 23:3-6; Exh. 9 (RHS Second Amended Response to Defendants' First Discovery Requests) No.2.
89. Ayers has not requested that any of the physicians who currently perform abortions at her clinic attempt to attain staff privileges. Exh. 15 (Ayers Depo) 99:5-9.
90. Ayers has not offered any of the physicians who currently perform abortions at her clinic any financial incentive to apply for staff privileges. Exh. 15 (Ayers Depo) 99:17-23.
91. Ayers has not solicited any physicians to move to Alabama to perform abortions at her clinic. Exh. 15 (Ayers Depo) 118:16-23.
92. Ayers has never advertised for doctors to perform abortions. Exh. 15 (Ayers Depo) 74:10-12.
93. Ayers has never hired a doctor to perform abortions who was not referred to her by another clinic. Exh. 15 (Ayers Depo) 74:7-9.
94. When the Alabama Department of Public Health (DPH) in 2003 imposed a requirement on abortion clinics that they contract with a physician who has

- staff privileges at a local hospital, Ayers informed DPH that she could not comply. Exh. 15 (Ayers Depo) 114:16-21, 119:12-21.
95. RHS eventually complied with the requirement that it contract with a physician who has staff privileges. Exh. 15 (Ayers Depo) 115:7-19.
  96. RHS complied with the requirement because Ayers asked a physician who she personally knew to fill the role. Exh. 15 (Ayers Depo) 116:7-20.
  97. Unlike in 2003, Ayers has not contacted any physicians about complying with the Women's Health and Safety Act. Exh. 15 (Ayers Depo) 119:7-11.
  98. In 2006, a local OB/GYN Dr. Chris Duggar treated a patient at the emergency room for complications arising from an abortion at RHS. Exh. 7 (Duggar Declaration) ¶3.
  99. The patient reported that she had sought assistance for her complications from RHS and had been denied. Exh. 26 (Geary Affidavit) (Reproductive Health Services, Montgomery – 2006).
  100. Dr. Duggar called RHS to speak with the patient's treating physician and was denied information about the treating physician. Exh. 7 (Duggar Declaration) ¶4.
  101. Dr. Duggar filed a complaint with state regulators. Exh. 7 (Duggar Declaration) ¶5.
  102. Because of this incident, RHS was cited for conduct "detrimental to the welfare of the [clinic's] patients" and "danger[ous] to public health and welfare." Exh. 26 (Geary Declaration) (Reproductive Health Services, Montgomery – 2006).
  103. Documents Bates Labeled RHS001 through RHS047 are incident records kept in the ordinary course of RHS's business. Exh. 15 (Ayers Depo) 160-162; Exh. 25 (RHS015, 032, 046, 047).
  104. RHS maintains an after-hours answering service for patients with complications or questions. Exh. 15 (Ayers Depo) 67:13-15.
  105. RHS's answering service directs calls to June Ayers. Exh. 15 (Ayers Depo) 67:13-68:13.
  106. Ayers screens patient calls on the after-hours answering service and refers patients to the covering physician if Ayers believes it is appropriate to do so. Exh. 15 (Ayers Depo) 68:16-69:5.
  107. Dr. A is RHS's primary abortion physician. Exh. 15 (Ayers Depo) 82:1-3.
  108. Dr. A lives in the country of Nigeria in Africa. Exh. 20 (Dr. A Depo) 14:22-15:8.
  109. When Dr. A comes to the United States to perform abortions, Dr. A stays [REDACTED]. Exh. 20 (Dr. A Depo) 16:3-23.

110. [REDACTED]  
[REDACTED]  
Exh. 20 (Dr. A Depo) 14:7-15; 16:3-14.
111. Dr. A has not attempted to secure staff privileges at a local hospital. Exh. 20 (Dr. A Depo) 45:11-17.
112. Dr. A is currently being sued by a patient [REDACTED]  
[REDACTED]  
[REDACTED] Exh. 20 (Dr. A Depo) 7:2-19, 67:10-68:8.
113. Dr. A performs abortions only at clinics in Alabama. Exh. 20 (Dr. A Depo) 30:21-31:5.
114. Dr. A used to [REDACTED] have staff privileges at an Alabama hospital. Exh. 20 (Dr. A Depo) 41:2-5.
115. When Dr. A had staff privileges at an Alabama hospital, no one at the hospital was concerned that he was also associated with abortion clinics. Exh. 20 (Dr. A Depo) 44:11-23.
116. Dr. B performs abortions at RHS. Exh. 9 (Attachment A to RHS Second Amended Response to Defendants' First Discovery Requests).
117. Dr. B has staff privileges at hospitals in [REDACTED] and [REDACTED]. Exh. 9 (Attachment A to RHS Second Amended Response to Defendants' First Discovery Requests); Exh. 15 (Ayers Depo) 275-276.

**Planned Parenthood Southeast**

118. Planned Parenthood clinics pay doctors \$70 per surgical abortion for 12 weeks or less. Exh. 20 (Dr. A Depo) 81:19-23; Exh. 8 (Attachment A to PPSE Response to Interrogatory No. 1).
119. Planned Parenthood clinics have paid about \$75 per abortion since 1994. Exh. 20 (Dr. A Depo) 82:8-16.
120. Barbara Buchanan is the Administrator of the Planned Parenthood clinic in Birmingham, hereinafter the Birmingham clinic. Exh. 16 (Buchanan Depo) 13:5-15.
121. Kiwana Brooks is the Administrator of the Planned Parenthood clinic in Mobile, hereinafter the Mobile clinic. Exh. 17 (Brooks Depo) 23:16-20.
122. The Birmingham and Mobile clinics are two of eight centers operated by Planned Parenthood Southeast ("PPSE"). Exh. 16 (Buchanan Depo) 16:1-5.
123. The Birmingham clinic performed 1,396 abortions in 2012. Doc. 42-2 (Donald Affidavit).

124. The Mobile clinic performed 1,275 abortions in 2012. Doc. 42-2 (Donald Affidavit).
125. PPSE operates a call center in Atlanta that takes calls and schedules appointments. Exh. 17 (Brooks Depo) 41-42.
126. On days when the Birmingham clinic performs abortions, a doctor generally performs between 12 and 20 abortions. Exh. 16 (Buchanan Depo) 27:17-22.
127. On days when the Mobile clinic performs abortions, a doctor generally performs between 30 and 35 abortions. Exh. 17 (Brooks Depo) 25:8.
128. The Birmingham and Mobile clinics do not regularly schedule a follow-up appointment for patients after a surgical abortion. Exh. 8 (PPSE Responses to Defendants' Second Discovery Requests).
129. The Birmingham and Mobile clinics regularly schedule a follow-up appointment for patients after a medication abortion at which the patient is examined by a nurse. Exh. 8 (PPSE Responses to Defendants' Second Discovery Requests), No. 2.
130. All the regular full-time employees of the Birmingham clinic live in the Birmingham metropolitan area. Exh. 8 (PPSE Responses to Defendants' First Discovery Requests), No.2.
131. All the regular full-time employees of the Mobile clinic live in the Mobile metropolitan area. Exh. 8 (PPSE Responses to Defendants' First Discovery Requests), No.2.
132. Dr. P9 is a physician whose purpose is to fulfill the DPH requirement that the Birmingham clinic have a covering physician with staff privileges. Exh. 16 (Buchanan Depo) 74:10-16.
133. Dr. P9 is not paid for his association with the Birmingham clinic. Exh. 16 (Buchanan Depo) 74:3-9.
134. Dr. P10 is a physician whose purpose is to fulfill the DPH requirement that the Mobile clinic have a covering physician with staff privileges. Exh. 17 (Brooks Depo) 87:6-15.
135. Dr. P10 is not paid for his association with the clinic. Exh. 17 (Brooks Depo) 88:13-22.
136. Dr. P10 has been called upon two times to perform services for patients of the Mobile clinic. Exh. 17 (Brooks Depo) 89:12-16.
137. On one of those occasions, Dr. P10 was called when the patient was punctured during a procedure. Exh. 17 (Brooks Depo) 89-90.
138. The patient was transported by ambulance to a hospital where Dr. P10 maintains privileges. Exh. 17 (Brooks Depo) 92:2-10.

139. On another occasion, Dr. P10 was called upon to perform an abortion on a patient who required a higher degree of sedation than the clinic allows. Exh. 21 (P1 Depo) 50-51.
140. Dr. P10 performed the abortion for the patient. Exh. 21 (P1 Depo) 50-51.
141. The Birmingham clinic competes with an abortion clinic in Columbus, Georgia. Exh. 16 (Buchanan Depo) 46:11-15.
142. The Birmingham clinic competes with an abortion clinic in Jackson, Mississippi. Exh. 16 (Buchanan Depo) 46:11-15.
143. The Birmingham clinic competes with an abortion clinic in Huntsville, Alabama. Exh. 16 (Buchanan Depo) 46:11-15.
144. The Birmingham clinic competes with West Alabama Women's Center in Tuscaloosa, Alabama. Exh. 16 (Buchanan Depo) 46:11-18.

- [REDACTED]
- [REDACTED]
- [REDACTED]
146. The Birmingham clinic does not compete with local hospitals or OB/GYNs. Exh. 16 (Buchanan Depo) 46: 19-21, 47:3-8; Exh. 18 (Fox Depo) 90:11-16.
  147. The Mobile clinic does not compete with local hospitals or OB/GYNs. Exh. 16 (Buchanan Depo) 65:8-19; Exh. 18 (Fox Depo) 90:11-16.
  148. PPSE and RHS refer women whose pregnancy has progressed past the first trimester to the Tuscaloosa clinic. Exh. 17 (Brooks Depo) 66:4-10; Exh. 15 (Ayers Depo) 29-30.
  149. Dr. Mary Roe is the medical director for Planned Parenthood Southeast. Exh. 19 (Roe Depo) 13:5-13.

- [REDACTED]
- [REDACTED]
- [REDACTED]
152. Staff members at UAB arranged for Dr. Roe to perform abortions at the Planned Parenthood clinic in Birmingham. Exh. 19 (Roe Depo) 88-89.
  153. She performed abortions at the Birmingham clinic while she worked at UAB. Exh. 19 (Roe Depo) 51: 17-23, 52:1-2.
  154. She had OB/GYN staff privileges at UAB Hospital, Children's Health Care, Cooper Green, and Carraway Hospital while she worked at UAB. Exh. 19 (Roe Depo) 90: 21-23.
  155. Dr. Roe's immediate past predecessor as the medical director of Planned Parenthood Southeast was on the faculty of UAB while she was medical director. Exh. 19 (Roe Depo) 89-90.

[REDACTED]

[REDACTED]

157. Dr. Roe receives 50% of her annual income from Planned Parenthood Southeast. Exh. 19 (Roe Depo) 90:6-8.

[REDACTED]

[REDACTED]

[REDACTED]

160. Planned Parenthood has not offered Dr. Roe any financial incentive to move to Birmingham. Exh. 19 (Roe Depo) 91:18-23.

161. No one at Planned Parenthood has discussed with Dr. Roe the possibility of Dr. Roe establishing a residence in Birmingham. Exh. 19 (Roe Depo) 92:1-4.

162. [REDACTED] three other doctors have performed abortion services at the Birmingham clinic while they resided in Birmingham. Exh. 16 (Buchanan Depo) 132:1-3.

163. One of these local physicians, Dr. P3, performed abortions at the Birmingham clinic as recently as 2012. Exh. 8 (Attachment A to PPSE Response to Defendants' First Discovery Requests).

164. Dr. P2 performed abortions every other week at the Birmingham clinic during 2012 [REDACTED]. Exh. 8 (Attachment A to PPSE Response to Defendants' First Discovery Requests).

165. Dr. Roe also performs abortions at clinics [REDACTED]. Exh. 19 (Roe Depo) 7:1-2; 11:8-10, 51:1-16.

166. Dr. Roe has never been harassed at her home because of abortion. Exh. 19 (Roe Depo) 78:16-21.

167. Dr. Roe's private practice has never been picketed because of abortion. Exh. 19 (Roe Depo) 79:10-21.

168. Dr. P1 lives in the area of [REDACTED]. Exh. 21 (P1 Depo) 6:23-7:1.

169. Dr. P1 performs abortions in Alabama, Georgia, and Virginia. Exh. 21 (P1 Depo) 21:5-10.

170. Dr. P1 has never been harassed by abortion protesters at the [REDACTED] hospital where she works. Exh. 21 (P1 Depo) 55:10-16.

171. Dr. P1 has never been harassed by abortion protesters at the [REDACTED] university where she teaches. Exh. 21 (P1 Depo) 55:17-22.

172. Planned Parenthood clinics have an after-hours answering service that patches calls to a nurse. Exh. 19 (Roe Depo) 35:22-23, 36:1-9.

173. The nurse assesses the patient and informs Dr. Roe if the nurse believes it is necessary. Exh. 19 (Roe Depo) 36:6-9.



174. Generally, Dr. Roe informs patients with serious complications that they should go to the emergency room. Exh. 19 (Roe Depo) 48:9-19.
175. The week before Dr. Roe was deposed, a patient called the after-hours answering service at the Birmingham clinic to complain of bleeding, the nurse called Dr. Roe, and Dr. Roe instructed the nurse to have the patient go to the nearest emergency room. Exh. 19 (Roe Depo) 36-37.
176. In February of 2011, a patient called the Birmingham clinic to complain of cramps, the nurse called Dr. Roe, and Dr. Roe instructed the nurse to have the patient go to the nearest emergency room. Exh. 24 (PPSE 00337).
177. In 2012, at least six of PPSE's Alabama abortion patients received or reported receiving care in a hospital. Exh. 8 (PPSE Response to Defendants' First Discovery Requests) pp. 12-13.
178. In 2011, at least seven of PPSE's Alabama abortion patients received or reported receiving care in a hospital. Exh. 8 (PPSE Response to Defendants' First Discovery Requests) pp. 12-13.
179. In 2010, at least 11 of PPSE's Alabama abortion patients received or reported receiving care in a hospital. Exh. 8 (PPSE Response to Defendants' First Discovery Requests) pp. 12-13.
180. Dr. Roe's expectation is that emergency room personnel take over the care of the patient once the patient gets to the emergency room. Exh. 19 (Roe Depo) 66:13-21.
181. When a patient is instructed to go to the emergency room, Dr. Roe or someone else from Planned Parenthood follows up with the patient within 24 to 48 hours of their trip to the emergency room to find out what kind of care they received. Exh. 19 (Roe Depo) 94:5-12.
182. This follow-up call to the patient is what Dr. Roe believes ensures continuity of care for a patient who is advised to go the emergency room. Exh. 19 (Roe Depo) 94:5-12.
183. Planned Parenthood is working to expand its services in Birmingham and Mobile because persons at UAB have communicated to Planned Parenthood that its physicians would be more likely to secure privileges if Planned Parenthood expanded its line of services. Exh. 18 (Fox Depo) 195.

## Hospitals

184. Mobile Infirmary is a hospital in Mobile, Alabama that confers OB/GYN staff privileges. *See* Exh. 27 Mobile Infirmary OB/GYN; OB/GYN Core Privileges.

185. Mobile Infirmary's Credentials Policy provides that threshold criteria for staff privileges may be waived. See Exh. 27 Mobile Infirmary Bylaws, Credentials Policy, 2.A.2, 2.B.1, 2.C.1.
186. Mobile Infirmary's Credentials Policy provides that the denial of a request for a waiver is not a denial of an application for privileges. See Exh. 27 Mobile Infirmary Bylaws, Credentials Policy, 2.A.2(d).
187. Springhill Memorial Hospital is a hospital in Mobile, Alabama that confers OB/GYN staff privileges. See Exh. 28 Springhill Bylaws p. 169-170 (15.41).
188. Springhill Memorial does not impose a minimum patient admission requirement on doctors with courtesy privileges. Exh. 28 Springhill Bylaws p.20-21 (3.13).
189. Springhill Memorial's bylaws provide that "the termination, granting, continuation or modification of Medical Staff privileges based on criteria unrelated to clinical qualifications, professional responsibilities or quality of care is prohibited, with the exception of statutory, regulatory, or judicial requirements, or other exception (sic) which may be defined in the Medical Staff Bylaws." Exh. 28 Springhill Bylaws p. 40 (5.1).
190. Doctors with courtesy privileges at Springhill Memorial can admit patients. Exh. 28 Springhill Bylaws at p.20-21 (3.14-11).
191. A doctor with courtesy privileges must either be "located and practice close enough to the hospital facilities, or otherwise arrange[] to provide continuous care to his/her patients." Exh. 28 Springhill Bylaws p.20 (3.13-13).
192. [REDACTED] is a hospital in [REDACTED] Alabama that confers OB/GYN staff privileges. [REDACTED]  
[REDACTED].  
[REDACTED] imposes the following requirement on physicians with active staff privileges: "whose geographical location must be such that he is able to render continuing care to his patients, or have satisfactory cross coverage," but it imposes no such privilege on courtesy staff. [REDACTED]  
[REDACTED]
194. [REDACTED] does not impose a minimum number of admissions for active staff or courtesy staff. [REDACTED]
195. [REDACTED] requires that courtesy staff admit no more than 10 patients per year. [REDACTED]
196. Jackson Hospital Infirmary is a hospital in Montgomery, Alabama that confers OB/GYN staff privileges. Exh. 30 Jackson Hospital Bylaws p. 34 (Article VII); OB/GYN Privilege Forms.
197. Doctors with Courtesy Staff privileges may admit patients at Jackson Hospital. Exh. 30 Jackson Hospital Bylaws, Art. V § 3B.

198. Jackson Hospital's bylaws require that doctors with Courtesy Staff privileges be "located closely enough to the Hospital to provide continuous care to their patients." Exh. 30 Jackson Hospital Bylaws, Art. V § 3A.
199. Jackson Hospital has waived its threshold requirements before so that certain doctors could have staff privileges. Exh 7 (Duggar Declaration).
200. Doctors with Courtesy Staff privileges do not have to "regularly admit, consult or perform outpatient procedures." Exh. 30 Jackson Hospital Bylaws, Art. V, § 3A.
201. The Baptist hospitals, Baptist East, Baptist South, and Baptist Prattville, are hospitals in the metropolitan area around Montgomery, Alabama that confer OB/GYN staff privileges. Exh. 31 Medical Staff Bylaws of Baptist Medical East, Baptist Medical Center South, Prattville Baptist Hospital ("Baptist Bylaws"), Art. III, § 3.1; Doc. 43-13 (Blaine Declaration).
202. Doctors with Courtesy Staff Privileges may admit patients at the Baptist hospitals. Exh. 31 Baptist Bylaws, Art. VIII, § 8.4.1; Doc. 43-13 (Blaine Declaration).
203. To maintain courtesy privileges at one of the Baptist hospitals, a physician must admit one patient per year, but that requirement can be waived. Exh. 31 Baptist Bylaws, Art. VIII, § 8.4.4; Doc. 43-13 (Blaine Declaration).
204. A physician with courtesy privileges at one of the Baptist hospitals must have a "practice [that] is within a reasonable distance to a Baptist Health facility at which he or she practices in order to provide timely continuous care to his/her patients. Exh. 31 Baptist Bylaws, Art. VIII, § 8.4.1; Doc. 43-13 (Blaine Declaration).
205. [REDACTED] is a hospital in [REDACTED], Alabama that confers OB/GYN staff privileges. [REDACTED].
206. Doctors with Courtesy Staff Privileges may admit patients at [REDACTED].
207. A doctor with Courtesy Staff Privileges at [REDACTED] must be "located within 50 miles of the Hospital, or otherwise arrange[], to provide continuous care to his/her patients." [REDACTED].
208. There is no minimum number of admissions required for courtesy staff at [REDACTED]. [REDACTED] is a hospital in [REDACTED], Alabama that confers OB/GYN staff privileges. [REDACTED].

210. Doctors with Courtesy Staff Privileges may admit patients at [REDACTED]  
[REDACTED]
211. Neither the general qualifications for membership nor the specific qualifications for doctors with Courtesy Staff Privileges at [REDACTED] impose a residency requirement. [REDACTED]  
[REDACTED].
212. There is no minimum number of admissions required for courtesy staff at [REDACTED]