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CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

EXHIBIT 1

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA
FIFTEENTH JUDICIAL CIRCUIT – CIVIL DIVISION

OASIS FAMILY BIRTHING CENTER, LLC, on behalf of itself and its patients; HEATHER SKANES, M.D., on behalf of herself and her patients; ALABAMA BIRTH CENTER; YASHICA ROBINSON, M.D., on behalf of herself and her patients; ALABAMA AFFILIATE OF THE AMERICAN COLLEGE OF NURSE-MIDWIVES, on behalf of its members; JO CRAWFORD, CPM, on behalf of herself and her patients; TRACIE STONE, CPM, on behalf of herself and her patients, Plaintiffs, **v.** **ALABAMA DEPARTMENT OF PUBLIC HEALTH; SCOTT HARRIS, in his official capacity as the State Health Officer at the Alabama Department of Public Health,** Defendants.	Civil Action No. 03-CV-2023-901109.00 - GOG

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT ON CLAIM ONE AND IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON CLAIM ONE

The Alabama Legislature placed clear limits on the authority of Defendants Alabama Department of Public Health ("ADPH") and Scott Harris, State Health Officer (collectively, "ADPH"), to license and regulate health care facilities—limits ADPH has unlawfully exceeded in this case. The Legislature gave ADPH authority *only* over those entities meeting the definition of a "hospital" under section 22-21-20(1) of the Alabama Code. For entities not meeting that definition, the Alabama Legislature entrusted oversight to *other* regulatory bodies—such as the professional licensing boards that oversee the practice of licensed health care practitioners in all settings across the state. For example, the Board of Medical Examiners, not ADPH, regulates the

practice of physicians in private practice, even when they are performing complex surgeries, *see* Ala. Code § 22-21-20(1); *e.g.*, Ala. Admin. Code rr. 540-X-10-.01, -.08. And the Board of Midwifery, not ADPH, regulates the practice of licensed midwives attending births in patients' homes, *see* Ala. Code §§ 34-19-14, -16; Ala. Admin. Code r. 582-X-3-.03.

Before the Court are the parties' cross motions for summary judgment on Plaintiffs' Claim One, which raises a single, but significant legal question: whether ADPH's attempt to exercise licensing and regulatory authority under section 22-21-20(1) over freestanding birth centers ("FSBCs") operating in the midwifery model of care violates the limits the Legislature placed on ADPH's authority. First. Am. Compl. 48–49, Doc. 144 [hereinafter "Am. Compl."]. Because nothing in the text of 22-21-20(1) covers these FSBCs, ADPH's actions exceed the boundaries of its statutory authority, in violation of the Alabama Administrative Procedure Act ("AAPA"), Ala. Code § 41-22-10. The law and the undisputed facts establish that FSBCs operating in the midwifery model of care are not "hospitals" under the statute for two reasons: (1) because they are not "primarily engaged in offering . . . obstetrical care," *id.* § 22-21-20(1), which, under Alabama law, is a distinct field from midwifery that can *only* be practiced by licensed physicians, not midwives; and (2) because they do not serve "the public generally," *id.*, but rather apply rigorous screening criteria and exercise discretion in determining which patients can receive midwifery care at the birth center. Defendants' contrary, overly broad interpretation of section 22-21-20(1) must be rejected, both because it violates fundamental principles of statutory interpretation and plain language, *see Bassie v. Obstetrics & Gynecology Assocs. of Nw. Ala., P.C.*, 828 So. 2d 280, 283 (Ala. 2002), and because the statutory interpretation question here concerns the boundaries of ADPH's own jurisdiction, making any deference to the agency inappropriate, *see Fraternal Ord. of Police, Lodge No. 64 v. Pers. Bd.*, 103 So. 3d 17, 28 (Ala. 2012).

Because FSBCs are not "hospitals" under section 22-21-20(1), Plaintiffs are entitled to summary judgment on Claim One,[1] and Defendants' motion must be denied.

NARRATIVE OF UNDISPUTED FACTS

The facts stated herein are established by the parties' joint stipulations, sworn affidavits, and materials authored and published by the Defendants or other official Alabama government bodies.[2] Ala. R. Civ. P. 56(c)(3). Because Defendants can point to no record evidence creating a "genuine issue as to any [of the following] material fact[s]" establishing that FSBCs do not fall within the meaning of "hospital" in section 22-21-20(1), Plaintiffs are entitled to "judgment as a matter of law." *Id.*

A. Midwifery and Out-of-Hospital Birth in Alabama

1. Midwifery care (or "the midwifery model" or "midwifery model of care") is a patient-centered health care model for pregnancy-related care with a focus on shared decision-making, patient education, and physiological birth with minimal technological interventions to initiate or augment labor. Joint Stipulations of Facts ¶ 20, Doc. 239 [hereinafter "Stips."]; *accord* Affidavit of Heather Skanes ¶¶ 26 & n.7, 28, attached hereto as Ex. 3 [hereinafter "Skanes Aff."]; Affidavit of Jo Crawford ¶¶ 8–9, 21, attached hereto as Ex. 4 [hereinafter "Crawford Aff."];

[1] The parties' cross-motions on Claim One do not affect Plaintiffs' alternative claims challenging the lawfulness of ADPH's actions on separate grounds, *see* Am. Compl. 49–60, (alternative Claims Two through Thirteen).

[2] Plaintiffs respectfully request that the Court take judicial notice of facts contained in the government publications cited *infra*, paragraphs 39 to 55, and provided to the Court in full as Exhibits A through H to the Affidavit of Whitney White, attached hereto as Exhibit 2 [hereinafter "White Aff."]. These publications contain official government data collected and reported to the public by official Alabama government bodies, and many of them by Defendant ADPH itself. *Cf.* Ala. R. Evid. 801(d)(2). Such facts are appropriate for judicial notice because they are "not subject to reasonable dispute in that" they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Id.* 201(b). The authenticity of these documents is shown by attorney affidavit attesting that they were accessed from official government websites of the State of Alabama. *See id.* 902(4).

Affidavit of Yashica Robinson ¶ 7 & n.2, attached hereto as Ex. 5 [hereinafter "Robinson Aff."]; Affidavit of Tracie Stone ¶¶ 20–21, 29–30, attached hereto as Ex. 6 [hereinafter "Stone Aff."]; Affidavit of Sheila Lopez ¶ 13, attached hereto as Ex. 7 [hereinafter "Lopez Aff."].

2. Midwifery is practiced by trained midwives with a different skill set, education, and training background than obstetricians. Stips. ¶ 21; *compare also, e.g.*, Skanes Aff. ¶¶ 2, 17, 28 (education and training as an obstetrician), *and* Robinson Aff. ¶¶ 2, 31 & n.8 (same), *with* Crawford Aff. ¶¶ 10–12 (same as a midwife), Stone Aff. ¶¶ 5–6, 26 (same), *and* Lopez Aff. ¶¶ 14–15 (same); *see also* Lopez Aff. ¶¶ 24–25.

3. Midwives care for low-risk patients who do not have pre-existing or pregnancy-related conditions that increase the risk of pregnancy complications. *See, e.g.*, Crawford Aff. ¶¶ 9, 18; Stone Aff. ¶¶ 19–20; Lopez Aff. ¶ 18.

4. Two kinds of midwives are licensed to practice in Alabama: certified nurse midwives ("CNMs") and certified professional midwives ("CPMs"). Both kinds of midwives provide care in the midwifery model but fulfill different educational and training requirements. Stips. ¶ 22; *see also, e.g.*, Lopez Aff. ¶¶ 14–15 & n.1; Robinson Aff. ¶ 9.

5. In 2017, the Alabama Legislature passed the Childbirth Freedom Act, which authorized CPMs to independently attend births in any out-of-hospital setting and created a State Board of Midwifery to license and regulate them. 2017 Ala. Laws 2017-383 (codified at, *inter alia*, Ala. Code §§ 34-19-11 to -20); *see* Ala. Code § 34-19-16(a) ("A licensed [CPM] may provide midwifery care in the setting of the client's choice, except a hospital."); *see also* Stips. ¶ 26 (stipulating that State Board of Midwifery licenses and regulates CPMs).

6. CPMs are skilled health care practitioners who provide direct patient care, counseling, and education throughout pregnancy, birth, and the postpartum period, including

continuous, hands-on care during labor and delivery, and maternal and well-baby care through 6–8 weeks postpartum. Stips. ¶ 27; *see also* Crawford Aff. ¶¶ 10, 12–13; Stone Aff. ¶¶ 5, 9.

7. CPMs are credentialed by the North American Registry of Midwives ("NARM") after completing training, which includes both didactic education and clinical apprenticeship, and a written exam to ensure they have demonstrated competency in and knowledge of all required skills within a CPM's scope of practice. Crawford Aff. ¶ 10.

8. To be licensed in Alabama, a CPM must be credentialed through an education program or pathway accredited by the Midwifery Educational Accreditation Council or by another accrediting agency recognized by the U.S. Department of Education. Stips. ¶ 26; *see also* Crawford Aff. ¶ 11; Stone Aff. ¶ 6.

9. To be credentialed, CPMs must have extensive training and direct experience attending out-of-hospital births. Crawford Aff. ¶¶ 10, 12; Stone Aff. ¶ 5; *see* Lopez Aff. ¶ 14 n.1.

10. Alabama law also authorizes the licensure and practice of CNMs, in both in-hospital and out-of-hospital settings. *See, e.g.*, Ala. Admin. Code rr. 610-X-5-.04(1)(b)3, -.20(4); *see also* Lopez Aff. ¶¶ 14 n.1, 22.

11. CNMs are advanced practice registered nurses licensed and regulated by the Alabama Board of Nursing ("ALBON") to engage in practice as a nurse midwife. Stips. ¶ 23; *see also* Lopez Aff. ¶¶ 14–16.

12. A CNM's scope of practice includes care during pregnancy, childbirth, and the postpartum period, and care for the healthy newborn during the first weeks of life, Stips. ¶ 25, as well as primary and routine reproductive care, Lopez Aff. ¶ 17.

13. CNMs may conduct patient examinations; prescribe and administer certain medications; make decisions about patient admission, management, and discharge; and order and interpret laboratory testing. Stips. ¶ 25.

14. CNMs must complete a nursing program qualifying them as a registered nurse ("RN"), in addition to specialized training and certification in nurse midwifery, Stips. ¶ 23; *see also* Lopez Aff. ¶ 14.

15. In Alabama, CNMs are required to maintain a collaborative practice agreement ("CPA") with a licensed physician as a condition of practice. Stips. ¶ 24; *see* Ala. Code §§ 34-21-81(1), (5), -83, -84, -85, -90; *see also* Lopez Aff. ¶¶ 19–23.

16. CPAs are regulated by a Joint Committee of ALBON and the Alabama Board of Medical Examiners ("ALBME"), Ala. Code §§ 34-21-81(7), -85, which licenses and regulates physicians, including obstetricians, *see* Stips. ¶ 21; Ala. Code § 34-24-330, *et seq*.

17. Obstetricians are physicians who specialize in the care of pregnant patients and who have training in surgery and treating abnormality or pathology in pregnancy. Skanes Aff. ¶¶ 2, 17, 28; Robinson Aff. ¶¶ 2, 31 & n.8.

18. To become an obstetrician/gynecologist ("OB/GYN"), practitioners must complete a medical degree and a residency specializing in obstetrics and gynecology, during which they receive surgical training and experience treating abnormality or pathology in pregnancy. *See* Skanes Aff. ¶¶ 2, 17, 28; Robinson Aff. ¶ 31 & n.8.

19. In contrast to CNMs, CPMs are not subject to any physician supervision or collaboration requirement to practice in Alabama. *See* Lopez Aff. ¶ 21; Crawford Aff. ¶ 29; Stone Aff. ¶ 36; Defs.' Partial Answer to First Am. Compl. ¶ 65, Doc. 162 [hereinafter "Ans."]; *see also* Ala. Code § 34-19-11 *et seq.*

20. Currently, pregnant Alabamians seeking an out-of-hospital birth have two options: birth in a freestanding birth center ("FSBC"), or a home birth. *See* Skanes Aff. ¶ 21; Crawford Aff. ¶ 28; Lopez Aff. ¶¶ 27, 31; *see also* Ans. ¶ 97; Am. Compl. ¶ 97.

21. As of this filing, the only FSBCs operating in Alabama are the two FSBCs that have received a temporary license pursuant to this Court's preliminary injunction, Stips. ¶ 30: Plaintiff Oasis Family Birthing Center ("OFBC"), in Birmingham, and Plaintiff Alabama Birth Center ("ABC"), in Huntsville (collectively, "the Birth Center Plaintiffs"), *id.* ¶¶ 1–2, 19, 30-31, 35.

22. Prior to the Birth Center Plaintiffs opening, there were no known FSBCs operating in Alabama. Ans. ¶ 96; Am. Compl. ¶ 96.

23. FSBCs are independent, autonomous health care centers not attached to or organized as part of a general or specialized hospital or other acute care facility. Stips. ¶ 14.

24. FSBCs provide pregnancy, birthing, postpartum, and limited newborn care in a home-like environment to low-risk patients, Stips. ¶ 13; *accord* Skanes Aff. ¶ 6 & n.2; Robinson Aff. ¶ 5 & n.1; *see also* Lopez Aff. ¶ 26.

25. Patients of FSBCs are clinically screened and receive continuous risk assessment to proactively identify risk factors or complications that could arise during pregnancy or birth and affect the patient's eligibility to be safely cared for in an FSBC. Stips. ¶ 13; *see also* Crawford Aff. ¶¶ 17–18, 20; Skanes Aff. ¶¶ 30–32; Stone Aff. ¶¶ 19, 23, 26; Robinson Aff. ¶¶ 27, 31.

26. Plaintiffs OFBC and ABC are FSBCs and employ licensed midwives to provide midwifery care. Skanes Aff. ¶ 6; Crawford Aff. ¶¶ 15–16; Robinson Aff. ¶ 5; Stone Aff. ¶ 14; *accord* Stips. ¶ 19 (Plaintiff Birth Centers "operate as FSBCs through CNMs and CPMs, utilizing the midwifery model of care").

27. Patients seek midwifery care and out-of-hospital birth for a variety of reasons, *e.g.*, because the midwifery model of care, with its focus on physiological birth with no or minimal intervention and an FSBC's homelike environment align with the patient's personal values, beliefs, and individual health needs; because of a wish to avoid interventions often common in a hospital setting, such as cesarean section, continuous electronic fetal monitoring, or medical induction; or because of a prior traumatic experience in a hospital. *See* Skanes Aff. ¶¶ 15–20; Robinson Aff. ¶¶ 13–16; Stone Aff. ¶ 18; Lopez Aff. ¶¶ 29–30.

28. Not all pregnant Alabamians interested in out-of-hospital birth are able to access a home birth, because of, *e.g.*, privacy concerns, if they live with family members, roommates, or in a multigenerational home; safety concerns, if they do not feel they live in a safe home environment; or space concerns, if they do not feel they have a suitable set-up at home for giving birth. *See* Crawford Aff. ¶ 28; Stone Aff. ¶ 37; Lopez Aff. ¶ 41; Skanes Aff. ¶ 21; Robinson Aff. ¶ 17.

B. ADPH Licensing Authority

29. Defendants ADPH and Harris are responsible for, *inter alia*, the licensing and regulation of, and supervising the licensing and regulation of, facilities defined as "hospitals" under Alabama law. *See* Stips. ¶¶ 8–11; Ala. Code. §§ 22-21-1, -2, -23.

30. Pursuant to Alabama Code section 22-21-22, ADPH has authority to regulate only those facilities meeting the definition of a "hospital" under section 22-21-20(1), which reads:

> General and specialized hospitals, including ancillary services; independent clinical laboratories; rehabilitation centers; ambulatory surgical treatment facilities for patients not requiring hospitalization; end stage renal disease treatment and transplant centers, including free-standing hemodialysis units; abortion or reproductive health centers; hospices; health maintenance organizations; and other related health care institutions when such institution is primarily engaged in offering to the public generally, facilities and services for the diagnosis and/or treatment of injury, deformity, disease, surgical or obstetrical care. Also included within

> the term are long term care facilities such as, but not limited to, skilled nursing facilities, intermediate care facilities, assisted living facilities, and specialty care assisted living facilities rising to the level of intermediate care. The term "hospitals" relates to health care institutions and shall not include the private offices of physicians or dentists, whether in individual, group, professional corporation or professional association practice. This section shall not apply to county or district health departments.

Id. [hereinafter "section 22-21-20(1)" or "the 'hospital' definition"]; *see* Stips. ¶¶ 10–11.

31. If FSBCs operating under the midwifery model of care are not "hospitals" within this definition, ADPH lacks statutory authority to regulate the Plaintiff Birth Centers. Stips. ¶ 40.

32. This definition does not encompass all settings where health care is delivered in the state. For example, ADPH is not authorized to license or regulate private physicians' offices, Ala. Code § 22-21-20(1), even though physicians are permitted to perform complex surgical procedures in office settings, such as liposuction and surgeries under generalized anesthesia, *see* Ala. Admin. Code rr. 540-X-10-.08, -.10, subject to the oversight of ALBME, *see id.* r. 540-X-10-.08.

33. When testifying under oath in this case, ADPH representative Dr. Karen Landers, ADPH Medical Director, "conceded that she holds no . . . safety concerns" about such surgeries, "even though those entities are not regulated by ADPH, because physicians remain subject to oversight by [ALBME]." Suppl. Prelim. Inj. Order 11, Doc.119 [hereinafter "Suppl. PI"].

34. ADPH does not regulate midwife-attended home births, Tr. of Prelim. Inj. H'rg 479: 8–11 (Sept. 29, 2023) (testimony of Dr. Landers), or prenatal or postpartum care provided in physicians' offices, Ala. Code § 22-21-20(1).

35. Effective October 15, 2023, ADPH adopted final regulations for the licensure and regulation of FSBCs, Ala. Admin. Code rr. 420-5-13-.01 to -.19 [hereinafter "the ADPH Regulations"], Stips. ¶ 15, asserting authority to regulate FSBCs as "hospitals" under section 22-21-20(1), *see* Stips. ¶¶ 15, 39–40.

36. Prior to issuing the ADPH Regulations, ADPH petitioned the Alabama Attorney General for an advisory opinion as to the meaning of the "hospital" definition and its applicability to FSBCs. Ala. Att'y Gen. Op. No. 2023-012, at 1, Dec. 15, 2022 [hereinafter "Att'y Gen. Op."].

37. The Attorney General concluded that FSBCs could qualify as "hospitals" under section 22-21-20(1) if they were "primarily engaged in offering obstetrical care." *Id.* at 3.

38. The Alabama Code does not define "obstetrical care," but the Attorney General defined "obstetrics" based on a medical dictionary definition as "[t]he branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium." *Id.*; *see* Stips. ¶ 12 (stipulating that this is the appropriate definition).

C. Alabama's Maternal and Infant Health Crisis

39. According to Defendant Harris, "Alabama, like the nation, continues to face an urgent maternal and infant health crisis." ADPH Perinatal Program & Ala. Public Health, Alabama Perinatal Health Act: Annual Progress Report for FY2023, Plan for 2024, at 2 (2024), Ex. A to White Aff. [hereinafter "2023–24 Perinatal Rep."].

40. Alabama's maternal death rate in both 2020 and 2021 was 36.4 deaths per 100,000 live births, the third and sixth highest in the U.S. for those years. Ala. Public Health, Annual Report 2023, at 24 (2024), Ex. B to White Aff. [hereinafter "2023 Annual Rep."]; ADPH, Bur. of Family Health Servs., 2020 Maternal Mortality Review: Annual Report, 2016–2017 Maternal Deaths in Alabama 6 (2022), Ex. C to White Aff. [hereinafter "2016–17 MMR"].

41. The most recent maternal mortality review published by Defendant ADPH determined that more than 60% of pregnancy-related deaths in Alabama were preventable. ADPH, Bur. of Family Health Servs., Alabama Maternal Mortality Review Report for 2018–2019, at 9, Ex. D to White Aff. [hereinafter "2018–19 MMR"].

42. Alabama's infant mortality rate in 2022 was 6.7 per 1,000, higher than the U.S. rate, and then the twelfth highest in the country, 2023–24 Perinatal Rep. 2; 2023 Annual Rep. 24. It increased to 7.8 deaths per 1,000 in 2023, ADPH, Ctr. for Health Statistics, Infant Mortality: Alabama 2023, at 2 (2024), Ex. E to White Aff. [hereinafter "2023 Infant Mortality Rep."].

43. Preterm birth (before 37 weeks) and low birth weight (under 2,500 grams) affect more than 10% of all babies born in the state and are among the top three leading causes of infant death in Alabama. 2023 Infant Mortality Rep. 10–11, 25; 2023–24 Perinatal Rep. 5–6.

44. Defendants admit that there is an "enduring disparity between birth outcomes for Black and white mothers" in Alabama. Ala. Public Health, *Health, News Releases: Alabama's overall infant mortality rate for 2022 decreases,* Alabama's Health Blog (Nov. 16, 2023), https://www.alabamapublichealth.gov/blog/2023/11/nr-16b.html (statement by Defendant Harris), Ex. F to White Aff.; *accord* 2023–24 Perinatal Rep. 2 (similar statement); *see also* Suppl. PI 4–5.

45. The maternal and infant mortality rates for Black Alabamians in recent years have been nearly two-to-three times higher than for white Alabamians, 2018–19 MMR 10, 12; 2023 Annual Rep., Letter from Harris, & 24; 2023–24 Perinatal Rep. 7; 2023 Infant Mortality Rep. 5.

46. Black infants in recent years were almost twice as likely as white infants to be born with low birth weight and to die from causes related to preterm birth and low birth weight before their first birthday. ADPH, Ctr. for Health Statistics, Alabama Vital Statistics 2022, at 18, 50, Ex. G to White Aff. [hereinafter "2022 Vital Statistics"].

47. Low-income families also experience disproportionately poor maternal and infant health outcomes: more than half of both maternal and infant deaths in recent years occurred among Medicaid-insured populations. 2018–19 MMR 9, 14; 2023 Infant Mortality Rep. 15.

48. Defendants admit that "inadequate access to pregnancy-related care, especially prenatal care, is a significant driver of maternal and infant mortality, increasing the risk of preterm birth and low birthweight." Am. Compl. ¶ 49; Ans. ¶ 49; *accord* 2023 Annual Rep., Letter from Harris (Defendant Harris: "Alabama faces challenges related to prenatal care, especially access to healthcare in rural areas of the state"); 2016–17 MMR 6 (Defendant Harris: "[t]he underlying causes" of the maternal mortality crisis include "access to healthcare, social determinants, and racial disparities"); *id.* at 23 ("barriers to accessing healthcare and using prenatal/postpartum services remain a significant issue in addressing maternal mortality"); *see also* Suppl. PI 4–5 (crediting expert testimony that "Alabama's maternal and infant health crisis is inextricably linked to the severely limited availability of pregnancy services in Alabama," and "expanding access to maternity care is a critical part of the solution").

49. More than a quarter of all Alabama births in 2023 lacked adequate prenatal care. 2023 Infant Mortality Rep. 20; *see also id.* at 22.

50. Defendants admit that "[m]ore than two-thirds of Alabama counties have inadequate access to [pregnancy-related] care," with "37.3% of counties classified as 'maternity care deserts' . . . [lacking] any hospitals, birthing centers, obstetricians, or nurse-midwives; and an additional 31.3% hav[ing] only low or moderate access." Am. Compl. ¶ 44; Ans. ¶ 44.

51. As of May 2024, nearly 60% of Alabama counties lacked any hospital-based obstetrical care, compared to only 13.4% that lacked such care in 1980. *See* ADPH, Off. of Primary Care & Rural Health, A Picture of the Loss of Rural Obstetrical Service in Alabama 1980 to 2024 (last updated May 17, 2024), Ex. H to White Aff.

52. Defendants admit that "[h]ospital-based labor and delivery units, especially in rural hospitals, are closing at an alarming rate in Alabama," and that "[m]any of those remaining are

losing money and at risk of closure." Am. Compl. ¶ 46; Ans. ¶ 46. This includes at least three hospitals—one in Birmingham, located in a predominantly Black community, another in Shelby County, and one in Monroe County—that closed their labor and delivery units in October and November 2023, leaving those communities with either reduced options or no options for hospitals providing birthing care. Am. Compl. ¶ 48; Ans. ¶ 48; *accord* Skanes Aff. ¶ 13.

53. In 2022, Defendant ADPH reported that nearly 35% of all Alabama births occurred by cesarean section, with some hospitals reporting rates over 40%. 2022 Vital Statistics 7–8. Cesarean sections are major abdominal surgeries that can carry a host of short- and long-term health effects, including risks for future pregnancies. Skanes Aff. ¶¶ 17–18; Robinson Aff. ¶ 14.

54. Defendant ADPH reported that nearly 40% of pregnant Alabamians in 2018 and 2019 were unable to get a desired pregnancy-related appointment. 2018-19 MMR 20.

55. ADPH has identified priorities for improving maternal and infant health outcomes, *e.g.*, improving "access to health care," 2023–24 Perinatal Rep. 4; "address[ing] any health equity barriers, such as . . . unavailability of services in a community and lack of culturally competent care," *id.*; expanding "current maternal support systems in the community such as access to home visiting postpartum care/support programs," 2018–19 MMR 18; and ensuring that pregnant Alabamians "seek prenatal care early," attend "follow-up visits during and after pregnancy," and receive "[m]aternal health education during the preconception, interconception, and postpartum period," *id.*; *see* Suppl. PI 4–5 (crediting expert testimony that, "to mitigate racial disparities, it is particularly important to increase options for culturally congruent pregnancy care").

D. Plaintiffs

56. Plaintiff OFBC is an FSBC founded in June 2022 and currently operating in Birmingham, Alabama. Stips. ¶ 1.

57. Plaintiff Dr. Heather Skanes, M.D., is an Alabama-licensed, board-certified obstetrician and gynecologist ("OB/GYN") and OFBC's founder and Executive Director. Stips. ¶ 3. She has over nine years of experience providing a wide range of reproductive health care. Skanes Aff. ¶¶ 2–4.

58. Plaintiff Jo Crawford is a nationally certified, Alabama-licensed CPM who currently provides midwifery services in Alabama at OFBC. Stips. ¶ 5. She has more than a decade of experience providing midwifery care in Alabama and Virginia (where she is also licensed), both in FSBCs and in home settings through her home birth practice, Home Sweet Birth, LLC; more than fifteen years of experience as a certified doula and childbirth educator; and extensive experience training student midwives as a NARM-registered preceptor. Crawford Aff. ¶¶ 2–4.

59. Plaintiff ABC is an FSBC that began development in 2020 and is currently operating in Huntsville, Alabama. Stips. ¶ 2.

60. Plaintiff Dr. Yashica Robinson, M.D., is an Alabama-licensed, board-certified OB/GYN and ABC's founder and Executive Director. Stips. ¶ 4. She has more than twenty years of experience providing a wide range of reproductive health care. Robinson Aff. ¶ 2–4.

61. Plaintiff Tracie Stone is a nationally-certified, Alabama-licensed CPM who currently provides midwifery services in Alabama at ABC, where she is Clinical Director, and through her home birth practice, Grace and Glory Maternity Care. Stips. ¶ 6. She is also licensed in Utah and has experience as a doula and childbirth educator. Stone Aff. ¶¶ 2, 5–7, 10–11.

62. Plaintiff ACNM-AL is the Alabama affiliate of American College of Nurse Midwives ("ACNM"), the national professional association of CNMs that sets national standards for nurse-midwifery education and practice in the United States. Stips. ¶ 7; *see* Lopez Aff. ¶ 10.

63. Plaintiff ACNM-AL is the primary organization representing Alabama CNMs. It provides professional support and liaises with ACNM on behalf of its members with respect to questions about national standards, state laws, and regulations, and engages in advocacy on behalf of its members. Stips. ¶ 7; *see* Lopez Aff. ¶ 11.

64. ACNM-AL's priorities include addressing the maternal and infant health crisis and expanding access to midwifery in Alabama, including the ability of its members to practice in out-of-hospital settings. Lopez Aff. ¶ 11.

65. Plaintiff ACNM-AL's members include all Alabama-based members of the national ACNM, including members who are dually certified as CNMs and CPMs. Stips. ¶ 7.

66. Plaintiff ACNM-AL's members include midwives currently employed by FSBCs, as well as those seeking to work in or open FSBCs in Alabama. Lopez Aff. ¶¶ 27, 33.

E. The Plaintiff Birth Centers' Founding and Operations

67. Both OFBC and ABC were founded with the goal of improving access to midwifery care in Alabama, including a focus on addressing health inequities and serving patients most impacted by the maternal and infant health crisis in Alabama, such as Black women and low-income women. Skanes Aff. ¶¶ 9, 11–13; Robinson Aff. ¶¶ 8, 10–11, 33.

68. Plaintiffs Skanes and Robinson were motivated to open their FSBCs in part because of their familiarity with research finding that midwife-led care in FSBCs is safe and can have benefits for maternal and infant health outcomes, including reducing disparities, and because of their own experience working with midwives. Skanes Aff. ¶¶ 11, 14; Robinson Aff. ¶¶ 11–12; *see also* Suppl. PI 6–8, 10.

69. Plaintiff Skanes began working to open OFBC in 2021. She spent considerable time and resources over two years, including securing and completing requirements for numerous

grants, identifying and leasing suitable property, making physical improvements, recruiting staff, and sourcing and acquiring equipment for the birth center. Skanes Aff. ¶ 22.

70. OFBC initially opened in September 2022 with Plaintiff Crawford as the primary midwife providing all patient care; the first birth at the birth center occurred in October 2022. Skanes Aff. ¶ 25; Crawford Aff. ¶ 13; Ans. ¶ 115; Am. Compl. ¶115.

71. OFBC temporarily closed in 2023 as a result of events related to this litigation, *see infra* ¶¶ 96–101, and reopened on January 1, 2024, after receiving a temporary license, Skanes Aff. ¶¶ 25, 33–35; Crawford Aff. ¶ 13; *accord* Stips. ¶¶ 1, 31.

72. To obtain a temporary license, OFBC submitted an application to and underwent inspection by Defendant ADPH to demonstrate OFBC's compliance with national standards for FSBCs set by the American Association of Birth Centers ("AABC"), consistent with this Court's orders. Skanes Aff. ¶¶ 35–36; *see also* Suppl. PI 1– 2; Skanes. Aff. ¶ 23.

73. To date, more than three dozen patients have received care at OFBC, and eleven have given birth at the birth center, attended by a licensed midwife, with no adverse outcomes. Skanes Aff. ¶ 37; *see also id.* ¶ 29; Crawford Aff. ¶ 13.

74. Plaintiff Robinson first began exploring opportunities to open ABC in 2019 and invested considerable time, energy, and financial resources over four years in, *e.g.*, securing property for the birth center, overseeing construction, applying for grants, engaging in fundraising, and hiring staff. Robinson Aff. ¶ 22.

75. ABC received a temporary license from Defendant ADPH in July 2024, pursuant to the preliminary injunction granted in this case, Robinson Aff. ¶ 24; *accord* Stips. ¶¶ 2, 35.

76. To obtain a temporary license, ABC submitted an application to and underwent inspection by Defendant ADPH to demonstrate ABC's compliance with national AABC standards

for FSBCs, consistent with this Court's orders. Robinson Aff. ¶ 24; *see also* Suppl. PI 1–2; Robinson Aff. ¶ 23.

77. To date, eleven patients have received pregnancy-related care at ABC, including one birth, attended by a licensed midwife, with no adverse outcomes. Robinson Aff. ¶ 33; *see also* Stone Aff. ¶¶ 10, 28.

78. Both OFBC and ABC employ licensed midwives—CPMs or CNMs—to provide all patient care. Skanes Aff. ¶¶ 6, 29; Robinson Aff. ¶¶ 5, 9, 29; *see also* Stips. ¶¶ 19, 33, 37.

79. Plaintiffs Skanes and Robinson are available for consultation or referral as needed through their respective private OB/GYN practices. *See, e.g.*, Skanes Aff. ¶¶ 30–31; Crawford Aff. ¶¶ 18, 20; Robinson Aff. ¶ 31; Stone Aff. ¶¶ 26–27.

80. Both OFBC and ABC provide midwifery services for pregnancy-related care, including births, and care for newborns through six weeks after birth, utilizing the midwifery model of care. *See* Stips. ¶¶ 32, 36; *see also, e.g.*, Skanes Aff. ¶ 6; Robinson Aff. ¶ 5.

81. At OFBC, CPMs or a dually licensed CNM/CPM conduct all prenatal and postpartum visits and attend births in the birthing center, with assistance from RNs, birth assistants, and/or student midwives, some of whom are also trained as doulas and lactation consultants. Every birth is attended by staff with training in basic life support and neonatal resuscitation. Stips. ¶ 33; *see also* Skanes Aff. ¶¶ 6, 29.

82. At ABC, CPMs or CNMs conduct all prenatal and postpartum visits and attend births in the birthing center, with assistance from RNs and/or student midwives, who also serve as birth assistants. ABC also employs doulas and lactation consultants. Every birth is attended by staff with training in basic life support and neonatal resuscitation. Stips ¶ 37; *see also* Robinson Aff. ¶¶ 5, 9, 29.

83. ABC and OFBC also provide patient education and counseling, including education on breastfeeding, preparing for childbirth, and newborn care. Stips ¶¶ 32, 36; *see also* Skanes Aff. ¶ 29; Crawford Aff. ¶ 21; Robinson Aff. ¶¶ 25, 28; Stone Aff. ¶¶ 20–24.

84. ABC and OFBC also work with or facilitate referrals for their patients to other practitioners who care for pregnant patients, such as chiropractors certified in pregnancy-specific techniques, pelvic floor therapists, prenatal yoga specialists, nutritionists, acupuncturists, or mental health professionals, among others. *See* Skanes Aff. ¶ 29; Crawford Aff. ¶ 22; Robinson Aff. ¶ 25; Stone Aff. ¶ 25.

85. Both OFBC and ABC also provide training opportunities to student midwives to obtain hands-on, clinical training at the birth center, consistent with their priorities to expand access to midwifery training. Skanes Aff. ¶ 39; Crawford Aff. ¶ 14; Robinson Aff. ¶ 26.

86. All patients at OFBC and ABC are pre-screened and receive continuous risk assessment throughout pregnancy to ensure they remain low-risk and therefore eligible for birthing care at the birth center. Stips. ¶¶ 34, 38; *accord* Skanes Aff. ¶¶ 30–31; Robinson Aff. ¶¶ 27, 31; Crawford Aff. ¶¶ 17–18, 20; Stone Aff. ¶¶ 19, 23, 26–27.

87. Patients who are identified during risk screening as having conditions requiring the care of an obstetrician are not cared for in the birth centers but instead transferred to a hospital or obstetrician for ongoing care. *See, e.g.*, Skanes Aff. ¶¶ 27–28; Crawford Aff. ¶¶ 17, 20, 26; Robinson Aff. ¶¶ 27, 30; Stone Aff. ¶¶ 26–27.

88. For example, to be considered low-risk and eligible for care in an FSBC, a patient must not have risk factors that increase the likelihood of experiencing pregnancy-related complications, such as chronic hypertension or pre-existing diabetes. Skanes Aff. ¶¶ 27, 30; Robinson Aff. ¶ 27; Crawford Aff. ¶ 18; Stone Aff. ¶ 19.

89. Patients at OFBC and ABC who are low risk upon intake but later develop risk factors affecting their eligibility for care, such as gestational diabetes or signs of preeclampsia, are referred for consultation with Plaintiffs Skanes and Robinson, respectively, through their private OB/GYN practices, or to a provider of the patient's choice and, depending on the condition, severity, and patient circumstances, may need to be transferred out of the birth center to an obstetrician for ongoing care and hospital birth. Skanes Aff. ¶¶ 31–32; Robinson Aff. ¶ 31; Crawford Aff. ¶ 20; Stone Aff. ¶¶ 26–27 *see also* Stips. ¶ 34, 38.

90. OFBC and ABC never offer procedures that are outside the authorized scope of practice of Alabama-licensed midwives, such as surgical deliveries (*i.e.*, cesarean sections), or operative deliveries (*i.e.*, vacuum extraction or forceps-assisted deliveries), Stips. ¶ 28, which require transfer to obstetrician-led, hospital-based care, Skanes Aff. ¶¶ 17, 27; Robinson Aff. ¶ 13.

91. Plaintiffs OFBC and ABC pre-screen patients who might otherwise be eligible to deliver in an FSBC based on low-risk status to ensure that they agree to forgo medicated pain management during labor and agree to complete education components to ensure that they are prepared for unmedicated labor and early home discharge, among other conditions. Stips. ¶ 29; *see also, e.g.*, Crawford Aff. ¶ 21; Robinson Aff. ¶ 28; Stone Aff. ¶ 22.

92. The midwifery model of care depends on an open and trusting relationship between the midwife and their patient, and patients must also agree to honestly communicate with their midwife, as a condition of eligibility for care. Crawford Aff. ¶ 19; Stone Aff. ¶ 22.

93. Consistent with the midwifery model of care, Plaintiffs OFBC and ABC do not provide interventions that are inconsistent with physiological birth, but common in hospital settings, such as epidurals, continuous fetal monitoring, or medications to initiate or augment

labor; patients requesting or requiring these interventions must be transferred to hospital-based care. *E.g.*, Skanes Aff. ¶¶ 20, 27; Robinson Aff. ¶¶ 13, 32; Stone Aff. ¶ 29.

94. The risk screening and eligibility procedures employed by Plaintiffs OFBC and ABC are consistent with the midwifery model of care and the practice of Alabama midwives in other settings, including home births. Crawford Aff. ¶¶ 18, 25–26; Stone Aff. ¶¶ 19, 26, 36; *see also* Lopez Aff. ¶¶ 18, 24–25.

95. Plaintiffs Crawford and Stone have provided the same midwifery services to patients with the same risk profiles in a home birth setting as is currently provided at Plaintiffs OFBC and ABC. Crawford Aff. ¶¶ 18, 24–26; Stone Aff. ¶¶ 19, 26, 36–37.

F. History of this Case

96. When OFBC first opened to patients in September 2022, there were no regulations in place requiring ADPH licensure for FSBCs. Am. Compl. ¶ 115; Ans. ¶ 115; Skanes Aff. ¶ 24.

97. In March 2023, six months after OFBC opened, Dr. Amber Clark-Brown, Medical Director of ADPH's Bureau of Health Provider Standards and Home and Community Services, contacted OFBC and informed Dr. Skanes that ADPH considered OFBC to be an unlicensed hospital. Skanes Aff. ¶ 33; Am. Compl. ¶ 125; Ans. ¶ 125; *see also* Ala. Code § 22-21-33(a)(1).

98. Dr. Clark-Brown told Dr. Skanes that OFBC must cease providing birthing care but could continue to provide prenatal care while unlicensed. Skanes Aff. ¶ 33; Ans. ¶¶ 126, 128.

99. After additional communications, ADPH agreed to let existing patients already in their third trimester give birth at OFBC while it was unlicensed but continued to require all other existing patients to arrange to deliver elsewhere. Skanes Aff. ¶ 34; Am. Compl. ¶ 130; Ans. ¶ 130.

100. The last patient permitted to deliver at OFBC under this agreement gave birth in June 2023. Skanes Aff. ¶ 34; Am. Compl. ¶ 130; Ans. ¶ 130.

101. Because it was not sustainable for OFBC to provide prenatal care only, OFBC stopped providing care entirely between June 2023 and January 2024, when it received a temporary license, turning away more than twenty patients during that time, Skanes Aff. ¶¶ 35, 43.

102. In August 2023, Plaintiffs filed this lawsuit. Compl., Doc. 2.

103. In September 2023, after an evidentiary hearing, this Court granted a preliminary injunction enjoining Defendants from "refusing to timely license (including but not limited to refusing to timely issue temporary or interim licenses to) freestanding birth centers operating in the midwifery model of care [including the Plaintiff Birth Centers and members of Plaintiff ACNM-AL] that can demonstrate substantial compliance with the standards set out by the American Association of Birth Centers and can satisfy the remaining statutory requirements for licensure under Alabama law." Suppl. PI 1 (citing Ala. Code §§ 22-21-23, -24, -29(a), -31).

104. This Court credited expert testimony that "there is a robust body of reliable evidence finding no increase in adverse events when care is provided at [an FSBC] that complies with the national standards set out by [AABC], rather than at a hospital," and that "there is a national expert consensus, shared by [the American College of Obstetricians and Gynecologists] among others, that [FSBCs] that comply with AABC standards are among the safest places to give birth in the United States." *Id.* at 5 (citations omitted); *see also id.* at 11 (finding that ADPH witness Dr. Landers, "conceded that she could not identify a single piece of evidence showing that [FSBCs] that comply with the national AABC standards are less safe than licensed hospitals").

105. This Court credited expert testimony that "there is a robust body of reliable evidence supporting the safety of pregnancy care led by midwives rather than physicians, and documenting meaningful benefits under the midwifery model of care for low-risk populations that midwives serve—including fewer medical interventions (such as cesarean section deliveries,

which are major abdominal surgeries), less preterm birth, less fetal loss, increased rates of breastfeeding, and higher patient satisfaction"; and that "[t]he birth center model offers significant benefits to patients that mirror the benefits of midwifery care generally, including fewer cesarean section deliveries, less preterm birth, reductions in race- and poverty-related disparities, and cost-savings." *Id.* at 5; *accord id.* at 6, 8, 10, 14.

106. This Court found that the services provided by the Plaintiff Birth Centers "would help address the dire needs of their communities, especially among Black women and the patient populations most at risk of adverse outcomes and harm and which Plaintiffs intend to prioritize, including patients with low incomes." *Id.* at 18; *see also id.* at 14 & n.2 (relying on "undisputed testimony . . . and the admissions by ADPH that increasing access to pregnancy services is critical to mitigate Alabama's dire maternal and infant health outcomes").

107. On October 15, 2023, ADPH adopted final regulations for the licensure and regulation of FSBCs. Stips. ¶ 15 (citing Ala. Admin. Code rr. 420-5-13-.01 to -.19).

108. Among other requirements, the ADPH Regulations would require all FSBCs either to have a physician on staff or an agreement with a consulting physician and would require such physicians to meet certain physical presence and supervision requirements. Stips. ¶ 16.

109. They would also restrict CPMs' scope of practice in FSBCs to providing care only as "assistive" personnel to a physician or CNM and prohibit them from providing independent patient care at FSBCs throughout pregnancy, birth, and the postpartum period, including attending deliveries. Stips. ¶ 17 (citing Ala. Admin. Code r. 420-5-13-.01(2)(b), (f), (w)).

110. The ADPH Regulations would also prohibit CPMs from working in an FSBC unless they had at least one year of prior experience providing all phases of prenatal, delivery, and postnatal care. Ala. Admin. Code r. 420-5-13-.01(2)(b), (e).

111. The ADPH Regulations would prevent CNMs from working in FSBCs absent a valid CPA with the FSBC's staff or consulting physician and meeting other experience and training requirements, Stips. ¶ 18, *i.e.*, at least one year of prior experience working in a hospital labor and delivery unit or neonatal intensive care, Ala. Admin. Code r. 420-5-13-.01(2)(b), (d), (f), (w).

G. Harm to Plaintiffs, Their Members, and Their Patients

112. It would be extremely burdensome, if not impossible, for the Plaintiff Birth Centers to continue operating if required to comply with the ADPH Regulations. *E.g.*, Skanes Aff. ¶ 38; Robinson Aff. ¶ 34.

113. Plaintiffs Skanes and Robinson have invested years of personal and financial resources in establishing their birth centers, which would be lost if the Plaintiff Birth Centers were unable to continue operating. Skanes Aff. ¶¶ 22, 41–42; Robinson Aff. ¶¶ 22, 37–38.

114. When Plaintiff OFBC had to close from June 2023 to January 2024, Plaintiff Skanes lost tens of thousands of dollars in lost income and forfeited grant money. Skanes Aff. ¶ 41.

115. When Plaintiff Robinson halted development of ABC in summer 2022, she suffered considerable financial losses, including lost fundraising opportunities and loan consequences, as well as harm to her professional reputation in her community. Robinson Aff. ¶ 37.

116. If the Plaintiff Birth Centers were unable to continue operating, Plaintiffs Skanes and Robinson would suffer additional financial harm, personal distress, and professional harm to their reputations. Skanes Aff. ¶¶ 41–44; Robinson Aff. ¶¶ 37–40.

117. The ADPH Regulations would deny employment opportunities in an FSBC to newly-certified CPMs, including CPM members of Plaintiff AL-ACNM, who meet all other requirements for licensure and practice in Alabama unless they also have at least "1 year of documented experience in providing all phases of prenatal, delivery, and postnatal care," Ala.

Admin. Code r. 420-5-13-.01(2)(e); *see also* Stone Aff. ¶ 38 (under this restriction, Plaintiff Stone would have been prevented from working at ABC when she started).

118. By limiting CPMs to "provid[ing] assistive care" to a physician or CNM, Ala. Admin. Code r. 420-5-13-.03(1), the ADPH Regulations would also prevent Plaintiffs Stone and Crawford and Plaintiff ACNM-AL's members who practice as CPMs from providing independent patient care in an FSBC, *e.g.*, Crawford Aff. ¶¶ 29–30; Stone Aff. ¶¶ 31–33; Lopez Aff. ¶ 39. This restriction would prevent CPMs from practicing to their full scope of practice in FSBCs, consistent with their training, qualifications, and licensure, and would prevent Plaintiffs Crawford and Stone from continuing to provide the independent care that they currently provide at OFBC and ABC, respectively, *e.g.*, Crawford Aff. ¶¶ 29–30, 33; Stone Aff. ¶¶ 31–32.

119. The "assistive care" restriction could also impede the Plaintiff Birth Centers in offering out-of-hospital training to midwifery students, consistent with their missions. Skanes Aff. ¶ 39; Robinson Aff. ¶ 35; Crawford Aff. ¶ 31; Stone Aff. ¶ 35; *see also* Lopez Aff. ¶ 35.

120. The "assistive care" restriction on CPMs could make it financially and practically unsustainable to employ CPMs in birth centers, making it prohibitively expensive to operate birth centers at all in some cases. Skanes Aff. ¶¶ 39–40; Robinson Aff. ¶ 35; *see also* Stone Aff. ¶¶ 32, 34 (restriction on CPMs would make Plaintiff Stone unlikely to continue working in an FSBC and prevent her from pursuing her goal of opening her own birth center in the future).

121. The ADPH Regulations would prevent newly-certified CNMs, including members of Plaintiff ACNM-AL, who meet all qualifications for licensure and practice in Alabama from working in an FSBC until they have obtained experience in particular hospital settings, Ala. Admin. Code r. 420-5-13-.01(2)(d), which may not be possible to obtain without leaving the state, because there are currently limited employment opportunities for CNMs in Alabama, Lopez Aff.

¶ 37; *see also id.* ¶¶ 20-22, 31-32 (explaining that only a handful of hospitals or private physician practices in Alabama currently employ CNMs at all, and those that do may not be hiring or may not provide opportunities for CNMs to work in the required departments).

122. The ADPH Regulations would also impose increased administrative burdens on FSBCs and Plaintiff ACNM-AL members who seek to work in FSBCs by requiring them to have a CPA with the FSBC's affiliated physician, Ala. Admin. Code r. 420-5-13-.01(2)(d), even if they already have a valid CPA with an unaffiliated physician that includes the FSBC as a remote practice site, *see* Lopez Aff. ¶ 38; Robinson Aff. ¶ 36; *see also* Ala. Admin. Code r. 610-X-5-.01(15) (remote practice sites are "approved site[s] for collaborative practice without an approved collaborating or covering physician on-site"). This could double the administrative burden on CNMs, including by doubling the time needed to prepare for and attend required meetings with collaborating physicians and complete documentation. Lopez Aff. ¶ 38; *see also* Ala. Admin. Code r. 610-X-5-.20 (CPA meeting and documentation requirements).

123. These specific requirements in the ADPH Regulations would harm Plaintiffs' and their members' patients by decreasing opportunities for licensed midwives to practice in FSBCs and for student midwives to obtain training, Stone Aff. ¶¶ 33–35, 38–39; Crawford Aff. ¶¶ 30–33; Lopez Aff. ¶¶ 37–39; Skanes Aff. ¶¶ 38–40; Robinson Aff. ¶¶ 34–36, thereby decreasing already-limited access to midwifery care in Alabama, *see, e.g.*, Lopez Aff. ¶¶ 20–23, 27, 31–35; Skanes Aff. ¶¶ 10, 43–44; Robinson Aff. ¶¶ 18–21, 39–40; *see also* Supp. PI 17.

124. To the extent the ADPH Regulations make it impossible for FSBCs to operate in Alabama, Plaintiffs' and their members' patients will be harmed because they will be denied access to FSBC care entirely, despite having determined with their trusted health care providers that such care was optimal for them, based on their individual circumstances, health, values, and needs, *see,*

e.g., Skanes Aff. ¶¶ 43–44; Robinson Aff. ¶¶ 39–40; Crawford Aff. ¶¶ 30–33; Stone Aff. ¶¶ 33–34, 39; Lopez Aff. ¶¶ 40–41; *see also* Suppl. PI 9.

125. As a result, Plaintiffs' and their members' patients would be forced to travel out of state to access care in an FSBC; to seek a home birth, which may not be accessible to them, *e.g.*, based on space or privacy concerns; or to have a hospital birth, even if, *e.g.*, they had specifically sought to avoid that model of care because of past traumatic experiences. *See, e.g.*, Skanes Aff. ¶ 43; Robinson Aff. ¶ 39; Crawford Aff. ¶ 28; Lopez Aff. ¶ 41.

ARGUMENT

A. Standards for Summary Judgment

A party is entitled to summary judgment if the evidence "show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Ala. R. Civ. P. 56(c)(3). The court must determine whether the movant has made "a prima facie showing that there is no genuine dispute of material fact." *Madasu v. Shoals Radiology Assocs., P.C.*, 378 So. 3d 501, 504 (Ala. 2022). Then, "the burden shifts to the nonmovant to produce substantial evidence that such a dispute exists." *Id.* Because the parties have cross-moved for summary judgment, when considering Defendants' motion for summary judgment, the Court must consider the record giving "the benefit of all reasonable inferences" to Plaintiffs, and, when considering Plaintiffs' motion for summary judgment, to Defendants. *Id.*

Here, Plaintiffs' entitlement to summary judgment is established by record evidence, including the parties' stipulations and Plaintiffs' exhibits and sworn affidavits. While Defendants suggest that evidence other than the joint stipulations is irrelevant, *see* Brief in Supp. of Defs.' Mot. Summ. J. 10, Doc. 243 [hereinafter "Defs.' Br."], that is not the case, as explained below. Equally importantly, Defendants can point to no record evidence to dispute these facts. Thus,

whether viewed in the light most favorable to Plaintiffs or Defendants, the record compels only one conclusion: Plaintiffs' motion should be granted and Defendants' motion denied.

B. Plaintiffs are Entitled to Summary Judgment on Claim One Because the ADPH Regulations Treating FSBCs as "Hospitals" Violate the AAPA.

Under the AAPA, an agency rule is "invalid" if its actual or threatened enforcement "interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the plaintiff," and, as relevant here, if the agency rule "exceeds the statutory authority of the agency." Ala. Code § 41-22-10. Plaintiffs are entitled to summary judgment because the undisputed facts establish that FSBCs do not fall within the "hospital" definition, *id.* § 22-21-20(1). Because both legal rules of statutory construction and undisputed record evidence make clear that FSBCs do not provide "obstetrical care" and do not provide care "to the public generally," *id.*, ADPH's attempt to regulate them as "hospitals" exceeds its statutory authority.

1. Plaintiffs Have Standing to Challenge the ADPH Regulations.

Defendants do not dispute, and record evidence confirms, that Plaintiffs have standing to challenge the threatened application of the ADPH Regulations to FSBCs in Alabama because the regulations "interfere with or impair . . . the legal rights [and] privileges," Ala. Code § 41-22-10, of both the Birth Center Plaintiffs, which would be subject to the ADPH Regulations, and the individual Plaintiffs and Plaintiff ACNM-AL's members, who either own, work in, or would like to own and work in birth centers that would be subject to the Regulations. Narrative of Undisputed Facts, *supra*, ¶¶ 56–66 [hereinafter "Facts"]. It would be incredibly burdensome, if not impossible, for Plaintiffs Skanes and Robinson to operate their birth centers at all under the ADPH Regulations, *id.* ¶ 112; *see also e.g.*, *id.* ¶¶ 119–120, 122, and closure would cause them significant personal, professional, and financial harm, *id.* ¶¶ 113–16, 123–24. Indeed, Plaintiff OFBC previously closed for six months after ADPH informed Dr. Skanes that it considered OFBC's operation as an FSBC

to require a "hospital" license and forced it to stop providing birthing care under threat of criminal sanction, *see* Ala. Code § 22-21-33(a)(1), costing Plaintiff Skanes tens of thousands of dollars in lost grant money and income and forcing Plaintiff Crawford to sever established relationships with OFBC patients, Facts ¶¶ 70–71, 97–101, 114. Moreover, the ADPH Regulations would restrict the ability of Plaintiffs Crawford and Stone to practice independently in FSBCs to their full scope of practice, preventing them from continuing to provide the care they currently provide at OFBC and ABC, *id.* ¶ 118; and the Regulations would likewise impede the ability of Plaintiff ACNM-AL's members to train in, work in, or open birth centers,[3] *id.* ¶¶ 117–22. These undisputed facts more than suffice to establish standing. *See* Ala. Code § 41-22-10.

2. The ADPH Regulations Violate the AAPA Because FSBCs Are Not "Hospitals."

When considering a question of statutory interpretation, the "cardinal rule" is "to determine and give effect to the intent of the Alabama Legislature as manifested in the language of the statute." *Bassie*, 828 So. 2d at 283 (quoting *Ex parte Univ. of S. Ala.*, 761 So. 2d 240, 243 (Ala. 1999)). "Absent a clearly expressed legislative intent to the contrary, the language of the statute is conclusive. Words must be given their natural, ordinary, commonly understood meaning, and where plain language is used, the court is bound to interpret that language to mean exactly what it says." *Id.* (quoting *Ex parte Univ. of S. Ala*., 761 So. 2d at 243).

Here, the Parties agree: If FSBCs are not "hospitals" under section 22-21-20(1), ADPH has no authority to require them to obtain licenses or comply with its Regulations. Stips. ¶ 40; Facts

[3] As a professional association challenging state action that adversely affects conditions associated with its members' professional activities, Plaintiff ACNM-AL has associational standing to seek relief on behalf of its members. *See City of Bessemer v. McClain*, 957 So. 2d 1061, 1077 (Ala. 2006) (professional trade association had associational standing to challenge tax affecting its members); *S. States Police Benevolent Ass'n, Inc. v. Bentley*, 219 So. 3d 634, 638 n.7 (Ala. 2016) (police association had associational standing to challenge pension plan that affected its members' benefits): *see also* Facts ¶¶ 62–66.

¶ 31. ADPH's licensing and regulatory authority does not encompass all health care settings in the state, or even all settings where patients give birth. *See* Facts ¶¶ 32–34 (ADPH lacks authority to regulate, *inter alia*, office-based surgeries or home births). As set forth below, it also does not encompass FSBCs: based on "the plain meaning of the words as written by the legislature," *Bassie*, 828 So. 2d at 283, FSBCs are not "hospitals") because they are not "primarily engaged in offering . . . obstetrical care" and do not serve "the public generally," Ala. Code § 22-21-20(1).[4]

a. FSBCs Operating in the Midwifery Model Do Not Provide "Obstetrical Care."

FSBCs like the Plaintiff Birth Centers do not fall within the "hospital" definition because they provide midwifery care, which is distinct from "obstetrical care" as a matter of Alabama law.

i. "Obstetrical care" and "midwifery care" are legally distinct.

As with any question of Alabama statutory construction, the plain language of the statute controls. *Bassie*, 828 So. 2d at 283. Section 22-21-20(1) uses the term "obstetrical care." The parties have jointly stipulated that the definition of "obstetrics" relied on in the Alabama Attorney General's advisory opinion is the appropriate definition of the term: "the branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium," Stips. ¶ 12, where "puerperium" is defined to mean "the period of 42 days following childbirth," Att'y Gen. Op. at 3; *see also Douglas v. Roper*, 374 So. 3d 652, 671 (Ala. 2022) (such advisory opinions are "persuasive authority"). Moreover, this definition is consistent with general rules of statutory interpretation, under which Alabama courts recognize that, "[w]hen the legislature has chosen not

[4] Plaintiffs agree that whether FSBCs are "hospitals" turns on whether FSBCs fall within the scope of the specific language of the "hospital" definition, not on whether "they are commonly accepted in public opinion as being a hospital." Defs.' Br. 10. Throughout this litigation and in their motion, Defendants have only ever asserted authority to regulate FSBCs as "hospitals" based on the clause of section 22-21-20(1) pertaining to institutions "primarily engaged in offering to the public generally . . . obstetrical care," and not based on any other part of the statute. *Accord* Att'y Gen. Op. at 2–3. For the reasons explained herein, FSBCs do not fall within this definition.

to define a word, the plain and ordinary language can be ascertained from a dictionary." *Ex parte Christopher*, 145 So. 3d 60, 64 (Ala. 2013) (internal quotation marks & citation omitted).

Under this definition, to be "obstetrical care," the care provided must not only involve pregnancy, childbirth, and the postpartum period, but must *also* be "a branch of medicine" concerning the same—a critical part of the definition that Defendants ignore entirely, *see* Defs.' Br. 11. Under Alabama law, only "a doctor of medicine" or a "doctor of osteopathy" can practice medicine. Ala. Code. § 34-24-50.1(5). Non-physicians, including CPMs or CNMs, can practice "any other branch of the healing arts[] *except medicine*," according to the "scope of [a] license" "issued . . . by any state licensing board." *Id.* § 34-24-51 (emphasis added). In fact, it would be a class C felony for CPMs or CNMs—or any non-physician—to practice *any* form of medicine, including obstetrics, *id*.; *see also id.* §34-19-18(b) (explicitly stating that nothing in the midwifery statute "shall be construed as authorizing a licensed midwife to practice medicine"). Thus, as a matter of law, midwifery and branches of medicine like obstetrics are distinct.

Other portions of the Alabama Code likewise support that obstetrics is a branch of medicine and that it must be practiced by licensed physicians. For example, other than the "hospital" definition, the only other usage of the term "obstetrical care" in the Code refers to care provided by *physicians* specifically, not midwives. *Id*. §§ 22-6-40 to -42 (referring to programs to improve access to "obstetrical care" and "obstetrical services" in underserved areas of the state by providing funding to "physicians" to provide that care). Another provision of the Code refers to "obstetrics and gynecology" as a "specialty" that is practiced by an "obstetrician and gynecologist … *physician*." *Id.* § 27-49-2 (emphasis added); *accord id.* § 27-49-3(2); *see also* Facts ¶¶ 17–18 (obstetricians are physicians, i.e., medical doctors).

By contrast, when defining midwifery and the practice of licensed midwives in Alabama statute, the Alabama Legislature consistently uses *different* language, never using the term "obstetrical care." The Alabama Legislature defined "midwifery" as practiced by CPMs as "[t]he provision of *primary maternity care* during the antepartum, intrapartum, and postpartum periods." Ala. Code § 34-19-11(3) (emphasis added). And it defined the scope of practice of CNMs under Alabama law to be "the performance of *nursing skills* … relative to the management of *women's health care* focusing on pregnancy, childbirth, the postpartum period, [and] care of the newborn." *Id.* § 34-21-81(2)(b) (emphases added). A court must "presume that the Legislature knows the meaning of the words it uses in enacting legislation," *Reed v. Bd. of Trs.*, 778 So. 2d 791, 794 (Ala. 2000) (quoting *Ex parte Jackson*, 614 So. 2d 405, 407 (Ala. 1993)), and that its choice of words is not "meaningless," *id.* (quoting *Elder v. State*, 50 So. 370, 371 (Ala. 1909)). Here, the Legislature has limited ADPH's hospital licensing authority in relevant part to health centers providing "obstetrical care," a term it uses to refer to the practice of medicine by physicians, *see* Ala. Code §§ 22-6-40 to -41, but that it deliberately chose *not* to use when defining the practice of midwifery by CPMs or CNMs, *id.* §§ 34-19-11(3), 34-21-81(2)(b). The language chosen by the Legislature is "conclusive." *Bassie*, 828 So. 2d at 283.

Even if the Court had any doubt that, as a matter of law alone, obstetrical care and midwifery are different, that conclusion is further supported by the undisputed facts in this case. The parties have stipulated that midwives and obstetricians have different training and education, have different scopes of practice, are credentialed by different bodies, and are regulated by different licensing boards, Stips. ¶¶ 21–28; *see, e.g.*, Facts ¶¶ 2–18, 90; *see also* Ala. Code § 34-19-14 (Board of Midwifery licenses and regulates CPMs); *id.* §§ 34-21-81(1), -84 (ALBON licenses and regulates advanced practice nurses, including CNMs); *id.* §§ 34-24-51, -53 (ALBME

licenses and regulates physicians). In particular, many procedures common to the practice of obstetricians in hospital settings—such as surgical and operative deliveries, or artificial induction or augmentation of labor—are outside Alabama-licensed midwives' scope of practice or otherwise incompatible with the practice of midwifery, which prioritizes "physiological birth with minimal technological interventions to initiate or augment labor." *See* Stips. ¶¶ 20, 28; Facts ¶¶ 1, 90, 93.

Taken together, "the intent of the Alabama Legislature as manifested in the language" of Alabama statutes, *Bassie*, 828 So. 2d at 283, and the undisputed record evidence demonstrate that the practice of midwifery and the practice of branches of medicine like obstetrics are distinct, and the Alabama Legislature has chosen to give ADPH licensing authority only over facilities that are primarily engaged in providing the latter.

ii. Defendants' broad reading of "obstetrical care" is unsupported by law or logic.

Despite stipulating that "obstetrics" is a "branch of medicine," *see* Stips. ¶ 12, Defendants try to read those words out of the definition of "obstetrical care," attempting to give that term a far more sweeping ambit encompassing *any* pregnancy-related care whatsoever, without regard to the credentials of the practitioner providing it or the kind of care involved, *see* Defs.' Br. 11–12. Defendants rest their entire argument on the fact that midwives and obstetricians both provide pregnancy-related care, which, Defendants contend, means midwives must necessarily be engaged in the practice of obstetrics. But the fact that midwives and obstetricians both treat pregnant patients and attend births does not mean that what midwives do is obstetrics any more than it makes what obstetricians do midwifery. The Court should reject Defendants' flawed reading, which conflicts with Defendants' own stipulations *and* violates cardinal rules of statutory interpretation.

First, Defendants' attempt to collapse the meanings of midwifery and obstetrical care ignores the plain language the Legislature chose to use. If the Legislature had wanted facilities

providing midwifery care by licensed CPMs and CNMs to qualify as providers of "obstetrical care" under section 22-21-20(1), it could have easily used the words "obstetrics" or "obstetrical care" to define midwifery, rather than going out of its way to define that care with different language, *e.g.*, Ala. Code § 34-19-11(3) ("primary maternity care"); *id.* § 34-21-81(2)(b) ("women's health care"), and to limit the practice of medicine to physicians, *id.* §§ 34-24-50.1(5), 34-24-51; *see also id.* § 34-19-18(b). Where the Legislature made a deliberate choice to use different language, this Court must give effect to the different definitions those terms carry. *See Ex parte Chesnut*, 208 So. 3d 624, 640 (Ala. 2016); *Reed*, 778 So. 2d at 794.

Second, Defendants' reading is so broad that it would lead to absurd results. According to Defendants, *any* care provided "during pregnancy, childbirth, and the puerperium" is "obstetrical care," without regard to who provides it or what it entails. *See* Defs.' Br. 11–12. But that capacious reading would encompass a host of practitioners that, in ordinary language and as a matter of common sense, have never been understood to be practicing obstetrical care and that ADPH, notably, has never attempted to regulate as such. For example, non-clinical pregnancy workers like doulas provide care to "women during pregnancy, childbirth and the puerperium." *See* Facts ¶¶ 58, 61, 81–84. So do professionals like, *e.g.*, chiropractors, pelvic floor therapists, acupuncturists, or psychiatrists specializing in postpartum depression. *See id.* ¶ 84. But it would be absurd to suggest that these practitioners therefore provide "obstetrical care," as Defendants' reading requires.[5] *See Ala. Dep't of Rev. v. Greenetrack, Inc.*, 369 So. 3d 640, 654 (Ala. 2022) (rejecting interpretation "because of the absurd results"); *accord City of Bessemer*, 957 So. 2d at 1075.

[5] *See, e.g.*, Ala. Code §§ 34-24-120(c), -122 (giving chiropractors "the right to treat patients according to specific chiropractic methods" and not restricting their ability to care for pregnant patients but specifying that they may not "practice obstetrics"); Facts ¶ 84 (Plaintiffs routinely refer patients to chiropractors specializing in techniques for treating pregnant patients).

Contrary to what ADPH appears to believe, just because obstetrics and midwifery both involve care to pregnant patients during the prenatal, labor and delivery, and postpartum periods, that does not make them categorically synonymous. For example, psychiatry, psychology, and social work all involve the provision of counseling and care for mental health conditions, but it would be inconceivable that a state agency would therefore consider licensed clinical social workers practicing within their scope of practice to be providing psychiatric care and to regulate them as such.[6] The same is true here: Notwithstanding that midwives and obstetricians treat overlapping patient populations, "midwifery" and "obstetrics" are not interchangeable terms, but reflect distinct models of care and fields of practice, practiced by different health care professionals, and requiring different skill sets, education, and training—as the different language the Legislature chose in referring to them reflects.

iii. The undisputed facts demonstrate that the Plaintiff Birth Centers provide midwifery care, not obstetrical care.

As set forth above, as a matter of Alabama law, midwives do not and cannot provide obstetrical care. The undisputed facts in this case thus make clear that, by providing solely *midwifery* care, the Plaintiff Birth Centers are not "primarily engaged" in providing "obstetrical care" and therefore are not "hospitals" under section 22-21-20(1).

To start, the parties have stipulated that Plaintiffs OFBC and ABC provide "midwifery services" and operate in the "midwifery model of care." Stips. ¶¶ 19, 32, 36. The parties have also stipulated that OFBC and ABC employ licensed CPMs and CNMs—who are prohibited under Alabama law from practicing any branch of medicine, Ala. Code § 34-24-51—to "conduct all

[6] *See* Ala. Code § 34-26-1 (practice of psychology); Ala. Code § 34-30-1 (practice of social work); 1997 Ala. Laws 97-387 (distinguishing practice of psychology from "the practice of medicine" by a "psychologically oriented physician, usually a psychiatrist").

prenatal and postpartum visits and attend births in the birth center." Stips. ¶¶ 33, 37; *see also* Facts ¶¶ 26, 78, 80–82.[7]

Moreover, the record evidence demonstrates that the Birth Center Plaintiffs do not provide any care in the birth center that is inconsistent with the midwifery model and physiological birth and that they transfer patients requiring the care of an obstetrician *out* of the birth center, *see* Facts ¶¶ 86–90; *see also id.* ¶¶ 79, 93–94. For example, as Defendants have stipulated, "[s]urgical and vaginal operative deliveries are not available in Plaintiffs OFBC and ABC, and these procedures are outside the scope of practice of the licensed midwives who work at Plaintiffs OFBC and ABC." Stips. ¶ 28. Such deliveries are common in hospital-based, obstetrician-led care, but are never provided at OFBC or ABC. *See* Facts ¶¶ 53, 90. Other technological interventions that are similarly common in hospital-based, obstetrician-led care—such as epidurals or narcotic analgesics, continuous fetal monitoring, and use of medications to initiate or augment labor—are likewise not offered at OFBC or ABC. *Id.* ¶ 93. Any OFBC or ABC patients requiring these procedures or opting for such care (in the case of, *e.g.*, epidural or elective medical induction) would be transferred out of the birthing center to hospital-based care. *Id.* Likewise, the parties have stipulated that patients developing certain risk factors are referred or transferred out of the birth center to the care of an OB/GYN, either through a physician's private practice or a hospital, depending on the circumstances. Stips. ¶¶ 34, 38. And, whereas there are numerous dissimilarities between obstetrician-led births in the hospital setting and midwife-led births at birth centers, *see e.g.*, Facts ¶¶ 1–3, 17, 23–24, 27, 53, 93, the record is undisputed that the care provided at OFBC

[7] Defendants mistakenly refer to the CPMs and CNMs employed by OFBC and ABC as "two types of nurses." Defs.' Br. 11. Both CPMs and CNMs are *midwives*, but only CNMs are also nurses, as the parties have stipulated. Stips. ¶ 23; *accord* Defs.' Br. 6–7; *see also* Facts ¶¶ 4–14.

and ABC is essentially identical to the care Plaintiffs Crawford and Stone provide in home birth settings, *id.* ¶¶ 94–95, which is outside ADPH's regulatory authority altogether, *id.* ¶ 34.

Notwithstanding the myriad substantive differences between the types of care midwives and obstetricians provide, the manner in which it is provided, and the training of those who provide it, Defendants insist that the practice of midwifery *is* obstetrical care. Defs.' Br. 10–12. But in moving for summary judgment Defendants can point to no law or record evidence—let alone undisputed record evidence—to support that claim. As such, there is no genuine dispute of material fact that the midwifery care Plaintiffs provide is not obstetrical care as a matter of law, and Plaintiffs are entitled to summary judgment on Claim One that ADPH's attempt to regulate them as "hospitals" exceeds its statutory authority.

b. FSBCs Operating in the Midwifery Model Do Not Provide Care to the "Public Generally."

Plaintiffs are also entitled to summary judgment on Claim One for a second, independent reason: whether or not this Court concludes that FSBCs like the Birth Center Plaintiffs are "primarily engaged" in providing "obstetrical care," they are outside ADPH's licensing authority because the care they provide is not "offer[ed] to the public generally." In order to fall within the "hospital" definition, FSBCs must not only be "primarily engaged in offering . . . obstetrical care," but must *also* offer such care "to the public generally." Ala. Code § 22-21-20(1); *see supra* note 4 (Defendants only raise arguments under this clause). The undisputed facts confirm that they do no such thing, and Defendants' contrary argument would render the statutory language meaningless.

Far from offering their care to the public writ large, FSBCs operating in the midwifery model of care are much more akin to private practices in that providers exercise discretion in choosing whether to take on a particular new patient, *cf.* Ala. Code § 20-21-20(1) (excluding care provided in a private doctor's office), or to home birth practices where CPMs do the same, *see*

Facts ¶¶ 25, 91–92, 94–95. For example, unlike hospitals, which by their nature offer acute care services to members of the community at large and are obligated under federal law to provide care to any patient who presents at the emergency department in active labor, 42 U.S.C. § 1395dd(b), the parties have stipulated that FSBCs only provide care to certain patients who have first been screened to ensure they have low-risk pregnancies and are appropriate candidates for care and delivery in the birth center. Stips. ¶¶ 13, 34, 38. It is further undisputed that patients sometimes "risk out" of care at a birth center, if, during pregnancy, they develop certain risk factors making them ineligible for FSBC care. Stips. ¶¶ 34, 38; *accord* Facts ¶¶86–87, 89. Moreover, contrary to Defendants' unsupported assertion that "*[a]ny* woman meeting the eligibility criteria for a low-risk pregnancy… may avail herself" of an FSBC's services, Defs.' Br. 10 (emphasis added), the undisputed evidence is that patients who meet risk-based eligibility criteria may *not* become patients of the Plaintiff Birth Centers unless they *also* agree to additional policies and procedures, *e.g.*, "to forgo medicated pain management during labor," "to complete education components to ensure they are prepared for unmedicated labor and early home discharge," Stips. ¶ 29; Facts ¶ 91, and to other conditions such as maintaining honest communication with their midwife, Facts ¶ 92.

Notwithstanding these stipulated and undisputed facts, Defendants insist that the Plaintiff Birth Centers are open to the "public generally" based solely on the fact that they provide midwifery care to *some* eligible patients. *See* Defs.' Br. 12 (citing only to Stips. ¶¶ 13, 32, 36). But if, as Defendants insist, all that is required to serve the "public generally" is to serve eligible customers willing to pay for their services, *see id.*, despite applying rigorous risk-based and other eligibility criteria to pre-screen clientele and exercising discretion, it is difficult to envision—and Defendants do not explain—what kind of health care provider would *not* be serving "the public generally." That reading renders these words meaningless, in defiance of the rules of statutory

construction that "every word, sentence, or provision [of a statute] was intended for some useful purpose, has some force and effect, and that some effect is to be given to each." *City of Montgomery v. Town of Pike Rd.*, 35 So. 3d 575, 584 (Ala. 2009) (alteration in original) (quoting *Ex parte Child.'s Hosp. of Ala.*, 721 So. 2d 184, 191 (Ala. 1998)); *see also Lang v. Cabela's Wholesale, LLC*, 371 So. 3d 228, 233–34 (Ala. 2022) ("the [L]egislature should not be deemed to have done a vain and useless thing" by including unnecessary words in a statute" (quoting *State Home Builders Licensure Bd. v. Sowell*, 699 So. 2d 214, 218 (Ala. Civ. App. 1997))).

The conclusion that FSBCs operating in the midwifery model do *not* offer care "to the public generally" is the only reading of the statute that would give these words independent "force and effect," *City of Montgomery*, 35 So. 3d 575, 584 (quoting *Ex parte Child.'s Hosp. of Ala.*, 721 So. 2d at 191). Plaintiffs are entitled to summary judgment for this additional, independent reason.

c. Defendants' Interpretation of the Statue Is Entitled to No Deference.

ADPH argues that the Court should defer to its interpretation of the hospital definition in section 22-21-20(1), as a "reasonable" interpretation, Defs.' Br. 13. But deference is not appropriate in this case for multiple reasons.

First, Defendants' reading of the statute violates multiple rules of statutory interpretation, as explained *supra*, and is therefore not reasonable. This is a far cry from the circumstances in the only case Defendants cite in support of their deference argument, where the agency interpretation at issue was *consistent* with the plain language: In *Ex parte State Dep't of Revenue*, 683 So. 2d 980 (Ala. 1996), the agency claimed that naphtha was subject to a gasoline tax under a statute that explicitly named "naphtha" as a material subject to the tax, an interpretation the Court agreed with under ordinary statutory interpretation principles and, therefore, found reasonable. *Id.* at 983. Here, FSBCs are *not* explicitly included in the list of covered facilities in section 22-21-20(1), nor do

ordinary rules of interpretation support a conclusion that they are "primarily engaged in offering, to the public generally . . . obstetrical care," *see supra* pp. 29–34, 36–38.

Second, the Alabama Supreme Court has repeatedly held that courts should *not* defer to the agency in cases like this one, where the statutory interpretation question is a question of the boundaries of the agency's own jurisdiction and "[t]he whole thrust of the [plaintiffs'] argument is that the [agency] does not have the statutory authority" at all. *Fraternal Ord. of Police*, 103 So. 3d at 28. ADPH "is purely a creature of the legislature, and [it] has only those powers conferred upon it by its creator." *Ex parte City of Florence*, 417 So. 2d 191, 194 (Ala. 1982). "Because an administrative agency may not expand its own jurisdiction by its interpretation of a statute (or by any other means)," courts should not defer to an agency on questions of whether a particular action (here, regulating FSBCs as "hospitals") falls within the agency's "sphere of statutory authority at all." *Ex parte State Health Plan. & Dev. Agency*, 855 So. 2d 1098, 1102–03 (Ala. 2002). Here, the Legislature placed limits on ADPH's licensing and regulatory authority by restricting that authority to facilities meeting the definition of a "hospital" under section 22-21-20(1). It is the role of this Court to enforce those limits. *See City of Florence*, 417 So. 2d at 193 ("It is axiomatic that administrative rules and regulations must be consistent with the . . . statutory authority by which their promulgation is authorized."). "Fidelity to [the] separation of powers precept requires [the Court] to . . . adhere" to the plain text and the Legislature's intent by preventing ADPH from exceeding its authority by regulating entities—FSBCs—that do not fall within the "hospital" definition. *Lang*, 371 So. 3d at 234.

In short, deference has no place in this case.

C. The Plaintiffs Are Entitled to a Declaratory Judgment and Permanent Injunction.

Because Plaintiffs have demonstrated their entitlement to summary judgment on Claim One, they are entitled to a declaratory judgment and permanent injunctive relief preventing ADPH

from enforcing the existing ADPH Regulations or from otherwise attempting to license or regulate FSBCs as "hospitals" under section 22-21-20(1). *See* Pls.' Mot. for Summ. J. 1–2.

1. Plaintiffs Are Entitled to a Declaration of Invalidity and Permanent Injunction Under the AAPA.

Where, as here, Plaintiffs establish that a rule "exceeds the statutory authority of the agency," "the court shall declare the rule invalid," Ala. Code § 41-22-10, and Plaintiffs are "entitled to a declaratory judgment stating as much," *Keith v. LeFleur*, No. 2200821, 2023 WL 5810427, at *8 (Ala. Civ. App. Sept. 8, 2023); *see also City of Florence*, 417 So. 2d at 193–94 ("[A] rule out of harmony with the statute[] is a mere nullity." (internal quotations omitted)); *see also* Ala. Code § 41-22-10 (providing for "a declaratory judgment" and "injunctive relief"). Likewise, because "an invalid rule cannot be invoked for any purpose," and "any action taken by an agency based on an invalid rule is generally void," a plaintiff who establishes an AAPA violation is "entitled to an injunction prohibiting the implementation" of the invalid rule. *LeFleur*, 2023 WL 5810427, at *6, *8; *cf. Redbud Remedies, LLC v. Ala. Med. Cannabis Comm'n*, Nos. CL-2023-0352 & CL-2023-0697, 2024 WL 1335229, at *3 (Ala. Civ. App. Mar. 29, 2024) (injunctive relief "is specifically authorized" by AAPA).

Because Plaintiffs have established that ADPH exceeded its statutory authority, the Court should grant summary judgment in their favor and declaratory and permanent injunctive relief.

2. Plaintiffs Are Entitled to a Permanent Injunction Because the ADPH Regulations Cause Irreparable Harm, and the Balance of Hardships and Public Interest Favor Relief.

Even if the AAPA did not provide for injunctive relief, Plaintiffs also meet the traditional factors for a permanent injunction: Plaintiffs have demonstrated (1) success on the merits of Claim One, *see supra* pp. 27–39, and, as explained below, they have also demonstrated (2) "a substantial threat of irreparable injury," (3) that "the threatened injury to [Plaintiffs] outweighs the harm the

injunction may cause [Defendants]," and (4) that "granting the injunction will not disserve the public interest." *Tipp v. JPMC Specialty Mortg., LLC*, 367 So. 3d 357, 363 (Ala. 2021) (quoting *Sycamore Mgmt. Grp., LLC v. Coosa Cable, Co.*, 42 So. 3d 90, 93 (Ala. 2010)).

a. Plaintiffs Will Suffer Irreparable Harm Absent an Injunction.

Failing to enjoin ADPH from asserting a regulatory authority it lacks will cause the Plaintiffs irreparable harm, because it would be incredibly burdensome, if not impossible, to operate or work in birth centers under the unlawful ADPH Regulations. Facts ¶¶ 112–25.

First, by making it burdensome, if not impossible, to operate, the ADPH Regulations would inflict catastrophic harm on the Birth Center Plaintiffs. *Id.* ¶¶ 112–16. As this Court previously held, *see* Suppl. PI 16, such an "existential threat to Plaintiffs' businesses[] constitutes irreparable injury." *Ala. Educ. Ass'n v. Bd. of Tr. of the Univ. of Ala.*, 374 So. 2d 258, 262 (Ala. 1979); *accord ABC Charters, Inc. v. Bronson*, 591 F. Supp. 2d 1272, 1306 (S.D. Fla. 2008); *Mid–Fla Coin Exch., Inc. v. Griffin,* 529 F. Supp. 1006, 1030 (M.D. Fla. 1981). For example, it is undisputed that Plaintiff Skanes was forced to forfeit tens of thousands of dollars in grant money and lost income when ADPH first asserted that OFBC was a "hospital," resulting in OFBC's closure, and Plaintiff Robinson likewise suffered considerable personal financial strain as a result of regulatory uncertainty related to the ADPH Regulations, Facts ¶¶ 114–15. If forced to close again, the Plaintiffs would suffer still more catastrophic financial and professional harm. *Id.* ¶ 116.

Second, if the Plaintiff Birth Centers were forced to close, Plaintiffs' and their members would be forced to sever established patient relationships and turn patients away from birth center care, even where they determined such care was in their patients' best interests, *see id.* ¶¶ 124–25; *see also id.* ¶ 101. As this Court previously held, Suppl. PI 17, such harm is irreparable. *Cf. Bd. of Dental Exam'rs of Ala. v. Franks*, 507 So. 2d 517, 520–21 (Ala. Civ. App. 1986) (irreparable harm to dentist from "decreased business and income and [confused] questions from patients").

Third, the ADPH Regulations, if enforced, would prevent the midwife Plaintiffs from practicing to their full scope of practice in FSBCs by restricting licensed CPMs to only providing "assistive care," Facts ¶¶ 109, 118; *see also id.* ¶ 19, imposing additional administrative burdens on CNMs working in FSBCs that could preclude them from working there altogether, *id.* ¶¶ 111, 122, and preventing otherwise qualified and licensed CNMs and CPMs from working in FSBCs absent specific prior employment experience that may be difficult to access in Alabama, *id.* ¶¶ 110–11, 117, 121, 123. This would deny Alabama midwives like Plaintiffs and their members invaluable professional employment and training opportunities that would help them expand access to midwifery care across the state. *Id.* ¶¶ 119, 123. "[P]revent[ing] them from providing their patients with the kind of … care they would provide but for [ADPH's] . . . rule," constitutes irreparable injury for purposes of injunctive relief, *see Med. Ass'n of Ala. v. Shoemake*, 656 So.2d 863, 867 (Ala. Civ. App. 1995), as this Court previously held, *see* Suppl. PI 17.

b. The Balance of Harms and Public Interest Favor a Permanent Injunction.

The undisputed record evidence and controlling case law also confirm that Plaintiffs have satisfied the balance of the harms and public interest factors for injunctive relief.

First, the balance of harms decisively favors Plaintiffs. As this Court previously held, "[a]n injunction that simply ensures adherence to the law imposes no hardship." Suppl. PI 18; *accord City of Ctr. Point v. Atlas Rental Prop., LLC*, 371 So. 3d 856, 862 (Ala. 2022) (injunction would merely prohibit municipality from improperly "attempt[ing] to regulate an area of law" that was beyond its authority to regulate). Preventing ADPH from exceeding the boundaries of its statutory authority causes it no harm whatsoever, but, as just discussed *supra*, pp. 41–42, Plaintiffs, their members, and their patients will suffer irreparable injury under the unlawful ADPH Regulations.

Second, an injunction will benefit, not disserve, the public interest. As this Court previously held, and as the undisputed evidence confirms, the services the Plaintiffs currently provide and will continue to provide if an injunction is granted "would help address the dire needs of their communities, especially among Black women and the patient populations most at risk of adverse outcomes and which Plaintiffs intend to prioritize, including patients with low incomes." Suppl. PI 18; *see also* Facts ¶¶ 67–68, 104–06. As the record evidence and ADPH's own publications show, Alabama is experiencing a severe maternal and infant health crisis, one involving significant racial disparities and persistent challenges to accessing high-quality pregnancy-related care. Facts ¶¶ 39–55. The Birth Center Plaintiffs prioritize expanding access to care for the populations most harmed by this crisis—including Black women, communities of color, and low-income populations—through the provision of culturally competent, patient-centered midwifery care and education, *id.* ¶¶ 67–68, 80–85—care that ADPH itself admits is essential to addressing the crisis, *id.* ¶¶ 48, 55; *see also id.* ¶¶ 39, 44–47, 59–52, 54. Indeed, record evidence credited by this Court at the preliminary injunction hearing demonstrates that many of the benefits of midwifery-led, FSBC care are in areas where Alabama currently fares poorly, such as preterm birth, rates of cesarean sections, and racial disparities. *Id.* ¶ 105–06 (quoting Suppl. PI 5–6 (finding these benefits)); *see also id.* ¶¶ 43–47, 53 (ADPH data showing poor outcomes on these and other measures). Denying Alabamians access to the care Plaintiffs provide and seek to provide in FSBCs will only exacerbate Alabama's health crisis, including by disrupting strategies that ADPH itself identifies as potential solutions, *id.* ¶¶ 48, 55; *see also id.* ¶ 106 (citing "undisputed testimony . . . [and] admissions by ADPH that increasing access to pregnancy services is critical to mitigate Alabama's dire maternal and infant health outcomes" (quoting Supp. PI 14 n.2)).

D. Defendants Are Not Entitled to Summary Judgment on Claim One, Even if Plaintiffs' Motion is Denied.

Even if this Court disagrees with Plaintiffs' reading of the "hospital" statute and the conclusion that midwifery care and obstetrical care are different as a matter of *law*, Plaintiffs' evidence has, at minimum, met their burden to identify "substantial evidence," *Madasu*, 378 So. 3d at 504, that, as a *factual* matter, midwifery and obstetrical care are different—especially when viewed "in the light most favorable to" Plaintiffs, *Byrne v. Fisk*, 385 So. 3d 973, 977 (Ala. 2023). Plaintiffs have submitted sworn testimony that care at the Plaintiff Birth Centers is provided by licensed midwives who have a different education, training, scope of practice, and credentialling bodies than obstetricians, Facts ¶¶ 2–18, 78–82; that the care they provide is low-intervention, midwifery care to support physiological birth for low-risk patients, *id.* ¶¶ 1, 3, 24–26, 80, 86–94; that they do not treat patients who have or develop conditions requiring care from an obstetrician, who has training in surgery and treating abnormality or pathology in pregnancy, but instead transfer them, *id.* ¶¶ 86–90; and that practices common to obstetrician-led care, such as surgical or operative deliveries, are outside the scope of practice of Alabama-licensed midwives, *id.* ¶¶ 53, 90. This evidence at *minimum* establishes that Defendants are not entitled to summary judgment.

CONCLUSION

For the reasons stated herein, the Court should deny Defendants' motion for summary judgment, grant Plaintiffs' motion for summary judgment on Claim One, and enter a declaratory judgment declaring invalid the ADPH Regulations and any further attempt by the agency to regulate FSBCs providing midwifery care, including the Birth Center Plaintiffs, as "hospitals" under section 22-21-20(1), and an injunction preventing ADPH from taking any action to enforce the same, *see* Pls.' Mot. for Summ. J. 1–2.

DATE: February 5, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon counsel of record by electronic filing with the Clerk of Court through Alafile, by e-mail, and/or by placing the same in the U.S. mail on this 5th day of February 2025.

/s/ *Robert D. Segall*
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