AlaFile E-Notice

03-CV-2023-901109.00

Judge: GREG GRIFFIN

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

OASIS FAMILY BIRTHING CENTER,LLC, ON BEHALF OF ITSELF AND ITS PATIENTS
03-CV-2023-901109.00

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C007 ALABAMA AFFILIATE OF THE AMERICAN COLLEGE OF NURSE
C008 CRAWFORD JO CPM
C009 STONE TRACIE CPM

DEFENDANTS' REPLY AND OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

[Filer: SEGALL ROBERT DAVID]

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03-CV-2023-901109.00
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

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

PLAINTIFFS' REPLY IN SUPPORT OF SUMMARY JUDGMENT ON CLAIM ONE

In their motion for summary judgment, Plaintiffs presented legal argument and extensive evidence establishing that, as a matter of law and based on the undisputed facts, freestanding birth centers ("FSBCs") do not meet the definition of a "hospital" under section 22-21-20(1) of the Alabama Code and, therefore, that Defendants have no statutory authority to license and regulate them as such. In opposition, Defendants fail to meaningfully respond to any of Plaintiffs' evidence or the vast majority of Plaintiffs' arguments, effectively conceding key facts and elements of Plaintiffs' claim. Because Plaintiffs established their entitlement to summary judgment and Defendants' response falls short of what is required to carry their burden in opposition, the Court should enter summary judgment on Claim One and a permanent injunction in Plaintiffs' favor.

ARGUMENT

A. Plaintiffs Are Entitled to Summary Judgment on Claim One.

As set forth below, nothing in Defendants' opposition brief undermines Plaintiffs' entitlement to summary judgment on the merits of their claim that the Alabama Department of Public Health ("ADPH") exceeded its statutory authority in attempting to license and regulate FSBCs as "hospitals" under section 22-21-20(1) ("the hospital statute").

First, Defendants do not dispute any of Plaintiffs' evidence, arguing instead that the Court should simply ignore it. *See* Defs.' Reply & Opp'n Br. 1–2, ECF 261 [hereinafter "Defs.' Opp'n"] ("declin[ing] to address" Plaintiffs' facts and responding only that they are "unnecessary"). This assertion is legally insufficient to create a genuine dispute for purposes of summary judgment. As such, the Court "must consider [Plaintiffs'] evidence uncontroverted, with no genuine issue of material fact existing." *Ala. Dep't of Revenue v. Greenetrack*, *Inc.*, 369 So. 3d 640, 657 (Ala. 2022) (quoting *Huntsville Golf Dev., Inc. v. Ratcliff, Inc.*, 646 So. 2d 1334, 1336 (Ala. 1994)); *see* Pls.' Summ. J. Mem. 3–26, ECF 247 [hereinafter "Pls.' Br."].

Second, Defendants' claim that the hospital statute demonstrates a legislative intent to grant ADPH "wide-sweeping" and "broad" authority to license and regulate any and all health care providers, Defs.' Opp'n 4–5, conflicts with both statutory text and history. The best evidence of legislative intent—i.e., the statute's plain text—establishes that the Legislature did *not* grant ADPH either discretion to pick and choose which facilities to treat as hospitals or a wide-reaching licensing authority over all health care providers in the state. Instead, the Legislature expressly cabined ADPH's authority to *only* those specified facilities explicitly listed in section 22-21-20(1)—which does not include FSBCs.

And third, Defendants' capacious reading of the hospital statute to encompass *any* facility providing *any* kind of care during pregnancy, childbirth, or the postpartum period to *any* members of the public rests on multiple misinterpretations of the jointly stipulated definition of "obstetrical care," Alabama law and precedent, and the language of the statute itself.

Thus, as a matter of both law and fact, Plaintiffs are entitled to summary judgment.

1. Plaintiffs' statement of facts is undisputed.

In support of their summary judgment motion, Plaintiffs set forth specific facts, amply supported by record evidence, *see* Ala. R. Civ. P. 56(c)(1); *see also* Pls.' Br. 3–26, that establish, *inter alia*, (1) that they have standing, *id.* at 27–28; (2) that the care FSBCs offer is midwifery care provided by licensed midwives practicing within their lawful scope of practice and that patients must be transferred out of an FSBC for any conditions necessitating care from an obstetrician, *id.* at 32–36; (3) that FSBCs offer care only to low-risk patients who are carefully screened based on rigorous risk-based and other eligibility criteria, *id.* at 36–38; (4) that, absent an injunction, Plaintiffs will suffer irreparable harm, *id.* at 41–42; and (5) that the balance of the equities and public interest favor injunctive relief, *id.* at 42–43. Such "substantial evidence," *see* Ala. Code § 12-21-12(d), more than suffices to meet Plaintiffs' burden under Rule 56(c)(1) of the Alabama Rules of Civil Procedure on every element of their claim.

To create a dispute as to any of these facts, Defendants were required to "set forth specific facts" in opposition supported by "substantial evidence" in the record. Ala. R. Civ. P. 56(e); Ala. Code § 12-21-12(d); *see also Greenetrack*, 369 So. 3d at 657. They have not done so. Defendants' bare assertion that Plaintiffs' facts are "unnecessary," Defs.' Opp'n 1–2, does not constitute "substantial evidence" under Rule 56(e) necessary to raise a genuine dispute, *see Greenetrack*, 369 So. 3d at 655–57. Such a "conclusory," "bare argument" does not "satisfy [Defendants'] burden to

offer facts to defeat" Plaintiffs' properly supported summary judgment motion. *Nelson v. Univ. of Ala. Sys.*, 594 So. 2d 632, 635 (Ala. 1992); *see also Jones-Lowe Co. v. S. Land & Expl. Co.*, 18 So. 3d 362, 368 (Ala. 2009) ("[A]rguments of counsel are *not evidence*." (internal quotation marks omitted)).

As such, Defendants effectively concede Plaintiffs' Narrative of Undisputed Facts. *See Greenetrack*, 369 So. 3d at 657 (failure to offer evidence to dispute properly supported facts renders them "uncontroverted" (quoting *Huntsville Golf Dev.*, 646 So. 2d at 1336)).

2. The Alabama Legislature intended to limit ADPH's licensing authority to reach only those health care facilities that the Legislature specifically included in the plain text of section 22-21-20(1).

Rather than defend their deference argument, Defendants now assert that, even absent deference, the Court should permit ADPH to treat FSBCs as "hospitals" because of the purportedly "wide-sweeping [legislative] purpose of the hospital-licensing statute." Defs.' Opp'n 4. But the Court will find no support for such a far-reaching legislative intent in the plain text, the "framework of the act, the intents and purposes of the act[,] [or] the means by which it has been given construction, effect and operation during its years of existence." *Fraternal Ord. of Police, Lodge No. 64 v. Pers. Bd. of Jefferson Cnty.*, 103 So. 3d 17, 28 (Ala. 2012) (quoted at Defs.' Opp'n 5). To the contrary, the Legislature made clear in the statute's plain text, in other parts of the Code, and through its own actions that ADPH does *not* have authority to license and regulate facilities—like FSBCs—that are not covered by a specifically named category in section 22-21-20(1).

First, the best evidence of legislative intent is "the language of the statute itself." *Pope v. Gordon*, 922 So. 2d 893, 897 (Ala. 2005) (quoting *Jefferson County v. Acker*, 885 So. 2d 739, 742–43 (Ala. 2003)). By its plain terms, the hospital statute does *not* authorize ADPH to license and regulate as a "hospital" *any* location where *any* health care that could impact the public health is provided; instead, it provides a list of specific facilities that are included within the definition,

without any language that would permit ADPH to require licensing for a facility not expressly included in that legislatively-defined list. *See* Ala. Code § 22-21-20(1). The closest thing to a catch-all clause included in the hospital statute is the clause at issue in this case, but that is still limited on its face to health care facilities "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." *Id.* In other words, the Legislature placed clear, textual boundaries around ADPH's licensing authority under that clause, too, by requiring that such facilities are "hospitals" *only* if they provide one of the specified kinds of care and *only* if they provide such care to "the public generally." Because FSBCs meet neither requirement, *see* Pls.' Br. 28–38; *infra* Section A.3, they are excluded from the plain language of the hospital statute.

Second, the "framework of the act," *Fraternal Ord. of Police*, 103 So. 3d at 29, in relation to the wider Alabama Code reaffirms that ADPH's licensing authority is not unbounded. The Legislature has *not* authorized ADPH to license and regulate all settings where health care is provided, *see* Pls.' Br. 1–2, 8–9, 28–29, which Defendants concede, *see id.* at 9 ¶¶ 33–34 (testimony of ADPH Medical Director); *supra* Section A.1. For example, the Legislature has given oversight of health care provided in physicians' offices (including complex surgeries) and all pregnancy-related care provided in patient homes (including deliveries) not to ADPH but to other state boards. *See* Ala. Code § 22-21-20(1) (private doctors' offices excluded from "hospital" definition and, therefore, ADPH licensing and regulation); Ala. Admin. Code r. 540-X-10-.01, *et seq.* (office-based surgery regulated by Board of Medical Examiners, not ADPH); Ala. L. Act No. 2017-383, § 2 (codified at Ala. Code §§ 34-19-11 to -20) (midwifery care in patients' homes regulated by Board of Midwifery, not ADPH); *see also* Pls.' Br. 4 ¶ 5, 8–9 ¶¶ 30–34. By omitting FSBCs from

the hospital statute, the Legislature has made the same judgment here, entrusting regulation of FSBCs not to ADPH but to professional boards, such as the Boards of Nursing and Midwifery.

Third, the "intents and purposes of the act," *Fraternal Ord. of Police*, 103 So. 3d at 29, likewise confirm the Legislature's intent to limit ADPH's licensing authority to specifically enumerated institutions. Defendants point to section 22-21-21 to claim a broad purpose for the hospital licensing statute, Defs.' Opp'n 5, but their paraphrase of that statute leaves out key language: section 22-21-21 provides that the purpose of the hospital licensing statute "is to promote the public health, safety and welfare by providing for the development, establishment and enforcement of standards for the treatment and care of individuals *in institutions within the purview of this article*." Ala. Code § 22-21-21 (emphasis added). While, in other contexts—including other contexts involving public health purposes—the Legislature unambiguously states its intention that a statute be "liberally construed,"[1] no such language exists in section 22-21-21, or any other statute in the article related to ADPH's licensing of hospitals. Thus, contrary to Defendants' claim, section 22-21-21 only confirms the Legislature's judgment and intent that the promotion of public health

[1] *See, e.g.*, Ala. Code § 22-21-312 ("It is therefore the intent of the Legislature by the passage of this article to promote the public health of the people of the state . . . by authorizing the several counties, municipalities, and educational institutions in the state effectively to form public corporations whose corporate purpose shall be to acquire, own and operate health care facilities . . . . To that end, this article invests each public corporation so organized or reincorporated hereunder *with all powers that may be necessary to enable it to accomplish its corporate purposes and shall be liberally construed in conformity with said intent*." (emphasis added)); *id.* § 22-27-41 ("The purpose of this article is to protect the public health and the state's environmental quality and to serve the public by recognizing the responsibilities of units of local government for the orderly management of solid wastes generated within their jurisdictions, and to require that decisions about the management of solid wastes shall be based on comprehensive local, regional and state planning. *The terms and obligations of this article shall be liberally construed to achieve remedies intended*." (emphasis added)); *see also id.* § 22-21-171 ("It is the legislative intent to confer on corporations organized under this article all the powers requisite for the fulfillment of the purposes of their organization, including the power to do whatever financing may be necessary to accomplish such purposes. *This article shall be liberally construed to give effect to its purpose.*" (emphasis added)).

will be effectuated by permitting ADPH to license and regulate *only* those "institutions within the purview of this article," *i.e.*, those named in section 22-21-20(1) as "hospital[s]." It is the Legislature, not ADPH, that decides which institutions are covered, and it did not include FSBCs in the definition of "hospitals." *See* Pls.' Br. 29–38.

Finally, the history of legislative action with respect to the hospital statute since the adoption of the current Alabama Code in 1975, *see Fraternal Ord. of Police*, 103 So. 3d at 29, further demonstrates that facilities not specifically named in the statute are excluded from ADPH's licensing authority. The Legislature has amended the hospital statute to add specific categories when it intends to extend ADPH's licensing authority to reach new or additional kinds of health care facilities. For example, in 1979, the Legislature added "rehabilitation centers, ambulatory surgical treatment facilities for patients not requiring hospitalization, [and] end stage renal disease treatment and transplant centers" to the "hospital" definition, 1979 Alabama Laws Act 79-798 (H. 138); in 1991, it amended the statute to add "hospices," 1991 Alabama Laws Act 91-548 (H.B. 95); and, in 2001, it created a new licensing category for "specialty care assisted living facilities," 2001 Alabama Laws 4th Sp. Sess. Act 2001-1058 (S.B. 18). These amendments show an understanding and practice that, far from granting ADPH broad discretion to determine whether and when a health care provider constitutes a "hospital" within the meaning of the statute, whenever the Legislature intends to expand the scope of the hospital statute beyond the existing list of named facilities, it amends the statute's terms to explicitly add new categories to the definition. But the Legislature has not amended the statute to include FSBCs.

Thus, whether looking to section 22-21-20(1)'s plain text, to other sections of the Alabama Code, to other statutes relating to ADPH's hospital licensing authority, or to the Legislature's past actions in amending section 22-21-20(1), all evidence demonstrates a clear legislative intent to

confine ADPH's authority to only those facilities specifically named in the statute. As previously explained, *see* Pls.' Br. 29–38, FSBCs do not fall within any such category in the statute because they are not "primarily engaged in offering to the public generally . . . obstetrical care."

3. FSBCs are not "hospitals" under section 22-21-20(1).

Defendants continue to ignore plain text and cardinal rules of statutory interpretation in attempting to shoehorn FSBCs into the hospital statute. Because these arguments find no support in the parties' joint stipulations, Alabama precedent, or plain language, the Court should reject Defendants' reading of section 22-21-20(1) and conclude that FSBCs do not fall within its terms.

a. *FSBCs are not "primarily engaged in offering . . . obstetrical care."*

The parties stipulated, based on an Alabama Attorney General opinion interpreting section 22-21-20(1), that the applicable definition of the term "obstetrics" is "the branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium." Joint Stipulations of Fact ¶ 12, ECF 239 (quoting *Obstetrics*, TABER'S CYCLOPEDIC MED. DICTIONARY (18th ed. 1997)); Pls.' Br. 10 ¶ 38. As explained in Plaintiffs' opening brief, it is beyond dispute that midwifery is not "a branch of medicine." *See* Pls.' Br. 29–32. And, indeed, Defendants do not contest that the practice of medicine and the practice of midwifery are distinct under Alabama law, or that the midwives who provide care in FSBCs cannot legally practice medicine in Alabama. Unable to evade the unavoidable implication of this distinction, Defendants instead attempt to wave aside the part of the stipulated definition they dislike by calling "branch of medicine" an "arbitrary label." Defs.' Opp'n 2. But there is nothing "arbitrary" about a label used in Alabama law to legally distinguish between those who can practice one specified form of the healing arts ("medicine") from those who cannot *under pain of felony criminal penalty. See* Ala. Code § 34-24-51; *see also* Pls.' Br. 29–32.

Nor has the Alabama Supreme Court ever adopted Defendants' revisionist definition of obstetrical care as encompassing the practice of non-physicians. The case Defendants rely on, *Hegarty v. Hudson*, 123 So. 3d 945 (Ala. 2013), *see* Defs.' Opp'n 2–3, concerned only whether a particular type of *physician*—a family medicine physician—was practicing the specialty of obstetrics or not. Nothing in that case even remotely suggests that the testifying obstetrician intended that his proffered definition of "the practice of obstetrics" could apply to a *non-physician*, or that the testifying obstetrician or the Court would have agreed with such a proposition, had the question been raised (which it was not). *See Hegarty*, 123 So. 3d at 947. Moreover, the Court did not "quote[] [that definition] with approval," as Defendants erroneously contend, Defs.' Opp'n 4. Rather, the Court quoted the definition in a section of the opinion that merely recounts the obstetrician's testimony in the trial court, without any commentary by the Court about whether the Court accepts the definition or not. *Hegarty*, 123 So. 3d at 947. In fact, the Court ultimately concluded that the obstetrician's testimony as a whole was inadmissible. *Id.* at 950–51.

Moreover, even on its own terms, the definition of obstetrics mentioned in *Hegarty* as "involv[ing]" care for pregnant women before, during, and after delivery, *id.* at 947, would not mean, as Defendants insist, that all pregnancy-related care is ipso facto obstetrics. The practice of psychiatry "involves" treatment of mental health conditions, but not all mental health care (such as therapy provided by psychologists or social workers) is therefore the practice of psychiatry. *See* Pls.' Br. 33–34.

Because midwifery is not "obstetrical care," and because FSBCs undisputedly provide midwifery care instead, FSBCs are not hospitals under section 22-21-20(1).

b. *FSBCs do not provide care to "the public generally."*

As detailed in Plaintiffs' opening brief, FSBCs do not fall within the hospital statute's definition of facilities providing care to "the public generally" because the undisputed evidence establishes that FSBCs exercise discretion over which patients they take into their care, based on rigorous risk-based screenings and other eligibility criteria. *See* Pls.' Br. 36–38. Defendants claim that this interpretation "contradicts" the hospital statute because other facilities that are *explicitly* named in section 22-21-20(1), such as "rehabilitation centers, abortion or reproductive health centers, and transplant centers," also "serve only a subset of the population." Defs.' Opp'n 3. That argument rests on a profound misreading of the statute.

First, the facilities Defendants cite (rehabilitation centers, abortion or reproductive health centers, and transplant centers), like the vast majority of facilities covered by section 22-21-20(1), are "hospitals" under the statute by virtue of the fact that the Legislature chose to *explicitly name them as such*. *See* Ala. Code § 22-21-20(1) (including within the definition of "hospitals," *inter alia*, "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;" and others). In other words, contrary to Defendants' argument, these facilities are considered "hospitals" for licensing purposes *regardless* of whether they serve the public generally or only some subset thereof. By contrast, the plain text of the hospital statute clearly demonstrates that the Legislature intended ADPH to license and regulate institutions "primarily engaged in offering . . . obstetrical care" *only* where they are open "to the public generally." *See* Ala. Code § 22-21-20(1) (defining as "hospital[s]" health care institutions "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").

Second, as Plaintiffs previously explained, Defendants' reading of the statute—under which a facility serves "the public generally" even if it only provides care to *some subset* of the public, and even if (like an FSBC) it applies strict risk-based and discretionary criteria for eligibility—would render the words "to the public generally" in the hospital statute superfluous. It is hard to imagine—and Defendants fail to identify—any provider of obstetrical care in the state that would *not* meet Defendants' expansive reading of that term, which would mean that the words serve no statutory purpose. *See* Pls.' Br. 37–38. Defendants fail to provide any explanation for how their reading is consistent with the basic rule that statutes should be interpreted so that "every word, sentence, or provision" has "some useful purpose" and "some force and effect," *City of Montgomery v. Town of Pike Rd.*, 35 So. 3d 575, 584 (Ala. 2009) (internal quotation marks omitted), and so that the Legislature is not "deemed to have done a vain and useless thing" by including them, *Lang v. Cabela's Wholesale, LLC*, 371 So. 3d 228, 233–34 (Ala. 2022) (internal quotation marks omitted), *reh'g denied* (Aug. 26, 2022). As such, it is Defendants' reading—not Plaintiffs'—that flouts legislative intent by ignoring the plain text. *See Pope*, 922 So. 2d at 897.

Finally, Defendants are also incorrect in arguing, based on section 22-21-21, that legislative intent compels their reading, *see* Defs.' Opp'n 4. In relying on section 22-21-21, Defendants once again omit the relevant key words from that statute: As explained above, section 22-21-21 *does not* say that the purpose of licensing is to "provid[e] for the development, establishment and enforcement of standards for the treatment and care of individuals" *generally*, but rather to provide such standards for the "treatment and care of individuals *in institutions within the purview of this article*." Ala. Code § 22-21-21 (emphasis added). A legislative purpose that is explicitly cabined by reference to a defined list of covered institutions provides no basis for giving that list a more expansive reading than its plain terms support.

Parker Building Services Co., Inc. v. Lightsey ex rel. Lightsey, 925 So. 2d 927 (Ala. 2005), does not state otherwise, contrary to Defendants' assertion, *see* Defs.' Opp'n 4. There, the Alabama Supreme Court distinguished between statutes "enacted to protect a class of persons" and those enacted to protect "the general public." *Parker Bldg. Servs.*, 925 So. 2d at 931. In that case, the city ordinance in question read in relevant part: "This Code is hereby declared to be remedial, and shall be construed to secure the beneficial interests and purposes thereof—which are public safety, health, and general welfare—through structural strength, stability, sanitation, adequate light and ventilation, and safety to life and property from fire and other hazards attributed to the built environment . . . ." *Id*. The Court held that references in the ordinance to its "remedial" purpose and to protecting "public safety, health, and general welfare," *combined* with the fact that, unlike here, the ordinance did *not* "identify [a] group" or "subset of persons" to which it was targeted, evidenced a legislative intent to protect the public generally. *Id.* The Court reasoned that the city ordinance identified only generally applicable means ("through structural strength, stability, sanitation, adequate light and ventilation, and safety to life and property") of promoting public health and safety that were not directed only to "a particular subset of persons who may be in a building at a particular time" but to the public writ large, noting that "a person who never enters a building could be injured as the result of a building-code violation." *Id.* at 932 (citing *O'Neill v. Windshire-Copeland Assocs., L.P.*, 595 S.E.2d 281, 284 (Va. 2004)).

While the statement of legislative purpose in section 22-21-21 includes the words "the public health, safety and welfare," the critical difference is that, unlike the ordinance in *Parker Building Services*, the Legislature here *did* identify a discrete class of persons that standards for hospital licensing were meant to protect: "individuals in institutions within the purview of this article." Ala. Code § 22-21-21. Thus, section 22-21-21 identifies a more limited means of

effectuating its goals of promoting public health, one that is directed towards a specific class of covered individuals in specified settings, *not* to the public generally. This accords with the undisputed fact that the Legislature has not conferred authority on ADPH to license all locations where health care is provided in that state but rather has placed certain health care settings under the authority of the professional licensing boards, *not* ADPH, s*ee* Pls.' Br. 4 ¶ 5, 8–9 ¶¶ 30–34; *supra* Section A.2—as is likewise the case here for FSBCs.

B. Plaintiffs Are Entitled to a Permanent Injunction.

Plaintiffs have established that they meet all four factors for a permanent injunction. *See* Pls.' Br. 40–43. In opposition, Defendants contest only the merits factor, Defs.' Opp'n 5, failing to raise any arguments addressing irreparable harm, the balance of the equities, or the public interest, in addition to failing to offer substantial evidence to dispute any material fact on which Plaintiffs rely to show that they satisfy the injunction factors. As such, Defendants have "essentially concede[d]" that Plaintiffs meet these factors "by failing in [their] response to address [them]." *See Holmes v. Behr Process Corp.*, No. 2:15-CV-0454-WMA, 2015 WL 7252662, at *2 (N.D. Ala. Nov. 17, 2015); *see also Tidwell v. Bank of Am., N.A.*, No. 2:17-CV-686-MHT-GMB, 2018 WL 1354794, at *3 (M.D. Ala. Feb. 13, 2018), *report and recommendation adopted*, No. CV 2:17-CV-686-MHT, 2018 WL 1352168 (M.D. Ala. Mar. 15, 2018); *Cardwell v. Auburn Univ. Montgomery*, 941 F. Supp. 2d 1322, 1329 (M.D. Ala. 2013). Because Defendants' arguments on the merits should also be rejected, *see supra* Section A, Plaintiffs are entitled to summary judgment, including a permanent injunction, *see* Pls.' Mot. Summ. J. 1–2, ECF 246.

CONCLUSION

For the reasons stated herein, Plaintiffs are entitled to summary judgment in their favor on Claim One. The Court should grant Plaintiffs' motion, deny Defendants' motion, and enter a declaratory judgment and permanent injunction.

DATE: March 19, 2025

Respectfully submitted,

/s/ *Robert D. Segall*

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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 19th day of March 2025.

/s/ *Robert D. Segall*
Robert D. Segall