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03-CV-2023-901109.00

Judge: GREG GRIFFIN

To: SEGALL ROBERT DAVID
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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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CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

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

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| **OASIS FAMILY BIRTHING CENTER, LLC, *et al.*,**<br><br>Plaintiffs,<br><br>v.<br><br>**ALABAMA DEPARTMENT OF PUBLIC HEALTH, *et al.*,**<br><br>Defendants. | Civil Action No.<br><br>03-CV-2023-901109.00 - GOG |

**AMENDED ORDER GRANTING SUMMARY JUDGMENT FOR PLAINTIFFS AND DENYING SUMMARY JUDGMENT FOR DEFENDANTS ON CLAIM ONE OF PLAINTIFFS' FIRST AMENDED COMPLAINT**

The Court, having reviewed the Plaintiffs' and Defendants' cross-motions for summary judgment and having considered the parties' arguments, including at the oral argument conducted April 21, 2025, concludes that "there is no genuine issue as to any material fact" and that Plaintiffs "are entitled to a judgment as a matter of law" on Claim One. Ala. R. Civ. P. 56(c)(3). Because the parties have cross-moved for summary judgment, when evaluating Defendants' motion for summary judgment, the Court considered the record giving "the benefit of all reasonable inferences" to Plaintiffs, and, when considering Plaintiffs' motion for summary judgment, to Defendants. *Madasu v. Shoals Radiology Assocs., P.C.*, 378 So. 3d 501, 504 (Ala. 2022). Having determined that Plaintiffs are entitled to summary judgment on Claim One of the First Amended Complaint ("Amended Complaint") as a matter of law, the Court hereby GRANTS Plaintiffs' motion (Doc. No. 246) and DENIES Defendants' motion (Doc. No. 242).

## I. Undisputed Material Facts

Plaintiffs are Oasis Family Birthing Center, LLC ("OFBC") and Alabama Birth Center ("ABC"), which are freestanding birth centers ("FSBCs"); their founders, Heather Skanes, M.D. and Yashica Robinson, M.D.; midwives who work at OFBC and ABC, Jo Crawford, CPM, and Tracie Stone, CPM; and the Alabama Affiliate of the American College of Nurse-Midwives ("AL-ACNM"), a professional association for Alabama midwives, on behalf of its members who work in or seek to work in or open FSBCs. The parties have cross-moved for summary judgment on the first claim of the Amended Complaint, which challenges the authority of Defendants Alabama Department of Public Health ("ADPH") and Scott Harris, State Health Officer, to license and regulate FSBCs. Am. Compl. 48–49, Doc. No. 144.

On a motion for summary judgment, a party must show "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). In support of such motion, parties may submit affidavits based on personal knowledge, "set[ting] forth such facts as would be admissible in evidence." *Id.* 56(e). To dispute the facts set forth in a properly supported summary judgment motion, an adverse party may not "rest upon the mere allegations or denials of the adverse party's pleading" but must "set forth specific facts showing that there is a genuine issue for trial." *Id.*

Here, the parties entered a joint stipulation of facts. Doc. No. 239 ("Stip."). In further support of their motion for summary judgment, Plaintiffs submitted sworn affidavits from Plaintiffs Skanes, Robinson, Crawford, and Stone, and Sheila Lopez, CNM, President of AL-ACNM. Doc. Nos. 248–52. Plaintiffs also submitted materials authored and published by the Defendants or other official Alabama government bodies. Doc. No. 255. In their briefing and at argument, Defendants failed to contest any of the evidence presented. *See, e.g.*, Defs.' Reply &

Opp'n Br. 1, ECF No. 261 ("Defs.' Opp'n") ("Defendants decline to address the affidavits and exhibits."). Defendants' "fail[ure] to point to substantial evidence to contest [Plaintiffs'] factual showing" means this Court "must consider [Plaintiffs'] evidence uncontroverted." *Ala. Dep't of Revenue v. Greenetrack, Inc.*, 369 So. 3d 640, 657 (Ala. 2022) (internal quotation marks and citation omitted). Accordingly, the Court hereby incorporates by reference the undisputed facts as expressed in the parties' joint stipulation, Plaintiffs' supporting documents, and Plaintiffs' Narrative of Undisputed Facts, Doc. No. 247 at 3–26 ("UF").

## II. Background and Procedural History

Plaintiff OFBC first opened to patients in September 2022. UF ¶ 70. At that time, there were no regulations in place requiring FSBCs to obtain a license from ADPH. *Id.* ¶ 96. In March 2023, six months after OFBC opened, Defendant ADPH contacted OFBC and informed its founder Dr. Skanes that ADPH considered OFBC to be an unlicensed hospital, that there was no way to obtain a license at that time, and that OFBC must cease providing birthing care but could continue to provide prenatal care while unlicensed. *Id.* ¶¶ 97–98; Suppl. Prelim. Inj. 7, Doc. 119. ADPH eventually agreed to permit existing patients in their third trimester to give birth at OFBC while it was unlicensed but required all other patients to arrange to deliver elsewhere. UF ¶ 99. 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 reopened as a result of this litigation. *Id.* ¶ 101.

In August 2023, Plaintiffs filed the Complaint, bringing multiple claims alleging that ADPH's actions violate the Alabama Administrative Procedures Act ("AAPA"). Doc. No. 2. Plaintiffs also moved for a preliminary injunction enjoining Defendants from requiring FSBCs operating in the midwifery model of care to be licensed as "hospitals" or, in the alternative, from "refusing to timely license" them. Pls.' Mot. Prelim. Inj. 10, Doc. No. 8. In September 2023, after

an evidentiary hearing, this Court granted a preliminary injunction on Plaintiffs' alternative claims, 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. Prelim. Inj. 1 (citing Ala. Code §§ 22-21-23, -24, -29(a), -31). In granting the injunction, this Court did not reach Plaintiffs' Claim One, which alleges that ADPH lacks licensing authority over FSBCs entirely. *See id.* at 12.

After the Court granted the preliminary injunction, permitting OFBC and ABC to obtain licenses to operate, and while this action was pending, on October 15, 2023, ADPH adopted final regulations for the licensure and regulation of FSBCs, Ala. Admin. Code rr. 420-5-13-.01 to -.19 ("the ADPH Regulations"), asserting authority to regulate FSBCs as "hospitals" under section 22-21-20(1), Stip. ¶ 15; *see also id.* ¶¶ 39–40. Plaintiffs amended their complaint on January 19, 2024, to challenge the ADPH Regulations, Doc. No. 144, and this Court denied Defendants' partial motion to dismiss, including denying the dismissal of Claim One, Doc. No. 211. The parties now cross-move for summary judgment on Claim One alone.

## III. ADPH's Attempt to Regulate FSBCs as "Hospitals" Exceeds Its Authority as a Matter of Law.

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 or 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 argue that Defendants have exceeded their statutory

authority in seeking to regulate FSBCs, in violation of the AAPA, because FSBCs do not fall within the "hospital" definition in section 22-21-20(1).

As a threshold matter, the Court observes that because the statutory interpretation question here concerns whether ADPH has exceeded its statutory authority, deference to ADPH's understanding of the term "hospital" is inappropriate, and the plain language of the statute controls. *Fraternal Ord. of Police, Lodge No. 64 v. Pers. Bd. of Jefferson Cnty.*, 103 So. 3d 17, 28 (Ala. 2012) ("[t]he traditional deference given an administrative agency's interpretation of a statute" does not apply where the question concerns "the agency's statutory authority (i.e., jurisdiction)") (quoting *Ex parte State Health Plan. & Dev. Agency*, 855 So. 2d 1098, 1102 (Ala. 2002)). "Absent a clearly expressed legislative intent to the contrary, the language of the statute is conclusive." *Bassie v. Obstetrics & Gynecology Assocs. of Nw. Ala., P.C.*, 828 So. 2d 280, 283 (Ala. 2002) (quoting *Ex parte Univ. of S. Ala.*, 761 So. 2d 240, 243 (Ala. 1999)). "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). To decide this matter, the Court turns to the plain language of the statute.

**A. The Hospital Statute**

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* Stip. ¶¶ 8–10; Ala. Code. § 22-1-2; *id.* §§ 22-2-1, -4, -8; *id.* § 22-21-23. Pursuant to section 22-21-22 of the Alabama Code, 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.* ("Section 22-21-20(1)" or "the 'hospital' definition"); *see* Stip. ¶¶ 10–11.

As an initial matter, the Court observes that this definition does not encompass all settings in the state where health care is provided. For example, ADPH is not authorized to license or regulate private physicians' offices, Ala. Code § 22-21-20(1), even when physicians perform surgery in office settings, UF ¶¶ 32–34; *see* Ala. Admin. Code rr. 540-X-10-.01(1), -.08, -.10. Rather, the Legislature delegated oversight of these settings only to the Alabama Board of Medical Examiners. *See* Ala. Admin. Code r. 540-X-10-.01(1). Nor does ADPH regulate midwife-attended home births, UF ¶ 34, oversight of which the Legislature delegated only to the Board of Midwifery, *see* Ala. Code §§ 34-19-14, -16(a).

**B. Interpretation of "Hospitals"**

The Parties agree that if FSBCs are not "hospitals" under section 22-21-20(1), ADPH has no authority to regulate them. Stip. ¶ 40. Here, ADPH has asserted authority to license and regulate FSBCs only under the clause referring to "health care institutions when such institution is primarily engaged in offering to the public generally . . . obstetrical care."[1]

[1] As Plaintiffs explained at oral argument, FSBCs could not be regulated as "Abortion or Reproductive Health Centers" under the hospital definition, *see* Ala. Code § 22-21-20(1), as this

Section 22-21-20(1) does not define the term "obstetrical care," but, in an opinion to ADPH, the Alabama 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." Ala. Att'y Gen. Op., No. 2023-012, at 3 (Dec. 15, 2022); *see* Stip. ¶ 12.[2] The parties stipulated to that definition. Stip. ¶ 12.

Consequently, the parties have narrowed the dispute as follows: Plaintiffs' assert that FSBCs are not "hospitals" under the statute for two independent reasons: (1) because FSBCs do not provide "obstetrical care" and (2) because they do not provide care "to the public generally." *See* Pls.' Mem. Summ. J. 27, Doc. No. 247. Defendants' counter that FSBCs do fall within the definition because they provide care involving "the management of women during all stages of their pregnancies and the birthing process," and because "[a]ny woman meeting the eligibility criteria for a low-risk pregnancy and seeking delivery" can receive care. Defs.' Mem. Summ. J. 10–11, Doc. 243.

On the basis of the law and undisputed material facts, the Court agrees with Plaintiffs. The Court concludes that FSBCs providing midwifery care are not providing "obstetrical care" and are not "offering [care] to the public generally," and therefore do not constitute "hospitals" under section 22-21-20(1) as a matter of law. Therefore, they are beyond the scope of ADPH's statutory authority to license and regulate "hospitals."

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category refers solely to "any health care facility, institution, physician's office, or place where 10 or more abortions are performed during any month, or where 100 or more abortions are performed in any calendar year, or that holds itself out to the public as an abortion provider by advertising by some public means, such as a newspaper, telephone directory, magazine, or electronic media, that it performs abortions," Ala. Admin. Code r. 420-5-1-.01(2)(e). Defendants have not asserted otherwise, relying solely on the clause set forth above as its asserted authority to regulate FSBCs.

[2] The puerperium is "the period of 42 days following childbirth." Att'y Gen. Op. at 3.

### 1. "Obstetrical Care"

First, obstetrical care is legally distinct from the midwifery care that FSBCs provide. The Court grounds its conclusion in the statute's plain language, giving effect to the "natural, ordinary, commonly understood meaning" of obstetrical care. *Bassie*, 828 So. 2d at 283 (internal quotation marks and citations omitted). Where, as here, "the legislature has chosen not 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 and citations omitted). As stated above, obstetrics is defined as "the branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium." Stip. ¶ 12.

At minimum, for ADPH to have authority, the practices it seeks to regulate here must involve a "branch of medicine." As explained below, Alabama law recognizes obstetrics, but not midwifery, as a "branch of medicine." Under Alabama law, only "a doctor of medicine" or a "doctor of osteopathy" can lawfully practice medicine. Ala. Code. § 34-24-50.1(5). Non-physicians, including certified professional midwives ("CPMs") and certified nurse-midwives ("CNMs"), are expressly excluded by statute from the practice of medicine and therefore, *ipso facto*, cannot be said to practice the "branch of medicine" that is obstetrics. *See id.* § 34-24-51 (permitting non-physicians to engage in "any other branch of the healing arts[] *except medicine*" according to the "scope of [a] license" "issued . . . by any state licensing board." (emphasis added)). In fact, Alabama law makes it a class C felony for CPMs or CNMs—or any non-physician—to practice *any* form of medicine, *id.*, which necessarily includes obstetrics. *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"). Other portions of the Alabama Code likewise support that obstetrics is a branch of medicine practiced by licensed physicians. *See, e.g., 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); *cf. id.* § 27-49-2 (referring to "the specialty of obstetrics and gynecology," which is provided by an "obstetrician and gynecologist . . . physician").

Alabama statutes defining midwifery reinforce that it is not the same as obstetrics and that it is not a branch of medicine. The Alabama Legislature did not use the terms "obstetrics," "obstetrical care," or "medicine" when defining the care that licensed midwives are authorized to provide. Instead, the Legislature defined midwifery in statutes concerning CPMs as "[t]he provision of primary maternity care during the antepartum, intrapartum, and postpartum periods," *id.* § 34-19-11(3), and it defined the practice of nurse-midwifery as "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); *see also id.* § 34-19-18(b) (licensed midwives may not "practice medicine").

Defendants do not contest that midwifery does not constitute the practice of medicine under Alabama law. Instead, at oral argument, Defendants suggested that, even if "obstetrics" is a branch of medicine that is limited to licensed physicians, "obstetrical care"—the term used in the hospital statute—should be read more broadly. The Court disagrees. Defendants cite no evidence that the Legislature intended to give the term "obstetrical care" a broader reach than the term "obstetrics," such that it would encompass care provided by non-physicians. Indeed, outside of the hospital statute, the only use of the term "obstetrical care" in the Alabama Code is in statutes referring to care provided by *physicians* specifically. *See id.* §§ 22-6-40 to -42. By contrast, as explained above, the Legislature did not use the term "obstetrical care" in defining the care it authorized licensed

midwives to provide but used different pregnancy-related terms instead. *See id.* § 34-19-11(3) ("primary maternity care"); *id.* § 34-21-81(2)(b) ("management of women's health care").[3]

This Court must "presume that the Legislature knows the meaning of the words it uses in enacting legislation," *Reed v. Bd. of Trs. of Ala. State Univ.*, 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)). In distinguishing the health care provided by non-physicians (i.e., midwives), from the practice of medicine by physicians (i.e., obstetricians), the Legislature has expressed its clear intent to treat midwifery care and obstetrical care as distinct fields.

Second, the undisputed facts establish that, even though both involve pregnancy-related care, "obstetrical care" and "midwifery care" are factually distinct, as well. The parties have stipulated that Plaintiffs OFBC and ABC provide midwifery services performed by licensed CPMs and CNMs, Stip. ¶¶ 19, 32–33, 36–37, who are prohibited under Alabama law from practicing any branch of medicine, as explained above, *see* Ala. Code § 34-24-51. Midwives and obstetricians have different training and education, different licensing and credentialing bodies and requirements, and different scopes of practice. Stip. ¶¶ 21–28; UF ¶¶ 2–18. Moreover, midwifery is a different model of care, focused on low-risk pregnancies and physiological birth, than the model of care practiced by obstetricians, which involves treating abnormality or pathology in

[3] The Alabama Supreme Court's decision in *Hegarty v. Hudson* further undermines Defendants' interpretation of "obstetrics" or "obstetrical care" as an umbrella term for all pregnancy- or childbirth-related health care. There, the Alabama Supreme Court held that even a family medicine *physician* delivering a baby via cesarean section was not engaged in the practice of "obstetrics" when doing so. 123 So. 3d 945, 950–51 (Ala. 2013). The Court thus recognized that, just because there may be "overlap" or "commonality" between the care provided by different practitioners, *id.* at 951, that does not erase differences between their fields of practice or make all care involving pregnancy "obstetrics" or "obstetrical."

pregnancy and the use of medical or surgical interventions into labor and delivery. *See* Stip. ¶ 20; UF ¶¶ 3, 17–18. Consistent with the midwifery model of care, birth centers do not 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), Stip. ¶ 28; UF ¶ 90, or that are inconsistent with physiological birth, UF ¶ 93. Defendants have not disputed these facts or adduced any facts suggesting that midwives in birth centers are otherwise engaged in the practice of medicine.

Having offered no facts that birth centers operating in the midwifery model of care practice obstetrical care, which is a branch of medicine, Defendants have failed to create a triable issue of fact, and Defendants have not shown as a matter of law that Plaintiffs' activities fall within the definition of obstetrical care that would bring FSBCs within the ambit of ADPH's authority. Accordingly, Plaintiffs are entitled to judgment as a matter of law on the grounds that FSBCs do not provide "obstetrical care" and therefore are not "hospitals" subject to ADPH licensure and regulation under section 22-21-20(1).

**2. "The Public Generally"**

FSBCs also do not constitute hospitals for purposes of ADPH's hospital licensing authority for a second, independent reason: they do not offer care to "the public generally." Unlike hospitals, which are obligated under federal law to provide care to any patient who presents at the emergency department in labor, *see* 42 U.S.C. §§ 1395dd(b), (e), FSBCs only provide care to certain patients, based on the exercise of discretion. *Cf. Parker Bldg. Servs. Co. v. Lightsey ex rel. Lightsey*, 925 So. 2d 927, 931 (Ala. 2005) (distinguishing "the public" from "a specific class of persons"). It is undisputed that, to be accepted as a FSBC patient, individuals must first be screened to ensure they have low-risk pregnancies, are appropriate candidates for midwifery care, and agree to additional

policies and procedures imposed by the birth centers. Stip. ¶¶ 13, 29, 34, 38; UF ¶¶ 86–93. Thus, FSBCs operating in the midwifery model of care are more akin to private practitioners, who exercise discretion in choosing whether to accept an individual as a patient and are not subject to ADPH regulation, *see* UF ¶ 32, or to home-birth midwives, who do the same, *id.* ¶¶ 94–95, and are likewise not subject to ADPH regulation, *id.* ¶ 34.

Defendants do not contest these facts. Instead, Defendants argue that Plaintiffs' reading of "the public generally" contradicts the hospital statute because other facilities 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 is unavailing. Unlike FSBCs, which are not explicitly named anywhere in the hospital statute, the Legislature expressly defines the term "hospital" to include those entities, without regard to the population served. *See* Ala. Code § 22-21-20(1). As such, by asking this Court to construe "the public *generally*" to include entities, like FSBCs, that only provide care to *a subset* of the public, Defendants would have this Court render the words "to the public generally" in the hospital statute "superfluous," which the Court cannot do. *Lang v. Cabela's Wholesale, LLC*, 371 So. 3d 228, 234–35 (Ala. 2022) (statutes should be interpreted so that "every word" has "some force and effect." (quoting *Barnett v. Panama City Wholesale, Inc.*, 312 So. 3d 754, 757 (Ala. 2020))).

The Court reasons that not every provider of health care makes itself available unconditionally to the public, and ADPH cannot shoehorn all health care entities it wishes to regulate into the statute. Plaintiffs are thus entitled to summary judgment on Claim One for the additional, independent reason that the undisputed facts establish that FSBCs do not provide care to "the public generally."

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," ADPH's attempt to regulate them as "hospitals" exceeds its statutory authority and violates the AAPA. Defendants' motion for summary judgment on this claim is thus also denied.

## IV. Relief

Plaintiffs have met their burden to establish that the ADPH rule requiring hospital licenses for FSBCs "exceeds the statutory authority of the agency" and so the Court "declare[s] the rule invalid." Ala. Code § 41-22-10. Accordingly, under the AAPA, the Defendants are enjoined from regulating FSBCs as hospitals under Section 22-21-20(1). *See Keith v. LeFleur*, 400 So. 3d 608, 620 (Ala. Civ. App. 2023).

Plaintiffs are also entitled independently to a permanent injunction, according to the traditional factors for injunctive relief. Plaintiffs seeking such relief must demonstrate (1) "success on the merits," (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). Plaintiffs have met those elements here.

As a threshold matter, Plaintiffs have prevailed on the merits for the reasons stated above. In addition, Defendants have failed to contest Plaintiffs' arguments as to irreparable harm, the balance of the equities, or the public interest, and therefore, effectively concede them. Defs' Opp'n 5 (contesting only the merits); *see Holmes v. Behr Process Corp.*, No. 2:15-CV-0454-WMA, 2015 WL 7252662, at *2 (N.D. Ala. Nov. 17, 2015); *Cardwell v. Auburn Univ. Montgomery*, 941 F. Supp. 2d 1322, 1329 (M.D. Ala. 2013).

Notwithstanding Defendants' failure to address these elements, the undisputed facts establish that Plaintiffs satisfy them. Plaintiffs have shown that they will suffer irreparable harm because, if ADPH unlawfully exceeds its statutory authority to license and regulate birth centers, Plaintiffs risk having to close their birth centers entirely, resulting in a loss of their businesses and income, disruption to the midwives' relationships with their patients, and the practice of their professions, and restrictions on their scope of practice. *See* UF ¶¶ 101, 112–22.

Next, the significant harm to Plaintiffs far outweighs any harm to ADPH, because an injunction prohibiting ADPH from improperly "attempt[ing] to regulate an area of law" that is beyond its authority to regulate poses no harm at all. *See City of Ctr. Point v. Atlas Rental Prop., LLC*, 371 So. 3d 856, 862 (Ala. 2022).

Finally, an injunction will benefit, not disserve, the public interest because Plaintiffs will be able to provide much-needed midwifery care to patients who seek it and help expand access to pregnancy-related care in the midst of Alabama's severe maternal and infant health crisis. *See* UF ¶¶ 39–55, 123–25 (citing evidence of the need for improved access to pregnancy-related care in Alabama and harm to Plaintiffs' patients if birth centers could not operate). The undisputed record evidence therefore supports the grant of permanent injunctive relief to Plaintiffs.

* * *

The Court holds that Plaintiffs are entitled to summary judgment on Claim One. The Court hereby DECLARES pursuant to the Alabama Declaratory Judgment Act, Ala. Code § 6-6-222, and the AAPA, *id.* § 41-22-10, that freestanding birth centers operating in the midwifery model of care are not "hospitals" under section 22-21-20(1) of the Alabama Code and, therefore, ADPH and Scott Harris, in his official capacity as the State Health Officer for ADPH, have no authority to require such freestanding birth centers to obtain a license under section 22-21-22 of the Alabama

Code or to otherwise regulate such freestanding birth centers, and that any such attempts to do so exceed the Defendants' statutory authority in violation of the AAPA; and FURTHER PERMANENTLY ENJOINS Defendants from requiring freestanding birth centers operating in the midwifery model of care to seek and obtain a "hospital" license under section 22-21-22 of the Alabama Code, and further from taking any adverse action against such entities, their owners, founders, or staff (including Plaintiffs and their members) for failing to seek or obtain such a license, including but not limited to threatening or seeking criminal or civil penalties under section 22-21-33 of the Alabama Code.

**IT IS SO ORDERED.**

**DONE this** 7 **day of** May **, 2025.**

**/s/**
**CIRCUIT JUDGE**