

CASE NO. _____

IN THE SUPREME COURT OF ALABAMA

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,

Petitioners,

v.

SCOTT HARRIS, in his official capacity as the State Health Officer of the Alabama Department of Public Health,

Respondent.

On Appeal from the Circuit Court of Montgomery County, Alabama
Civil Action No. 03-cv-23-901109
Court of Civil Appeals Case No. CL-2025-0419

**PETITION FOR A WRIT OF CERTIORARI
TO THE ALABAMA COURT OF CIVIL APPEALS**

Oral Argument Requested

Robert D. Segall (SEG003)
Copeland, Franco,
Screws & Gill, P.A.
444 South Perry Street
Montgomery, AL 36104
(334) 834-1180

Date of decision sought to be
reviewed: January 9, 2026

Date of decision overruling
Application for Rehearing:
March 6, 2026

segall@copelandfranco.com

Alison Mollman
American Civil Liberties Union of Alabama
P.O. Box 6179
Montgomery, AL 36106
(510) 909-8908
amollman@aclualabama.org

Whitney White*
Alexa Kolbi-Molinas*
Lindsey Kaley*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
wwhite@aclu.org
akolbi-molinas@aclu.org
lkaley@aclu.org

Rachel Reeves*
American Civil Liberties Union Foundation
915 15th Street NW
Washington, DC 20005
(212) 549-2633
rreeves@aclu.org

Barbara Tsao*
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
btsao@cov.com

Jeffeline Ermilus*
COVINGTON & BURLING LLP
One CityCenter 850 Tenth Street, NW

Washington, DC 20001
(202) 662-6000
jermilus@cov.com

Vanessa Lauber*
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 841-1000
vlauber@cov.com

Cecilia Bobbitt*
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105
(415) 591-7017
cbobbitt@cov.com

Counsel for Plaintiffs-Appellees

*Admitted pro hac vice

STATEMENT REGARDING ORAL ARGUMENT

If this Court grants Plaintiffs' petition and issues a writ of certiorari, Plaintiffs respectfully request oral argument pursuant to Rules 34(a) and 39(h) of the Alabama Rules of Appellate Procedure. The Court of Civil Appeals erred in resolving a material question of first impression involving the definition of "hospital" under section 22-21-20(1) of the Alabama Code and whether that definition applies to freestanding birth centers providing midwifery care. In addition to other legal and factual errors, the lower court's reasoning misapplied or disregarded this Court's binding precedent. The appellate court's erroneous decision implicates significant separation of powers concerns, as it allowed the Defendant to exceed the boundaries the Alabama Legislature placed on his authority. It also directly affects the ability of licensed health care practitioners to expand access to much-needed health care and improve maternal and infant health outcomes in the State—issues of significant public importance. As such, if the writ issues, Plaintiffs respectfully submit that oral argument will aid or assist in this Court's decisional process.

TABLE OF CONTENTS

STATEMENT REGARDING ORAL ARGUMENT	4
TABLE OF CONTENTS	5
TABLE OF AUTHORITIES.....	6
INTRODUCTION.....	8
GROUND FOR GRANTING PETITION.....	11
ARGUMENT	12
1. The application of the hospital statute to freestanding birth centers presents a material question of first impression.....	12
2. The Court of Civil Appeals’ interpretation of “the public generally” conflicts with this Court’s precedent.	18
CONCLUSION.....	22
CERTIFICATE OF COMPLIANCE.....	25
CERTIFICATE OF SERVICE.....	26

TABLE OF AUTHORITIES

Cases

<i>Barnett v. Panama City Wholesale, Inc.</i> , 312 So. 3d 754 (Ala. 2020).....	21, 22
<i>City of Montgomery v. Town of Pike Rd.</i> , 35 So. 3d 575 (Ala. 2009).....	21, 22
<i>Coastal States Gas Transmission Co. v. Ala. Pub. Serv. Comm'n</i> , 524 So. 2d 357 (Ala. 1988).....	19, 20, 21
<i>Ex parte City of Florence</i> , 417 So. 2d 191 (Ala. 1982).....	13
<i>Funliner of Ala., L.L.C. v. Pickard</i> , 873 So. 2d 198 (Ala. 2003).....	20, 21
<i>Harris v. Oasis Family Birthing Center, LLC</i> , No. CL-2025-0419, 2026 WL 71483 (Ala. Civ. App. Jan. 9, 2026)	<i>passim</i>
<i>Lang v. Cabela's Wholesale, LLC</i> , 371 So. 3d 228 (Ala. 2022).....	21
<i>Opinion of the Justices</i> , 345 So. 2d 1354 (Ala. 1977).....	13
<i>Parker Bldg. Servs. Co., Inc. v. Lightsey ex rel. Lightsey</i> , 925 So. 2d 927 (Ala. 2005).....	20
<i>Williams v. Ala. Fuel & Iron Co.</i> , 102 So. 136 (Ala. 1924).....	21
<i>Woodruff v. Beeland</i> , 127 So. 235 (Ala. 1930).....	13

Statutes, Rules, and Regulations

Act No. 658, 1919 Ala. Laws 909	16
---------------------------------------	----

Act No. 2017-383, 2017 Ala. Laws 1235	9, 15
Ala. Admin. Code rr. 540-X-10-.01, <i>et. seq.</i>	15
Ala. Code § 22-21-20.....	<i>passim</i>
Ala. Code § 34-19-11.....	16
Ala. Code § 34-19-14.....	10, 14
Ala. Code § 34-19-18.....	16
Ala. Code § 34-21-81.....	16
Ala. Code § 34-21-84.....	10, 14
Ala. Code § 34-21-85.....	10, 14
Ala. Code § 34-24-50.1.....	16
Ala. Code § 34-24-51.....	16
Ala. Code § 41-22-10.....	10
Ala. Const. Art. III, § 42.....	13
Ala. R. App. P. 34	4
Ala. R. App. P. 39	<i>passim</i>
Other Authorities	
Ala. Op. Att’y Gen. No. 2023-012 (Dec. 15, 2022).....	16

Pursuant to Rule 39 of the Alabama Rules of Appellate Procedure, Plaintiffs—two freestanding birth centers, their owners, midwives who work in the birth centers, and a membership association of Alabama midwives—respectfully petition this Court to issue a writ of certiorari to the Court of Civil Appeals and to reverse and set aside its judgment in *Harris v. Oasis Family Birthing Center, LLC*, No. CL-2025-0419, 2026 WL 71483 (Ala. Civ. App. Jan. 9, 2026), *rehearing denied* Mar. 6, 2026 [hereinafter “*OFBC*”], attached as Exhibit A. In support of said Petition, Plaintiffs set forth a Statement of Facts (“SOF”), attached as Exhibit B, and the following arguments:

INTRODUCTION

This case is about enforcing limits the Alabama Legislature placed on the authority of the Alabama Department of Public Health (“ADPH”) to license and regulate health care facilities (ADPH’s “licensing authority”).¹ The Legislature created a framework that relies on multiple agencies to ensure patient health and safety. That framework limits ADPH’s licensing authority to only facilities meeting the Legislature’s

¹ Defendant Scott Harris, in his official capacity as ADPH’s State Health Officer, is responsible for supervising the licensing and regulation of such facilities. SOF 7.

definition of a “hospital” in section 22-21-20(1) of the Alabama Code. As relevant here, that definition applies to health care institutions that are “primarily engaged in offering to the public generally . . . obstetrical care.” Ala. Code § 22-21-20(1).²

Freestanding birth centers, like Plaintiffs, do not meet that definition because they do not provide “obstetrical care” and do not offer services “to the public generally.” Instead, these birth centers employ licensed midwives who exclusively provide low-intervention midwifery care to a subset of carefully screened patients with low-risk, uncomplicated pregnancies—care that is different as a matter of law and fact from the obstetrical care provided by physicians in traditional hospital settings. *See* SOF 4–7, 12–14. The midwifery care birth centers provide is identical to home birth midwifery care, which the Legislature authorized the Board of Midwifery, *not* ADPH, to oversee. *See* Act No. 2017-383, 2017 Ala. Laws 1235; SOF 8–9, 14. Indeed, unlike ADPH’s licensing authority, which is limited to “hospitals,” the Legislature tasked professional boards such as the Board of Midwifery and the Board

² Defendant asserts authority over birth centers exclusively on this basis. SOF 9; *see OFBC*, 2026 WL 71483, at *6.

of Nursing with overseeing the practice of licensed midwives in every setting where they practice, including birth centers. *See* SOF 4; Ala. Code §§ 34-19-14(a) & (b), 34-21-84, 34-21-85.

The Circuit Court of Montgomery County correctly applied controlling law to the undisputed facts in concluding that Defendant’s attempt to require birth centers to be licensed as “hospitals” exceeded the boundaries of his authority, in contravention of the statute’s plain text and the Alabama Administrative Procedures Act, Ala. Code § 41-22-10; C. 2942–43.³ The Court of Civil Appeals reversed, *OFBC*, 2026 WL 71483, at *1, *13, in an opinion that misapprehended the Legislature’s regulatory framework, misconstrued Alabama law and undisputed facts, and failed to correctly apply binding precedent.

The statutory question at the heart of this case affects foundational principles of separation of powers involving legislative limits on agency authority. Defendant’s unlawful overreach also has real-world impacts on birth centers’ ability to “address the dire needs of their communities,” SOF 3, amid what even Defendant describes as “an urgent maternal and

³ “C.” refers to the Clerk’s record.

infant health crisis,” SOF 1. As set forth below, these “special and important reasons,” Ala. R. App. P. 39(a), warrant this Court’s review.

GROUND FOR GRANTING PETITION

As explained *infra*, Plaintiffs respectfully request that the Court issue a writ of certiorari on the following grounds:

1. This case presents a material issue of first impression. Ala. R. App. P. 39(a)(1)(C). This Court has never interpreted the relevant clause of the “hospital” definition in section 22-21-20(1) or determined whether it applies to freestanding birth centers providing midwifery care. This material question implicates both fundamental separation of powers concerns and issues of significant public importance affecting Alabamians’ access to pregnancy and birthing care.

2. The appellate court’s decision also conflicts with this Court’s binding precedent. Ala. R. App. P. 39(a)(1)(D). The conclusion that birth centers offer services “to the public generally”—one of two necessary criteria under the “hospital” statute—conflicts both with precedent interpreting the meaning of “the public generally” and analogous language, and also with well-settled rules of statutory construction.

ARGUMENT

Freestanding birth centers providing midwifery care only fall within ADPH's hospital-licensing authority if they meet two criteria: they must be "primarily engaged in offering . . . obstetrical care," and they must offer such care "to the public generally." Ala. Code § 22-21-20(1). The appellate court erred in reversing the circuit court's well-founded conclusion that birth centers satisfy neither requirement as a matter of law and fact. The appellate decision warrants certiorari review because it involves a material question of first impression and because its reasoning conflicts with this Court's precedent.

1. The application of the hospital statute to freestanding birth centers presents a material question of first impression.

This Court has never determined whether freestanding birth centers are "hospitals" under section 22-21-20(1), nor has it ever construed the meaning of "obstetrical care" or "the public generally" as used in that definition.

This legal question of statutory construction is a "material" one, Ala. R. App. P. 39(a)(1)(C), because it concerns the scope of agency authority in an area of significant public importance. It is "axiomatic"

that an administrative agency “is purely a creature of the legislature, and has only those powers conferred upon it by its creator.” *Ex parte City of Florence*, 417 So. 2d 191, 193–94 (Ala. 1982); accord *Woodruff v. Beeland*, 127 So. 235, 236 (Ala. 1930). ADPH’s attempt to require birth centers to be licensed as “hospitals” exceeds the scope of its authority and strikes at the heart of separation of powers, one of the “fundamental concepts of our form of government” and a “foundation stone[] upon which the freedom, liberty, and rights of the citizens in the final analysis rest,” *Opinion of the Justices*, 345 So. 2d 1354, 1356 (Ala. 1977) (quotation marks and citations omitted); see also Ala. Const. Art. III, § 42(c) (“[T]he executive branch may not exercise the legislative . . . power.”).

Moreover, the resolution of this question is of public importance because it impacts access to much-needed health care. The Plaintiff birth centers have been safely providing midwifery care to their communities continuously since 2024. SOF 10–11. But if permitted to seize unauthorized licensing authority, Defendant intends to enforce burdensome and unnecessary regulations⁴ that would make it difficult,

⁴ Plaintiffs also brought alternative claims not at issue here challenging these regulations. See *OFBC*, 2026 WL 71483, at *13 n.5; C. 1045–56.

if not impossible, for the birth centers to keep operating, thus depriving their current patients and communities of access to essential care. *See* SOF 1–3, 14–15; *see also OFBC*, 2026 WL 71483, at *12 (recognizing that the Plaintiff birth centers “were opened to provide greater access to pregnancy-related care”).

The appellate court erred in multiple respects when resolving this question of first impression and concluding that the “hospital” definition applies to freestanding birth centers. This petition focuses on three key errors. *First*, the appellate court’s reasoning relied on a fundamental misapprehension of the Legislature’s framework for regulating health care. The appellate court assumed that the Legislature must have intended to subject birth centers to ADPH licensure because, otherwise, they “would not be subject to regulation by any state agency.” *OFBC*, 2026 WL 71483, at *11. But that is simply not true. To the contrary, professional boards such as the Board of Midwifery and the Board of Nursing already oversee the practice of midwives in *every* setting in the state where they practice, ADPH-licensed or not. *See* SOF 4; Ala. Code §§ 34-19-14(a) & (b), 34-21-84, 34-21-85. That necessarily includes birth centers. Moreover, this outcome would not be unique: this same

regulatory system—in which the Legislature grants professional boards, but not ADPH, authority to oversee the provision of health care—exists in other settings, including where pregnancy care is provided. This is true of home births, which involve the exact same midwifery services and low-risk patients as in birth centers, SOF 8–9, 13–14; Act No. 2017-383, 2017 Ala. Laws 1235, and of physician’s offices, SOF 8; Ala. Code § 22-21-20(1), where pregnancy-related care often occurs. Regulation by the boards (but not ADPH) is also the system the Legislature adopted for more complex care than birth centers provide: physicians perform surgeries, including under general anesthesia, in office-based settings without ADPH licensing. SOF 8; Ala. Admin. Code rr. 540-X-10-.01, *et. seq.* In sum, the Legislature did not grant ADPH authority over every setting where health care, or pregnancy care, is provided; instead, it entrusted the professional boards with exclusive authority both in settings providing the same care as birth centers, and in settings providing far more complex care.

Second, in interpreting “obstetrical care” to apply to midwifery care in birth centers, the appellate court’s reasoning misunderstood critical legal and factual distinctions between midwifery and obstetrics. The

legal history it relied on, *see OFBC*, 2026 WL 71483, at *9–10, demonstrates that, for decades prior to enacting the “hospital” definition in 1949, the Legislature consistently distinguished the practice of midwifery from the practice of obstetrics as a matter of law, banning midwives from practicing obstetrics or any other form of medicine, *see id.*; Act No. 658, § 13, 1919 Ala. Laws 909, 916. This legal distinction persists today between obstetrics as a branch of medicine practiced by physicians and midwifery as a separate field of health care practiced by licensed professionals who are prohibited from practicing medicine under felony penalty. *See* Ala. Code §§ 34-24-50.1(5), -50.1(6), -51; *see also id.* § 34-19-18(b); Ala. Op. Att’y Gen. No. 2023-012, at 4 (Dec. 15, 2022) (attorney general opinion stating that “obstetrics” is a “branch of medicine”). Construing “obstetrical care” to encompass midwifery and obstetrics alike, as the appellate court did, blurs the Legislature’s century-old, bright-line distinction between the practice of medicine and all other forms of health care, like midwifery. *Cf.* Ala. Code §§ 34-19-11(3), 34-21-81(2)(b) (defining licensed practice of Alabama midwives as “primary maternity care” and “management of women’s health care,” *not* as “obstetrical care”).

The appellate court also misstated or glossed over undisputed facts evidencing core differences between obstetrics and midwifery. The appellate court reasoned that the Legislature must have intended for ADPH to license both obstetrics facilities and midwifery facilities because they “implicate[] identical health and safety concerns.” *OFBC*, 2026 WL 71483, at *10. This claim is flatly contradicted by the undisputed record. Obstetrics is a surgical specialty involving treatment of abnormality or pathology in pregnancy for patients with a range of risk levels, who may experience a range of complications or need more invasive, complex care than what birth centers provide; by contrast, midwifery in birth centers is limited to low-risk patients with uncomplicated pregnancies, and involves only low-intervention care and physiological birth without surgical or operative interventions, labor induction or augmentation, or narcotic anesthesia. SOF 4–7, 12–14; *see also OFBC*, 2026 WL 71483, at *9 (recognizing midwifery is “limited to ordinary assistance in the normal cases of childbirth,” and obstetrics is a “more specialized” field of medicine involving “complicated pregnancies” (quotation marks and citation omitted)). Birth centers exclusively provide low-intervention midwifery care, transferring any patient needing more complex care.

SOF 12–14. In fact, the record confirms that the (low) risks posed by midwifery care in birth centers are identical *not* to those posed by obstetrics, but to those in home birth midwifery, SOF 14, which the Legislature authorized without ADPH oversight, SOF 8–9; *see also* SOF 3 (evidence of midwifery’s safety and benefits). There is nothing “illogical, unreasonable, or unfair,” *OFBC*, 2026 WL 71483, at *11, about regulating lower risk midwifery care in birth centers differently than higher risk obstetrics care.

And *third*, the appellate court erred in concluding that birth centers meet the second necessary criterion of offering services “to the public generally,” as explained *infra* Section 2.

These and other errors in the Court of Civil Appeals’ resolution of this material question of first impression warrant this Court’s review.

2. The Court of Civil Appeals’ interpretation of “the public generally” conflicts with this Court’s precedent.

The following facts are undisputed: birth centers only serve “low-risk patients who do not have preexisting or pregnancy-related conditions that increase the risk of pregnancy complications”; they “screen their patients at intake and throughout the childbirth process to ensure” eligibility; they require patients’ agreement to additional

policies; and they “are not required to provide the use of their facilities or midwifery services to any woman who presents in labor, like an emergency department of a traditional hospital [is].” *OFBC*, 2026 WL 71483, at *12–13; *see also* SOF 4, 6, 12–13. Yet the appellate court reasoned that this rigorous screening process, involving the exercise of midwives’ discretion, is consistent with offering services “to the public generally” under section 22-21-20(1):

When used in the context of a business providing a product or services, the phrase “to the public generally” commonly means that the business solicits its customers from the public at large, or from a considerable segment of the public, as opposed to limiting its customer base to select individuals through private contracts. *See Coastal States Gas Transmission Co. v. Alabama Pub. Serv. Comm’n*, 524 So. 2d 357 (Ala. 1988) When a business invites the public, or a subset of the public, to apply for the use of its facilities or services, it serves “the public generally” even if it screens those applicants to ensure that they meet the requirements for using the facilities or services. . . . As a matter of law, [the Plaintiff birth centers] offer their facilities and midwifery services to the public generally because they invite the population of pregnant women in their communities to apply to use those facilities and services. The fact that [they] screen the applicants to ensure that they meet the eligibility standards to receive midwifery care does not alter that conclusion.

OFBC, 2026 WL 71483, at *12–13. This holding conflicts with two sets of binding precedent.

First, the appellate court’s conclusion conflicts with precedent interpreting what it means to be open “to the public” or “the public generally.” The appellate court reasoned that birth centers serve “the public generally” merely because they “solicit[]” clients from the public. *Id.* But *Coastal States*, the only Alabama case relied on for this holding, says no such thing. In that case, this Court distinguished businesses that (like birth centers) serve only select clients from those that are open “to the public.” 524 So. 2d at 358–65. Those that serve the public make their services “available to the public *generally and indiscriminately*,” “h[o]ld [themselves] out to the public as being willing to serve *all* of [the public’s] members,” and have a “duty” to do so. *Id.* at 360–61 (emphases added) (quotation marks and citations omitted). Under this interpretation, birth centers—which only serve pre-screened, low-risk patients and exercise discretion over whom to accept—do not serve “the public generally.”

The appellate court’s interpretation also conflicts with and altogether ignores a line of this Court’s decisions repeatedly distinguishing “the public generally” from “a specific class of persons,” *Parker Bldg. Servs. Co., Inc. v. Lightsey ex rel. Lightsey*, 925 So. 2d 927, 931 (Ala. 2005); *see also Funliner of Ala., L.L.C. v. Pickard*, 873 So. 2d

198, 209 (Ala. 2003) (distinguishing a “group injury” from injury to “the public generally”); *Williams v. Ala. Fuel & Iron Co.*, 102 So. 136, 139 (Ala. 1924) (distinguishing class of “owners, operators, and employés [sic] of coal mines” from “the public generally”). Under this precedent, like *Coastal States*, the fact that birth centers draw the limited class of pre-screened clientele they serve from a subset of the public does not mean they offer care to “the public generally.”

Second, the appellate court’s construction of “the public generally” violates the well-established canon against superfluous language.⁵ This Court has repeatedly directed that statutes be interpreted so that “every word, sentence, or provision” has “some useful purpose” and “force and effect,” and so that “no superfluous words or provisions [are] used.” *City of Montgomery v. Town of Pike Rd.*, 35 So. 3d 575, 584 (Ala. 2009) (quotation marks and citation omitted); *accord Barnett v. Panama City Wholesale, Inc.*, 312 So. 3d 754, 757–58 (Ala. 2020); *Lang v. Cabela’s Wholesale, LLC*, 371 So. 3d 228, 234–35 (Ala. 2022). But the unavoidable

⁵ Plaintiffs state that it is not feasible to quote a portion of the opinion in conflict with these decisions, because no wording in the opinion clearly shows the conflict; however, Plaintiffs state with particularity in this section how the appellate court’s opinion conflicts with this Court’s precedent. *See* Ala. R. App. P. 39(a)(1)(D)(2).

outcome of the appellate court’s interpretation is to drain “the public generally” of any meaning. All health care facilities in some way “solicit[] [their] customers from the public” or a segment thereof. *See OFBC*, 2026 WL 71483, at *12. If the statute’s “public generally” requirement is satisfied merely by a facility “invit[ing] the public . . . to apply for the use of its facilities,” *id.*, even if it exercises discretion over patient selection, then this provision will always be satisfied and have no “force and effect,” *City of Montgomery*, 35 So. 3d at 584. This contravenes the rule that courts must “ascribe meaning to each provision without rendering any provision logically superfluous.” *Barnett*, 312 So. 3d at 758.

Because the Court of Civil Appeals’ decision conflicts with prior decisions of this Court, Ala. R. App. P. 39(a)(1)(D), the writ should issue.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant this petition for writ of certiorari.

March 20, 2026

Respectfully Submitted,

/s/ Robert D. Segall
Robert D. Segall (SEG003)
Copeland, Franco, Screws & Gill, P.A.
444 South Perry Street

Montgomery, AL 36104
(334) 834-1180
segall@copelandfranco.com

Alison Mollman
American Civil Liberties Union of
Alabama
P.O. Box 6179
Montgomery, AL 36106
(510) 909-8908
amollman@aclualabama.org

Whitney White*
Alexa Kolbi-Molinas*
Lindsey Kaley*
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
wwhite@aclu.org
akolbi-molinas@aclu.org
lkaley@aclu.org

Rachel Reeves*
American Civil Liberties Union
Foundation
915 15th Street NW
Washington, DC 20005
(212) 549-2633
rreeves@aclu.org

Barbara Tsao*
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700

btsao@cov.com

Jeffeline Ermilus*
COVINGTON & BURLING LLP
One CityCenter 850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
jermilus@cov.com

Vanessa Lauber*
COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 841-1000
vlauber@cov.com

Cecilia Bobbitt*
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105
(415) 591-7017
cbobbitt@cov.com

Counsel for Plaintiffs-Appellees

*Admitted pro hac vice

CERTIFICATE OF COMPLIANCE

I certify that this application is composed of 2,993 words and was completed with Century Schoolbook size 14 font in compliance with the rules set forth in Rule 32 of the Alabama Rules of Appellate Procedure.

/s/ Robert D. Segall
Of Counsel

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March 2026, I electronically filed the foregoing with the Clerk of this Court, and I also served a copy upon counsel for Defendant-Appellant by electronic mail to Ben.Albritton@AlabamaAG.gov.

/s/ Robert D. Segall
Of Counsel

EXHIBIT A

2026 WL 71483

Only the Westlaw citation is currently available.

NOT YET RELEASED FOR PUBLICATION.

Court of Civil Appeals of Alabama.

[Dr. Scott HARRIS](#), in his official capacity as the [State Health Officer](#)

v.

OASIS FAMILY BIRTHING CENTER, LLC, Dr. Heather Skanes, Alabama Birth Center, Dr. Yashica Robinson, Alabama Affiliate of the American College of Nurse-Midwives, Jo Crawford, and Tracie Stone

CL-2025-0419

|

January 9, 2026

Synopsis

Background: Freestanding birthing centers, certified professional midwives, and related parties brought action against Alabama Department of Public Health (ADPH) and, in his official capacity, State Health Officer, seeking declaratory and injunctive relief on claim that birthing centers operating in midwifery model of care were not “hospitals” for purposes of ADPH’s regulatory and licensing authority. The Circuit Court, Montgomery County, No. CV-23-901109, entered partial-summary-judgment order determining that freestanding birthing centers operating in the midwifery model of care were not “hospitals” within the relevant statutory definition and permanently enjoining ADPH and State Health Officer from requiring freestanding birth centers operating in the midwifery model of care to seek and obtain a hospital license. ADPH and State Health Officer appealed after circuit court certified its order as final pursuant to rule on judgment upon multiple claims or involving multiple parties. Upon stipulation of the parties, the Court of Civil Appeals dismissed ADPH as an appellant on grounds of state agencies being immune from suit under the Alabama Constitution.

Holdings: The Court of Civil Appeals, [Moore](#), P.J., held that:

the freestanding birthing centers offered their facilities and midwifery services to the public generally, as required to find that the centers were “hospitals” as that term was defined by the Hospital Act, and

freestanding birthing centers operating in the midwifery model of care are “hospitals” within the definition of the Hospital Act.

Reversed and judgment rendered.

Procedural Posture(s): On Appeal; Motion for Declaratory Judgment; Motion for Permanent Injunction; Motion for Summary Judgment.

Appeal from Montgomery Circuit Court (CV-23-901109)

Opinion

[MOORE](#), Presiding Judge.

*1 This appeal involves the question whether the authority of the Alabama Department of Public Health to license and regulate hospitals applies to freestanding birth centers that operate in the midwifery model of care. As fully explained in the following opinion, we hold that it does.

Statutory and Regulatory Background

In 1949, the legislature enacted a law granting the State Board of Health authority over the licensing and regulation of hospitals (“the Hospital Act”). See Ala. Acts 1949, Act No. 530. Section 1 of the Hospital Act defined “hospitals” as follows:

“As used in th[e Hospital] Act the term ‘hospitals’ shall mean sanatoria, rest homes, nursing homes and other related institutions when such institution is primarily engaged in offering to the public generally facilities for the diagnosis and treatment of injury, deformity, disease or obstetrical care. The word ‘person’ includes individuals, partnerships, corporations and associations.”

Section 7 of the Hospital Act authorized the State Board of Health to “issue licenses for the operation of hospitals which are found to comply with the provisions of th[e Hospital] Act and any regulations lawfully promulgated by the said State Board of Health.” Section 8 of the Hospital Act provided, in pertinent part: “[T]he State Board of Health ... shall have the power to make and enforce, and may modify, amend and rescind, reasonable rules and regulations governing the operation and conduct of hospitals as defined in th[e Hospital] Act.”

The Hospital Act, as amended over the years, is now codified at [Ala. Code 1975, § 22-21-20 et seq. Section 22-21-20\(1\)](#), [Ala. Code 1975](#), currently defines “hospitals” as:

“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.”

(Emphasis added.) [Section 22-21-25\(a\), Ala. Code 1975](#), provides: “The State Board of Health may grant licenses for the operation of hospitals which are found to comply with the provisions of [the Hospital Act, as amended,] and any regulations lawfully promulgated by the State Board of Health.” [Section 22-21-28\(a\), Ala. Code 1975](#), provides, in pertinent part:

*2 “In the manner provided in this section, the State Board of Health ... shall have the power to make and enforce, and may modify, amend, and rescind, reasonable rules and regulations governing the operation and conduct of hospitals as defined in [[Ala. Code 1975, § 22-21-20](#)].”¹

In 1987, the State Board of Health, expressly relying on the Hospital Act, as amended, promulgated rules governing the operation of birthing centers. Under the 1987 regulations, “birthing center” was defined as

“a publicly or privately owned facility, place or institution constructed, renovated, leased or otherwise established where nonemergency births are planned to occur away from the mother's usual residence following a documented

period of prenatal care for a normal uncomplicated pregnancy which has been determined to be low risk through a formal risk scoring examination.”

Former [Ala. Admin. Code \(State Bd. of Health\), r. 420-5-13-.01\(1\)\(d\)](#). “Freestanding birthing center” was defined as “a separate and distinct facility or center or a separate and distinct organized unit of a hospital ... for the purpose of performing the service of a ‘birthing center.’ ” Former [Ala. Admin. Code \(State Bd. of Health\), r. 420-5-13-.01\(1\)\(n\)](#). The regulations governed the administration of birthing centers, as well as the personnel, services, facilities, supplies, and equipment used by birthing centers. See former [Ala. Admin. Code \(State Bd. of Health\), rr. 420-5-13-.01 through 420-5-13-.19](#). However, in 2010, at a time when no birthing centers were operating in Alabama, the State Board of Health repealed the 1987 birthing-center regulations.

In 2022, Oasis Family Birthing Center, LLC (“Oasis”), began operating a freestanding birthing center in Birmingham, and Alabama Birth Center (“ABC”) was developing a freestanding birthing center in Huntsville. Dr. Scott Harris, the State Health Officer, acting as the executive and chief regulatory officer of the State Board of Health, see [Hard v. State ex rel. Baker, 228 Ala. 517, 520, 154 So. 77, 80 \(1934\)](#), requested a legal opinion from Attorney General Steve Marshall as to whether freestanding birthing centers could be regulated as “hospitals” under the Hospital Act, as amended. The attorney general opined that “[a] freestanding birth center that is primarily engaged in offering obstetrical care to the public is a ‘hospital,’ as defined by [section 22-21-20\(1\) of the Code of Alabama](#) and must be licensed by the Alabama State Board of Health.” Att’y Gen. Op. No. 2023-012 (Dec. 15, 2022). The attorney general continued:

*3 “Obstetrics is ‘[t]he branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium.’ [Obstetrics](#), *Taber's Cyclopedic Medical Dictionary* (18 ed. 1997). The puerperium is ‘[t]he period of 42 days following childbirth....’ [Puerperium](#), *Taber's Cyclopedic Medical Dictionary* (18 ed. 1997). Thus, a freestanding birth center is engaged in offering obstetrical care if it concerns the management of women during pregnancy, childbirth, and the puerperium. Whether a freestanding birth center is primarily engaged in offering obstetrical care requires a factual determination that must be made by the [State Board of Health] as this Office only makes determinations of law. [Ala. Code \[1975,\] § 36-15-1\(1\)\(a\) & \(b\) \(2013\)](#). If the [State Board of Health]

determines that a freestanding birth center is primarily engaged in offering obstetrical care, then the freestanding birth center is a ‘hospital’ as defined by [section 22-21-20\(1\) of the Code](#) and must be licensed by the [Alabama State Board of Health].”

Id.

In 2022 and 2023, the State Board of Health developed new regulations governing freestanding birthing centers and notified the public that it intended to adopt those regulations. [See Ala. Code 1975, § 41-22-5](#) (governing adoption of administrative rules). After receiving and responding to public comments, in August 2023 the State Board of Health formally adopted the new regulations governing freestanding birthing centers (“the 2023 regulations”), which became effective October 15, 2023. [See Ala. Admin. Code \(State Bd. of Health\), rr. 420-5-13-.01 through -.19.](#)

The 2023 regulations define “birthing center” as

“a publicly or privately owned health care facility, place, or institution, constructed, renovated, leased, or otherwise established, where nonemergency births are planned to occur away from the mother’s usual residence following a documented period of prenatal care for a low risk patient, as defined herein. Such facility, place, or institution must be a freestanding unit, not part of a hospital or other facility licensed for other purposes by the State Board of Health, and hold itself out to the public as a birthing center by advertising by some public means, such as a newspaper, directory, a website, the Internet, etc.”

[Ala. Admin. Code \(State Bd. of Health\), r. 420-5-13-.01\(2\)\(b\)](#). “Freestanding” is defined as “a separate and distinct health care facility, place, or institution, constructed, renovated, leased, or otherwise established, for purposes of these rules, to provide the services of a birthing center.” [Ala. Admin. Code \(State Bd. of Health\), r. 420-5-13-.01\(2\)\(j\)](#). Like the 1987 regulations, the 2023 regulations cover the administration, staffing, record keeping, services, patient care, rights, responsibilities, quality assurance, reporting, and physical environment of freestanding birthing centers. [Ala. Admin. Code \(State Bd. of Health\), rr. 420-5-13-.01 through -.19.](#)

Procedural Background

On August 8, 2023, Oasis; Dr. Heather Skanes, the founder and executive director of Oasis; ABC; Dr. Yashica Robinson, the founder and medical director of ABC; the Alabama Affiliate of the American College of Nurse-Midwives;² and others (“the plaintiffs”) commenced a civil action in the Montgomery Circuit Court (“the circuit court”) against the Alabama Department of Public Health (“the ADPH”) and Dr. Harris, in his official capacity as the State Health Officer. In the complaint, the plaintiffs alleged, among other things, that the ADPH and Dr. Harris were interfering with the ability of Oasis and ABC to operate their freestanding birthing centers by proposing onerous regulations beyond the ADPH and Dr. Harris’s statutory authority.

*4 On January 19, 2024, after the ADPH adopted the 2023 regulations, the plaintiffs filed an amended complaint adding two new plaintiffs -- Jo Crawford, a certified professional midwife working for Oasis, and Tracie Stone, a certified professional midwife who ultimately became the clinical director for ABC. In count one of the amended complaint (“Count One”), the plaintiffs collectively alleged:

“194. Under Alabama law, a ‘hospital,’ for purposes of [the] ADPH’s regulatory and licensing authority, includes, inter alia, ‘institution[s] primarily engaged in offering to the public generally ... obstetrical care.’ [Ala. Code \[1975,\] § 22-21-20\(1\)](#).

“195. The ADPH’s determination that any and all freestanding birth centers are ‘hospitals’ for purposes of its regulatory and licensing authority under [section 22-21-20\(1\)](#), including but not limited to ... adopting regulations for freestanding birth centers, [Ala. Admin. Code \[r.\]r. 420-5-13-.01 to -.19](#), constitutes a rule under the [Alabama Administrative Procedure Act, [Ala. Code 1975, § 41-22-1 et seq.](#)] because it is a ‘standard[] or statement of general applicability that implements, interprets, or prescribes law or policy.’ [Ala. Code. \[1975,\] § 41-22-3\(9\)](#)

“196. Because a freestanding birth center operating under the midwifery model of care is not engaged in offering obstetrical care to the public generally, it does not fall within [the] ADPH’s hospital regulatory and licensing authority.

“197. Therefore, [the] ADPH’s adoption of the rule that any and all freestanding birth centers operating under the midwifery model of care are ‘hospitals’ for purposes of its regulatory and licensing authority, including through

the adoption of regulations for freestanding birth centers and its application of that rule to Plaintiffs [Oasis], ABC, and any other similarly situated birth centers that may be owned, operated, or staffed by the individual Plaintiffs or Plaintiff [Alabama Affiliate of the American College of Nurse-Midwives'] members, exceeds [the] ADPH's statutory authority in violation of [Alabama Code \[1975,\] § 41-22-10.](#)"

The plaintiffs requested that the circuit court enter a judgment declaring that freestanding birthing centers operating in the midwifery model of care are not "hospitals" under [§ 22-21-20\(1\)](#) and, therefore, that the ADPH and Dr. Harris had no authority to require such freestanding birthing centers to obtain a hospital license or to otherwise regulate such freestanding birthing centers and that any such attempts to do so exceeded their statutory authority. The plaintiffs further requested that the circuit court permanently enjoin the ADPH and Dr. Harris from requiring freestanding birthing centers operating in the midwifery model of care to obtain a hospital license and from taking any adverse action against such freestanding birthing centers for operating without a hospital license.

On January 14, 2025, the parties entered into a joint stipulation of facts for the purpose of resolving Count One. The parties stipulated to, among other things:

"13. A [freestanding birthing center] provides pregnancy, birthing, postpartum, and limited newborn care in a home-like environment to low-risk patients who have been clinically screened and receive continuous risk assessment to proactively identify risk factors or complications that could arise during pregnancy or birth and affect the patients' ability to be safely cared for in [a freestanding birthing center].

*5 "14. [Freestanding birthing centers] are independent, autonomous health care centers and are not attached to or organized as part of a general or specialized hospital or other acute care facility.

"....

"19. Plaintiffs [Oasis] and ABC operate ... [freestanding birthing centers] through [certified nurse midwives] and [certified professional midwives], utilizing a midwifery model of care.

"20. Midwifery 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.

"21. Midwifery is practiced by trained midwives with a different skill set, education, and training background than obstetricians, who are licensed and regulated by the Alabama State Board of Medical Examiners. [Ala. Code \[1975,\] § 34-24-330, et seq.](#)

"22. Two kinds of midwives are licensed to practice in Alabama: [certified nurse midwives] and [certified professional midwives]. Both kinds of midwives provide care in the midwifery model but fulfill different educational and training requirements.

"23. [Certified nurse midwives] are advanced practice registered nurses licensed and regulated by the Alabama Board of Nursing to engage in practice as a nurse midwife. [Certified nurse midwives] must complete a nursing program qualifying them as a registered nurse, in addition to specialized training and certification in nurse midwifery. [Ala. Code \[1975,\] §§ 34-21-81\(1\), \(2\)\(b\).](#)

"24. In Alabama, [certified nurse midwives] are required to maintain [collaborative practice agreements] with licensed physicians as a condition of their advanced practice. [Ala. Code \[1975,\] §§ 34-21-81\(1\), \(5\), 34-21-83, -84, -85, -90.](#)

"25. A [certified nurse midwife]'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. [Certified nurse midwives] may conduct patient examinations; prescribe and administer certain medications; make decisions about patient admission, management, and discharge; and order and interpret laboratory testing.

"26. [Certified professional midwives] are licensed and regulated by the Alabama State Board of Midwifery. [Ala. Code \[1975,\] §§ 34-19-12\(a\), -14, -15.](#) [Certified professional midwives] must be credentialed through an education program or pathway accredited by the Midwifery Educational Accreditation Council or by another accrediting agency recognized by the United States Department of Education. [Ala. Code \[1975,\] § 34-19-15\(a\) \(3\).](#)

"27. A [certified professional midwife]'s scope of practice encompasses the provision of care, counseling, and education throughout pregnancy, birth, and the

postpartum period; making diagnoses; recognizing conditions requiring consultation or referral to other healthcare providers; administering medications; ordering and interpreting lab and diagnostic tests; providing continuous, hands-on care during labor and delivery; and providing maternal and well-baby care through 6-8 weeks postpartum.

“28. Surgical and vaginal operative deliveries are not available in [the birthing centers operated by Oasis] and ABC, and these procedures are outside the scope of practice of the licensed midwives who work at [the birthing centers operated by Oasis] and ABC.

*6 “29. [Oasis] and ABC pre-screen patients who might otherwise be eligible to deliver in [a freestanding birthing center] 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.

“....

“32. [Oasis] provides midwifery services for pregnancy-related care, including births, and neonatal care through six weeks after birth, utilizing the midwifery model of care. [Oasis] also provides patient education and counseling, including education on breastfeeding, preparing for childbirth, and newborn care.

“33. At [the birthing centers operated by Oasis], [certified professional midwives] or a dually licensed [certified professional midwife/certified nurse midwife] conduct all prenatal and postpartum visits and attend births in the birthing center, with assistance from registered nurses ..., 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.

“34. All patients at [the birthing centers operated by Oasis] are pre-screened and receive continuous risk assessment to ensure that they remain eligible for birthing care in the birth center. Patients who develop risk factors are referred for consultation with Dr. Skanes through her private practice and, where appropriate, transferred to an [obstetrician/gynecologist] for births at a general or specialized hospital.

“....

“36. ABC provides midwifery services for pregnancy-related care, including births, and neonatal care through six weeks after birth, utilizing the midwifery model of care. ABC also provides extensive patient education and counseling, including education on breastfeeding, preparing for childbirth, and newborn care.

“37. At [the birthing centers operated by] ABC, [certified professional midwives] or [certified nurse midwives] conduct all prenatal and postpartum visits and will attend births in the birthing center, with assistance from [registered nurses] 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.

“38. All patients at [the birthing centers operated by] ABC are pre-screened and receive continuous risk assessment to ensure that they remain eligible for birthing care in the birth center. Patients who develop risk factors are referred for consultation with Dr. Robinson through her private practice and, where appropriate, transferred to her care for births at a general or specialized hospital.”

On January 15, 2025, the ADPH and Dr. Harris moved for a partial summary judgment on Count One. On February 5, 2025, the plaintiffs filed a motion for a partial summary judgment on Count One. The parties agreed that the cross-motions for a partial summary judgment presented a question of law as to whether, based on the undisputed material facts, freestanding birthing centers operating in the midwifery model of care, like the birthing centers operated by Oasis and ABC, are “hospitals” within the definition of § 22-21-20(1), *i.e.*, are health-care institutions “primarily engaged in offering to the public generally ... obstetrical care.” If so, the 2023 regulations would be valid and enforceable against Oasis, ABC, and other similar freestanding birthing centers; if not, the 2023 regulations would be invalid and unenforceable against Oasis, ABC, and other operators of similar freestanding birthing centers.

*7 On May 1, 2025, the circuit court entered an order granting the plaintiffs’ motion for a partial summary judgment on Count One. In the order, which was amended on May 7, 2025, the circuit court determined that freestanding birthing centers operating in the midwifery model of care are not “hospitals” within the definition of § 22-21-20(1) because, it said, they do not offer “obstetrical care” to “the public generally.” The order further provided:

“The Court hereby DECLARES pursuant to the Alabama Declaratory Judgment Act, [Ala. Code \[1975,\] § 6-6-222](#), and the Alabama Administrative Procedure Act, [[Ala. Code 1975,\] § 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 \[1975,\]](#) and, therefore, [the] ADPH and [Dr.] Scott Harris, in his official capacity as the State Health Officer for [the] ADPH, have no authority to require such freestanding birth centers to obtain a license under [[§\] \[22-21-22 of the Alabama Code \\[1975\\]\]\(#\) or to otherwise regulate such freestanding birth centers, and that any such attempts to do so exceed \[the ADPH's and Dr. Harris\]’s statutory authority ...; and FURTHER PERMANENTLY ENJOINS \[the ADPH and Dr. Harris\] from requiring freestanding birth centers operating in the midwifery model of care to seek and obtain a ‘hospital’ license under \[section 22-21-22 of the Alabama Code \\[1975\\]\]\(#\), 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 \[section 22-21-33 of the Alabama Code \\[1975\\]\]\(#\).”](#)

(Capitalization in original.) On May 26, 2025, the circuit court certified the order as a final judgment pursuant to [Rule 54\(b\)](#), [Ala. R. Civ. P.](#) The ADPH and Dr. Harris timely appealed.³ This court heard oral arguments on November 18, 2025.

Issue

In this appeal, Dr. Harris argues that the circuit court erred in entering the partial summary judgment in favor of Oasis, ABC, and the other plaintiffs and that it erred in denying him a summary judgment. See [Mountain Lakes Dist. v. Oak Grove Methodist Church ex rel. Green](#), 126 So. 3d 172, 180 (Ala. Civ. App. 2013) (“Where cross-motions for a summary judgment are filed in the trial court, the party whose motion was not granted is entitled to have that motion reviewed on an appeal from the grant of the opponent's motion”). Dr. Harris maintains that the statutory definition of “hospitals” contained in [§ 22-21-20\(1\)](#), when applied to the undisputed facts, shows that the ADPH has the statutory authority to regulate freestanding birthing centers operating in the midwifery model of care. Dr. Harris also maintains that the circuit court erred in enjoining him in his official capacity as the State Health Officer from enforcing the Hospital Act,

as amended, and the 2023 regulations against freestanding birthing centers operating in the midwifery model of care.

Standard of Review

*8 We review de novo the grant or denial of a motion for a summary judgment in an action commenced pursuant to [Ala. Code 1975, § 41-22-10](#), which is a part of the Alabama Administrative Procedure Act (“the AAPA”), [Ala. Code 1975, § 41-22-1 et seq.](#) See [Keith v. LeFleur](#), 400 So. 3d 608, 614 (Ala. Civ. App. 2023).

“[I]t is well settled that a motion for a summary judgment may be granted only where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Rule 56, Ala. R. Civ. P.](#); [Wilbanks v. United Refractories, Inc.](#), 112 So. 3d 472 (Ala. 2012). Where all the basic facts are undisputed and the matter is one of interpretation or of reaching a conclusion of law by the court, a summary judgment may be appropriate. [Bible Baptist Church v. Stone](#), 55 Ala. App. 411, 316 So. 2d 340 (1975). Statutory interpretation -- particularly interpretation of the effect of a statute where the facts are undisputed -- is primarily a legal question amenable to summary judgment. [Continental Nat'l Indem. Co. v. Fields](#), 926 So. 2d 1033 (Ala. 2005). When the facts are undisputed, this Court reviews de novo the trial court's interpretation of statutory language.”

[Ex parte Chesnut](#), 208 So. 3d 624, 636 (Ala. 2016).

Analysis

[Section 41-22-10](#) provides, in pertinent part:

“The validity or applicability of a rule may be determined in an action for a declaratory judgment or its enforcement stayed by injunctive relief in the circuit court of Montgomery County, unless otherwise specifically provided by statute, if the court finds that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. ... In passing on such rules the court shall declare the rule invalid only if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with rulemaking procedures provided for in [the AAPA].”

The plaintiffs alleged in Count One, and the circuit court determined, that the 2023 regulations were invalid because the ADPH had exceeded its statutory authority by treating freestanding birthing centers operating in the midwifery model of care as “hospitals” within the meaning of § 22-21-20(1). Whether the ADPH exceeded its statutory authority in adopting the 2023 regulations depends primarily on the meaning of the term “hospitals.”

Notably, the legislature included a special definition of “hospitals” within § 22-21-20(1). “It is well recognized that when the Legislature defines the language it uses, its definition is binding upon the courts, even though this definition does not coincide with the ordinary meaning of the words used.” [McWhorter v. State Bd. of Registration for Prof'l Eng'rs & Land Surveyors ex rel. Baxley](#), 359 So. 2d 769, 773 (Ala. 1978). Ordinarily, freestanding birthing centers are not considered to be hospitals. See [Birth Center](#), [Taber's Cyclopedic Medical Dictionary](#) (18th ed. 1997) (defining “birth center” as “[a]n alternative nonhospital facility that provides family-oriented maternity care for women judged to be at low risk of experiencing obstetrical complications” (emphasis added)). However, the term “hospitals” is broadly defined in § 22-21-20(1) to include not only traditional hospitals, but also “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.” Thus, a freestanding birthing center may qualify as a “hospital” if it satisfies the legislative criteria established in § 22-21-20(1). The parties do not dispute that freestanding birthing centers operating in the midwifery model of care are health-care institutions, but they disagree as to whether those centers offer facilities and services for “obstetrical care” “to the public generally.”

“Obstetrical Care”

*9 The term “obstetrical care” is not defined in the Hospital Act, as amended. When the legislature leaves a term undefined, the courts will apply the common meaning of that term.

“Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used a court is bound to interpret that language to mean exactly what it says. If the language of the statute is unambiguous, then there is no room for

judicial construction and the clearly expressed intent of the legislature must be given effect.”

[IMED Corp. v. Systems Eng'g Assocs. Corp.](#), 602 So. 2d 344, 346 (Ala. 1992). “[T]his Court regularly looks to dictionary definitions to ascertain the plain meaning of words used in a statute.” [State v. City of Birmingham](#), 299 So. 3d 220, 226 (Ala. 2019).

The current version of [Merriam-Webster's Collegiate Dictionary](#) defines the word “obstetrical” to mean “of, relating to, or associated with childbirth or obstetrics.” [Merriam-Webster's Collegiate Dictionary](#) 857 (11th ed. 2020) (emphasis added). Under that definition, “obstetrical care” refers most broadly to care relating to or associated with “childbirth,” which, synonymous with “parturition,” means “the action or process of giving birth to offspring,” *id.* at 904, but it also can refer more specifically to care relating to or associated with “obstetrics,” “a branch of medical science that deals with birth and with its antecedents and sequels.”⁴ *Id.* at 857. The legislature did not clarify which of the two alternative meanings it intended, but a review of the history and purpose of the Hospital Act, as amended, suggests that it did not intend the more limited meaning of “obstetrical care.” See [Standard Oil Co. v. State](#), 55 Ala. App. 103, 110, 313 So. 2d 532, 537 (Civ. App. 1975) (“In ascertaining the purpose and intent of constitutional provision or statute, courts may look to history of times, existing order of things, state of law when instrument was adopted, and conditions necessitating its adoption.”).

Historically, childbirth care was provided exclusively by midwives, but, eventually, medical doctors predominantly assumed the care of women during pregnancy and childbirth through the branch of medicine known as obstetrics. See Stacey A. Tovino, [American Midwifery Litigation and State Legislative Preferences for Physician-Controlled Childbirth](#), 11 *Cardozo Women's L.J.* 61 (2004). The word “obstetrics” was derived from the Latin word “obstetrix,” which, literally translated, meant “a midwife.” See [Obstetrics](#), [Stedmans Medical Dictionary](#) 1250 (27th ed. 2000). At one time, “[b]oth medical and popular lexicographers define[d] midwife as a female obstetrician, and midwifery as the practice of obstetrics.” [Commonwealth v. Porn](#), 196 Mass. 326, 327, 82 N.E. 31, 31 (1907). By the early 20th century, however, the medical practice of obstetrics had become more specialized, especially in treating complicated pregnancies, and midwives were not allowed to practice obstetrics. *Id.* Midwifery, as a

form of obstetrical care, was limited to “ordinary assistance in the normal cases of childbirth.” [Id.](#)

***10** In 1919, the Alabama Legislature enacted a law authorizing the State Board of Health to regulate midwifery. Ala. Acts 1919, Act No. 658, § 13. The 1919 act made it unlawful for any person to practice as a midwife, defined as a nonphysician who attends a woman at childbirth, without obtaining a certificate of approval from the county board of health. [Id.](#) To obtain a certificate of approval, an applicant had to present to the county board of health “satisfactory evidence of having or possessing sufficient knowledge and skill in the art of midwifery.” [Id.](#) The legislature directed the State Board of Health to develop an application to examine the knowledge and skill of prospective midwives, and, if, upon examination, the applicant was deemed sufficiently qualified, the county board of health would issue the certificate of approval, and the applicant would become a registered midwife. [Id.](#) The 1919 act allowed registered midwives to continue to practice traditional obstetrical care by assisting with normal childbirths, but it did not allow midwives to practice obstetrical care in the relatively new branch of medicine -- obstetrics -- like a licensed physician.

Between 1919 and 1949, across the country, most women obtained childbirth care from medical doctors who were trained in obstetrics, but, in Alabama, registered midwives continued to provide a significant percentage of childbirth care. [Tovino, supra](#). Thus, when the legislature adopted the Hospital Act in 1949, it was understood that both licensed physicians practicing obstetrics and midwives practicing the art of midwifery were providing obstetrical, or childbirth, care. Against this backdrop, the legislature elected to grant to the State Board of Health, the same agency overseeing the regulation of midwives, the power to license and to regulate institutions offering “obstetrical care” without distinguishing between the care provided by physicians and the care provided by midwives.

In construing a statute, this court's duty is to “ascertain and effectuate the legislative intent expressed in the statute, which may be gleaned from the language used, the reason and necessity for the act, and the purpose sought to be obtained.” [Bama Budweiser of Montgomery, Inc. v. Anheuser-Busch, Inc.](#), 611 So. 2d 238, 248 (Ala. 1992). The stated purpose of the Hospital Act, as amended, 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 [the Hospital Act, as amended,] and the establishment, construction, maintenance and operation of such institutions which will promote safe and adequate treatment and care of individuals in such institutions.”

[Ala. Code 1975, § 22-21-21](#). The legislature obviously intended that “hospitals” providing “obstetrical care,” the care carried out in 1949 by licensed physicians and by registered midwives, should be regulated to ensure the safety and well-being of the pregnant women admitted in those hospitals. We do not believe that the legislature intended that only institutions utilizing obstetrics to treat pregnant women should be treated as “hospitals” and be regulated by the ADPH while institutions providing alternative midwifery care, which implicates identical health and safety concerns, should not be considered “hospitals” and should not be regulated by the ADPH. In determining whether an institution is “within the purview” of the Hospital Act, as amended, the inquiry focuses on the nature of the services provided in the institution, not on the identity and qualifications of the person providing those services. See [Tucker v. State Dep’t of Pub. Health](#), 650 So. 2d 910, 914 (Ala. Civ. App. 1994) (holding that “[t]he regulation of the operation of a defined health care facility ... is the regulation of what takes place there” (quoting and adopting trial court's order)).

The legislature has amended the Hospital Act several times since 1949, see Ala. Acts 1975, Act No. 75-140, § 1; Ala. Acts 1979, Act No. 79-798; Ala. Acts 1991, Act No. 91-548, § 1; Ala. Acts 2001, Act No. 2001-1058, § 1, but it has always maintained that “hospitals” include healthcare institutions offering facilities and services for “obstetrical care.” As noted earlier, in 1987, the State Board of Health interpreted [§ 22-21-20](#) to authorize it to regulate freestanding birthing centers. Although the regulations adopted by the State Board of Health were later repealed in 2010, it was not because the legislature changed the law to prohibit the ADPH from enforcing those regulations. The legislature has never excluded freestanding birthing centers from the definition of “hospitals” in [§ 22-21-20\(1\)](#). “[W]hen the statute has been reenacted or amended a number of times since the promulgation of the administrative interpretation, such may be considered legislative approval of the administrative construction.” [Pilgrim v. Gregory](#), 594 So. 2d 114, 119 (Ala. Civ. App. 1991).

***11** The legislature has also amended the laws governing the practice of midwifery several times. In 1976, the legislature temporarily outlawed the practice of midwifery

except by certified nurse midwives. See Ala. Acts 1976, Act No. 76-499. In 1995, the legislature defined the scope of the practice of certified nurse midwives to include only “performance of nursing skills ... relative to the management of women's health care focusing on pregnancy, childbirth, the post-partum period, care of the newborn, family planning and gynecological needs of women ...” Ala. Acts 1995, Act No. 95-263, § 2(4)b., codified at Ala. Code 1975, § 34-21-81(2)b. In 2017, the legislature revived lay midwifery by permitting persons other than registered nurses to become licensed, or certified professional, midwives. See Ala. Acts 2017, Act No. 17-383, codified at Ala. Code 1975, § 34-19-11 et seq. However, those changes have not altered the basic concept of midwifery as involving childbirth care without the practice of medicine. Under current statutory law, “midwifery” means “the provision of primary maternity care during the antepartum, intrapartum, and postpartum periods,” Ala. Code 1975, § 34-19-11(3), and midwives are barred from practicing medicine. See Ala. Code 1975, § 34-19-18(b). Presently, midwives perform the same type of “obstetrical care,” assisting with normal childbirth cases without practicing obstetrics, as they did when the Hospital Act was first passed.

The Alabama Board of Nursing and the Alabama Board of Medical Examiners now regulate the practice of certified nurse midwifery, see Ala. Admin. Code (Bd. of Nursing), r. 610-x-5-.14 et seq., and Ala. Admin. Code (State Bd. of Med. Exam'rs), r. 540-x-8-.17 et seq., and the Alabama Board of Midwifery regulates the practice of licensed midwifery, see Ala. Admin. Code (Bd. of Midwifery), r. 582-x-1-.01 et seq. However, none of those state agencies have been granted the authority to regulate freestanding birthing centers, even those operating in the midwifery model of care, and none of those state agencies has attempted to regulate freestanding birthing centers. If freestanding birthing centers are not “hospitals” within the meaning of § 22-21-20(1), they would not be subject to regulation by any state agency. We do not believe the legislature intended that a health-care institution providing childbirth care to a multitude of pregnant women should be out of the reach of the regulatory authority of the state agency responsible for protecting public health and safety when the law can be easily construed to prevent that outcome. In seeking to ascertain legislative intent, a court may consider the consequences resulting from one meaning rather than another and may adopt the construction that avoids an illogical, unreasonable, or unfair result. See *Studdard v. South Cent. Bell Tel. Co.*, 356 So. 2d 139, 142 (Ala. 1978); *State v.*

Calumet & Hecla Consol. Copper Co., 259 Ala. 225, 233, 66 So. 2d 726, 731 (1953).

Of course, obstetricians, gynecologists, family practitioners, and other licensed physicians also practice “obstetrical care.” Section 22-6-40, Ala. Code 1975, the only other Alabama statute using the term “obstetrical care,” recognizes that fact. However, that statute, which solely addresses Medicaid financing and adjustment of insurance premiums for obstetricians, pediatricians, and family practitioners, does not provide that only medical practitioners can provide “obstetrical care,” and it does not in any way exclude midwifery as a form of “obstetrical care.” Although licensed physicians provide a different, more specialized form of “obstetrical care,” that does not mean that midwives do not also provide “obstetrical care.” Our legislature has impliedly recognized this fact by prohibiting midwives from administering or performing certain “obstetric procedures which are outside of the scope of the licensed practice of midwifery,” Ala. Code 1975, § 34-19-14(c), without prohibiting them from engaging in other types of “obstetrical care.”

In his opinion, the attorney general defined “obstetrical care” as “the management of women during pregnancy, childbirth, and the puerperium.” Att’y Gen. Op. No. 2023-012 (Dec. 15, 2022). We are persuaded by that opinion, see *HealthSouth Corp. v. Jefferson Cnty. Tax Assessor*, 978 So. 2d 737, 741 (Ala. Civ. App. 2006), *aff’d*, 978 So. 2d 745 (Ala. 2007), which, we conclude, encompasses the long-standing definition of midwifery as well as the medical practice of obstetrics. Thus, if a freestanding birthing center offers either facilities or services related to or associated with midwifery or facilities or services related to or associated with the practice of obstetrics, or both, the freestanding birthing center is providing “obstetrical care.”

*12 It is undisputed that Oasis's and ABC's freestanding birthing centers operating in the midwifery model of care utilize certified professional midwives and certified nurse midwives to provide childbirth-related care to their patients during antepartum, intrapartum, and postpartum periods. Therefore, as a matter of law, they are providing “obstetrical care” within the meaning of § 22-21-20(1).

“The Public Generally”

We now address the remaining disputed question of law -- whether Oasis and ABC were primarily engaged in offering obstetrical care “to the public generally” within the meaning of § 22-21-20(1). When used in the context of a business providing a product or services, the phrase “to the public generally” commonly means that the business solicits its customers from the public at large, or from a considerable segment of the public, as opposed to limiting its customer base to select individuals through private contracts. See Coastal States Gas Transmission Co. v. Alabama Pub. Serv. Comm'n, 524 So. 2d 357 (Ala. 1988) (holding that a natural gas company was not a public utility because it offered its product only to certain businesses with whom it entered into private contracts and not to the general public). When a business invites the public, or a subset of the public, to apply for the use of its facilities or services, it serves “the public generally” even if it screens those applicants to ensure that they meet the requirements for using the facilities or services. See State ex rel. Washington Univ. v. Richardson, 396 S.W.3d 387, 396 (Mo. Ct. App. 2013) (holding that public university that invited the public to apply to a Master of Fine Arts program was a business “offering ... to the general public” its facilities and services and that it was, in fact, open to the public even though it admitted only those applicants meeting its eligibility criteria).

In addition to the stipulations above, the plaintiffs presented uncontradicted affidavits of several witnesses in support of their motion for a partial summary judgment. The undisputed evidence from those affidavits establishes that Oasis's and ABC's birthing centers were opened to provide greater access to pregnancy-related care for the benefit of the Birmingham and Huntsville communities, particularly low-income and marginalized populations who, historically, have suffered inequitable disparities in receiving obstetrical care. Oasis and ABC offer the midwifery model of care to low-risk patients who do not have preexisting or pregnancy-related conditions that increase the risk of pregnancy complications. Oasis and ABC screen their patients at intake and throughout the childbirth process to ensure that they remain eligible for midwifery care, and, if a high risk of complication is identified, the patient is transferred to an appropriate health-care provider. Before admitting a patient, Oasis and ABC also obtain informed consent to their policies, which are consistent with the midwifery model of care. If a patient meets all eligibility requirements and consents to midwifery care, Oasis and ABC offer their facilities and services to them. The patients at Oasis and ABC are predominantly, but not exclusively, women of color.

The screening process is not unique to Oasis and ABC. By law, licensed midwives may provide midwifery care relating to only normal pregnancies and childbirth. See Ala. Admin. Code (Bd. of Midwives), r. 582-X-3-.03(1). Midwives are required to obtain informed consent from the patient regarding the midwifery care she will receive. See Ala. Admin. Code (Bd. of Midwives), r. 582-X-3-.03(3)(h) and r. 582-X-3-.04(d). Midwives must also perform risk assessments at all stages of the childbirth process. See Ala. Admin. Code (Bd. of Midwives), r. 582-X-3-.08. If a risk of complication is identified, a midwife is required to consult with a physician, see Ala. Admin. Code (Bd. of Midwives), r. 582-X-3-.05, and, if necessary, transfer the care of the patient to an appropriate physician. See Ala. Admin. Code (Bd. of Midwives), r. 582-X-3-.06. By screening patients to ensure that they do not require medical care, Oasis and ABC are only complying with the legal midwifery standards.

***13** As a matter of law, Oasis and ABC offer their facilities and midwifery services to the public generally because they invite the population of pregnant women in their communities to apply to use those facilities and services. The fact that Oasis and ABC screen the applicants to ensure that they meet the eligibility standards to receive midwifery care does not alter that conclusion. Likewise, freestanding birthing centers like those operated by Oasis and ABC are not required to provide the use of their facilities or midwifery services to any woman who presents in labor, like an emergency department of a traditional hospital, see 42 U.S.C. § 1395dd(b) & (e), but that does not mean that they do not offer those facilities and services to the public generally.

Summary Judgment

Summary judgment shall be rendered if “there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.” Rule 56(c)(3), Ala. R. Civ. P. Based on our de novo review, we conclude that there is no genuine issue of material fact and that Dr. Harris is entitled to a judgment as a matter of law on Count One. Freestanding birthing centers operating in the midwifery model of care, like those operated by Oasis and ABC, are “hospitals” within the definition of § 22-21-20(1) because they are health-care institutions “primarily engaged in offering to the public generally, facilities and services for ... obstetrical care.” As such, the ADPH and Dr. Harris had the authority to regulate those institutions pursuant to § 22-21-28(a), and the 2023

regulations adopted by the ADPH are valid. We, therefore, reverse the judgment declaring the 2023 regulations invalid and render a judgment declaring that the ADPH did not exceed its statutory authority under § 22-21-28(a) in adopting the 2023 regulations.⁵

The Injunction

We also reverse the judgment insofar as it granted a permanent injunction in favor of the plaintiffs. To obtain a permanent injunction, a movant must, among other things, demonstrate success on the merits. [Sycamore Mgmt. Grp., LLC v. Coosa Cable Co.](#), 42 So. 3d 90, 93 (Ala. 2010). The injunction was based on the circuit court's determination that the ADPH and Dr. Harris lacked licensing authority over freestanding birthing centers operating in the midwifery model of care. As

we have concluded, the birthing centers operated by Oasis and ABC are “hospitals” as defined in § 22-21-20(1). Therefore, they are required to obtain a hospital license from the ADPH to operate. [See Ala. Code 1975, § 22-21-22](#) and [§ 22-21-25\(a\)](#). The plaintiffs have not succeeded on the merits of their claim in Count One, so the circuit court committed reversible error in granting the permanent injunction. Therefore, we reverse the judgment insofar as it granted injunctive relief, and we render a judgment for Dr. Harris denying that relief.

REVERSED AND JUDGMENT RENDERED.

[Edwards, Hanson, Fridy, and Bowden, JJ.](#), concur.

All Citations

— So.3d —, 2026 WL 71483

Footnotes

- 1 Before October 1, 2024, the State Board of Health and the Alabama Committee of Public Health were treated synonymously for the purposes of Title 22 of the Alabama Code of 1975. [See former Ala. Code 1975, § 22-1-1](#). Effective October 1, 2024, the legislature abolished the State Board of Health and provided that all references in the Alabama Code to the State Board of Health and the Alabama Department of Public Health should be construed to mean the State Committee of Public Health. [See Ala. Acts 2024, Act No. 24-247, § 1](#) (codified at [Ala. Code 1975, § 22-1-1](#), [§ 22-2-1](#), and [§ 22-2-5](#)). For the purposes of this opinion, we refer to the Alabama Department of Public Health and the former State Board of Health interchangeably.
- 2 The American College of Nurse-Midwives is the nationwide professional association of certified nurse-midwives and sets the national standards for nurse-midwifery education and practice in the United States. The Alabama affiliate is the primary organization representing certified nurse-midwives in this state.
- 3 Upon a stipulation of the parties, this court dismissed the ADPH as an appellant because all orders and judgments entered against the ADPH, which is a state agency that is immune from suit pursuant to § 14 of the [Alabama Constitution of 2022](#), are void, and a void judgment will not support an appeal. [See Alabama Dep't of Pub. Health v. TSTL Holdings, LLC](#), [Ms. CL-2024-0604, Apr. 25, 2025] — So. 3d —, — (Ala. Civ. App. 2025).
- 4 Citing Attorney General Opinion No. 2023-012 (Dec. 15, 2022), the parties stipulated that “obstetrics” means “ ‘[t]he branch of medicine that concerns management of women during pregnancy, childbirth, and the puerperium,’ [Obstetrics](#), [Taber's Cyclopedic Medical Dictionary](#) (18th ed. 1997).” This court finds that this definition does not conflict with the general dictionary definition of the word.
- 5 We do not express any opinion as to whether the 2023 regulations are invalid or inapplicable for any other reason.

End of Document

© 2026 Thomson Reuters. No claim to original U.S. Government Works.

The Alabama Court of Civil Appeals



SETH P. RHODEBECK
CLERK

300 DEXTER AVENUE
MONTGOMERY, ALABAMA 36104-3741
TELEPHONE 334-229-0733

LYNN DEVAUGHN
ASSISTANT CLERK

March 6, 2026

CL-2025-0419

Dr. Scott Harris, in his official capacity as the State Health Officer v. Oasis Family Birthing Center, LLC, Dr. Heather Skanes, Alabama Birth Center, Dr. Yashica Robinson, Alabama Affiliate of the American College of Nurse-Midwives, Jo Crawford, and Tracie Stone (Appeal from Montgomery Circuit Court: CV-23-901109).

NOTICE

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Application for Rehearing Overruled. No opinion written on rehearing.

Moore, P.J., and Edwards, Hanson, Fridy, and Bowden, JJ., concur.

A handwritten signature in black ink, appearing to read "S.P. Rhodebeck", written in a cursive style.

Seth P. Rhodebeck, Clerk

EXHIBIT B

STATEMENT OF THE FACTS

A. Alabama’s Maternal and Infant Health Crisis

According to ADPH, Alabama is experiencing “an urgent maternal and infant health crisis,” C. 1939 (statement by Defendant Scott Harris, State Health Officer), marked by some of the worst outcomes in the United States, C. 1939–40. Alabama’s maternal death rate in 2020 and 2021 was 36.4 deaths per 100,000 live births, the third and sixth highest in the U.S. for those years, and the infant mortality rate increased from 6.7 deaths per 1,000 in 2022 (then the twelfth highest in the country) to 7.8 per 1,000 in 2023, C. 1939–40. More than 60% of pregnancy-related deaths documented in a recent ADPH review were preventable. C. 1939. Preterm birth and low birthweight are among the leading causes of infant death, affecting more than 10% of all babies born in Alabama. C. 1940.

Per ADPH, improving “access to health care” and addressing “health equity barriers,” including the “unavailability of services in a community,” are priorities in addressing this crisis. C. 1942. Defendant admits 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.” C. 1941. Per

recent ADPH data, more than a quarter of all Alabama births involved inadequate prenatal care and nearly 40% of pregnant Alabamians struggled to get a desired pregnancy-related appointment. C. 1941–42. More than two-thirds of Alabama counties in 2022 lacked adequate access to pregnancy-related care, with 37.3% classified as “maternity care deserts” lacking *any* hospitals, birthing centers, obstetricians, or nurse-midwives, and an additional 31.3% with only low or moderate access. C. 1941. Nearly 60% of Alabama counties lacked any hospital-based obstetrical care as of May 2024, and Defendant admits that hospital labor and delivery units across the state are closing “at an alarming rate” with many more “at risk of closure.” C. 1941–42.

More than half of maternal and infant deaths in recent years occurred among Medicaid-insured populations. C. 1940. Defendant Harris has also stated that there is an “enduring disparity between birth outcomes for Black and [W]hite mothers” in Alabama, with mortality rates for Black mothers and babies two-to-three times higher than for White Alabamians. C. 1940. Black babies in Alabama are nearly twice as likely as White babies to be born with low birthweight and to die from

causes related to preterm birth and low birthweight before their first birthday. C. 1940.

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

Plaintiffs are FSBCs, their owners, midwives working in the Plaintiff FSBCs, and a midwifery association whose members offer or intend to offer midwifery care in FSBCs. C. 1942–44. The Plaintiff FSBCs were founded with the goal of increasing access to midwifery care in Alabama, including birthing care, especially for patients most impacted by the maternal and infant health crisis. C. 1944.

There is “a robust body of reliable evidence supporting the safety” and “meaningful benefits” of midwifery and FSBC care, including “fewer cesarean section deliveries,” “less preterm birth,” “less fetal loss,” “increased rates of breastfeeding,” “higher patient satisfaction,” reductions in disparities in outcomes, and “cost-savings,” C. 929. The Circuit Court concluded that the care Plaintiffs-Appellees provide “help[s] address the dire needs of their communities,” including “the patient populations most at risk of adverse [maternal and infant health] outcomes,” C. 942.

1. Midwifery Philosophy and Training

The midwifery model of care (or “midwifery care”) is a patient-centered health care model for low-risk pregnant patients (*i.e.*, those without pre-existing or pregnancy-related conditions that increase the risk of complications) focused on shared decision-making, patient education, and physiological birth (*i.e.*, birth with minimal interventions into labor or delivery). C. 1903; C. 1932–33.

Midwifery is practiced by trained midwives with a different skill set, education, and training than obstetricians. C. 1903; C. 1933. Alabama licenses both certified nurse midwives (“CNMs”) and certified professional midwives (“CPMs”). C. 1903; C. 1933. CNMs are registered nurses (“RNs”) who have additional training and certification in midwifery and are licensed and regulated by the Alabama Board of Nursing to engage in advanced practice nursing. C. 1903–04; C. 1934–35. CPMs are skilled health care practitioners credentialed by the North American Registry of Midwives (“NARM”) and licensed and regulated by the Alabama Board of Midwifery after completing an accredited credentialing program involving didactic education and hands-on clinical apprenticeship in out-of-hospital birth. C. 1904; C. 1933–34.

In Alabama, CNMs are authorized to provide patient care in both in-hospital and out-of-hospital settings without direct, on-site supervision but must maintain a collaborative practice agreement with an Alabama-licensed physician as a condition of licensure. C. 1935; Ala. Admin. Code rr. 610-X-5-.01(5), -.01(15), -.04(1)(b)(3); *see also id.* r. 610-X-5-.20(4). CPMs are authorized to provide independent patient care in out-of-hospital¹ settings without a collaborative agreement. C. 1933, 1935; Ala. Code §§ 34-19-14(b)(2), -16(a). Both CNMs and CPMs provide direct patient care, education, and counseling throughout pregnancy, childbirth, and the postpartum period in the midwifery model of care, with some variations in scope of practice, *see* C. 1903–04; C. 1933–35.

Obstetricians are physicians who specialize in caring for pregnant patients, but have different education, training, licensing requirements, and scopes of practice than midwives. C. 1903; C. 1935. Obstetricians have completed a medical degree and specialized residency and must be trained to perform surgery and treat abnormality and pathology in

¹ As used here, “out-of-hospital” refers to settings other than a hospital as “commonly understood,” *i.e.*, a general or acute care hospital, and does not exclude all facilities meeting section 22-21-20(1)’s definition. *See* Ala. Op. Att’y Gen. No. 2023-012, at 4 (Dec. 15, 2022); *cf.* C. 1902.

pregnancy. C. 1935. The Alabama Board of Medical Examiners oversees the practice of Alabama-licensed physicians, including obstetricians, and, with the Board of Nursing, jointly regulates collaborative practice agreements. C. 1904; C. 1935.

2. Freestanding Birth Centers

FSBCs provide pregnancy, birthing, postpartum, and limited newborn care in a homelike environment to low-risk patients who have been clinically screened and are continuously assessed throughout pregnancy for risk factors that could affect the patient's eligibility for FSBC care. C. 1902; C. 1936. FSBCs are autonomous health care centers not attached to or organized as part of a general or specialized hospital or other acute care facility. C. 1902; C. 1936.

Patients seek out-of-hospital birth for a variety of reasons. Some have had a prior traumatic experience in a hospital. C. 1937. For some, midwifery's focus on low-intervention, physiological birth, and home or homelike environments aligns with personal values, beliefs, and health needs. C. 1937. Others wish to avoid interventions common in hospitals, such as cesarean sections—major abdominal surgeries carrying short- and long-term health consequences, including for future pregnancies,

and which account for 35% of all births in Alabama and more than 40% at some hospitals. C. 1937, 1942.

Pregnant Alabamians seeking an out-of-hospital birth have two options: an FSBC or a home birth. C. 1936. Home birth is not an option for everyone, because of, *e.g.*, privacy or space concerns. C. 1937. Without FSBCs, these patients must travel out of state to give birth or else seek hospital-based care, despite determining with their trusted health care providers that it is not optimal for them given their health needs and individual circumstances. C. 1954–55.

C. “Hospital” Licensing under Alabama Law

The Alabama Legislature authorized ADPH and the State Health Officer to license and regulate, and supervise the licensing and regulation of, facilities defined as “hospitals” under Alabama law, *see* Ala. Code §§ 22-2-8, 22-21-22; C. 1901. The Legislature defined “hospitals” for these purposes as:

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.

Ala. Code § 22-21-20(1) [hereinafter the “hospital definition” or “section 22-21-20(1)”].

This definition does not encompass all settings in the state where health care is provided. C. 1938. The Legislature did not authorize ADPH to license or regulate private physicians’ offices, including when they provide prenatal and postpartum care, or even when physicians perform surgery in office settings, including liposuction and surgeries under general anesthesia. *See* C. 1938; Ala. Admin. Code r. 540-X-10-.01; *see also id.* rr. 540-X-10-.08 to -.10. Similarly, in 2017, when the Legislature authorized CPMs to independently attend out-of-hospital, including

home, births, it did not authorize ADPH to license or regulate that care, *see* Childbirth Freedom Act of 2017, Act 2017-383, 2017 Ala. Laws 1235; C. 1933, 1938. Home birth care involves the *same* midwifery care and patient populations as FSBCs. C. 1949.

In October 2023, ADPH finalized new regulations for birth centers, citing its authority under section 22-21-20(1). C. 1902; Ala. Admin. Code rr. 420-5-13-.01 to -.19.² ADPH previously promulgated birth center regulations under this same authority in 1987, but repealed them in 2010, because there were no birth centers in Alabama. Appellees’ Br. 15; *see also* C. 1936; C. 1022 (§§ 95–96); C. 1355 (§§ 95–96).

Throughout this litigation, Defendant exclusively relied on the clause of the hospital definition in section 22-21-20(1) covering “health care institutions . . . primarily engaged in offering to the public generally . . . obstetrical care” as the sole basis of ADPH’s purported authority over FSBCs. *See* Appellants’ Br. 9–14, 30; C. 2934. “Obstetrical care” is not statutorily defined, but the parties stipulated to the medical dictionary definition relied on by the Alabama Attorney General in an advisory

² To date, these regulations have not been enforced against any birth centers. *See* C. 1905; C. 2943.

opinion addressing section 22-21-20(1): Obstetrics is “the *branch of medicine* that concerns management of women during pregnancy, childbirth, and the puerperium.” C. 1902 (emphasis added); C. 1939.

D. Plaintiffs and Plaintiff Birth Centers

Plaintiff Oasis Family Birthing Center, LLC (“OFBC”) is an FSBC in Birmingham, Alabama, founded in June 2022 by Plaintiff Heather Skanes, an Alabama-licensed, board-certified obstetrician and gynecologist (“OB/GYN”) and OFBC’s Executive Director. C. 1899–1900; C. 1942–43. OFBC first operated between September 2022 and June 2023, prior to the filing of this litigation, and, since January 2024, has been continuously operating pursuant to the injunctions in this case. C. 1905; C. 1942, 1945.

Plaintiff Jo Crawford is a nationally certified, Alabama-licensed CPM, who has provided midwifery care at OFBC since its inception and has more than a decade of experience practicing in home birth and FSBC settings in Alabama and Virginia and training midwifery students as a NARM-registered preceptor. C. 1900; C. 1943, 1945.

Plaintiff Alabama Birth Center (“ABC”) is an FSBC in Huntsville, Alabama, founded by Plaintiff Yashica Robinson, an Alabama-licensed,

board-certified OB/GYN and ABC's Executive Director. C. 1900; C. 1943. ABC began development in 2020 and, since July 2024, has been continuously operating pursuant to the injunctions in this case. C. 1905; C. 1943, 1945–46.

Plaintiff Tracie Stone is a nationally certified, Alabama-licensed CPM who provides midwifery care at ABC, where she is Clinical Director, and through her Alabama home birth practice. C. 1900; C. 1943.

Plaintiff ACNM-AL is the Alabama affiliate of the American College of Nurse-Midwives (“ACNM”), the professional association of CNMs that sets national standards for nurse-midwifery education and practice. C. 1900; C. 1943–44. ACNM-AL provides professional support to and advocacy on behalf of its members, who include all Alabama-based ACNM members (including those dually certified as CNMs and CPMs). C. 1900; C. 1944. Its organizational priorities include addressing the maternal and infant health crisis and expanding access to midwifery care in Alabama, including in out-of-hospital settings. C. 1944. ACNM-AL's membership includes midwives currently employed by FSBCs and those seeking to work in or open FSBCs in Alabama. C. 1944.

Both OFBC and ABC employ licensed midwives (CPMs or CNMs), *not* obstetricians, to provide *all* patient care, including births, prenatal and postpartum care, and neonatal care through six weeks after birth, utilizing the midwifery model of care. C. 1905–06; C. 1946. Licensed midwives attend all births in the birth centers, with assistance from RNs, birth assistants, student midwives, doulas, and/or lactation consultants. C. 1905–06; C. 1946. Every birth is attended by staff with training in life support and neonatal resuscitation. C. 1905–06; C. 1946. OFBC and ABC also provide patient education and counseling, *e.g.*, on breastfeeding, childbirth preparation, and newborn care, and they facilitate referrals to other practitioners who provide care during pregnancy and postpartum, such as chiropractors, pelvic floor therapists, or mental health providers. C. 1947.

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), which require transfer to obstetrician-led, hospital-based care. C. 1904; C. 1948. Nor do they provide interventions inconsistent with physiological birth but common

in hospitals, such as epidurals, continuous electronic fetal monitoring, or medications to initiate or augment labor; patients requesting or requiring these interventions are transferred to a hospital. C. 1948–49.

All patients at OFBC and ABC are pre-screened for eligibility and receive continuous risk assessment throughout pregnancy to identify any pre-existing or pregnancy-related conditions that could increase the risk of complications. C. 1905–06; C. 1947–48. Patients who are ineligible for FSBC care because of such conditions are transferred *out* of the birth centers to receive that care—depending on the circumstance, to a hospital or obstetrician (either Plaintiffs Skanes or Robinson, through their respective private OB/GYN practices, or a provider of the patient’s choice). C. 1905–06; C. 1946–48. Patients who are otherwise eligible based on low-risk status nonetheless might *not* be accepted for care unless they agree to certain conditions, *e.g.*, undergoing education to prepare for unmedicated labor and early home discharge, forgoing medicated pain management during labor, and committing to open and honest communication with their midwife. C. 1904–05; C. 1948.

Plaintiffs’ risk screening and eligibility procedures are consistent with the midwifery model of care and the practice of Alabama midwives

in other settings, including home births. C. 1949. Plaintiffs Crawford and Stone provide the same midwifery services to patients with the same risk profiles in home birth settings as they do at OFBC and ABC. C. 1949 (citing, *e.g.*, C. 2003 (testimony that birth center and home birth care involve the “same patient screening and eligibility criteria,” “same prenatal care schedule, labor and delivery care, and postpartum care,” and same “healthy, low-risk patients”); C. 2039 (similar)).

E. Impact of ADPH’s Unauthorized Regulation of Birth Centers

Aside from the legal injury that flows from unlawful government regulation, if Defendant is permitted to exercise unauthorized regulatory authority over FSBCs, *e.g.*, via the ADPH regulations, it would be extremely burdensome, if not impossible, for OFBC and ABC to continue operating. C. 1952. This would cause personal, financial, and professional harm to their founders and the midwives who work there and prevent pregnant Alabamians from accessing much-needed care, *see* C. 1952–55.

For example, the ADPH Regulations would restrict CPMs from working to their full scope of practice in FSBCs, impose unnecessary and expensive administrative burdens on CNMs working in FSBCs, and deprive licensed midwives of employment and training opportunities. *See*

Ala. Admin. Code r. 420-5-13-.01(2)(b), (d), (f), (w); C. 1902–03; C. 1936, 1946–48, 1951–54. As a result, Alabama’s already limited health care work force would be further depleted, and access to much-needed pregnancy-related care further diminished. C. 1939–42, 1954–55.

VERIFICATION

Pursuant to Rule 39(d)(5) of the Alabama Rules of Appellate Procedure, undersigned counsel verifies that this statement of facts is a verbatim copy of the statement of facts presented to Court of Civil Appeals in Plaintiffs’ Application for Rehearing.

March 20, 2026

Respectfully Submitted,

/s/ Robert D. Segall
Robert D. Segall (SEG003)
Copeland, Franco, Screws & Gill, P.A.
444 South Perry Street
Montgomery, AL 36104
(334) 834-1180
segall@copelandfranco.com

Alison Mollman
American Civil Liberties Union of
Alabama
P.O. Box 6179
Montgomery, AL 36106
(510) 909-8908

amollman@aclualabama.org

Whitney White*
Alexa Kolbi-Molinas*
Lindsey Kaley*
American Civil Liberties Union
Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
wwhite@aclu.org
akolbi-molinas@aclu.org
lkaley@aclu.org

Rachel Reeves*
American Civil Liberties Union
Foundation
915 15th Street NW
Washington, DC 20005
(212) 549-2633
rreeves@aclu.org

Barbara Tsao*
COVINGTON & BURLING LLP
3000 El Camino Real
5 Palo Alto Square, 10th Floor
Palo Alto, CA 94306-2112
(650) 632-4700
btsao@cov.com

Jeffeline Ermilus*
COVINGTON & BURLING LLP
One CityCenter 850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000
jermilus@cov.com

Vanessa Lauber*

COVINGTON & BURLING LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
(212) 841-1000
vlauber@cov.com

Cecilia Bobbitt*
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, CA 94105
(415) 591-7017
cbobbitt@cov.com

Counsel for Plaintiffs-Appellees

*Admitted pro hac vice