



## AlaFile E-Notice

03-CV-2023-901109.00

Judge: GREG GRIFFIN

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

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

The following matter was FILED on 10/3/2023 1:22:40 PM

Notice Date: 10/3/2023 1:22:40 PM

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

**OASIS FAMILY BIRTHING CENTER, LLC,  
*et al.*,**

Plaintiffs,

v.

**ALABAMA DEPARTMENT OF PUBLIC  
 HEALTH, *et al.*,**

Defendants.

**Civil Action No.**

**03-CV-2023-901109.00 - GOG**

**SUPPLEMENTAL PRELIMINARY INJUNCTION ORDER**

On September 30, 2023, this Court entered the following order granting Plaintiffs’

Motion for Preliminary Injunction:

The Court, having reviewed Plaintiffs’ Motion for Preliminary Injunction and having considered evidence supporting that motion, including live testimony, finds that Plaintiffs have demonstrated (1) “immediate and irreparable injury” absent an injunction; (2) that there is “no adequate remedy at law”; (3) “a reasonable chance of success on the ultimate merits of [the] case”; and (4) that any hardship on the defendant from an injunction “would not unreasonably outweigh the benefit accruing to the plaintiff.” *Baldwin Cnty. Elec. Membership Corp. v. Catrett*, 942 So. 2d 337, 344 (Ala. 2006).

This Court GRANTS Plaintiffs’ Motion for Preliminary Injunction and ORDERS that Defendants are ENJOINED from refusing to timely license (including but not limited to refusing to timely issue temporary or interim licenses to) freestanding birth centers operating in the midwifery model of care (including Plaintiffs Oasis Family Birthing Center, Alabama Birth Center, Birth Sanctuary, and/or any birth centers owned or operated by members of Plaintiff Alabama Affiliate of the American College of Nurse-Midwives) that can demonstrate substantial compliance with the standards set out by the American Association of Birth Centers and can satisfy the remaining statutory requirements, §§ 22-21-23, -24, -29(a), -31,

pursuant to the Alabama Department of Public Health's statutory authority under Alabama Code Section 22- 21-25(a). This order remains in effect until final judgment or further order from this Court.

Order Granting Pls.' Mot. for Prelim. Inj., Doc. 110.

The Court hereby supplements this order with additional findings of fact and conclusions of law explaining the Court's reasoning.

### **BACKGROUND**

Plaintiffs are individual Alabama-licensed physicians and midwives, freestanding birth centers that either provided or seek to provide out-of-hospital midwifery care, including birthing care, to patients in Alabama, and a membership organization of Alabama midwives.<sup>1</sup> Plaintiffs filed suit on August 8, 2023, against the Alabama Department of Public Health and State Health Officer Scott Harris (collectively, "ADPH"), alleging in six counts that ADPH's actions prohibiting birth centers from operating in Alabama without a hospital license as defined in section 22-21-20(1) of the Alabama Code and refusing to grant such licenses violated the Alabama Administrative Procedures Act (AAPA), Ala. Code § 41-22-10, and the federal and Alabama

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<sup>1</sup> The Plaintiffs are: Oasis Family Birthing Center, a freestanding birth center in Birmingham that was open and operating from September 2022 until June 2023; Dr. Heather Skanes, a licensed and Board-certified obstetrician/gynecologist (OB/GYN) who is the founder and Executive Director of Oasis Family Birthing Center; Alabama Birth Center, a freestanding birth center in development in Huntsville; Dr. Yashica Robinson, a licensed and Board-certified OB/GYN, who is the founder and Medical Director of Alabama Birth Center; Birth Sanctuary, a freestanding birth center in development in Gainesville; Dr. Stephanie Mitchell, a licensed certified professional midwife and registered nurse and Board-certified certified nurse midwife, who is the founder, Executive Director, and Clinical Midwifery Director of Birth Sanctuary; and the Alabama affiliate of the American College of Nurse-Midwives (ACNM-AL), the local state affiliate of ACNM, the nationwide professional association of certified nurse-midwives, and whose members include Alabama-based members of ACNM, including Dr. Mitchell. The Court refers herein to Drs. Skanes, Robinson, and Mitchell as the "Individual Plaintiffs" and to Oasis Family Birthing Center, Alabama Birth Center, and Birth Sanctuary as the "Birth Center Plaintiffs."

Constitutions, and seeking declaratory and injunctive relief. Compl. Declaratory & Inj. Relief, ¶¶ 159–84, Doc. 2.

On August 9, 2023, Plaintiffs filed a motion for preliminary injunction, seeking preliminary and injunctive relief on four of their six claims. Pls.’ Mot. for Prelim. Inj., ¶¶ 11–30, Doc. 8. The Court set the preliminary injunction motion for a hearing beginning on September 28, 2023, to continue as needed, Order on Mot. for Prelim. Inj., Doc. 18, during which the Court heard testimony from five witnesses and received documentary evidence.

### **FINDINGS OF FACT**

During the preliminary injunction hearing held on September 28 and 29, 2023, the Court heard testimony from Zsakeba T. Henderson, MD, FACOG; Plaintiff Heather Skanes, MD; Sheila Lopez, CNM, President of Plaintiff AL-ACNM; Plaintiff Yashica Robinson, MD; and Karen Landers, MD, ADPH Chief Medical Officer.

Dr. Henderson is a board-certified OB/GYN. After completing her medical training in obstetrics and gynecology and a fellowship at the U.S. Centers for Disease Control and Prevention (CDC), Dr. Henderson spent approximately 15 years working as a Medical Officer in the Maternal and Infant Health Branch of the CDC’s Division of Reproductive Health, where she specialized in research, surveillance, and programmatic work relating to both maternal and infant health. While at CDC, Dr. Henderson, *inter alia*, established and led a national program to support Perinatal Quality Collaboratives (PQCs), statewide initiatives that bring together public and private stakeholders to improve the quality and safety of perinatal care. Dr. Henderson subsequently served as the Deputy Chief Medical and Health Officer and then Interim Chief Medical and Health Officer for March of Dimes, a national nonprofit dedicated to ending the maternal and infant health crisis in the United States. Since leaving March of Dimes, Dr. Henderson has led her own

consulting firm focused on maternal and infant health outcomes, with a particular focus on advancing health equity, and is a Senior Health Advisor for the National Institute of Children's Health Quality. Dr. Henderson has held leadership positions at the American College of Obstetricians and Gynecologists (ACOG), the nation's leading professional association for OB-GYNs, which issues practice guidelines and clinical statements relied on by practitioners, governmental authorities, and many others. Dr. Henderson has also served as an expert participant in pregnancy-related workshops held by the National Academies of Science, Engineering, and Medicine, including a workshop on "birth settings"—i.e., the focus of the instant litigation. In addition to her national expertise, Dr. Henderson established her specific familiarity with and expertise in maternal and infant health policies and outcomes in Alabama, including that she consulted directly with the State of Alabama in developing its PQC, served earlier this month as the Keynote Speaker for the Annual Meeting of Alabama's PQC, and co-authored reports at March of Dimes that specifically tracked perinatal health measures in Alabama. The Court found Dr. Henderson's testimony highly credible and qualified Dr. Henderson as an expert in maternal and infant health and evidence-based policies to improve maternal and infant health outcomes and reduce health disparities.

Dr. Henderson testified, relying in large part on admissions and data from Defendant ADPH itself, that Alabama is experiencing some of the worst maternal and infant health outcomes in the United States, the country with the worst pregnancy outcomes in the developed world. For instance, according to the most recent available data, Alabama has the highest maternal mortality rate, the third highest infant death rate, and the third highest rate of preterm birth (a leading cause of infant death, *see* Pls.' Ex. 18) in the country. Moreover, these risks are not borne equally: certain populations, including Black Alabamians and those living in rural areas, are significantly more

likely to suffer negative pregnancy outcomes, and Black babies in Alabama are twice as likely as white babies to die before their first birthday. *See, e.g.*, Pls.’ Exs. 17–19. Dr. Henderson testified, consistent with ADPH’s own recent publications, *see, e.g.*, Pls.’ Exs. 17, that Alabama’s maternal and infant health crisis is inextricably linked to the severely limited availability of pregnancy services in Alabama, and that expanding access to maternity care is a critical part of the solution. Dr. Henderson also explained that, to mitigate the racial disparities, it is particularly important to increase options for culturally congruent pregnancy care delivered by health care providers from within the communities they serve.

Dr. Henderson testified that there is a robust body of reliable evidence supporting the safety of pregnancy care led by midwives rather than physicians, and documenting meaningful benefits under the midwifery model of care for the low-risk populations that midwives serve—including fewer medical interventions (such as cesarean section deliveries, which are major abdominal surgeries), less preterm birth, less fetal loss, increased rates of breastfeeding, and higher patient satisfaction. Dr. Henderson likewise testified that there is a robust body of reliable evidence finding no increase in adverse events when care is provided at a freestanding birth center that complies with the national standards set by the American Association of Birth Centers (AABC), Pls.’ Ex. 24, rather than at a hospital. The birth center model offers significant benefits to patients that mirror the benefits of midwifery care generally, including fewer cesarean section deliveries, less preterm birth, reductions in race- and poverty-related disparities, and cost-savings. In addition to reviewing specific high-quality research supporting these conclusions, Dr. Henderson testified that there is a national expert consensus, shared by ACOG among others, that freestanding birth centers that comply with AABC standards are among the safest places to give birth in the United States.

Dr. Skanes is a board-certified OB-GYN. Dr. Skanes testified that, during her training and practice, she has cared for approximately 1,000 patients during pregnancy and birth. Dr. Skanes currently sees patients through her private practice—Oasis Women’s Health—where she offers the full scope of OB-GYN care. She also attends to her patients in a hospital setting as well, including for births. In approximately late 2020, Dr. Skanes began taking steps to establish Oasis Family Birthing Center (Oasis), a freestanding birth center providing midwifery care based in Birmingham, Alabama. While open, Oasis offered prenatal, birthing, and postpartum care by licensed midwives and educational and training opportunities for student midwives. Dr. Skanes also serves as a member of the Board of Directors of AABC, where she sits on the Standards Committee. Dr. Skanes testified that the AABC Standards Committee reviews and updates the AABC national standards on a monthly basis, in order to incorporate any recent evidence pertaining to the safety and equity of freestanding birth centers. The Court found Dr. Skanes’s testimony highly credible and qualified Dr. Skanes as an expert in obstetrics and gynecology, freestanding birth centers, and maternal health and safety.

Dr. Skanes testified, in her opinion and based on her experience working with and observing midwives throughout her training and practice, that midwives safely provide high-quality pregnancy-related care, including birthing care, to low-risk patients. She further testified to the numerous benefits of midwifery care, including a higher likelihood of vaginal delivery, higher likelihood of breastfeeding, lower likelihood of preterm birth, and higher patient satisfaction. Dr. Skanes sought to open Oasis in pursuit of these benefits and to offer an alternative to hospital or home birth to her patients. Over the span of about a year, Dr. Skanes applied for and secured a number of competitive grants and fellowships, consulted with members of her community, secured a space, and recruited midwifery staff. In establishing Oasis, Dr. Skanes relied

on AABC standards, and testified to her understanding that the appropriate professional licensing boards would also have regulatory authority over the midwives who worked at the birth center. Dr. Skanes testified that Oasis began seeing patients in September 2022, but was forced by ADPH to cease operations in 2023. Between September 2022 and June 2023, when the last birth at Oasis took place, twenty-two patients received midwifery care at Oasis, fourteen of whom delivered at the birth center, attended by Oasis's midwifery staff. The remaining eight patients received prenatal and postpartum care at the birth center and, either due to patient preference or because of risk factors identified during Oasis's ongoing risk assessment processes, ultimately delivered with Dr. Skanes in the hospital. All of these births, including the eight who gave birth at the hospital attended by Dr. Skanes, were successful and without complications. There were no emergent transfers of any Oasis patients during labor and delivery. All patients—mothers and babies—cared for at Oasis are healthy and doing well.

Dr. Skanes testified that in March 2023, Dr. Amber Clark-Brown of ADPH contacted her and informed her that ADPH considered Oasis, as a freestanding birth center, to be an unlicensed hospital, and that Oasis would need to stop caring for birthing patients. Dr. Skanes testified that she asked how she could apply for a license for Oasis and was told that no such license was available. Following further inquiries by herself and her counsel, ADPH agreed to allow Oasis's third-trimester patients to give birth at the birth center but rejected Dr. Skanes's request to apply for a license and her alternative proposal to be permitted to operate in accordance with AABC national standards. *See* Pls.' Exs. 2–6. In June 2023, the last patient gave birth at Oasis. Since then, Dr. Skanes testified that she has had to regularly turn away patients who seek birthing care at Oasis and cannot offer her patients out-of-hospital birth options, disrupting her relationship with her patients. Dr. Skanes also testified that, as a result, she has been unable to continue providing



training opportunities at the birth center for midwifery students. Dr. Skanes testified that, if she is not able to reopen Oasis, she will only be able to financially sustain it until the end of the year, given that she is still incurring ongoing costs to maintain the birth center. Already, she has lost tens of thousands of dollars in grant funds as a result of the closure.

Sheila Lopez, CNM, testified in her capacity as the President of Plaintiff AL-ACNM. Ms. Lopez, who has worked as a registered nurse, certified nurse midwife (CNM), and clinical nursing instructor in Alabama, was elected by the membership of the Alabama affiliate. ACNM is the primary professional organization representing and setting standards of practice for CNMs in the United States. CNMs are advanced practice nurses who practice the midwifery model of care in their provision of reproductive health care to patients. ACNM has state-based affiliates whose membership includes, *inter alia*, CNMs and nurse-midwifery students in a specific state or territory. ACNM-AL provides professional development and organizing and advocacy opportunities for the CNM and broader midwifery community in Alabama. One of the affiliate's goals is to improve maternal and infant outcomes in Alabama. The Court found Ms. Lopez's testimony highly credible and qualified Ms. Lopez as an expert witness in the midwifery model of care and in the practice of midwifery in Alabama.

Like Dr. Henderson, Ms. Lopez testified to the proven benefits of midwifery-led care as evidenced in systematic analyses (including a Cochran Library review, the "gold standard" of scientific evidence) and a recent study by Vedam et al. finding a significant correlation between the integration of midwives into a statewide health system and improved pregnancy outcomes. Ms. Lopez also testified that midwifery care is hard to access throughout Alabama—for instance, midwifery care is currently available in Birmingham only at a single hospital, and only on weekdays during business hours. The Vedam et al. study, which found that higher integration of

midwifery care into the health system is correlated with improved outcomes for families, ranked states according to their integration of midwifery care: Alabama ranked second-to-last. In addition to the limited availability of midwifery care, there is also limited labor and delivery care generally in the State, including no operating birth centers. As an example, Ms. Lopez testified that the number of hospital labor and delivery units in the Birmingham area would soon shrink from six to four due to two hospitals closing their women's services departments.

Ms. Lopez also testified that limits on the ability to provide care in birth centers harms ACNM-AL members by depriving them of training and employment opportunities to practice in out-of-hospital settings, and that ACNM-AL members, including Ms. Lopez and Plaintiff Dr. Mitchell, would open or work in birth centers if not for ADPH's actions. Ms. Lopez has been involved in multiple attempts to open birth centers. In April 2020, Ms. Lopez and her colleagues at the Simon Williamson Clinic (where she was employed at the time) sought to open an "alternative maternity unit," or birth center-like space, in their clinic to help provide an alternative birthing site for patients who expressed a desire to avoid hospital care at the outset of the COVID-19 pandemic. Ms. Lopez testified that, while in conversations with ADPH, Ms. Lopez and her colleagues were informed by ADPH that "the Alabama Department of Public Health does not regulate birthing centers." Pls.' Ex. 1. Ms. Lopez further testified that her patients and other members' patients have expressed interest in receiving care at birth centers, but that ACNM-AL members cannot currently offer this care despite their understanding that such care is safe and can significantly improve maternal and infant health outcomes.

Dr. Robinson is a board-certified OB-GYN, who currently sees patients through her private practice—Alabama Women's Wellness Center—where she offers the full scope of OB-GYN care. She also provides care in a hospital setting, including attending births. Dr. Robinson has provided

OB-GYN care for almost twenty years, caring for thousands of pregnant patients through their births. The Court found Dr. Robinson's testimony highly credible and qualified Dr. Robinson as an expert in obstetrics and gynecology, and maternal health and safety.

Dr. Robinson testified that she began taking steps to establish Alabama Birth Center (ABC), a freestanding birth center providing midwifery care based in Huntsville, Alabama, in 2019. Dr. Robinson testified, in her opinion and based on her experience working with and observing midwives, that midwives safely provide high-quality pregnancy-related care, including birthing care, to low-risk patients. She further testified to reliable research outlining the numerous benefits of midwifery care, including a lower rate of births by cesarean sections, lower rates of induction of labor, higher breastfeeding rates, low rates of preterm birth and low birthweight infants, reduction in health disparities across racial groups, and cost savings. Dr. Robinson was motivated to open ABC in order to help her community access the benefits of midwifery care and to provide an out-of-hospital birth alternative. To that end, she secured a location for ABC, secured funding for the birth center, began making necessary improvements to the birth center, and started advertising ABC to the community. Dr. Robinson testified that she relied on AABC standards in planning and developing ABC.

Dr. Robinson testified that, when she began developing ABC, there were no regulations from ADPH in place for birth centers. After ADPH first proposed (but did not approve) regulations in 2022, Dr. Robinson testified that she halted construction on ABC because of legal uncertainty about what requirements she would need to comply with. She testified that progress on the birth center has been in limbo ever since. Dr. Robinson testified that she is unsure how much longer she can maintain the birth center without being able to open. Dr. Robinson testified that she took out a sizable loan of over one million dollars to acquire the property she intended to use for the birth

center and that, without being able to open, the ongoing expenses she is incurring to maintain the property are subjecting her to serious personal financial strain. Meanwhile, she continues to receive regular inquiries from patients interested in ABC but has had to turn them away, and cannot offer her existing patients out-of-hospital birth options, disrupting her relationship with her patients. As a result, Dr. Robinson testified that she feels like she has let down her patients, her community, and her donors who supported the birth center because she has been unable to deliver on her promises to open the birth center, causing harm to her professional reputation in her community.

Finally, the Court heard testimony from Dr. Karen Landers, Chief Medical Officer of Defendant ADPH, who testified as a representative of ADPH. Dr. Landers testified that she is personally very familiar with the body of medical literature relating to maternal and infant health and conceded that she could not identify a single piece of evidence showing that freestanding birth centers that comply with the national AABC standards are less safe than licensed hospitals. Dr. Landers also admitted the importance of expert position statements, such as those issued by ACOG and ACNM, in informing policies relating to pregnancy care, and acknowledged her specific familiarity with ACOG's position statement describing "hospitals and accredited birth centers" (i.e., birth centers shown to be in compliance with AABC standards) as "the safest places to give birth." Pls.' Ex. 26, at 1. While Dr. Landers testified in the abstract about the potential risks of "unregulated" health care facilities not subject to ADPH regulations, she conceded that she holds no such safety concerns about surgeries performed in physician's offices (including under general anesthesia), even though those entities are not regulated by ADPH, because physicians remain subject to oversight by the Alabama Board of Medical Examiners.

## CONCLUSIONS OF LAW

Having considered the live testimony and evidence submitted, the Court holds that Plaintiffs have demonstrated all four factors necessary for a preliminary injunction.

### *1. Reasonable Chance of Success on the Merits*

The Court concludes that Plaintiffs demonstrated a likelihood of success on the merits of Claims Two through Four.

Plaintiffs argued that, even if ADPH has licensing authority over birth centers, ADPH's actions refusing to issue licenses, including interim or temporary licenses, to birth centers or to provide a timely path for obtaining such licenses exceeds ADPH's statutory authority under the AAPA and violates Plaintiffs' due process right to pursue useful activities under the Alabama Constitution and, thereby, the AAPA.

In particular, in Claim Two, Plaintiffs argued that, if ADPH has licensing authority over birth centers at all, it has existing statutory authority to issue a license without waiting for any final regulations to be in place. *See* Ala. Code § 22-21-25(a) (providing statutory authority to issue “licenses for the operation of hospitals [as defined in section 22-21-20] which are found to comply with the provisions of this article and any regulations promulgated by the State Board of Health” (emphases added)); *id.* § 22-21-23 (an applicant for a license “shall submit evidence of ability to comply with the minimum standards provided in this article *or* by regulations issued under its authority” (emphasis added)). Plaintiffs argued that ADPH's actions, including statements informing Dr. Skanes, when she inquired about a license for Oasis, that it was impossible to apply for such a license at all, constituted a generally applicable rule to refuse to license freestanding birth centers under its existing authority. *See id.* § 41-22-3(9). Plaintiffs further argued that this rule exceeds ADPH's statutory authority in violation of the AAPA, *id.* § 41-22-10, because the

Legislature has not specifically authorized ADPH to refuse to license an entire class of regulated facilities, and, further, Defendants have not identified any source of authority that allows them to refuse to license an entire category of hospitals. *See Ex parte State Health Plan. & Dev. Agency*, 855 So. 2d 1098, 1103 (Ala. 2002) (“[A]dministrative agencies are creatures of the Legislature, which serves as the source of their authority and sets their relevant boundaries . . . [A]n administrative agency may not expand its own jurisdiction by . . . any . . . means.”).

In Claims Three and Four, Plaintiffs argued that ADPH’s actions violate the individual Plaintiffs’ and AL-ACNM’s members’ due process rights protected by article I, section 13 of the Alabama Constitution and, in turn, the AAPA, *see* Ala. Code § 41-22-10. In particular, Plaintiffs argued that ADPH’s actions preventing freestanding birth centers from opening and operating in Alabama infringe on Plaintiffs’ due process right to pursue useful activities, that such infringement does not “bear [a] substantial relation to the public health, safety, or morals, or to the general welfare, the public convenience, or to the general prosperity,” *see State v. Lupo*, 984 So. 2d 395, 406 (Ala. 2007) (emphasis added), and that ADPH’s actions are not the “less restrictive” means of achieving any such relation to public health, *see City of Russellville v. Vulcan Materials Co.*, 382 So. 2d 525, 527 (Ala. 1980) (holding that the “restraint imposed upon the [pursuit useful activities may not be] disproportionate to the amount of evil that will be corrected”).

Having considered the evidence and live witness testimony, the Court holds that Plaintiffs have demonstrated a likelihood of success on these claims. The Court holds that, in the absence of a clear source demonstrating that the Legislature has given ADPH the authority to refuse to license a particular class of facilities, Plaintiffs demonstrated a likelihood of success on Claim Two. The Court further holds that, applying the substantial relation test set forth by the Alabama Supreme Court to Claims Three and Four, Plaintiffs have demonstrated a likelihood of success on their

claims that: Plaintiffs’ operation of birth centers, employment in such birth centers, training of student midwives, and provision of midwifery care, including birth services, at birth centers is a useful activity entitled to constitutional protection, especially in light of undisputed testimony by Plaintiffs’ witnesses and the admissions by ADPH that increasing access to pregnancy services is critical to mitigate Alabama’s dire maternal and infant health outcomes<sup>2</sup>; that the refusal to license birth centers in Alabama does not bear a substantial relation to public health and safety, in light of the credible expert testimony that birth centers that comply with national standards are safe and can in fact lead to improved patient outcomes and ADPH’s failure to identify any evidence to the contrary, *see supra*; and that the refusal to license birth centers is not the less restrictive means of advancing public health and safety, given that ADPH has made temporary licensure available for other regulated facilities, to allow them to continue operating when regulatory requirements change, *see, e.g.*, Ala. Admin. Code r. 420-5-2-.01(3)(b) (providing for temporary licenses for ambulatory surgical centers); *id.* 420-5-5-.01(3)(b) (same for renal disease treatment and transport centers), but failed to do so with respect to birth centers, and that the licensed staff working in birth centers would continue to be overseen and regulated by their respective professional licensing boards, *see* Ala. Code § 34-19-14.<sup>3</sup> *See Lupo*, 984 So. 2d at 406–07 (holding unconstitutional act limiting the practice of interior design where the record evidence “negate[d] the [defendant’s] assertion” that the requirements served any state interest in “protect[ing] the public”); *Vulcan*

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<sup>2</sup> *See, e.g.*, Pls.’ Ex. 17, at 25 (ADPH 2020 State Health Assessment identifying “pregnancy outcomes” as Alabama’s third most important health indicator, and “inadequate prenatal care” and “transportation to prenatal care” as “risk factors”).

<sup>3</sup> Notably, this is the same regulatory structure that Dr. Landers recognized provides adequate oversight of office-based surgeries, where ADPH does not have regulatory authority at all. *See* Ala. Code § 22-21-20(1) (excluding care provided in private doctor’s offices from the definition of “hospitals”); Ala. Admin. Code r. 540-X-10-.01, *et seq* (office-based surgery regulations issued by Alabama Board of Medical Examiners to regulate conduct of physicians).



*Materials Co.*, 382 So. 2d at 527–28 (holding unconstitutional a law regulating the detonation of explosives within city limits where “less restrictive standards” existed that “would produce the same degree of safety without having the effect of prohibiting operation of the quarry”).

The Court further concludes that new regulations approved by ADPH in late August and which may take effect October 15, 2023, pending possible action by the Joint Committee on Administrative Regulation Review, Ala. Code §§ 41-22-22, -23(b)(1), -23(c), do not alter this rule or defeat Plaintiffs’ claims,<sup>4</sup> because the new regulations, even if they take effect, will not provide a timely, feasible path to licensure. For example, the new rules will require any birth center seeking a license to have already *obtained* accreditation from a national accrediting organization, Proposed Rules for Birthing Centers, Ala. Admin. Code r. 420-5-13-.13(6), a process which the national accrediting body for birth centers, the Commission for Accreditation of Birth Centers (CABC), informed ADPH could take six to twelve months or more to complete, according to ADPH’s internal memorandum documenting public comment on the rules, Pls.’ Ex. 7, at 12–13. ADPH’s memorandum reported that CABC specifically recommended temporary licensure to enable birth centers to operate while the accreditation process is ongoing, *id.*, but the new rules make no such provision, Proposed Rules for Birthing Centers, Ala. Admin. Code r. 420-5-13-.13(6). Moreover, Dr. Skanes and Dr. Robinson testified that it would be difficult, if not impossible, for them to satisfy the burdensome requirements of the new proposed rules. Thus, the new rules do not provide a timely or feasible path to licensure.

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<sup>4</sup> In previously denying ADPH’s motion to dismiss, the Court rejected Defendants’ argument that the new regulations mooted Plaintiffs’ claims. Order, Doc. 104. As explained herein, the Court now concludes that the existence of these new regulations does not defeat Plaintiffs’ claims on the merits either.



## ***2. Immediate and Irreparable Injury and Lack of Adequate Remedy at Law***

The Court next concludes that, absent injunctive relief, Plaintiffs, their members, and their patients will continue to suffer immediate and irreparable injuries, for which there is no adequate remedy at law. Harm is irreparable when it is not redressable in a court of law through an award of money damages, meaning there is no adequate remedy at law.

First, the Court concludes that Plaintiffs demonstrated irreparable harm because the Birth Center and Individual Plaintiffs risk catastrophic financial harms and harms to their businesses from the risk that their birth centers will be forced to close permanently before being able to obtain a license to operate from ADPH. In particular, Plaintiff Dr. Skanes testified that, as a result of the closure, she has already lost tens of thousands of dollars in grant money for the birth center, and that she will not be able to continue to incur ongoing financial costs to maintain Oasis if the birth center is not able to re-open by the end of the year. Dr. Robinson testified that her inability to open ABC because of legal uncertainty about whether it would be able to open and operate lawfully in Alabama has caused her considerable financial harm, putting her family's financial stability at risk. Dr. Robinson also testified that she is not certain how long she would be able to continue to incur financial costs necessary to maintain the property she had secured for ABC without being able to resume development, open, and begin providing services to patients. Such ongoing financial harm, which presents an existential threat to Plaintiffs' businesses, constitutes irreparable harm. *See, e.g., Ala. Educ. Ass'n v. Bd. Of Tr. of the Univ. of Ala.*, 374 So. 2d 258, 262 (Ala. 1979) (finding irreparable harm where threatened loss of state funding jeopardized state universities' ability to operate entirely); *Bd. Of Dental Exam'rs of Ala. v. Franks*, 507 So. 2d 517, 520-21 (Ala. Civ. App. 1986) (finding irreparable harm to dentist where agency rule caused "decreased business and income and [confused] questions from patients"); *see also* Ala. Code. § 41-22-10 (permitting only

actions for “declaratory judgement or [an agency rule’s] enforcement stayed by injunctive relief” under the AAPA).

Second, the Court finds that Plaintiffs are suffering irreparable harm from interference with their patient relationships and the inability to provide patient care consistent with their training, professional judgment, and scope of practice. For example, Dr. Skanes testified that Oasis had to turn away and deny care in the birthing center to patients with whom Oasis’s midwifery staff had established provider-patient relationships. Based on the testimony, the other Plaintiffs—including Dr. Robinson and ACNM-AL members—are unable to offer their existing patients, who they see in other clinical settings, access to options for out-of-hospital midwifery care in a birth center, even when, in their professional judgment, such care would be appropriate or ideal for their patients. Ms. Lopez also testified that the lack of birth centers operating in the state, as a result of ADPH’s actions, denies ACNM-AL’s members training and employment opportunities that would allow them to practice to their full scope of practice in a birth center.

Third, the Court further concludes that Plaintiffs’ patients are also suffering irreparable harm due to the denial of safe options for pregnancy and birthing care, despite the ongoing maternal and infant health crisis in Alabama, and despite ongoing challenges with lack of access to pregnancy-related care due to maternity care deserts and hospital closures in the state.

### *3. Balance of the Hardships*

Finally, the Court concludes that the final preliminary injunction factor decisively favors Plaintiffs because any hardship that the injunction will impose on Defendants does “not unreasonably outweigh the benefit accruing to the Plaintiff[s].” *Catrett*, 942 So. 2d at 344 (internal quotations omitted). The Court concludes that ADPH would not be harmed by the issuance of an injunction. The Court has concluded, *see supra*, that ADPH’s actions exceed its statutory authority

under the AAPA and Alabama Constitution. An injunction that simply ensures adherence to the law imposes no hardship. And temporary or interim licensure would not deprive ADPH of its traditional licensing and regulatory authority, *see* Ala. Code §§ 22-21-23, -24, -29(a), -31. ADPH maintains other avenues to protect its asserted interest in ensuring health and safety in birth centers, including by issuing licenses based on compliance with statutory criteria and national AABC standards in compliance with this injunction. Moreover, the continued ability of ADPH to protect health and safety despite the issuance of an injunction is especially so given that ADPH has not presented any evidence calling into question the safety of birth centers that comply with AABC safety standards.

The Court further concludes that, while ADPH faces no harm, as discussed *supra*, Plaintiffs have demonstrated through extensive testimony that they and their communities will continue to suffer serious hardship in the absence of an injunction. *See supra*. For example, testimony from Dr. Henderson, Dr. Skanes, Ms. Lopez, and Dr. Robinson all show that Plaintiffs' patients, prospective patients, and communities will continue to suffer health-related harms in the absence of a preliminary injunction, given Alabama's severe maternal and infant health crisis and the fact that ADPH's actions are denying them access to essential health care that has been proven to improve patient outcomes, reduce health inequities, and expand access to critically needed pregnancy-related care. The services Plaintiffs would provide but for ADPH's actions would help address the dire needs of their communities, especially among Black women and the patient populations most at risk of adverse outcomes and harm and which Plaintiffs intend to prioritize, including patients with low incomes.

In sum, the Court holds that the benefits of granting the injunction to Plaintiffs, their members, and their patients substantially outweigh any hardship to ADPH.

Accordingly, based on the evidence, the Court concludes that Plaintiffs have satisfied all necessary factors for a preliminary injunction.

**IT IS SO ORDERED.**

**DONE this 3<sup>rd</sup> day of October, 2023.**

<b>/s/ GREG GRIFFIN</b>
<b>CIRCUIT JUDGE</b>