IN THE
CIRCUIT COURT OF ST. LOUIS, MISSOURI
22nd JUDICIAL CIRCUIT

REPRODUCTIVE HEALTH SERVICES OF PLANNED PARENTHOOD OF THE ST. LOUIS REGION 4251 Forest Park Avenue St. Louis, MO 63018 (314/531-7526) Petitioner, v. MICHAEL L. PARSON, in his official capacity as Governor of Missouri, Office of the Governor, P.O. Box 720 Jefferson City, MO 65102 (573/751-3222) MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES Randall W. Williams, M.D., Director 912 Wildwood, P.O. Box 570 Jefferson City, MO 65102 (573/751-6400), and RANDALL WILLIAMS, M.D., in his official capacity as Director of Missouri Department of Health and Senior Services, 912 Wildwood, P.O. Box 570 Jefferson City, MO 65102 (573/751-6400) Respondents.	Case No. Division No.

VERIFIED PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

Petitioner Reproductive Health Services of Planned Parenthood of the St. Louis Region ("Planned Parenthood"), by and through its undersigned attorneys, brings this Verified Petition for Declaratory and Injunctive Relief against the above-named Respondents, their employees, agents, and successors in office (collectively, "DHSS" or "the Department"), and in support thereof states the following:

I. INTRODUCTION

1. For over two decades, Planned Parenthood has provided safe, legal abortion at a health center in St. Louis. And for decades, the State has sought to restrict abortion access and deny Missourians their right to choose abortion. Indeed, last Friday, Governor Parson signed into law a bill banning abortions at eight weeks of pregnancy, without exceptions in cases of rape or incest.[1] H.B. 126, 100th Gen. Assemb., Reg. Sess. (Mo. 2019).

2. Even prior to this effort to institute a clearly unconstitutional abortion ban (which would not take effect until August 28, 2019), it has long been the State's objective to eliminate abortion access in Missouri. And the State has come close to succeeding, using a series of medically irrelevant and onerous requirements to prevent health centers that stand ready to provide abortion services from being allowed to do so.

3. This campaign has intensified in recent years, with the State's unnecessary restrictions forcing two safe and high-quality health centers to stop providing abortions and preventing others from starting, and leaving the entire state of Missouri with only *one* generally available provider providing only *one* of the two main types of abortion (that is, surgical, but not medication, abortion).

4. This is the provider DHSS now is attempting to shut down, by unlawfully conditioning a decision on its routine license renewal application on completion of a supposed "investigation" of a patient complaint (the contents of which the Department has refused to disclose) and yet refusing to proceed with its investigation in a reasonable manner—despite that Planned Parenthood has fully cooperated with every investigative request within its power.

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[1] Morgan Winsor, *Missouri Governor Signs Sweeping Abortion Bill with 8-Week Ban*, ABC News (May 24, 2019), https://abcnews.go.com/US/missouri-governor-signs-sweeping-abortion-bill-week-ban/story?id=63256446.

5. On May 15, Governor Parson declared that it was "time to make Missouri the most Pro-Life state in the country!"[2] He tweeted that abortions in Missouri had "recently hit an ALL-TIME low," and vowed that "we still have more work to do!"[3]

6. Without this Court's immediate intervention, the State's "work" will succeed: on May 31, 2019, the license of Missouri's last remaining generally available abortion provider will lapse. The State will succeed in its endeavor to end abortion in Missouri, and over 1.1 million women of reproductive age in Missouri will face a world we have not seen since before *Roe v. Wade*, 410 U.S. 113 (1973), was decided.

II. PARTIES

7. Petitioner Planned Parenthood is a not-for-profit corporation organized under the laws of Missouri. Planned Parenthood is currently licensed as an abortion facility by Respondent DHSS to provide abortion services at a health center in St. Louis, Missouri. The license expires on May 31, 2019. Operating an abortion facility without a license is a class A misdemeanor, and each day is a separate violation. *See* § 197.235.1, RSMo. Planned Parenthood sues on behalf of itself, its staff, and its patients.

8. Respondent Michael L. Parson is the Governor of Missouri. He is sued in his official capacity. Pursuant to Article IV of the Missouri State Constitution, Governor Parson is directly responsible for ensuring that all Missouri agencies, including DHSS, comply with applicable federal and state laws. Governor Parson is opposed to abortion.

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[2] Amber Ruch, *Gov. Parson: 'Time to make Missouri the most pro-life state in the country*,' KVF (May 16, 2019), https://www.kfvs12.com/2019/05/15/gov-parson-time-make-missouri-most-pro-life-state-country/.

[3] Mike Parson (@GovParsonMO), Twitter (May 15, 2019), https://twitter.com/govparsonmo/status/1128799161548234752?s=12.

9. Respondent DHSS is a state agency created by section 192.005, RSMo. DHSS is charged with the licensure of abortion facilities. §§ 197.200–.240, RSMo.

10. Respondent Randall Williams, M.D., is the Director of DHSS. He is sued in his official capacity. Respondent Williams is opposed to abortion.

III. VENUE AND JURISDICTION

11. Planned Parenthood brings this action under chapters 526, 527, and 536, RSMo., and Missouri Rules of Civil Procedure 87 and 92.

12. This Court has jurisdiction over this challenge, pursuant to section 527.010 and 536.150, RSMo., to declare Planned Parenthood's rights and status; to declare 19 CSR 30-30.050(2)(I) invalid; and to declare that the scope and methods of Respondents' investigation is arbitrary, capricious and unlawful. This Court similarly has jurisdiction, because DHSS's decision to condition Planned Parenthood's abortion facility license renewal on conditions Planned Parenthood cannot meet is arbitrary, capricious, unlawful, and not subject to administrative review and there is no other provision for judicial inquiry into or review of such decision. In the alternative, the Court has jurisdiction under sections 536.050, 536.053, and 536.100, RSMo.

13. Venue is proper in the Circuit Court of St. Louis, Missouri. *See* §§ 508.010, 536.050, RSMo.

IV. FACTUAL ALLEGATIONS

A. Abortion in Missouri

14. Legal abortion is one of the safest medical procedures in the United States. Carrying a pregnancy to term and delivering the baby is significantly riskier than abortion, and every pregnancy-related complication is more common among women having births than among those

having abortions. The risk of death associated with childbirth is approximately fourteen times higher than that associated with abortion.[4]

15. The National Academies of Sciences, Engineering, and Medicine ("the National Academies")—a body composed of highly esteemed experts that was first established by Congress in 1863 to provide independent, objective expert analysis and advice to the Nation to inform public policy—recently conducted a systematic review of the safety and quality of care of abortion in the United States and further confirmed that abortion is safe.[5]

16. Patients decide to end a pregnancy for a variety of reasons, including familial, medical, financial, and personal reasons, and these decisions are intimately related to an individual's values and beliefs, culture and religion, health status and reproductive history, familial situation, resources, and economic stability. Some patients end a pregnancy because it is not the right time in their lives to have a child; some because they already have one or more children and decide they cannot add to their families; some to preserve their life, health, or safety; some because they receive a diagnosis of a fetal anomaly; some because they have become pregnant as a result of rape or incest; and some because they choose not to have biological children.

17. Approximately one in four women in this country will have an abortion by age forty-five. A majority of those having abortions (61%) already have at least one child, while most (66%) also plan to have a child or additional children in the future.[6]

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[4] Elizabeth Raymond & David Grimes, *The Comparative Safety of Legal Induced Abortion and Childbirth in the United States*, 119 Obstetrics & Gynecology 215, 215 (Feb. 2012).

[5] National Academies of Sciences, Engineering, and Medicine, *The Safety and Quality of Abortion Care in the United States* (March 16, 2018), http://www.nationalacademies.org/hmd/Reports/2018/the-safety-and-quality-of-abortion-care-in-the-united-states.aspx.

[6] *See* Rachel K. Jones & Jenna Jerman, *Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008-2014*, Guttmacher Institute (Oct. 2017), https://www.guttmacher.org/article/2017/10/population-group-abortion-rates-and-lifetime-

18. There are two types of abortion: surgical abortion and medication abortion. Surgical abortion is not what is commonly understood to be "surgery;" it involves no incision and no need for general anesthesia. Surgical abortion involves the use of suction and/or instruments to remove the contents of the uterus.

19. Medication abortion is a U.S. Food & Drug Administration ("FDA")-approved, safe, and effective method of terminating an early pregnancy non-surgically by taking medication by mouth that end the pregnancy in a process similar to a miscarriage. Before May 2018, medication abortion was the most common method of early abortion among Missouri women.

B. Missouri's History of Restricting Abortion Access

20. Over the last 40 years, Missouri has placed numerous medically irrelevant restrictions on abortion that have severely limited access and reduced the number of health centers offering abortion so dramatically over time that only one remains.

(1) Ambulatory Surgical Center Licensing Law

21. Before 2007, abortion providers did not need to be licensed as an ambulatory surgical center ("ASC") unless the facility "operated primarily for the purpose of performing surgical procedures" (the same standard applicable to other healthcare providers). H.B. 1055, 94th Gen. Assemb., 1st Reg. Sess. (Mo. 2007) (amending § 197.200, RSMo.). But in 2007, the General Assembly amended the Ambulatory Surgical Center Licensing Law ("Licensing Law") to treat abortion differently by requiring any facility "operated for the purpose of performing or inducing

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incidence-abortion-united-states-2008; *Concern for Current and Future Children a Key Reason Women Have Abortions*, Guttmacher Institute (Jan. 7, 2008), https://www.guttmacher.org/news-release/2008/concern-current-and-future-children-key-reason-women-have-abortions; Abortion Facts, National Abortion Federation, https://prochoice.org/education-and-advocacy/about-abortion/abortion-facts/.

any second or third trimester abortions or five or more first trimester abortions per month" to be licensed as an ASC. *Id.*

22. As a result, any health center regularly providing abortions (including medication abortion, which is provided through pills administered orally) had to comply with medically irrelevant ASC requirements and be licensed by DHSS. As described further below, the U.S. Supreme Court has since recognized that such ASC requirements provide "few, if any" medical benefits in the abortion context and any such marginal benefits are outweighed by the severe burdens they can impose. *See Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2318 (2016).

23. At that time, DHSS refused to license health centers in Kansas City and Columbia operated by then-Planned Parenthood of Kansas and Mid-Missouri ("PPKM"), as well as an additional non-Planned Parenthood health center that has since stopped providing abortions.[7] The Kansas City health center only offered medication abortion and the other two provided surgical and medication abortion only through the first trimester of pregnancy. The law thus threatened to close down three of the state's four generally available abortion providers.

24. After PPKM and the other provider sued and obtaining a preliminary injunction, DHSS ultimately agreed to grant licenses and waive many of the Licensing Law requirements for those health centers. *See Planned Parenthood of Kan. & Mid-Mo. v. Drummond*, No. 07-4164-CV-C-ODS, 2007 WL 2811407, at *2 (W.D. Mo. Sept. 24, 2007).

(2) Local Hospital Privileges Requirement

25. Missouri restricts who can provide abortion care to physicians only, § 188.020, RSMo., and further provides that such physician must have "clinical privileges at a hospital which

[7] PPKM was a predecessor in interest to Planned Parenthood Great Plains, which currently operates the Columbia and Kansas City health centers.

offers obstetrical or gynecological care located within thirty miles of" the abortion facility, § 188.080, RSMo., among other related requirements, *see* 19 CSR § 30-30.060(1)(C)(4). As described further below, the U.S. Supreme Court has recognized that such laws provide virtually no medical benefit and can impose severe burdens on abortion access, including because the safety of abortion services makes it very difficult for abortion providers to find a hospital willing to grant them such privileges. *See Whole Woman's Health*, 136 S. Ct. at 2313, 2318.

26. Because of the difficulty of finding providers able to comply with these medically unnecessary restrictions, even after the 2010 settlement of the ASC litigation, the Columbia and Kansas City health centers were able to provide abortions only some of the time. For example, in 2012, the physician providing care at the Columbia health center resigned as a result of harassment from protestors, and the health center was forced to suspend its abortion care because it was unable to find another physician able to comply with the medically unnecessary local privileges requirement. In September 2013, DHSS suspended the Columbia health center's license due to the lack of a provider.

27. In 2015, the Columbia health center was able to again provide medication abortion services, but only briefly, after Dr. Colleen McNicholas (who had local hospital privileges that met these requirements) began providing care there.

28. In July 2015, a group of anti-abortion extremists released heavily edited and misleading videos making false claims about other Planned Parenthood affiliates in other states. Thereafter, the Missouri Senate formed a special interim committee named "The Sanctity of Life Committee" ("Committee") to investigate the false allegations. Instead, the Committee's meetings focused almost entirely on the licensing of the Columbia health center and its relationship with Missouri University Health Care ("MU Health"), including Dr. McNicholas's privileges at MU

Health. The Committee put pressure on MU Health regarding its grant of privileges to Dr. McNicholas, including sending a letter to the University's chancellor requesting information about those privileges and warning that the question of whether the Columbia facility's license was dependent upon privileges from MU Health Care, "a publicly funded entity . . . is a matter of substantial public interest and concern."[8] Shortly thereafter, MU Health eliminated the category of privileges Dr. McNicholas had held, effectively revoking her privileges.

29. DHSS subsequently informed PPKM that, because PPKM would no longer have a provider with hospital privileges as of December 1, 2015, it would revoke PPKM's abortion facility license as of close of business on November 30, 2015. PPKM sought emergency injunctive relief, and a federal court granted a TRO and, subsequently, a preliminary injunction based on a determination PPKM was likely to succeed on its claim that in trying to revoke its license DHSS was singling out PPKM and treating it differently from non-abortion providers. *See Planned Parenthood of Kan. & Mid-Mo. v. Lyskowski*, No. 2:15-CV-04273- NKL, 2016 WL 2745873, at *2 (W.D. Mo. May 11, 2016). However, when the Columbia health center remained unable to locate a physician with local admitting privileges at the end of the license term, it was unable to renew its license.

30. As a result of Dr. McNicholas losing her privileges at MU Health, and of the medically unnecessary local hospital admitting privileges requirement, Planned Parenthood's St. Louis health center became the sole abortion provider in the state.

[8] Rose Schmidt & Emma Nicolas, *TARGET 8: Planned Parenthood Emails Uncover Lack of Transparency* (Nov. 12, 2015), https://www.komu.com/news/target-8-planned-parenthood-emails-uncover-lack-of-transparency/.

(3) The State's Retaliation After Planned Parenthood's Challenge to Existing Restrictions Under *Whole Woman's Health*

31. In the fall of 2016, Planned Parenthood affiliates in Missouri brought a federal lawsuit, challenging Missouri's ASC and local hospital privileges requirements, both of which are almost identical to those the U.S. Supreme Court had recently held unconstitutional in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016). The Western District of Missouri preliminarily enjoined the local hospital privileges requirement and the portions of the ASC regulations that impose physical facility requirements. Order Granting Prelim. Inj., *Comprehensive Health of Planned Parenthood Great Plains v. Williams*, No. 2:16-CV-04313-HFS (W.D. Mo. May 2, 2017), ECF No. 97.[9]

32. Once those restrictions were enjoined, DHSS had no choice but to provide abortion licenses to the Planned Parenthood health centers in Kansas City and Columbia. Planned Parenthood's health centers in Joplin and Springfield also began the licensing process, and Missourians stood poised to be able to receive time-sensitive and constitutionally protected abortion care at five locations throughout the state, instead of only in St. Louis.

33. Unhappy with the increase in abortion access for Missouri women, Governor Greitens called an emergency session of the General Assembly to pass a slate of abortion restrictions in Senate Bill 5, 99th Gen. Assemb., 2nd Extraordinary Sess. (Mo. 2017) ("S.B. 5"). S.B. 5's main sponsor stated publicly that its purpose was to prevent Planned Parenthood from

[9] On September 10, 2018, the U.S. Court of Appeals vacated the injunction on the ground it failed to make sufficient findings on Missouri-specific evidence of the lack of medical benefit, and remanded to the district court for such findings. *Comprehensive Health of Planned Parenthood Great Plains v. Hawley*, 903 F.3d 750 (8th Cir. 2018). That case is now stayed.

expanding access to abortion to additional health centers in Missouri allowed by the federal preliminary injunction.[10]

34. S.B. 5, combined with existing medically irrelevant and onerous restrictions, created a maze of rules and barriers in the path of doctors and health centers, as well as patients. S.B. 5.

35. Relevant here, S.B. 5 also added a provision to Missouri's existing informed-consent law, which already required that before a woman can obtain an abortion she must make an unnecessary trip to a health center to be given state-mandated information at least 72 hours before an abortion. §§ 188.027.1, 188.039.2, RSMo. S.B. 5 made this law even more burdensome by requiring that the doctor who provides the abortion must be the same one who gave the state-mandated information. S.B. 5 (adding § 188.027.6, RSMo.).

36. S.B. 5 also amended the existing Licensing Law—where previously, any clinic that performed a certain number of abortions per month needed to obtain an abortion license, now *no* abortions could be performed *except* in licensed abortion facilities or licensed hospitals. S.B. 5 (amending § 197.230, RSMo.). And S.B. 5 required DHSS to make at least one unannounced visit per year to all licensed abortion facilities. S.B. 5 (amending § 197.230, RSMo.).

(4) DHSS and Respondent Williams' Retaliation to Block Abortion Services

37. While the legislature responded to the injunction in *Comprehensive Health of Planned Parenthood Great Plains v. Williams* by passing legislation restricting access, Respondent Williams and DHSS in particular responded by promulgating and construing regulations to prevent the expansion in abortion access promised by the injunction, and instead

[10] Jason Hancock, *Fate of New Abortion Limits Unclear as Missouri Senators Return to Capitol*, Kan. City Star (July 24, 2017), http://www.kansascity.com/article163000723.html.

make abortion access in Missouri even more limited than it had been before *Whole Woman's Health*.

(a) The complication plan requirement

38. For example, S.B. 5 required that providers of medication abortion have a DHSS-approved plan of how any patients who experience a complication will be treated, but left it to DHSS to determine what requirements such a "complication plan" would have to meet. Despite medication abortion's safety record and the fact that complications only occur after the woman has taken the medication and travelled home, DHSS promulgated an emergency rule requiring medication abortion providers to have a written contract with a board-certified or board-eligible obstetrician/gynecologist ("OB/GYN") or an OB/GYN practice group near the abortion facility who agrees to be "on-call and available twenty-four hours a day, seven days a week" to "personally treat all complications" from medication abortion. *See* 42 Mo. Reg. 1747, 1754–55 (Dec. 1, 2017); 43 Mo. Reg. 505, 624 (Mar. 15, 2018); 19 CSR 30-30.061 ("Complication Plan Regulation").

39. Respondent Williams then went even further, adding a requirement that the backup OB/GYNs have local hospital admitting privileges and live near that hospital—despite that at the time Missouri's local hospital admitting privileges requirement was enjoined. And although the Complication Plan Regulation does not specify the number of such backup OB/GYNs with whom a medication-abortion provider must have a written arrangement, Director Williams also interpreted it to require two—thus ensuring that Planned Parenthood affiliates' health centers could not comply.[11]

[11] Planned Parenthood unsuccessfully sought a preliminary injunction of this requirement at a time at which the privileges requirement was enjoined and the Columbia health center was still providing surgical abortion. *See* Order & Op. Denying Pls.' Mot. for Prelim. Inj., *Comprehensive Health of Planned Parenthood Great Plains v. Williams*, No. 2:17-cv-04207-BP (W.D. Mo. June 11, 2018), ECF No. 134. This case is now stayed.

40. A DHSS employee wrote in two 2017 emails:

So you remember how the requirement for the docs to have admitting privs was thrown out? So the new plan is this for med abortion the doc providing the medicaiton doesn't have to have admit priv, BUT they have to have a written contract with another physician in case there is a complication, and THAT second doctor has to have admit priv. Still trying to get my full head around that one, but that's what I was directed to write.

[…]

As of now, we are interpreting that to mean the Ob/GYN who is covering them has to have surgical priv in a hospital . . . So in a way it's kind of a workaround to continue to require hospital priv.

41. As a result of Respondent Williams's Complication Plan Regulation, the Planned Parenthood affiliates were forced to stop offering medication abortion at the Columbia health center, and to abandon plans to provide that service at the Springfield and Joplin health centers.

(b) The pelvic exam requirement

42. Respondent Williams then turned his focus to a new restriction on medication abortion: requiring a medically unnecessary pelvic exam in order to be permitted to administer medications by mouth to the patient, which end the pregnancy in a process similar to a medically induced miscarriage. This exam requires a physician to insert a speculum to separate the walls of a patient's vagina in order to see the cervix, and also to insert the fingers of one hand into the vagina and press down on her lower abdomen to feel her reproductive organs.

43. Pelvic exams are not medically indicated or appropriate in the context of medication abortion. Mandating pelvic exams in such a context is not only medically irrelevant; it

is also deeply inappropriate and bad medical practice, not least because it may cause unnecessary trauma for patients, particularly victims of rape or sexual assault.

44. A pre-existing regulation, 19 CSR 30-30.060(2)(D), required a pelvic exam before an abortion, but prior to Respondent Williams' directorship DHSS had only required this exam prior to *surgical* abortions—because only then is it medically indicated and, indeed, the pelvic examination requirement was imposed long before medication abortion was approved in the United States, and thus could not have contemplated requiring such an invasive examination in the context of administering pills by mouth. Indeed, as part of the settlement reached about the 2007 Licensing Law, DHSS had waived this requirement for medication abortions at the Kansas City health center, presumably recognizing it was not necessary for patient health and safety.

45. But during a 2018 annual inspection of the St. Louis health center, DHSS cited Planned Parenthood for not performing pelvic exams before providing medication abortion. Petitioner sought a waiver of this requirement, explaining that pelvic exams are not medically indicated for medication abortions and would cause discomfort and trauma to some patients. Respondent DHSS rejected this waiver application and stated that it would not resolve the statement of deficiency unless Planned Parenthood amended its policies to require the unnecessary pelvic exam prior to administering medication abortions.

46. Planned Parenthood complied by amending its procedures, but its physicians determined that performing an unnecessary pelvic exam would be unethical—and so Planned Parenthood was forced to stop offering medication abortions.

47. Consequently, Respondents eliminated access to medication abortion in the state of Missouri, despite that it is a safe and common method of early abortion and that many patients

who choose medication abortion have a deeply held preference for that method, including because it involves taking pills by mouth and allows them to avoid an invasive procedure.

48. Thus, the net result of these years of restrictions—and especially of Missouri's more recent escalation of its war on abortion, including under Respondent Williams's leadership at the Department of Health and Senior Services—is that the State has succeeded in limiting Missouri to a single generally available abortion provider, located on the easternmost edge of the state, providing only surgical abortion. Having accomplished that, the State has now shifted its focus to trying to shut down this last remaining provider entirely: Planned Parenthood's St. Louis health center.

C. 2019 Inspections of Planned Parenthood's St. Louis Health Center

49. Planned Parenthood has had an abortion facility license to provide abortion care at its St. Louis health center since 1996. DHSS has renewed that license every year since, without any lapse in service, until now.

(1) Regulatory Scheme

50. Under section 197.230, RSMo., DHSS has authority to make "inspections and investigations as it deems necessary" of abortion facilities and other ambulatory surgical centers. With regard to abortion facilities, that statute specifically requires DHSS to make an unannounced on-site inspection at least annually, and requires that inspection to include, but not be limited to: "(1) Compliance with all statutory and regulatory requirements for an abortion facility, including requirements that the facility maintain adequate staffing and equipment to respond to medical emergencies; (2) Compliance with the provisions of chapter 188; and (3) Compliance with the requirement in section 197.215 that continuous physician services or registered professional nursing services be provided whenever a patient is in the facility."

51. Section 197.220, RSMo. authorizes DHSS to deny, suspend, or revoke an abortion facility's license if it finds a "substantial failure" to comply with the Licensing Law.

52. Section 197.293, RSMo. requires DHSS to provide the abortion facility with notice of any deficiency and an opportunity and time to develop and implement a plan of correction approved by DHSS before taking any licensure action. In some instances, multiple plans of correction are needed. Indeed, this statute provides that if the deficiency is not corrected by the implemented plan, DHSS can require the facility to develop and implement a new plan or implement a DHSS-developed plan. And if there is a continuing deficiency after those steps are taken, and the facility has had an opportunity to correct the deficiency, DHSS can restrict patient access to the affected service. If there is still a deficiency after DHSS restricts patient access, and the facility has had an opportunity to correct the deficiency, DHSS may suspend the facility's operations. And only after all those corrective actions are taken and there is continuing deficiency may DHSS deny, suspend, or revoke the facility's license.

53. If a deficiency presents an immediate and serious threat to the patients' health and safety, however, DHSS may immediately restrict access to the affected service until the facility has implemented a DHSS-approved plan of correction. §197.293.2, RSMo.

54. Absent a finding that the facility has failed to meet regulatory requirements, DHSS must renew an abortion facility license upon receipt of an application. § 197.215.2, RSMo.

55. DHSS has always followed this process for Planned Parenthood and, on information and belief, for other licensed healthcare providers. Indeed until now, the only exception was in 2015 when DHSS sought to revoke the Columbia health center's license, *see* ¶¶ 26–29, *supra*, and was prevented from doing so when a federal court granted a preliminary injunction on the ground the Planned Parenthood affiliate that operates that health center was likely

to succeed on its claim that DHSS was impermissibly singling it out and treating it differently from other licensed healthcare providers. *See Planned Parenthood of Kansas v. Lyskowski*, No. 2:15-CV-04273-NKL, 2016 WL 2745873, at *7 (W.D. Mo. May 11, 2016). It is doing the same again, as it seeks to shutter the last remaining abortion provider in Missouri.

(2) The 2019 Annual Inspection

56. DHSS conducted its annual onsite licensure inspection on March 11, 12, and 13, 2019. During that inspection, DHSS inspectors interviewed several physicians and staff; reviewed records, policies, and other documentations; and observed procedures. DHSS then submitted written follow-up questions on March 20, which Planned Parenthood answered on March 25. DHSS issued a statement of deficiency on March 27, as is routine in the license renewal process. A true and correct copy of the March 27 statement of deficiency is attached hereto as Exhibit A.

57. The majority of the cited deficiencies are non-remarkable and typical of the license renewal process, including claimed deficiencies for not ensuring all staff participated in a fire drill; not having full emergency supplies in the correct area; and failure to meet certain infection control requirements. Indeed, according to a document DHSS shared with ASCs to assist in preparation for inspection, DHSS observed that 17 out of 18 facilities were cited for not ensuring all staff participated in a fire drill, and all 18 were cited for failures relating to infection control.

58. DHSS also cited Planned Parenthood for providing a pelvic exam just before a surgical abortion rather than on the day of the state-mandated informed consent visit at least 72 hours earlier, despite that the relevant regulation (19 CSR 30-30.060(2)(D)) does not state when the pelvic exam must be done and that providing the pelvic exam on the informed-consent day is medically unnecessary and invasive. Presumably for this reason, DHSS had never previously taken

issue with Planned Parenthood's medically sound practice of providing the pelvic exam just before the procedure is performed, at the time it is most relevant and appropriate.

59. Finally, DHSS also claimed that Planned Parenthood failed to ensure that the physician who provided certain state-mandated information 72 hours prior to the abortion must also substantially participate in providing the abortion, as required by § 188.027.6, RSMo. As discussed further below at ¶¶ 76–81, this claim appears to relate to a change in DHSS's position on what is required by § 188.027.6 in the context of a fellow or resident providing a procedure under the supervision of an attending physician.

60. Planned Parenthood submitted a timely plan of correction on April 9. A true and correct copy of Planned Parenthood's April 9 plan of correction is attached hereto as Exhibit B.

61. The plan included conducting another fire drill by the end of April 2019, as well as auditing the program to ensure all staff have participated in a drill; repositioning emergency equipment to the recovery room, retraining staff, and performing weekly audits of the equipment; and retraining staff on proper infection control standards and auditing supplies to ensure only unexpired products are used. It also attempted to address DHSS's concerns about the pelvic exam and same-doctor/informed consent requirement, as discussed further below.

(3) The Patient Complaint Investigation

62. After DHSS completed its licensure inspection, had its follow-up questions answered, and issued its statement of deficiency, DHSS employees appeared at the St. Louis health center unannounced on April 2 and 3, stating they were investigating a complaint from one patient and asking for six patient medical records and other documentation. Although DHSS refused to provide any information about the subject matter of the complaint or any other information that

might allow Planned Parenthood to better aid the investigation, Planned Parenthood cooperated, providing copies of all requested documents and answering DHSS's questions.

63. DHSS first indicated it would want to interview two physicians, a family planning fellow at Washington University School of Medicine who is completing her training fellowship at the St. Louis health center, and Dr. McNicholas, the fellow's attending physician and supervising physician and a faculty member at the Washington University School of Medicine.

64. DHSS then formally requested, on April 11, to conduct interviews with *seven* physicians and one nurse (although all eight practitioners could not have been involved in the care of one complaining patient) and demanded interview availability with within two business days. None of the physicians, however, are employed by Planned Parenthood. To the contrary, as Planned Parenthood explained, three are faculty members at Washington University School of Medicine; one is a family planning fellow at Washington University School of Medicine who, as noted above, is completing her training fellowship at Planned Parenthood's St. Louis health center; two are OB/GYN residents at Barnes Jewish Hospital (which is affiliated with Washington University's School of Medicine) who completed a training rotation at Planned Parenthood's St. Louis health center in September of 2018, and are no longer involved in providing care there; and one is a contract physician. Each physician is represented by separate counsel. A true and correct copy of DHSS's April 11 request to Planned Parenthood is attached hereto as Exhibit C.

65. Because only one of the eight individuals requested was an employee and the others were represented by separate counsel, Planned Parenthood responded on April 16 asking for more time to convey the requests to the physicians' counsel. In addition, Planned Parenthood sought clarification of DHSS's authority to compel any interview and the consequences to Planned Parenthood's license if the interviews (which are not within Planned Parenthood's ability to

require) did not take place. Planned Parenthood also made clear that it would consider other avenues of providing DHSS with the information it sought, including answering written questions. A true and correct copy of the April 16 letter Planned Parenthood's counsel sent to DHSS is attached hereto as Exhibit D.

66. On April 22, DHSS responded by asserting that its demands were authorized under Section 197.230.1, RSMo., which obligates the Department to "make, or cause to be made, such inspections and investigations as it deems necessary" and by 19 CSR 30-30.060(7)(C), which obligates the Department to investigate complaints regarding abortion facilities.

67. DHSS also asserted its position that "under 19 CSR 30-30.050(2)(I), the Department is prohibited from issuing or renewing a license until the Department has inspected the facility and determined that the facility is in compliance with all statutory and regulatory requirements." The text and DHSS's interpretation of 19 CSR 30-30.050(2)(1), that DHSS must confirm compliance with all statutory and regulatory requirements prior to acting on DHSS's renewal application is, however, at odds with the Licensing Statute itself, which states that a properly submitted license renewal application *shall* be granted absent a finding of substantial non-compliance, which itself requires a series of progressive discipline steps. § 197.215.1, RSMo. DHSS itself acknowledged that "section 197.293 RSMo. obligates the Department generally to use standards of progressive discipline (generally beginning with a plan of correction) when a deficiency in meeting regulatory standards is found." A true and correct copy of DHSS's April 22 response is attached as Exhibit E.

68. Planned Parenthood agreed to the interview of its employee, which was held on April 24. Planned Parenthood also cooperated fully with all other aspects of the investigation that

are under its control, including providing copies of multiple patient records, patient rosters, and policies as requested and cooperating in additional on-site visits.

69. The physicians' counsel through Washington University Medical School also sought information regarding the subject matter of the interview demands. DHSS refused to provide any information, but also indicated that any information obtained during the interviews could result in criminal referrals or referrals to the Board of Registration for the Healing Arts.

70. In an effort to resolve any issues prior to expiration of the St. Louis health center's license on May 31 (despite DHSS's refusal to disclose the nature of the issues being investigated), and notwithstanding that they are employed by Washington University School of Medicine and not by Planned Parenthood, the two most senior physicians—Dr. McNicholas and Dr. Eisenberg—agreed to be interviewed by DHSS, as the physicians' counsel through Washington University Medical School advised DHSS on May 14. Dr. Eisenberg agreed to sit for an interview on Friday, May 17, and Dr. McNicholas the following week.

71. Drs. McNicholas and Eisenberg, together with two other physicians DHSS has not requested to interview, supervise all care provided by trainees at the St. Louis health center, and thus any questions DHSS has about the care provided by the attending physicians or their trainees (that is, fellows and residents) could be explored with them. In addition to being attending physicians to the trainees and faculty members at Washington University School of Medicine, Dr. McNicholas is Planned Parenthood's incoming Chief Medical Officer and Dr. Eisenberg is its Co-Medical Director.

72. DHSS, however, refused to meet with Drs. McNicholas and Eisenberg, stating for the first time that the seven physician interviews would need to be done in a specified order and

that if Planned Parenthood could not comply with this order (which required a Washington University fellow to be interviewed first) then DHSS would not proceed with its investigation.

73. The following day Planned Parenthood wrote to DHSS, again reiterating its cooperation in the investigation and imploring DHSS to proceed with the interviews of the attending physicians, Drs. McNicholas and Eisenberg. Planned Parenthood also observed that two of the junior physicians DHSS is seeking to interview are OB/GYN residents who completed their clinical rotation at Planned Parenthood in September 2018 and were unlikely to provide care there again, and that as to *all* of the junior physicians, the decision of whether they would sit for an interview—particularly an interview on unspecified topics under circumstances where DHSS has indicated it could make criminal or board of healing arts referrals—was outside Planned Parenthood's control.[12] A true and correct copy of the May 16 correspondence from Planned Parenthood's counsel to DHSS is attached hereto as Exhibit F.

74. While these exchanges about DHSS's demands to interview Washington University Medical School's fellow and the residents of its affiliated hospital continued, DHSS refused to respond to the plan of correction Planned Parenthood had submitted on April 9—despite that Planned Parenthood's license expiration date of May 31 was rapidly approaching. Finally, on May 20 (nearly six weeks after Planned Parenthood submitted the plan of correction), after

[12] Nor were DHSS's investigation techniques limited to interviews and patient records. On April 19, DHSS employees made an unannounced visit to the pathology lab with which Planned Parenthood contracts and demanded to interview the lab medical director and obtain copies of records, and on April 25 they made a second unannounced visit to the pathology lab, demanded an immediate tour of the facility, interviewed staff, and interviewed the medical director. These visits risked jeopardizing a vendor relationship that is required by state law for Planned Parenthood to be able to provide abortion services. *See* § 188.047, RSMo. (imposing medically unnecessary requirement that all fetal tissue be examined at pathology lab).

multiple requests from Planned Parenthood, DHSS issued a response requesting an amended plan of correction. A true and correct copy of DHSS's May 20 response is attached hereto as Exhibit G.

75. The response appeared to accept the plan of correction for almost all the deficiencies originally cited, but asked for an amended plan for three deficiencies, as detailed below. In addition, the response stated that DHSS identified "potential deficient practices . . . including but not limited to those discussed above" and that it could not "complete [its] investigation as required until [it] interview[ed] the physicians involved." The response asserted that under 19 CSR 30-30.050(2)(I), DHSS could not renew Planned Parenthood's license until it determined complete compliance with all applicable requirements, and that DHSS would be unable to determine compliance until the investigation was complete.

76. Planned Parenthood nevertheless promptly submitted an amended plan of correction on May 22, a true and correct copy of which is attached hereto as Exhibit H. This amended plan of correction responded to each of the three remaining deficiencies identified by DHSS:

(a) First, DHSS's response had expressed a new, previously uncommunicated (and plainly unsupported) interpretation of the pelvic exam requirement, stating that the pelvic exam cannot be performed "immediately prior" to the abortion. *See* Ex. G. As laid out more fully in the amended plan of correction, it has always been Planned Parenthood's practice to provide the pelvic exam just before the surgical abortion procedure, which is when the exam is most clinically appropriate and least onerous for the patient. DHSS has been aware of this practice, and has never before indicated it is deficient. Nevertheless, with continued serious concern about the appropriateness, in order to resolve DHSS's concerns and in an attempt to ensure

the continuity of its license and ability to provide its patients with abortion care, Planned Parenthood agreed to amend its policy to require the pelvic exam to be done on the same day the state-mandated information is provided, at least 72 hours prior to the abortion procedure. *See* Ex. H at 11.

(b) Second, DHSS's response sought additional clarification of the frequency and types of audits Planned Parenthood committed to doing to ensure compliance with infection prevention standards. Planned Parenthood provided the requested clarification. *See id*. at 15.

(c) Finally, DHSS's response raised concerns regarding whether Planned Parenthood's practices fully complied with the requirement under section 188.027.6, RSMo. that the same physician who provided certain state-mandated information 72 hours prior to the abortion must also substantially participate in providing the abortion. As laid out more fully in its amended plan of correction, Planned Parenthood believes that its prior practices fully comply with its obligations and reflect the norm of how care is provided in the context of attending physicians supervising and training fellows and residents. Nevertheless, because it appeared that DHSS's concerns would be satisfied if Planned Parenthood ensured that the attending physician who provided the state-mandated information be in the room at the time a fellow or resident is providing a procedure under supervision, Planned Parenthood agreed to modify its policies to require this. *See id.* at 4–6.

77. On May 23, DHSS responded to Planned Parenthood's amended plan of correction, acknowledging that Planned Parenthood had addressed its concerns relating to pelvic exams and infection control. DHSS noted, however, that it had "continuing concerns . . . regarding

compliance with the same-physician requirement of Missouri's informed consent law," rejecting Planned Parenthood's plan to ensure that the attending physician who provided the state-mandated information be in the room at the time a fellow or resident is providing a procedure under supervision. For the first time, DHSS took the position that the physician providing the state-mandated information need be not only "substantially involved" but rather had to play a "substantial and active role in performing or inducing the abortion—mere physical presence is not enough." A true and correct copy of DHSS's May 23 letter is attached hereto as Exhibit I.

78. DHSS's interpretation runs counter to accepted understanding in the larger medical education community of the relationship between attending physicians and the fellow and residents they supervise. Fellows and residents learn to practice medicine by performing hands-on procedures under the supervision of attending physicians, and it is well established that in this context the attending physician is understood to be actively involved in performing these procedures even if the fellow or resident is providing the hands-on care.

79. Indeed, in prior litigation DHSS specifically rejected the idea that it was unclear how the same-doctor requirement applied in the scenario of "a medical resident working with a teaching physician to perform an abortion," stating that "Section 188.027.6 is not, in fact, ambiguous as applied to th[is] scenario[]. When there are two or more physicians who are substantially involved in performing or inducing the abortion, any one of those physicians may satisfy section 188.027.6 by providing informed consent." Defendants' Suggestions in Opposition to Plaintiffs' Motion for Temporary Restraining Order at 22, Circuit Court of Jackson County, Missouri, Case No. 1716-CV24109 (Oct. 16, 2017). Thus, the Department had previously made clear that for purposes of section 188.027.6, an attending physician who supervises a resident (or

a fellow, presumably) in providing an abortion is sufficiently involved to be able to provide the state-mandated information required by section 188.027.6, RSMo.—a position it is now reversing.

80. Moreover, the Department's shifting interpretations of section 188.027.6, RSMo. Seem to relate in no way to the Department's mission of promoting patient health and safety as the Department has never throughout this process suggested that any of RHS's prior or proposed practices with respect to section 188.027.6, RSMo. Are inconsistent with the standard of care or have compromised patient health and safety.

81. Nevertheless, in the interest of maintaining its license and continuing to be able to provide abortions to its patients—as the only remaining health center in Missouri able to do so—on May 28, Planned Parenthood submitted a second amended plan of correction attempting to resolve this remaining claimed deficiency. In this second amended plan of correction, despite inconsistencies with standard accepted medical training practices, Planned Parenthood stated that RHS will revise its policies such that if it continues providing training opportunities to fellows and/or residents, it will ensure that the fellow or resident provides the information required by section 188.027.6, RSMo. In the presence of the attending physician, and that both the fellow or resident and the attending physician document their participation in this process. A true and correct copy of the second amended plan of correction is attached hereto as Exhibit J.

82. In its May 23, letter DHSS also reversed course and, after refusing to interview Dr. McNicholas and Dr. Eisenberg in the nine days since the physicians' counsel through Washington University Medical School first offered them, explained that it would now agree to interview them. However, DHSS stated "we emphasize that we are ***not*** withdrawing our request to interview the other five physicians," and "we also require that you make the other requested physicians available." Ex. I. (emphasis in original). DHSS also again refused to specify the topic or topics of

investigation, noting only that its "complaint investigation has identified a large number of potential deficient practices requiring explanation by the physicians directly involved in patient care, as well as the attending physicians." *Id.*

83. The following day, on May 24, Dr. McNicholas and Dr. Eisenberg's counsel through Washington University Medical School advised DHSS that the doctors would be available to be interviewed on Tuesday, May 28. On May 25, DHSS accepted these interview dates.

84. Despite that DHSS has now agreed to interview Dr. McNicholas and Dr. Eisenberg, Planned Parenthood and DHSS remain at an impasse. As DHSS is well aware, the third-party physicians it desires to interview (several of which have already completed their rotation at Planned Parenthood) have, through counsel, declined to be interviewed. Planned Parenthood believes it is in compliance with all applicable licensing requirements, and has cooperated with all DHSS requests within its control in order to demonstrate that compliance. This includes that Planned Parenthood has agreed to amend its policies in ways that are not required by statute or regulation in order to address DHSS's purported concerns. DHSS, however, has made clear that it will not conclude its "investigation" until it can speak with the remaining physicians, who are not under Planned Parenthood's control—and yet refuses to make a determination on Planned Parenthood's license renewal application until its investigation is concluded.

85. DHSS is simply wrong in insisting it is entitled to refuse to act on Planned Parenthood's application for license renewal, as the Licensing Law is clear that a license renewal application *shall* be granted unless DHSS finds substantial noncompliance, which finding requires a series of progressive corrective measures and opportunities for the applicant to correct any noted deficiencies. §§ 197.215.2; 197.220; 197.293.1(1)–(5), RSMo. DHSS has not made any such finding, and the process of Planned Parenthood trying to address DHSS's claimed concerns is

ongoing. Moreover, the Licensing Law includes an exception to the progressive correction steps where a deficiency "presents an immediate and serious threat to the patients' health and safety." § 197.293.2, RSMo. DHSS has not claimed any issue falling into this exception, and could not credibly do so.

D. DHSS's Actions' Impact on Patients

86. For this reason, absent intervention from this Court, the St. Louis health center will no longer be able to provide abortions after May 31, 2019, and Missouri will be left the only state in the nation without a generally available abortion provider. This means that Planned Parenthood's patients seeking abortions will not be able to obtain them in Missouri and will either have to travel out of state (at risk of further delay and exposing them to increased medical risk and other harms) or, if they do not have the resources to do so, turn to medically unsupervised and in some cases unsafe methods to terminate unwanted pregnancies, or carry an unwanted pregnancy to term.

87. The right to abortion is a critical component of health care, which is why numerous medical and health organizations, such as the American College of Obstetricians and Gynecologists, the American Medical Association, the American Academy of Family Physicians, the American Osteopathic Association, the American Academy of Pediatrics, and the American Psychiatric Association, have affirmed that safe and legal abortion is a public health imperative.

88. Nationally, an estimated 75 percent of abortion patients are poor or low income. The medical risks associated with pregnancy and childbirth are higher for individuals living in poverty. They may also be higher for people living in rural areas, where there are fewer medical providers. People forced to carry their pregnancies to term, and their newborns, also are at risk of

other negative health consequences, including lower breastfeeding rates, and poor maternal and neonatal outcomes.

89. If an individual is forced to continue a pregnancy against their will, it can pose a risk to their physical, mental, and emotional health, as well as to the stability and wellbeing of their family, including existing children. People forced to carry an unwanted pregnancy to term may find it harder to bring themselves and their family out of poverty; a child can place economic and emotional strain on a family and may interfere with an individual's life goals. As most patients who seek abortion already have at least one child, families must consider how an additional child will impact their ability to care for the children they already have.

V. CLAIMS FOR RELIEF

COUNT I:
Regulation 19 CSR 30-30.050(2)(I), as Promulgated by Respondents and Which Respondents Here Threatens to Apply, Is Invalid and Conflicts with the Relevant Statute

90. Petitioner repeats and realleges all paragraphs set forth above and below as though fully incorporated herein.

91. Respondents have promulgated a rule—19 CSR 30-30.050(2)(I) ("Nonrenewal Regulation")—which conflicts with the text and purpose of the Licensing Law and thus which is invalid under the Missouri Administrative Procedure Act, §§ 197.215.2; 197.220; 536.014, RSMo.

92. The Nonrenewal Regulation is a rule for which there is no statutory authority, is in conflict with state law, is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected, and conflicts with the Missouri Constitution's requirement of equal rights and opportunity under the law. Mo. Const. art. I § 2.

93. Respondents have threatened to—indeed, have made clear they intend to—rely on the Nonrenewal Regulation to refuse to act on Petitioner's application for license renewal, by

interpreting it to require that Respondents affirmatively determine in advance of renewal that Petitioner is in compliance with any and all statutes and regulations which may apply to Petitioner.

94. Petitioner is thus harmed by Respondents' promulgation, interpretation, and threatened application of the Nonrenewal Regulation.

95. This Court has the power to declare the rights, status, and other relations of Petitioner, whether or not further relief is or could be claimed, and such power extends to declaratory judgments respecting the validity of rules, or the threatened application thereof. § 536.050.1, RSMo.

96. This Court further has the power to grant such further relief as it deems necessary or proper. Mo. R. Civ. P. 87.

COUNT II:
Respondents' Conduct During Their Investigation Is Unauthorized, Unreasonable, Exceeds the Scope of Their Authority, and Is Unconstitutional

97. Petitioner repeats and realleges all paragraphs set forth above and below as though fully incorporated herein.

98. Respondents are conducting an investigation well outside its authority and which is not limited in scope and concerning topics which Respondents will not define or enumerate.

99. Respondents are demanding, *inter alia*, that Petitioner produce individuals for interviews who Petitioner has no power to produce.

100. Respondents are demanding such individuals be produced for interviews of unlimited scope and concerning topics which Respondents will not define or enumerate.

101. Respondents' demand for interviews affords neither Petitioner nor the proposed interviewees any opportunity for precompliance review or an opportunity for hearing.

102. The conduct of Respondents' investigation constitutes an unlawful warrantless administrative search which exceeds the scope of Respondents' statutory and regulatory authority and which violates the Missouri Constitution's prohibition on unreasonable searches.

103. The conduct of Respondents' investigation, including Respondents' interpretation of its investigatory powers, are not subject to administrative review or hearing.

104. This Court has the power to declare the rights, status, and other relations of Petitioner, whether or not further relief is or could be claimed. § 536.050.1, RSMo.

105. This Court further has the power to grant such further relief as it deems necessary or proper. Mo. R. Civ. P. 87.

COUNT III:
Respondents' Determination That Their Investigation Will Remain Open Unless Petitioner Produces Third Parties for Interviews Constitutes a Final Decision That Is Arbitrary, Capricious, Unreasonable, and Outside Respondents' Agency Authority

106. Petitioner repeats and realleges all paragraphs set forth above and below as though fully incorporated herein.

107. Respondents have determined that their investigation will remain open unless and until Petitioner produces individuals for interviews over whom Petitioner has no control.

108. Respondents have determined that Petitioner's license renewal cannot be decided upon until the investigation is completed.

109. Respondents have made clear that these constitute final decisions.

110. These decisions determine the legal rights, duties and privileges of Petitioner, as they result in Respondents' refusal to act on Petitioner's license renewal application and thus prevent Petitioner from obtaining a license renewal to which it is entitled under the Licensing Law.

111. Respondents' decisions are arbitrary, capricious, unlawful, and outside the scope of Respondents' agency authority.

112. Respondents' purported rationale for these decisions are not based on substantial evidence and are themselves arbitrary, capricious, and unreasonable.

113. Neither Respondents nor any other authority provide Petitioner with any avenue for administrative review or hearing to contest Respondents' decision.

114. This Court has the power to judicially review Respondents' decisions, as Petitioner has no other avenues for relief and Respondents' decisions are not subject to administrative review. § 536.150.1, RSMo.

115. This Court has the power to declare the rights, status, and other relations of Petitioner, whether or not further relief is or could be claimed. § 536.050.1, RSMo.

116. This Court further has the power to grant such further relief as it deems necessary or proper. Mo. R. Civ. P. 87.

COUNT IV:
Respondents' Conduct Violates the Substantive Due Process Rights of Petitioner and Its Patients

117. Petitioner repeats and realleges all paragraphs set forth above and below as though fully incorporated herein.

118. Respondents' conduct as complained of herein produces no benefits to the women of Missouri.

119. Respondents' conduct as complained of herein has the intent and effect of placing substantial burdens on Missouri women's ability to access abortions, by closing the last generally available abortion provider in the state.

120. Respondents' conduct thus violates rights guaranteed to women by Article I, Section 2 and Article I, Section 10 of the Missouri Constitution.

COUNT V:
Respondents' Actions Violate Equal Protection

121. Petitioner repeats and realleges all paragraphs set forth above and below as though fully incorporated herein.

122. Respondents' conduct as complained of herein violates the rights of Petitioner and its patients under the equal protection clause of Article I, Section 2 of the Missouri Constitution by treating them differently than providers and patients of all other medical services in the state without any legitimate basis.

COUNT VI:
Respondents' Actions Violate Procedural Due Process

123. Petitioner repeats and realleges all paragraphs set forth above and below as though fully incorporated herein.

124. Respondents' actions and decisions as complained of herein have impaired Petitioner's right to have its license renewal application acted upon according to law.

125. Respondents' actions and decisions as complained of herein have done so without providing Petitioner with fair notice of the reasons for such actions nor a fair opportunity to respond to or contest such reasons.

126. Respondents' conduct during and decisions concerning their investigation similarly has impaired Petitioner's rights without providing petitioner with any avenue for review, relief, or to contest the scope, basis, or methods of said investigation.

127. Respondents have conditioned the renewal of Petitioner's license on conduct Petitioner cannot take, trapping Petitioner's license in limbo and leaving Petitioner with no avenues for relief.

DEMAND FOR RELIEF

WHEREFORE, Petitioner asks this Court:

A) To enter judgment declaring unlawful the acts, omissions, administrative actions, and interpretations of Respondents complained of above.

B) To issue injunctive relief:

(i) Enjoining Respondents from conditioning Petitioner's license renewal on Petitioner's production of third parties for interviews;

(ii) Enjoining Respondents from violating the requirements of the Licensing Law, §§ 197.200–.240, RSMo., which mandates that Respondents renew Petitioner's license as Respondents have found no substantial noncompliance within the meaning of the Licensing Law;

(iii) Enjoining Respondents from refusing to act on Petitioner's licensing renewal application or otherwise allowing Petitioner's license to expire or become non-effective in violation of the Licensing Law.

C) To award Petitioner its fees and expenses.

D) To grant such other and further relief as this Court should find just, proper, and equitable.

Dated: May 28, 2019

Respectfully submitted,

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Attorneys for Reproductive Health Services of Planned Parenthood of the St. Louis Region

** Pro hac vice motion forthcoming*

VERIFICATION

I, Cathy Williams, after first being duly sworn upon my oath, state that I have read the foregoing Petition and that I am familiar with the information it contains therein, and that the matters set forth therein are true and accurate to the best of my knowledge, information, and belief.

Cathy Williams

Cathy Williams, SPHR, SHRM-SCP
Interim CEO & President
Reproductive Health Services of Planned
Parenthood of the St. Louis Region

Subscribed and sworn to before me, a Notary Public in and for said State, this 28th day of May, 2019.

Kristina Winkelman

Notary Public

My commission expires: 12/5/2022

KRISTINA WINKELMAN
MY COMMISSION EXPIRES
12-5-2022
NOTARY SEAL
#14119325
FRANKLIN COUNTY
NOTARY PUBLIC, STATE OF MISSOURI