

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

JACKSON WOMEN’S HEALTH)
ORGANIZATION, on behalf of itself and its)
patients,)

and)

WILLIE PARKER, M.D., M.P.H., M.Sc., on)
behalf of himself and his patients,)

Plaintiffs,)

v.)

Case No. 3:12-CV-00436-DPJ-FKB

MARY CURRIER, M.D., M.P.H. in her)
official capacity as State Health Officer of)
the Mississippi Department of Health,)

and)

ROBERT SHULER SMITH, in his official)
capacity as District Attorney for Hinds)
County, Mississippi,)

and)

SHERRI M. FLOWERS-BILLUPS, in her)
official capacity as Hinds County Attorney,)

and)

BARBARA A. BLUNTSON, in her official)
capacity as Acting Chief City Prosecutor for)
the City of Jackson, Mississippi,)

Defendants.)

SECOND AMENDED COMPLAINT

Plaintiffs Jackson Women’s Health Organization (the “Clinic”) and Willie Parker, M.D.,
M.P.H., M.Sc. (collectively “Plaintiffs”), by and through their undersigned attorneys, bring this

Complaint against the above-named Defendants, their employees, agents, and successors in office (“Defendants”) and in support thereof state the following:

I. Preliminary Statement

1. This is a challenge, pursuant to the Constitution of the United States of America and 42 U.S.C. § 1983, to Mississippi House Bill 1390 (“the Act”),¹ which imposes extreme, burdensome, and medically unjustified requirements on the provision of abortion care in the State of Mississippi. These requirements will obstruct women’s access to abortion in Mississippi and could even function as an effective ban on the provision of abortion. The Act was intended to have precisely this effect: it was clearly enacted with the unconstitutional purpose “to cause fewer abortions.” Ex. B, M.J. Lee, *Bill Dooms Only Miss. Abortion Clinic*, Politico, April 5, 2012.

2. These new requirements are not medically justified and will cause serious harm to Plaintiffs and their patients in at least two ways.

3. First, the requirement that physicians associated with an abortion facility must have “admitting privileges and staff privileges to replace local hospital on-staff physicians” (“the Admitting Privileges Requirement”) effectively gives local hospitals veto power over Plaintiffs’ ability to provide abortion care to women in Mississippi. Plaintiffs cannot control whether any local hospital will grant the applications for privileges submitted on behalf of the Clinic’s doctors, and accordingly cannot control whether they are in compliance with the Admitting Privileges Requirement. Non-compliance with the Admitting Privileges Requirement is grounds for revocation of the Clinic’s license. Accordingly, the Admitting Privileges Requirement makes Plaintiffs vulnerable to closure at the discretion of local hospitals.

¹ A copy of the Act is attached hereto as Exhibit A.

4. The Clinic is the only licensed abortion provider in Mississippi. It provides the vast majority of abortions obtained by women in the State. If the Clinic is forced to close, women seeking abortions will have nowhere to turn in Mississippi.

5. Second, the Admitting Privileges Requirement and the requirement that any physician associated with an abortion facility must be a board certified or eligible obstetrician/gynecologist (“the OB/GYN Requirement”) will—in combination and individually—dramatically constrict the pool of qualified physicians from which the Clinic can draw to meet the needs of the women who seek abortion care at the Clinic, without any legitimate medical justification.

6. Accordingly, the Act endangers the health of women in Mississippi and violates their constitutional rights.

7. Plaintiffs seek injunctive and declaratory relief to prevent irreparable harms to themselves and their patients. Plaintiffs have no adequate remedy at law.

II. Jurisdiction and Venue

8. This court has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

9. Plaintiffs’ action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this district.

III. Parties

A. Plaintiffs

11. The Clinic is a health care facility in Jackson, Mississippi that has been providing abortion care and other reproductive health care to women since 1996. It has been the sole

abortion provider in the State of Mississippi for almost ten years. The Clinic has been continuously licensed by the Department of Health since licensure was required. The Clinic sues on its own behalf and on behalf of its patients.

12. Plaintiff Willie Parker, M.D., M.P.H., M.Sc. is a board-certified obstetrician-gynecologist licensed to practice medicine in Mississippi, Alabama, the District of Columbia, Maryland, Pennsylvania, and Virginia. Dr. Parker graduated with an M.D. from the University of Iowa College of Medicine and completed his residency in obstetrics and gynecology at The University of Cincinnati College of Medicine. He also holds a Master's of Public Health from the Harvard School of Public Health. Dr. Parker provided general ob-gyn care to his patients for nearly 20 years, including delivering babies. He has been providing abortion care since 2002. Dr. Parker sues on his own behalf and on behalf of his patients.

B. Defendants

13. Defendant Mary Currier, M.D., M.P.H., is the State Health Officer of the Mississippi Department of Health. Among other things, she is responsible for supervising and directing all activities of the Department of Health, pursuant to Miss. Code Ann. §§ 41-3-5.1, 41-3-15(1)(c). She is sued in her official capacity.

14. Defendant Robert Shuler Smith is the District Attorney for Hinds County, in which the Clinic is located. Defendant Smith has enforcement authority for any intentional violation of the licensing scheme for abortion facilities, pursuant to Miss. Code Ann. § 41-75-26(2). He is sued in his official capacity.

15. Defendant Sherri M. Flowers-Billups is the Hinds County Attorney. Among other things, she is responsible for prosecuting misdemeanors, pursuant to Miss. Code Ann. § 19-23-11(4). She is sued in her official capacity.

16. Defendant Barbara A. Bluntson is the Acting Chief City Prosecutor for the City of Jackson, Mississippi. Defendant Bluntson has the authority to prosecute misdemeanor offenses committed in the City of Jackson, pursuant to Miss. Code Ann. § 21-13-19. She is sued in her official capacity.

IV. Factual Allegations

A. Mississippi House Bill 1390

17. On April 16, 2012, Governor Phil Bryant signed Mississippi House Bill 1390 into law. The Act's effective date was July 1, 2012.

18. The Act amends Miss. Code Ann. § 41-75-1, which defines certain terms for purposes of Mississippi's statutory scheme regulating ambulatory surgical facilities. Two amendments are at issue in this litigation.

19. First, the Act amends the definition of "abortion facility" to state that all physicians "associated with an abortion facility must be board certified or eligible in obstetrics and gynecology." H.B. 1390 § 1, *to be codified at* Miss. Code Ann. § 41-75-1(f).

20. Second, the Act amends the definition of "abortion facility" to state that all physicians "associated with the abortion facility must have admitting privileges at a local hospital and staff privileges to replace local hospital on-staff physicians." *Id.*

21. The Act makes no provision for a waiver or exception to either the Admitting Privileges Requirement or the OB/GYN Requirement.

22. Numerous elected officials have made statements indicating that the purpose of the Act is to end abortion in Mississippi.

23. For example, in an official statement issued shortly after the Mississippi Legislature passed the Act, Lieutenant Governor Tate Reeves declared that HB 1390 "should effectively

close the only abortion clinic in Mississippi.” See Ex. D, Joe Sutton and Tom Watkins, *Mississippi Legislature Tightens Restrictions on Abortion Providers*, CNN Politics, Apr. 4 2012.

24. Similarly, Governor Bryant vowed to sign the bill, saying, “I will continue to work to make Mississippi abortion-free.” See Ex. E, Phil West, *Mississippi Senate Passes Abortion Regulation Bill*, The Commercial Appeal, April 4, 2012.

25. As of the filing of this Amended Complaint, Lt. Gov. Reeves has the following statement posted on his website: “[T]he Legislature took steps to end abortion in Mississippi by requiring doctors performing abortion to have admitting privileges at a local hospital. This measure not only protects the health of the mother but should close the only abortion clinic in Mississippi.” Ex. F, Statement from Lt. Gov. Reeves’ Website, <http://ltgovreeves.ms.gov/Pages/About.aspx> (last visited Aug. 8, 2012).

26. Likewise, State Senator Merle Flowers reportedly stated, “There’s only one abortion clinic in Mississippi. I hope this measure shuts that down.” See Ex. E.

27. State Representative Bubba Carpenter was videotaped saying, “We have literally stopped abortion in the state of Mississippi. . . . Three blocks from the Capitol sits the only abortion clinic in the state of Mississippi. [The Act] says, if you would perform an abortion in the state of Mississippi, you must be a certified OB/GYN and you must have admitting privileges to a hospital. Anybody here in the medical field knows how hard it is to get admitting privileges to a hospital.” See Alcorn County G.O.P., Rep. Bubba Carpenter: *We Have Literally Stopped Abortion in the State of Mississippi*, YouTube, <http://www.youtube.com/watch?v=N3LOm2iXa4U&noredirect=1> (last visited Aug. 8, 2012).

B. The OB/GYN Requirement

28. The Act is not the first attempt by the State of Mississippi to require physicians who provide abortions to have specialized, and medically unnecessary, training in obstetrics and gynecology (“OB/GYN”).

29. On October 9, 1996, the United States District Court for the Southern District of Mississippi preliminarily enjoined then-new regulations that required any physician providing abortions to have completed a residency in OB/GYN. *Pro-Choice Mississippi v. Thompson*, CV No. 3:96CV596BN (Oct. 9, 1996).

30. The Court held that “the state cannot meet its burden . . . [to show] that there is a reasonable medical necessity directed to preserve the woman’s health in requiring ob-gyn residency training for all physicians performing abortions.” *Id.*, Tr. of Hr’g and Bench Op. at 18 ln.14-19 (Sept. 28, 1996).

31. Board certification or eligibility in OB/GYN is not necessary for the safe provision of abortion care.

32. Medical evidence has shown that physicians with specialties other than OB/GYN can safely provide abortion care.

33. The Clinic has hired physicians with specialties other than OB/GYN to provide abortion care in the past, and would do so again. Hiring appropriately trained and qualified physicians, regardless of their specialty, is an important way to provide women with access to abortion care.

34. On an ongoing basis, the Clinic attempts to hire qualified physicians to serve the women in Mississippi. For example, the Clinic seeks to hire physicians who will commit to provide abortion care and other reproductive health care on a regular basis, to expand the

Clinic's medical staff or to replace departing physicians. The Clinic also seeks to hire physicians who will commit to being available on an as-needed basis, in case one of the regular physicians is ill or has transportation problems or is otherwise unable to come to the Clinic as scheduled.

35. The OB/GYN Requirement will prevent the Clinic from hiring qualified physicians with specialties other than obstetrics and gynecology to provide abortion care to patients. This would restrict access to care with no showing of "a reasonable medical necessity directed to preserve the woman's health." *Id.*

C. The Admitting Privileges Requirement

1. The Clinic's Current Arrangements With Respect to Local Hospitals

36. Because the Clinic provides abortion care up to 16 weeks of pregnancy, as calculated from the first day of a woman's last menstrual period ("lmp"), it is required to be licensed as a "Level I abortion facility." *See* Miss. Admin. Code 15-16-1:44.2. Level I abortion facilities must comply with the regulations applicable to abortion facilities and also with the regulations applicable to ambulatory surgical facilities. *Id.*

37. The Department frequently conducts rigorous inspections of the Clinic to assess its compliance with all applicable regulations.

38. The Department's two inspections of the Clinic prior to the filing of this litigation were conducted on June 18, 2012 and on April 12, 2012. Both inspections found the Clinic to be in compliance with applicable regulations.

39. The Department inspected the Clinic on July 16, 2012. It found the Clinic to be in violation of the Admitting Privileges Requirement.

40. In compliance with Miss. Admin. Code 15-16-1:44.12, the Clinic has a written transfer agreement with a local hospital.

41. In compliance with Miss. Admin. Code 15-16-1:42.9.7, one of the physicians on the Clinic's medical staff has admitting privileges at a local hospital.

42. The Clinic has not needed to use either of these arrangements.

43. The Clinic's current arrangements are more than adequate to ensure patient safety.

2. Safety of Abortion Care Provided to Patients at the Clinic

44. Abortion care before 16 weeks Imp is extremely safe and significantly safer than carrying a pregnancy to term.

45. Complications of any kind following an abortion are rare. The overall complication rate for abortion care nationwide is less than 1%. The nationwide rate for complications requiring hospitalization following an abortion is less than .3% (less than 3 out of 1000).

46. In the vast majority of cases, the types of complications that may occur following an abortion can be safely and appropriately managed in an outpatient setting.

47. Admitting privileges are not necessary to provide appropriate care in the unlikely event of a serious complication following an abortion.

48. In the unlikely event that a patient experienced a serious complication that required hospitalization while at the Clinic, the Clinic would transfer her by ambulance to the nearest hospital.

49. The customary practice is for a facility that accepts a patient in emergency situations to remain in contact with the physician who made the decision to transfer the patient, whether or not that physician has admitting privileges at the facility.

50. The Clinic has an impeccable safety record.

51. Since the current owner took over in 2010, the Clinic has had no major incidents, nor has a single patient required admittance to a hospital after obtaining an abortion at the Clinic.

52. Many of the Clinic's patients travel substantial distances to receive abortion care at the Clinic.

53. In the unlikely event that a patient experienced a serious complication after leaving the Clinic, the appropriate course of action would be for her to go to the nearest emergency room. For many of the Clinic's patients, the nearest emergency room would not be in Jackson, where the Clinic is located, and might not even be in the State.

54. Thus, requiring all of the physicians "associated with" the Clinic to have admitting privileges at a local hospital would not increase patient safety, because the Clinic is already more than adequately prepared to respond to a serious complication or other health emergency.

D. The Clinic Doctors' Applications for Admitting Privileges

55. Shortly after the Act was signed into law, the Clinic began the process of applying for privileges on behalf of John Doe, M.D.,² who was at that time the only physician providing abortion to women at the Clinic on a regular basis and did not have privileges at a local hospital.

56. As soon as Dr. Parker joined the Clinic's medical staff on June 18, 2012, the Clinic began to seek privileges for him as well.

57. The burdens associated with the process of applying for admitting privileges in compliance with the Act required the Clinic to hire additional staff and to gather a substantial amount of information.

58. Clinic staff members have worked diligently to assist Drs. Doe and Parker in attempting to obtain privileges in compliance with the Act, without success.

59. For example, one hospital has not even sent an application to the Clinic, despite the Clinic's repeated efforts since early May to obtain one. The Clinic began attempting to contact

University Medical Center in early May, has made multiple phone calls and, pursuant to instructions from hospital staff, submitted a written request for an application, but has not been able to obtain an application for privileges at that hospital.

60. Similarly, although another hospital received Dr. Doe's application for privileges on or about May 30, 2012, Clinic staff have been unable to learn when the application would be considered. At the time Dr. Doe's application was submitted, the Clinic's staff understood that it would be considered at a meeting on June 19, 2012. However, on or about June 19, 2012, when Clinic staff contacted the hospital to ask for an update, the hospital's staff advised that Dr. Doe's application had not been considered at the meeting and that it was unclear when it would be considered.

61. Despite Plaintiffs' diligent efforts, no local hospital has granted privileges to Dr. Doe or Dr. Parker as of the date of this filing.

62. Two hospitals, Crossgates River Oaks Hospital and Woman's Hospital, have denied the applications for privileges submitted by Drs. Doe and Parker. Each of the hospitals characterized its denial of the doctors' applications as "administrative" in nature.

63. Crossgates River Oaks Hospital and Woman's Hospital both gave the following two reasons for denying privileges to Drs. Doe and Parker: "The nature of your proposed medical practice is inconsistent with this Hospital's policies and practices as concerns abortion and, in particular, elective abortions; ... [and] The nature of your proposed medical practice would lead to both an internal and external disruption of the Hospital's function and business within this community."

² Plaintiffs are using a pseudonym to refer to this physician out of concern for his safety and privacy.

64. Crossgates River Oaks Hospital also gave the following reason for denying privileges to Drs. Doe and Parker: “The nature of your proposed medical practice is inconsistent with this Hospital’s practices as concerns obstetric/ gynecological services. This Hospital has no obstetrical services and very limited gynecological services, with no OB/GYN’s on its Active Staff[.]”

65. Woman’s Hospital also gave the following reason for denying privileges to Drs. Doe and Parker: “In light of this Hospital’s Rules and Regulations concerning therapeutic abortions, namely that such procedures may only be performed by physicians with major surgical privileges, your application does not comport with a functional practice at this Hospital[.]”

E. The Department’s Enforcement of the Act

66. While its efforts to obtain privileges were underway, the Clinic wrote to the Department on May 15, 2012, asking it to suspend enforcement of the Admitting Privileges Requirement for either one year or six months, pursuant to Miss. Code Ann. § 41-75-16, so that the Clinic could complete the process of applying for privileges for its doctors.

67. When it had not received a response to its letter within a week, the Clinic followed up with a phone call to Department staff.

68. By letter dated May 29, 2012, the Department declined to suspend enforcement of the Admitting Privileges Requirement for the period of time requested by the Clinic. However, the Department indicated that it would be following its normal rule-making process and stated in the letter that it would not be considering amendments to the rules affected by the Act until its meeting on July 11, 2012. Further, the Department stated that it would review the Clinic’s compliance with the Act at the Clinic’s “next annual survey,” which the Clinic expected to occur in August or September 2012. *See* Ex. G, Letter from Defendant Dr. Mary Currier to Diane Derzis (May 29, 2012).

69. From the May 29 letter and its conversations with Department staff, the Clinic understood that the Department intended to promulgate amended rules according to Miss. Code Ann. § 25-43-3.113(1), which provides for a 30-day period between filing and effective date. Because the Department's letter stated it would be considering amendments to the rules affected by the Act at its July 11, 2012 meeting, the Clinic understood that the new rules enforcing the Admitting Privileges Requirement would not be effective until August 10, 2012, at the earliest.

70. On information and belief, the Department has never required the Clinic to comply with newly-promulgated regulations without the 30-day period between filing and effective date described in Miss. Code Ann. § 25-43-3.113(1).

71. For all of the reasons stated above, the Clinic reasonably believed that the Department would not be requiring compliance with the Admitting Privileges Requirement on July 1, 2012.

72. On June 20, 2012, State Representative Sam C. Mims wrote to Defendant Currier to ask her to enforce the new requirements imposed by the Act by the first business day after the law's effective date. His letter stated, "I would expect that any abortion facility in Mississippi that is staffed by a physician or physicians without hospital admitting and staff privileges . . . must immediately cease performing abortions until such time as the requirements of House Bill 1390 have been met." Ex. C., Letter from Representative Sam C. Mims to Dr. Mary Currier, State Health Officer (June 20, 2012)

73. On June 22, 2012, the Department advised the Clinic by telephone that it would be enforcing the new requirements imposed by the Act immediately upon its effective date of July 1, 2012.

74. On June 25, 2012, the Clinic received a letter from the Department stating that, in order to continue operating as an abortion provider, the Clinic was required to send proof of

compliance with the Act to the Department on or before July 1, 2012. *See* Ex. H, Letter from Vickey Berryman to Diane Derzis (June 25, 2012).

75. Although the Clinic applied for a renewal license and paid the application fee in May 2012, it was not until June 28, 2012, after this litigation was filed, that the Department renewed the Clinic's license for the period beginning July 1, 2012.

76. On July 11, 2012, the Department of Health adopted rules implementing the Act.

77. On July 16, 2012, the Department inspected the Clinic for compliance with the rules adopted on July 11, 2012.

78. The Department made no finding that would have waived the delayed effective date for amended rules pursuant to Mississippi's Administrative Procedure Act. *See* Miss. Code Ann. § 25-43-3.113(2).

79. Immediate implementation of the Act is not justified by any imminent peril. Indeed, the Department's initial decision to follow the normal rulemaking procedure indicates that it recognized no immediate peril exists.

80. The Act does not serve any legitimate state interest.

V. Irreparable Harm

81. But for the Act, the Clinic would be able to continue to recruit physicians to provide abortion care to women in Mississippi on the basis of the physicians' qualifications and abilities.

82. Recruiting and hiring qualified and capable physicians to provide abortion care to women in Mississippi is a time-consuming and difficult process. For example, it took well over a year for the Clinic to find, recruit, and hire Dr. Parker, and it took several months for Dr. Parker to obtain his Mississippi medical license.

83. The OB/GYN Requirement prevents the Clinic from hiring qualified physicians to provide abortion care.

84. The Admitting Privileges Requirement prevents the Clinic from hiring qualified physicians to provide abortion care.

85. If Plaintiffs are forced to stop providing abortion care to women in Mississippi, women's health will suffer.

86. Although abortion is a very safe procedure, its risks increase with gestational age; therefore, any delay in a woman's ability to obtain abortion would expose her to unnecessary, increased health risks. Some of the Clinic's patients may be able to travel to other states, but this can cause significant delays. Women without the means to travel will not have this option, and accordingly may not be able to obtain a safe abortion at all.

87. In addition, the Act will irreparably harm Plaintiffs by depriving them of protected property and/or liberty interests without due process of law.

88. As a whole, the Act will irreparably harm women in the State of Mississippi because it interferes with women seeking to exercise their constitutional right to a pre-viability abortion.

VI. Claims for Relief

COUNT ONE

(Substantive Due Process – Patients' Right to Privacy)

89. The allegations of ¶¶ 1-88 are incorporated by reference as though fully stated herein.

90. The Admitting Privileges Requirement violates the liberty interests of Plaintiffs' patients, as guaranteed by the Fourteenth Amendment to the United States Constitution, because it imposes a substantial obstacle in the path of a woman seeking a pre-viability abortion.

91. The OB/GYN Requirement violates the liberty interests of Plaintiffs' patients, as guaranteed by the Fourteenth Amendment to the United States Constitution, because it imposes a substantial obstacle in the path of a woman seeking a pre-viability abortion.

92. The Act violates the liberty interests of Plaintiffs' patients, as guaranteed by the Fourteenth Amendment to the United States Constitution, because its purpose is to prevent women from obtaining pre-viability abortions.

COUNT TWO
(Substantive Due Process – Unlawful Delegation)

93. The allegations of ¶¶ 1-98 are incorporated by reference as though fully stated herein.

94. The Admitting Privileges Requirement violates rights secured to Plaintiffs and their patients by the Fourteenth Amendment to the United States Constitution by impermissibly delegating the State's licensing authority to third party hospitals.

VII. Prayer for Relief

WHEREAS, Plaintiffs respectfully request that this Court:

A. issue a temporary restraining order and/or injunctive relief barring Defendants, their employees, agents, and successors in office from enforcing the Act;

B. declare that the OB/GYN Requirement and the Admitting Privileges Requirement are unconstitutional, void, and of no effect;

C. issue permanent injunctive relief, without bond, restraining Defendants, their employees, agents, and successors in office, from enforcing the Act; and

D. grant such other relief, including attorney's fees and costs under 42 U.S.C. § 1988, as this Court deems just and proper.

Respectfully submitted, this 2d day of July, 2013,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the clerk of the court by using the Court's CM/ECF system, which will send a notice of electronic filing to counsel for defendants who have appeared in this case:

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July 2, 2013

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Exhibit A

MISSISSIPPI LEGISLATURE

REGULAR SESSION 2012

By: Representative Mims

To: Public Health and Human Services

HOUSE BILL NO. 1390

1 AN ACT TO AMEND SECTION 41-75-1, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE THAT ALL PHYSICIANS WHO PERFORM ABORTIONS IN ABORTION
3 FACILITIES MUST HAVE ADMITTING PRIVILEGES AT A LOCAL HOSPITAL AND
4 MUST BE BOARD CERTIFIED IN OBSTETRICS AND GYNECOLOGY; AND FOR
5 RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** Section 41-75-1, Mississippi Code of 1972, is
8 amended as follows:

9 41-75-1. For the purpose of this chapter:

10 (a) "Ambulatory surgical facility" means a publicly or
11 privately owned institution that is primarily organized,
12 constructed, renovated or otherwise established for the purpose of
13 providing elective surgical treatment of "outpatients" whose
14 recovery, under normal and routine circumstances, will not require
15 "inpatient" care. The facility defined in this paragraph does not
16 include the offices of private physicians or dentists, whether
17 practicing individually or in groups, but does include
18 organizations or facilities primarily engaged in that outpatient
19 surgery, whether using the name "ambulatory surgical facility" or
20 a similar or different name. That organization or facility, if in
21 any manner considered to be operated or owned by a hospital or a
22 hospital holding, leasing or management company, either for profit
23 or not for profit, is required to comply with all licensing agency
24 ambulatory surgical licensure standards governing a "hospital
25 affiliated" facility as adopted under Section 41-9-1 et seq.,
26 provided that the organization or facility does not intend to seek
27 federal certification as an ambulatory surgical facility as
28 provided for at 42 CFR, Parts 405 and 416. If the organization or



29 facility is to be operated or owned by a hospital or a hospital
30 holding, leasing or management company and intends to seek federal
31 certification as an ambulatory facility, then the facility is
32 considered to be "freestanding" and must comply with all licensing
33 agency ambulatory surgical licensure standards governing a
34 "freestanding" facility.

35 If the organization or facility is to be owned or operated by
36 an entity or person other than a hospital or hospital holding,
37 leasing or management company, then the organization or facility
38 must comply with all licensing agency ambulatory surgical facility
39 standards governing a "freestanding" facility.

40 (b) "Hospital affiliated" ambulatory surgical facility
41 means a separate and distinct organized unit of a hospital or a
42 building owned, leased, rented or utilized by a hospital and
43 located in the same county in which the hospital is located, for
44 the primary purpose of performing ambulatory surgery procedures.
45 The facility is not required to be separately licensed under this
46 chapter and may operate under the hospital's license in compliance
47 with all applicable requirements of Section 41-9-1 et seq.

48 (c) "Freestanding" ambulatory surgical facility means a
49 separate and distinct facility or a separate and distinct
50 organized unit of a hospital owned, leased, rented or utilized by
51 a hospital or other persons for the primary purpose of performing
52 ambulatory surgery procedures. The facility must be separately
53 licensed as defined in this section and must comply with all
54 licensing standards promulgated by the licensing agency under this
55 chapter regarding a "freestanding" ambulatory surgical facility.
56 Further, the facility must be a separate, identifiable entity and
57 must be physically, administratively and financially independent
58 and distinct from other operations of any other health facility,
59 and shall maintain a separate organized medical and administrative
60 staff. Furthermore, once licensed as a "freestanding" ambulatory
61 surgical facility, the facility shall not become a component of



62 any other health facility without securing a certificate of need
63 to do that.

64 (d) "Ambulatory surgery" means surgical procedures that
65 are more complex than office procedures performed under local
66 anesthesia, but less complex than major procedures requiring
67 prolonged postoperative monitoring and hospital care to ensure
68 safe recovery and desirable results. General anesthesia is used
69 in most cases. The patient must arrive at the facility and expect
70 to be discharged on the same day. Ambulatory surgery shall only
71 be performed by physicians or dentists licensed to practice in the
72 State of Mississippi.

73 (e) "Abortion" means the use or prescription of any
74 instrument, medicine, drug or any other substances or device to
75 terminate the pregnancy of a woman known to be pregnant with an
76 intention other than to increase the probability of a live birth,
77 to preserve the life or health of the child after live birth or to
78 remove a dead fetus. Abortion procedures after the first
79 trimester shall only be performed at a Level I abortion facility
80 or an ambulatory surgical facility or hospital licensed to perform
81 that service.

82 (f) "Abortion facility" means a facility operating
83 substantially for the purpose of performing abortions and is a
84 separate identifiable legal entity from any other health care
85 facility. Abortions shall only be performed by physicians
86 licensed to practice in the State of Mississippi. All physicians
87 associated with the abortion facility must have admitting
88 privileges at a local hospital and staff privileges to replace
89 local hospital on-staff physicians. All physicians associated
90 with an abortion facility must be board certified or eligible in
91 obstetrics and gynecology, and a staff member trained in CPR shall
92 always be present at the abortion facility when it is open. The
93 term "abortion facility" includes physicians' offices that are
94 used substantially for the purpose of performing abortions. An



95 abortion facility operates substantially for the purpose of
96 performing abortions if any of the following conditions are met:

97 (i) The abortion facility is a provider for
98 performing ten (10) or more abortion procedures per calendar month
99 during any month of a calendar year, or one hundred (100) or more
100 in a calendar year.

101 (ii) The abortion facility, if operating less than
102 twenty (20) days per calendar month, is a provider for performing
103 ten (10) or more abortion procedures, or performing a number of
104 abortion procedures that would be equivalent to ten (10)
105 procedures per month, if the facility were operating twenty (20)
106 or more days per calendar month, in any month of a calendar year.

107 (iii) The abortion facility holds itself out to
108 the public as an abortion provider by advertising by any public
109 means, such as newspaper, telephone directory, magazine or
110 electronic media, that it performs abortions.

111 (iv) The facility applies to the licensing agency
112 for licensure as an abortion facility.

113 (g) "Licensing agency" means the State Department of
114 Health.

115 (h) "Operating" an abortion facility means that the
116 facility is open for any period of time during a day and has on
117 site at the facility or on call a physician licensed to practice
118 in the State of Mississippi available to provide abortions.

119 An abortion facility may apply to be licensed as a Level I
120 facility or a Level II facility by the licensing agency. Level II
121 abortion facilities shall be required to meet minimum standards
122 for abortion facilities as established by the licensing agency.
123 Level I abortion facilities shall be required to meet minimum
124 standards for abortion facilities and minimum standards for
125 ambulatory surgical facilities as established by the licensing
126 agency.



127 Any abortion facility that begins operation after June 30,
128 1996, shall not be located within fifteen hundred (1500) feet from
129 the property on which any church, school or kindergarten is
130 located. An abortion facility shall not be in violation of this
131 paragraph if it is in compliance with this paragraph on the date
132 it begins operation and the property on which a church, school or
133 kindergarten is located is later within fifteen hundred (1500)
134 feet from the facility.

135 **SECTION 2.** This act shall take effect and be in force from
136 and after July 1, 2012.



Exhibit B

POLITICO

Bill dooms only Miss. abortion clinic

By: [MJ Lee](#)

April 5, 2012 01:39 PM EDT

The owner of Mississippi's only abortion clinic on Thursday accused Republicans of "hiding behind words like 'safety' and 'women's health'" in pushing a bill that is expected to become law soon that she says could shut down the facility and leave thousands of women without the option.

Diane Derzis, who owns the Jackson Women's Health Organization in Jackson, Miss., told POLITICO in an interview that she believes the passage of a bill in the state Senate on Wednesday that would require all physicians performing in abortion clinics to have admitting privileges at a local hospital was directly targeted at closing down her clinic.

Mississippi's H.B. 1390 is the latest of a number of recent measures in state legislatures across the country aimed at rolling back access to abortion, including a controversial measure in Virginia that Gov. Bob McDonnell signed into law last month which mandates women to undergo an ultrasound prior to getting an abortion.

"These people hide behind words like 'safety,' 'women's health,' 'concern' and 'compassion,'" Derzis said. "This kind of legislation – they bring [it] up every year. Up to this point we've jumped through the hoop."

But this time, she fears the hurdle may be too great for her clinic to jump over. The facility currently has three physicians who are all board-certified OB-GYN, according to Derzis. However, only one of the doctors has "admitting privileges" to a local hospital, meaning once the bill is signed into law, the other two physicians will have to scramble to try to obtain these rights in order to continue their work.

If the doctors are unable to obtain admitting privileges, Derzis said she will sue the state of Mississippi. "If you mandate something that can't be accomplished, I don't believe that's constitutional," she said.

H.B. 1390 passed the state House earlier in the session and is expected to head to Gov. Phil Bryant's desk as early as next week for his signature. Bryant, who has pledged to "make Mississippi abortion-free," hailed the legislation as "an important step in strengthening abortion regulations and protecting the health and safety of women."

Republican State Rep. Sam Mims, the author of the bill, told POLITICO Thursday that he is "very pleased" that the legislation is poised to become law.

"Mississippi members of the legislature are pro-life, and I believe that life begins at conception, and this legislation will cause fewer abortions in Mississippi," he said. "Our state is historically one of the strongest pro-life states in the nation, and this new legislation will add

to that.”

Asked about the Jackson Women’s Health Organization that could close as a result of the law, Mims said, “The intent of the legislation is to cause fewer abortions. So if the clinic in Jackson had to shut down, then I think it is a positive day for the unborn.”

Derzis said the bill is a representation of “what’s going on with the Republican Party nationally.”

“I think it’s time that people started waking up and start raising hell. This whole thing is a travesty,” she said.

According to Derzis, Jackson Women’s Health Organization performs over 2,000 abortions a year, and the three doctors that work there constantly feel as though they are being targeted.

“They’ve been stalked, threatened — that goes on daily. They’re very brave guys who are willing to ensure that the women of Mississippi have a choice, and we made a commitment many years ago that the clinic will be standing,” she said.

For the 58-year-old, preserving the one last clinic where the women of Mississippi can go to receive abortion services is a mission close to her heart. Derzis said she had an abortion in Birmingham, Ala., when she was just 19 years old.

“There were no clinics at the time — it was a local physician who was doing it before they were legal and it was a horrible experience,” she said. “I was young, stupid and I knew I didn’t want to have children at that point ... But I’m thankful I was able to have a safe abortion.”

She added, “I’ve been in the field since then. I’m blessed to do what I do. It makes a difference in women’s lives.”

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Exhibit C

HOUSE OF REPRESENTATIVES



STATE OF MISSISSIPPI

SAM C. MIKS, V.
District #1
Adams, Amis, Francis
Leshon, Rice and
Wether Counts
600 Lakeside Drive
Jackson, Mississippi 39204

Office (601) 356-5120
Fax (601) 356-5144
Res (601) 961-0051
smc@house.ms.gov

COMMITTEE ASSIGNMENTS:
Public Health and Human Services
Chairman
Agriculture
Conservation and Water Resources
Industry &
Judiciary En Banc
Youth and Family Affairs

June 20, 2012

Dr. Mary Carrier, State Health Officer
Mississippi State Department of Health
570 East Woodrow Wilson Drive
Jackson, MS 39216

RE: ENFORCEMENT OF HOUSE BILL #1390

Dear Dr. Carrier:

House Bill 1390, which requires all physicians who perform abortions in abortion facilities in our state to have admitting and staff privileges at a local hospital and be board certified in obstetrics and gynecology, becomes law on July 1, 2012. I'm sure you are aware of this bill due to the attention focused on it both before and after the 2012 legislative session. As the licensing agency for abortion facilities, the State Department of Health is responsible for enforcing the various provisions of House Bill 1390.

I am certainly aware that the Health Facilities Licensure Division is responsible for regulatory and enforcement duties on many types of facilities and does so with a limited number of employees. However, as the author of HB 1390, this legislation was one of my priorities as chairman of the Public Health and Human Services Committee, and I consider it to be an important accomplishment.

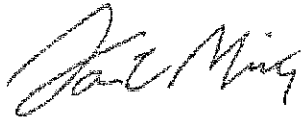
In your important role as State Health Officer, I would respectfully ask that you personally insure that the provisions of HB 1390 are fully enforced by the department on the first business day after the law's effective date of July 1, 2012.

Dr. Mary Currier
June 20, 2012
Page Two

Accordingly, I would expect that any abortion facility in Mississippi that is staffed by a physician or physicians without hospital admitting and staff privileges and not board-certified or eligible in obstetrics and gynecology must immediately cease performing abortions until such time as the requirements of House Bill 1390 have been met.

Dr. Currier, I shall greatly appreciate your consideration and attention in addressing this matter of great importance to me. If you wish to further discuss this request, please contact me.

Sincerely,



Sam C. Mims, V

cc: Governor Phil Bryant
Lt. Governor Tate Reeves
Speaker of the House Philip Gunn
Dr. Luke Lampton, Chairman

Exhibit D

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Mississippi legislature tightens restrictions on abortion providers

April 04, 2012 | By Joe Sutton and Tom Watkins, CNN

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Mississippi lawmakers passed a bill Wednesday that would require any physician performing abortions in the state to be a board-certified obstetrician-gynecologist and to have admitting privileges at an area hospital.

The bill "should effectively close the only abortion clinic in Mississippi," said Lt. Gov. Tate Reeves in a statement. "This is a strong bill that will effectively end abortion in Mississippi." If the state's only abortion facility, Jackson Women's Health Organization, closes, Mississippi women seeking abortions would have to leave the state.

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Diane Derzis runs Mississippi's only abortion clinic. "We are not going to let the women of Mississippi down," she said.

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The clinic's owner, Diane Derzis, said in a telephone interview that all her doctors are obstetrician-gynecologists, but only one has admitting privileges at an area hospital. She vowed to fight to remain open.

"We are going to do everything we can to remain there ... we are not going to let the women of Mississippi down," said Derzis.

Wednesday's vote by the state Senate is the latest in a string of attempts by lawmakers to close her facility, she said. Last year, the state introduced a bill known as the Personhood Amendment, which would have defined life as beginning at the moment of conception. The bill was defeated by voters in November.

The bill is in a period for comment before it will be sent to Republican Gov. Phil Bryant, who has said he wants Mississippi to become "abortion-free."

"This legislation is an important step in strengthening abortion regulations and protecting the health and safety of women," he said after Wednesday's vote, in a statement.

"I am sick about this," said Felicia Brown-Williams, regional director of public policy for Planned Parenthood in Hattiesburg, Mississippi. The bill "puts in place requirements that intentionally try to make it impossible for physicians to provide abortion services. ... Voters have already said that they want the government to stay out of decisions that should be made by a woman, her family and her physician."

She expressed hope the bill might not be sent to the governor. "We are asking Mississippians to reach out to their senators and ask them to reconsider their vote on this," she said.

Still, she acknowledged, the bill is likely to be tabled Thursday and then sent to Bryant.

Exhibit E

Mississippi Senate passes abortion regulation bill

By Phil West

Wednesday, April 4, 2012

JACKSON -- With a Republican governor and a solid GOP majority in the Legislature, conservative lawmakers pushed ahead Wednesday toward their goal of ending legal abortion in Mississippi.

The state has only one clinic that performs abortions, and anti-abortion protestors routinely sit in chairs on the sidewalk outside the clinic in the Fondren community north of downtown Jackson.

Gov. Phil Bryant and Lt. Gov. Tate Reeves issued press releases minutes after senators approved legislation requiring physicians performing abortions to hold admitting privileges at a local hospital.

The bill also requires that abortions be performed by certified obstetrics-gynecologists, and the facility must have someone certified in cardiopulmonary resuscitation on hand during the facility's operating hours.

"This legislation is an important step in strengthening abortion regulations and protecting the health and safety of women," Bryant said.

"As governor, I will continue to work to make Mississippi abortion-free."

Senators approved the House version of that legislation with only six "no" votes, but held it for one day on a parliamentary move before sending it on to Bryant for his signature.

"Today's bill was a fantastic win for the unborn child in that the bill requires the practicing physician to have hospital privileges and be ob-gyn certified," said Sen. Merle Flowers, R-Olive Branch.

"There's only one abortion clinic in Mississippi. I hope this measure shuts that down."

Another bill linked by some with the abortion measure and which the House approved Feb. 2 would make it a crime for teachers, principals, physicians, nurses, ministers -- even photo processing lab workers -- to fail to report sex crimes against minors.

Senators amended the bill, which means it has to go back to the House for consideration of the amended bill. Should the House agree with Senate changes, the

measure goes to the governor.

Should the House decline the Senate amendment, the bill will go to a conference committee to hash out the differences.

A third bill, which was amended and goes back to the House, would require inspections of would-be adoptive parents' homes before children can be placed there for adoption.

"These are strong, common-sense pro-life bills that will not only end abortion in Mississippi but will enhance efforts to protect children from abuse," Reeves said.

"I appreciate the hard work by these senators to shape laws that make Mississippi an even safer place for children."



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Exhibit F



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About Tate



Tate Reeves and his family

Elected in 2011 as Mississippi's Lieutenant Governor, Tate Reeves stands ready to help guide the state toward a brighter future through a focus on improving educational achievement for students, supporting the creation of high-skilled jobs and responsibly managing the taxpayers' money.

Reeves led the 52-member Senate in a successful 2012 legislative session with a focus on keeping government spending under control, reforming education and making Mississippi a better place to raise a family.

Mississippi will have a balanced budget for Fiscal Year 2013 that spends more on education and adequately funds other priorities for the fiscal year that begins in July. One of Reeves' priorities, setting aside 2 percent of state funds for a "rainy day," was adopted to provide a cushion in the current economic climate. The budget increased spending for education programs and controlled spending with a moratorium on state vehicle purchases.

Mississippi increased education spending and enacted consolidation reforms to save money and clearly communicate school performance. In an effort to make school district ratings more transparent, the Legislature changed the grading system to A, B, C, D, and F. The simplified grading terminology will clarify district performance for parents. Also, school district administrative functions were consolidated in both Sunflower and Bolivar counties, saving taxpayers more than \$3 million.

The Legislature approved several measures to make Mississippi an even better place to do business. Reeves believes government should create an environment to encourage the private sector to create more jobs. The Legislature laid the groundwork by allowing businesses to claim

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a tax credit on inventory held in the state, which will encourage companies to invest more capital in creating jobs. The state's workers' compensation law also was reformed to ensure a more fair and impartial relationship between the worker and employer with provisions to better define the employee's choice of physician, implement stronger measures against workplace drug and alcohol use and increased certain benefits.

Several measures to make Mississippi a safe place to raise a family were adopted in the legislative session. Legislators worked with law enforcement and social services experts to enact new laws that would build a foundation for a better Mississippi. The Child Protection Act requires health care professionals, members of the clergy, educators, child care providers and law enforcement to report cases of suspected child abuse. Also, the Legislature took steps to end abortion in Mississippi by requiring doctors performing abortion to have admitting privileges at a local hospital. This measure not only protects the health of the mother but should close the only abortion clinic in Mississippi.

Previously, Reeves was elected as Mississippi's 53rd Treasurer in 2003 and re-elected to a second term four years later with 61 percent of the vote, the highest percentage of any candidate was running for statewide office. He was the first Republican treasurer in the state's history.

Reeves is a Rankin County native and a graduate of Florence High School. He is an honors graduate of Millsaps College and holds a bachelor's degree in economics. Reeves has continued to be an active alumnus and remains involved with his alma mater by serving as a member of the investment policy board for the Millsaps College General Louis Wilson Fund and a member the Advisory Committee of the Else School of Management.

In 2007, Reeves was named as one of 42 national "Rising Star(s) in the Republican Party" by Rising Tide magazine – the publication of the Republican National Committee. Furthermore, in 2008 Reeves was elected by his peers to serve as President of the Mississippi Republican Elected Officials Association. Also in December 2008, he was selected by the Aspen Institute's Rodell Fellowships in Public Leadership as one of their "Top Young Elected Officials" to its Fourth Class of Aspen-Rodell Fellows.

Reeves and his wife Elee Williams Reeves, a Tylertown native, are the proud parents of their two daughters, Sarah Tyler, Elizabeth Magee and Madeline Tate. The Reeves family attends Galloway Memorial United Methodist Church, where Elee and Tate co-chaired a past Capital Campaign. They have been very committed to many civic and charitable organizations in Mississippi – including the Mississippi Society of Disabilities, UMC Children's Cancer Clinic, UMC MIND Center, Mississippi Museum of Art, Mississippi Children's Museum, Girl Scouts of Greater Mississippi, Boys & Girls Club of Mississippi, YMCA, United Way, Stewpot Ministries and the Mississippi Symphony Orchestra.

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Exhibit G



MISSISSIPPI STATE DEPARTMENT OF HEALTH

May 29, 2012

Ms. Diane Derzis
Jackson Women's Health Organization
2903 North State Street
Jackson, MS 39216

Dear Ms. Derzis:

I received your letter, dated May 15, 2012, requesting that the Department of Health suspend enforcement of the privileges requirement, as outlined in House Bill 1390, during the license renewal period, or for a period of one year, while the Clinic makes efforts to comply with the requirement. Jackson Women's Health Organization's current license expires June 30, 2012. Review of the Department's records reflect that this licensed entity reached compliance with the State's licensure regulations as evidenced by findings of the last survey visit on April 12, 2012; therefore, a renewal license may be issued.

House Bill 1390 does not contain a provision that will allow the Department to suspend enforcement of the law. This new law requiring that each physician have "admitting privileges in a local hospital and staff privileges to replace local hospital on-staff physicians" does go into effect July 1, 2012. The Department will propose revisions to the *Minimum Standards of Operation of Abortion Facilities* and the *Minimum Standards of Operation of Ambulatory Surgical Facilities* that reference this law for approval at the upcoming July 11, 2012 Board of Health meeting.

The Department does appreciate your interest in assuring that the clinic physicians are credentialed in a local hospital and that your clinic meets the statutory requirements of the new law. We also understand the difficult task of this undertaking. However, without having a legal option allowing such suspension, the Department will review for Jackson Women's Health's compliance, to include compliance with this new law, as part of Jackson Women's Health next annual survey.

Sincerely,

A handwritten signature in black ink that reads "Mary Currier".

Mary Currier, MD, MPH
State Health Officer

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Exhibit H



MISSISSIPPI STATE DEPARTMENT OF HEALTH

June 25, 2012

VIA HAND DELIVERY

Diane Derzis, Owner
Jackson Women's Health Organization
2903 North State Street
Jackson, MS 39215

**Re: Enforcement of House Bill 1390
Notice of Statutory Requirement**

Dear Ms. Derzis:

During the 2012 Mississippi Legislative Session, the Legislature adopted House Bill 1390 which states in pertinent part, "All physicians associated with the abortion facility must have admitting privileges at a local hospital and staff privileges to replace local hospital on-staff physicians. All physicians associated with an abortion facility must be board certified or eligible in obstetrics and gynecology, and a staff member trained in CPR shall always be present at the abortion facility when it is open." This law becomes effective July 1, 2012.

As the Mississippi State Department of Health (MSDH) is the licensing agency responsible for regulation and enforcement duties, please be advised that compliance with this new law on or by the effective date of July 1, 2012, as well as compliance with all other components of the *Minimum Standards of Operation for Abortion Facilities*, is imperative should you wish to remain licensed and operate an abortion facility in the State of Mississippi. Please provide MSDH documentation reflective of Jackson Women's Health Organization's full compliance with the new law on or before the July 1, 2012 effective date. Such information may be mailed to Mary Gervin, Director of Health Facilities, Non-Long Term Care, Post Office Box 1700, Jackson, MS 39215 or faxed to 601-364-5055.

570 East Woodrow Wilson Post Office Box 1700 Jackson, MS 39215-1700
1-866-HLTHY4U www.HealthyMS.com
Equal Opportunity in Employment/Services

MSDH appreciates your efforts to comply with the new law and your cooperation in providing us evidence of your compliance. Should you have questions, please do not hesitate to contact our office at 601-364-1100.

Sincerely,

A handwritten signature in black ink that reads "Vickey Berryman". The signature is written in a cursive style with a large, looping initial "V".

Vickey Berryman, Director
Office of Licensure

cc: Mary Carrier, MD, MPH
State Health Officer