

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

WOMEN’S HEALTH CARE CENTER, INC. on \*  
behalf of it patients, physicians, and staff; DELTA \* Case No. 3:14-cv-597  
CLINIC OF BATON ROUGE, INC., on behalf of its \*  
patients, physicians, and staff; JOHN DOE 5, M.D., \*  
on behalf of himself and his patients; and JOHN \*  
DOE 6, M.D., on behalf of himself and his patients, \*

Plaintiffs \*

Versus \*

KATHY KLIEBERT, in her official capacity as \*  
Secretary of the Department of Health and Hospitals; \*  
and MARK HENRY DAWSON, in his official \*  
capacity as President of the Louisiana State Board of \*  
Medical Examiners, \*

Defendants \*

\* \* \* \* \*

**DECLARATION OF JOHN DOE 5, M.D.**

I, JOHN DOE 5, M.D., declare under penalty of perjury that the following statements are true and correct:



1. I am a board-certified obstetrician-gynecologist with over 9 years of experience in women's health. I have provided medical services to women at Women's Health Care Center, Inc. ("Women's Clinic") in New Orleans and Delta Clinic of Baton Rouge, Inc. ("Delta Clinic") in Baton Rouge since 2012.

2. I submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction.

3. In 2013, I performed approximately 40% of the abortions at Women's Clinic and all of the abortions at Delta Clinic.

4. The types of complications that may occur following an abortion include infection, bleeding, uterine perforation, and retained tissue. In the overwhelming majority of cases, these complications can be handled in an outpatient setting without the need for hospitalization. If such a complication occurs during a procedure, I am well equipped and prepared, with the assistance of the staff, to handle the complication at Women's Clinic or Delta Clinic.

5. These types of complications when they do occur, however, are often after the patient has returned home. The vast majority of the time, they would still not require hospital care. Both Women's Clinic and Delta Clinic have medical staff who are available 24 hours a day for patients to call if they believe they are experiencing a complication. The medical staff is able to provide immediate advice and consults with me or Dr. Doe 6, as necessary. Any complication for most of these patients can either be handled over the phone or the patient is scheduled for follow up care at the clinic.

6. In the event that a more serious complication arises after the patient has returned home, we advise the patient to go to the nearest emergency room, and I call the hospital to alert

the attending physician of the nature of the complication and continue to check on the patient's status and to consult on any follow-up questions that may arise.

7. In my experience, the risk of complications that require a direct hospital transfer are extremely low. In 2013, I provided approximately 2000 abortions at Delta Clinic and approximately 950 abortions at Women's Clinic. Moreover, I began providing services at Women's Clinic and Delta Clinic in April 2012, and of the many abortions I have provided during that time, I have never had to transfer a patient directly to the hospital.

8. I am confident that if I ever needed to directly transfer a patient from Women's Clinic or Delta Clinic, that the clinics have policies and procedures that would ensure quality of care. In the event of a complication during a procedure, Women's Clinic has a transfer agreement with a trained OB/Gyn physician in New Orleans who has admitting privileges at an area hospital, and Delta Clinic has a transfer agreement with a trained OB/Gyn in Baton Rouge who has admitting privileges at an area hospital. In any event that a hospital transfer is necessary, the clinics transfer the patient to the hospital with a copy of the clinic record, and the physician calls the hospital to alert the attending physician of the nature of the complication and continues to check on the patient's status and consult on any follow-up questions, if they may arise.

9. The risk of complications arising during an abortion at Women's Clinic and Delta Clinic that would require hospitalization is even further reduced because all abortions are currently performed using either a minimal analgesic or no sedation.

10. When I heard that H.B. 388 was going to be enacted, I began reviewing hospital bylaws and speaking with people in the medical community in New Orleans and Baton Rouge in order to determine where I should apply for privileges. For example, many hospitals require that

a physician admit a certain number of patients per year in order to obtain admitting privileges. Since I have not admitted any patients for over two years, and the risk of a complication from an abortion requiring hospitalization is so low, I will not be able to meet these requirements. In my experience, hospitals who are affiliated with the Catholic church or that are affiliated with the State also will not grant admitting privileges to a physician who performs abortions.

11. Therefore, I applied to the hospitals where I believed that I had a realistic chance of obtaining admitting privileges. I was very concerned about applying to hospitals where my application would almost certainly be denied because such a determination has adverse professional consequences, such as being reported to the National Practitioner Data Bank, and the denial must often be disclosed in any future application for privileges at a hospital.

12. I currently do not have admitting privileges at any hospitals within 30 miles of Delta Clinic. Prior to September 1, 2014, I applied for admitting privileges at Woman's Hospital, Baton Rouge General Medical Center, and Lane Regional Medical Center. I have not received a response from any of the hospitals in Baton Rouge where my applications for privileges are pending.

13. However, I have been contacted by Woman's Hospital with concerns that I do not reside close enough to the hospital to meet the hospital's residency requirement. I tried to reassure the hospital that I could get to the hospital quickly and that a hospitalist could provide services in the meantime. I also contacted the physician with whom Delta Clinic has a transfer agreement in Baton Rouge to see if he would agree to sign on as my covering physician. He is very concerned about anti-abortion protestors threatening him or his family and protesting outside of his private practice. Even though Delta Clinic has a transfer agreement with him, he

has requested that the information be kept confidential, so he is too afraid to be my covering physician at the hospital. I do not yet know how the hospital will resolve this issue.

14. I have also received reports that during the past few weeks, in an effort to pressure the hospital into denying my privileges, Woman's Hospital has been targeted by anti-abortion activists have sent threatening letters to the hospital and have been escorted out of the medical staff offices because of disruptive conduct. These incidents increase my concerns that the hospital will decide to deny my privileges, even though they have indicated that my credentials are not an issue.

15. If H.B. 388 were allowed to be enforced at this time, I would be forced to stop providing abortion services at Delta Clinic, and the clinic would have to close because it would not have a doctor. I would be too afraid to continue providing abortions in Baton Rouge because H.B. 388 allows the Louisiana State Board of Medical Examiners to take disciplinary action against a physician's license if the physician is not in compliance with H.B. 388, and it subjects physicians to a fine of up to \$4,000 per violation.

16. I believe it is very unlikely that another physician who has admitting privileges within 30 miles of Delta Clinic would begin providing abortions at the clinic. Given the hostile environment in Louisiana towards abortion providers and the extreme harassment and intimidation by anti-abortion activists, most doctors are simply too afraid. I am very concerned about what my patients in Baton Rouge and the surrounding areas will do if Delta Clinic is forced to close. Delta Clinic is the only licensed abortion provider in Baton Rouge, and many of my patients are low income.

17. I also applied for admitting privileges in New Orleans at New Orleans East Hospital and Touro Infirmary in order to attempt to comply with H.B. 388 as it relates to

Women's Clinic. I thought that I had the best chance of obtaining admitting privileges in New Orleans at one of these hospitals because I performed my residency at Touro Infirmary and New Orleans East Hospital is a hospital that will be reopening and may be in need of physicians.

18. I have not yet received a response from New Orleans East Hospital. New Orleans East Hospital has not yet begun offering services, but it is scheduled to do so in the near future and will be providing obstetrics and gynecology services. However, if my pending application for privileges were granted at this time, the privileges would not immediately comply with the statutory requirements of H.B. 388.

19. However, I have been granted admitting privileges at Touro Infirmary, so for now, I will be able to continue providing abortion services at Women's Clinic.

20. I am extremely concerned, though, that Touro Infirmary will change its mind and refuse to allow me to be a member of its medical staff while performing abortion services at an abortion clinic. In my experience, the chances that a hospital will revoke a physician's privileges are dramatically increased once anti-abortion protestors find out that a particular hospital has decided to associate with an abortion provider. I know that Touro Infirmary is already receiving threatening letters, and phone calls, including from some very high profile members of the religious community, and that protestors are threatening a large demonstration outside of the hospital if it does not revoke my privileges.

21. I am well aware of how this type of threatening behavior affects hospital decisions making. Previously, I was a hospital-employed physician. Within three months of when I began performing abortions at Delta Clinic and Women's Clinic, anti-abortion protestors mounted a protest outside of the hospital over July 4<sup>th</sup> weekend, and the hospital told me that I had to either cease performing abortions or cease working at the hospital. I was therefore forced

to stop working at the hospital, so that I could continue providing services at Women's Clinic and Delta Clinic.

22. Even if I am able to maintain my privileges at Touro Informary, if H.B. 388 is allowed to be enforced, Women's Clinic will be operating with significantly diminished capacity and will not be able to serve the number of patients it currently serves because Dr. Doe 6 will not be able to perform any abortion services. During 2013, Dr. Doe 6 provided 60% of the abortion services at Women's Clinic, and all of the medication abortion services. Even if I were able to commit all of my time to serving patients at Women's Clinic, I do not see how we could serve all of the patients who will be coming to our doors once Delta Clinic closes, and with the predicted closures of two of the three other abortion clinics in Louisiana.

23. Even if I am able to see all of the patients that Women's Clinic has served in the past, which in 2013 was approximately 2300 patients, the size of the facility, alone, will make it impossible for me to see many more of the patients who would have ordinarily gone to Causeway or Delta Clinic.<sup>1</sup> Women will also certainly face long waits to obtain appointments and be delayed in their abortion care.

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<sup>1</sup> I find it just as unlikely that we will be able to recruit another doctor to perform abortions at Women's Clinic, for the same reasons that I explained about Delta Clinic. However, even with additional physicians, the size constraints of the facility and the need to increase staff, combined with the fact that every patient must come to the clinic twice because of the 24 hour waiting period, will make it impossible for Women's Clinic to serve the increased need for abortion services.

24. Although abortion is a very safe procedure, its risks increase with gestational age. I am very concerned that delay in a woman's ability to obtain abortion care as a result of H.B. 388 will expose her to unnecessary and increased health risks.

I declare under penalty of perjury that the foregoing is true and correct. This declaration was executed on September 19<sup>th</sup>, 2014.

  
**DR. JOHN DOE 5, M.D.**