Exhibit 5

Declaration of Dr. Stanley Henshaw

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

WEST ALABAMA WOMEN'S CENTER, et al., Plaintiffs, v. DONALD E. WILLIAMSON, M.D., in his official capacity as State Health Officer of the State of Alabama, Defendant.	CIVIL ACTION NO.

DECLARATION OF STANLEY K. HENSHAW, PH.D.

Stanley K. Henshaw, Ph.D., declares and states as follows:

1. I am an independent consultant working on matters related to reproductive epidemiology, which is the study of the patterns, causes, and effects of behavior related to fertility in defined populations. Until recently, I was for many years a Senior Fellow with the Guttmacher Institute, an independent nonprofit corporation involved in research, policy analysis, and public education in the field of reproductive health care. I joined the Guttmacher Institute in 1979 and served as its Deputy Director of Research from 1985 to 1999. Over the course of more than thirty years, I have researched and published extensively in the field of reproductive health care. I am the author of numerous studies on the effects of abortion restrictions, and am also familiar with the literature published by others in this area, including literature addressing the effect that an increase in the distance women must travel to obtain abortions has on their ability to obtain abortions. A copy of my *curriculum vitae* is attached hereto as Exhibit A. I submit this declaration as an expert in reproductive epidemiology.

2. I submit this declaration in support of Plaintiffs' motion for a temporary restraining order or preliminary injunctive relief against enforcement of Alabama Administrative Code regulation 420-5-1-.03(6)(b) (the "Regulation") against the Plaintiffs. It is my understanding that under the Regulation, a physician seeking to perform abortions must obtain staff privileges at a local hospital, or the clinic must have a contractual arrangement for outside covering physician services. I understand that Plaintiffs have not been able to obtain staff privileges or an arrangement for covering physician services and have thus been forced to stop providing abortion services. I also understand that Plaintiffs' clinic—West Alabama Women's Center, located in Tuscaloosa, Alabama—performed more abortions than any provider in the state (more than twice the number performed at the second-highest-volume clinic, according to the most recent available state numbers),[1] and that it was one of only two abortion clinics that provided abortion services after 16 weeks in pregnancy, as measured from the woman's last menstrual period. Finally, I understand that Tuscaloosa is approximately 150 miles from the next-closest provider of post-16-week abortions (in Huntsville), almost 60 miles from the nearest abortion clinic (in Birmingham), more than 100 miles from the Montgomery clinic, and more than 200 miles from the Mobile clinic. These are, I understand, the only abortion clinics in the state of Alabama.

3. Briefly stated, the relevant demographic and epidemiological literature demonstrates that increasing the distance women must travel to obtain an abortion decreases the abortion rate, and that increased travel distance is associated with delays in abortion access. Based upon my review of the relevant research, it is my professional opinion that the elimination of abortion services at West Alabama Women's Center will prevent a substantial number of women who would otherwise have had abortions in Alabama from obtaining them, and will lead to

[1] *See* http://www.adph.org/healthstats/assets/ITOP_PROB_rev_2013.pdf.

delayed access to abortion for other women. These burdens are likely to be felt most acutely by low-income women, who are least able to overcome the costs and barriers that the increased travel would impose.

The Effect of Travel Distance on Abortion Rates

4. The best available research shows that increases in the distance women must travel in order to obtain abortions prevent women from having abortions they would have otherwise had. For example, in *Regulating Abortion: Impact on Patients and Providers in Texas*, Silvie Colman and Ted Joyce studied the impact of a Texas law that required that all abortions after 15 weeks' gestation be performed in an ambulatory surgical center ("ASC"). Silvie Colman & Ted Joyce, *Regulating Abortion: Impact on Patients and Providers in Texas*, 30 J. Pol'y Analysis & Mgmt 775 (2011). In 2004, when the law went into effect, none of the abortion clinics in Texas qualified as an ASC, which meant that there was an immediate decrease in the availability of abortion after fifteen weeks' gestation in the state. The result of this decreased availability of abortion providers was a significant increase in the average distance that a Texas woman had to travel to obtain an abortion after fifteen weeks' gestation: As the authors reported, the average distance from a woman's county of residence to the nearest county with a non-hospital provider of abortions after fifteen weeks' gestation increased from 33 miles in 2003 to 252 miles in 2004.

5. Colman and Joyce concluded that this increase in travel distance had a substantial negative impact on the ability of Texas women to obtain abortions after fifteen weeks' gestation. Examining vital records from Texas and from the health departments of neighboring and nearby states, the authors found that in 2004, the law was associated with a 69% decrease in the number of Texas women who obtained abortions after fifteen weeks, notwithstanding a fourfold increase

in the number of Texas women who went out of state for such abortions. In other words, because of the law, many more Texas women traveled out of state to obtain abortions in 2004 than had previously been the case, but despite that fact, there still was a nearly 70% decline in the number of Texas women having abortions after fifteen weeks in the year the ASC law went into effect. As the study explains, although the Texas law may have encouraged some Texas women to have abortions earlier in pregnancy, this did not offset the reduction in the abortion rate that the increase in travel distance imposed: The study estimated that as a result of the law, over the course of three years 6,631 abortions did not take place that would otherwise have occurred. In other words, even accounting for women who were able to obtain abortions out of state and women who were able to have earlier abortions, the travel burden imposed by the ASC law prevented thousands of women from obtaining abortions.

6. Similarly, in their study on Georgia abortion rates, Shelton et al. concluded that "the farther a woman has to travel to obtain an abortion, the less likely she is to obtain one." James D. Shelton, Edward A. Brann, & Kenneth F. Schulz, *Abortion Utilization: Does Travel Distance Matter?*, 8 Fam. Plan. Persp. 260 (1976). The Shelton study examined abortion rates in Georgia counties at various distances from Atlanta (where all of the major abortion providers in Georgia were located in 1974), and found that for every ten miles of distance from Atlanta, there was a decline of 6.7 abortions per 1,000 live births.

7. In addition, the Shelton study evaluated the impact that reducing the distance women had to travel to obtain abortion care had on abortion rates, and found once again that distance had a substantial impact on abortion rates. Specifically, between 1974 and 1975, two new abortion clinics opened in Georgia—one in Muscogee County and one in Richmond County, each of which is more than 100 miles from Atlanta. From 1974 to 1975, Muscogee

County saw a 35% increase in the number of abortions per 1,000 live births, and, significantly, the counties within fifty miles of Muscogee saw a nearly 43% increase. Similarly, from 1974 to 1975, Richmond County had a nearly 49% increase in the number of abortions per live 1,000 live births, and the counties within fifty miles of Richmond—all of which are more than fifty miles from Atlanta—saw a 40% increase. The findings from the Shelton study show that travel distance, including distances far less than those at issue in the Joyce study, has a substantial effect on abortion access.

8. Other studies of the impact of travel distance on abortion rates have reached comparable conclusions—longer travel distances to access an abortion provider correlate with lower abortion rates. *See* Robert W. Brown, R. Todd Jewell, & Jeffrey J. Rous, *Provider Availability, Race, and Abortion Demand*, 67 S. Econ. J. 656 (2001); Sharon A. Dobie, L. Gary Hart, Ann Glusker, David Madigan, Eric H. Larson & Roger A. Rosenblatt, *Abortion Services in Rural Washington State, 1983-1984 to 1993-1994: Availability and Outcomes*, 31 Fam. Plan. Persp. 241 (1999). The Brown study of Texas counties found that a doubling of the distance to a county with an abortion provider was associated with a 23% decline in the abortion ratio for white women, 27% for African-American women, and 50% for Hispanic women. The Dobie study found that due to a decline in the number of providers, abortion services became less available in rural but not urban areas between 1983-1984 and 1993-1994. On average, the distance traveled by rural women for an abortion increased by 12 miles. The abortion rate among rural women declined by 27% and among urban women 17%. Thus, the 12-mile increase in distance caused a 10% fall in abortions among rural women as compared with urban women.

Impact on Low-Income Women

9. Increasing the travel distance increases the financial cost and logistical hurdles of obtaining an abortion. *See* James D. Shelton, Edward A. Brann, & Kenneth F. Schulz, *Abortion Utilization: Does Travel Distance Matter?*, 8 Fam. Plan. Persp. 260 (1976); R. Todd Jewell & Robert W. Brown, *An Economic Analysis of Abortion: The Effect of Travel Cost on Teenagers*, 37 Soc. Sci. J. 113 (2000).

10. Due to a combination of factors, low-income women have more unintended pregnancies, and higher abortion rates, than women with higher incomes. *See* Rachel K. Jones, Lori Frohwirth, and Ann M. Moore, *More than Poverty: Disruptive Events Among Women Having Abortions in the USA*, 39 J. Fam. Reprod. Health Care 36 (2012). Consequently, a disproportionately high percentage of the women who seek abortions have poverty-level incomes. In 2008, 42% of women having abortions in the United States had incomes below the federal poverty level ($11,770 for a single person, or $24,250 for a family of four, *see* http://aspe.hhs.gov/poverty/15poverty.cfm#thresholds), and another 27% had incomes between 100 and 199% of poverty. *See* Rachel K. Jones, Lawrence B. Finer, and Susheela Singh, Characteristics of U.S. Abortion Patients, 2008, New York, Guttmacher Institute, 2010 (https://www.guttmacher.org/pubs/US-Abortion-Patients.pdf).

11. Increases in the cost associated with obtaining an abortion have a major impact on the ability of low-income women to access abortion services. For example, a study on data from North Carolina examined the impact of short-term cutoffs in public funding for abortion for indigent women. The state of North Carolina provided a fixed amount of funds that could be used to pay for abortions for women who were indigent. Between 1990 and 1993, the fund was depleted, on average, approximately four months before the end of the fiscal year. The authors of the study found that the annual cutoff when these funds were depleted—that is, the period

when indigent women had to pay the cost of the procedure without state assistance—was associated with a statistically significant decline in abortions and a statistically significant rise in births: "the implication is that a shortfall in funding would have resulted in over 1 in 3 women (37%) who would have obtained an abortion if the state had paid for it, instead decided to carry the baby to term." Phillip J. Cook, Allan M. Parnell, Michael J. Moore, Deanna Pagnini, *The Effects of Short-Term Variation in Abortion Funding on Pregnancy Outcomes*, 18 Journal of Health Economics 241 (1999). As the authors note, it "is rather remarkable that the necessity of paying a couple-of-hundred-dollar fee for an abortion is sufficient to persuade (or compel) some women to incur the much larger financial and personal costs of bearing an unwanted child." The study indicates that for indigent women, increases in the cost of obtaining an abortion can have a substantial negative impact on their ability to obtain abortions.

12. Other studies have reached similar results, concluding that when indigent women were faced with paying for the cost of abortions that had previously been covered by Medicaid, many were prevented from obtaining abortions altogether. *See* James Trussell, Jane Menken, Barbara L. Lindheim, and Barbara Vaughan, *The Impact of Restricting Medicaid Financing for Abortion*, 12 Family Planning Perspectives 120 (1980); *Effects of Restricting Federal Funds for Abortion – Texas*, 29 Morbidity & Mortality Wkly. Rep. 253 (1980).

13. The impact of cost on abortion access for low-income women is not, of course, confined to the Medicaid context. Multiple studies have shown that women who experience delays in obtaining abortions frequently cite among the factors that caused the delay (1) acquiring the funds to pay for the procedure, and (2) overcoming transportation-related hurdles. For example, in a 2006 sample of 1,209 abortion patients in 11 clinics, among those who said that they would have preferred to have had their abortions earlier, 26% said they were delayed by

the time needed to acquire the money needed to have the abortion, and 7% were delayed because there was no nearby clinic and they had to arrange transportation. Lawrence B. Finer, Lori F. Frohwirth, Lindsay A. Dauphinee, Susheela Singh, & Ann M. Moore, *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 Contraception 334 (2006).

14. Similarly, a survey of women who had abortions at 30 clinics selected to represent all clinics nationally showed that, of women who had abortions at or after 16 weeks and experienced delay, 28% reported that a reason for the delay was the time they needed to obtain money to pay for the abortion, and 12% reported that a reason was that they had to arrange transportation because there was no nearby provider. Aida Torres & Jacqueline Darroch Forrest, *Why Do Women Have Abortions?*, 20 Family Planning Perspectives 169 (1988).

15. Moreover, the Finer and Torres studies make clear that "[l]ower-income women are . . . more likely to have later abortions," Finer, *supra*, at 335, and that for women who seek abortions in the second trimester but who would have preferred to have had earlier abortions, the burdens of raising money for the procedure and making travel arrangements to access the clinic played an especially significant role in causing delay. In the Finer study, of second-trimester patients who experienced unwanted delay, 36% attributed the delay to the need to raise money; 16% were delayed because they had difficulty finding out where to get an abortion; and 9% were delayed by the need to obtain transportation to a non-local provider. The Torres study found that of women seeking abortions at 16 weeks or later who experienced delay, nearly half attributed the delay to difficulties in making arrangements for the abortion—difficulties that included the time necessary to raise money, challenges in arranging for transportation, trouble finding out where to obtain an abortion, and difficulty in arranging for child care. As discussed below, it is therefore notable that West Alabama Women's Center has been one of two clinics in Alabama

providing abortion services after 16 weeks and the highest-volume provider of such abortion services in the state. Women who need that clinic's second-trimester abortion services are especially likely to be impacted by obstacles that increase the travel distance and cost necessary to access an abortion.

16. It is also important to recognize that the Finer and Torres studies reviewed above necessarily capture only those women who *were* ultimately able to obtain abortions. For many women, however, increasing the travel and financial burdens associated with obtaining an abortion can impose an insurmountable barrier, as the studies discussed in ¶¶ 4-8 and 11-12 indicate.

Application of This Research to the Present Case

17. As the preceding discussion explains, research shows that an increase in the distance women must travel to access an abortion leads to a decrease in the abortion rate. When women are forced to travel longer distances to obtain an abortion, some women are unable to do so—that is, some women who would otherwise have terminated their pregnancies are prevented from doing so. And of the women who are able to travel to a non-local provider, longer travel distances (and the increased cost associated with them) lead to delayed access to abortions, especially for low-income women.

18. Based on this data, it is my opinion that the elimination of abortion services in Tuscaloosa will prevent a substantial proportion of women who would have obtained an abortion at the Tuscaloosa clinic from being able to obtain abortions, and will cause many of the women who are ultimately able to access an abortion provider to experience unwanted delay.

19. As set forth above, I understand that West Alabama Women's Center was the only abortion provider in Tuscaloosa, and that the next-closest abortion provider to women in

and around Tuscaloosa is almost 60 miles away in Birmingham. Women living in Tuscaloosa who would not need to travel to obtain an abortion if West Alabama Women's Center were open will now have to travel an additional 60 miles one way. The research reviewed above shows that such an increase in the travel distance needed to access an abortion will prevent a substantial proportion of affected women in and around Tuscaloosa from obtaining an abortion. In particular, the Shelton and Brown studies specifically demonstrate that changes in travel distances of this magnitude significantly impact abortion rates. Indeed, given that women in Alabama must generally make two trips to the clinic (separated by 48 hours) before obtaining an abortion, the effect of eliminating the closest abortion clinic is likely to be even more burdensome for women in and around Tuscaloosa than the effect shown in the Shelton and Brown studies.[2] The additional distance of 60 miles translates into 240 additional miles for two round-trips.

20. Traveling out of state would not alleviate these burdens either. Tuscaloosa is more than 180 miles from the closest out-of-state abortion clinic in Jackson, Mississippi, and it is my understanding that Mississippi also requires that patients make two trips to the clinic (separated by 24 hours) before obtaining an abortion.

21. I further understand that West Alabama Women's Center was one of only two clinics in the state that has provided abortions at and after 16 weeks' gestation and that in recent years it was the highest-volume provider of such services; it is my understanding that the only other such provider in Alabama is located in Huntsville. For women in need of abortions after

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[2] It is my understanding that the 48-hour waiting period law technically permits counseling materials to be sent by registered mail (with return receipt), but that very few women in the state utilize the registered mail route because it increases the cost and delay to the woman and may compromise her privacy.

16 weeks, the effect of eliminating such services in Tuscaloosa is especially devastating. A woman in Tuscaloosa in need of a post-16-week abortion will now have to travel an additional distance of over 150 miles one-way to Huntsville to seek such services. And women in Montgomery seeking a post-16-week abortion in Alabama—who already had to overcome the burden of traveling 100 miles to Tuscaloosa for such services—will now have to find the resources to travel nearly twice as far, 200 miles, one-way to Huntsville. Likewise, women in Birmingham seeking a post-16-week abortion in Alabama will now have to travel 100 miles one-way to Huntsville, nearly twice as far as the distance between Birmingham and Tuscaloosa. Given the data discussed above, it is my opinion that the elimination of abortion services at West Alabama Women's Center will prevent a substantial proportion of affected women from obtaining abortions at or after 16 weeks. These increases in distance are comparable to the additional 219-mile travel burden that resulted from the Texas ASC law examined in the Colman and Joyce study, which prevented thousands of Texas women from obtaining abortions after fifteen weeks in the years following the implementation of that law. *See* Silvie Colman & Ted Joyce, *Regulating Abortion: Impact on Patients and Providers in Texas*, 30 J. Pol'y Analysis & Mgmt 775 (2011).

22. Once again, traveling out of state would not alleviate these burdens. Because the sole clinic in Mississippi does not provide abortions past 16 weeks, the 150-mile trip to the clinic in Huntsville is still a woman from Tuscaloosa's closest option. Moreover, both Montgomery and Birmingham are approximately 150 miles from the closest out-of-state provider of post-16-week abortions in Atlanta, Georgia.

23. The travel burdens reviewed above are likely to be especially great for low-income women, who are least likely to be able to overcome the financial and logistical hurdles

such additional travel would entail. As noted above, 42% of women who have abortions have incomes below the federal poverty level—that is, less than $11,670 in annual income for a single individual—and the poverty rate among second-trimester abortion patients is even higher.[3]

24. To put these figures into perspective, an income below the federal poverty level amounts to less than $972.50 per month. The fair market rent for a one-bedroom apartment in Tuscaloosa, Alabama, as determined by the United States Department of Housing and Urban Development, is $572 per month.[4] If an individual in Tuscaloosa with an income below the federal poverty level were to pay the fair-market rate in rent, she would have less than $400.50 remaining to cover the cost of food, clothing, transportation, utility bills, and other necessities. Without even accounting for costs such as travel and time off of work, the average cost of a first-trimester abortion is nearly $500, and the average cost of a later procedure is much greater—for example, the median charge for a 20-week abortion is $1,350.[5] And unlike the costs of other forms of medical care, federal and state Medicaid do not cover the cost of an abortion. With such limited financial resources, low-income women affected by the closure of West Alabama Women's Center will be severely burdened by the resultant increase in travel distance. Such travel is not free. A woman would at the very least have to pay for transportation costs and possibly for lodging—and the likelihood of having to pay for lodging is heightened here by (1)

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[3] *See* Rachel K. Jones, Lawrence B. Finer, and Susheela Singh, Characteristics of U.S. Abortion Patients, 2008, New York, Guttmacher Institute, 2010, https://www.guttmacher.org/pubs/US-Abortion-Patients.pdf; Lawrence B. Finer, Lori F. Frohwirth, Lindsay A. Dauphinee, Susheela Singh, & Ann M. Moore, *Timing of Steps and Reasons for Delays in Obtaining Abortions in the United States*, 74 Contraception 334 (2006).

[4] *See* http://www.huduser.org/portal/datasets/fmr/fmrs/FY2015_code/select_Geography.odn.

[5] *See* Jenna Jerman & Rachel K. Jones, *Secondary Measures of Access to Abortion Services in the United States, 2011 and 2012: Gestational Age Limits, Cost, and Harassment*, 24 Women's Health Issues 419 (2014).

Alabama's 48-hour waiting period law requiring multiple visits to the clinic, *see* Note 2, *supra*, and (2) the fact that many later abortion procedures require two days to be completed. And on top of the direct travel costs themselves, forcing women to travel longer distances to access abortion services would mean increasing other costs women must shoulder in order to access care, including costs of childcare and of taking time off of work. Given this array of costs, it is little wonder that the research shows that imposing the sort of travel burdens that women face due to the closure of the Tuscaloosa clinic amounts to an insurmountable barrier to their ability to obtain an abortion.

25. Finally, it is my opinion that even when women are able to overcome the above-described obstacles and travel to an abortion clinic, many are likely to experience unwanted delay. Unwanted delay increases the cost of the procedure (potentially putting access to an abortion even further out of reach for indigent women).

26. In summary, it is my opinion that the closure of West Alabama Women's Center poses serious burdens for many women seeking abortions in Alabama, and that for a substantial number of the women impacted by the closure, these burdens will prevent them from obtaining abortions.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 29, 2015 in Pittsboro, North Carolina.

Stanley K. Henshaw