

Exhibit 2
Declaration of Dalton
Johnson

**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

Case No. _____

Dalton Johnson declares and states the following:

1. I am the owner and administrator of the Alabama Women's Center ("AWC"), located in Huntsville, Alabama.
2. AWC is the only abortion clinic in Huntsville. The clinic opened in 2001, and, in the 14 years since we opened, no new abortion clinics have opened anywhere else in the state. There are only four other licensed abortion clinics in the state that I am aware of, all of which opened prior to 2001: West Alabama Women's Center in Tuscaloosa; Reproductive Health Services in Montgomery; and two Planned Parenthood health centers, one in Birmingham and one in Mobile.
3. At AWC, we provide abortion services up to 21.6 weeks of pregnancy, as measured from the woman's last menstrual period ("LMP"), although the vast majority of the abortions that we provide are in the first trimester. Until January of this year, AWC was one of just two facilities in Alabama providing second-trimester abortion services after 15.0 weeks, with the other such provider being West Alabama Women's Center in Tuscaloosa. I am aware, however, that the physician at West Alabama Women's Center retired in December 2014; that

the clinic's new physician has been unable to obtain hospital privileges or a contractual arrangement for covering physician services; and that the clinic has thus been closed since January 1, 2015. I learned of these developments in December 2014 when Gloria Gray informed me of the clinic's circumstances—AWC agreed in December to provide follow-up care to West Alabama Women's Center's patients.

4. The difficulty West Alabama Women's Center has had in finding a physician willing to serve as a covering physician mirrors the trouble I experienced in attempting to comply with the same regulatory requirement back in 2004. That year, Dr. Palmer, the doctor who co-founded AWC with me, passed away unexpectedly. While I was eventually able to persuade a doctor who lived out of state to provide abortions at our facility, he did not have staff privileges at a local hospital, and so under Alabama Administrative Code regulation 420-5-1-.03(6)(b) (the "Regulation"), I had to obtain an agreement with a local physician with staff privileges who would be willing to serve as the covering physician for AWC. I contacted every single ob-gyn in Huntsville and Decatur at that time, emphasizing that this was a paid position with a minimal time commitment, but not a single doctor replied. It was only after pleading with a physician who had been a friend and mentee of Dr. Palmer's to serve as our covering physician that I was able to comply with the Regulation. This physician, who did not provide abortions, had been apprehensive that if his affiliation with AWC were to become publicly known, it would negatively impact his private ob-gyn practice. Unfortunately, his fears were well-founded—within months of his agreement to serve as AWC's covering physician, word of his affiliation with our clinic got out, and anti-abortion protesters outside his office drove so many of this patients from his practice that his business was destroyed.

5. All of this is to say that I understand full well why West Alabama Women's Center has been unable to comply with the Regulation. In my experience, a clinic's ability to comply with the Regulation depends on the willing cooperation by local physicians, most, if not all, of whom either oppose abortion or rightfully fear that being affiliated with the local abortion clinic would negatively impact their livelihoods.

6. In my role as administrator at AWC, my responsibilities include maintaining statistics on the number of procedures we perform at various periods of gestation; we report these statistics to the Alabama Department of Public Health. Since the beginning of 2015, when West Alabama Women's Center closed, AWC has had a sizable increase in the number of patients we have treated compared with the same period last year, with a particularly notable increase in the number of patients we have treated who were seeking abortions later in the second trimester. The 2014 and 2015 statistics based on these numbers are shown in the charts attached as Exhibit A. As the statistics show, we treated 485 more patients—including 78 additional patients seeking abortions at 16 weeks or later—in the first six months of 2015 than we did in the same period in 2014. As described in greater detail below, with this increase we are currently operating very close to our maximum capacity.

7. But these numbers only tell part of the story, and for several reasons, I am very concerned that the closure of West Alabama Women's Center is having an extremely negative impact on the well-being of women seeking abortions in Alabama.

8. First, since West Alabama Women's Center has been closed, we have started receiving more and more telephone calls from women who live farther away from our clinic—including women from western Alabama (for whom the Tuscaloosa clinic would have been easily accessible) and women in their second trimester from Montgomery and Birmingham who

otherwise would have gone to the Tuscaloosa clinic. Numerous women have told me that they are utterly without the means to travel that far. The frequency of calls from women who tell me that they cannot reach our clinic has increased significantly since West Alabama Women's Center closed.

9. To the extent I am able, I try to do what I can for as many of these women as possible. For example, I have offered to reduce the fee for the procedure (at a loss to the clinic) so that a woman can pay for the gas she needs to get here. But some of the women who call do not even have cars or any other means to reach us. Some of these women have said to me that because they cannot travel six hours to Huntsville, they will be forced to take matters into their own hands to terminate the pregnancy, and have asked me what pills they can take to cause a self-abortion; I have received at least two such calls per month ever since West Alabama Women's Center closed. What this all amounts to is that the number of calls from women who have told me they cannot travel to Huntsville—women who I have never heard from again—has increased substantially this year.

10. Second, this year, a greater share of our patients have been indicating to me that they are getting the procedure later than they wanted to because of the difficulties they experienced in traveling a longer distance to the abortion clinic. For example, one patient from Tuscaloosa recently told me she would have obtained a first-trimester abortion there had West Alabama Women's Center been open. But with the local clinic closed, she made an appointment in Montgomery. By the time she was able to travel to the clinic there for pre-procedure counseling, she was 14 weeks pregnant, and that clinic's physician was not available to perform the abortion until the following week, at which point she would have been past the clinic's gestational limit. So her only option was to travel to yet another clinic (our clinic in

Huntsville)—but it took her an additional two weeks to make arrangements with someone willing to drive her the 150-mile (one way) distance from Tuscaloosa to Huntsville. Ultimately, she was able to get an abortion, but the cost of the procedure was nearly twice as expensive as the first-trimester surgical abortion she would have had in Tuscaloosa, and that is not including transportation costs.

11. This woman's experience of encountering unnecessary and unwanted delay in accessing an abortion is far from unusual these days. Overall, I estimate that about ten percent of our patients in recent months have told me that they were delayed in getting an abortion because of challenges associated with reaching our facility. This is a definite increase over the number of patients for whom this was true before West Alabama Women's Center closed.

12. Finally, there is the issue of our capacity to treat the women displaced by the closure of West Alabama Women's Center, particularly those women who have experienced delays and are therefore seeking later abortion procedures. As I mentioned above, AWC is operating very close to its maximum capacity. We are open four days per week, and our physicians are already committing as much time to the clinic as they are able to. One of my physicians has a full-time obstetrical practice that cannot be neglected. Ironically, it is only through this obstetrics practice, which has the effect of limiting the time that this physician can spend at AWC, that this physician is able to maintain local hospital staff privileges. If this physician did not have privileges, then I, too, would need to find a local physician willing to sign a written contract to serve as AWC's covering physician. I have little doubt that if that were the case, I would find myself in the same predicament as the Tuscaloosa clinic: closed.

13. Nor can we extend our working day to accommodate additional patients. A local zoning ordinance limits the hours we conduct business to between 8:00 a.m. and 5:00 p.m.,

Monday through Friday. In order to comply with this ordinance, we cannot perform procedures after 2:00 p.m., because we have to ensure that every patient has the time she needs to recover from the procedure before she can be discharged, and to do so, the latest we can perform procedures is 2:00. Indeed, we could not get around this zoning ordinance even if we wanted to—every day, at 5:00 p.m., a group of antiabortion protesters that spends the day outside our clinic comes to the door of our facility to check if there are any patients inside. Thus, AWC's capacity is confined to performing abortion procedures from 8:00 a.m. to 2:00 p.m. on weekdays. I really do not know how our physicians could realistically accommodate more patients in this window of time than we have seen recently.

14. Given that we are now operating very close to our maximum capacity, I am concerned because the number of patients we have been seeing this year since the closure of West Alabama Women's Center has been increasing. And I am particularly concerned that we are seeing more second-trimester patients because later abortion procedures take longer to complete than earlier ones. Whereas a first-trimester surgical abortion takes less than five minutes to complete, a post-16-week procedure can significantly longer. Thus, scheduling more procedures for women at 16 weeks or later further stretches our capacity to treat all the women who need of our services to the limit. The more women who come to us later in pregnancy, the fewer women we will be able to see each week, and a backlog will develop. Eventually, we will have to institute a waiting list, giving priority to the patients who are later in pregnancy. But that is an imperfect solution too, as it would have the effect of forcing our patients who come to us earlier in pregnancy to delay, which would only compound the problem for everyone. Indeed, if the trend in recent months continues, I am concerned about our capacity to accommodate all of the women seeking our services.

15. In short, it has become abundantly clear to me in the last few months that if West Alabama Women's Center remains closed, AWC is likely to hit a wall in terms of how many patients we can serve, and more and more women will suffer.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 10, 2015 in Montevalle, Alabama


Dalton C. Johnson