

# EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT FOR  
THE WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

COMPREHENSIVE HEALTH OF PLANNED )	)	
PARENTHOOD GREAT PLAINS, et al. )	)	
	)	
Plaintiffs, )	)	
	)	
v. )	)	Case No. 2:16-cv-04313-HFS
	)	
PETER LYSKOWSKI, in his official capacity )	)	
as Director of the Missouri Department of )	)	
Health and Senior Services, et al. )	)	
	)	
Defendants. )	)	

**DECLARATION OF MARY M. KOGUT IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION**

Mary M. Kogut declares the following:

1. I am President and Chief Executive Officer of Plaintiff Reproductive Health Services of Planned Parenthood of the St. Louis Region (“RHS”). I am responsible for the management of this organization, and therefore am familiar with our operations and finances, including the services we provide and the communities we serve. I submit this declaration in support of Plaintiffs’ Motion for a Preliminary Injunction.

2. I understand that the Missouri’s Ambulatory Surgical Center Licensing Law (“ASCLL”), Mo. Ann. Stat. § 197.200, and its implementing regulations require any health center providing five or more first trimester abortions, or any second trimester abortions, to be licensed as an ambulatory surgical center (“ASC”), and impose certain requirements for such licensure, Mo. Code. Regs. Ann. tit. 19 § 30-30.010, 050–070 (“ASC Restriction”). I also understand that the ASCLL requires that either physicians who provide abortions must have hospital admitting privileges within 15 minutes from the health center, or the health center must

have a written transfer agreement with such a hospital, Mo. Ann. Stat. § 197.215(2); Mo. Code Regs. Ann. tit 19, § 30-30.060(1)(C)(4), and also that a separate Missouri statute makes it a crime for a physician to provide an abortion without hospital privileges, Mo. Ann. Stat. § 188.080; *see also* Mo. Ann. Stat. § 188.027(1)(1)(e) (collectively, the “Hospital Relationship Restriction”).

3. RHS seeks to expand the services offered at health centers in Joplin and Springfield, Missouri to include abortion services, but, as is discussed below, RHS and its physicians are unable to comply with the ASC and Hospital Relationship Restrictions as to these health centers, and are therefore unable to provide abortion services at those locations.

4. As a result, the availability of abortion services in Missouri is severely restricted, threatening the health of Missouri women and depriving them of their right to obtain a pre-viability abortion.

### **RHS and Abortion Services**

5. RHS is a not-for profit corporation organized under the laws of Missouri. RHS operates a licensed abortion facility ASC in St. Louis, Missouri, at which it has been providing abortions since 1998. RHS offers both surgical and medication abortions at this facility, and has an excellent safety record. RHS also provides medication abortions at a health center in Fairview Heights, Illinois.

6. RHS seeks to also provide abortion services at health centers in Joplin and Springfield, Missouri. These health centers currently provide general reproductive health care, including family planning services, testing and treatment for sexually transmitted infections, cervical and breast cancer screening services, pregnancy testing, and all-options counseling.

7. RHS seeks to provide both surgical and medication abortions at the Springfield

health center and, at least initially, medication abortions only at the Joplin health center.

### **ASC Restriction**

8. Neither the Joplin nor the Springfield health center complies with the physical facility requirements contained in the ASCLL's implementing regulations. For example, neither facility meets the minimum hallway width, doorway width, ceiling height, or dimensions for procedure rooms outlined in the regulations. The facilities also do not meet the regulatory requirements for air filtration and scrub facilities, among others.

9. I have consulted with an architect to find out what would be required to bring the Joplin and Springfield health centers into compliance with the ASCLL's physical facility requirements. He has determined that it would cost over \$2 million each to renovate these health centers, and that it would not be reasonable to do so from a construction perspective, given the details of what the renovations would require. Decl. of George W. Johannes in Supp. of Pls.' Mot. for Prelim. Inj., attached as Ex. 4 to Suggestions in Support of Pls. Mot. for Prelim. Inj. ("Johannes Decl.") ¶ 11-12. Renovation would also require a lengthy suspension of family planning and other services at these health centers. Because of the service disruption and construction complications of renovations, he has concluded that the only reasonable option would be for RHS to build new ASC facilities in Springfield and Joplin, at a cost of approximately \$2.3 million dollars per facility, not including the cost of land. *Id.* This would not be financially possible for RHS.

### **Hospital Relationship Restriction**

10. RHS and its physicians are also unable to comply with the Hospital Relationship Restriction at either the Joplin or Springfield Health Centers.

11. RHS is unable to locate a physician in either of these local communities who has

privileges within the required geographic area to provide abortions at these health centers. There is highly visible hostility to abortion within both these communities and this has made it very difficult for us historically to recruit and retain providers even to offer family planning services. Even though these health centers currently do not provide abortion, protestors regularly demonstrate at the Springfield health center, and the Joplin health center has been subject to recent attempted arson. *See* Trevor J. Mitchell, *More than 100 Gather in Springfield to Protest or Support Planned Parenthood*, Springfield News-Leader, August 22, 2015, <http://www.news-leader.com/story/news/local/ozarks/2015/08/22/gather-springfield-protest-support-planned-parenthood/32202983/>; Bill Morlin, *Prison for Man who Fire-Bombed Mosque, Planned Parenthood Clinic*, Southern Poverty Law Center Hatewatch, October 22, 2016, <https://www.splcenter.org/hatewatch/2016/10/19/prison-man-who-fire-bombed-mosque-planned-parenthood-clinic>. As a result of this hostility, one of our family planning providers, for example, has not been willing to provide abortion because he feared that doing so would attract protesters to his private ob-gyn practice. We have also had a provider consider resigning because of fear of being mistaken for an abortion provider and having to deal with resulting harassment.

12. We currently have two out-of town providers who wish to provide abortions in Joplin and Springfield, RHS's Medical Director Dr. David Eisenberg and Plaintiff Dr. Yeomans, but neither physician is able to obtain privileges within the required local geographic areas. There are two hospitals located within the required distance from the Joplin health center: Mercy Hospital Joplin and Freeman Health Systems. There are also two hospitals located within the required distance from the Springfield health center: Mercy Hospital Springfield and Cox Health.

13. Dr. Eisenberg has reached out to each of these hospitals to request information about their requirements for privileges and has determined that, as an out-of-town physician, he

cannot meet the hospitals' requirements, which include, for example, residency near one hospital and taking emergency department call shifts at others. Decl. of David L. Eisenberg. in Supp. of Pls.' Mot. for Prelim. Inj., attached as Ex. 3 to Suggestions in Support of Pls. Mot. for Prelim. Inj. ("Eisenberg Decl.") ¶ 55-58. Because Plaintiff Dr. Yeomans is also an out-of-town provider, he similarly cannot meet these requirements. In addition, the Mercy Hospitals are Catholic hospitals that require their physicians to abide by the Ethical and Religious Directives for Catholic Health Facilities, which prohibit providing abortion, and, of course, neither physician can meet this requirement. *Id.* ¶ 56-57.

14. RHS staff has also reached out to each of these four hospitals to request a transfer agreement, and all four replied that a transfer agreement is not necessary, as they will treat any patient who needs care in the hospitals' emergency departments. RHS staff followed up with each hospital to explain that the Hospital Relationship Restriction means that we need a formal agreement. One Joplin hospital emailed to inform me that the hospital had decided not to enter into a transfer agreement with us, but reiterating that it would provide any emergent care our patients need in its emergency department. The other Joplin hospital refused to return our calls. While one of the Springfield hospitals told us over the phone that it will not enter into an agreement with us, the other hospital indicated that it was willing, and we have fully executed an agreement with that hospital. However, because our physicians are unable to obtain local privileges, we are still unable to provide abortions in Springfield. Furthermore, the agreement may be canceled at any time by the hospital, so we are at risk of losing it at any time. Because the only other hospital within the required geographic area has already declined to enter into an agreement with us, if we lose this agreement, we would be out of options.

## **Impact of the Restrictions on RHS, its Physicians, and its Patients**

15. RHS's inability to comply with the ASC and Hospital Relationship Restrictions in Joplin and Springfield means that there are no abortion providers in the southern half of Missouri. I understand that Comprehensive Health of Planned Parenthood Great Plains is similarly unable to provide abortion services at health centers in Columbia and Kansas City, Missouri, which leaves RHS's health center in St. Louis as the only abortion provider in the state. We see women in our St. Louis facility who travel from all over Missouri, which can be up to a 740 mile round trip from the furthest parts of the state. Women who live in Springfield must travel 430 miles round trip to reach the St. Louis facility, and women who live in Joplin must travel 565 miles round trip.

16. This additional travel is extremely burdensome for our patients. For example, many patients tell us they have had to delay their abortion procedure in order to work out the costs and logistics of traveling; this happens approximately ten times a week. Travel is particularly challenging because of Missouri's 72 hour consent law, which requires patients to make an additional trip to a health center; patients regularly delay multiple weeks between their initial 72 hour consent appointment and their abortion appointment because it is so difficult for them to travel to the health center twice. Patients frequently tell staff that they need to push their appointments back because they are unable to get time off work again so soon after their initial appointment, or they are unable to arrange child care, among other reasons.

17. In addition, more than 70% of our patients who obtain abortions at our St. Louis facility have incomes at or below 200% of the federal poverty level, and the costs and logistics associated with travel are particularly difficult for these women. *See generally* Decl. of Sheila M. Katz in Supp. of Pls.' Mot. for Prelim. Inj., attached as Ex. 5 to Suggestions in Support of Pls.

Mot. for Prelim. Inj.

18. In addition, working out the logistics of travel sometimes results in a loss of confidentiality for our patients, as their pregnancy or abortion decision may become known to their employer or family members. For example, many low-income women work for employers that require a doctor's note in order for a woman to take multiple days off for health care, and we routinely provide such documentation. While we do not indicate on that paperwork why the patient sought medical care, nonetheless we have had at least one patient whose employer figured out from the note that she was taking time off to obtain an abortion, and the information was quickly known by all the staff at her workplace.

19. In addition, by not being able to offer a full range of reproductive health services that includes abortion in Springfield and Joplin, RHS and its physicians are injured in the pursuit of their business and professions, and are unable to fulfill their mission to provide comprehensive reproductive health care to Missouri women.

20. As I have outlined above, my staff and I have made diligent efforts to comply with Missouri's medically unnecessary Restrictions, but, because we cannot comply, access to abortion in Missouri remains severely restricted. My staff and I are very familiar with the burdens the Restrictions impose on women, since we take care of patients every day who struggle to travel to our St. Louis health center to obtain the care they need. Our patients' health and well-being should not be compromised by these medically unnecessary Restrictions.

Dated: December 12, 2016

/s/ Mary M. Kogut

Mary M. Kogut