

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

YASHICA ROBINSON, M.D., <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 2:19-cv-00365-MHT-JTA
)	
STEVEN MARSHALL, in his official)	
capacity as Alabama Attorney General,)	
)	
Defendant.)	

ANSWER OF ALABAMA ATTORNEY GENERAL STEVE MARSHALL

Alabama Attorney General Steve Marshall, sued in his official capacity, answers Plaintiffs' First Amended Complaint (doc. 79) as set out below.¹

INTRODUCTION

1. The allegations of paragraph 1 do not require a response as it is a description of the nature of Plaintiffs' claims. Defendant denies that Plaintiffs are entitled to the relief requested under a proper interpretation of the United States Constitution.
2. The allegations of paragraph 2 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).
3. Admitted that some individuals seek abortions for a variety of reasons.

¹ The First Amended Complaint renamed Danny Carr, Daryl Bailey, Mark LeQuire, Robert Broussard, Ashley Rich, Hays Webb, and James Walburn as Defendants, but these Defendants were dismissed by the April 24, 2020 Order of the Court pursuant to an agreement of the parties. Doc. 154. State Health Officer Dr. Scott Harris was also renamed as a Defendant in the First Amended Complaint. However, the Court dismissed without prejudice all portions of Count I that concern the medical restrictions language contained in Dr. Harris's April 3 health order and the entirety of Count II. Doc. 167. As a result, Plaintiffs and Dr. Harris filed a Joint Motion to Dismiss him from this suit. Doc. 174. Thus, Attorney General Steve Marshall is the sole remaining Defendant.

4. The allegations of paragraph 4 do not require a response as the law speaks for itself. Defendant denies that the United States Constitution guarantees a right to abortion or that Plaintiffs are entitled to the relief requested under a proper interpretation of the United States Constitution.

5. The allegations of paragraph 5 do not require a response as they are a statement of a legal conclusion. Defendant denies that Plaintiffs are entitled to the relief requested under a proper interpretation of the United States Constitution. Defendant wishes to enforce the challenged law and intends to argue in this case that H.B. 314 is constitutional under a proper interpretation of the United States Constitution.

6. Admitted that Eric Johnston and Representative Terri Collins were quoted as making these statements in the sources cited by Plaintiffs, and that Rep. Collins sponsored H.B. 314. Defendant denies the remaining allegations of paragraph 6.

7. Admitted that Governor Kay Ivey released a statement upon signing H.B. 314 that quoted H.B. 314's statement that Alabama's prior statute criminalizing abortion has remained "unenforceable as a result of the U.S. Supreme Court decision in *Roe v. Wade*," and that Gov. Ivey's statement said, regarding H.B. 314, that "at least for the short term, this bill may similarly be unenforceable." Defendant denies the remaining allegations of paragraph 7.

8. The allegations of paragraph 8 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).

9. Admitted that H.B. 314 was scheduled to take effect on November 15, 2019, until it was enjoined by the October 29, 2019 Order of the Court (doc. 69). Defendant denies the remaining allegations of paragraph 9.

10. The allegations of paragraph 10 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).

11. Admitted that Plaintiffs seek declaratory and injunctive relief preventing the enforcement of H.B. 314. The remaining allegations of paragraph 11 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).

JURISDICTION AND VENUE

12. Admitted.

13. Admitted that these statutes and rules of procedure authorize Plaintiff's complaint for declaratory and injunctive relief. Defendant denies that Plaintiffs are entitled to the relief requested under a proper interpretation of the United States Constitution.

14. Admitted that venue is proper in the Middle District of Alabama.

PLAINTIFFS

15. Admitted that Dr. Robinson is the Medical Director of the Alabama Women's Center ("AWC") in Huntsville, Alabama, that Dr. Robinson performs abortions, and that H.B. 314 would criminally prohibit abortions under the terms set out in H.B. 314. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 15 and therefore denies them. Defendant denies that Dr. Robinson may represent the interests of third parties.

16. Admitted that AWC is the only abortion clinic in Huntsville, Alabama. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 16 and therefore denies them. Defendant denies that AWC may represent the interests of third parties.

17. Admitted that Planned Parenthood Southeast, Inc. ("PPSE") has facilities in Birmingham and Mobile, Alabama. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 17 and therefore denies them. Defendant denies that PPSE may represent the interests of third parties.

18. Admitted that Reproductive Health Services (“RHS”) is the only abortion clinic in Montgomery, Alabama. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 18 and therefore denies them. Defendant denies that RHS may represent the interests of third parties.

19. Admitted that West Alabama Women’s Center (“WAWC”) is the only abortion facility in Tuscaloosa, Alabama. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 19 and therefore denies them. Defendant denies that WAWC may represent the interests of third parties.

DEFENDANTS

20. Admitted.

21. The allegations of paragraph 21 do not require a response as this defendant has been dismissed.

22. The allegations of paragraph 22 do not require a response as this defendant has been dismissed.

23. The allegations of paragraph 23 do not require a response as this defendant has been dismissed.

24. The allegations of paragraph 24 do not require a response as this defendant has been dismissed.

25. The allegations of paragraph 25 do not require a response as this defendant has been dismissed.

26. The allegations of paragraph 26 do not require a response as this defendant has a joint motion for dismissal pending.

27. The allegations of paragraph 27 do not require a response as this defendant has been dismissed.

28. The allegations of paragraph 28 do not require a response as this defendant has been dismissed.

STATUTORY & LEGAL FRAMEWORK

H.B. 314

29. The allegations of paragraph 29 do not require a response as the law speaks for itself.

30. The allegations of paragraph 30 do not require a response as the law speaks for itself.

31. The allegations of paragraph 31 do not require a response as the law speaks for itself.

32. The allegations of paragraph 32 do not require a response as the law speaks for itself.

33. The allegations of paragraph 33 do not require a response as the law speaks for itself.

34. The allegations of paragraph 34 do not require a response as the law speaks for itself.

35. The allegations of paragraph 35 do not require a response as the law speaks for itself.

36. The allegations of paragraph 36 do not require a response as the law speaks for itself.

37. Admitted that H.B. 314 was set to take effect on November 15, 2019, until it was enjoined by the October 29, 2019 Order of the Court (doc. 69), that H.B. 314 would criminally prohibit abortions under the terms set out in H.B. 314, and that persons in violation of H.B. 314 would face the risk of criminal penalties.

The March 27 Order

38. The allegations of paragraphs 38 – 60 do not require a response as the claims against Dr. Harris’s health orders have been dismissed pursuant to the Court’s May 22, 2020 Order (doc. 167).

FACTUAL ALLEGATIONS

61. Admitted that AWC, RHS, and WAWC are the only three abortion clinics in the State. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 61 and therefore denies them.

62. Defendant lacks sufficient information to admit or deny the allegations in paragraph 62 and therefore denies them.

63. Admitted that pregnancy is generally forty weeks in duration, and that Alabama law prohibits abortions where the probable postfertilization age of the unborn child is 20 or more weeks, subject to the exceptions contained in Alabama Code § 26-23B-5. The remaining allegations of paragraph 63 are denied.

64. Admitted that according to the publications cited very few abortions performed in Alabama in 2017 and 2018 were performed in hospitals. Defendant refers to the complete contents of the publications themselves for specific numbers of abortions performed in hospitals versus abortion clinics.

65. Denied.

66. Denied.

67. Admitted that the publication cited states that one in four women will have an abortion by age forty-five. Defendant denies the remaining allegations of paragraph 67.

68. Admitted that some individuals seek abortions for a variety of reasons, and that the publication cited states 59% of women having abortions already have at least one child.

69. Admitted that some individuals seek abortions for a variety of reasons.

70. Admitted that some individuals seek abortions for a variety of reasons.

71. Admitted that some individuals seek abortions for a variety of reasons.

72. Admitted that some individuals seek abortions for a variety of reasons.

73. Admitted with the addition that “procedural abortion” is also commonly referred to as “surgical abortion.”

74. Defendant lacks sufficient information to admit or deny the allegations in paragraph 74 and therefore denies them.

75. Defendant lacks sufficient information to admit or deny the allegations in paragraph 75 and therefore denies them.

76. The allegations of paragraph 76 do not require a response as the claims against Dr. Harris’s health orders have been dismissed pursuant to the Court’s May 22, 2020 Order (doc. 167); otherwise, denied.

77. The allegations of paragraph 77 do not require a response as the claims against Dr. Harris’s health orders have been dismissed pursuant to the Court’s May 22, 2020 Order (doc. 167); otherwise, denied.

78. Defendant lacks sufficient information to admit or deny the allegations in paragraph 78 and therefore denies them.

79. Defendant lacks sufficient information to admit or deny the allegations in paragraph 79 and therefore denies them.

80. Admitted that “procedural abortion” is commonly referred to as “surgical abortion.” Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 80 and therefore denies them.

81. Defendant lacks sufficient information to admit or deny the allegations in paragraph 81 and therefore denies them.

82. Defendant lacks sufficient information to admit or deny the allegations in paragraph 82 and therefore denies them.

83. The allegations of paragraph 83 do not require a response as the claims against Dr. Harris’s health orders have been dismissed pursuant to the Court’s May 22, 2020 Order (doc. 167); otherwise, denied.

84. Defendant lacks sufficient information to admit or deny the allegations in paragraph 84 and therefore denies them.

85. The allegations of paragraph 85 do not require a response as the claims against Dr. Harris’s health orders have been dismissed pursuant to the Court’s May 22, 2020 Order (doc. 167); otherwise, denied.

86. The allegations of paragraph 86 do not require a response as the claims against Dr. Harris’s health orders have been dismissed pursuant to the Court’s May 22, 2020 Order (doc. 167); otherwise, denied.

87. The allegations of paragraph 87 do not require a response as the claims against Dr. Harris’s health orders have been dismissed pursuant to the Court’s May 22, 2020 Order (doc. 167); otherwise, denied.

Pregnancy and the COVID-19 Crisis

88. The allegations of paragraph 88 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 88 and therefore denies them.

89. The allegations of paragraph 89 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 89 and therefore denies them.

90. The allegations of paragraph 90 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 90 and therefore denies them.

91. The allegations of paragraph 91 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 91 and therefore denies them.

92. The allegations of paragraph 92 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 92 and therefore denies them.

93. The allegations of paragraph 93 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167);

otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 93 and therefore denies them.

94. The allegations of paragraph 94 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 94 and therefore denies them.

95. The allegations of paragraph 95 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 95 and therefore denies them.

96. Defendant objects to the allegations in this paragraph as argument and denies the same.

97. Defendant admits that the Alabama Legislature has passed legislation to promote Alabama's strong interest in protecting human life and has passed legislation related to abortion to protect public safety. The allegations regarding *Planned Parenthood Se., Inc. v. Strange*, 33 F. Supp. 3d 1330 (M.D. Ala. 2014), do not require a response as the decision speaks for itself. Defendant objects to the remaining allegations in this paragraph as argument and denies the same.

98. The allegations of paragraph 98 do not require a response as the law speaks for itself.

99. The allegations of paragraph 99 do not require a response as the law speaks for itself. Defendant otherwise denies the allegations in paragraph 99.

100. The allegations of paragraph 100 do not require a response as the law and the decisions cited speak for themselves.

101. The allegations of paragraph 101 do not require a response as the law speaks for itself.

102. The allegations of paragraph 102 do not require a response as the law and the decision cited speak for themselves.

103. The allegations of paragraph 103 do not require a response as the law and the decisions cited speak for themselves.

104. The allegations of paragraph 104 do not require a response as the law speaks for itself. Defendant otherwise denies the allegations in paragraph 104.

105. The allegations of paragraph 105 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, the allegations of paragraph 105 do not require a response as the law speaks for itself.

106. The allegations of paragraph 106 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).

107. The allegations of paragraph 107 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).

108. The allegations of paragraph 108 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).

109. The allegations of paragraph 109 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).

110. The allegations of paragraph 110 do not require a response as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167).

111. The allegations of paragraph 111 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, denied.

112. Admitted that the statistical sources cited state the conclusions alleged in paragraph 55. Defendant otherwise denies the allegations of paragraph 112.

113. Defendant lacks sufficient information to admit or deny the allegations in paragraph 113 and therefore denies them.

114. Defendant lacks sufficient information to admit or deny the allegations in paragraph 114 and therefore denies them.

115. The allegations of paragraph 115 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 115 and therefore denies them.

116. The allegations of paragraph 116 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, denied.

117. Admitted that pregnancy carries some risk of adverse physical or mental consequences. Defendant otherwise denies the allegations of paragraph 117.

118. The allegations of paragraph 118 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 118 and therefore denies them.

119. The allegations of paragraph 119 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 119 and therefore denies them.

120. The allegations of paragraph 120 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, Defendant lacks sufficient information to admit or deny the allegations in paragraph 120 and therefore denies them.

121. The allegations of paragraph 121 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, admitted that pregnancy carries some risk of adverse physical or mental consequences. Defendant denies the remaining allegations of paragraph 121.

122. Admitted that pregnancy carries some risk of adverse medical or physical consequences. Defendant otherwise denies the allegations of paragraph 122.

123. Admitted that the article cited states that 29 of 67 Alabama counties have hospitals that offer obstetrical care according to a statement made by an Alabama Department of Public

Health employee. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 123 and therefore denies them.

124. Admitted that the first source cited reports that nationally there were 7.2 pregnancy-related deaths per 100,000 live births in 1987 and 18.0 in 2014. Admitted that the second source cited reports that black women were nearly three times more likely to die from pregnancy-related causes than white women on a national level and nearly five times more likely to die from pregnancy-related causes than white women in Alabama. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 124 and therefore denies them.

125. Admitted that the source cited reports that Alabama is among the five states with the highest infant mortality rate. Defendant lacks sufficient information to admit or deny the remaining allegations in paragraph 125 and therefore denies them.

Injunctive Relief

126. The allegations of paragraph 126 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, denied.

127. The allegations of paragraph 127 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, denied.

CLAIM FOR RELIEF

Count I

128. Defendant reincorporates his responses to the previous allegations in paragraphs 1 – 127.

129. The allegations of paragraph 129 do not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167); otherwise, the allegations of paragraph 129 do not require a response as they are a statement of a legal conclusion. Defendant denies that Plaintiffs are entitled to the relief requested under a proper interpretation of the United States Constitution.

Count II

130. Defendant reincorporates his responses to the previous allegations in paragraphs 1 – 129.

131. The allegations of paragraph 131 do not require a response insofar as Count II has been dismissed in its entirety pursuant to the Court's May 22, 2020 Order (doc. 167).

REQUEST FOR RELIEF

Plaintiffs' Request for Relief does not require a response insofar as the claims against Dr. Harris's health orders have been dismissed pursuant to the Court's May 22, 2020 Order (doc. 167). As to Plaintiffs' claims against H.B. 314, Defendant denies that Plaintiffs are entitled to the relief requested under a proper interpretation of the United States Constitution.

ADDITIONAL DEFENSES

1. As to all of his responses above, Defendant denies any allegation not specifically admitted in this Answer.
2. Plaintiffs fail to state a claim upon which relief can be granted.
3. There is no right to abortion in the United States Constitution.
4. *Roe v. Wade*, 410 U.S. 113 (1973), *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), and their progeny were wrongly decided and should be overruled.

5. Plaintiffs lack standing to the extent they fail to allege they will suffer any violation of their own rights as opposed to the constitutional rights of third parties.

6. The clinic plaintiffs lack standing because they do not face criminal prosecution under the challenged law.

7. The named plaintiffs lack standing to assert the rights of third parties not before the court, and cases holding to the contrary should be overruled.

Respectfully submitted,

Steve Marshall
Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of June, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a copy to the following:

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