IN THE SUPREME COURT OF THE UNITED STATES

PLANNED PARENTHOOD OF GREATER TEXAS SURGICAL HEALTH SERVICES, PLANNED PARENTHOOD CENTER FOR CHOICE, PLANNED PARENTHOOD SEXUAL HEALTHCARE SERVICES, WHOLE WOMAN'S HEALTH, AUSTIN WOMEN'S HEALTH CENTER, KILLEEN WOMEN'S HEALTH CENTER, SOUTHWESTERN WOMEN'S SURGERY CENTER, WEST SIDE CLINIC, INC., ROUTH STREET WOMEN'S CLINIC, HOUSTON WOMEN'S CLINIC, each on behalf of itself, its patients and physicians, ALAN BRAID, M.D., LAMAR ROBINSON, M.D., PAMELA J. RICHTER, D.O., each of behalf of themselves and their patients;	)	NO. _____ (5th Cir. 13-51008) (W.D. Tex. No. 13-cv-862-LY)
Applicants,	)	
v.	)	
GREGORY ABBOTT, Attorney General of Texas, DAVID LAKEY, M.D., Commissioner of the Texas Department of State Health Services, MARI ROBINSON, Executive Director of the Texas Medical Board, each in their official capacities, as well as their employees, agents, and successors;	)	
Respondents.	)	

EMERGENCY APPLICATION TO VACATE STAY

To the Honorable Antonin Scalia, Associate Justice of the Supreme Court, and Circuit Justice for the United States Court of Appeals for the Fifth Circuit:

Applicants respectfully move for an emergency order vacating the stay granted by the United States Court of Appeals for the Fifth Circuit of the permanent injunction entered in this case by the District Court.

INTRODUCTION

Applicants, who operate more than two-thirds of the licensed facilities in Texas that provide abortions, filed suit in the Western District of Texas on behalf of themselves, their physicians, and their patients to halt the implementation of a provision of state law requiring doctors who perform abortions to have admitting privileges at a hospital within 30 miles of where the abortion is performed. The District Court enjoined the operation of the law prior to its effective date because it found that it does not improve patient outcomes and imposes a substantial obstacle in the path of women seeking abortion. *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*, No. 1:13-cv-862-LY, Memorandum Opinion Incorporating Findings of Fact and Conclusions of Law (Oct. 28, 2013) ("Dist. Ct. Order") (attached hereto as App. B).

Indeed, the evidence showed that, absent an injunction, the law would have an unprecedented and devastating effect on women's abilities to obtain an

abortion. Consistent with that evidence, in just the few short days since the injunction was lifted, over one-third of the facilities providing abortions in Texas have been forced to stop providing that care and others have been forced to drastically reduce the number of patients to whom they are able to provide care. Already, appointments are being cancelled and women seeking abortions are being turned away. As the evidence before the District Court showed, this forced cessation of services and reduction in capacity will prevent, each year, approximately 20,000 Texas women who would have otherwise had an abortion from accessing this constitutionally protected health care service.

Nonetheless, and despite the fact that no concrete harm has ever been identified by Respondents from a doctor's lack of admitting privileges, Respondents filed an emergency motion with the Fifth Circuit Court of Appeals, arguing that even an expedited appeal was not sufficient to protect their interests. Essentially ignoring the indisputable harm to Applicants and their patients, a panel of the Fifth Circuit granted the emergency motion, identifying a generalized interest in the enforcement of law as Respondents' only harm. *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*, No. 13-51008 (Oct. 31, 2013) ("Fifth Cir. Order") (attached hereto as App. A).

The Fifth Circuit, in taking the extraordinary step of altering the status quo by staying a final judgment of a district court reached following trial, relied almost

entirely on its determination that Respondents would prevail on the merits—a determination that misapplied this Court's precedents, rendering the constitutional right to abortion illusory for nearly one in three Texas women who would exercise that right, and as a result has already wreaked substantial harm on women who are now being prevented from obtaining an abortion, in violation of their fundamental constitutional rights. In addition, the Fifth Circuit ignored the fact that by imposing the stay and thereby forcing Applicants to discontinue the provision of abortion services for several months, at a minimum, many providers will lose their ability to resume providing care for their patients at all, even if Applicants ultimately prevail. Applicants thus respectfully request that the stay granted by the Fifth Circuit be vacated.

JURISDICTION AND STANDARD OF REVIEW

A "Circuit Justice has jurisdiction to vacate a stay where it appears that the rights of the parties to a case pending in the court of appeals, which case could and very likely would be reviewed here upon final disposition in the court of appeals, may be seriously and irreparably injured by the stay, and the Circuit Justice is of the opinion that the court of appeals is demonstrably wrong in its application of accepted standards in deciding the issue of the stay." *W. Airlines, Inc. v Int'l Brotherhood of Teamsters*, 480 U.S. 1301, 1305 (1987) (O'Connor, J., in chambers) (citation and quotation marks omitted).

PROCEEDINGS BELOW

On July 12, 2013, the Texas Legislature passed H.B. 2 (the "Act"), which imposes medically unjustified and burdensome restrictions that are intended to—and will—decimate access to safe and legal abortion in the state of Texas and thereby prevent many women from obtaining abortions. *See* Act of July 12, 2013, 83rd Leg., 2d C.S., ch. 1, Tex. Sess. Law Serv. 4795-802 (West) (to be codified at TEX. HEALTH & SAFETY CODE §§ 171.0031, 171.041-048, 171.061-064, & amending § 245.010-011; TEX. OCC. CODE amending §§ 164.052 & 164.055). On September 26, Applicants brought this challenge to two restrictions in the Act that would have the most immediate and severe impact: (1) a requirement that physicians secure admitting privileges at a hospital within 30 miles of where an abortion is performed, *id*. § 2 (the "admitting privileges requirement"); and (2) restrictions on medication abortion that are contrary to medical practice and actively harmful to patients, *id.* § 3.[1]

Because both of these provisions were scheduled to take effect on October 29, Applicants moved to preliminarily enjoin their enforcement. The District Court consolidated Applicants' motion for a preliminary injunction with a trial on the merits pursuant to Federal Rule of Civil Procedure Rule 65(a)(2). A two-day trial

[1] The medication abortion restrictions are not at issue in this application.

was held on October 21 and 22, during which the District Court heard testimony from five live witnesses. It also considered declarations submitted by the parties.[2]

On October 28, the District Court issued a Memorandum Opinion Incorporating Findings of Fact and Conclusions of Law and entered final judgment partially in Applicants' favor. It permanently enjoined the admitting privileges requirement, finding based on the evidence adduced at trial that: (1) the provision had no rational relationship to patient care; *and* (2) it would impose an undue burden on women's access to abortion by drastically decreasing the number of abortion providers in Texas. App. B at 11 (Dist. Ct. Order). Respondents immediately filed a notice of appeal and within hours of entry of final judgment, moved the Fifth Circuit for an emergency stay of the District Court's injunction. Because Respondents asked the Fifth Circuit for a ruling by the end of the day, Applicants responded just over nine hours after Respondents filed their motion.

By opinion dated October 31, 2013, a panel of the Fifth Circuit granted Respondents' motion to stay the District Court's injunction based almost entirely on its conclusion that Respondents were likely to prevail on the merits of their appeal. Significantly, in so holding, the panel jettisoned the District Court's

[2] Respondents presented no live witnesses at trial. Applicants objected to the admission of Respondents' declarations without an opportunity to cross-examine the witnesses. The District Court overruled that objection.

findings of fact and relied on its own review of the record; it also misapplied this Court's well-established precedent.

The Fifth Circuit has set this case for expedited briefing and placement on the January 2014 oral argument docket. App. A at 20 (Fifth Cir. Order). The relatively short period of time that will elapse until the case is heard on the merits demonstrates that the stay was unnecessary. No harm will come to Respondents from vacating the stay and restoring the status quo that has prevailed in Texas for many years prior to enactment of the Act. On the other hand, thousands of women may lose their constitutional right to obtain an abortion so long as the stay remains in effect, and abortion clinics forced to shut down because of the stay may not be able to reopen even if the District Court's injunction is ultimately affirmed.

ARGUMENT

I. Applicants and Their Patients Will be Irreparably Harmed If the Fifth Circuit's Stay is Not Vacated.

Applicants' patients are being "seriously and irreparably injured" by the Fifth Circuit's stay of the injunction against the admitting privileges requirement. *W. Airlines, Inc*, 480 U.S. at 1305. As a result of the stay, at least one-third of abortion providers in the state have ceased providing abortion services and others, because only some of their doctors have privileges, have been forced to significantly reduce the number of patients they are able to see. If the stay is not

lifted, during the period of Respondents' appeal alone, thousands of women in Texas will not be able to access safe abortion care.

The undisputed evidence before the District Court showed that at least one-third of the state's thirty-six licensed providers could not continue abortions once the privileges requirement took effect. App. F at 2-3 (Declaration of Dr. Joseph E. Potter ("Potter Dec.")); App. J at 8-9 (Potter Trial Transcript ("Tr.")); *see also* App. B at 11 (Dist. Ct. Order) (the evidence establishes that as a result of the admitting privileges requirement "there will be abortion clinics that will close").[3] Those providers include two of the six ambulatory surgical centers ("ASCs") providing abortions (located in Austin and Fort Worth), which are the only places that abortions after 15 weeks gestation may be performed under Texas law. App. E at 5-6 (Declaration of Darrel Jordan, M.D. ("Jordan Dec.")); App. G at 1-2 (Fine Trial Tr.). One of the three remaining ASCs (located in San Antonio) can provide only extremely limited services, forcing women who need abortions after 15 weeks to travel to either Dallas or Houston. App. C at 2-3 (Declaration of Andrea

[3] Dr. Potter's conclusions were based on information about all of the licensed facilities that were providing abortion services at the time of his testimony, including the plaintiffs in this case. Since that time, one plaintiff, Planned Parenthood Women's Health Center, has withdrawn from this litigation, and it is Applicants' understanding that abortion services will not be available in Lubbock even if this application is granted. However, Dr. Potter explained that Lubbock was a relatively small part of his conclusions. App. J at 6-7 (Potter Trial Tr.); *see also* App. L at Table 3 (Rebuttal Declaration of Dr. Joseph E. Potter) (showing annual provision of abortions at Lubbock facility to be only 1,077).

Ferrigno ("Ferrigno Dec.")); *see also* App. F at 3, 11-12 (Potter Dec.). All of the licensed facilities providing earlier abortions, *i.e.*, non-ASCs, in Waco, Fort Worth, Killeen, McAllen, and Harlingen, will also cease providing abortions, thereby eliminating all abortion access in those cities. App. E at 1, 3 (Jordan Dec.); App. I at 3-4 (Hagstrom-Miller Trial Tr.). In addition, one non-ASC abortion facility in El Paso, *id.* at 5, and another in San Antonio, *id.* at 3, will cease providing abortions. As a result, large parts of the state will lack an abortion provider. Moreover, many of the providers who can continue to provide services will have significantly reduced capacity because some, but not all of the physicians have privileges. *See* App. K (Plaintiffs' Trial Exhibit 46) (showing which of Applicants' facilities will close and of those that remain open, their ongoing capacity to provide abortions).

As a result of the admitting privileges requirement, the record shows that approximately 20,000 women annually will no longer be able to access abortion due to the shortfall in capacity among remaining providers. App. J at 8-9 (Potter Trial Tr.); App. F at 3, 6-9 (Potter Dec.) (over 60,000 women will seek abortion each year in Texas; approximately 20,000 will not be able to obtain one because of the admitting privileges requirement, *not* including those who cannot overcome obstacles due to travel distance)[4]; App. F at Table 3 (Potter Dec.).[5] Many other

[4] The evidence established that the privileges requirement would result in a significant increase in the number of women who will have to travel 100 miles or more for abortion services, App. J at 2 (Potter Trial Tr.); App. F at 2-3, 5 (Potter

women who are not outright denied access, will be delayed in obtaining abortions due to the shortage of providers, and as a result, will face an increased risk of complications. App. F at 3-4, 11 (Potter Dec.). These delays are particularly relevant here given the extremely limited availability of abortion after 15 weeks. These delays further no valid state interest, but rather are due solely to a restriction that makes it more difficult or impossible for women to obtain abortions due to a shortage of providers. App. J at 5 (Potter Trial Tr.).[6]

Moreover, as the District Court found, Applicants cannot mitigate these harms by hiring additional physicians with admitting privileges. App. B at 12-13 (Dist. Ct. Order). That is because there is a very small pool of physicians willing

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Dec.), and that these travel burdens will preclude many women from being able to obtain an abortion, App. F at 2-3 (Potter Dec.); App. C at 11 (Ferrigno Dec.); App. H at 1-2 (Ferrigno Trial Tr.). The Fifth Circuit believed that these increased travel burdens were insufficient to constitute an undue burden on women, but it ignored the undisputed evidence that approximately 20,000 women will be denied abortion each year as a result of the law *solely* because of the inability of the remaining clinics to absorb the patient volume. App. F at 6-9 (Potter Dec.).

[5] While the Fifth Circuit perceived deficiencies in the District Court's findings of fact (*see, e.g.*, App. A at 11 (Fifth Cir. Order)), Applicants' evidence of the harm that would befall their patients was undisputed. Moreover, in other portions of its opinion, the panel felt free to rely on Respondents' evidence that the District Court did not credit. *See, e.g., id.* at 6 (citing declarations of Drs. Anderson and Thorp).

[6] This Court has emphasized that delays not only must advance a valid state interest, but also must be carefully minimized to avoid pushing women further along in their pregnancy when the procedure may become riskier, or completely unavailable. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 885 (1992) (upholding one-day delay where shown it "does not create any appreciable health risk"); *Bellotti v. Baird*, 443 U.S. 622, 642-43 (1979) (recognizing delay can lead to abortion decision being made by "default").

and able to provide abortions; others who might be qualified are deterred by the fear of violence and harassment directed against themselves and their families, or precluded by anti-abortion employers. App. D at 2, 5, 6-7 (Declaration of Amy Hagstrom-Miller ("Hagstrom-Miller Dec.")); App. I at 1-2 (Hagstrom-Miller Trial Tr.); App. C at 8-9 (Ferrigno Dec.); App. G at 3-4 (Fine Trial Tr.).

Finally, and significantly for purposes of this application, clinics forced to close as a result of the stay are likely never to reopen even if the District Court injunction is ultimately affirmed. App. J at 3-4 (Potter Trial Tr.); App. I at 3 (Hagstrom-Miller Trial Tr.); App. D at 8 (Hagstrom-Miller Dec.); *see also* App. B at 13 (Dist. Ct. Order) (the "subsequent granting of privileges at some later date is meaningless if in the interim the clinic has closed"). Thus, if the Fifth Circuit's stay is allowed to stand, it will immediately—and in the long run—dramatically reduce the availability of abortion in Texas, regardless of the outcome of this case on the merits.[7]

[7] Even if there are physicians who might ultimately be able to obtain privileges, the Act did not give them adequate time to do so. The privileges requirement took effect 91 days after the Act's passage. Texas law permits hospitals to take as much as 170 days from the time an application is received to notify a physician whether privileges are granted. *See* TEX. HEALTH & SAFETY CODE § 241.101(k). Thus, in spite of their best efforts to promptly apply for privileges, Applicants' physicians have not been informed of the outcome of their applications, and cannot expect to hear for several months. App. C at 3-7 (Ferrigno Dec.); App. H at 1 (Ferrigno Trial Tr.); App. E at 3 (Jordan Dec.). The District Court's injunction remedied this problem, but the Fifth Circuit's stay forces them to comply without adequate time to do so, despite their good faith efforts.

These harms are not speculative. They have occurred in the few days since the Fifth Circuit's stay was issued. Just as Applicants' evidence at trial demonstrated would happen, abortion facilities where no physician has obtained admitting privileges have had no choice but to stop providing abortions, cancel appointments, and turn women away. *See, e.g.*, L. Tillman and J. Schwartz, *Texas Clinics Stop Abortions After Court Ruling*, N.Y. Times (Nov. 1, 2013) (*available at* http://www.nytimes.com/2013/11/02/us/texas-abortion-clinics-say-courts-ruling-is-forcing-them-to-stop-the-procedures.html?ref=us&_r=0); C. Sherman and C. Tomlinson, *Reinstatement of Abortion Law Leaves Few Options*, Associated Press (Nov. 1, 2013) (*available at* http://abcnews.go.com/US/wireStory/court-reinstates-texas-abortion-restrictions-20748957).

II. Respondents Will Not Be Harmed if the Fifth Circuit's Stay is Vacated.

In stark contrast to the immediate and irreparable harm Applicants face, Respondents cannot demonstrate that maintaining the status quo that has governed the practice of abortion in Texas for 40 years would result in any harm of the sort that would merit the "extraordinary" remedy of a stay pending final resolution of an appeal. *Graves v. Barnes*, 405 U.S. 1201, 1203 (1972) (Powell, J., in chambers).

Tellingly, Respondents did not even argue in their motion to the Fifth Circuit that delaying the enforcement of the law would pose any risk to patients. Nor could they. After hearing two days of testimony and reviewing numerous expert

declarations, the District Court soundly rejected such an argument, finding that there "is no rational relationship between improved patient outcomes and hospital admitting privileges within 30 miles of [the abortion provider]." App. B at 10 (Dist. Ct. Order). In particular, it found that "[a] lack of admitting privileges on the part of an abortion provider is of no consequence when a patient presents at a hospital emergency room." *Id*. "Admitting privileges make no difference in the quality of care received in an emergency room, and abortion patients are treated the same as all other patients who present to an emergency room" *Id*. "[W]hether an abortion provider has admitting privileges does nothing to further the interest of patient care by improving communication. Nor does it impact the timeliness of care in the emergency room, where the nature of the practice is to treat all patients with all possible haste." *Id*. Nor, the District Court found, would privileges improve patient care if a patient is admitted to the hospital or assuage concerns about patient abandonment, hospital costs, or accountability. *Id.* at 10-11.[8]

Moreover, pre-existing Texas law, with which Applicants comply, already requires that physicians who work at an abortion facility "have admitting privileges or have a working arrangement with a physician(s) who has admitting privileges at a local hospital in order to ensure the necessary backup for medical complications"

[8] The District Court's conclusion that admitting privileges bear no rational relationship to patient safety is bolstered by the fact that Texas does not require physicians performing far riskier surgeries than abortions at ASCs, App. G at 1-2 (Fine Trial Tr.), to have such privileges. *See* 25 TEX. ADMIN. CODE § 135.4(c)(11).

as well as a written protocol for emergency management and the transfer of patients to a hospital. 25 Tex. Admin. Code § 139.56(a). While this may not be necessary, it is certainly sufficient to protect patients in the rare circumstance that they need hospital treatment.

The lack of harm to patients is also evidenced by the District Court's findings that many physicians cannot obtain privileges for reasons having nothing to do with their qualifications to provide safe abortion care. *See* App. B at 12 (Dist. Ct. Order) ("[e]ach hospital's bylaws are unique" and can include variable requirements such as residency near the hospital, board-certification, and a minimum number of admissions per year). Physicians may not be able to meet these requirements for many reasons, including the fact that they do not reside close enough to qualifying hospitals. *Id*. Indeed, the District Court specifically found that a requirement that physicians seeking admitting privileges admit a minimum number of patients per year often disqualified physicians performing abortions "because the nature of the physicians' low-risk abortion practice does not generally yield *any* hospital admissions." *Id*. (emphasis added).

Unable to find that immediate (or even eventual) enforcement of the admitting privileges requirement was necessary to protect the public health, the *only* injury the Fifth Circuit panel identified was Respondents' inability to implement the Act during the pendency of the appellate review. But this Court has

never held that a state's interest in enforcement of its laws itself is sufficient to tip the balance of harm in the state's favor. *See, e.g., Certain Named and Unnamed Non-Citizen Children and Their Parents v. Texas*, 448 U.S. 1327, 1334 (1980) (Powell, J., in chambers) (vacating Fifth Circuit's stay and reinstating district court's injunction of Texas statute); *cf. Maryland v. King*, 133 S. Ct. 1, 2-3 (2012) (Roberts, J., in chambers) (state showed concrete, irreversible effects beyond lack of enforcement of statute); *New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers) (same).[9] If it were, then no plaintiff would ever be able to obtain a preliminary injunction against enforcement of a state statute.

Because the balance of harms tips so heavily in Applicants' favor here, the stay was improvidently granted and should be vacated.[10]

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[9] *See also KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (the government "has no legitimate interest in enforcing an unconstitutional ordinance" and suffers no injury from its injunction); *Planned Parenthood Ass'n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987) (finding it "questionable" whether the City "has any 'valid' interest in enforcing [an] Ordinance" likely to be found unconstitutional).

[10] The District Court's injunction will also serve the public interest, another factor in favor of vacating the stay. *See F.C.C. v. Radiofone, Inc.*, 516 U.S. 1301, 1301-1302 (1995) (Stevens, J., in chambers) (finding the public interest favored vacating a stay). In addition to protecting Texas women's access to abortion, the public interest is not served by enforcing a statute that is likely unconstitutional. *See, e.g., Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir.), *cert. denied sub nom. Moore v. Ingrebretsen*, 519 U.S. 965 (1996); *Florida Businessmen for Free Enterprise v. City of Hollywood*, 648 F.2d 956, 959 (5th Cir. 1981).

III. The Constitutionality of Local Admitting Privileges Is All But Certain to Come Before This Court and The Fifth Circuit Erred in Concluding That Respondents Are Likely to Prevail on the Merits.

As the District Court found based on the evidence in the record, a requirement that abortion providers have local admitting privileges does not advance women's health, App. B at 10-11 (Dist. Ct. Order), and no federal court has ever held such a requirement constitutional. To the contrary, in the past two years alone, in addition to the District Court here, three other federal district courts have enjoined such laws, finding them unconstitutional or likely unconstitutional. *See* App. B (Dist. Ct. Order); *Planned Parenthood of Wis., Inc. v. Van Hollen*, No. 13–cv–465–WMC, 2013 WL 3989238, at *16 (W.D. Wis. Aug. 2, 2013) (granting preliminary injunction after finding state's local admitting privileges requirement would have the "immediate effect of *substantially* decreasing access to abortion services to a significant percentage of women in Wisconsin"), *appeal docketed*, No. 13-2726 (7th Cir. Aug. 6, 2013)[11]; *Jackson Womens' Health Org. v. Currier*, No. 3:12-CV-436-DPJ-FKB, 2013 WL 1624365, at *5 (S.D. Miss. Apr. 15, 2013) (granting preliminary injunction after finding undue burden when state's admitting privileges requirement would close only known abortion provider in Mississippi), *appeal docketed*, No. 13-60599 (5th Cir. Aug. 27, 2013); *Planned Parenthood Se., Inc. v. Bentley*, 2013 WL 3287109, at *6-*7 (M.D. Ala. June 28, 2013) (granting

[11] The Seventh Circuit Court of Appeals has scheduled oral argument in the challenge to Wisconsin's admitting privileges law for December 3, 2013.

temporary restraining order after finding that the admitting privileges requirement would close three of five clinics in Alabama).

The Fifth Circuit's decision, based on briefing completed within twenty-four hours of the District Court's injunction, is the outlier among these cases. Indeed, the Fifth Circuit is the only court to allow a local admitting privileges requirement to take effect despite evidence that it would force numerous women's health centers to stop providing abortion care.[12]

More importantly, the Fifth Circuit's decision runs directly contrary to the heart of this Court's abortion jurisprudence. If *Casey*'s undue burden standard means anything, it must mean that a law that forces a third of the providers in the state to cease providing abortions and prevents approximately 20,000 women a year from accessing safe abortion services is unconstitutional. *See Planned Parenthood of Se. Pa.. v. Casey*, 505 U.S. 833, 893 (1992) (holding unconstitutional spousal notice requirement because it would "prevent a significant number of women from obtaining an abortion"). *See also Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52, 69, 74 (1976) (holding spousal consent

[12] The Eighth Circuit's ruling on an admitting privileges requirement is not to the contrary. *Women's Health Ctr. of W. County Inc. v. Webster*, 871 F.2d 1377 (8th Cir. 1989). As an initial matter, the Missouri law at issue allowed the physician to have admitting privileges anywhere in the United States. Moreover, the evidence showed there was that only one doctor in the entire state who was unable to comply, and thus there was no "substantial" obstacle placed in the path of women seeking abortion. *Id*. at 1380 n.7.

requirement and a parental consent requirement unconstitutional because both would prevent women from obtaining an abortion).

Accordingly, the Fifth Circuit's conclusion conflicts with this Court's precedent, and, given the number of cases currently in the federal courts and in particular, on appeal, the question of the constitutionality of a local admitting privileges requirement is extremely likely to come to this Court.

CONCLUSION

In order to prevent devastating and irreparable harm to Texas women who seek safe abortion care, Applicants respectfully request that this Court preserve the status quo as it has existed for more than forty years and vacate the stay entered by the Fifth Circuit during the pendency of Respondents' appeal.

Dated: November 4, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 4th day of November, 2013, I served the above document on the following counsel of record by electronic mail and by overnight commercial carrier.

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