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**Testimony of the New York Civil Liberties Union
to
The Office of the New York State Attorney General
regarding
The Proposed Closure of Burdett Birth Center**

September 18, 2023

The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony to the Office of the New York State Attorney General, regarding the proposed closure of Burdett Birth Center and its anticipated impact on the reproductive rights and health of the Capital Region community.

I. Introduction

The NYCLU, the New York State affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and more than 95,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the constitutions of New York and the United States. As an organization that focuses on legal and policy work in service of civil rights and social justice, the NYCLU strives to ensure that New York is a leader in the effort to secure the full range of rights and supports that underpin people's decision making around reproduction and family, from access to abortion care to birth justice.

The proposed closure of Burdett Birth Center would further distance New York from this goal. Equitable access to comprehensive, patient-centered, birth-related care is essential to people's ability to meaningfully determine their reproductive futures and exercise their bodily autonomy. This is especially critical amidst a maternal mortality crisis that is even more acute for Black and low-income pregnant people. As the state works to reduce these racial disparities and improve maternal health outcomes across the board, it must not allow hospital closures and consolidations to undermine its progress by further eroding access to reproductive health care, least of all for communities already bearing the brunt of longstanding structural inequities in the health care system. With above-average patient

outcomes, Burdett Birth Center is an essential resource for pregnant people throughout the Capital Region, and we welcome the opportunity to testify against its closure today.

II. Burdett Birth Center plays an essential role in the Capital Region health care ecosystem as the sole provider of dedicated, midwife-led prenatal and birth care.

For over a decade, Burdett Birth Center has provided comprehensive birth-related health care to the Capital Region community. Burdett Birth Center has been the only birth unit in Rensselaer County since 2011 and its closure will create a dangerous care desert for county residents. Burdett is also important for patients in Columbia and Washington counties, who have few birthing resources following the 2020 closure of the birth ward at Columbia Memorial Hospital, an affiliate of Albany Medical Center.¹ Burdett oversees roughly 900 births each year, and many of its patients are Black and low-income, with 51% of Burdett patients receiving Medicaid.²

Beyond its geographic significance as the sole birth ward in the county, and one of the few remaining in the region, Burdett is also uniquely important as one of the only providers of low-intervention, midwife-led birth care in a hospital setting.³ Burdett's collaborative midwifery model allows it to provide more attentive, patient-centered care and to offer a variety of care options, such as hydrotherapy.⁴ It also welcomes doula involvement. This not only supports Burdett patients' more empowering and satisfying birthing experiences, but also results in better maternal health outcomes—Burdett is the only maternity ward in the Capital Region that exceeds the federal government's Healthy People 2020 Initiative recommendations.⁵ It also boasts a lower primary cesarean rate than the statewide average—only 12.7 percent at Samaritan as opposed to 28.9 percent statewide.⁶

Moreover, until 2020 Burdett played a crucial role as a provider of certain reproductive health services, such as tubal ligations and vasectomies, which are prohibited under the

¹ Rachel Silberstein, *Attorney General to hold hearing on Burdett Birth Center closure*, Times Union (Sept. 7, 2023), <http://bit.ly/3RoMLdr>.

² Save Burdett Birth Center, *About*, <https://www.saveburdettbirthcenter.com/who-we-are>.

³ Silberstein (Sept. 7, 2023), *supra* note 1.

⁴ St. Peter's Health Partners, *Our Midwifery Model of Care*, Maternity Care (2023), <https://www.sphp.com/find-a-service-or-specialty/maternity/midwifery-model>.

⁵ Jesse King, *Midwives, parents rally against proposed closure of Burdett Birth Center in Troy*, WAMC Northeast Public Radio (Jun. 21, 2023), <https://www.wamc.org/news/2023-06-21/midwives-parents-rally-against-proposed-closure-of-burdett-birth-center-in-troy>. Burdett was also named a "Best Hospital for Maternity Care" by U.S. News & World Report; holds a "Baby-Friendly" designation, considered the gold standard in maternity care; and is a Blue Distinction Center for Maternity Care, a national designation for hospitals that show expertise in delivering improved patient safety and better health outcomes based on objective measures developed with input from the medical community. St. Peter's Health Partners, *National Recognition*, Maternity Care (2023), <https://www.sphp.com/find-a-service-or-specialty/maternity/national-recognition>.

⁶ Jesse King, *supra*, note 5.

ethical and religious directives binding St. Peter’s religiously-affiliated network of facilities.⁷ In 2020, St. Peter’s dissolved Burdett’s independent nonprofit status in order to merge it with Samaritan Hospital, citing this as necessary to preserve maternity services in Troy, and effectively ending sterilization procedures at Samaritan.⁸ At the time, St. Peter’s made statements assuring the public and regulators that it had no intention of closing Burdett—a testament to the vital role the facility plays in the community.⁹

Notwithstanding this prior commitment, St. Peter’s now claims that financial considerations spur it to close Burdett Birth Center entirely.¹⁰ It filed its application for closure to the New York State Department of Health two days before a law went into effect that would have subjected it to community engagement and an independent health equity impact assessment.¹¹

III. Closing Burdett Birth Center would further degrade an already hollowed out reproductive health care landscape for Capital Region residents, with the impacts falling hardest on low-income patients of color.

After a series of hospital consolidations and closures that have eroded regional reproductive health care access, the loss of Burdett Birth Center would cement Rensselaer County as a birth-related care desert. Closing Burdett would require people to travel long distances to access care, which is simply not feasible for many patients. It would also severely reduce patients’ ability to choose a care setting and philosophy that meets their needs.

In 2020, Albany Med Health System closed its eight-bed maternity unit about 30 miles south of Albany at Columbia Memorial Hospital, leaving Burdett as one of the only remaining dedicated birth centers in the area.¹² Since then, pregnant patients have already been made to travel longer distances to access care, a challenge that Burdett’s closure would further exacerbate.¹³ The lack of nearby maternal health facilities especially burdens low-income patients—the majority of Burdett’s patient-base—who may lack their own vehicle and rely on slow and unpredictable public transit or expensive taxis and ride shares in order to access medical care.

⁷ Silberstein (Sept. 7, 2023), *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ Robert Webster Jr., *A Message from Dr. Steven Hanks on the Proposed Closure of Burdett Birth Center*, St. Peter’s Health Partners (Jun. 30, 2023), <https://news.sphp.com/news/a-message-from-dr-steven-hanks-on-the-proposed-closure-of-burdett-birth-center/>.

¹¹ See 2021 Sess. Law of N.Y., Health Equity Impact Assessment Act (S.1451-A), <https://www.nysenate.gov/legislation/bills/2021/A191>.

¹² Rachel Silberstein, *St. Peter’s agrees to conduct impact study for birth center closure*, Times Union (Jul. 11, 2023), <https://bit.ly/3PnTp1a>.

¹³ Some experts predict that the current closure plan may even force pregnant patients to travel out of state for care when they are in labor. King, *supra* note 5.

Recognizing these obstacles, Albany Med now claims to make efforts to provide transportation support for its pregnant patients—an approach St. Peter’s CEO Dr. Steve Hanks has said he views as a model.¹⁴ But assistance arranging transportation is no substitute for geographically proximate care, especially when patients experience emergency complications that require urgent treatment. Moreover, such transportation assistance would only benefit patients who coordinate with the hospital in advance, which not all patients can or will do.¹⁵

Closing Burdett would also deprive the community of access to the Center’s unique collaborative midwifery model of care, which is associated with better maternal health outcomes—especially important given Burdett’s large base of Black and low-income patients, who experience disproportionately high rates of maternal mortality.¹⁶ Integrated access to midwifery is associated with improved maternal and infant health outcomes, including lower rates of cesarean section, higher rates of breastfeeding, lower rates of preterm births, lower rates of neonatal deaths, and fewer obstetric interventions; conversely, having less midwife integration and access to midwives and community birth has been correlated with higher rates of neonatal mortality.¹⁷ Burdett lives up to the promise of this integrated model, boasting a below-average cesarean rate and exceeding the

¹⁴ Silberstein (July 11, 2023), *supra* note 12.

¹⁵ While St. Peter’s leadership appears to minimize this concern—Dr. Hanks has publicly dismissed “the ones who show up without ever having seen somebody” as “pretty rare”—it is foreseeable that not all pregnant people will choose to involve St. Peter’s in their pregnancy and birth planning, especially considering the high rates of patient distrust of medical providers. Silberstein (July 11, 2023), *supra* note 12; see Harvard School of Public Health, *Marginalized communities likely to distrust healthcare system, polling finds* (Feb. 7, 2023), <https://www.hsph.harvard.edu/news/hsph-in-the-news/marginalized-communities-likely-to-distrust-healthcare-system-polling-finds/>.

¹⁶ Rachel Silberstein, *Officials: Burdett Birth Center survey falls short*, Times Union (Sept. 4, 2023), <https://www.timesunion.com/health/article/officials-burdett-birth-center-survey-falls-18340856.php>. According to New York’s most recent Maternal Mortality Review Report, the maternal mortality rate for Black women was over four times that for white women, and the majority of pregnancy-associated deaths occurred to individuals with Medicaid as their insurance. New York’s pregnancy-related mortality rate was also 1.7 times higher for cesarean delivery than for vaginal births. New York State Department of Health, *New York State Report on Pregnancy-Associated Deaths in 2018*, at 1-2, <https://on.ny.gov/44VbNUA>.

¹⁷ A study mapping midwifery integration into the health care system across the United States found that increased access to midwives and a higher density of midwives in a state were associated with improved maternal and infant health outcomes. These include higher rates of vaginal delivery and vaginal delivery after C-section; higher rates of breastfeeding; lower rates of C-sections; low rates of preterm births, low birth weight infants, and neonatal deaths; and fewer obstetric interventions. The study also found that states with the least integration of midwives and least access to midwives and community birth saw the highest rates of neonatal mortality. Nora Ellman, *Community-Based Doula and Midwives Key to Addressing the U.S. Maternal Health Crisis*, Center for American Progress (Apr. 14, 2020), <https://www.americanprogress.org/article/community-based-doula-midwives/> (citing Saraswathi Vedam and others, *Mapping integration of midwives across the United States: Impact on access, equity, and outcomes*, PLOS One 13 (2) (2018), at <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0192523>).

Healthy People 2020 recommendations. Accordingly, many patients intentionally seek care from Burdett in order to take advantage of its low-intervention, midwife-led approach to birth. Closing the Center would not only eliminate access to this potentially life-saving care model, but it would also jeopardize the quality of care at other nearby facilities, which will have to absorb the roughly 900 births that occur at Burdett annually, testing their already limited capacity.¹⁸

Amidst a maternal mortality crisis,¹⁹ closing Burdett Birth Center would have the doubly damaging effect of eliminating an overperforming facility while exacerbating the challenges and dangers patients must face when forced to seek care elsewhere.

IV. As New York combats a maternal mortality crisis, it must ensure hospital consolidations and closures do not undermine progress to improve health equity and birth justice.

Ranking 23rd among states in one of the only countries to have seen a rise in maternal mortality since 2000, New York recognizes that it faces a maternal mortality crisis.²⁰ In 2018, the Governor convened a Task Force on Maternal Mortality and Disparate Racial Outcomes to develop recommendations for decreasing maternal mortality, morbidity and racial disparities; in 2019 the Department of Health established the Maternal Mortality Review Board (MMRB) to examine pregnancy-associated deaths and issue recommendations; and the state has invested millions of dollars initiatives meant to improve maternal health outcomes and equity.²¹ Much of the state's work in this area has sought to increase access to midwives and doulas. The most recent MMRB Report explicitly recommends access to the midwifery model of care, as it is "associated with less intervention in labor and birth and a very patient centered approach throughout prenatal care..."²² The Report also highlights ongoing efforts by the state to expand access to midwifery-led birth centers by further integrating them into regional health systems.²³ Burdett Birth Center embodies precisely the model of care that New York is affirmatively

¹⁸ Jesse King, *supra* note 5; Anne McCloy, *Columbia Memorial Hospital to stop delivering babies due to doctor shortage*, WRGB Albany (Sept. 12, 2019), <https://cbs6albany.com/news/local/columbia-memorial-hospital-to-stop-delivering-babies-due-to-doctor-shortage>.

¹⁹ *See, supra* note 16.

²⁰ *See*, New York State Department of Health, *Maternal Mortality*, https://www.health.ny.gov/community/adults/women/maternal_mortality/.

²¹ *See*, New York State Taskforce on Maternal Mortality and Disparate Racial Outcomes, *Recommendations to the Governor to Reduce Maternal Mortality and Racial Disparities* (March 2019), <https://on.ny.gov/3sXcpvS>; Anna Kheyfets, *Assessing New York State's Progress on Maternal Mortality and Racial Disparities*, Mount Sinai (Jun. 30, 2022), https://www.health.ny.gov/community/adults/women/maternal_mortality/; New York State Department of Health, *supra* note 20.

²² *New York State Report on Pregnancy-Associated Deaths in 2018*, *supra* note 16, at 75.

²³ *Id.* at 76-77.

working to expand; allowing it to close would be antithetical to the state’s longstanding goal of reducing maternal mortality and racial disparities.

Moreover, by passing the Health Equity Impact Assessment Act, the state committed to ensuring transparency with respect to how hospital closures impact community members, especially communities who are already medically underserved. Members of the legislature recognized that “disparities in access to care result in unequal health outcomes. The distribution of health care providers and to whom they provide what services inevitably contributes to these inequalities.”²⁴

St. Peter’s sought to circumvent this much-needed state oversight by filing an application to close Burdett two days before the health equity impact assessment law went into effect. Although St. Peter’s agreed to independently hire a firm to evaluate the potential consequences of the closure after significant community pushback, this effort—consisting of a poorly worded survey that did not even collect demographic information and was open for only a few days—was woefully insufficient to solicit meaningful community feedback and did not amount to earnest cooperation with the intent and requirements of the law.²⁵

V. St. Peter’s plan to shutter Burdett is part of a striking pattern of secrecy and rejection of community involvement in hospital consolidation decisions and reductions in health care services in the Capital Region.

The state should be especially wary of St. Peter’s attempt to evade Department of Health oversight considering the greater context of hospital consolidations and mergers in the region and their impact on access to reproductive health care. In 2020, St. Peter’s announced its intent to merge with Ellis Medicine in Schenectady, New York, which includes Bellevue Woman’s Center—at the time, the Capital Region’s only inpatient hospital providing dedicated care to pregnant people and infants. The proposed merger faces significant opposition from community members who fear the loss of comprehensive reproductive care, infertility care, LGBTQ-inclusive care, gender affirming care, and end-of-life care within their local community. Instead of submitting a Certificate of Need to the state and allowing for public review, St. Peter’s pursued a similarly secretive process in 2021 that failed to account for community engagement.²⁶ As it originally claimed with respect to Burdett, St. Peter’s again promised to maintain reproductive health care at Bellevue unimpeded by the ethical and religious directives of the larger hospital system. But history shows that absent meaningful state involvement and enforcement of such

²⁴ 2021 Sess. Law of N.Y., Sponsor’s Memo, Health Equity Impact Assessment Act (S.1451-A), <https://www.nysenate.gov/legislation/bills/2021/A191>.

²⁵ Patrick Madden and John T. McDonald III, *Letter to New York State Department of Health Commissioner McDonald* (Aug. 29, 2023), <https://troyny.gov/DocumentCenter/View/1629/83023---Joint-Letter-for-Increased-Burdett-Input>.

²⁶ Rachel Silberstein (Sept. 7, 2023), *supra* note 1.

assurances, St. Peters—like any other hospital system—can make and break promises with grievous impacts on regional systems of health care. Allowing St. Peter’s to close Burdett would deal yet another destabilizing blow to the already precarious reproductive health care landscape in the Capital Region.

VI. Conclusion

Hospital closures and consolidations—particularly by hospitals that limit available care based on ethical and religious directives—can significantly impact health outcomes for New Yorkers, especially those who already face deeply embedded race-, gender-, and class-based structural inequities throughout the health care delivery system.²⁷ New York State leaders must scrutinize proposed hospital closures such as Burdett’s through this lens to ensure that corporate motives do not prevail over the needs of New York patients. These concerns are even more pressing as the state grapples with high maternal mortality rates and strives to reduce racial inequities and improve health care outcomes for all pregnant people. Burdett Birth Center represents a uniquely bright example of the kind of collaborative, patient-centered facility that can bring the ideal of birth justice closer to reality, especially for low-income patients of color. It is a model of care that the entire New York health care system should be working to emulate, not allowing to close.

²⁷ See, Allie Bohm, *Pushing past the pandemic means going beyond vaccine mandates and constantly improving on the progress New York has made.*, New York Civil Liberties Union (Feb. 8, 2022), <https://www.nyclu.org/en/news/ny-cant-just-rely-vaccine-mandates>.