

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

WEST ALABAMA WOMEN'S CENTER, et
al.,

Plaintiffs,

v.

DR. THOMAS M. MILLER, in his official
capacity as State Health Officer, et al.,

Defendants.

CIVIL ACTION

Case No. 2:15-cv-497-MHT

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' EMERGENCY MOTION TO
ENFORCE STIPULATED ORDER**

Plaintiffs hereby oppose Defendants' Emergency Motion to Enforce Stipulated Order (doc no. 38).

On June 2, 2016 Plaintiffs filed its Motion to Lift Stay and to File a Supplemental Complaint, Pls' Mot. (doc. no. 32), pursuant to this Court's order staying the litigation in this case, Stay Order (doc. no. 31). Paragraph 7 of the stay order provided that a party could move to lift the stay and that "the other party will have no less than 30 days to respond before the court rules on the motion, *provided however that this period will be shortened in accordance with Fed. R. Civ. P. 65 should the plaintiffs seek to lift the stay in order to obtain emergency relief.*" Id. ¶ 7 (emphasis added). Because Plaintiffs seek to lift the stay so that they may obtain emergency relief, the 30 day period was shortened by the Court within that provision. *See* Order to Show Cause by June 10, doc. no. 36.

Plaintiffs seek to supplement their complaint to bring new claims challenging the amended regulation, Ala. Admin. Code r. 420-5-1-.03(6)(b), and two recently enacted statutes, Alabama Senate Bill 205, Reg. Sess. 2016 ("SB 205" or the "clinic closure law"); Alabama

Senate Bill 363, Reg. Sess. 2016 (“SB 363” or the “D&E ban”), both of which are effective August 1. In their memorandum of law in support of their motion to supplement, Plaintiffs stated that because of the statutes’ imminent effective date, “in order to prevent irreparable harm from befalling Plaintiffs and their patients, Plaintiffs must seek injunctive relief before that date, and . . . respectfully request that the Court consider the instant motion on an expedited basis.” Pls’ Mem. of Law (doc. no. 33) at 3.

Despite the fact that Plaintiffs’ motion presents the precise scenario that the exception to Paragraph 7 contemplated, Defendants now request the full 30-day period to file their response to Plaintiffs’ motion, which will materially affect Plaintiffs’ ability to seek the emergency relief they require to prevent irreparable harm. In doing so they argue that the exception to Paragraph 7 does not apply because Plaintiffs have not filed a motion seeking emergency relief. This argument is a technicality and ignores the parties’ underlying considerations motivating Paragraph 7—that the 30-day period to respond to a motion to lift the stay would not apply if doing so would prevent Plaintiffs from obtaining emergency relief. Plaintiffs could not have filed a motion for emergency relief with their Motion to Lift Stay and to File a Supplemental Complaint because doing so would have been premature. If this Court were to deny Plaintiffs’ motion to supplement the complaint, then Plaintiffs would have to file a new case challenging the recently enacted statutes and would file a motion for emergency relief in that case. However, for the reasons set forth in the motion for leave to file a supplemental complaint, proceeding in this action is fully warranted under the circumstances and serves both to promote judicial efficiency and more completely resolve the dispute between the parties.

Wherefore, Plaintiffs respectfully request that this Court reject Defendants' motion and consider Plaintiffs' Motion to Lift Stay and to File a Supplemental Complaint (doc. no. 32) on an expedited basis so that they may seek emergency relief to prevent irreparable harm.

Date: June 9, 2016

Respectfully submitted,

s/ Andrew Beck

Andrew Beck*

New York State Bar No. 4740114

Alexa Kolbi-Molinas*

New York State Bar No. 4477519

Jennifer Lee*

New York State Bar No. 4876272

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

125 Broad Street, 18th Floor

New York, NY 10004

abeck@aclu.org

akolbi-molinas@aclu.org

jlee@aclu.org

(212) 549-2633

/s Randall C. Marshall

Randall C. Marshall

ASB-3023-A56M

ACLU FOUNDATION OF ALABAMA,
INC.

P.O. Box 6179

Montgomery, AL 36106-0179

rmarshall@aclualabama.org

(334) 265-2754

Attorneys for Plaintiffs

** Admitted pro hac vice*

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing will be filed with the Clerk of Court using the CM/ECF system, which will serve a copy of the same upon the following counsel of record, on this 9th day of June, 2016:

P. Brian Hale
Bethany L. Bolger
Carol R. Gerard
Alabama Department of Public Health
P.O. Box 303017
Montgomery, AL 36130

s/ Randall C. Marshall