

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**JACKSON WOMEN'S HEALTH
ORGANIZATION, on behalf of itself and its
patients, et al.**

PLAINTIFFS

VS.

CIVIL ACTION NO. 3:12-cv-00436-DPJ -FKB

**MARY CURRIER, M.D., M.P.H., in her
official capacity as State Health Officer of
the Mississippi Department of Health, et al.**

DEFENDANTS

**RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND/OR TEMPORARY RESTRAINING ORDER**

COMES NOW Defendant Robert Shuler Smith, in his official capacity as District Attorney of Hinds County, Mississippi, and respectfully submits this Response in Opposition to Plaintiffs' Motion for a Preliminary Injunction and/or Temporary Restraining Order.

This litigation concerns a newly enacted provision of Mississippi law that would require all physicians associated with abortion clinics in the state to have admitting privileges at local hospitals. District Attorney Smith is named a defendant because of his authority to prosecute crimes that occur in Hinds County. Plaintiffs particularly are concerned that, if the new law is allowed to take effect on July 1, District Attorney Smith might pursue criminal charges against a Jackson abortion clinic, its physicians, or its staff pursuant to state laws that establish penalties for violations of clinic licensure requirements. Thus, they have filed this motion for a temporary restraining order or preliminary injunction to stop the Admitting Privileges Requirement from becoming effective.

However, according to District Attorney Smith's understanding of state law governing abortion clinics and other ambulatory surgical facilities, a clinic's violation of licensure

requirements does not become subject to criminal or civil penalty until the clinic is provided notice of the purported violation, a hearing, and an opportunity to appeal. Therefore, District Attorney Smith will not pursue criminal charges or adverse action of any kind against the Jackson clinic, its physicians, or its staff while its compliance with licensure requirements is being reviewed by the state Department of Health. Neither has District Attorney Smith ever brought charges of any kind against the clinic, its physicians, or its staff for licensure violations.¹

Because the Plaintiffs therefore face no “credible threat of prosecution,” they cannot demonstrate the prospect of irreparable harm required for this Court to issue emergency relief as to District Attorney Smith. *Cf. KVUE, Inc. v. Moore*, 709 F.2d 922, 929-930 (5th Cir. 1983) (finding that plaintiffs faced a “credible threat of prosecution” when prosecutor’s statements about intent to pursue criminal charges under disputed statute were ambiguous).

WHEREFORE, PREMISES CONSIDERED, Defendant Robert Shuler Smith respectfully requests that the Plaintiffs’ motion be denied.

RESPECTFULLY SUBMITTED this, the 29th day of June, 2012.

**ROBERT SHULER SMITH, in his official
capacity as District Attorney of Hinds County,
Mississippi, Defendant**

**BY: JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

/s/ Benjamin Bryant

BY: P. ROGER GOOGE, MSB NO. 4903
BENJAMIN BRYANT, MSB NO. 103623
SPECIAL ASSISTANT ATTORNEYS GENERAL

¹Though time constraints associated with this motion for emergency relief prevented attorneys for the Defendant from securing an affidavit from District Attorney Smith attesting to these facts, District Attorney Smith stands ready to testify to their accuracy if necessary.

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CERTIFICATE OF SERVICE

I, Benjamin Bryant, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I electronically filed the foregoing document with the Clerk of this Court using the ECF system, which sent notification of this filing to:

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THIS, the 29th day of June, 2012.

/s/ Benjamin Bryant

Benjamin Bryant