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

WEST ALABAMA WOMEN'S CENTER and WILLIAM J. PARKER, M.D., on behalf of themselves and their patients,	)	
PLAINTIFFS,	)	
vs.	)	**Case No. 2:15-CV-497-MHT**
DONALD E. WILLIAMSON, M.D., in his official capacity as State Health Officer,	)	
DEFENDANT.	)	

DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION TO SHORTEN THE TIMEFRAME FOR RESPONSE SO THAT PLAINTIFFS MAY OBTAIN EMERGENCY RELIEF

COMES NOW Defendant State Health Officer[1] to oppose Plaintiffs' motion to shorten his time to respond – as was stipulated to by the parties and ordered by the Court on August 31, 2015 (the "Stipulated Order")(Doc. 31) – to Plaintiffs' motion to lift stay and file supplemental complaint. In opposition to Plaintiffs' motion, Defendant states as follows:

1. **Defendant should not be prejudiced by having to file response in a timeframe shorter than was agreed to by the parties. No emergency relief is necessary as it relates to the amended rule.**

The focus of the Stipulated Order was on actions of Defendant, State Board of Health, State Committee of Public Health, and/or Alabama Department of Public Health relating to administrative rules applicable to abortion or reproductive health centers. The commencement of timelines set out in said order are triggered by events of the rulemaking process (*i.e.*, 30-day window from effective date of a final rule for Plaintiffs to move to dismiss, lift stay, amend

[1] Since the filing of this action, Thomas M. Miller, M.D., has succeeded Dr. Williamson as State Health Officer, who was named as a defendant only in his official capacity.

complaint, or seek other relief). The Stipulated Order clearly did not contemplate actions of persons or entities other than Defendant, State Board of Health, State Committee of Public Health, and/or Alabama Department of Public Health, such as other governmental branches' and officials' passage and enactment of Act 2016-388 (the "School Proximity Bill") and Act 2016-397 (the "Dismemberment Bill").

As such, any emergency relief that may be needed by the Plaintiffs should be considered by the Court with the focus of the Stipulated Order in mind, and limited to the amended rule. The amended rule poses no imminent threat as it will not become applicable to Plaintiff West Alabama Women's Center until roughly two and a half months from today on August 24, 2016. Even then, there is no direct threat to the clinic's ability to stay open or to abortion access for Alabama women. Moreover, the amended rule will have no operation against any new Plaintiff sought to be added through supplemental pleading; nor will it be enforced by any new Defendant sought to be added. The amended rule can properly be addressed by the Court after allowing Defendant the time to respond to the Plaintiffs' motion to lift stay as was agreed to by the parties.[2]

While Defendant acknowledges the Court has broad discretion in determining whether to hold a party to its stipulations, they are not to be set aside lightly. *See* Haynes v. Gasoline Marketers, Inc., 84 F. Supp. 2d 1261, 1272 (M.D. Ala. 1999)(citing Morrison v. Genuine Parts Co., 828 F.2d 708 (11th Cir. 1987)). Plaintiffs admitted in the June 9, 2016, telephone conference with the Court that they were cognizant of the 30-day response time when they filed their motion to lift the stay but argued that requesting a shorter timeframe would be premature until the Court allowed the supplemental complaint. In other words, it is Plaintiffs' position that

[2] As was shared with the Court during its June 9, 2016, telephone conference with the parties, Defendant does not expect a trial to be necessary as it relates to the amended rule. Plaintiffs have made a number of representations about the amended rule that are not consistent with this agency's interpretation.

they cannot seek emergency relief because the parties connected to the need for emergency relief – both plaintiffs and defendants – are not in the case yet, which is precisely the point Defendant is trying to make. The emergency relief is not tied to Defendant but to other unrelated issues and unnamed parties. If it is emergency relief that Plaintiffs are waiting to seek, the most efficient and reasonable solution is to file a lawsuit to name those parties and bring those claims, not to spend time and resources trying to override the 30-day response time previously stipulated to in this action by these parties.

2. No manifest injustice will be suffered, nor judicial economy wasted, by Plaintiffs filing a separate lawsuit challenging the School Proximity and Dismemberment Bills.

The agreement of the parties reflected in the Stipulated Order may remain intact, and the needs of existing and new Plaintiffs to commence their challenge to the School Proximity and Dismemberment Bills met, by simply filing a separate lawsuit. Supplementing the pleadings in this matter pursuant to Rule 15, Fed. R. Civ. P., is not the only procedural vehicle available to the Plaintiffs to commence a legal challenge to the bills. Plaintiffs, accordingly, did not have to, but chose to, wait until June 2, 2016, to move to lift the stay in this matter and supplement the complaint to add challenges to the newly enacted School Proximity and Dismemberment Bills and to add additional parties. They could have filed a lawsuit naming all of the necessary parties and challenged the bills immediately following their both being signed into law on May 12, 2016.

Any injury, loss, or damage of an emergent nature relating to the School Proximity and Dismemberment Bills that may currently exist was largely created by the Plaintiffs' choice, and could have been lessened by Plaintiffs filing a separate lawsuit weeks ago; any harm posed by

these bills that may loom large with the additional passage of time can be addressed by Plaintiffs filing a separate lawsuit posthaste.

A significant component of Plaintiffs' stated reasoning to support supplementing the complaint in this case relates to matters of judicial economy. While Defendant will argue that the challenge to the amended rule and challenge to the recently enacted bills should be litigated separately on the date so ordered by the Court, the Court's resources may equally be conserved by considering whether to consolidate the two matters pursuant to Rule 42(a), Fed. R. Civ. P. That consideration can occur at a later date; and a date which would allow Defendant the opportunity to respond in the time as agreed between the parties in the Stipulated Order.

The purposes of both Rule 15, as stated in cases cited by Plaintiffs – *see, e.g.*, United States v. Ohio, 2014 WL 1308718, at *7 (granting motion to file supplemental complaint to avoid "piecemeal litigation and needless waste of judicial resources") – and Rule 42 are similar.

> "[Rule 42(a)] is a codification of a trial court's inherent managerial power '"to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."' In re Air Crash Disaster at Florida Everglades, 549 F.2d 1006, 1012 (5th Cir.1977) (quoting Landis v. North American Co., 299 U.S. 248, 254, 57 S.Ct. 163, 166, 81 L.Ed. 153 (1936)). We have encouraged trial judges to 'make good use of Rule 42(a) ... in order to expedite the trial and eliminate unnecessary repetition and confusion.' Dupont v. Southern Pacific Co., 366 F.2d 193, 195 (5th Cir.1966), cert. denied, 386 U.S. 958, 87 S.Ct. 1027, 18 L.Ed.2d 106 (1967)."

Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1495 (11th Cir. 1985).

As such, to the extent Plaintiffs desire swift action by the Court with regard to the recently enacted bills, they can initiate that request the instant they file a lawsuit; something they could have done nearly a month ago. And to the extent Plaintiffs believe the litigation over the amended rule is sufficiently connected to the litigation over the bills, the Court can consider those arguments – with the input of all involved parties – at a later date pursuant to Rule 42, Fed.

R. Civ. P. In summary, Plaintiffs have failed to provide any reason they are limited to bring challenge to the newly enacted bills via Rule 15, Fed. R. Civ. P., and the Court should not allow the Stipulated Order to be unnecessarily circumvented.

WHEREFORE, Defendant respectfully requests that the Court allow him no less than 30 days to respond to Plaintiffs' motion to lift stay and to file supplemental complaint, as set forth in the Stipulated Order. Alternatively, if the Court finds there to be sufficient reason to shorten the timeframe in which Defendant must respond, it is respectfully requested that Defendant be allowed until June 20, 2016, to do so; the same reduced timeframe previously requested, but refused by Plaintiffs.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 10th day of June 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will serve a copy of same upon the following counsel of record:

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