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227 F. Supp. 2d 1194 (2002)

SUMMIT MEDICAL CENTER OF ALABAMA, INC., New Women's Health Care; Center for Choice; Beacon Women's Center; West Alabama Women's Center; Reproductive Health Services; Louis T. Payne, M.D.; and Richard Stuntz, M.D., on behalf of themselves and their patients seeking abortions, Plaintiffs,

v.

Don SIEGELMAN, in his official capacity as Governor for the State of Alabama and his agents and successors; Bill Pryor, in his official capacity as Attorney General for the State of Alabama and his agents and successors; Donald Williamson, M.D., in his official capacity as State Health Officer for the Alabama Department of Public Health and his agents and successors; and Ellen Brooks, in her official capacity as Montgomery District Attorney and as representatives of the class of district attorneys for the State of Alabama, Defendants.

No. CIV.A. 02-A-1064-N.

United States District Court, M.D. Alabama, Northern Division.

September 30, 2002.

Order Amending Preliminary Injunction, October 14, 2002.

*1195 *1196 M. Wayne Sabel, Sabel & Sabel, P.C., Montgomery, AL, David A. Gespass, Gespaaa & Johnson, Birmingham, AL, Linda A. Rosenthal, New York City, for plaintiffs.

William H. Pryor, Jr., Charles B. Campbell, Office of Atty. Gen., Montgomery, AL, Edward A. Hosp, Office of Governor, Montgomery, AL, for defendants.

MEMORANDUM OPINION

ALBRITTON, Chief Judge.

I. INTRODUCTION

This case is before the court on a Motion for Temporary Restraining Order/Preliminary Injunction filed by the Plaintiffs on September 17, 2002.

The Plaintiffs, a group of health care facilities and physicians who provide abortion services in the State of Alabama, challenge the constitutionality of The Woman's Right to Know Act^[1] and seek either a preliminary injunction or a temporary restraining order against its enforcement. The Defendants include the Governor of the State of Alabama, the Attorney General, the State Health Officer, and a class of prosecuting attorneys. The court held a hearing on the matter on September 26-27, 2002 during which both sides presented comprehensive evidence of their respective positions.

For the reasons to be discussed, the Motion for Temporary Restraining Order is due to be DENIED; the Motion for Preliminary Injunction is due to be GRANTED in part and DENIED in part.

II. STANDARD OF REVIEW

A district court may grant preliminary injunctive relief if the movant shows the following: (1) substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest *McDonald's Corp. v. Robertson* [147 F.3d 1301](#), 1306 (11th Cir.1998). The purpose of a preliminary injunction is to protect the moving party from irreparable injury and to preserve the status quo until the district court renders a meaningful decision on the merits. *Carr v. State of Ala. Human Resources*, 952 F. Supp. 1496, 1500 (M.D.Ala.1996).

The Eleventh Circuit has consistently stated that "[a] preliminary injunction is an extraordinary and drastic remedy not to be granted unless the movant clearly established the burden of persuasion" as to the four requisites. *Id.* at 1306-07 (internal quotations omitted). Particularly relevant to the present case is the Eleventh Circuit's statement that "preliminary injunctions of legislative enactments —because they interfere with the democratic process and lack the safeguards against abuse or error that come with a full trial on the merits —must be granted reluctantly and only upon a clear showing that the injunction before trial is definitely demanded by the Constitution and by the other strict legal and equitable principles that restrain courts". *Northeastern Florida Chapter of Ass'n of General Contractors of America v. City of Jacksonville, Fla.*, [896 F.2d 1283](#), 1285 (11th Cir.1990), *rev'd on other grounds*, [508 U.S. 656](#), [113 S. Ct. 2297](#), [124 L. Ed. 2d 586](#) (1993).

III. THE WOMAN'S RIGHT TO KNOW ACT

The State of Alabama adopted The Woman's Right to Know Act ("Act .No. 2002-419" or "the Act") on April 17, 2002. The Act will go into effect on October 14, 2002. Act § 15. Its purpose is

"to ensure that every woman considering an abortion receives complete information on the procedure, risks, and her alternatives." Act § 2(b). In similarity to statutes passed by an increasing number of states, the Act is an "informed consent" statute by which providers of abortions are required to provide a patient seeking an abortion with certain information and a designated set of printed informational materials at least twenty-four hours prior to an abortion procedure, either in person or by certified mail, and to then obtain her informed consent before the abortion is performed. Act § 4(a), (b).

The Act mandates that the Department of Public Health ("DPH") has 180 days from the Act's effective date to publish the following printed materials for distribution:

- (1) Geographically indexed printed materials designed to inform the woman of public and private agencies and services available to provide medical and financial assistance to a woman through pregnancy, prenatal care, upon childbirth, and while her child is dependent. The materials shall include a comprehensive list of the agencies, a description of the services offered, and the telephone numbers and addresses of the agencies.
- (2) The printed materials shall include a list of adoption agencies geographically indexed and that the law permits adoptive parents to pay the cost of prenatal care, childbirth and neonatal care.
- (3) Printed materials that inform the pregnant woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term. It shall include color photographs of the developing child at each of the two-week gestational increments, a *1198 clear description of the unborn child's development, any relevant information on the possibility of the unborn child's survival, and dimensions of the unborn child. The materials shall be realistic, clear, objective, non-judgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.
- (4) The materials shall contain objective information describing the methods of abortion procedures commonly employed and the medical risks of each, and the medical risks associated with carrying a child to term.
- (5) The printed materials shall list the support obligations of the father of a child who is born alive.
- (6) The printed materials shall state that it is unlawful for any individual to coerce a woman to undergo an abortion, that any physician who performs an abortion upon a woman without her informed consent may be liable to her for damages in a civil action at law.
- (7) The material shall include the following statement: "There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or place him or her for adoption. The State of Alabama strongly urges you to contact those agencies before making a final decision about abortion. The law requires that your physician or his or her agent give you the opportunity to call agencies like these before you undergo an abortion."

Act § 5(a). These materials "shall be in a bound booklet, shall contain large clear photographs, and shall be printed in a typeface large enough to be clearly legible". Act § 5(b). DPH must also

create a video tape detailing much of the information in the printed materials as well as a consent form in order for the patient to verify that she gives informed consent pursuant to the Act. Act § (6)(a), (c).^[2]

In addition, the Act requires a physician or qualified person to inform the woman in person of additional information prior to the abortion. Act § 4(b). Among other things, this section of the Act requires the woman to be informed of the following, which is challenged by the Plaintiffs:

(3) The probable gestational age of the unborn child at the time the abortion is to be performed, and the probable anatomical and physiological characteristics of the unborn child at the time the abortion is to be performed. If the unborn child is viable or has reached a gestational age of more than 19 weeks, that:

- a. The unborn child may be able to survive outside the womb.
- b. The woman has the right to request the physician to use the method of abortion that is most likely to preserve the life of the unborn child, provided such abortion is not otherwise prohibited by law.
- c. If the unborn child is born alive, the attending physician has the legal obligation to take all reasonable steps necessary to maintain the life and health of the child.

Act § (4)(b)(3).

The Act also contains a provision that excuses the physician or qualified person from compliance with the Act's informed consent provisions in the event of a "medical emergency." Act § 4. The Act defines a "medical emergency" as:

*1199 That condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or in which a delay will create serious risk of substantial and irreversible impairment of a major bodily function.

Act § 3(5). If the physician believes a woman faces a "medical emergency," he or she must document the medical conditions associated with the medical emergency abortion on a DPS form. Act § 8(b).

The Act contains ...