

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK I. EVANS, M.D., *et al.*,

Plaintiffs,

v.

JENNIFER M. GRANHOLM, Attorney General,

Defendant.

CIVIL ACTION
NO: 00-70586
Hon. Arthur J. Tarnow

U.S. DIST. COURT CLERK
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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FILED

WOMANCARE OF SOUTHFIELD, P.C., *et al.*,

Plaintiffs,

v.

JENNIFER M. GRANHOLM, Attorney General,

Defendant.

CIVIL ACTION
NO: 00-70585
Hon. Arthur J. Tarnow

**PLAINTIFFS' MOTION FOR A CONTINUANCE OF DEFENDANT'S
MOTIONS TO CONSOLIDATE, TO CONVENE A PRE-TRIAL CONFERENCE,
AND TO ADOPT PRE-TRIAL ORDER**

Plaintiffs in Evans v. Granholm, No. 00-CV-70586, and WomanCare of Southfield, P.C. v. Granholm, No. 00-CV-70585, (hereinafter "Plaintiffs") hereby move for a continuance of Defendant's Motions to Consolidate, to Convene a Pre-trial

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Conference, and to Adopt Pre-trial Order, served March 30, 2000 ("Defendant's motions"), pending the Court's resolution of Plaintiffs' motion for a stay of proceedings in these cases. Plaintiffs' stay motion was served and filed on March 27, 2000; Defendant's response is due April 13, 2000. Absent a continuance, Plaintiffs' response to Defendant's motions will be due on April 17, 2000.

If Plaintiffs' stay motion is granted, they request that their response to Defendant's motions be due 21 days after the stay is lifted. If Plaintiffs' stay motion is denied, they request that their response to Defendant's motions be due 21 days after the order denying the stay motion.

Plaintiffs seek a continuance because resolving Plaintiffs' stay motion before attempting to work out the details of a Pre-trial Order will promote an orderly resolution of the case, and will further the interest in the economical use of judicial resources, as well as the resources of the parties. If a Pre-trial Order is negotiated now, before the stay motion is decided, and the stay motion is subsequently granted, the Pre-trial Order will likely need to be amended, once the stay is lifted, in light of the Supreme Court's decision in Stenberg v. Carhart, 120 S. Ct. 865 (2000) (granting cert. in part) (to be argued April 25, 2000).

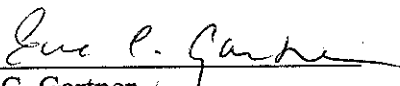
Pursuant to Local Rule 7, Plaintiffs' counsel has conferred with Defendant about this motion. Defendant objects to the issuance of a continuance.

WHEREFORE, Plaintiffs respectfully request that the Court continue Defendant's Motions to Consolidate, to Convene a Pre-trial Conference, and to Adopt Pre-trial Order, until after it has ruled on Plaintiffs' pending motion for a stay of proceedings. Plaintiffs

request that their response time be continued until either 21 days after the stay is lifted or, if no stay is granted, until 21 days after their stay motion is denied.

Dated: April 6, 2000

Respectfully submitted

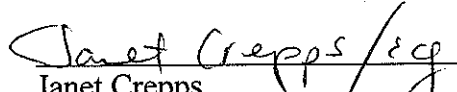

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK I. EVANS, M.D., *et al.*,

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CIVIL ACTION
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WOMANCARE OF SOUTHFIELD, P.C., *et al.*,

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CIVIL ACTION
NO: 00-70585
Hon. Arthur J. Tarnow

U.S. DIST. COURT CLERK
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FILED

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR A CONTINUANCE

Plaintiffs in Evans v. Granholm, No. 00-CV-70586, and WomanCare of Southfield, P.C. v. Granholm, No. 00-CV-70585 (hereinafter "Plaintiffs") submit this brief in support of their motion for a continuance of Defendant's Motions to Consolidate, to Convene a Pre-trial Conference, and to Adopt Pre-trial Order, served March 30, 2000.

PROCEDURAL BACKGROUND

On January 31, 2000, Plaintiffs filed these challenges to the constitutionality of the Michigan "Infant Protection Act," Mich. Comp. Laws § 750.90g (the "Act"). On February 14, 2000 (WomanCare plaintiffs) and February 15, 2000 (Evans plaintiffs), Plaintiffs moved for a preliminary injunction preventing the Act from taking effect as scheduled. On March 9, 2000, this Court entered a preliminary injunction. Shortly thereafter, counsel for Defendant asked Plaintiffs for a three-week extension of time in which to answer the complaints in these actions. Plaintiffs assented to Defendant's serving and filing her Answers by April 10, 2000.

On March 27, 2000, Plaintiffs filed and served a motion for a stay of proceedings in these cases until the Supreme Court of the United States issues its final decision in Stenberg v. Carhart, 120 S. Ct. 865 (2000) (granting cert. in part) (to be argued April 25, 2000), a challenge to Nebraska's ban on so-called "partial-birth abortion." Defendant's response to Plaintiffs' motion is due April 13, 2000.

On March 30, 2000, despite the pendency of Plaintiffs' stay motion and despite the fact that Defendant has not yet answered the Complaints, Defendant served and filed the instant motions seeking a pre-trial conference and order, and proposing the contents of the Pre-trial Order. Under Defendant's proposed Pre-trial Order, the parties would follow an expedited discovery schedule. Among other deadlines, Defendant would require Plaintiffs to serve Fed. R. Civ. P. 26(a)(2) and (3) disclosures within 30 days of the Pre-trial Order (though, inexplicably, Defendant would have until 60 days before trial begins to do the same). In addition, under Defendant's proposed order, all amendments to pleadings would have to be served, and all parties joined, within 30 days of the Pre-

trial Order, even though Plaintiffs have not yet had the benefit of seeing Defendant's Answers.¹

Absent a continuance, Plaintiffs' response to the motions will be due on April 17, 2000.

ARGUMENT

Plaintiffs seek a continuance because resolving Plaintiffs' stay motion before attempting to work out the details of a Pre-trial Order will promote an orderly resolution of the case, and will further the interest in the economical use of judicial resources, as well as the resources of the parties.

Although the Act is very different from—and even broader than—the Nebraska “partial birth abortion” ban before the Supreme Court, the Stenberg ruling is likely to clarify and perhaps narrow both the legal issues this Court must resolve and the factual issues the parties must address in discovery. See Plaintiffs' Brief in Support of Stay of Proceedings, at 4-5. Accordingly, Plaintiffs submit that once Stenberg is decided, the Court and the parties will be in a superior position to set a schedule regarding, *inter alia*, the filing of amendments to the pleadings; discovery (indeed, in light of Stenberg, no discovery may be necessary); and dispositive motions.² Moreover, until Plaintiffs have

¹ Defendant also inexplicably seeks to impose deadlines on the Court – suggesting in her proposed Pre-Trial Order that the final decision must be issued no later than 45 days after the trial ends.

² Some aspects of Defendant's proposed order will be unacceptable to Plaintiffs regardless of the outcome of Stenberg, such as Proposed Pre-trial Order ¶ 8, which provides that the “record made during the preliminary injunction hearing shall not be admitted as evidence at trial,” despite the clear provision of Fed. R. Civ. P. 65(a)(2) that evidence from the preliminary injunction hearing “becomes part of the record on the trial and need not be repeated.”

had the opportunity to review Defendant's Answer and affirmative defenses, they will not be in a position to fully assess Defendant's scheduling proposals.

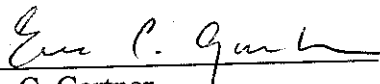
Any Pre-trial Order developed before the parties have determined how the Supreme Court's Stenberg ruling affects this case -- including what issues remain, what pleadings need amendment, what discovery, if any, is necessary, and what dispositive motions, if any, are likely to resolve legal issues -- is likely to require amendment once Stenberg is decided. Accordingly, Plaintiffs submit that the resources of the Court and the parties would best be preserved by continuing Defendant's motions until after Stenberg is decided. At a minimum, in order to avoid having to duplicate efforts, the motions should be continued until Defendants have answered and Plaintiffs' stay motion is decided.

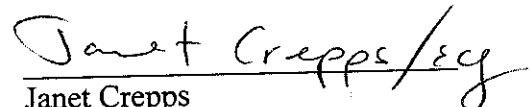
CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court continue Defendant's Motions to Consolidate, to Convene a Pre-trial Conference, and to Adopt Pre-trial Order, until after it has ruled on Plaintiffs' pending motion for a stay of proceedings until the Supreme Court issues a final decision in Stenberg v. Carhart. If Plaintiffs' stay motion is granted, Plaintiffs request that their response to Defendant's pending motions be due 21 days after the stay is lifted. If Plaintiffs' stay motion is denied, they request that their response to Defendant's motions be due 21 days after the order denying the stay motion.

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