

FILED  
SEP 17 2002  
CLERK  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA

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

\_\_\_\_\_  
SUMMIT MEDICAL CENTER OF :  
ALABAMA INC., ET AL., :  
 :  
 :  
 Plaintiffs, :  
 :  
 :  
 versus :  
 :  
 DON SIEGELMAN, ET AL., :  
 :  
 :  
 Defendants. :  
\_\_\_\_\_ X

Civil Case No. 02-A-1064-N

**DECLARATION OF GLORIA GRAY  
IN SUPPORT OF TEMPORARY RESTRAINING ORDER/  
PRELIMINARY INJUNCTION**

GLORIA GRAY deposes and says the following:

1. I am the Administrator of West Alabama Women’s Center (West Alabama) a women’s reproductive health care facility in Tuscaloosa, Alabama. I have occupied this position since August 1993. I am a member of the National Abortion Federation (NAF), as is the Clinic. NAF is a prestigious organization of abortion clinic and providers, and a clinic must satisfy stringent qualification criteria in order to gain NAF membership. I am also a member of the Tuscaloosa chapter of the Alabama Medical Group Management Association. Prior to becoming the Administrator at West Alabama, I served as the Director of the Birmingham Women’s Clinic for 2 years.

2. I submit this declaration in support of the Plaintiffs’ Motion for a Temporary Restraining Order/Preliminary Injunction against the Alabama’s “Women’s Right to Know” Act (hereinafter “SB 333” or the Act). Unless this Court blocks enforcement of this statute, West Alabama and its patients will suffer irreparable harm.

4

3. In my role as Administrator, I am responsible for the ongoing operations of the clinic, including counseling patients, scheduling staff hours, taking appointments, and maintaining the personnel, insurance, perform ultrasounds, and human resources files. I am basically responsible for the day-to-day operation of the clinic, as well as the accounting and business management of the clinic. I have first-hand knowledge of the circumstances of many of the clinic patients, particularly those in difficult situations that require my intervention.

4. At West Alabama, we strive to ensure that our patients receive quality reproductive health care in a supportive environment. West Alabama provides reproductive services to its patients, including a full range of gynecological services; pregnancy testing; non-directive options counseling; abortion up to 20 weeks gestation as measured from a woman's last menstrual period (lmp); contraceptives counseling; contraceptives; and sexually transmitted disease testing. Under Alabama law, all women are already required to have informed consent counseling before their abortion is performed. Annually, our physician performs approximately 3000 abortions and provides other gynecological services to approximately 2100 women.

5. I am concerned that Alabama's "Women's Right to Know" Act (hereinafter "SB 333" or the Act), will directly interfere with West Alabama's operations and endanger our patients' health and well being. If the Act is allowed to go into effect it will force us to stop performing all abortion procedures at least for the foreseeable future. It is for these reasons that West Alabama sues on its own behalf and on behalf of its patients for whom SB 333 would significantly impede, and in some cases preclude, access to abortion services.

6. Our clients seek abortions for a multitude of reasons. For all women, abortion is a difficult choice. Some women have important medical reasons for wanting an abortion. Among these medical problems are kidney disease, diabetes, cancer, cardiac disease, a history of post-partum hemorrhage, alcohol and/or drug abuse, radiation exposure, contraindicated medications,

and sickle-cell anemia. The vast majority of our patients seek abortions because of their age, their psychological, familial, educational or financial situation, or because their religion or conscientious beliefs preclude having a child at that point in their lives.

7. At West Alabama, we provide options counseling by non-licensed counselors who receive extensive training in abortion counseling. During the counseling session, a woman is counseled on her options and her decision to have an abortion. The counselors ensure that the woman is not ambivalent about her decision. In addition, the counselor discusses future contraceptive use with the patient. All of our patients also watch a video that reviews with them all of the information they have just heard from the counselor. If the patient appears ambivalent about her decision we will refer her to a social agency, or another counselor, and the abortion will be rescheduled to give the patient more time to consider her options. West Alabama always refuses to perform an abortion if a patient seems ambivalent or if her decision seems to be coerced. Individual counseling is also available after the abortion procedure.

8. Although the Act is scheduled to go into effect on October 14, 2002, the Alabama Department of Public Health has 180 days from that date, or until April 12, 2003, to develop and publish the materials that West Alabama is required to provide to its patients seeking abortions. It has the same amount of time to publish numerous forms that are required in order to provide abortion services.

9. If the Act is not enjoined, West Alabama will be required to use materials that do not yet exist in order to continue providing abortion services. The Clinic will therefore be in an impossible position: either we will have to provide abortions and be in what would appear to be in violation of the Act or we will have to stop providing abortions altogether. Given the Act's severe penalties, West Alabama would strongly consider stopping all abortion services if the materials are not ready.

10. The Act requires the Department to publish forms, such as a signature form verifying that the patient has received certain information (SB 333, Section 6(c)) and a signature form for recording the medical conditions associated with a medical emergency abortion (SB 333, Section 7(b)). The Department must also develop a videotape that contains information specified in the Act. See SB 333, Section 6(a). As far as I am aware, none of these materials or forms is ready or is going to be ready by the Act's effective date on October 14, 2002.

11. The Act also requires the Department to publish specific information materials listed in the statute. I am aware that the Department has started to develop some of these informational materials because I received a draft version of the materials in July. I have not yet received a final version of the informational materials, however, nor has the Department notified me that the materials are finalized. I have never seen a copy of a State-produced video tape.

12. Moreover, the draft materials I reviewed in July contain numerous problems that make me think that the materials are not going to be usable by the Act's effective dates. For example, when we met with the Department in August, it still had not obtained copyright permission to use the images contained in the draft circulated by the State. The materials also contain numerous factual inaccuracies that will at best confuse my patients and at worst mislead them about the treatment we are providing. For example, the State's draft states that medical abortion is "[o]nly an option up to 49 days (7 weeks) after LMP." See Declarations Exhibit 1 (attached to Ayers Decl.) at 18. But that is untrue; we provide medical abortion through 63 days or 9 weeks lmp. In addition, the Draft states that a woman will be given three pills of mifepristone to be taken orally, see Declarations Exhibit 1 (attached to Ayers Decl.) at 19, but we administer only one pill. The rest of the information regarding medical abortion is similarly inaccurate and confusing. It does not accurately describe any medical abortion regiment that I

am aware of and it conflicts with the Federal Drug Administration's approved protocol for medical abortion.

13. In addition, regarding medical abortion, the brochure lists reasons that women should avoid medical abortion, but it fails to list the number one reason that a woman should not be administered medical abortion: namely, if she is not willing to follow-up with a surgical procedure in case there are any complications with the medication. The list is incomplete and therefore not accurate.

14. There are many more inaccuracies in the State's draft brochure. In addition, when describing a first-trimester surgical abortion procedure (as required by SB 333), the State inaccurately says that a physician may insert laminaria to dilate a woman's cervix. See Declarations Exhibit 1 (attached to Ayers Decl.) at 21. But a first-trimester surgical procedure does not require dilating a woman's cervix with laminaria and, in fact, in all my years of experience, we have never used laminaria in a first-trimester surgical abortion. In contrast, the materials make no mention of the use of laminaria in a second-trimester surgical abortion procedure, see Declarations Exhibit 1 (attached to Ayers Decl.) at 22, even though that is precisely when a woman's cervix may need to be mechanically dilated. We consistently use laminaria for all second-trimester procedures after 16 weeks lmp. These inaccuracies in the materials are just a few examples of the erroneous information contained in the State's draft brochure that renders it unusable. To provide this information to my patients would be giving them blatantly false information and would mislead them about the medical services they are receiving. This would plainly do them a disservice and would significantly compromise their confidence in the medical care they are receiving at what is already a fairly stressful time for them.

15. In addition, we encourage our patients to return for a follow-up visit after a surgical abortion procedure so that we can ensure that their uterus has returned to normal and that they are fully recovered. We strongly advise our patients to return for follow-up care and, in fact, the cost of that visit is included in the cost of the procedure. The Draft brochure states, however, that a surgical abortion “[d]oes not require follow-up in all cases.” See Declarations Exhibit 1 (attached to Ayers Decl.) at 21. Thus, the State’s materials are in direct tension with the course of treatment that we recommend to our patients. It is for our patients benefit that we ask them to return for a follow-up visit and the brochure would undermine our request by creating the impression that a follow-up visit is not typically required.

16. In addition, the Department has attempted to create regulations to implement the Act, but they have not followed their own procedures to put those into effect. I am aware that under Alabama law, the Department must publish written notice of any new rules and regulations at least 35 days in advance of soliciting comments on those regulations. The Department has not followed its own rules for how to properly implement the Act and it will not be able to do so in time for the October effective date. Instead, the Department has indicated it is going to issue emergency regulations to implement the Act. But there is no “immediate danger to the public health” and the Department has never stated in writing that there is, although I understand it is obligated to do so if it wants to bypass the proper time requirements for implementing regulations. Thankfully, abortion services in Alabama are provided at an extremely high level of care. There is no public health crisis for abortion services and thus there is no reason why the Department should not have to follow its own rules to implement the Act. Since it cannot do so in time for the Act’s effective date, I understand this is another reason why the Department will not be able to be ready to enforce the Act and should be enjoined.

17. Given that the Act goes into effect in approximately one month, if the State represents that it would be able to create accurate materials by the Act's effective date, the Clinic will still be left in a precarious position. We need to familiarize ourselves with the State's materials in order to incorporate them into our day-to-day operations. A last-minute distribution of forms and information by the State would place me in the position of having to distribute materials without appropriate staff training. Given the severe nature of the Act's penalties, I am fearful that the State will distribute inaccurate materials on the eve of the statute's effective date, and we will be in an untenable position of having to use the materials without having had sufficient time to prepare to do so.

18. I am also concerned about the requirements that SB 333 places on facilities like West Alabama that provide abortions after 19 weeks. At the present time, I am aware of only 2 clinics in the state of Alabama where a woman can obtain a procedure after 19 weeks. SB 333 mandates that a facility providing an abortion to woman who is 19 weeks pregnant inform the woman that the fetus may be able to survive outside of the womb. But, according to the medical and scientific community, this is simply not true. A fetus cannot independently survive outside the womb before 23 or 24 weeks at the earliest. Of course, in the case of some fetuses with genetic anomalies, they will never be able to survive outside of the womb at 19 weeks or anytime after that point. Just like with the State's draft brochure, to tell our patients something contrary to established medical fact would plainly be harmful to them and would undermine their medical care at an already difficult time in their lives.

19. SB 333 also requires that a woman seeking a procedure after 19 weeks be told that she has the right to request the abortion procedure most likely to preserve the life of the fetus. This seems to me like it could very well entitle a patient to demand a physician to perform a particular abortion method. The abortion procedure most likely to preserve the life of the fetus is

a hysterotomy which requires an external incision into a woman's uterus, akin to a Cesarean section, and then the removal of the fetus. A hysterotomy is a major surgical procedure that cannot be performed at a clinic setting but must be performed in a hospital. West Alabama's physician does have surgical privileges at local hospitals, but I know that he would not typically perform a hysterotomy as a routine abortion procedure and can think of almost no circumstances where a hysterotomy procedure would be his best medical judgment for a preferred abortion procedure. If the Act goes into effect, we would seriously consider not performing abortions after 19 weeks, as we cannot risk being required to perform a medical procedure against the best judgment of the physician.

20. Although SB 333 will have an adverse effect on all women, women who are the survivors of abuse, rape, or incest will be especially hurt by the new provisions. In 2002, we have already treated several women who reported to us that their pregnancies were the result of rape; there were many other patients whose pregnancies we suspected were the result of rape but who did not want to discuss the issue with us. Many more were the victims of physical abuse at the hands of a husband or boyfriend. In my experience, at least one woman each week appears to me as if she is in an abusive relationship. In the last year alone, I have seen at least 6 women, most of whom were minors, who were survivors of rape and incest and had become pregnant as a result.

21. Over the years, I have also seen a significant number of women who were carrying previously wanted pregnancies who learned sad news about their fetus, such as that their fetus was no longer alive or that it had significant abnormalities that would have made it not possible for the fetus to have a meaningful existence after it was born. These cases often are discovered after 19 weeks gestation, as some anomalies are only able to be detected at that point in



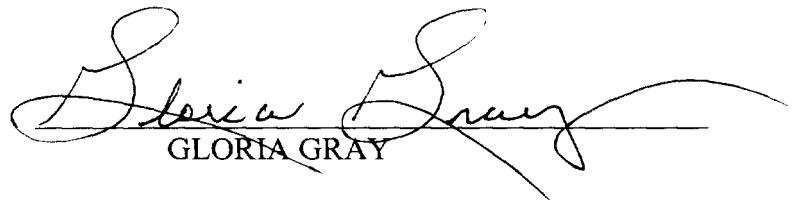
pregnancy. Although it is infrequent, we see those cases approximately once a month and would estimate that I have already seen about 6-10 cases this year alone.

22. Although SB 333 has a medical emergency exception that permits an abortion to be performed without following the statute's informed consent provisions, it does not appear to provide an exception for women who are victims of rape or incest. It also does not provide an exception for women who are carrying previously wanted pregnancies. Without an exception that permits us not to subject these women to the mandatory statements about support obligations and adoption agencies, for example, SB 333 will cause these women significant and unnecessary harm. It would be extremely cruel to "inform" these women of the mandatory information, but the Act appears to make no exception for the woman's circumstances except in the most dire of medical emergencies. It does not permit West Alabama not to administer all of the required information if in the best judgment of the physician the information will have an adverse effect on the woman's mental and emotional well-being.

23. I do not believe that SB 333 will contribute to women making informed decisions about abortion. On the contrary, it will lead to an outright ban on abortions given that the Department materials are not ready; it will provide incorrect information to women who are seeking abortions any point after 19 weeks gestation; it will create a right for women to demand a physician perform a procedure against his better medical judgment; and endanger the emotional and mental health women who are in abusive relationships, survivors of rape and incest, and women who are seeking to terminate previously wanted pregnancies. It is for all of these reasons that I respectfully request that the Court grant Plaintiffs' Motion for a Temporary Restraining Order / Preliminary Injunction.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 9<sup>th</sup>, 2002

  
GLORIA GRAY