

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF ARIZONA

3

4 Planned Parenthood Arizona,)
 Incorporated, et al.,)
 5)
 Plaintiffs,)
 6)
 vs.) CV-19-00207-TUC-JGZ
 7)
 Mark Brnovich, et al.,)
 8) Tucson, Arizona
 Defendants.) July 22, 2019
 9) 1:04 p.m.

10

11 TRANSCRIPT OF SCHEDULING CONFERENCE
 12 BEFORE THE HONORABLE JENNIFER G. ZIPPS
 UNITED STATES DISTRICT JUDGE

13 For the Plaintiffs:

14 Ms. Catalina Vergara
 Mr. Dimitri D. Portnoi
 O'Melveny & Myers, LLP - Los Angeles, CA
 15 400 South Hope Street, 18th Floor
 Los Angeles, CA 90071

16

17 Mr. Daniel B. Pasternak
 Squire, Patton, Boggs, LLP - Phoenix, AZ
 1 East Washington Street, Suite 2700
 18 Phoenix, AZ 85004

19 Ms. Alice Clapman
 Planned Parenthood Federation of America - New York, NY
 20 123 William Street
 New York, NY 10038

21

22 Proceedings recorded by mechanical stenography, transcript
 produced by computer.

23

24 Aaron H. LaDuke, RMR, CRR
 Federal Official Court Reporter
 405 W. Congress St.
 25 Tucson, Arizona 85701

1 APPEARANCES CONTINUED:

2 For Plaintiff Paul A. Isaacson, M.D.

Mr. Marc A. Hearn

3 Center for Reproductive Rights - Washington, D.C.

1634 Eye Street NW, Suite 600

4 Washington, D.C. 20006

5 Ms. Jessica L. Sklarsky

Center for Reproductive Rights

6 199 Water Street, 22nd Floor

New York, NY 10038

7

For Defendant Mark Brnovich:

8 Mr. Andrew G. Pappas

Office of the Attorney General - Phoenix

9 2005 North Central Avenue

Phoenix, AZ 85004

10

For Defendants Members and Executive Director of the Arizona

11 Medical Board and Arizona Board of Nursing:

Mr. John R. Tellier

12 Office of the Attorney General - Phoenix

2005 North Central Avenue

13 Phoenix, AZ 85004

14 For Defendant Cara M. Christ

Ms. Aubrey Joy Corcoran

15 Office of the Attorney General - Phoenix

1275 West Washington Street

16 Phoenix, AZ 85007

17

18

* * * * *

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE CLERK: In civil matter 19-207, Planned
3 Parenthood America, Incorporated, et al., versus Brnovich, et
4 al., on for a scheduling conference.

5 Counsel, please state your appearances.

6 MS. VERGARA: Good afternoon, Your Honor. Catalina
7 Vergara of O'Melveny & Myers here on behalf of plaintiffs.
8 I'm here with my law partner, Dimitri Portnoi, and one of our
9 summer associates, Andrew Campa, who is a law student at
10 Berkeley.

11 THE COURT: Good afternoon.

12 MR. PAPPAS: Good morning, Your Honor -- or good
13 afternoon, rather. Andrew Pappas of the Arizona Attorney
14 General's Office for Attorney General Mark Brnovich.

15 THE COURT: Good afternoon.

16 And do we have attorneys on the phone?

17 MR. PASTERNAK: Good afternoon, Your Honor. This is
18 Dan Pasternak on behalf of plaintiffs.

19 MS. CLAPMAN: And Alice Clapman on behalf of
20 plaintiffs.

21 MR. TELLIER: Good afternoon, Your Honor. Assistant
22 Attorney General John Tellier on behalf of the Members and
23 Executive Director of the Arizona Medical Board and the
24 Arizona Board of Nursing.

25 THE COURT: Good afternoon.

1 MR. HEARRON: Marc Hearron on behalf of plaintiff
2 Dr. Isaacson.

3 MS. SKLARSKY: Jessica --

4 MS. CORCORAN: Aubrey Joy Corcoran -- I'm sorry.
5 Aubrey Joy Corcoran with the Arizona Attorney General's Office
6 for defendant Dr. Cara Christ.

7 MS. SKLARSKY: Jessica Sklarsky on behalf of
8 plaintiff Dr. Isaacson.

9 THE COURT: All right. Is that everyone?

10 MS. VERGARA: I believe so, Your Honor.

11 THE COURT: All right. Thank you.

12 All right. So I have multiple counsel for plaintiffs.
13 Will each attorney be speaking, or is there one attorney who
14 is speaking for plaintiffs generally?

15 MS. VERGARA: This is Catalina Vergara. I will be
16 speaking on behalf of plaintiffs, Your Honor. Thank you.

17 THE COURT: Thank you.

18 And for the defendants, who all will be speaking?

19 MR. PAPPAS: Your Honor, this is Andrew Pappas. I'll
20 be speaking primarily, though if I need for Ms. Corcoran or
21 Mr. Tellier to chime in on behalf of their respective clients,
22 I'll ask them to do so.

23 THE COURT: All right. Thank you.

24 All right. So this is the time set for a scheduling
25 conference in this matter. The parties have submitted a joint

1 Rule 26(f) report. Thank you for that submission. The report
2 proposes standard deadlines for discovery and disclosure of
3 certain matters in this case. I appreciate those.

4 The deadlines are a little bit longer than what are
5 presumptively set in our cases, but I realize this isn't the
6 standard type of accident case or such, so I'm assuming that
7 the parties have proposed these deadlines, have taken into
8 account what type of discovery and disclosure is needed and
9 how long it will take to have expert reports prepared and
10 such.

11 But to review that, I'm going to ask if each party would
12 please generally summarize the discovery that's anticipated so
13 that I'll have an idea of what that is, and I'll start with
14 Ms. Vergara.

15 MS. VERGARA: Yes, Your Honor. Thank you.

16 As you know from having reviewed our joint report, this
17 litigation challenges a series of statutes and regulations in
18 the state and a rather extensive web, if you will, of statutes
19 and regulations.

20 The litigation we anticipate and the discovery will be
21 focused on uncovering not only information on the legislative
22 history regarding the statutes that were implemented but also
23 information regarding the enforcement of the various statutes
24 and how they have played out in the state of Arizona and
25 restricted the rights of women in Arizona to access legal

1 abortions.

2 And so we do expect a fair amount of expert discovery,
3 which is why we've allotted for, if I'm not mistaken, two
4 months following the close of fact discovery for the parties
5 to submit expert reports and an additional two months for
6 rebuttal reports.

7 And we recognize that that is perhaps longer than in your
8 typical case, as Your Honor mentioned, but given the extent of
9 the expert discovery that we are anticipating, we feel that
10 the time limits are appropriate and worked collaboratively
11 with Mr. Pappas to come up with a schedule that we mutually
12 thought would work for the case.

13 THE COURT: All right. Mr. Pappas.

14 MR. PAPPAS: Thank you, Your Honor.

15 We did work collaboratively together and agree that the
16 deadlines are reasonable, particularly given the extent of the
17 factual allegations in the plaintiffs' complaint. It runs
18 to -- I think I checked -- 188 paragraphs of factual
19 allegations, and, of course, we want to test all of those
20 allegations.

21 A lot of the allegations in the complaint concern the
22 effects, the alleged effects of these laws on Planned
23 Parenthood and the other plaintiffs. Among other things, they
24 allege that these laws caused for their clinics to close, for
25 example, and so we'll want to test -- we'll want to test the

1 veracity of all those allegations.

2 We also anticipate a reasonable but substantial amount of
3 expert discovery, including with regard to the medical
4 benefits and other benefits, for that matter, associated with
5 the challenged laws.

6 So we also think that the discovery proposal is
7 reasonable under the circumstances.

8 THE COURT: The substantial amount of expert
9 discovery, what does that consist of?

10 MR. PAPPAS: Well, that's a good question, Your
11 Honor. We don't exactly know yet. I mean, we do anticipate
12 identifying medical experts, for instance, who could opine on
13 the benefits of certain of these laws. I don't know what sort
14 of expert testimony exactly the plaintiffs have in mind, but I
15 know that they've represented to us that they do intend to
16 engage multiple experts.

17 MS. VERGARA: Yes, Your Honor, and we've begun the
18 work of thinking through those issues. It will be guided, of
19 course, in part by what we learn over the course of fact
20 discovery, but much of the expert discovery we expect to be
21 focused on how these laws have affected the women of Arizona
22 in seeking legal abortions, and that could touch on a number
23 of different areas. So we do anticipate fairly extensive
24 expert discovery, and I would invite Mr. Portnoi to fill in
25 the details, with Your Honor's indulgence.

1 MR. PORTNOI: Yes. So we would expect that there
2 would be a number of experts. I know that Mr. Pappas in this
3 regard mentioned impacts, but those impacts may result in
4 multiple experts, for instance, in different communities.

5 Arizona is not a state that's easy to summarize with a
6 single, a single easy expert in different communities. In,
7 for instance, tribal areas, rural areas, you'll see different
8 impacts than you do in urban areas. But also we intend to
9 test, ourselves, the veracity of the medical benefits that are
10 purported to accompany these laws and whether or not there are
11 sufficient benefits to justify them as is contemplated in the
12 standards of cases such as this in the U.S. Supreme Court,
13 like *Whole Woman's Health*.

14 THE COURT: All right. And then as far as the number
15 of depositions, if I'm reading the parties' report correctly,
16 neither party is planning on exceeding the number of
17 depositions provided for in the rules, at least not at this
18 point. That's not something that's anticipated; is that
19 correct?

20 MS. VERGARA: That's correct. At this time, we don't
21 anticipate exceeding the limits. Should there come a time
22 when either side believes that to be necessary, we will work
23 together to see if we can come up with a solution that makes
24 sense, Your Honor.

25 MR. PAPPAS: That's correct, Your Honor.

1 THE COURT: All right. The defense raises an issue
2 with respect to Joey Ridenour, that the complaint names
3 Ms. Ridenour in the caption but not in the body, and there are
4 no factual allegations pertaining to the executive director.

5 Is that an issue that the plaintiffs intend to address
6 with an amendment or dismissal?

7 MS. VERGARA: No, Your Honor, it's not an issue that
8 we intend to address. Joey Ridenour is the executive director
9 of the Arizona State Board of Nursing, and the allegations
10 that pertain to that board pertain to Ms. Ridenour.

11 THE COURT: All right. And the defense raises the
12 issue or states its position that plaintiff lacks standing to
13 assert the punitive constitutional rights of patients. Is
14 that something that the defense intends to address by motion?

15 MR. PAPPAS: It is not, Your Honor.

16 THE COURT: All right.

17 MR. PAPPAS: At least not at this juncture.

18 THE COURT: All right. The report indicates the
19 parties have talked about a plan for disclosure of
20 electronically stored information. No issues with that?
21 That's in place?

22 MS. VERGARA: Your Honor, we've begun those
23 conversations and they're progressing very well. We've
24 agreed, on the plaintiffs' side, to draft an ESI protocol to
25 exchange with Mr. Pappas and his office for their review and

1 expect to be able to work out any issues on that front. We're
2 also working on a protective order that we'll exchange and
3 collaborate on.

4 THE COURT: All right. And that was my next
5 question, since it seems that that would be a possible
6 impediment to discovery, but the parties -- is there a
7 deadline or date by which you have set to submit a proposed
8 protective order?

9 MS. VERGARA: We've offered to send drafts of both
10 the ESI protocol and the protective order to Mr. Pappas by
11 Wednesday of this week, so in a couple of days, and we'll work
12 together to get that resolved quickly so that it doesn't
13 impede the parties' productions.

14 THE COURT: All right. I am going to adopt the
15 guidelines that the parties have proposed, and I will by
16 separate order adopt those guidelines and then provide general
17 information about how this Court conducts its cases and what
18 to do in particular circumstances, and I want to cover two of
19 those specific standard procedures that I follow.

20 Discovery disputes: You all know that if there's a
21 discovery dispute that the rules require personal consultation
22 and that the Court expects that the personal consultation will
23 occur and that it will be cordial, and the best method, of
24 course, is in-person and in-person can be over the phone.

25 But if after personal consultation the parties are unable

1 to resolve a dispute, it's my procedure that the parties
2 jointly, or in this case more than jointly, contact the law
3 clerk assigned to this case telephonically and tell the law
4 clerk what the nature of the dispute is. If I'm available,
5 I'll get on the line and we'll see if we can resolve the
6 discovery dispute then. If I need additional information
7 based on the nature of the dispute, then I'll have the parties
8 provide briefing. It will be abbreviated briefing. And the
9 idea is to keep the case on track. So I wanted to make you
10 aware of that procedure.

11 As far as motions for summary judgment, it appears that
12 this might be the kind of case where motions for summary
13 judgment would be filed and that potentially cross-motions for
14 summary judgment could be filed, and if that occurs, then I'm
15 going to ask the parties to consider a four-brief briefing
16 schedule to address those motions, and my order will set out
17 the details of that.

18 Usually we set a deadline, a periodic deadline for the
19 parties to report as to settlement efforts, and the idea of
20 that deadline is to make sure the parties are periodically
21 talking about the case and seeing if it can be resolved. This
22 doesn't strike me as the kind of case where that would be
23 useful, so unless the parties disagree, I would not anticipate
24 including that type of requirement in the scheduling order.

25 Does anyone disagree with that?

1 MR. PAPPAS: No, Your Honor.

2 MS. VERGARA: No, Your Honor.

3 THE COURT: Counsel, are there any other issues that
4 we could address at this point with respect to scheduling or
5 the progression of the case that will help to resolve or keep
6 it on track?

7 Anything from the plaintiffs?

8 MS. VERGARA: No, Your Honor.

9 THE COURT: Anything from the defense?

10 MR. PAPPAS: No, Your Honor.

11 THE COURT: All right. I appreciate the parties'
12 joint report and the way that everyone's working together to
13 conduct the discovery. I appreciate that very much. And I
14 will issue an order essentially that will be adopting the
15 guidelines that you've proposed and then providing some
16 information about the procedures, as I talked about here in
17 court, in the scheduling order.

18 All right. If there's nothing further, we'll stand at
19 recess. Thank you.

20 MS. VERGARA: Thank you very much, Your Honor.

21 MR. PAPPAS: Thank you, Your Honor.

22 MR. TELLIER: Thank you, Your Honor.

23 (Court recessed at 1:19 p.m.)
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Aaron H. LaDuke, do hereby certify that I reported the foregoing proceedings to the best of my skill and ability, and that the same was transcribed by me via computer-aided transcription, and that the foregoing pages of typewritten matter are a true, correct, and complete transcript of all the proceedings had, as set forth in the title page hereto.

Dated this 23rd day of September, 2019.

s/Aaron H. LaDuke
Aaron H. LaDuke, RMR, CRR
Official Court Reporter