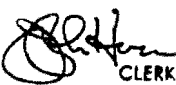


FILED

JUN 11 2013


CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

PLANNED PARENTHOOD MINNESOTA,)
NORTH DAKOTA, SOUTH DAKOTA,)
and CAROL E. BALL, M.D.,)

Plaintiffs,)

v.)

DENNIS DAUGAARD, Governor,)
MARTY JACKLEY, Attorney General,)
DONEEN HOLLINGSWORTH, Secretary)
of Health, Department of Health, and)
MARY S. CARPENTER, M.D., President,)
Board of Medical and Osteopathic)
Examiners, in their official capacities,)

Defendants,)

ALPHA CENTER and BLACK HILLS)
CRISIS PREGNANCY CENTER,)
d/b/a Care Net Pregnancy Resource)
Center,)

Intervenors.)

Civ. 11-4071-KES

ORDER DISSOLVING IN PART
AND CONTINUING IN PART
THE MODIFIED
PRELIMINARY INJUNCTION

On June 30, 2011 this Court entered an Order (Doc. 39) preliminarily enjoining portions of South Dakota H.B. 1217, 2011 Leg. Reg. Sess. (S.D. 2011) ("the Act"). The Act was subsequently modified by the enactment of H.B. 1254, 2012 Leg. Reg. Sess. (S.D. 2012). Collectively, these enactments are referred to herein as the "Amended Act" and are found in SDCL 34-23A-53 through SDCL 34-23A-62, inclusive.

On June 26, 2012, the Plaintiffs, Defendants and Intervenors ("Parties"), by and through their counsel, filed a Joint Stipulation to Dissolve in Part and

Continue in Part the Preliminary Injunction in the above matter ("Joint Stipulation"), in light of the 2012 amendments made to the Act and Plaintiffs' subsequent filing of a Third Amended Complaint. See Doc. 81. On June 27, 2012, this Court entered an Amended Order Dissolving in Part and Continuing in Part the Preliminary Injunction (the "Amended Order"). See Doc. 84.

On December 21, 2012, the Plaintiffs, by and through their counsel, filed a Motion to Dismiss Counts Eight and Nine of the Third Amended Complaint Without Prejudice and to Modify Injunction ("Plaintiffs' Motion to Dismiss and Motion to Modify"). See Doc. 104.

On February 28, 2013, this Court considered Plaintiffs' Motion to Dismiss and Motion to Modify and granted Plaintiffs leave to amend their complaint to dismiss without prejudice Counts Eight and Nine of the Third Amended Complaint relating to the 72-hour waiting period in the Amended Act. See Memorandum Opinion and Order, Doc. 110. In this Order, the Court ordered that "the portion of the preliminary injunction relating to the 72-hour wait will dissolve upon the filing of the fourth amended complaint." *Id.* at 20.

On April 1, 2013, Plaintiffs filed a Motion for Leave to File Updated Fourth Amended Complaint, along with a proposed amended complaint, in part due to legislative amendments to the Amended Act made during the 2013 legislative session (South Dakota H.B. 1237, 2013 Leg. Reg. Sess.). See Doc. 115. This Court granted Plaintiffs' motion for leave on May 8, 2013 (Doc. 124). Thereafter, Plaintiffs filed their Fourth Amended Complaint on May 13, 2013, in which Plaintiffs have eliminated Counts 8 and 9 of the Third Amended

Complaint, consistent with Plaintiffs' Motion to Dismiss and Motion to Modify and this Court's February 28, 2013 Order. See Doc. 125.

On May 24, 2013, the Parties filed a joint letter and Proposed Order Dissolving in Part and Continuing in Part the Modified Preliminary Injunction. Doc. 127. In the letter, the Parties requested that the order be entered for purposes of clarifying what portions of the statutes remain preliminarily enjoined, similar to the manner in which the Court entered its Amended Order on June 27, 2012.

Now that the Fourth Amended Complaint has been filed, to be consistent with the Court's prior Order that the "the portion of the preliminary injunction relating to the 72-hour wait will dissolve upon the filing of the fourth amended complaint" and to provide clarity regarding the status of the modified preliminary injunction and the Amended Act, it is, therefore, hereby

ORDERED that the preliminary injunction granted by this Court on June 30, 2011 (Doc. 39), as modified by this Court in the Amended Order on June 27, 2012 (Doc. 84), is dissolved in part and continued in part, as described below.

The Court hereby DISSOLVES the preliminary injunction with respect to the following portions of SDCL 34-23A-56 that had continued to be preliminarily enjoined by the Amended Order, as follows:

- The portion of the second sentence that reads: "but in no instance may the physician schedule such surgical or medical abortion to take place in less than seventy-two hours from the completion of such consultation and assessment except in a medical emergency as set forth in § 34-23A-10.1 and subdivision 34-23A-1(5).";

- The third sentence in its entirety;
- The portion of the fourth sentence that reads: "as they pertain to the initial consultation,";
- The portion of the fifth sentence (prior to the colon) that reads: "During the initial consultation between the physician and the pregnant mother," as well as the word "scheduling".

It is further

ORDERED that all provisions of SDCL 34-23A-56 (as amended), *except* that portion of SDCL 34-23A-56 which continues to be preliminarily enjoined as described below, are in full force and effect.

Provisions of the Amended Act That Continue to be Preliminarily Enjoined.

It is further ORDERED that the preliminary injunction, as modified by the Amended Order, is CONTINUED with respect to the following provisions or portions thereof of the Amended Act (identified here by SDCL), pending further adjudication of the Parties' claims and defenses:

a) SDCL 34-23A-56 - as follows:

- In subsection (3), the phrase in the first sentence (before the colon) that reads: "and provide her with written instructions that set forth the following", as well as all of subsections (3)(a) and (3)(b) in their entirety.

b) SDCL 34-23A-59 - in its entirety.

c) SDCL 34-23A-61 - the phrase within subsection (4) that reads: "other than from a pregnancy help center as referenced in §§ 34-23A-56 and 34-23A-57".

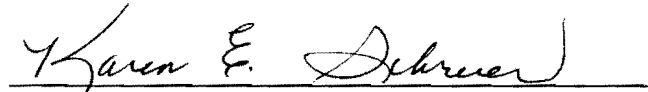
The provisions of the Amended Act that continue to be preliminarily enjoined by this Order are identified in highlighted and underlined type in the

attached Exhibit 1 and incorporated in this Order as a representative illustration of the descriptions herein.

This Order is effective as of 11:59 p.m. on this date.

Dated June 11, 2013.

BY THE COURT:

A handwritten signature in cursive script, reading "Karen E. Schreier", is written over a horizontal line.

Karen E. Schreier
United States District Judge