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United States District Court, W.D. Missouri, Central Division.

COMPREHENSIVE HEALTH OF PLANNED PARENTHOOD GREAT PLAINS, et al., Plaintiffs,
v.
Peter LYSKOWSKI, et al., Defendants.

Case No. 2:16-CV-04313-BCW
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Signed 04/08/2019
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Attorneys and Law Firms

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ORDER

BRIAN C. WIMES, UNITED STATES DISTRICT JUDGE

***1** Before the Court is Plaintiff's motion to stay (Doc. #188).[1] The Court, being duly advised of the premises, grants in part and denies in part said motion.

BACKGROUND

On November 30, 2016, Plaintiffs Comprehensive Health of Planned Parenthood Great Plains ("Comprehensive Health"), Reproductive Health Services of Planned Parenthood of the St. Louis Region ("RHS"), and Ronald N. Yeomans, M.D. (collectively, "Plaintiffs") filed claims against Joshua Hawley in his official capacity as Missouri Attorney General[2] and Dr. Randall Williams in his official capacity as Director of the Missouri Department of Health and Senior Services ("DHSS"), among others ("Defendants"). Together, Comprehensive Health and RHS represent all facilities that provide or seek to provide abortion services in Missouri. Comprehensive Health operates facilities in Kansas City and Columbia, and RHS operates a facility in St. Louis and seeks to operate a facility in Springfield, Missouri ("Springfield Facility").

In their complaint, Plaintiffs allege that certain Missouri statutes, as amended in 2007, violate the substantive due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution. (Doc. #1).

Plaintiffs sought a preliminary injunction with respect to the following Missouri statutory provisions. (Doc. #14). First, Plaintiffs sought to enjoin from enforcement an amendment to § 197.200, which included in the statutory definition of "ambulatory surgery center" ("ASC") most facilities that perform abortions. In conjunction with this amendment, § 197.225 delegated to DHSS authority to enact health and safety regulations for abortion facilities, and DHSS promulgated regulations 19 C.S.R. § 30-30.070 that adopted a number of physical and layout requirements for facilities performing surgical abortions (collectively, "Physical Plant Regulations"). These requirements are subject to waiver upon written request. 19 C.S.R. § 30-30.070(2) ("Requests for deviations from requirements on physical facilities shall be in writing to the [DHSS].").

Second, Plaintiffs sought a preliminary injunction with respect to § 197.215 and implementing regulations, 19 C.S.R. § 30-30.060(1)(C)(4), requiring doctors who perform abortions to have a relationship with a local hospital ("Hospital Relationship Requirement"). The Hospital Relationship Requirement includes Mo. Rev. Stat. §§ 188.027.1(1)(e) and 188.080, which, together, require abortion providers to have local hospital admitting privileges to avoid criminal charges, and to inform patients of those local hospital admitting privileges (together, "Privileges Requirement").

On April 19, 2017, the district court granted a slightly narrower preliminary injunction enjoining from enforcement only the Physical Plant Regulations and the Hospital Relationship Requirement on substantive due

process grounds. (Doc. #93).

***2** On September 10, 2018, the Court of Appeals for the Eighth Circuit vacated the preliminary injunction in its entirety and remanded to this Court. (Doc. #131-1). As relevant for purposes of this motion to stay, in its remand opinion, the Eighth Circuit held as follows. With respect to the Physical Plant Regulations, the Eighth Circuit noted that "a substantive due process challenge to the Physical Plant Regulations—governed by the 'cost-benefit analysis' required by the undue burden standard—[wa]s not ... fit for judicial resolution given the paucity of evidence on how DHSS will grant waivers." Comprehensive Health of Planned Parenthood Great Plains v. Hawley, 903 F.3d 750, 757 (8th Cir. 2018). The Eighth Circuit ultimately held that it lacked "sufficient information to make a constitutional determination on the Physical Plant Regulations," specifically with respect to RHS's Springfield Facility. Id. After remand, RHS applied for waivers of a number of the Physical Plant Regulations as to its Springfield Facility. The DHSS conducted an in-person inspection of the Springfield Facility on March 5, 2019.

With respect to the Hospital Relationship Requirement, the Eighth Circuit held that the district court erred in explicitly refusing to "weigh[ ] the asserted benefits" stating that to do so "would be impermissible judicial practice." The Eighth Circuit directed the court to "consider[ ] the evidence in the record—including expert evidence, presented in stipulations, depositions, and testimony" and then "weigh[ ] the asserted benefits against the burdens."

On remand from the Eighth Circuit, on September 19, 2018, Plaintiffs sought a limited temporary restraining order and / or preliminary injunction against the Privileges Requirement with respect to the Columbia health center ("Columbia facility"), which provides only surgical abortions. (Docs. ##132 & 133).

On February 22, 2019, the Court denied Plaintiffs' motion for preliminary injunction concluding that there was insufficient evidence in the record as to the burdens to demonstrate the likelihood of success on the merits, as required to prevail on a motion for preliminary injunction. (Doc. #186). The Court also ordered the parties to meet and confer regarding a proposed scheduling order to be submitted to the Court.

On March 6, 2019, Plaintiffs filed the instant motion to stay all proceedings in this matter. (Doc. #188). On March 8, 2019, the parties submitted a proposed scheduling order, which proposes a trial setting in February 2020. (Doc. #189).

On March 25, 2019, Plaintiffs filed notice of appeal in the Eighth Circuit with respect to this Court's denial of the preliminary injunction. (Doc. #193).

LEGAL STANDARD

"The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket." Clinton v. Jones, 520 U.S. 681, 706 (1997) (citation omitted). "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am. Co., 299 U.S. 248, 254 (1936).

> Generally, courts consider the following factors in determining whether to grant a stay: (1) whether a stay would unduly prejudice or present a clear tactical disadvantage to the non-moving party; (2) whether a stay will simplify the issues in question and trial of the case; and (3) whether discovery is complete and whether a trial date has been set.

Dordt Coll. v. Burwell, No. C 13-4100-MWB, 2014 WL 5454649, at *1 (N.D. Iowa Oct. 27, 2014) (citation and internal quotation marks omitted).

DISCUSSION

Plaintiffs seek to stay all discovery and proceedings in this matter pending (i) the completion of all proceedings in the Supreme Court related to a recent decision of the Fifth Circuit in June Med. Servs. L.L.C. v. Gee, 905 F.3d 787, 790 (5th Cir. 2018), and (ii) the resolution of RHS's request for a waiver of certain Physical Plant Regulations with respect to the Springfield Facility. Plaintiffs argue that a stay will promote judicial economy because the disposition of June Medical, and the resolution of the waiver application with respect to the Springfield Facility may clarify, narrow or alter the issues in this case. They further assert that a stay will preserve the parties'

resources and avoid costly and time-consuming discovery, motion practice and trial preparation. Plaintiffs' final argument is that the State Defendants will not be prejudiced, because the restrictions at issue remain in full force and effect.

***3** The State Defendants oppose a stay, arguing that the stay is unwarranted because (i) a petition for a writ of certiorari in June Medical has not even been filed in the Supreme Court, and (ii) the resolution of the waiver process will likely be completed sooner than the proposed trial date.

To the extent Plaintiffs argue that the proceedings in this case should be stayed until the final resolution by the Supreme Court with respect to the Fifth Circuit's decision in June Medical, the Court disagrees. Given that June Medical plaintiffs have not even filed a petition for writ of certiorari in the Supreme Court, the Court sees no reason to stay all proceedings in this case indefinitely pending the final resolution in that case.

However, for the following reasons, the Court finds that a temporary stay is warranted for a limited time pending resolution of the waiver process. First, the State Defendants will not be unduly prejudiced by the stay, because the restrictions at issue remain in full force and effect. Second, except for some limited discovery conducted for purposes of the first motion for preliminary injunction, no additional discovery has commenced, and the trial has not yet been scheduled. Furthermore, as Plaintiffs argue in their reply suggestions, at the end of the waiver process, many of the Physical Plant Requirements may not be at issue any longer, thus limiting the scope of the case.

In the Court's view, the best course at this point is a temporary 120-day stay pending the resolution of the waiver process. The parties shall contact the Court to address scheduling matters in the event the waiver process is completed on or before the expiration of the 120-day stay. Otherwise, the Court will hold a status conference on August 12, 2019 to discuss scheduling matters. Accordingly, it is hereby

ORDERED Plaintiff's motion to stay (Doc. #188) is GRANTED IN PART AND DENIED IN PART. The motion is GRANTED to the extent it seeks to stay discovery and all other proceedings. The motion is DENIED with respect to the duration of the extension. All discovery and proceedings in this matter are stayed for 120 days. It is further

ORDERED a status conference is set on **August 12, 2019 at 10 a.m.**

IT IS SO ORDERED.

All Citations

Slip Copy, 2019 WL 8359242

Footnotes

[1] To the extent this motion seeks to stay the mediation deadline, the Court has previously granted this motion in part. (Doc. #192).

[2] Pursuant to Fed. R. Civ. P. 25(d), Missouri Attorney General Eric Schmitt is substituted for Joshua Hawley.