

2019 WL 11626422

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United States District Court, E.D. Arkansas, Western
Division.

PLANNED PARENTHOOD OF ARKANSAS AND
EASTERN OKLAHOMA, d/b/a Planned
Parenthood Great Plains; and Stephanie Ho, M.D.,
on behalf of themselves and their patients,
Plaintiffs

v.

Larry JEGLEY, Prosecuting Attorney for Pulaski
County, in his official capacity, his agents and
successors; and Matt Durrett, Prosecuting
Attorney for Washington County, in his official
capacity, his agents and successors, Defendants

Case No. 4:15-cv-00784-KGB

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Signed 03/27/2019

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ORDER

Kristine G. Baker, United States District Judge

***1** Before the Court is plaintiff Planned Parenthood of
Arkansas and Eastern Oklahoma ("PPAEO") and Dr.
Stephanie Ho's motion to stay or, in the alternative,
dismiss without prejudice (Dkt. No. 174). Defendants
have responded in opposition (Dkt. No. 180), and
plaintiffs have replied (Dkt. No. 181).

Plaintiffs seek a six-month stay of this proceeding from
the date of filing of their motion and propose to file a
status report on May 26, 2019, so that the Court may
determine whether to extend the stay or dismiss the case
with prejudice (Dkt. No. 175, at 1, 9). Plaintiffs
acknowledge that they have signed an agreement with a
physician who has qualifying hospital privileges and that
they are therefore currently satisfying § 1540(d) of
Arkansas Act 577 (the "Act" or the "contracted physician
requirement") (*Id.*, at 5). Plaintiffs argue, however, that

the history of this case demonstrates that it may be difficult for them to continue retaining this contracted physician and quickly find a replacement if the contracted physician resigns (*Id.*, at 6). Therefore, according to plaintiffs, the Court should stay this matter for six months from the date of filing their motion so that the Court may quickly provide relief in the event that plaintiffs become unable to comply with the contracted physician requirement (*Id.*, at 7). In the alternative, plaintiffs ask this Court to dismiss without prejudice this action.

Defendants argue that a stay is improper because there is no ongoing controversy between the parties and because plaintiffs have not “cited any reason they believe that further relief from this Court will be required.” (Dkt. No. 180, at 3). Defendants therefore urge the Court to dismiss without prejudice this action (*Id.*, at 4). In reply, plaintiffs argue that a case or controversy remains as a result of their still-pending equal protection claim (Dkt. No. 181, at 2). Further, plaintiffs point out that defendants have failed to demonstrate any prejudicial effect of a stay (*Id.*, at 3).

The Court grants plaintiffs’ motion and stays this action until May 26, 2019, at which point plaintiffs are directed to file a status report regarding whether they intend to proceed with their Equal Protection claims and whether they are able to continue retaining a contracted physician. A district court’s power to stay an action 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. North Am. Co.*, 299 U.S. 248, 254 (1936). When deciding whether to stay proceedings, courts consider potential prejudice to the non-moving party, hardship and inequity to the moving party if the matter is not stayed, and economy of judicial resources. *See Benge v. Eli Lilly & Co.*, 553 F. Supp. 2d 1049, 1050 (N.D. Ind. 2008).

First, the Court notes that defendants have presented no evidence that they would be prejudiced by a six-month stay. Further, the Court is persuaded that a six-month stay is the most efficient way to proceed with this litigation. Contrary to defendants’ contentions, the Court finds that this action is not moot. Plaintiffs’ complaint contains claims brought under the Due Process and Equal Protection Clauses of the Fourteenth Amendment (*see* Dkt. No. 1, ¶¶ 50-57). Plaintiffs’ equal protection claim asserts that the Act violates the Equal Protection Clause “because it imposes requirements on medication abortion

providers that it does not impose on other medical providers or medications without adequate justification.” (*Id.*, ¶ 57). While the Court declines to decide the merits of this claim at this time, it is clear that equal protection challenges to statutes allegedly targeting certain abortion providers are cognizable in federal court. *See Woman’s Health Ctr. of W. Cty., Inc. v. Webster*, 871 F.2d 1377, 1381 (8th Cir. 1989) (holding that a regulation which was directed at surgical abortion procedures did not violate the Equal Protection Clause); *Planned Parenthood of Minn. v. State of Minn.*, 612 F.2d 359, 363 (8th Cir. 1980) (affirming district court decision that the Equal Protection Clause was violated by a state statute that allowed funds for hospitals who performed abortions but not for other non-profits who performed abortions). The Court is satisfied that there remains an ongoing controversy as to plaintiffs’ equal protection claim.

*2 Further, the record evidence demonstrates how and why it is difficult for plaintiffs to find and retain a contracted physician (Dkt. No. 30, Declaration of Debra Stulberg, M.D., ¶¶ 13-17; Dkt. No. 151, at 100, 213; Dkt. No. 29, Declaration of Stephanie A. Ho, M.D., ¶ 10; Dkt. No. 84, Supplemental Declaration of Stephanie A. Ho, M.D., ¶¶ 15-17). Even after this Court ordered plaintiffs to report to the Court on their continued search for a contracted physician, it took plaintiffs approximately four months to secure an agreement with a qualifying physician to act as the contracted physician (*see* Dkt. No. 169). Accordingly, for these reasons, judicial economy favors a stay over a dismissal at this time.

The Court grants plaintiffs’ motion for a stay or, in the alternative, dismiss without prejudice (Dkt. No. 174). The Court stays this matter until May 26, 2019, on which date plaintiffs are directed to file a status report indicating whether they intend to proceed with their Equal Protection claims and whether they are able to continue retaining a contracted physician.

So ordered this 27th day of March, 2019.

All Citations

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