

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

JACKSON WOMEN'S HEALTH)
ORGANIZATION, on behalf of itself and its)
patients,)

and)

WILLIE PARKER, M.D., M.P.H., M.Sc., on)
behalf of himself and his patients,)

Plaintiffs,)

v.)

Case No. 3:12-CV-00436-DPJ-FKB

MARY CURRIER, M.D., M.P.H. in her)
official capacity as State Health Officer of)
the Mississippi Department of Health,)

and)

ROBERT SHULER SMITH, in his official)
capacity as District Attorney for Hinds)
County, Mississippi,)

Defendants.)

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs, by and through their undersigned counsel, hereby move this Court to issue an immediate temporary restraining order, prior to July 1, 2012, restraining Defendants, and their agents and successors in office, from enforcing Mississippi House Bill 1390 ("the Act") unless and until Plaintiffs obtain admitting privileges at a local hospital. The Act was passed with the stated goal of making Mississippi "abortion-free" by imposing medically unjustified requirements on the one

remaining abortion provider in the state. The undersigned attorneys certify that they have attempted to provide notice of this Motion to Defendants by email immediately after filing the Complaint with the Clerk's Office.

In addition, Plaintiffs respectfully request that this Court issue an order preliminarily enjoining Defendants, their employees, agents, and successors in office from enforcing the Act until such time as the Court issues a final ruling in this case.

The Act takes effect July 1, 2012 and will force Plaintiff Jackson Women's Health Organization ("the Clinic"), the sole provider of abortion services in the State of Mississippi, to cease providing abortion care to women. Thus, without relief from the Court, abortion will be effectively banned in Mississippi as of July 1, 2012, violating the constitutional rights of Mississippi women and endangering their health. The Act will make abortion unavailable in Mississippi even though the Clinic has an excellent safety record, and even though the Mississippi Department of Health found it to be in compliance with all current regulations only two weeks ago.

Emergency injunctive relief is appropriate here for the following reasons:

1. Plaintiffs are likely to succeed on the merits of their claim that the Department of Health's last-minute decision to require immediate compliance with the Act, including as a condition of licensure renewal, violates the liberty interests of Plaintiffs' patients under the Due Process Clause of the Fourteenth Amendment because it imposes a *de facto* ban on pre-viability abortion;
2. Plaintiffs are likely to succeed on the merits of their claim that the Act is unconstitutional because its proponents have made clear that it has nothing to do with

any legitimate state interest but rather, its purpose is to end abortion in Mississippi; and

3. Plaintiffs are likely to succeed on the merits of their claim that the Department's last-minute decision to require immediate compliance with the Act, including as a condition of licensure renewal, violates Plaintiffs' right to procedural due process by depriving them of protected interests without any process whatsoever.
4. Enforcement of the Act will irreparably harm Plaintiffs and women seeking abortion care in Mississippi by depriving them of their constitutional rights and endangering women's health.
5. A temporary restraining order and/or preliminary injunction will impose no harm on Defendants, because it will impose no affirmative burdens or costs on them but, rather, will merely preserve the *status quo*.¹

¹ The Court may issue temporary and preliminary injunctive relief in this case without bond under Rule 65(c) because the balance of hardships tips decidedly in favor of Plaintiffs. *See* Fed. R. Civ. P. 65(c); *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (noting it is within a court's discretion to require no security at all and holding that the district court did not violate Rule 65(c) by failing to require plaintiff to post bond); *Corrigan Dispatch Co. v. Casa Guzman, S. A.*, 569 F.2d 300, 302 (5th Cir. 1978) (holding that a court "may elect to require no security at all"). Given the lack of any possible financial or other harm to the Department if injunctive relief is granted, the irreparable harm that Plaintiffs and their patients face, and the importance of the constitutionally-protected right that Plaintiffs seek to enforce, waiver of the bond requirement is appropriate here. *See Cohens v. Coahoma County, Miss.*, 805 F. Supp. 398, 408 (N.D. Miss. 1992) (granting preliminary injunction to prevent violation of plaintiff's constitutional rights and waiving the security requirement in light of the fact that defendants were unlikely to "incur any significant costs or any damages as a result of the preliminary injunction").

6. Injunctive relief is in the public interest to protect against the violation of fundamental constitutional rights.

In support of this Motion for a Temporary Restraining Order and/or Preliminary Injunction, Plaintiffs respectfully submit the following documents:

- A Memorandum of Law in Support of Plaintiffs Motion for a Temporary Restraining Order and/or Preliminary Injunction;
- Declaration of Shannon Brewer-Anderson dated June 26, 2012 (annexed hereto as Exhibit A);
- Declaration of Willie Parker, M.D., MPH, M.Sc., dated June 26, 2012 (annexed hereto as Exhibit B);
- Declaration of Betty Thompson dated June 26, 2012 (annexed hereto as Exhibit C); and
- Transcript of Bench Opinion and Written Order from *Pro-Choice Mississippi v. Thompson*, CV No. 3:96CV596BN (Sept. 28, 1996) (annexed hereto as Exhibit D).
- Transcript Excerpts of Temporary Restraining Order Hearing, *Hodes & Nauser, MD's, P.A., v. Moser*, No. 11-2365-CM (D. Kan. July 1, 2011) (annexed hereto as Exhibit E).

Plaintiffs request oral argument on their motion for a preliminary injunction.

WHEREFORE, Plaintiffs respectfully request that this Court: (1) immediately issue an emergency temporary restraining order, prior to July 1, 2012, prohibiting Defendants, their employees, agents and successors in office, from enforcing the Act unless and until Plaintiffs obtain admitting privileges at a local hospital; restraining Defendants from taking any negative licensure action, including non-renewal of the Clinic's license, because of the Clinic's failure to comply with the Act; restraining Defendants from imposing any licensure or criminal penalties on Plaintiffs because of non-compliance with the Act; and (2) issue a preliminary injunction prohibiting Defendants, and their agents and successors in office, from enforcing the Act until such time as the Court issues a final ruling in this case.

Respectfully submitted this 27th day of June, 2012,

/s/ Robert B. McDuff
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**Pro Hac Vice Admission To Be Filed*

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served by delivery to the following counsel through the Court's ECF system, or by email or hand delivery:

Harold Pizzetta
Office of the Attorney General
Sillers Building
Jackson, MS

Robert Shuler Smith
Hinds County District Attorney
Hinds County Courthouse
Jackson, MS

This the 27th day of June, 2012.

/s/ Robert B. McDuff
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