

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

WHOLE WOMAN’S HEALTH, et al.,)	
)	
Plaintiffs,)	
)	CIVIL ACTION
v.)	
)	CASE NO. 1:21-CV-616-RP
AUSTIN REEVE JACKSON, et al.,)	
)	
Defendants.)	

**PLAINTIFFS’ OPPOSITION TO DEFENDANT MARK LEE
DICKSON’S MOTION TO STRIKE PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION FOR VIOLATING LOCAL RULE 7(c)(2)**

This Court should deny Defendant Dickson’s Motion to Strike Plaintiffs’ Motion for a Temporary Restraining Order and Preliminary Injunction (“TRO/PI Motion” or “Motion”).

On July 13, 2021, Plaintiffs commenced this action and filed their Motion for Summary Judgment. With the Motion for Summary Judgment, Plaintiffs filed a motion to exceed the page limits under the local rules. (ECF No. 18). On August 4, 2021, this Court granted Plaintiffs’ motion to exceed the page limits by text order.

On August 7, 2021, Plaintiffs filed their TRO/PI Motion, which incorporated by reference Plaintiffs’ Motion for Summary Judgment and relied on evidence submitted in support thereof. *See* Pls.’ Mot. for TRO and Prelim. Injunction & Mem. of Law in Supp. 2 (ECF No. 53). Plaintiffs did so expressly to give the Court the necessary flexibility to issue a temporary restraining order or preliminary injunction “if the Court is unable to grant Plaintiffs’ motion for summary judgment by September 1, 2021.” *Id.* at 8. In their TRO/PI Motion, Plaintiffs believed it more appropriate and in the interest of judicial economy to refer to their briefing on the merits and jurisdictional issues rather than repeat all of those arguments within the Motion. Plaintiffs’ Motion thus

incorporated that briefing by reference and addressed the other factors for injunctive relief, the availability of injunctive relief against the defendant classes of judges and clerks under 42 U.S.C. § 1983, and the absence of any need for requiring security. The Motion is eight pages long.

While Defendant Dickson suggests that Plaintiffs employed a “maneuver” to flout the local rules on seeking an extension of the page limits, this clearly was not Plaintiffs’ intention. And while Plaintiffs filed their TRO/PI Motion on August 7, 2021, and this Court then entered an order on August 11, 2021 setting a briefing schedule and hearing on the Motion (ECF No. 60), counsel for Defendant Dickson waited until the night before Defendant Dickson’s opposition to the TRO/PI Motion was due (Sunday, August 15, 2021), to raise his objections and request that Plaintiffs withdraw the Motion and start anew.

Because of the complex issues involved in this case, Plaintiffs had no objection to any request to exceed the page limits on Defendants’ oppositions to the TRO/PI Motion. Thus, when Defendant Dickson’s counsel contacted Plaintiffs’ counsel on August 15, counsel for Plaintiffs immediately responded that while they would not withdraw the Motion, Plaintiffs would of course agree to an extension of the page limits for Defendant Dickson’s response, and he could note that any motion for such an extension was unopposed. Plaintiffs likewise did not oppose the State Defendants’ or Defendant Clarkston’s requests to exceed the page limits in connection with their oppositions. (ECF Nos. 68 & 69). And, notably, far from objecting to Plaintiffs’ incorporating other briefing by reference, both State Defendants and Defendant Clarkston did the same in their oppositions to the Motion. *See* State Defendant Opp. at 7 (“For the reasons stated in the State Defendants’ motions to dismiss and replies in support thereof (ECF 48, 49, 63, 66)”) (ECF No. 69-2); Defendant Clarkston Opp. at 7 (“Defendant Clarkston incorporates the arguments in her motion-to-dismiss brief and reply in support here”) (ECF No. 68-2).

This Court has discretion under Local Court Rule CV-1(e) to waive the page-limit requirements of Local Court Rule CV-7(c)(2). *FDIC v. Schreiner*, 892 F. Supp. 848, 851 (W.D. Tex. 1995) (“While it is true that the FDIC failed to first obtain permission to file a brief in excess of the ten page limit, the Court has discretion under Local Court Rule CV-1(e) to waive the requirement.”). Significantly, Defendant Dickson did not and cannot show any harm from Plaintiffs’ incorporation of other briefing by reference in their TRO/PI Motion. Plaintiffs offered their consent to an extension of the page limits for Defendant Dickson’s opposition to Plaintiffs’ TRO/PI Motion, and Plaintiffs plainly would not have objected to Defendant Dickson likewise incorporating other briefing by reference, as all other Defendants did. In light of the complexity of the issues involved and the absence of any prejudice to Defendant Dickson, if this Court believes Plaintiffs TRO/PI Motion does not comply with Local Rule CV-7(c)(2), Plaintiffs respectfully request that this Court waive the page-limit requirement with respect to the Motion. *See id.* (“In light of the complexity of the issues involved and the lack of any harm befalling Moore from allowing the FDIC to exceed the ten page limit, the Court hereby waives the requirement.”)

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendant Dickson’s motion to strike.

Dated: August 23, 2021

Respectfully submitted,

/s/ Marc Hearron

Christen Mason Hebert
(Texas Bar No. 24099898)
Johns & Hebert PLLC
2028 East Ben White Blvd
Suite 240-1000
Austin, TX 78741
(512) 399-3150
chebert@johnshebert.com

Attorney for all Plaintiffs

Marc Hearron (Texas Bar No. 24050739)*
Center for Reproductive Rights
1634 Eye St., NW, Suite 600
Washington, DC 20006
(202) 524-5539
mhearron@reprorights.org

Molly Duane*
Kirby Tyrrell*
Melanie Fontes*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3631
mduane@reprorights.org
ktyrrell@reprorights.org
mfontes@reprorights.org

Jamie A. Levitt*
J. Alexander Lawrence*
Morrison & Foerster LLP
250 W. 55th Street
New York, NY 10019
(212) 468-8000
jlevitt@mofocom
alawrence@mofocom

Attorneys for Whole Woman's Health, Whole Woman's Health Alliance, Marva Sadler, Southwestern Women's Surgery Center, Allison Gilbert, M.D., Brookside Women's Medical

Julie Murray*
Richard Muniz*
Planned Parenthood Federation of America
1110 Vermont Ave., NW Ste. 300
Washington, DC 20005
(202) 973-4997
julie.murray@ppfa.org
richard.muniz@ppfa.org

Attorneys for Planned Parenthood of Greater Texas Surgical Health Services, Planned Parenthood South Texas Surgical Center, Planned Parenthood Center for Choice, and Dr. Bhavik Kumar

Julia Kaye*
Brigitte Amiri*
Chelsea Tejada*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2633
jkaye@aclu.org
bamiri@aclu.org
ctejada@aclu.org

Lorie Chaiten*
American Civil Liberties Union Foundation
1640 North Sedgwick Street
Chicago, IL 60614
(212) 549-2633
rfp_lc@aclu.org

Adriana Pinon (Texas Bar No. 24089768)
David Donatti (Texas Bar No. 24097612)
Andre Segura (Texas Bar No. 24107112)
ACLU Foundation of Texas, Inc.
5225 Katy Freeway, Suite 350
Houston, TX 77007

Center PA d/b/a Brookside Women's Health Center and Austin Women's Health Center, Alamo City Surgery Center PLLC d/b/a Alamo Women's Reproductive Services, Houston Women's Reproductive Services, Reverend Daniel Kanter, and Reverend Erika Forbes

Tel. (713) 942-8146
Fax: (713) 942-8966
apinon@aclutx.org
ddonatti@aclutx.org
asegura@aclutx.org

Attorneys for Houston Women's Clinic

Stephanie Toti
LAWYERING PROJECT
41 Schermerhorn Street #1056
Brooklyn, NY 11201
(646) 490-1083
stoti@lawyeringproject.org

Rupali Sharma*
LAWYERING PROJECT
197 Pine Street, Apt. 23
Portland, ME 04102
(908) 930-6445
rsharma@lawyeringproject.org

Attorneys for The Afiya Center, Frontera Fund, Fund Texas Choice, Jane's Due Process, Lilith Fund for Reproductive Equity, North Texas Equal Access Fund

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I certify that today, August 23, 2021, I electronically filed a copy of the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Marc Hearron

Marc Hearron