

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

**RIMS BARBER, CAROL BURNETT, JOAN BAILEY,
KATHERINE ELIZABETH DAY, ANTHONY LAINE
BOYETTE, DON FORTENBERRY, SUSAN GLISSON,
DERRICK JOHNSON, DOROTHY C. TRIPLETT,
RENICK TAYLOR, BRANDIILYNE MANGUM-DEAR,
SUSAN MANGUM, and JOSHUA GENERATION
METROPOLITAN COMMUNITY CHURCH,**

Plaintiffs,

v.

Civil Action No. 3:16-cv-417-CWR-LRA

**PHIL BRYANT, GOVERNOR OF MISSISSIPPI;
JIM HOOD, ATTORNEY GENERAL OF MISSISSIPPI;
JOHN DAVIS, EXECUTIVE DIRECTOR OF THE
MISSISSIPPI DEPARTMENT OF HUMAN SERVICES;
and JUDY MOULDER, MISSISSIPPI STATE REGISTRAR
OF VITAL RECORDS,**

Defendants.

MOTION TO CONSOLIDATE RELATED CASES

The Plaintiffs in *CSE v. Bryant* No. 3:16cv442 (*CSE III*) filed in that case a motion, pursuant to Federal Rule of Civil Procedure 42(a), to consolidate that case with this case for all purposes or, in the alternative, for purposes of the preliminary injunction hearing. The Plaintiffs in the present case agreed to that motion. In order to insure completeness of the record, the Plaintiffs in the present case herewith move to consolidate No. 3:16cv442 with the present case. The Defendants oppose the motion.

APPLICABLE STANDARD

Rule 42(a) of the Federal Rules of Civil Procedure provides that when “actions before the court involve a common question of law or fact,” the court may consolidate the

actions for all purposes, join the actions (or matters therein) for hearing or trial, or “issue any other orders to avoid unnecessary cost or delay.” Fed. R. Civ. P. 42(a). “Consolidation is warranted where ‘two or more district court cases involve common questions of law and fact and the district judge finds that consolidation would avoid unnecessary costs or delay.’” *Entergy Miss., Inc. v. Marquette Transp. Co., LLC*, Civil Action No. 5:11-cv-49, 2013 WL 3778436, *1 (S.D. Miss. July 17, 2013) (quoting *Mills v. Beech Aircraft Corp., Inc.*, 886 F.2d 758, 761–62 (5th Cir. 1989)). This Court has “broad discretion in determining whether and to what extent to consolidate cases.” *Achari v. Signal Int’l, LLC*, Nos. 1:13-CV-222, 1:13-CV-318, 1:13-CV-319, 2013 WL 5705660, *2 (S.D. Miss. Oct. 18, 2013); *see also Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 703 F.3d 413, 432 (5th Cir. 2013) (“The trial court’s managerial power is especially strong and flexible in matters of consolidation.”).

Courts should be “especially” inclined to exercise their discretion to consolidate cases “when doing so will avoid unnecessary costs or delay or will eliminate unnecessary repetition or confusion.” *Branch Banking & Trust Co. v. Price*, Nos. 2:11-cv-23, 3:11-cv-59, 2011 WL 5403403, *3 (S.D. Miss. Nov. 8, 2011); *see also Achari*, 2013 WL 5705660, *2 (granting motion to consolidate where “considering the cases together will result in judicial economy.”); *Baudoin v. Stogner*, Civil Action Nos. 2:11-cv-16, 2:11-cv-17, 2012 WL 315976, *1 (S.D. Miss. Feb. 1, 2012) (“Consolidation of these cases will serve to reduce the costs and expenses of all parties. Likewise, by eliminating duplicate motions on the same issues and eliminating multiple hearings and trials, consolidation will conserve judicial time and resources.”).¹

¹ Uniform Local Rule 42 provides in pertinent part: “In civil actions consolidated under Fed. R. Civ. P. 42(a), the action bearing the lower or lowest docket number will control the designation of the district or

ARGUMENT

I. The *Barber* and *CSE III* Cases Involve Common Issues of Law and Fact

Plaintiffs in both *CSE III* and *Barber* bring a pre-enforcement Establishment Clause challenge to HB 1523. (*CSE III* Compl. ¶¶ 8, 113–14; *Barber* Compl. ¶ 36, Dkt. No. 1.) These actions were brought against the same four defendants and seek the same relief under the same legal theory. Plaintiffs in both cases specifically argue that Section 2 of HB 1523 violates the Establishment Clause of the First Amendment by singling out and granting special protection to only certain religious beliefs that plaintiffs and many other religious persons do not hold. (*Compare CSE III* Compl. ¶ 8 (alleging that HB 1523 “identif[ies] particular sectarian religious beliefs for special treatment and impo[ses] a statutory scheme that systematically advances those beliefs”), *with Barber* Compl. ¶ 29, Dkt. No. 1 (“H.B. 1523 provides a number of protections exclusively for people and religious organizations who subscribe to the religious beliefs and moral convictions set forth in Section 2.”).)

Plaintiffs in both cases further argue that HB 1523 violates the Establishment Clause because it was enacted with the impermissible purpose of advancing and endorsing religion. (*Compare CSE III* Compl. ¶¶ 46, 60, *with Barber* Compl. ¶ 31, Dkt. No. 1 (“H.B. 1523 was clearly enacted for religious purposes”)). Finally, Plaintiffs in both cases argue that HB 1523 violates the Establishment Clause by imposing significant burdens upon people who do not adhere to the religious beliefs favored in Section 2, including gay and lesbian Mississippians. (*Compare CSE III* Compl. ¶ 80,

magistrate judge before whom the motion to consolidate is noticed; the docket number will also determine the judge before whom the case or cases will be tried.” *See also Wilburn v. City of Southaven*, Civil Action Nos. 3:15-cv-168, 3:15-cv-176, 2015 WL 7289476, *1 (N.D. Miss. Nov. 16, 2015) (holding that the case with the “lower docket number of the two” “will serve as the lead case”). *Barber* bears the lowest docket number, and so *CSE III* should be consolidated with *Barber*.

with *Barber* Compl. ¶ 33, Dkt. No. 1). It is plain that *CSE III* and *Barber* involve common questions of law and fact.

II. Consolidating the Cases Will Avoid Unnecessary Cost or Delay

Consolidating the cases will serve the Court's and the parties' interest in efficiency and judicial economy in several ways. First, because the cases "will utilize many of the same witnesses and records," "consolidation will conserve judicial time and resources" by "eliminating multiple hearings." *Baudoin*, 2012 WL 315976, at *1. Requiring the *CSE III* and *Barber* plaintiffs to present their overlapping evidence and duplicative testimony in support of their respective motions for a preliminary injunction would create additional costs for this Court as well as for Defendants, who would be forced to present essentially the same case at two separate hearings. Consolidating the cases and holding just one hearing on these motions will save time and reduce unnecessary redundant expenditures.

Second, should this case proceed to discovery, consolidating the cases will enable the Court to coordinate discovery and minimize the burden on Defendants, ultimately saving money for Mississippi taxpayers. *See Washington v. Univ. of Miss. Med. Ctr.*, Civ. Action Nos. 3:11-cv-484, 3:11-cv-485, 2011 WL 5117129, *1 (S.D. Miss. Oct. 25, 2011) ("Consolidation of these cases will reduce the costs and expenses of all parties . . . [and] conserve judicial time and resources.") And perhaps more importantly, in the very likely event of an appeal to the Fifth Circuit, consolidating the cases will create one streamlined record to facilitate appellate review.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant this motion to consolidate.

Dated: June 15, 2016

Respectfully submitted,

s/Robert B. McDuff

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CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2016, I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of such filing to all counsel of record.

s/Robert B. McDuff

Robert B. McDuff