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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

DARCY CORBITT, et al.,

Plaintiffs,

Vs.

CASE NO.: 2:18cv91-MHT

HAL TAYLOR, et al.,

Defendants.

* * * * *

TELEPHONE CONFERENCE

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BEFORE THE HONORABLE MYRON H. THOMPSON, UNITED STATES
DISTRICT JUDGE, at Montgomery, Alabama, on Tuesday,
September 29, 2020, commencing at 7:37 a.m.

APPEARANCES

FOR THE PLAINTIFFS:

Mr. Garbriel Arkles
Attorney at Law
TRANSGENDER LEGAL DEFENSE
AND EDUCATION FUND
520 8th Avenue, Suite 2204
New York, New York 10018

Ms. Kaitlin Welborn
Mr. Randall C. Marshall
Attorneys at Law
ACLU OF ALABAMA FOUNDATION, INC.
Post Office Box 6179
Montgomery, Alabama 36106-0179

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APPEARANCES, Continued:

FOR THE DEFENDANTS: Mr. Brad A. Chynoweth
Mr. Winfield J. Sinclair
Attorneys at Law
OFFICE OF THE ATTORNEY GENERAL
501 Washington Avenue
Montgomery, Alabama 36104

Proceedings reported stenographically;
transcript produced by computer

(The following proceedings were heard before the Honorable
Myron H. Thompson, United States District Judge, at Montgomery,
Alabama, on Tuesday, September 29, 2020, commencing at
7:37 a.m.:)

THE COURT: Hello, counsel. This is Corbitt versus
Taylor, civil action number 18cv91.

I think I have on the line -- is that Mr. Arkles?

MR. ARKLES: Yes, Your Honor.

THE COURT: Okay. Mr. Marshall?

MR. MARSHALL: Yes, Your Honor.

THE COURT: Is that Ms. Welborn?

MS. WELBORN: Yes, Your Honor.

THE COURT: Mr. Chynoweth?

MR. CHYNOWETH: Yes, Your Honor.

THE COURT: And Mr. Sinclair?

MR. SINCLAIR: Yes, Your Honor.

THE COURT: I have your motion to expedite, and some of
the allegations in the motion raise some rather interesting

1 issues that I'd like to discuss.

2 The first one is I've read your briefs on the impact of
3 the opinion in *Bostock*. I think they were filed last week or
4 early this week. I can't remember.

5 But the more pressing issue is the motion to expedite.
6 In the motion, I believe one of the plaintiffs, Corbitt, Darcy
7 Corbitt, is now in school at Auburn. Is that --

8 Who will speak for the plaintiffs, by the way?

9 MR. ARKLES: Your Honor, this is Gabriel Arkles. I
10 will speak for the plaintiff, although Ms. Welborn is actually
11 more familiar with this situation in North Dakota. So with your
12 permission, we'd like to have her speak as needed.

13 THE COURT: Okay. Very good.

14 I believe that Darcy Corbitt is now a student at
15 Auburn; is that correct?

16 MR. ARKLES: Yes, Your Honor.

17 THE COURT: She's in the Ph.D. program?

18 MR. ARKLES: That's right.

19 THE COURT: Where is she in the program?

20 MR. ARKLES: Your Honor, I believe that she is still
21 completing her course work, as well as working on her
22 dissertation.

23 THE COURT: And she's doing it while she's staying at
24 Auburn; right?

25 MR. ARKLES: Yes, Your Honor.

1 THE COURT: What program is she in?

2 MR. ARKLES: She's studying developmental psychology,
3 Your Honor.

4 THE COURT: You don't know how far along she is towards
5 her Ph.D.?

6 MR. ARKLES: I'm afraid I don't recall how close she is
7 to finishing, Your Honor.

8 THE COURT: Okay. Now, in the motion you say that her
9 North Dakota license is about to expire; is that correct?

10 MR. ARKLES: Yes, Your Honor.

11 THE COURT: And she's applied for a temporary Alabama
12 license?

13 MR. ARKLES: No, Your Honor. We reached out to
14 defendants through counsel to see if it would be possible for
15 her to get a temporary license listing her as female, and they
16 informed us that that would not be possible at this time.

17 THE COURT: Okay. So it's that she can't get a license
18 that would list her as female, not that she just can't get a
19 license at all.

20 MR. ARKLES: That's right, Your Honor. From her
21 perspective, she would have to confirm that she was male, which
22 from her perspective would be a lie, in order to get a license
23 listing her as male.

24 THE COURT: Okay. This raises an interesting issue. I
25 think that one of the issues in the case is whether her claim

1 was moot or -- no, it wasn't moot. It was whether she had
2 standing. And I believe one of the arguments was that because
3 she had a North Dakota license and she was in Alabama and she
4 really didn't need an Alabama license.

5 My question, really, for the parties now is, does this
6 sort of solidify that she does have standing? Because as of
7 Wednesday, she won't have a North Dakota license, and she'll
8 have to depend on an Alabama license. So does that sort of
9 resolve the standing issue in favor of her having standing?

10 MR. ARKLES: Your Honor, from plaintiffs' perspective,
11 absolutely, although we also think that because she would have
12 liked to remain in Alabama, she would have had standing
13 regardless.

14 THE COURT: Yes. But I'm asking, does this make her
15 standing issue even more solid?

16 MR. ARKLES: Yes, Your Honor, we believe it does.

17 THE COURT: Who will speak for the defendants?

18 MR. CHYNOWETH: Brad Chynoweth, Your Honor. I'll speak
19 for the defendants.

20 We never actually raised a standing argument as to
21 Plaintiff Corbitt based on a North Dakota license. We --

22 THE COURT: What was it, then? Go ahead.

23 MR. CHYNOWETH: The standing argument we raised was
24 relevant to that count regarding disclosure of confidential
25 information, and it was that the plaintiffs were -- did not keep

1 their transgender status as confidential information.
2 Therefore, they did not have standing to raise the argument that
3 their driver's license disclosed something that was confidential
4 within the meaning of the Fourteenth Amendment.

5 THE COURT: So you were never really challenging her
6 standing just because she had a North Dakota license.

7 MR. CHYNOWETH: No, Your Honor.

8 THE COURT: Okay. Well, that helps in and of itself.
9 I don't know where I got that information.

10 Now, the other issue is she wants an expedited ruling
11 because as of Wednesday, she will lose her North Dakota license.
12 And I'll be candid with you, this poses some real difficulty for
13 the Court. I'm simply unavailable Thursday and Friday. And
14 there is still an issue in the case -- and I've read your briefs
15 on the recent Supreme Court case -- and I still have some very
16 deep concerns about the evidence regarding the state's interest
17 here; that is, I think you've submitted an affidavit about
18 identifying people, you know, when a policeman stops them or
19 identifying them perhaps when they're arrested. None of that is
20 thoroughly developed, and I wanted to hold an evidentiary
21 hearing on that -- I just think the record is inadequate -- just
22 to get my own understanding as to what's going on here insofar
23 as the state's interest is concerned. And I think it would be
24 unfair to both sides for the record as it now stands to resolve
25 it, especially with regard to the equal protection claim, which

1 is what I would like to explore more, in more detail, and
2 especially in light of the recent Supreme Court case. But the
3 state's interest is what's so troubling.

4 At the same time, I do have this urgency from
5 Ms. Corbitt. You know, you could file a motion for a TRO or
6 preliminary injunction. But I'll tell the plaintiffs now, your
7 record will be held inadequately developed on that issue of the
8 state's interest, I think.

9 MR. ARKLES: All right. Very well, Your Honor. And so
10 as we state in the motion, we certainly didn't plan to put the
11 Court in this position. We rightfully --

12 THE COURT: You know, I just think the case is -- to
13 just be candid with you, I think I said at the hearing, I have
14 some real concerns about the statute, but I think that the
15 state's interest is just not adequately developed.

16 MR. ARKLES: Very well, Your Honor. Well, we are
17 prepared to move for a TRO or RPI if that would be helpful.

18 THE COURT: It would be, but we would still have to
19 have that hearing, so a PI would be better.

20 MR. ARKLES: Understood, Your Honor.

21 THE COURT: But, you know, I can just move this on a
22 very fast track. I'm not sure a PI would help either. I mean,
23 it's just a matter of getting it done. But I need to get the
24 state's interest developed on the record.

25 Let me suggest this. Let me -- as I said, I'm just

1 unavailable next Thursday and Friday. But if we could talk
2 again next Monday, maybe we can set this down for a very quick
3 hearing on the issue. And it would be as quick as any
4 preliminary injunction, I think, and plus we would have a
5 complete record. The thing is just getting the record complete.

6 So if we were to have a call, say, as I said, next
7 Monday --

8 But let me ask you more about Ms. Corbitt. I know she
9 says that she's studying for a Ph.D., and she mentions that not
10 having the driver's license would be difficult because of
11 getting her medication. I don't know whether she's working
12 remotely at school -- from school. I know, you know, for
13 instance, here at the courthouse, much of our work is now
14 remote. I need to get just a better idea of exactly what the
15 burden would be for her if we were to wait just a few more
16 weeks. Plaintiffs?

17 MR. ARKLES: Yes, Your Honor. So my understanding that
18 where she lives, it's very difficult for her to do anything,
19 even to do errands, without driving.

20 Ms. Welborn, you jump in and correct me if I'm wrong
21 about this.

22 But I understand that while part of her course work and
23 work responsibilities have been moved remote, she still has some
24 responsibilities that are in person.

25 MS. WELBORN: That's correct. A part of her course

1 work that she is teaching at Auburn is in person, so she must go
2 to the university some number of days. I'm not sure how many.

3 THE COURT: Oh, she's actually teaching at the
4 university?

5 MS. WELBORN: Yes. That's part of her Ph.D. program is
6 to teach, in addition.

7 THE COURT: Okay. How far does she live from the
8 university?

9 MR. ARKLES: I believe that she is around an hour away,
10 but I could be remembering that incorrectly, Your Honor.

11 THE COURT: Is that driving or walking? Or that is --

12 MR. ARKLES: Driving.

13 THE COURT: Yes. So she actually lives further than an
14 hour away, then. Walking, that is.

15 She said that she had a problem with the medicine, too.
16 Is that -- tell me about that.

17 MR. ARKLES: Well, Your Honor, she goes to a clinic
18 that is relatively far from where she lives to get her regular
19 medical care, including hormone treatment. So that as well.
20 When she needs to go in, it requires driving.

21 THE COURT: Right. Right. I didn't think about that.
22 How often does she have to go get her hormone treatment?

23 MR. ARKLES: Your Honor, the last time I remember
24 speaking to her about it, it was once every few months, but I
25 don't have up-to-date information on that. I'm sorry.

1 THE COURT: Well, as I said, it's the equal protection
2 argument that I would like to explore more, but I do have this
3 issue about the state's interest, which I need some more
4 evidence on from both sides.

5 MR. CHYNOWETH: Your Honor, this is Brad Chynoweth.
6 Could I say one thing about the emergency nature of this
7 situation?

8 THE COURT: Right.

9 MR. CHYNOWETH: Ms. Corbitt has had her North Dakota
10 license since the date this suit was filed on February 6th,
11 2018. And when I took her deposition on November 21st, 2018, I
12 got a copy of her license, which is in the record at document
13 48-12 on page 20. And on November 21st, 2018, the license shows
14 that it was set to expire on May 11th, 2020. And now she's been
15 residing in Alabama continuously since that time, to my
16 knowledge. And so I understand the situation with the
17 expiration now, but she has known for years when her North
18 Dakota license was set to expire. So we really did want to have
19 that on the record. We're willing to have a hearing if the
20 Court requests --

21 THE COURT: Let me ask that. I'm confused. I thought
22 her license was expiring on September 30.

23 MR. ARKLES: Your Honor, it was going to expire in May,
24 but with COVID-19, North Dakota was pushing back the deadline
25 for when renewals were required. They pushed it back several

1 times, but they don't seem to be doing that anymore. And we
2 believed that she would meet the requirements for renewal based
3 on the regulations on the web site; but when we called their
4 office just to confirm, we learned that they require a proof of
5 ongoing residency such as a lease or utility bills that she can
6 no longer provide, unfortunately.

7 THE COURT: I interrupted you, Mr. Chynoweth. Had you
8 finished? Sorry.

9 MR. CHYNOWETH: Mostly, Your Honor. The other two
10 plaintiffs in this case have Alabama licenses, so there was
11 no -- we really don't think that this is -- that there's a
12 threat of irreparable harm, of imminent irreparable harm, given
13 the amount of time that plaintiff had to make arrangements,
14 given that she's known for years when the license was going to
15 expire.

16 THE COURT: So I guess we have defendants' position
17 challenging irreparable harm, and then I have the Court's issue
18 about needing further development of the record. I now have the
19 briefs on the Supreme Court, and we're digesting that -- the
20 Supreme Court decision. We're digesting that. And I just hate
21 to get a rushed decision out, Mr. Arkles, in light of all those
22 circumstances.

23 Let me think about what's been said, but I'm not going
24 to be able to really digest this until next Monday. I apologize
25 for the burden it's going to place on Ms. Corbitt between now

1 and Monday, but I don't know what else I can do.

2 MR. ARKLES: Understood, Your Honor. We appreciate
3 your attention.

4 THE COURT: Certainly. Certainly. Okay. The motion
5 to expedite, however, will be -- I take it very seriously. That
6 doesn't mean I'm not going to expedite.

7 MR. ARKLES: Thank you, Your Honor.

8 THE COURT: The motion to expedite is there. It needs
9 to be resolved. Just how I resolve it is the question. Okay?

10 MR. CHYNOWETH: Your Honor, Brad Chynoweth. One quick
11 question for the Court.

12 THE COURT: Yes.

13 MR. CHYNOWETH: I don't know what -- at a hearing would
14 the Court anticipate witnesses and evidentiary, or just hearing
15 argument?

16 THE COURT: No. Witnesses. I want witnesses. But
17 I'll let you know on that very soon. Okay? Thank you all very
18 much.

19 (Proceedings concluded at 7:53 a.m.)

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COURT REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript
from the record of the proceedings in the above-entitled matter.

This 19th day of March, 2021.

/s/ Patricia G. Starkie
Registered Diplomate Reporter
Certified Realtime Reporter
Official Court Reporter