

APPEARANCES:

For Plaintiffs:

GLBTQ Legal Advocates & Defenders

By: JENNIFER L. LEVI
CHRISTOPHER M. ERCHULL
Attorney at Law
jlevi@glad.org
cerchull@glad.org

18 Tremont Street
Suite 950
Boston, Massachusetts 02108

Southern Legal Counsel

By: SIMONE M. CHRISS
CHELSEA LEE DUNN
Attorneys at Law
simone.chriss@southernlegal.org
chelsea.dunn@southernlegal.org

1229 NW 12th Avenue
Gainesville, Florida 32601

National Center for Lesbian Rights

By: KELLY J. POPKIN
SHANNON MINTER
CHRIS STOLL
Attorneys at Law
kpopkin@nclrights.org
sminter@nclrights.org
cstoll@nclrights.org

870 Market Street
San Francisco, California 94102

Human Rights Campaign Foundation

By: AMI R. PATEL
CYNTHIA C. WEAVER
Attorney at Law
ami.patel@hrc.org
cynthia.weaver@hrc.org

1640 Rhode Island Avenue NW
Suite 950
Washington, DC 20001

APPEARANCES (cont'd):

For Defendants:

Holtzman Vogel Baren, et al.
By: MOHAMMAD OMAR JAZIL
GARY VERGIL PERKO
MICHAEL BEATO
Attorneys at Law
mjazil@holtzmanvogel.com
garyp@holtzmanvogel.com
michaelb@holtzmanvogel.com
119 South Monroe Street
Suite 500
Tallahassee, Florida 32301

For Defendant Moody:

Attorney General's Office
By: WILLIAM H. STAFFORD, III
Assistant Attorney General
william.stafford@myfloridalegal.com
The Capitol
400 South Monroe Street
Tallahassee, Florida 32399

For Defendant State Attorneys:

Jacobs, Scholz & Wyler, LLC
By: BUDDY JACOBS
Attorney at Law
961687 Gateway Boulevard
Suite 201-1
Fernandina Beach, Florida 32034

P R O C E E D I N G S

1
2 (Call to Order of the Court at 2:22 PM on Thursday,
3 June 01, 2023.)

4 THE COURT: Good afternoon. This is Judge Hinkle.

5 Let me start by saying two things: First, thank you
6 for being available on short notice; and, second, thank you for
7 your patience as you waited. I've been in the courtroom in
8 another hearing that ran longer than anticipated, so I apologize
9 for starting late with all of you. I know that's a burden, and
10 I appreciate you bearing it.

11 The agenda for today, first and foremost, is to take
12 stock of where we are in terms of getting notice to the
13 defendants who were added by the recent amendment to the
14 complaint. Both sides were heard on the preliminary injunction
15 motion and procedures, but, of course, the new defendants were
16 not, and so I wanted to give them a chance to be heard.

17 Maybe I should start with the plaintiffs and get you
18 to tell me who you've served, gotten notice to, and where things
19 stand, whether you have made any agreements with the defense
20 along the lines of what the parties agreed to before the
21 amendment.

22 MR. MINTER: Thank you, sir. Shannon Minter for the
23 plaintiffs.

24 We have served all of the new defendants. They have
25 all been served. And we have been able to reach an agreement

1 with the state attorneys whereby one of them will remain in the
2 case to defend SB 254, and we've agreed to dismiss the others,
3 the 19 others, in exchange for their agreement that they'll
4 abide by the Court's orders.

5 MR. JACOBS: Your Honor, if I may just say -- this is
6 Buddy Jacobs. I'm general counsel for the Florida Prosecuting
7 Attorney's Association. We represent the 20 state attorneys.

8 And what was just said is 99 percent correct. We are
9 still finalizing the stipulation and the conditions. We
10 certainly are optimistic. We've done this before with the ACLU
11 case, which you may have heard about which were similar
12 allegations dealing with House Bill 5. This is dealing with
13 Senate Bill 254.

14 But what was just said is correct. There are 19 that
15 are going to be dismissed based upon the finalization of the
16 stipulation and the conditions, and one will remain in the case,
17 and that's the Fifth Circuit out of Ocala. Bill Gladson is the
18 state attorney. He is on the call today as well.

19 So that's kind of where we are, Your Honor, in this
20 situation. We ought to have these conditions and stipulation
21 all presented to the Court within the next few days. And it
22 will be by agreement of the 19 state attorneys and the
23 plaintiffs on the other side.

24 THE COURT: All right. Thank you. That will make the
25 procedures a little easier for everybody.

1 Does Mr. Gladson want to -- Mr. Gladson may be on the
2 phone. I don't know who is going to represent Mr. Gladson.

3 MR. JACOBS: I'm going to do that, Your Honor, Buddy
4 Jacobs. I'll be representing Mr. Gladson as well.

5 THE COURT: Do you want to be heard today on the
6 motion for TRO or preliminary injunction?

7 MR. JACOBS: No, sir. We will defer to the folks on
8 the defense side.

9 THE COURT: All right. Meaning the medical -- what
10 I've called --

11 MR. JACOBS: Yes, sir, all the medical folks.

12 THE COURT: -- medical defendants?

13 MR. JACOBS: Yes, sir.

14 THE COURT: Okay. And then the other new party is the
15 attorney general. Is somebody on the phone for the attorney
16 general, and tell me where the attorney general stands?

17 MR. STAFFORD: Yes, Your Honor, this is William
18 Stafford for the attorney general.

19 We have filed a notice of appearance, and we have also
20 filed a motion to dismiss based on standing and the Eleventh
21 Amendment essentially saying that the attorney general is not a
22 proper party because she has no enforcement authority over this
23 statute, either in her capacity as the legal officer -- the
24 State's legal officer, her superintendence over the state
25 attorneys, nor with respect to her authority with respect to the

1 statewide prosecutor.

2 THE COURT: I did see that you had filed that, and I
3 guess at this point I've just glanced at it and haven't gone all
4 the way through it. A couple of the plaintiffs, at least, maybe
5 all three of the plaintiffs, who had moved for a temporary
6 restraining order or preliminary injunction get care in a county
7 different from their own.

8 Doesn't that make the criminal statute within the
9 jurisdiction of the statewide prosecutor?

10 MR. STAFFORD: Your Honor, that might otherwise be the
11 case, but the statute that -- the statewide prosecutor is a
12 state officer of -- whose jurisdiction is limited. Not only is
13 it limited to crimes involving more than one jurisdiction, it's
14 also -- there are express statutes and chapters over which the
15 statewide prosecutor is given jurisdiction. This statute is not
16 among them nor is Chapter 456 where this statute is located.

17 So I think without any express jurisdictional grant,
18 there is no possibility for the statewide prosecutor to
19 prosecute any action under this -- the new criminal statute.

20 THE COURT: All right. You may have taught me
21 something about the statewide prosecutor. It is not enough to
22 bring something within the statewide prosecutor's jurisdiction
23 for it to be a crime that crosses county lines; it also has to
24 be within a separate listing of specific areas?

25 MR. STAFFORD: Yes, Your Honor. I would -- I will

1 point to Section 16.56, which creates the Office of Statewide
2 Prosecution, and Section 1(a) lists the statutes and types of
3 statutes over which the statewide prosecutor has jurisdiction.
4 And with those there is -- it lists the statutes or types of
5 statutes over which there is authority, but also -- it also
6 confirms that it requires a multi-circuit involvement. The list
7 is at least 16, but I can represent that looking at this --
8 looking at it, either through the crimes that are described or
9 the ones that are specifically referenced by statute number,
10 Chapter 456 or 456.52 are not listed among them.

11 THE COURT: All right. So in due course the
12 plaintiffs will respond to your motion to dismiss.

13 Do you wish to be heard in any other respect on the
14 motions for a temporary restraining order or preliminary
15 injunction?

16 MR. STAFFORD: No, Your Honor. We would agree with
17 the position taken by the health defendants in this case
18 otherwise.

19 THE COURT: All right. I think that answers my
20 question, but let me ask both you and Mr. Jacobs this more
21 specifically. The medical defendants, the original defendants,
22 in the case agreed that the temporary restraining order and
23 preliminary injunction could be adjudicated based not just on
24 the filings of this case, but also based on the record in the
25 Dekker case, a separate case that involves Medicaid

1 reimbursement for these same procedures. And the record in that
2 case includes the entire transcript of the bench trial that I
3 have conducted and not yet ruled on.

4 And, Mr. Stafford, I understand you want to be
5 dismissed entirely, but aside from that, do you agree with the
6 medical defendants and plaintiffs' stipulation that the records
7 from Dekker can be considered?

8 MR. STAFFORD: Your Honor, I would like just an
9 opportunity to review that record. And the only reason being if
10 there is any -- I didn't know if there was any criminal statute
11 involved there because the -- under the jurisdiction of the
12 statewide prosecutor, there may be some crimes involving fraud
13 that might -- if there was a separate criminal provision might
14 be implicated.

15 So I would not feel comfortable responding at this
16 point. I just need to do a little more exploration.

17 THE COURT: Fair enough. I don't think there is any
18 criminal claim in that case. That doesn't mean that criminal
19 statutes weren't talked about at some point during the testimony
20 or whatever, but the case does not involve a -- any crime and
21 wouldn't be any different. At the point that that case was
22 filed, there was a rule, so it started off as a challenge to a
23 rule, and it deals with reimbursement payment by the Medicaid
24 system for the procedures.

25 MR. STAFFORD: Your Honor, just so I can do my due

1 diligence, I'd like the opportunity, maybe until Monday to file
2 a notice with the Court, you know, agreeing or not agreeing with
3 the stipulation as to Dekker.

4 THE COURT: Perfect, and that works.

5 And then, Mr. Jacobs, same question of you.

6 MR. JACOBS: All right. Mr. Stafford and I work
7 together on many, many cases, and so I would join him in this
8 effort and would like to review the things that we are
9 discussing here today. And I appreciate the opportunity to join
10 him as we move forward on Monday.

11 THE COURT: All right. Very good.

12 I think that's all I needed to ask anybody today.

13 Let me see from the plaintiffs -- ask the plaintiffs
14 whether there is anything else you'd like to bring up or deal
15 with other than I know you are in a -- you'd like a ruling just
16 as soon as I can get it to you.

17 MR. MINTER: Yes, sir. Just that we do have the
18 plaintiffs' medical records. They are ready to be submitted
19 under seal. And we are -- have circulated a proposed protective
20 order and HIPAA order to defense counsel, and as soon as there
21 is an agreement on that, we will move forward as quickly as we
22 can to get those records to you.

23 THE COURT: Very good. And to file them under seal
24 you'd probably need to submit hard copies, and then the clerk's
25 office will get them properly sealed. If you can do that as

1 soon as you can do that, that would be excellent.

2 In fact, I can tell you that if you want to go ahead
3 and overnight them or whatever to the clerk's office, I can have
4 them filed under seal, pending your agreements with the other
5 side and how you want to deal with it.

6 MS. LEVI: Thank you, Your Honor.

7 THE COURT: And I'll alert the clerk's office to be on
8 the lookout so they can get them on file.

9 Anything else from the plaintiffs?

10 MS. LEVI: No, sir.

11 THE COURT: How about the original defendants? I
12 haven't called on you.

13 Is there anything you'd like to address today?

14 MR. JAZIL: No, thank you, Your Honor.

15 This is Mohammad Jazil.

16 THE COURT: Then for the -- Mr. Jacobs or
17 Mr. Stafford, anything further?

18 MR. STAFFORD: No, Your Honor.

19 MR. JACOBS: No, sir, Your Honor. But thank you very
20 much. And I appreciate you letting us appear by telephone. I
21 look much better over telephone than I do by Zoom.

22 THE COURT: I look just about as bad either place, but
23 I do understand it saves a lot of effort and not have to travel
24 for somebody as quick as this.

25 Again, thank you for your patience with me.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

We are adjourned.

MR. JACOBS: Thank you, Your Honor.

MR. STAFFORD: Thank you, Judge.

(Proceedings concluded at 2:36 PM on Thursday, June 01,
2023.)

* * * * *

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.
Any redaction of personal data identifiers pursuant to the
Judicial Conference Policy on Privacy is noted within the
transcript.

/s/ Megan A. Hague

6/2/2023

Megan A. Hague, RPR, FCRR, CSR
Official U.S. Court Reporter

Date