

**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. 1:16-cv-01300-
CHARLES SMITH)	DAE-AWA
)	
Defendant.)	

LIST OF STIPULATIONS

Pursuant to the Court’s pre-trial Order, Dkt. No. 213, the parties, by and through undersigned counsel of record, provide all the stipulations applicable to the trial in this matter. These are Dkt. No. 194 (June 29, 2018), Dkt. No. 119 (March 22, 2018), Dkt. No. 117 (February 23, 2018), Dkt. No. 39 (January 4, 2017), Dkt. No. 30 (December 29, 2016), and Dkt. No. 29 (December 29, 2016). In addition, the parties have reached further stipulations regarding vendor names. The text of each stipulation is reproduced below.

STIPULATED FACTS, Dkt. No. 194 (June 29, 2018)

1. A health-care facility sending EFTR to a pathology lab is not required to ensure that the tissue is subsequently disposed of as provided for in § 697.004 of the Act.
2. A health-care facility that releases EFTR to law enforcement is not required to ensure that the tissue is subsequently disposed of as provided for in § 697.004 of the Act.
3. The Act does not impose any obligations on healthcare facilities to make any disclosures to patients.

STIPULATION, Dkt. No. 119 (March 22, 2018)

The parties, by and through undersigned counsel of record, state as follows:

1. Plaintiffs' Amended Complaint contains allegations regarding the monetary cost of complying with the challenged laws (Tex. Health & Safety Code §§ 697.001-697.009; 25 Tex. Admin. Code §§ 138.1-138.8; and the amendments to 25 Tex. Admin. Code §§ 1.132-1.137 published in 41 Tex. Reg. 9732-41 (Dec. 9, 2016)). *See, e.g.*, First Am. Compl. ¶¶ 91-95, 103-04. Plaintiffs now stipulate that they will not seek to introduce evidence concerning the monetary cost of compliance with the challenged laws, including the cost of collection, storage, transportation, and disposal of embryonic and fetal tissue remains. Plaintiffs further stipulate that they will not argue that the monetary cost of compliance with the challenged laws contributes to their alleged constitutional infirmity and hereby waive any argument in this lawsuit that the monetary cost of compliance with the challenged laws contributes to their alleged unconstitutionality. Neither party, therefore, will present evidence regarding the monetary cost of complying with the challenged laws or argue that the challenged laws are unconstitutional due to any monetary costs of compliance.

2. In exchange for the stipulation in Paragraph 1, Defendant will not seek discovery from Plaintiffs concerning the monetary cost of complying with the challenged laws. Defendant also will not present evidence concerning monetary costs of compliance.

3. Dr. Anne Layne-Farrar will not provide testimony in this matter. In exchange for the stipulation in Paragraph 1, (1) Defendant will not seek to obtain discovery from her; and (2) neither Dr. Layne-Farrar's testimony in the preliminary injunction hearing in this matter, nor her Declaration in support of Plaintiffs' motion for a preliminary injunction, ECF No. 6-6, is part of the trial record in this case.

4. This Stipulation does not limit any party's claims or defenses in this matter other than as expressly stated herein.

5. Notwithstanding any other provision herein: (1) Defendant reserves the right to seek discovery related to any monetary cost (including from Dr. Anne Layne-Farrar), to present evidence concerning the monetary cost of compliance, and to present arguments concerning any monetary cost, should Plaintiffs or intervenors seek to present evidence in this lawsuit of the monetary cost of complying with the challenged laws, or argue that the monetary cost of complying with the challenged laws renders the challenged laws unconstitutional; and (2) no party is prohibited from presenting evidence regarding the Burial or Cremation Assistance Registry, Tex. Health & Safety Code § 697.005, or the Ethical Fetal Remains Grant Program, *id.* § 697.006, at trial.

STIPULATION, Dkt. No. 117 (February 23, 2018)

The undersigned parties, by and through their counsel, state as follows:

1. Tex. Gov't. Code § 531.02011 transferred certain Department of State Health Services regulatory responsibilities to the Texas Health and Human Services Commission on September 1, 2017 pursuant to the Health and Human Services Transition Plan required by Texas Gov't. Code § 531.0204. *See* Act of May 30, 2015, 84th Leg., R.S., ch. 837, 2015 Tex. Gen. Laws 2489-2552 (consolidation of the Texas Health and Human Services system). Accordingly, the undersigned parties agree that Charles Smith, Executive Commissioner of the Texas Health and Human Services Commission, is now the proper defendant in this case and should be substituted for John Hellerstedt, M.D. The matter should now be styled: *Whole Woman's Health, et al., v. Charles Smith, Executive Commissioner of the Texas Health and Human Services Commission, in his official capacity.*

2. Defendant's discovery responses will encompass facts known to, responsive documents maintained by, and individuals affiliated with both the Department of State Health Services and the Texas Health and Human Services Commission.

STIPULATION, Dkt. No. 39 (January 4, 2017)

The parties, by and through undersigned counsel of record, state as follows:

1. On December 12, 2016, Plaintiffs commenced the above-captioned lawsuit seeking declaratory and injunctive relief from, among other things, enforcement of Title 25, § 181.7 of the Texas Administrative Code as applied to abortion.

2. Consistent with their representations to this Court, the parties hereby agree and stipulate that 25 Texas Administrative Code § 181.7 and its requirement of a fetal death certificate does not apply to abortion, regardless of the period of gestation.

3. The parties therefore agree and stipulate that Plaintiffs' claims regarding the application of 25 Texas Administrative Code § 181.7 to abortion, specifically Count III (Privacy) and the portion of Count II (Vagueness) concerning the application of 25 Texas Administrative Code § 181.7 to abortion, are moot.

STIPULATION, Dkt. No. 30 (December 29, 2016)

1. The parties to this action, through counsel, hereby stipulate to the authenticity under Federal Rule of Evidence 901, of an email Open Records request, with attachment, made to the Department of State Health Services ("DSHS") on October 13, 2016, entitled, and the response to the same, with attachment, made by DSHS on October 24, 2016, filed together as Exhibit I to Plaintiffs' Motion for a Temporary Restraining Order, or in the Alternative a Preliminary Injunction (ECF No. 6-9).

2. This correspondence has been filed with redactions made to the names and contact information of people not otherwise involved in this litigation. At the Court's request, Plaintiffs will file an unredacted copy under seal.

STIPULATION, Dkt. No. 29 (December 29, 2016)

1. The parties to this action, through counsel, hereby agree and stipulate that the name, address, and any other identifying information regarding the "one facility in the entire state willing and able to provide cremation services for embryonic and fetal tissue from abortion clinics at a cost that is not an order of magnitude larger than their current special waste disposal costs," mentioned in Plaintiffs' Complaint at ¶ 71 (ECF No. 1), is "For Counsel Only" under the terms of the proposed Confidentiality and Protective Order today submitted in this case.

2. Upon request of the Court, Plaintiffs' counsel shall provide this information to the Court under seal.

3. Until such time, if any, as the Court grants the Confidentiality and Protective Order and so-order the present Stipulation, the parties and their counsel shall abide by the terms of this Stipulation to the same extent as they would be bound to do had the Court granted the Confidentiality and Protective Order and entered the present Stipulation.

VENDOR STIPULATIONS (July 15, 2018)

1. The parties agree to file a key under seal identifying the Plaintiffs' current vendors by pseudonym.

2. Vendor A, as identified on the key, is the medical waste services vendor used by all Plaintiffs in Texas.

3. Vendor B, as identified on the key, is a pathology lab used by Plaintiff Alamo Women's Reproductive Services.

4. Vendor C's name appears on some biohazardous waste boxes used by Plaintiffs Whole Woman's Health and Whole Woman's Health Alliance.

5. Due to the sensitive nature of the information contained in this pseudonym key, Defendant will not seek to unseal this pseudonym key in later proceedings in this litigation, including in any subsequent appeals.

Dated: July 15, 2018

Respectfully submitted,

/s/ David Brown

David Brown*
Dipti Singh*
Stephanie Toti
Juanluis Rodriguez*
LAWYERING PROJECT
25 Broadway, 9th Floor
New York, NY 10004
(646) 490-1225
dbrown@lawyeringproject.org
dsingh@lawyeringproject.org
stoti@lawyeringproject.org
prodriquez@lawyeringproject.org

J. Alexander Lawrence*
Francesca Cocuzza*
MORRISON & FOERSTER LLP
250 W. 55th Street
New York, NY 10019
(212) 336-8638
alawrence@mofo.com
fcocuzza@mofo.com

Attorneys for Plaintiffs

*Admitted *pro hac vice*

Molly Duane*
Autumn Katz*
Caroline Sacerdote*
Emily Nestler*
CENTER FOR REPRODUCTIVE RIGHTS
199 Water Street, 22nd Floor
New York, NY 10038
(917) 637-3631
mduane@reprorights.org
akatz@reprorights.org
csacerdote@reprorights.org
enestler@reprorights.org

Patrick J. O'Connell
LAW OFFICES OF PATRICK J. O'CONNELL, PLLC
2525 Wallingwood Drive, Bldg. 14
Austin, TX 78746
(512) 222-0444
pat@pjofca.com

Respectfully submitted,

KEN PAXTON

Attorney General of Texas

JEFFREY C. MATEER

First Assistant Attorney General

BRANTLEY STARR

Deputy First Assistant Attorney General

JAMES E. DAVIS

Deputy Attorney General for Civil Litigation

/s/ Darren McCarty

DARREN MCCARTY
Special Counsel for Civil Litigation
Texas Bar No. 24007631
AUSTIN R. NIMOCKS
Special Counsel for Civil Litigation
Texas Bar No. 24002695
BETH KLUSMANN
Assistant Solicitor General
Texas Bar No. 24036918
KARA HOLSINGER
Assistant Attorney General
Texas Bar No. 24065444
BENJAMIN S. WALTON
Assistant Attorney General
Texas Bar No. 24075241

OFFICE OF THE ATTORNEY GENERAL
Administrative Law Division
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
Telephone: (512) 475-4300
Facsimile: (512) 320-0167
Darren.McCarty@oag.texas.gov
Austin.Nimocks@oag.texas.gov
Beth.Klusmann@oag.texas.gov
Kara.Holsinger@oag.texas.gov
Benjamin.Walton@oag.texas.gov

CERTIFICATE OF SERVICE

I certify that, on the 15th day of July, 2018, a copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ David Brown

David Brown