

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

PLANNED PARENTHOOD OF WISCONSIN, INC.
and FREDRIK BROEKHUIZEN, M.D.,

Plaintiffs,

v.

ORDER

12-cv-913-bbc

J.B. VAN HOLLEN, Attorney General of Wisconsin,
in his official capacity;
ISMAEL OZANNE, District Attorney for Dane County,
in his official capacity and as representative of a class of
all district attorneys in the state of Wisconsin;
CAROLYN H. BRONSTON, Medical Examining Board Member
in her official capacity;
MARY JO CAPODICE, Medical Examining Board Member,
in her official capacity;
RODNEY A. ERICKSON, Medical Examining Board Member,
in his official capacity;
JUDE GENEREAUX, Medical Examining Board Member,
in his official capacity;
SURESH K. MISRA, Medical Examining Board Member,
in his official capacity;
GENE MUSSER, Medical Examining Board Member,
in his official capacity;
SANDRA L. OSBORN, Medical Examining Board Member,
in her official capacity;
KENNETH B. SIMONS, Medical Examining Board Member,
in his official capacity;
TIMOTHY SWAN, Medical Examining Board Member,
in his official capacity;
SRIDHAR VASUDEVAN, Medical Examining Board Member,
in his official capacity;
SHELDON A. WASSERMAN, Medical Examining Board Member,
in his official capacity;
TIMOTHY W. WESTLAKE, Medical Examining Board Member,
in his official capacity;

GREG COLLINS, Medical Examining Board Member,
in his official capacity; and
JAMES BARR, Medical Examining Board Member,
in his official capacity;

Defendants.

Plaintiffs Planned Parenthood of Wisconsin and Fredrik Broekhuizen filed this case under 42 U.S.C. § 1983 to challenge the constitutionality of parts of 2011 Wisconsin Act 217, which took effect in April 2012 and places restrictions on what plaintiffs refer to as “medication abortions.” In their complaint and motion for a preliminary injunction, plaintiffs argued that several provisions violated the due process clause because they did not provide adequate notice to medical providers regarding what was required of them.

Before defendants’ response to plaintiffs’ motion was due, the parties filed what they call a “stipulation to class certification and for the entry of a declaratory judgment.” Dkt. #22. In the stipulation, the parties ask the court to certify a defendant class of each of the district attorneys in Wisconsin under Fed. R. Civ. P. 23(b)(1)(a) and to appoint the Attorney General to serve as class counsel. In addition, the parties ask the court to enter a declaratory judgment that includes interpretations of the provisions in dispute. The parties state that the stipulation “is not an admission” by defendants that the challenged provisions are unconstitutional.

The parties’ proposed stipulation raises a number of jurisdictional questions that they do not attempt to answer. First, plaintiffs filed this lawsuit in federal court under 28 U.S.C.

§ 1331, which applies when the plaintiff's claim "arises under" federal law. However, the proposed declaratory judgment does not resolve any federal claim in the complaint. Rather, it seems to relate solely to state law questions of statutory interpretation. Thus, it is not clear whether this court has subject matter jurisdiction to enter the proposed judgment.

Even if I assume that the court has jurisdiction under § 1331, the proposed declaration raises justiciability concerns. The Declaratory Judgment Act, 28 U.S.C. § 2201, allows parties to go to court to seek a determination of their "rights and liabilities" under the law. DeBartolo v. Healthsouth Corp., 569 F.3d 736, 741 (7th Cir. 2009). However, in this case, the parties are not seeking a declaration of their rights, but a statutory construction in a vacuum. I am not aware of any authority that would permit the court to grant such a request.

I will hold a hearing to give the parties an opportunity to address these questions and any others they wish to discuss with the court about the proposed stipulation. In the event that I conclude that I cannot enter the proposed judgment, the parties should be prepared to discuss how they wish to proceed with the case.

ORDER

IT IS ORDERED that a hearing shall be held on the parties' proposed stipulation, dkt, #22, on Tuesday, February 5 at 2:00 p.m. in Courtroom 260. The parties should be prepared to discuss each of the issues raised in this order. If the parties wish to submit

anything in writing before the hearing, they should do so no later than Monday, February 4 at 12:00 p.m.

Entered this 28th day of January, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge