UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

REPRODUCTIVE HEALTH SERVICES, on behalf of its patients, physicians, and staff; and JUNE AYERS, RN,

Plaintiffs,

v.

LUTHER STRANGE, in his official capacity as Attorney General of the State of Alabama; and DARYL D. BAILEY, in his official capacity as District Attorney of Montgomery County, Alabama,

Defendants.

CIVIL ACTION

No. 2:14-cv-1014-SRW

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR MORE DEFINITE STATEMENT OR TO STRIKE

The Federal Rules of Civil Procedure make clear that a motion for a more definite pleading should be granted only when a pleading is "so vague or ambiguous that the party cannot reasonably prepare a response." Fed. R. Civ. P. 12(e). In their "Motion for a More Definite Statement or to Strike" (Doc. # 18), Defendants contend that Plaintiffs' straightforward Complaint (Doc. # 1) is an unintelligibly vague "shotgun pleading," and that they have no way of knowing whether the claims are brought pursuant to 42 U.S.C. § 1983. These arguments, which unnecessarily delay getting to the legal issues that are squarely laid out in the complaint and further delay consideration of the pending motion for preliminary injunctive relief, are meritless, and Plaintiffs respectfully request that the Court deny Defendants' motion.

Courts in this Circuit have consistently emphasized that "[m]otions for more definite statement are viewed with disfavor and are rarely granted." *Fathom Exploration, LLC v. Unidentified Shipwrecked Vessel or Vessels*, 352 F. Supp. 2d 1218, 1221 (S.D. Ala. 2005);

accord Austin v. Auto Owners Ins. Co., No. 12–345–WS–B, 2012 WL 3101693, at *5 (S.D. Ala. July 30, 2012) ("Rule 12(e) motions are highly disfavored and appropriate only in a rare case.") (quotation marks and citation omitted). As such, "a more definite statement will only be required when the pleading is so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without prejudice to himself." *Fathom Exploration*, 352 F. Supp. 2d at 1221 (citation omitted); *accord Faulk v. Home Oil Co.*, 173 F.R.D. 311, 313 (M.D. Ala. 1997) (Rule 12(e) motion is "intended to provide a remedy for an unintelligible pleading") (citation omitted). Defendants' suggestion that Plaintiffs' Complaint is an unintelligible pleading that warrants such disfavored relief is unavailing.

As an initial matter, contrary to Defendants' argument, the Complaint is not a "shotgun" pleading, and is certainly not so vague or ambiguous that Defendants cannot file a responsive pleading. The Eleventh Circuit has explained that a "shotgun pleading" is one in which the plaintiff "fail[s] . . . to identify his claims with sufficient clarity to enable the defendant to frame a responsible pleading." *Sledge v. Goodyear Dunlop Tires N. Am.*, 275 F.3d 1014, 1018 n.8 (11th Cir. 2001). The court has expressed particular concern over pleadings that group together multiple legal claims into a single count of the complaint such that it is impossible to identify the specific legal claim asserted in each count. For example, in *Davis v. Coca-Cola Bottling Company Consolidated*, the court explained that a more definite statement was warranted where the multiple plaintiffs nonspecifically alleged "race discrimination in 'pay, raises, benefits, ability to advance, and right to be free of racial discrimination, harassment and intimidation, and other terms and conditions of employment,' all in violation of Title VII." 516 F.3d 955, 980 (11th Cir. 2008) (footnote omitted). As the court noted, "[t]his all-encompassing discrimination gave the eight named plaintiffs (and the unnamed members of their class) untold causes of

action, all bunched together in one count contrary to the requirements of Federal Rules of Civil Procedure 10(b)." *Id.*[1]

The clearly identified, separately numbered claims in Plaintiffs' Complaint are a far cry from the ambiguous pleadings in cases like *Davis*. Each count of the Complaint sets forth the basis for a single cause of action, *see, e.g.*, Compl. Count II ("Substantive Due Process – Right to Informational Privacy"), and describes the particular, individual nature of the claim, *see, e.g.*, Compl. ¶ 47 ("The Act's judicial bypass provisions violate Plaintiffs' patients' right to liberty and privacy as guaranteed by the due process clause of the Fourteenth Amendment to the United States Constitution by permitting adverse parties and the court to disclose deeply sensitive, private information about the minor to others, including to any potential witness."). Were there any real doubts about the nature of any claim—and Defendants have identified none beyond their disingenuous speculation that Plaintiffs' equal protection claim might incorporate legal conclusions from other claims—the nature of Plaintiffs' claims are spelled out in detail in the motion for preliminary injunctive relief. Simply put, the actual concerns animating the Eleventh Circuit's decisions on shotgun pleadings—that an attorney cannot "compose an answer to these sweeping and multifaceted . . . [allegations] that would be in keeping with what the framers of the Rules envisioned in fashioning Rule 8(b)"—are not present here. *Davis*, 516 F.3d at 980-81.

Nor does a complaint "become a shotgun pleading merely because multiple claims rely upon the same underlying factual allegation[s]." *ANZ Advanced Technologies, LLC v. Bush Hog, LLC*, No. 09–228–KD–N, 2009 WL 3415650, at *2 (S.D. Ala. Oct. 20, 2009) (citation omitted). Unlike the sprawling factual narratives at issue in cases where courts have found that a

[1] *See also, e.g., Anderson v. Dist. Bd. of Trs. of Cent. Fl. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996) (calling the "perfect example" of a "shotgun" pleading a complaint that lumped within each count the sweeping allegation that the defendants "violated the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution; 42 U.S.C. Section 1983; Article I, Sections 2 and 9 of the Constitution of the State of Florida, and Rule 6Hx3: 8–28 of the Rules of [Central Florida Community College]").

complaint constitutes a shotgun pleading, the factual allegations in the Complaint here consist of just seventeen paragraphs. *See* Compl. ¶¶ 26-43. Those paragraphs largely contain factual allegations about the circumstances of minors who seek abortions, which are germane to all of the asserted claims. The suggestion that Plaintiffs' claims are rendered "unintelligible," *Faulk*, 173 F.R.D. at 313, by their incorporation of these seventeen paragraphs is exceedingly difficult to credit. *Cf. Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1324 (11th Cir. 2012) (notice pleading standard eliminates a "hyper-technical" approach to pleading).

Equally implausible is Defendants' contention that "[t]here is no way . . . to know" whether Plaintiffs' claims are asserted pursuant to 42 U.S.C. § 1983. Defs.' Mot. 4. The Complaint asserts constitutional claims against state actors, and "Section 1983 *is* the statutory vehicle by which plaintiffs may sue for violations of their constitutional rights." *Lebron v. Commonwealth of Puerto Rico*, --- F.3d ----, 2014 WL 5326513, at *5 n.10 (1st Cir. Oct. 20, 2014) (emphasis added); *accord Lowe v. Aldridge*, 958 F.2d 1565, 1569 (11th Cir. 1992). The Complaint requests an award of attorneys' fees under 42 U.S.C. § 1988, and *Defendants themselves* acknowledge that "attorney fees are available *only* in suits brought pursuant to Section 1983 (or a few other statutes not conceivably relevant here)."[2] Defs.' Mot. 3 (emphasis in original). And indeed, to the extent any trace of doubt could remain, Plaintiffs' counsel confirmed to defense counsel that the claims are asserted pursuant to Section 1983. *See* Email from Andrew Beck to Will Parker (Oct. 28, 2014), attached hereto as Exhibit A. Courts have not hesitated to reach the only conceivable conclusion that a complaint such as that herein must be construed to rely upon Section 1983 as the statutory vehicle. *See, e.g.*, *Hindes v. F.D.I.C.*, 137 F.3d 148, 157 (3d Cir. 1998); *Nickerson v. City of Highland Park Police Dept.*, No. 14–10278,

[2] In light of Defendants' acknowledgment that Section 1988 attorneys' fees are available in Section 1983 cases, and that Section 1983 is the only statute "conceivably relevant" here, Defs.' Mot. 3, their argument that the Complaint's invocation of Section 1988 should be stricken as "'immaterial' or 'impertinent,'" *id.* at 6, is untenable.

2014 WL 1922636, at *3 (E.D. Mich. May 14, 2014); *Wagner v. United States*, 486 F. Supp. 2d 549, 555 (D.S.C. 2007); *Smith v. Duquesne University*, 612 F. Supp. 72, 75 n.4 (W.D. Pa. 1985). Given that Defendants themselves appear to have correctly reached the conclusion that the claims are brought pursuant to Section 1983, *see* Defs.' Mot. 3—the only plausible conclusion here—this cannot be one of the "rare case[s]" when a pleading is so unintelligible as to warrant the "highly disfavored" relief of a more definite statement, *Austin*, 2012 WL 3101693, at *5.

Plaintiffs therefore respectfully request that the Court deny Defendants' Rule 12(e) motion and require Defendants to file a responsive pleading.

Dated: November 5, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Andrew Beck, do hereby certify that a true and correct copy of the foregoing will be perfected upon the following counsel of record via ECF filing on this 5th day of November, 2014:

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