Fulton County Superior Court
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Cathelene Robinson, Clerk

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SISTERSONG WOMEN OF COLOR REPRODUCTIVE JUSTICE COLLECTIVE on behalf of itself and its members *et al.*, Plaintiffs v. STATE OF GEORGIA, Defendant	CIVIL ACTION 2022CV367796

ORDER DENYING MOTION TO "CANCEL" TRIAL

Plaintiffs seek declaratory and injunctive relief concerning several constitutional challenges to Georgia's 2019 House Bill 481 as enacted (a/k/a the LIFE Act a/k/a the "Six-Week Ban", depending on one's perspective). Plaintiffs filed their complaint on 26 July 2022, along with an emergency motion for a temporary restraining order/interlocutory injunctive relief that would, if granted, have enjoined the enforcement of those allegedly unconstitutional provisions of the LIFE Act until the claims brought in the complaint could be fully litigated. On 8 August 2022, the Court held a hearing on the emergency motion and on 15 August 2022 entered an Order dismissing Plaintiffs' motion, finding that the State has not waived sovereign immunity for claims for preliminary injunctive relief from aggrieved parties challenging the constitutionality of an act of our State's Legislature.

On 26 August 2022, the State answered the complaint. Three days later, on 29 August 2022, the State filed a motion to dismiss the complaint, arguing, among other things, that Georgia's constitution "does not contain a 'privacy' right to abortion because abortion always harms a third party." (29 August 2022 Motion to Dismiss at 12). On 1

September 2022, Plaintiffs filed a motion for partial judgment on the pleadings, limited to their claim that the LIFE Act was void *ab initio* under prevailing Georgia law. After conferring with the parties about how best to proceed with this case, the Court issued a scheduling order on 27 September 2022 setting the case down for a two-day trial beginning on 24 October 2022 on Plaintiffs' two interrelated claims for declaratory and permanent injunctive relief. That scheduling order made clear that the first portion of these late October hearings would be dedicated to any additional argument concerning the parties' dispositive motions (much of which was provided during the hearing on (and briefing for) Plaintiffs' emergency motion).

Since then, the State has filed a motion seeking to either "cancel" (not a term of civil procedure with which the Court is familiar) or postpone the trial. The State has offered four reasons for this "cancellation," which can be summarized as "We are really busy with other things," "There are no facts in dispute," "We don't know what facts are in dispute," and "You can't do what you are trying to do." The Court's response, detailed below, can be summarized as "Who isn't?," "There are," "You do," and "I can."

To begin with, the Court appreciates the congested schedules and demanding workloads of all participants in this important litigation. Other matters tug and pull the lawyers (and judge) in many different directions. The pending election will undoubtedly consume some focus for some members of the defense team. But there is *always* something else out there that needs to be done. Being busy is neither a proper nor a sufficient basis to delay these proceedings. If it were, few trials would go forward. This one shall.

As for the facts (or lack of them), the State will eventually need to settle on a view. If indeed no facts are in dispute, little preparation is necessary and the trial will move

quickly because the Court will be sustaining defense objections to relevance and/or excluding Plaintiffs' witnesses' testimony as cumulative. If instead, despite similar litigation occurring across the country (and even in federal courts in Georgia), the State truly finds itself unable to discern what factual issues will be contested at the trial, it could always take Plaintiffs up on their offer to meet and confer.[1] Whatever course the State elects, the Court finds that the parties can be adequately prepared for trial in late October.[2] And, should the trial proceedings demonstrate that more time is needed for one side (or both) to marshal additional evidence to assist the Court in reaching a just and proper outcome, the Court can always adjourn the trial. At this point, however, neither cancellation nor postponement is necessary.

In terms of the Court's ability to require the parties to present their case nearly three months after the complaint was filed, there is both the general observation that "[t]he trial court has broad discretion in regulating its business and in scheduling trials," *DeClue v. City of Clayton*, 246 Ga. App. 487, 492 (2000), and the following specific items:

1. Plaintiff's claim for declaratory judgment has been ripe for final adjudication (a/k/a trial) for over a month. O.C.G.A. § 9-4-5 (empowering court to bring declaratory judgment action to trial twenty-one days after service has been

[1] Or the State could rely on the allegations set forth in Plaintiffs' complaint for guidance as to the factual issues that would naturally arise during a trial on a declaratory judgment action alleging violations of liberty, privacy, and equal protection rights.

[2] In making this finding, the Court rejects the State's claim that it must resort to "divination" to determine how and for what to prepare in this case. The State needs neither a Ouija board nor a Magic 8 Ball to be ready in this matter.

perfected); *Taylor Inv. Partners II, LLC v. Moe's Franchisor, LLC*, 344 Ga. App. 552, 553 (2018).[3]

2. Contrary to the State's claim, there is no automatic stay of discovery in place in this case. As mentioned, the State filed its answer on 26 August 2022. Three days later, the State filed its motion to dismiss. The automatic 90-day discovery stay provided for in O.C.G.A. § 9-11-12(j) is triggered when the motion to dismiss is filed before or simultaneously with a defendant's answer. That is not what the docket in this case shows and thus no stay was mandated. *Jurden v. HSBC Mortgage Corp.*, 330 Ga. App. 179, 181 (2014).[4]

3. Finally, as to the wisdom of combining a hearing on the dispositive motions and the trial on the merits of Plaintiffs' two claims, the Court appreciates (and steadfastly shares) the State's desire to avoid wasting the Court's time. However, given the State's correct observation that this litigation is less factually intensive and more focused on questions of law, bringing the two litigative strands -- dispositive motions and trial -- together seems to the undersigned to be much more efficient, so that all aspects are presented in one sitting. Plus, O.C.G.A. § 9-11-12(d) contemplates (and expressly authorizes) just such an approach when the legal issues raised in the dispositive motions are closely intertwined in the factual questions framed by the complaint.

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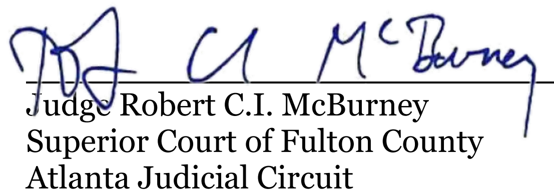
[3] While the injunctive relief Plaintiffs seek travels along a different statutory timeline, such relief will flow only if Plaintiffs prevail on their declaratory judgment action -- making the trial of the declaratory judgment claim the central consideration here.

[4] And, even if the State had filed its motion to dismiss contemporaneously with its answer, the Court is always free to "terminate" or "modify" the 90-day automatic discovery stay. O.C.G.A. § 9-11-12(j)(3). Insofar as it is necessary to say so, any stay, real or imaginary, is hereby terminated.

So, in short, the schedule remains the same. If there are experts beyond those whose testimony has already been memorialized in one (or more) depositions, those experts (and their opinions) shall be disclosed by 10 October 2022. All non-expert witnesses shall be disclosed by 12 October 2022. Exhibits, if any, shall be exchanged by 19 October 2022. If the parties desire or require a pre-trial conference, they should contact the Court's staff attorney to arrange a time.

This case *is* different and the State knows that. Different cases call for different procedures. Delay here has a fundamentally more significant impact on the lives of many Georgians than in most other cases. The Court finds that this schedule is both workable and reasonable, given the skill, knowledge, and resources already deployed and available to both sides. And, as noted above, if, at the conclusion of the two full days allocated for trial, either or both sides make a persuasive case for additional time to be heard, the Court can always resume the proceedings at a later date. But for now, we press forward together.

SO ORDERED this 5th day of October 2022.



Judge Robert C.I. McBurney
Superior Court of Fulton County
Atlanta Judicial Circuit