

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

EMW WOMEN'S SURGICAL CENTER,  
P.S.C., et al.,

Plaintiffs,

v.

DANIEL J. CAMERON, KENTUCKY  
ATTORNEY GENERAL,

Defendant-Intervenor.

Civil Action No. 3:18-CV-00224-DJH

Judge David J. Hale

**JOINT MOTION TO VACATE THIS COURT'S MAY 10, 2019 OPINION AND  
JUDGMENT AND FOR DISMISSAL WITH PREJUDICE PURSUANT TO  
FED. R. CIV. P. 41(a)(2).**

Plaintiffs EMW Women's Surgical Center, P.S.C., Ashlee Bergin, M.D., and Tanya Franklin, M.D., and Defendant-Intervenor Attorney General Daniel J. Cameron ("Parties") respectfully move this Court to (1) vacate the Opinion and Judgment entered by this Court in the above-captioned matter on May 10, 2019 (Doc. Nos. 126, 127) and (2) dismiss the above-captioned matter pursuant to Fed. R. Civ. P. 41(a)(2) with prejudice:

1. On April 10, 2018, Plaintiffs challenged House Bill 454 (hereinafter "H.B. 454" or "the Act"). Doc. No. 1. The following day, Plaintiffs moved for a temporary restraining order and/or preliminary injunction on the grounds that H.B. 454 violated and burdened "their constitutionally protected right to end a previability pregnancy." Doc. No. 6, PageID#35. Relying on the U.S. Supreme Court's decisions in *Roe v. Wade*, 410 U.S. 113 (1973) and *Planned Parenthood of*

*Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992) and their progeny, Plaintiffs argued that H.B. 454 was unconstitutional and imposed an “undue burden” because it banned the most common second-trimester abortion method in general, and the dilation and evacuation method (“D&E”), in particular. Doc. No. 6-1, PageID##47–53.

2. On April 12, 2018, this Court entered a Joint Consent Order, *inter alia*, suspending enforcement of H.B. 454 until the Court could rule on Plaintiffs’ motion for preliminary injunctive relief. Doc. No. 24.

3. On May 21, 2018, this Court dismissed without prejudice Defendants Attorney General Andrew Beshear and Michael S. Rodman, Executive Director of the Kentucky Board of Medical Licensure (Doc. Nos. 51, 52) leaving the interim Secretary of the Cabinet for Health and Family Services (“the Cabinet”) and Commonwealth Attorney Thomas B. Wine as defendants.

4. On May 29, 2018, this Court set this matter for trial on November 13, 2018, and ordered that the parties should continue to abide by the terms of the Consent Order (Doc. No. 24) suspending enforcement of H.B. 454 throughout that time. Doc. No. 56.

5. After an expedited discovery schedule, a bench trial in this matter began on November 13, 2018, and concluded on November 19, 2018.

6. On May 10, 2019, this Court entered an Opinion (Doc. No. 126) and Judgment (Doc. No. 127) in favor of Plaintiffs, holding that H.B. 454 was unconstitutional, and permanently enjoining its enforcement.

7. The Secretary of the Cabinet appealed. Doc. No. 128.

8. On June 2, 2020, the Sixth Circuit affirmed this Court's Opinion and Judgment. 6th Cir. Dkt. No. 53.

9. On June 11, 2020, after learning that the Secretary of the Cabinet would not pursue any further appeals, Attorney General Cameron moved to intervene in order to petition for rehearing en banc and/or certiorari. 6th Cir. Dkt. No. 56. Attorney General Cameron also tendered a petition for rehearing in which he argued that H.B. 454 was constitutional under then-existing precedent. 6th Cir. Dkt. No. 60.

10. On June 24, 2020, the Sixth Circuit denied the motion to intervene. 6th Cir. Dkt. No. 61-2.

11. On October 30, 2020, Attorney General Cameron petitioned for certiorari, which was granted, and on March 3, 2022, the U.S. Supreme Court reversed the denial of intervention and remanded to the Sixth Circuit. *See Cameron v. EMW Women's Surgical Center, P.S.C., et al.*, 142 S.Ct. 1002 (2022).

12. On June 24, 2022, the U.S. Supreme Court reversed its prior decisions in *Roe* and *Casey*. *See Dobbs v. Jackson Women's Health Organization*, 142 S.Ct. 2228 (2022) ("*Dobbs*").

13. On July 21, 2022, the Sixth Circuit granted Attorney General Cameron's motion to intervene and vacated the panel's June 2, 2020 opinion and order and remanded the case back to this Court to reconsider the permanent injunction in light of *Dobbs*. 6th Cir. Dkt. No. 87.

14. In view of *Dobbs*, the federal precedent on which this Court's May 10, 2019 opinion and judgment (Doc. Nos. 126, 127) was based has been overruled. The Parties therefore respectfully move this Court to vacate the May 10, 2019 Opinion and Judgment (Doc. Nos. 126, 127).

15. The Parties further move this Court to dismiss the above-captioned matter pursuant to Fed. R. Civ. P. 41(a)(2) with prejudice.

16. A proposed order is attached.

DATED: August 15, 2022

Respectfully submitted,

/s/ Heather Gatnarek

Heather L. Gatnarek  
ACLU of Kentucky  
325 W. Main Street, Suite 2210  
Louisville, Kentucky 40202  
(502) 581-9746  
heather@aclu-ky.org

Michele Henry  
Craig Henry PLC  
401 W. Main Street, Suite 1900  
Louisville, Kentucky 40202  
(502) 614-5962  
mhenry@craighenrylaw.com

Alexa Kolbi-Molinas  
Meagan Burrows  
American Civil Liberties Union  
Foundation  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2633  
akolbi-molinas@aclu.org  
mburrows@aclu.org

Leah Godesky  
O'Melveny & Myers LLP  
7 Times Square  
Times Square Tower  
New York, New York 10036  
(212) 326-2254  
lgodesky@omm.com

*Counsel for Plaintiffs*

*/s/ Christopher L. Thacker*  
Christopher L. Thacker  
Office of the Attorney General  
700 Capital Avenue, Suite 118  
Frankfort, Kentucky 40601  
Phone: (502) 696-5300  
Christopher.Thacker@ky.gov

*Counsel for Intervening Defendant,  
Daniel J. Cameron,  
Kentucky Attorney General*