

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW HAMPSHIRE

Mary Rose Reddy et al.

v.

Civil No. 14-cv-299-JL

Joseph Foster et al.

**ORDER ON AGREED-UPON STAY**

The plaintiffs seek injunctive and declaratory relief, alleging that New Hampshire's Act Relative to Access to Health Care Facilities, [N.H. Rev. Stat. Ann. §§ 132:37-132:39](#), violates their rights, including freedom of speech, under the federal and state constitutions. The Act provides that, with limited exceptions, "[n]o person shall knowingly enter or remain on a public way or sidewalk adjacent to a reproductive health care facility within a radius up to 25 feet of any portion of an entrance, exit, or driveway of a reproductive health care facility." [Id. § 132:38, I](#). The Act further provides that "reproductive health care facilities shall clearly demarcate [this] zone . . . and post such zone with signage," [id. § 132:38, II](#), and that, prior to doing so, "a reproductive health care facility shall consult with local law enforcement and those local authorities with responsibilities specific to the approval of locations and size of signs," [id. § 132:38, III](#).

The Act requires that, "[p]rior to issuing a citation, a police officer or any law enforcement officer shall issue one written warning to an individual," but that, "[i]f the individual

fails to comply after one warning, such individual will be given a citation," [id.](#) § 132:39, I, which carries a minimum fine of \$100," [id.](#) § 132:39, II. The Act also authorizes the New Hampshire Attorney General or appropriate county attorney to "bring an action for injunctive relief to prevent further violations." [Id.](#) Importantly, however, § 132:39, which contains these enforcement mechanisms, "shall not apply unless the signage authorized in [§] 132:38, II was in place at the time of the alleged violation." [Id.](#) § 132:39, III.

This court previously entered an order giving effect to representations by certain of the defendants--who include the Attorney General, various county attorneys, and several New Hampshire cities and towns--that, pending this court's ruling on the plaintiffs' pending motion for a preliminary injunction, [see Fed. R. Civ. P. 65](#), these defendants would not seek to enforce the statute against the plaintiffs. [Order](#) of July 9, 2014. The court also scheduled a hearing on the plaintiffs' motion for preliminary injunction for July 25, 2014. [Id.](#)

As the date for the hearing approached, the Attorney General filed an objection to the plaintiffs' motion, as well as his own motions seeking to dismiss or to stay these proceedings. In these filings, the Attorney General took the position that, because § 132:39, III, makes the Act's enforcement mechanisms inapplicable in the absence of the signage contemplated by

§ 132:38, II, and no such signage has been posted, the plaintiffs face no threat of sanction under the Act at present. In fact, the Attorney General stated, the absence of the signs means that the "patient safety zone" created by § 132:38, I, has yet to take effect, since, under his reading of the statute, "[a]n individual cannot be prohibited from entering a specific space until its bounds have been established and demarcated." (The plaintiffs dispute that conclusion, though they agree that, in the absence of the signs, the enforcement mechanisms of the Act itself are inoperative. At this juncture, the court need not and does not resolve any of the issues in dispute here.) The Attorney General also submitted affidavits from the operators of the reproductive health facilities in the state attesting that they do not have any present intention of posting the signs contemplated by § 132:38, II.

Based on these submissions, the court convened a telephone conference with counsel for all parties to attempt to arrive at conditions for an agreed-upon stay of these proceedings. During the conference, counsel agreed to the following:

1. These proceedings, including all pending deadlines for the submission of pleadings or other filings, are stayed; the preliminary injunction hearing, scheduled for July 25, 2014, is cancelled; and the temporary restraining order imposed by the court's Order of July 9, 2014, is dissolved.
2. The defendants shall not enforce the Act against the plaintiffs, either through the enforcement mechanisms specified in § 132:39, or by invoking an alleged

violation of § 132:38, I, as the basis for the alleged violation of another statute, including, but not limited to, N.H. Rev. Stat. Ann. § 644:2, II(e) (prohibiting the "knowing[] refus[al] to comply with a lawful order of a peace officer to move from or remain away from any public place"), provided, however, that nothing in this order shall be construed to prevent any of the defendants from otherwise enforcing § 644:2, or enforcing any other statute, ordinance, or regulation, against any of the plaintiffs.

3. Any defendant who receives notice, through whatever means, that a reproductive health clinic intends to post the signage contemplated by § 132:38, II, shall immediately notify the plaintiffs, through their counsel, and the court, which will then schedule a hearing on the plaintiffs' motion for preliminary injunction forthwith.
4. Paragraphs 2 and 3 shall remain in place until the court rules on the plaintiffs' motion for preliminary injunction, or this order is dissolved or modified on motion of one or more parties or otherwise.

Within 60 days of this order, the parties, having conferred through counsel, shall file a joint status report apprising the court of any legislative, executive, judicial or factual developments that bear upon this action.

**SO ORDERED.**



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Joseph N. Laplante  
United States District Judge

Dated: July 23, 2014

cc: Michael J. Tierney, Esq.  
Nancy J. Smith, Esq.  
Garry R. Lane, Esq.