



AlaFile E-Notice

01-CV-2013-901119.00

Judge: JOSEPH L. BOOHAKER

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

STATE BOARD OF HEALTH V. ALL WOMEN'S, INC. ET AL
01-CV-2013-901119.00

The following matter was FILED on 9/27/2013 2:44:47 PM

F002 CHARISMATIC EPISCOPAL CHURCH FOR LIFE

F005 CHARISMATIC EPISCOPAL CHURCH FOR LIFE

F001 LIFE LEGAL DEFENSE FOUNDATION

F004 LIFE LEGAL DEFENSE FOUNDATION

F003 OPERATION RESCUE

F006 OPERATION RESCUE

MOTION TO RECONSIDER

[Filer: WEBSTER WILLIAM HOUSTON]

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**IN THE CIRCUIT COURT OF
JEFFERSON COUNTY, ALABAMA**

| | | |
|-------------------------------------|---|--|
| STATE BOARD OF HEALTH, |) | Case No.: 01-CV-2013-901119 JB |
| Plaintiff, |) | |
| vs. |) | BRIEF OF <i>AMICI CURIAE</i> IN OPPOSITION |
| |) | TO DEFENDANT’S REQUEST FOR |
| ALL WOMEN’S INC., d/b/a NEW WOMAN |) | RECONSIDERATION |
| ALL WOMEN HEALTH CARE, DIPAT, |) | |
| L.L.C., DIANE W. DERZIS, PATRICK H. |) | |
| SMITH, and BRUCE E. NORMAN, M.D., |) | |
| Defendants. |) | |
| _____ |) | |

BRIEF OF *AMICI CURIAE* LIFE LEGAL DEFENSE FOUNDATION,

CHARISMATIC EPISCOPAL CHURCH FOR LIFE, AND

OPERATION RESCUE IN OPPOSITION TO

DEFENDANT’S REQUEST FOR RECONSIDERATION

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RULES

Alabama Rules of Civil Procedure, Rule 59(e) 3
Alabama Rules of Civil Procedure, Rule 60(b) 3

INTERESTS OF AMICI

1. **Amicus Life Legal Defense Foundation** is a California non-profit corporation dedicated to defending life, and to protecting the free speech rights of pro-life advocates. It has also supported, financially and with legal services, efforts to hold abortion providers accountable for their failure to abide by mandatory abuse reporting laws and failure to comply with state department of health rules and regulations.

2. **Charismatic Episcopal Church for Life (CEC for Life)** is an international organization dedicated to educating and motivating the culture to understand what it means to believe in the sanctity of human life. CEC for Life is based in Birmingham, Alabama, and is actively involved in bringing attention to and protecting the most defenseless victims of violence in Birmingham. As part of its work, it gathers public information about conduct and practices of abortion providers in the state of Alabama for the purpose of informing and educating the public and lawmakers about the dangerous actions of abortion providers. It has special knowledge of the New Woman All Women abortion center, located at 1001 17th Street South, Birmingham, Alabama, because its members observe the facility weekly and have taken pictures of staff and newsworthy events at the facility.

3. **Operation Rescue** is a national organization dedicated to ending the performance of unsafe abortions and protecting the health and safety of pregnant women and their unborn children. Operation Rescue seeks to educate citizens and government officials about the hazardous conditions inside many abortion facilities and expose abortionists who endanger the lives of women and their children by violating state laws.

Each of these amici possesses specialized knowledge, information, and experience concerning the practice of abortion in Alabama, and at plaintiff All Women's Inc., doing business as New Woman All Women Health Care (hereafter "NWAH") in particular, which knowledge, information, and experience can help to inform this court's decision in this matter.

ARGUMENT

I. Unsupported statements are not evidence.

Defendant Norman seeks to change this court's ruling by submitting unsworn statements by and through his attorney. These statements are not set forth in the form of a declaration, nor are they signed under penalty of perjury. Motions and arguments of counsel are not evidence. *Carney v. Carney*, 92 So. 3d 70, 73 (2011).

Furthermore, even if there was an adequate foundation for the claims, the information contained in the motion is in direct contradiction to defendant Norman's statements at trial. In paragraph 4 of the motion for reconsideration, defendant Norman's attorney states that Norman had not performed 30 or more abortions in any one calendar month prior to the court order. At trial, defendant Norman testified that he performs 12-14 abortions per day and that his office is open one day every other week. As the court aptly deduced, by defendant Norman's own testimony he performs 36-42 abortions during the months of the year that the facility is open for three days.

This motion represents the defendant's attempt to recalculate his testimony after trial to present himself in a better light. It is essentially asking the court to change its ruling based on the self-serving, unsworn statements.

II. Altered testimony is not permissible evidence.

A motion for reconsideration is proper if based on the evidence presented at trial or newly discovered evidence. Alabama Rules of Civil Procedure, Rule 59(e); Rule 60(b). However, a motion for reconsideration cannot be based on evidence that comes into existence after trial. *Goodyear Tire & Rubber Co. v. Haygood*, 93 So. 3d 132, 141 (2012). Thus, defendant Norman's attempt to submit altered testimony after the trial is not permissible and is not proper grounds to alter the court's initial order.

III. Voluntary compliance with the law is not grounds for setting aside the Court's order.

Agreeing to abide by the law is not a proper basis for modification of a previously issued order. In paragraphs 1 and 2 of defendant Norman's motion for reconsideration, defendant Norman agrees to abide by the terms of the court order and agrees to follow the law. Simply agreeing to follow the law does not alter the fact that the law was violated in the first place. Such an argument would be comparable to a person committing a battery, being tried and convicted of battery, and then asking the judge to overturn his conviction because he promises not to do it again. There simply is no basis in law for this type of post-judgment repentance. If defendant Norman agrees to follow the law and abide by the court's order, then he can rest assured that he will not be subject to any contempt of court proceeding, but that certainly does not mean that the order should be quashed. The court's order was properly issued based on the evidence presented at trial and must stand.

CONCLUSION

Further, and for all of the above reasons, amici respectfully request the Court to deny Defendant Norman's motion for reconsideration and allow the previously issued order to stand.

Respectfully Submitted,

/s/ William H. Webster

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CERTIFICATE OF SERVICE

I hereby certify that Amici's Motion for Leave to File Brief of Amici Curiae was electronically filed with the Clerk of Court on this the 27th day of September, 2013. This Court's electronic filing system will serve this filing on all counsel of record.

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