

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

REV. PAUL A. EKNES-TUCKER, et al.

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

STEVE MARSHALL, et al.

Defendants.

Civil Action No.
2:22-cv-00184-LCB-CWB

**PLAINTIFFS' CONSENT MOTION FOR LEAVE
TO FILE SECOND AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15(a)(2), Plaintiffs Rev. Paul A. Eknes-Tucker; Brianna Boe, individually and on behalf of her minor son, Michael Boe; Megan Poe, individually and on behalf of her minor daughter, Allison Poe; Kathy Noe, individually and on behalf of her minor son, Christopher Noe; Rebecca Roe, individually and on behalf of her minor daughter Melissa Roe; Robert Voe, individually and on behalf of her minor daughter, April Voe; Heather Austin, Ph.D.; and Rachel Koe, M.D. (collectively, the "Private Plaintiffs") hereby move for leave to file the Second Amended Complaint ("SAC") attached hereto as Exhibit A, respectfully showing the Court as follows:

1. On August 9, 2022, the Private Plaintiffs filed a First Amended Complaint (Doc. 146) (the “FAC”), asserting various claims challenging the Alabama Vulnerable Child Compassion and Protection Act (the “Act”).

2. On August 23, 2022, Defendants filed a Motion to Dismiss certain claims asserted in the FAC (Doc. 150) (the “Motion to Dismiss”), including the Private Plaintiffs’ claim in Count III of the FAC that the Act is preempted, the Private Plaintiffs’ claim in Count IV of the FAC that the Act deprives the Private Plaintiffs of their right to free speech, in violation of the First Amendment, and the Private Plaintiffs’ claim in Count V that the Act is void for vagueness.

3. During the hearing on Plaintiffs’ Motion for Preliminary Injunction, “Alabama Solicitor General Edmund LaCour explained that a person must administer or prescribe transitioning medications to violate the Act” and “opined that a person cannot violate the Act simply by advising a minor to take transitioning medications or by driving a minor to a gender clinic where transitioning medications are administered,” May 13, 2022 Opinion and Order (Doc. 107), at 26 (the “Preliminary Injunction Order”).

4. The Court found in its Preliminary Injunction Order that “the Act does not criminalize speech that could indirectly lead to a minor taking transitioning medications,” but only speech “which compels the administration or prescription of transitioning medications to minors,” *id.* at 28.

5. The Private Plaintiffs have considered the arguments raised in the Motion to Dismiss in light of the above-referenced representations made by Defendants' counsel on the record during the preliminary injunction hearing and the above-referenced findings in the Court's Preliminary Injunction Order and, in reliance on same, have decided to withdraw certain claims asserted in the FAC. Thus, the Private Plaintiffs seek to file the SAC attached hereto as Exhibit A, which withdraws the claims previously asserted by Plaintiff Rev. Paul A. Eknes-Tucker and the claims previously asserted in Counts III, IV, and V of the FAC.

6. The Private Plaintiffs have conferred with counsel for Plaintiff-Intervenor and counsel for Defendants. Plaintiff-Intervenor and Defendants consent to the filing of the SAC attached hereto as Exhibit A.

7. Wherefore, the Private Plaintiffs respectfully request that the Court grant their motion for leave to amend and permit the Private Plaintiffs to file the SAC attached hereto as Exhibit A.

Respectfully submitted this 12th day of September, 2022.

/s/ Melody H. Eagan

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CERTIFICATE OF SERVICE

I certify that, on September 12, 2022, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will provide notification of such filing to all counsel of record.

/s/ Melody H. Eagan
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