

NO. 22-CI-003225  
*Electronically filed*

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRY

EMW WOMEN’S SURGICAL CENTER,  
P.S.C., *et al.*

PLAINTIFFS

v.

DANIEL CAMERON, *et al.*

DEFENDANTS

**PLAINTIFFS’ MOTION TO DISMISS WITHOUT PREJUDICE**

Plaintiffs EMW Women’s Surgical Center, P.S.C., Ernest Marshall, M.D., and Planned Parenthood Great Northwest, Hawai’i, Alaska, Indiana, and Kentucky, Inc., by and through undersigned counsel, move to voluntarily dismiss the above-captioned action without prejudice pursuant to CR 41.01(2).

**I. BACKGROUND**

Plaintiffs brought suit to challenge two Kentucky abortion bans, KRS 311.772 and KRS 311.7701-11 (collectively, the “Bans”). This Court granted a temporary injunction against the Bans, which was dissolved by a Court of Appeals judge. The Kentucky Supreme Court affirmed the Court of Appeals’ dissolution of the temporary injunction, holding that Plaintiffs had not shown that they had third party standing to bring claims on behalf of their patients. *Cameron v. EMW Women’s Surgical Center, P.S.C.*, 664 S.W.3d 633 (Ky. 2023). The Supreme Court remanded the case back to this Court for further proceedings consistent with its opinion to adjudicate the nondelegation claim, which Plaintiffs have standing to raise.

**II. ARGUMENT**

CR 41.01(2) provides for voluntary dismissal by a plaintiff “upon order of the court.” The decision of how to handle a motion to dismiss without prejudice is “a matter within the trial court’s discretion.” *Louisville Label, Inc. v. Hildesheim*, 843 S.W.2d 321, 325 (Ky. 1992). While “[m]any

things must be taken into consideration by the trial judge prior to entering an order dismissing an action without prejudice...the basic criterion is whether the opposing party will suffer some substantial injustice or be substantially prejudiced.” *Sublett v. Hall*, 589 S.W.2d 888, 893 (Ky. 1979); *see also Hartlage v. Kroger*, No. 2006-SC-0139-WC, 2006 WL 3386623, at \*2 (Ky. Nov. 22, 2006). *Sublett* lays out particular factors for courts to consider prior to entering an order dismissing a case without prejudice, including: “What preparation has the opposing parties and their counsel made for trial?,” “What was the lapse of time between the filing of the complaint and the date of the motion to dismiss?,” and “Will a dismissal without prejudice be prejudicial to the opposing parties?” *Sublett*, 589 S.W.2d at 893.

Here, no injustice or prejudice to Defendants exists. This case is at the very early stages and thus far has focused only on preliminary relief, and there has been no extensive lapse of time between the filing of the complaint and the instant motion. *See id.* (affirming dismissal without prejudice when that dismissal was granted three years after commencement of the action). Further, no meaningful discovery has taken place (Defendants have only propounded written discovery), which weighs in favor of dismissal without prejudice. *See Haroon v. Kerwin*, No. 2011-CA-001299-MR, 2013 WL 3105545, at \*1, \*4 (Ky. App. June 21, 2013) (affirming lower court dismissal where the “matter was dismissed before the parties could undertake any significant discovery”). Dismissal would therefore conserve, not waste, this Court and defendants’ time and effort.

### III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully ask this Court to grant dismissal of this action without prejudice pursuant to CR 41.01(2).

DATE: June 20, 2023

Respectfully submitted,

/s/ Michele Henry

Michele Henry (KBA No. 89199)  
Craig Henry PLC  
401 West Main Street, Suite 1900  
Louisville, Kentucky 40202  
(502) 614-5962  
mhenry@craighenrylaw.com

*Counsel for Plaintiffs*

Brigitte Amiri\*  
Chelsea Tejada\*  
American Civil Liberties Union Foundation  
125 Broad Street, 18th Floor  
New York, New York 10004  
(212) 549-2633  
bamiri@aclu.org  
ctejada@aclu.org

*Counsel for Plaintiffs EMW Women's  
Surgical Center, P.S.C., and Ernest  
Marshall, M.D.*

Carrie Y. Flaxman\*  
Planned Parenthood Federation of America  
1110 Vermont Avenue, NW, Suite 300  
Washington, D.C. 20005  
(202) 973-4830  
carrie.flaxman@ppfa.org

Anjali V. Salvador\*  
Planned Parenthood Federation of America  
123 William Street, Floor 11  
New York, NY 10038  
(212) 541-7800  
anjali.salvador@ppfa.org

*Counsel for Plaintiff Planned Parenthood  
Great Northwest, Hawai'i, Alaska, Indiana,  
and Kentucky, Inc.*

Heather L. Gatnarek (KBA No. 95113)  
Crystal Fryman (KBA No. 99027)  
ACLU of Kentucky  
325 Main Street, Suite 2210  
Louisville, Kentucky 40202  
(502) 581-9746  
heather@aclu-ky.org  
crystal@aclu-ky.org

*Counsel for Plaintiffs EMW Women's  
Surgical Center, P.S.C., and Ernest  
Marshall, M.D.*

Leah Godesky\*  
O'Melveny & Myers LLP  
1999 Avenue of the Stars  
Los Angeles, CA 90067  
(310) 246-8501  
lgodesky@omm.com

*Counsel for Plaintiffs*

\* *Admitted pro hac vice*

## CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2023, true and accurate copies of the foregoing were served by email on the following:

Victor Maddox  
Christopher Thacker  
Lindsey Keiser  
Office of the Attorney General  
700 Capitol Avenue, Suite 118  
Frankfort, KY 40601  
victor.maddox@ky.gov  
christopher.thacker@ky.gov  
lindsey.keiser@ky.gov

Wesley Duke  
Office of the Secretary of Kentucky's Cabinet for Health and Family Services  
275 E. Main St. 5W-A  
Frankfort, KY 40621  
wesleyw.duke@ky.gov

Leanna Diakov  
Kentucky Board of Medical Licensure  
310 Whittington Pkwy, Suite 1B  
Louisville, KY 40222  
leanne.diakov@ky.gov

Jason Moore  
Office of the Commonwealth's Attorney, 30th Judicial Circuit  
514 West Liberty Street  
Louisville, KY 40202  
jbmoore@louisvilleprosecutor.com

*/s/ Michele Henry*

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Michele Henry (KBA No. 89199)  
*Counsel for Plaintiffs*

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DEFENDANTS

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION TO  
DISMISS WITHOUT PREJUDICE**

Plaintiffs EMW Women’s Surgical Center, P.S.C., Ernest Marshall, M.D., and Planned Parenthood Great Northwest, Hawai’i, Alaska, Indiana, and Kentucky, Inc. have moved to voluntarily dismiss the above-captioned action without prejudice pursuant to CR 41.01(2). Upon consideration of the motion, any oppositions and replies filed thereto, and the record in this case, the Court finds that dismissal without prejudice will not cause Defendants to “suffer some substantial injustice or be substantially prejudiced,” *Sublett v. Hall*, 589 S.W.2d 888, 893 (Ky. 1979), and accordingly that such dismissal is warranted under CR 41.01(2).

Accordingly, **IT IS ORDERED** that Plaintiffs’ motion to dismiss this action without prejudice is **GRANTED**.

This action is **DISMISSED WITHOUT PREJUDICE**.

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CHIEF JUDGE MITCH PERRY

Date: \_\_\_\_\_

*Tendered by:*

Michele Henry (KBA No. 89199)  
Craig Henry PLC  
401 West Main Street, Suite 1900  
Louisville, Kentucky 40202  
Phone: (502) 614-5962  
mhenry@craighenrylaw.com

*Counsel for Plaintiffs*