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

YASHICA ROBINSON, M.D., et al., Plaintiffs, v. STEVEN MARSHALL, in his official capacity as Alabama Attorney General, Defendant.	CIVIL ACTION Case No. 2:19-cv-365-MHT-JTA

PLAINTIFFS' EMERGENCY MOTION TO FILE A SUPPLEMENTAL COMPLAINT PURSUANT TO FED. R. CIV. P. 15(d)

Pursuant Federal Rule of Civil Procedure 15(d), Plaintiffs hereby move to file a Supplemental Complaint, attached hereto as Exhibit 1. The grounds for this motion are set forth in the following memorandum of law.

Dated: March 30, 2020

Respectfully Submitted,

s/Alexa Kolbi-Molinas

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR EMERGENCY MOTION TO FILE A SUPPLEMENTAL COMPLAINT

On June 21, 2019, Plaintiffs Yashica Robinson, M.D., Alabama Women's Center, Planned Parenthood Southeast, Inc., Reproductive Health Services, and West Alabama Women's Center (together, the "Plaintiffs") brought this action on behalf of their patients and themselves, challenging Alabama House Bill 314 of the 92nd General Assembly ("H.B. 314" or "the Ban"), which would have criminalized nearly all abortions in the state. On October 29, 2019, this Court preliminarily enjoined H.B. 314, finding that Plaintiffs had established a likelihood of success on the merits of their claim that the Ban violated decades of Supreme Court precedent safeguarding the right to abortion before the point of viability. Defendants did not appeal this Court's ruling.

On March 19 and 20, in response to the COVID-19 crisis, the State Public Health Officer issued a series of emergency orders restricting "elective" medical procedures in an effort to enforce "social distancing." *See* Scott Harris, M.D., M.P.H., State Health Officer, "Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19," Mar. 19, 2020 ("March 19 Order")[1]; Scott Harris, M.D., M.P.H., State Health Officer, "Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19," Mar. 20, 2020, ("March 20 Order").[2] At the time, counsel for the Alabama Department of Public Health ("ADPH" or "the Department") assured counsel for Plaintiffs that the Department did not intend to enforce the orders against abortion clinics, which provide essential, time-sensitive medical care. *See* Decl. of Randall Marshall in Supp. of Pls.' Second Mot. for TRO and Prelim. Inj. ("Marshall Decl.") ¶ 4. However, one week later, the State Public Health Officer issued a new order, *see* Scott Harris, M.D., M.P.H., State Health Officer,

[1] *Available at* https://www.alabamapublichealth.gov/legal/assets/order-adph-cov-gatherings-031920.pdf.

[2] *Available at* https://www.alabamapublichealth.gov/legal/assets/order-publicgathering-032020.pdf.

"Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19," Mar. 27, 2020, attached to Pls.' Supplemental and Partially Verified Compl. for Declaratory and Injunctive Relief as Ex. B ("March 27 Order")[3]. The March 27 Order prohibits any medical or surgical procedure except those necessary to treat an "emergency medical condition" or to "avoid serious harm from an underlying condition." *Id.* Each medical or surgical procedure performed in violation of the March 27 Order is considered a misdemeanor, and the Attorney General has issued guidance encouraging prosecution of violations. *See* Steve Marshall, Attorney General, Guidance for Law Enforcement, Mar. 27, 2020, attached to Pls.' Supplemental and Partially Verified Compl. for Declaratory and Injunctive Relief as Ex. D. ("Guidance for Law Enforcement").[4] The Attorney General has taken the position that the March 27 Order prohibits some unknown quantity of pre-viability abortions. Marshall Decl. ¶ 14. Because Plaintiffs cannot risk criminal, along with licensure penalties, for continuing to perform abortions under these circumstances, they have had to stop performing pre-viability abortions. As such, the recent actions of the Attorney General and ADPH have effectively nullified the relief this Court granted in its preliminary injunction ruling.

As this Court recognized, abortion bans "impose[] substantial costs on women, including those who are unable to obtain an abortion and those who "desperately seek to exercise their ability to decide whether to have a child" and thus "would take unsafe measures to end their pregnancies." *Id.* at 1058 (quoting *Planned Parenthood Se., Inc. v. Strange*, 33 F. Supp. 3d 1330, 1363 (M.D. Ala. 2014) (Thompson, J.)). Nothing in the current crisis justifies these harms. To the contrary, prohibiting pregnant people from accessing abortion and forcing them to continue

[3] *Available at* https://www.alabamapublichealth.gov/legal/assets/order-adph-cov-gatherings-032720.pdf

[4] *Available at* https://www.alabamaag.gov/Documents/files/03-27-2020-GuidanceEnforcementStateHealthOrder.pdf.

their pregnancies to term against their will not only deprives Alabamians of their constitutional rights and jeopardizes their health and safety, but will also further tax an already overburdened health care system struggling to respond to a global pandemic. *See, e.g.*, Jayme Fraser & Matt Wynn, *US hospitals will run out of beds if coronavirus cases spike*, USA TODAY, Mar. 13, 2020 (estimating that there will be 12-14 seriously ill patients per available hospital bed in Alabama).[5]

In order to promote the interests of judicial economy and to obtain complete relief for Plaintiffs and their patients without piecemeal litigation, Plaintiffs move to supplement their complaint to challenge the March 27 Order on behalf of themselves and their patients against Defendant Marshall and to add Scott Harris M.D., in his official capacity as the State Health Officer of ADPH, as an additional proposed defendant.[6] Plaintiffs' motion falls well within the liberal policy favoring motions to supplement and should be granted.

BACKGROUND

On June 21, 2019, Plaintiffs filed this challenge to the constitutionality of H.B. 314, which would have banned virtually all abortions in the State of Alabama. *See* Verified Compl. for Declaratory and Injunctive Relief (Doc. No. 1).

[5] *Available at* https://www.usatoday.com/in-depth/news/investigations/2020/03/13/us-hospitals-overwhlemed-coronavirus-cases-result-in-too-few-beds/5002942002/.

[6] Although Scott Harris was previously named as a defendant in this suit, he was voluntarily dismissed, along with all the other original defendants except for Defendant Marshall, on June 7, 2019, pursuant to a stipulation to "be bound by the terms of any injunctive (including but not limited to a temporary restraining order or preliminary injunction), declaratory, and/or other relief [against H.B. 314] against the Alabama Attorney General and/or any of the other defendants by any court in this action so long as such relief remains in effect as to the Alabama Attorney General and/or any other defendant(s)." *See* Order (Doc. No. 44). However, as the author of the March 27 Order, and given his ability to seek licensure penalties against Plaintiff abortion clinics for violations of the Order, Plaintiffs need to re-name him in the suit. The other original defendants remain bound by any injunctive, declaratory, and/or other relief this Court orders against the March 27 Order.

On October 29, 2019, this Court preliminarily enjoined enforcement of the Ban. *See* Opinion (Doc. No. 68) at 17. In its opinion, the Court held that "Alabama's abortion ban contravenes clear Supreme Court precedent. It violates the right of an individual to privacy, to make choices central to personal dignity and autonomy. It diminishes the capacity of women to act in society, and to make reproductive decisions. It defies the United States Constitution." *Id.* at 16–17 (internal quotations and citations omitted).

Recently, governments across the world have enacted measures to respond to the outbreak of COVID-19. On March 13, 2020, Governor Ivey proclaimed a state of emergency in Alabama. *See* Governor Kay Ivey, Proclamation of the Governor (State of Emergency: Coronavirus (COVID-19)), Mar. 13, 2020.[7] Starting on March 19, 2020, Defendant Harris issued a series of emergency orders requiring the postponement of "elective" medical and surgical procedures. *See* March 19 and March 20 Orders, *supra*. On March 20, 2020, counsel for ADPH assured counsel for Plaintiffs that the Orders were not intended to apply to abortion. Marshall Decl. ¶ 4. However, after news articles reported that abortion was considered an "essential" health procedure under the emergency orders, *see, e.g.*, Abbey Crain, *Alabama abortion clinics deemed essential amid COVID-19 business closures*, AL.com, Mar. 25, 2020[8], a new order was issued on March 27, 2020, mandating the indefinite postponement of *all* medical and surgical procedures that are not "necessary" to treat an "emergency medical condition" or to "avoid serious harm from an underlying condition or disease." *See* March 27 Order at 4. That same day, the Attorney General issued "Guidance for Law Enforcement," explaining that violation of the March 27 Order constitutes a misdemeanor under Ala. Code § 22-2-14. *See* Guidance for Law

[7] *Available at* https://governor.alabama.gov/assets/2020/03/2020-03-13-Initial-COVID-19-SOE.pdf.

[8] *Available at* https://www.al.com/news/2020/03/alabama-abortion-clinics-deemed-essential-amid-covid-19-business-closures.html

Enforcement. The Attorney General's guidance goes on to state (emphasis in the original): "While the unprecedented nature of this pandemic and the government's evolving response seem to demand some restraint related to criminal enforcement of this order, **if a violator has been made aware of the state health order and the refusal to comply presents a threat to public health and safety, [criminal penalties] are available as an enforcement tool.**" *Id.* The guidance further states that "[t]he order does not offer a total exemption for any specific type of provider or clinic." *Id.* The March 27 Order states that it "shall remain in full force and effect until 5:00 P.M. on April 17, 2020[,]" and that prior to that date "a determination shall be made whether to extend this Order—or, if circumstances permit, to relax this Order." March 27 Order at 4.

Plaintiffs again sought assurances from ADPH that the March 27 Order was not intended to apply to abortion, which is time-sensitive health care for which delay threatens patient health and safety. Marshall Decl. ¶ 10. ADPH did not respond; rather, counsel for ADPH referred Plaintiffs' question directly to the Attorney General who, in turn, merely cited the guidance emphasizing criminal penalties. *Id.* ¶ 11. After receiving the Attorney General's non-responsive answer to their question, Plaintiffs' counsel again sought clarification of whether either medication or surgical abortion were prohibited by the Order. *Id.* ¶ 12. The Attorney General responded that: "Per the order, we are unable to provide you with a blanket affirmation that abortions will, in every case, fall within one of the exemptions." *Id.* ¶ 14. In the wake of the ADPH's about-face, the threat of criminal penalties, and the refusal of either ADPH or the Attorney General to provide any further clarification to Plaintiffs as to what abortions they consider to constitute criminal acts under the March 27 Order, Plaintiffs have had no choice but to start cancelling existing abortion appointments and turning away patients.

To promote judicial efficiency and more completely resolve the dispute between the parties, Plaintiffs seek leave to supplement their complaint in order to challenge the application of the March 27 Order to prohibit pre-viability abortions in this action.

ARGUMENT

Federal Rule of Civil Procedure 15(d) provides that a court "may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented." The Eleventh Circuit, like its sister circuits, has a "liberal" policy concerning supplemental pleadings. *U.S. v. One Piece of Real Property at 5800 SW 74th Ave., Miami, Fla.*, 182 Fed. App'x 921, 924–25 (11th Cir. 2006) (citing *Harris v. Garner*, 216 F.3d 970, 984 (11th Cir. 2000)); *see also U.S. ex rel. Gadbois v. PharMerica Corp.*, 809 F.3d 1, 7 (1st Cir. 2015) ("courts customarily have treated requests to supplement under Rule 15(d) liberally"); *Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, 793 F.3d 1177, 1186 (10th Cir. 2015) (same); *Hall v. C.I.A.*, 437 F.3d 94, 101 (D.C. Cir. 2006) ("motions for supplemental pleadings . . . are to be freely granted"); *Quarantino v. Tiffany & Co.*, 71 F.3d 58, 66 (2d Cir. 1995) (same); *Keith v. Volpe*, 858 F.2d 467, 473 (9th Cir. 1988) (supplemental pleadings are "favored"); *Ramsey v. Georgia-Pacific Corp.*, 597 F.2d 890, 892 (5th Cir. 1979) (noting "liberal application of Rule 15. . . which freely permits supplemental amended pleadings"); *New Amsterdam Cas. Co. v. Waller*, 323 F.2d 20, 28–29 (3rd Cir. 1963) (supplemental pleadings "ought to be allowed as of course"); *W. Ala. Women's Ctr. v. Miller*, 318 F.R.D. 143, 148 (M.D. Ala. 2016) (Thompson, J.) (noting that "the court's discretion [to permit supplementation] is broad, and… should be exercised liberally…").

It is well established that a supplemental complaint can include new claims based on new events and transactions. *See Gadbois*, 809 F.3d at 4 ("[T]he Rule helps courts and litigants to

avoid pointless formality: although causes of action accruing after the institution of a lawsuit usually can be filed as separate actions, supplementation under Rule 15(d) is often a more efficient mechanism for litigating such claims." (citing *Predator Int'l, Inc. v. Gamo Outdoor USA, Inc.*, 793 F.3d 1177, 1186–87 (10th Cir. 2015)); *William Inglis & Sons Baking Co. v. ITT Cont'l Baking Co.*, 668 F.2d 1014, 1057 (9th Cir. 1981) ("The purpose of Rule 15(d) is to promote as complete an adjudication of the dispute between the parties as possible by allowing the addition of claims which arise after the initial pleadings are filed.") (citation omitted); *Keith*, 858 F.2d at 474 (noting the "absence of a transactional test" under Rule 15(d)); *W. Ala. Women's Ctr.*, 318 F.R.D. at 148; 6A Charles A. Wright et al., *Federal Practice and Procedure* § 1506 (3d. ed.) ("[A] party should be given every opportunity to join in one lawsuit all grievances against another party regardless of when they arose."). It is equally "well-established that supplemental pleadings under Rule 15(d) are appropriate vehicles for the addition of new parties." *See W. Ala. Women's Ctr.*, 318 F.R.D. at 148; *see also Griffin v. Cty Sch. Bd. of Prince Edward Cty.*, 377 U.S. 218, 226 (1964) ("Rule 15(d) of the Federal Rules of Civil Procedure plainly permits supplemental amendments to cover events happening after suit, and it follows, of course, that persons participating in these new events may be added if necessary. Such amendments are well within the basic aim of the rules to make pleadings a means to achieve an orderly and fair administration of justice."); *Keith*, 858 F.2d at 476 ("there is ample authority for adding new defendants in a supplemental complaint"); *Lofton v. Tillman, No.*, 2006 WL 2052522, at *2 (S.D. Ala. July 21, 2006) (granting plaintiff leave to amend her complaint to add twenty-three defendants); 6A Charles A. Wright et al., *Federal Practice & Procedure* § 1507 (3d ed.) ("a supplemental pleading may seek to bring in additional parties").

This preference for supplementation ensures that the court can grant "more nearly complete relief, in one action, and to avoid the cost, delay and waste of separate actions which must be separately tried and prosecuted." *W. Ala. Women's Ctr.*, 318 F.R.D. at 148 (quoting *New Amsterdam Cas. Co.*, 323 F.2d at 28–29); *see also Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 (5th Cir. 1981) ("it is appropriate for the court to consider judicial economy and the most expeditious way to dispose of the merits of the litigation"); *Gadbois*, 809 F.3d at 4 (Rule 15(d) "shares the core objective of the Civil Rules: 'to make pleadings a means to achieve an orderly and fair administration of justice.' . . . [and] facilitates this objective by 'promoting as complete an adjudication of the dispute between the parties as is possible.'") (quoting *Griffin*, 377 U.S. at 227 and 6A Charles A. Wright et al., *Federal Practice and Procedure* § 1504)); *Dillard v. Crenshaw Cty.*, 640 F. Supp. 1347, 1368 (M.D. Ala. 1986) (Thompson., J.) ("Under the Federal Rules of Civil Procedure, 'joinder of claims, parties and remedies is strongly encouraged.'" (quoting *United Mine Workers v. Gibbs,* 383 U.S. 715, 724 (1966)).

Indeed, supplemental pleadings are so favored that the Eleventh Circuit has said that "leave shall be granted unless there is a substantial reason to deny it." *Halliburton & Associates, Inc. v. Henderson, Few & Co.*, 774 F.2d 441, 443 (11th Cir. 1985) (citing *Epsey v. Wainwright*, 734 F.2d 748 (11th Cir. 1984)).[9] Such reasons may include "undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice

[9] Although *Halliburton* concerned leave to amend pleadings under Rule 15(a), courts apply the same standard to amended pleadings as they do to supplemental pleadings under Rule 15(d). *See, e.g.*, *Ala. v. U.S. Army Corps of Engineers*, 382 F. Supp. 2d 1301, 1309 (N.D. Ala. 2005) ("Regardless of whether the motions are to amend or supplement, the standard of review is the same . . .") (citing cases and authorities); *Gadbois*, 809 F.3d at 7 ("This liberality [of Rule 15(d)] is reminiscent of the way in which courts have treated requests to amend under Rule 15(a)'s leave 'freely give[n]' standard." (citations omitted)); *W. Ala. Women's Ctr.*, 318 F.R.D. at 148 (same); *Davis v. Day & Zimmermann NPS, Inc.*, No. , 2012 WL 1885165, at *2 (N.D. Ala. May 17, 2012) (discussing standard for "amended and supplemental pleadings" under Rule 15); 6A Charles A. Wright et al., § 1504 ("the distinction between amended and supplemental pleadings is sometimes ignored completely" and both are addressed to the court's discretion).

to the opposing party by virtue of allowance of the amendment, and futility of amendment." *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1340 (11th Cir. 2014) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962) (quotation marks and modifications omitted)); *see also Halliburton*, 884 F.2d at 443.

As argued below, Plaintiffs' proposed Supplemental Complaint will promote judicial efficiency and there are no substantial reasons that counsel in favor of denial of the motion. Plaintiffs' motion should therefore be granted.

I. Supplementation Will Promote Judicial Efficiency and Completely Resolve the Parties' Dispute.

Granting the instant motion will further the interests underlying Rule 15(d) in multiple respects. First, there is substantial legal overlap between the claims asserted in the original Complaint and the proposed Supplemental Complaint, and as a result of earlier proceedings in this case and others, the Court is intimately familiar with the relevant case law. Both pleadings focus on actions by Alabama officials which effectively ban abortion services within the state. To adjudicate the claims in Plaintiffs' proposed Supplemental Complaint, the Court need only revisit the same body of case law that it considered when determining that Plaintiffs' legal claims with respect to H.B. 314 were likely to succeed on the merits—namely, whether a state may ban abortion before the fetus or embryo has attained viability. *See, e.g.*, *Robinson v. Marshall*, 415 F. Supp. 3d 1053, 1058 (M.D. Ala. 2019) (this Court collecting cases regarding the constitutionality of pre-viability bans). "While the justifications for the original [ban] differed from those that will probably be proffered for" the March 27 Order, "the analytical approach the parties and the court will employ for assessing the constitutionality of [the March 27 Order] will likely largely be the same." *W. Ala. Women's Ctr.*, 318 F.R.D. at 149. The Complaint and the proposed Supplemental Complaint thus share the same "focal point"—the legality of state action prohibiting abortion in

Alabama and the effect of that prohibition on the health, safety, and constitutional rights of Alabamians seeking abortion. *See Jackson Women's Health Org. v. Dobbs*, 379 F. Supp. 3d 549, 552 (S.D. Miss. 2019), *aff'd*, 951 F.3d 246 (5th Cir. 2020) ("The supplemental claims pose the same legal question as the original suit: does the law ban abortion prior to viability?"); *see also Keith*, 858 F.3d at 474 (allowing the plaintiffs to supplement their complaint 13 years after the initial complaint because the original complaint and supplemental complaint shared the same "concern . . . the availability of replacement housing for persons displaced by the Century Freeway"); *Griffin*, 377 U.S. 218, 226 (1964). As a result of the Court's "familiarity with the subject matter," supplementation would "serv[e] the efficient administration of justice." *Ohio Valley Envtl. Coal. v. U.S. Army Corps of Eng'rs*, 243 F.R.D. 253, 257 (S.D. W. Va. 2007).

Second, the March 27 Order challenged in the proposed Supplemental Complaint, would, if enforced against pre-viability abortions, nullify outright the relief the Court granted in October by permitting Alabama to achieve the very result that the preliminary injunction expressly forbade. Supplementation is therefore appropriate to "prevent [an] end-run by the State," *United States v. Ohio*, No. 2:08-CV-00475, 2014 WL 1308718, at *4 (S.D. Ohio March 28, 2014), which would "circumvent" the relief ordered by the Court earlier in this litigation, *Griffin*, 377 U.S. at 226.

Third, supplementation will prevent unnecessary duplication of efforts and conserve judicial resources, by consolidating many of the same plaintiffs and defendants and by addressing many of the same legal issues and claims in a single lawsuit. *See, e.g.*, *Ohio*, 2014 WL 1308718, at *7 (granting the plaintiff's motion to file a supplemental complaint to avoid "piecemeal litigation and needless waste of judicial resources"). Indeed, "one of the primary goals of Rule 15(d) is to aid in the complete resolution of disputes between parties" by

consolidating various claims into a single action. *W. Ala. Women's Ctr.*, 318 F.R.D. at 150. As alleged in the proposed Supplemental Complaint, Plaintiffs and their patients will be irreparably harmed by a ban on pre-viability abortions. These are the same serious constitutional harms that the Court has already considered in granting Plaintiffs' preliminary injunction motion. It will therefore "promote the economic and speedy disposition of the entire controversy between the parties" if Alabama's dual attempts to ban abortion were litigated in one action. *Katzman v. Sessions*, 156 F.R.D. 35, 39 (E.D.N.Y. 1994); *see also W. Ala. Women's Ctr.*, 318 F.R.D. at 150 ("Given the interrelated nature of the two challenges, it makes sense to consider them in one lawsuit[, which will] keep down litigation costs and conserve judicial resources…"); *Jackson Women's Health Org.*, 379 F. Supp. 3d at 552 ("This Court is in a very similar position to Judge Thompson. The State passed a new abortion ban while its present abortion ban is in active litigation. Supplementation will allow for a complete resolution of the dispute between [the abortion provider] and the State. To use the State's words, it would not 'make sense' to force the plaintiffs to challenge this statute in a separate lawsuit.")

Accordingly, under the Eleventh Circuit's liberal standard for allowing supplementation, Plaintiffs' motion should be granted.

II. There Are No Substantial Reasons to Deny Supplementation.

Because Plaintiffs are filing this motion on the earliest possible date and because the parties have not undertaken any discovery in this case, there are no reasons such as "undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies . . . undue prejudice . . . [or] futility" that counsel against granting Plaintiffs' motion. *Perez*, 774 F.3d at 1340. Plaintiffs' motion is timely and filed in good faith. The Governor declared a state of emergency on March 13, 2020; it was not until Friday, March 27, 2020 that Plaintiffs first had reason to believe they

would be prohibited from performing pre-viability abortions; and it was not until Sunday, March 29, 2020 – less than 24-hours ago – that the Attorney General confirmed that Plaintiffs could not continue providing abortions without risking criminal penalties.

Further, neither Defendant nor the Proposed Defendant would be prejudiced by the filing of the Supplemental Complaint. Since the granting of the preliminary injunction in October of 2019, there has been *no* substantive activity on the docket. As noted above, the parties have not engaged in any discovery. *See W. Ala. Women's Ctr.*, 318 F.R.D. at 151 (fact that "no uniform scheduling order with discovery and other deadlines has ever been entered" would weigh in favor of supplementation); *id.* (permitting supplementation *even when* "there was much evidentiary development in this case with regard to the original challenge"). At this stage in the litigation, no party would be prejudiced by supplementation. *See Phelps v. McClellan*, 30 F.3d 658, 662–63 (6th Cir. 1994) ("In determining what constitutes prejudice, the court considers whether the assertion of the new claim or defense would: require the opponent to expend significant additional resources to conduct discovery and prepare for trial; significantly delay the resolution of the dispute; or prevent the plaintiff from bringing a timely action in another jurisdiction."); *Sims v. Montgomery Cnty Comm'n*, 873 F. Supp. 585, 610 (M.D. Ala. 1994) (finding defendants would suffer no prejudice from amendment when, *inter alia*, they would not be subject to any additional discovery or trial preparation); *Ohio*, 2014 WL 1308718, at *7 (same).

Finally, supplementation would not be futile. As described above and set forth more fully in the attached proposed Supplemental Complaint and associated briefing, prohibiting pre-viability abortions will not only inflict irreparable harm on pregnant people in Alabama, but also plainly violates long-established Supreme Court precedent. Plaintiffs' proposed Supplemental

Complaint clearly "states a claim for relief" and "sufficiently gives [Defendants] fair notice of" Plaintiffs' allegations and claims. *Travelers Property Cas. Co. of Am. v. The Lamar Co.*, LLC, No. 07-0704-KD-C, 2009 WL 661906, at *2 (S.D. Ala. Mar. 10, 2009).

Thus, no substantial reasons weigh against supplementation and Plaintiffs' motion should be granted.

CONCLUSION

For all these reasons, supplementation will promote judicial economy and Defendant and Proposed Defendants will not be prejudiced; indeed, supplementation will *save* resources and time for all parties and the Court. This Court should grant Plaintiffs' motion to file the proposed Supplemental Complaint.

Dated: March 30, 2020

Respectfully submitted,

s/Alexa Kolbi-Molinas

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2020, I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Middle District of Alabama using the CM/ECF system, thereby serving all counsel of record, and served the State Public Health Officer, Proposed Defendant Scott Harris, by and through his attorneys through the email addresses below:

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