

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

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Jennifer Goodall)	
)	
	Plaintiff,	
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)	
vs.)	CASE NO. _____
)	
Comprehensive Women’s Health Center,)	
Bayfront Medical Health Group;)	
Bayfront Health Port Charlotte;)	
Stephen B. Russell as the State Attorney for)	
Florida’s Twentieth Judicial Circuit;)	
John Doe I in his or her official capacity as)	
Special Assistant State’s Attorney; John)	
Doe(s) II, physicians providing obstetric car)	
at Bayfront Health Port Charlotte.)	
)	
	Defendants.	
)	

MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Fed. R. Civ. P. 65(b) and Local Rule 4.05(b)(2), Jennifer Goodall moves this honorable Court to issue an immediate temporary order restraining Bayfront Health Medical Group, Bayfront Health Port Charlotte, Stephen B. Russell as the State Attorney for Florida’s Twentieth Judicial Circuit, John Doe I in his or her official capacity as Special Assistant State’s Attorney, John Doe(s) II, physicians providing obstetric care at Bayfront Health Port Charlotte, their agents, servants, employees and attorneys from:

- a. Contacting the Department of Children and Family Services based upon Ms. Goodall's exercise of her right, protected by the laws and constitutions of the United State and Florida, to make medical decisions;
- b. Instituting process for an "Expedited Judicial Intervention Concerning Medical Treatment Procedures;"
- c. Performing a cesarean surgery without Ms. Goodall's consent and over her objection;
- d. Interfering with her ability to obtain care from another hospital or obstetrical practice by sharing the Letter (described below) with any other medical provider, hospital, or entity.

GROUND

The grounds of this motion, as more fully set forth in the verified complaint, the attached declaration of Jennifer Goodall, the attached expert declarations, and the attached memorandum of points and authorities, are as follows:

1. Jennifer Goodall is an adult woman who resides in Cape Coral, Florida. She is presently 39 weeks pregnant (estimated due date 7/18/2014), which is considered full term by the American College of Obstetricians and Gynecologists and Society for Maternal Fetal Medicine.

American College of Obstetricians and Gynecologists Committee on Obstetric Practice & Society for Maternal Fetal Medicine, Committee Opinion No. 579: Definition of Term Pregnancy, Nov. 2013, available at

<https://www.acog.org/Resources-And-Publications/Committee-Opinions/Committee-on-Obstetric-Practice/Definition-of-Term-Pregnancy>.

2. This is her fourth pregnancy. Her three prior deliveries were by cesarean surgery, but she wishes for this pregnancy to attempt a trial of labor after cesarean section (TOLAC).
3. She has been under the care of Dr. Aimee Young and Dr. Nay Hoche of Bayfront Health Medical Group's Comprehensive Women's Health Care. While the physicians at Comprehensive Women's Health Care informed her of the potential risks of TOLAC, there was no indication that she would be forced to undergo the recommended course of care if she disagreed with medical recommendations.
4. On July 10, 2014, a woman from Comprehensive Women's Health Care came to Ms. Goodall's home and delivered a letter from Cheryl Tibbett, Chief Financial Officer of Bayfront Health Port Charlotte (hereinafter "the Letter," attached as Exhibit 1). The Letter stated that the hospital's ethics committee had reviewed her case, and that the hospital intends to (1) "contact the Department of Children and Family Services about [Ms. Goodall's] refusal to undergo a Cesarean section," (2) "begin a process for an Expedited Judicial Intervention Concerning Medical Treatment Procedures . . . relating to the delivery of [her] child," and (3) perform a cesarean section "with or without [Ms. Goodall's] consent" in the event that she presents to the hospital in labor.
5. The Letter provided no legal justification for the proposed course of action.
6. Based on the threats contained in the Letter, Ms. Goodall faces serious, imminent potential for irreparable harms, namely deprivation of her right to medical decision making, bodily integrity and autonomy due to forced, potentially life-threatening invasive abdominal surgery; deprivation of her right to due process of law through the use of expedited judicial processes that do not

allow for full discovery, briefing, and the presentation of experts on her behalf; a deprivation of her right to family privacy through wrongful reporting to the Department of Children and Family Services and attendant investigation; and a deprivation of her right to equal protection of the law.

7. Because Ms. Goodall is at full term in her pregnancy, she may deliver at any moment. She faces a possibility of unwanted surgery through forcible, unconsented means that is so imminent that notice and hearing on the application for preliminary injunction is impractical, if not impossible.
8. Ms. Goodall has a substantial likelihood of success on the merits:
 - a. Ms. Goodall's constitutional right to equal protection of the law is violated by invocation of judicial proceedings that single her out, as a pregnant woman, for special regulation and penalty, and which would not be used against her as a competent adult but for the fact of her pregnancy. Thus, the proceedings here relegate Ms. Goodall to second-class status on the basis of her gender, and permit a host of intrusions, including potentially life-threatening bodily invasions, that would not be tolerated for any other class of person. Such discrimination is only permissible upon showing of "exceedingly persuasive justification." *United States v. Virginia*, 518 U.S. 515, 531 (1996). The threatened action, which is the epitome of an invasion by the state, cannot be supported by exceedingly persuasive justification when there is no specific clinical indication that cesarean surgery in advance of labor is necessary, and is not in any event sufficiently tailored to meet constitutional muster as Ms. Goodall has agreed to consent to surgery should it become necessary during labor.

b. Ms. Goodall's procedural due process rights are violated by invocation of judicial proceedings that, if invoked a) do not apply to her or b) do not allow her sufficient process. The Expedited Judicial Intervention Concerning Medical Treatment Procedures petition threatened by the Letter, described by Fla. Prob. R. 5.900, requires that the petition contain "facts to support the allegation that the patient lacks the capacity to make the requisite medical treatment decision." Fla. Prob. R. 5.900(a)(5). *In re Amendments to Fla. Probate Rules*, 607 So. 2d 1306, 1307 (Fla. 1992) ("Rule 5.900 is amended to clarify that a petition for expedited judicial intervention concerning medical treatment should include an allegation that the patient lacks the capacity to make the requisite medical treatment decision, and to require that the patient receive notice of the petition and hearing.") There is no indication that Ms. Goodall lacks capacity to make medical decisions on her own behalf. She is a conscious, adult woman, and no court or body has found her to be incompetent to make her own decisions. Her desire to attempt a trial of labor has been made clear and is understood by Bayfront Health Medical Group, even if her intent to consent to surgery should it become medically necessary has been misconstrued by the Letter as a "refusal to undergo Cesarean surgery." Absent a colorable allegation of lack of capacity to make medical decisions, an Expedited Judicial Intervention Concerning Medical Treatment Procedures petition will fail. Moreover, any other proceeding that defendants might institute to force compliance with medical recommendations would necessarily deprive Ms. Goodall of her right to procedural due process given the fact that she is facing the

possibility of labor at any moment and will have insufficient time to marshal evidence and experts in her favor while in labor. Ms. Goodall's interest in due process far outweighs the hospitals asserted interests.

- c. Ms. Goodall's right to family privacy is violated by the threat of a wrongful report to DCFS contained in the Letter. The constitutionally-protected right to family privacy may be intruded upon by DCFS through intrusive investigations and court proceedings only under the limited circumstances permitted by Florida law. However, that agency has no jurisdiction over the medical decisions that competent adults make on their own behalf, and there is no indication that the Legislature has granted the DCFS jurisdiction over fetuses in addition to children. *See* Fla. Stat. § 39.01. To the contrary, appellate courts have ruled that fetuses may not be encompassed within the term "child." *State v. Carter*, No. 89-6274 (Fla. Cir. Ct. Escambia County July 23, 1990) (dismissing criminal child abuse charges brought against a woman who continued to term in spite of a drug problem on the grounds that such application of the law violated legislative intent), *aff'd*, 602 So. 2d 995 (Fla. App. 1992). Fla. Stat. § 39.201, which lays out the requirements for mandatory reports of child abuse, neglect, or abandonment makes no mention whatsoever of reporting pregnant women who disagree with their doctors' proposed course of care for pregnancy, labor, and delivery. The threat of a report is not only wrongful, because it was made in bad faith with the intent to either coerce Ms. Goodall into acquiescence or as a form of patient abandonment, it may even trigger an abrogation of reporter immunity, leaving the Defendants susceptible to criminal and civil

liability, and a fine of up to \$10,000. *See* Fla. Stat. § 39.205(9) (“A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.”); Fla. Stat. § 39.206.

- d. Ms. Goodall’s right to privacy and autonomy in medical decision making under the United States and Florida Constitutions, as well her right to bodily integrity under Florida common law, would be violated by cesarean surgery performed without her consent as threatened by the Letter. Under the United States Constitution, Ms. Goodall has a right to privacy that includes the right to refuse unwanted medical treatment. *See Cruzan v. Director, Missouri Dep’t of Health*, 497 U.S. 261 (1990), *Washington v. Glucksberg*, 521 U.S. 702, 709 (1997). Florida’s Constitution has similar guarantees. *See In re Dubreuil*, 629 So. 2d 819, 822 (Fla. 1993)(“We begin our analysis with the overarching principle that article I, section 23 of the Florida Constitution guarantees that "a competent person has the constitutional right to choose or refuse medical treatment, and that right extends to all relevant decisions concerning one's health.") Florida case law has interpreted this guarantee to apply to “even lifesaving medical treatment” and has held, therefore, that “a physician who treats a patient despite such a refusal is civilly (and criminally) liable for assault and battery.” *Rodriguez v. Pino*, 634 So. 2d 681, 685 (Fla. Dist. Ct. App. 1994) (holding that physician could not be liable for patient’s death following competent patient’s refusal to be treated because treating her against her will would have rendered him liable for assault and battery); *see, e.g., Meretsky v.*

Ellenby, 370 So. 2d 1222, 1223 (Fla. Dist. Ct. App. 3d Dist. 1979) (“The law is well settled that an operation cannot be performed without the patient's consent and that one performed without consent, express or implied, is a technical battery or trespass for which the operator is liable.”)

9. Neither Bayfront Health Port Charlotte nor Bayfront Health Medical Group faces any potential harm if this order is issued. Ms. Goodall has expressed, and continues to express, her willingness to consent to surgery if she is advised that any condition indicating need for surgery arises during labor, as well as to memorialize in writing her understanding of the potential risks and benefits of TOLAC and repeat cesarean surgery. Her clear informed consent to a TOLAC, memorialized in writing, will serve to protect any interest the hospital has with respect to limiting exposure to medicolegal liability.
10. The public interest in this case strongly favors the preservation of Ms. Goodall’s constitutional and statutory rights to medical decision making, informed consent, bodily integrity, family privacy, equal protection of the law, and due process of the law. For this court to permit BHPC, Bayfront Health Medical Group, Stephen B. Russell as the State Attorney for Florida’s Twentieth Judicial Circuit, John Doe I in his or her official capacity as Special Assistant State’s Attorney, John Doe(s) II, physicians providing obstetric care at Bayfront Health Port Charlotte, their agents, servants, employees or attorneys to force a woman to undergo surgery by threat of force or force of law would create a second-class status for pregnant women that would strip them of the fundamental elements of personhood under the United States and Florida Constitutions. Moreover, it is in the interests of the public to ensure that pregnant women's rights

as patients to informed consent are vindicated; here, by virtue of its actions so late in her pregnancy, without immediate action the hospital and other providers will be encouraged to take this patently unethical and illegal action against their patients when they disagree with the patient's decisions regarding their recommended course of treatment.

Respectfully submitted,



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Counsel for Jennifer Goodall

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

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Jennifer Goodall)	
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	Plaintiff,	
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vs.)	CASE NO. _____
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)	Date:
Comprehensive Women’s Health Center,)	Time:
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Bayfront Health Port Charlotte;)	
Stephen B. Russell as the State Attorney for)	
Florida’s Twentieth Judicial Circuit;)	
John Doe I in his or her official capacity as)	
Special Assistant State’s Attorney; John)	
Doe(s) II, physicians providing obstetric care)	
at Bayfront Health Port Charlotte.)	
	Defendants.	
)	

[PROPOSED] TEMPORARY RESTRAINING ORDER

In accordance with Fed. R. Civ. P. 65(b) and (d), Plaintiff Jennifer Goodall’s application for a temporary restraining order having come before this Court, and good cause appearing therefor, namely evidence showing that (i) the defendants have made serious and unjustifiable threats against Ms. Goodall, (ii) Ms. Goodall faces a credible and imminent threat of wrongful legal proceedings that will interfere with and impair her statutory and constitutional rights including the right to bodily integrity, family privacy, medical decision making, due process, and equal protection and (iii)

immediate and irreparable harm will result to Ms. Goodall if the defendants are permitted to carry out the threats of forcibly surgery or wrongful reporting to the Department of Children and Family Services contained in the Letter by delay in adjudication of the issues,

IT IS HEREBY ORDERED that:

- Plaintiff Jennifer Goodall's Motion for Temporary Restraining Order is GRANTED, and
1. The defendants Comprehensive Women's Health Center, Bayfront Medical Health Group; Bayfront Health Port Charlotte; Stephen B. Russell as the State Attorney for Florida's Twentieth Judicial Circuit; John Doe I in his or her official capacity as Special Assistant State's Attorney; and John Doe(s) II, physicians providing obstetric care at Bayfront Health Port Charlotte, their agents, servants, employees and attorneys are hereby

TEMPORARILY RESTRAINED FROM

- a. Contacting the Department of Children and Family Services based upon Ms. Goodall's exercise of her right, protected by the U.S. Constitution and Florida statutory law, to make medical decisions;
- b. Instituting process for an "Expedited Judicial Intervention Concerning Medical Treatment Procedures" or any other judicial proceeding requesting authorization to perform cesarean surgery without her consent;
- c. Performing a cesarean surgery without Ms. Goodall's consent and over her objection;

- d. Interfering with her ability to obtain care from another hospital or obstetrical practice by sharing the Letter (described below) with any other medical provider, hospital, or entity absent Ms. Goodall's express written consent to same; and
2. Such order will remain in effect until _____ a.m./p.m on the _____ day of _____, 2014; and
3. Plaintiff's counsel shall serve a copy of this order on the defendants (or their counsel, if known) by method permissible under the Local Rules on or before _____ a.m./p.m. on the _____ day of _____, 2014.

SO ORDERED.

Dated: _____

United States District Judge