IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SKAGIT COUNTY

KEVAN COFFEY **Petitioner,** **and** **PUBLIC HOSPITAL DISTRICT NO. 1, SKAGIT COUNTY WASHINGTON D/B/A SKAGIT REGIONAL HEALTH, ET. AL.** **Respondent**	**No. 15-2-00217-4** **DECISION AND ORDER GRANTING PLAINTIFF'S *MOTION FOR SUMMARY JUDGMENT* and DENYING DEFENDANTS' *MOTION FOR SUMMARY JUDGMENT***

THIS MATTER CAME BEFORE THE COURT on summary judgment; both the Plaintiff and the Defendants submitted *Motions for Summary Judgment.* The Court has reviewed and considered the Motion, the parties' brief and supporting papers and considered both parties' oral arguments. The Plaintiff, Kevan Coffey, is represented by the ACLU of Washington. The Defendants are represented by Thomas Ahearne of Foster Pepper.

The Court having reviewed all the pleadings, relevant law and the parties' arguments to the Court, HEREBY ORDERS that the Plaintiffs' *Motion for Summary Judgment* shall be granted and the Defendants' *Motion for Summary Judgment* shall be denied. The Court does not rule on the Defendants' Motion for a Protective Order as this Court's decision and order renders that motion moot.

DECISION

Plaintiff Kevan Coffey filed a *Complaint for Injunctive and Declaratory Relief* in the Superior Court of Washington for Skagit County in February 2015. The Defendants (hereinafter referred to as the "Hospital District") filed *Motions for Summary Judgment* and the Plaintiff filed a *Cross Motion for Summary Judgment*. The Court heard oral argument on those Motions. Both parties agree that this lawsuit turns on the construction of the Reproductive Privacy Act; there are no genuine issues of material fact in this case. This is solely a question of how the Reproductive Privacy Act functions and how the Hospital District complies with its requirements.

Washington's Reproductive Privacy Act, codified at RCW 9.02 et. seq., was adopted by the voters as Initiative 120 through the initiative process in 1991. RCW 9.02.100 states that "The sovereign people hereby declare that every individual possesses a fundamental right of privacy with respect to personal reproductive decisions." RCW 9.02.100(3) further states "Except as specifically provided . . . the state shall not deny or interfere with a woman's fundamental right to choose or refuse to have an abortion; and (4) the state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information." Plaintiff Coffey argues that the Hospital District violates the Reproductive Privacy Act by failing to provide elective abortion services when it provides an otherwise broad range of maternity care services. The Hospital District argues that while it would be willing to provide those services, it cannot do so because it cannot affirmatively seek to hire providers who would provide those services, nor can it require them to do so. RCW 9.02.150 provides that "No person or private medical facility may be required by law or contract in any circumstances to participate in the performance of an abortion if such person or private medical facility objects to so doing. No person may be discriminated against in employment or professional privileges

because of the person's participation or refusal to participate in the termination of a pregnancy." This provision of the RPA allows providers to "opt out" of providing terminations if they so choose.

It is undisputed that the Hospital District is a public hospital district in Skagit County that provides a broad array of maternity care services. It is undisputed, therefore, that the RPA applies to the Hospital District. It is also undisputed that the Hospital District does not provide elective terminations; the Hospital District states it would provide elective terminations to patients seeking them if it had providers who would do so, but that all of their obstetric/maternity care providers object to providing those services. If a woman seeking an elective termination calls the Skagit Valley Hospital seeking services, the Hospital refers the patient to Planned Parenthood. The Plaintiff argues that this violates the RPA, arguing that because the Hospital District provides maternity care services, it is required under RCW 9.02.160 to provide "substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies."

The Hospital District argues that it complies with the RPA if this Court accepts its argument about the definition of "program" and "substantially equivalent" under the RPA. The Hospital District further argues that it would be willing to provide voluntary elective terminations if it had providers to do so, but it does not, and under RCW 9.02.150, it cannot hire or contract with providers who would provide those services.

The RPA's clear policy is to ensure that women, in the state of Washington, have "the fundamental right to choose or refuse to have an abortion [except as specified]" and that "the state shall not discriminate against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information." RCW 9.02.100(2) and (4) respectively. As the Attorney General of Washington, appearing as Amicus Curiae in this case, notes, Washington

has a long history of protecting women's access to a wide range of reproductive health choices, including voluntary terminations, including the passage of the RPA by the voters of Washington. The Hospital District argues that the requirement of "parity" set out in RCW 9.02.160 only requires that it provide equal maternity and termination services to low income women (as opposed to "all" women) who seek services through its "charity care" program. RCW 9.02.160 states:

> If the state provides, directly or by contract, maternity care benefits, services, or information to women through any program administered or funded in whole or in part by the state, the state shall also provide women otherwise eligible for any such program with substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies.

The Hospital District argues that it complies with this section of the RPA by providing "substantially equivalent" benefits, services, and information to its low-income patients by not providing elective caesarean section births; in not providing elective terminations and elective C-sections, the Hospital District argues, they achieve the parity requirement.

Such a narrow reading of Section 160 does not comport with the overall policy and intention of the RPA. Section 160 does not limit this parity provision solely to low-income women. Rather, it states that if the state is providing maternity care to women through "any program," it must provide services for voluntary terminations as well. The Hospital District is a state entity; that is undisputed. It provides a broad array of maternity care services to its patients, something it is not required to do, but has chosen. Section 160 does not limit its parity requirement to those women who receive services from the state because they are low-income; rather, Section 160 requires the State to provide the same services to women who access a state Hospital District like this one whether they seek maternity care services or voluntary termination services. If the Hospital District chooses to provide maternity services, it is acting in its capacity as a state entity, and, therefore, must provide those services in an equivalent manner those women who seek voluntary terminations.

The Hospital District's argument that voluntary C-sections and voluntary terminations are "substantially equivalent" also requires the Court to read the RPA and Section 160 as narrowly as possible. Again, this contravenes the stated policy of the RPA. The RPA protects a woman's right to choose or refuse an abortion, and it requires the state to adopt a neutral position with regard to a woman's choices. To read Section 160's guarantee of "substantially equivalent" as only requiring voluntary termination services when other voluntary pregnancy-related medical services like elective C-sections are provided requires this Court to engage in a fairly tortured reading of the RPA. The purpose of the RPA is to ensure women have access to voluntary termination services in this same manner in which they have access to maternity care services; as the RPA itself requires, the state, acting here through the Hospital District, must remain "choice neutral" by providing women access to services that allow them to either carry pregnancies to term or to terminate them (subject to the exceptions in 9.02.110 relating to limitations based on viability). By failing to provide voluntary termination services, the Hospital District not only violates Section 160, it also violates Section 110, which states that the "the state may not deny or interfere with a woman's right to have an abortion prior to viability of the fetus, or to protect her life or health."

The Hospital District relies on its passage of Resolution 3339 to deflect any finding that it is in violation of the RPA. The Hospital District and the Defendant Commissioners state that the Hospital District would be more than willing to comply with the requirements of the RPA, but that it cannot do so because of what it describes as the prohibitions in Section 150. Section 150 recognizes the rights of providers themselves and holds that "No person may be discriminated in employment or professional privileges because of the person's participation or refusal to participate in the termination of a pregnancy." The Hospital District argues that as a result of Section 150, it cannot inquire of potential candidates for employment whether (or not) they would perform elective or voluntary terminations and that, even if it did hire a provider to

perform elective or voluntary terminations, that no contract requiring those providers to perform those services would be enforceable.

Resolution 3339 states in Section 4:

> SRH's facilities are available to its healthcare providers to perform surgical terminations, including dilation and curettage procedures, dilation and evacuation procedures, and inductions. SRH provides surgical termination procedures directly to patients requesting those services *when physicians and support staff agree to participate in that termination.* To provide those termination services at SRH's facilities in the event that SRH provides exercise their legal right to opt out of participating in a termination, *SRH will use reasonable efforts to establish a reasonable contract with an outside provider for the performance of such surgical terminations at SRH's facilities* and as required provide information to assist in the referral of patients to a qualified provider. In the event that SRH providers exercise their legal right to opt out of participating in a surgical termination for a patient, SRH also provides patients referral to one or more other healthcare providers in our region whose employees do not exercise their legal right to opt out of participating in such terminations. (Emphasis added.)

Section 5 of the Resolution 3339 provides similar language with respect to medication terminations. Section 7 requires the Hospital's Executive Team to "report" to the Board of Commissioners on the "status of securing reasonable contracts with non-SRH providers to provide terminations at SRH facilities and on the adequacy of referral opportunities." This Resolution, the Hospital District argues, demonstrates the Hospital District's clear policy supporting its compliance with the RPA.

In practice, however, the Hospital District acknowledges it does not provide voluntary terminations and instead refers patients seeking elective surgical or medication terminations to other providers. The Hospital District argues it complies because 1) all of its providers opt out and 2) information is provided to patients who seek to terminate pregnancies.

Again, this reading of the RPA would require this Court to ignore the clear policy of the RPA and its mandate. Certainly the RPA, like many other healthcare related laws in the state of Washington, provides that individual providers may choose to opt out of providing these services; the key distinction here is that individual providers may choose either to provide or not provide these services, but the state, acting here through the Hospital District, cannot exercise

such an opt out clause. The Hospital District must comply with its responsibility under the RPA and the Court sees no tenable reason why it cannot.

Simply arguing that it cannot find providers who might perform elective terminations, but that it would provide those services if it could find them does not fulfill the mandate of the RPA. In effect, the Hospital District shrugs its shoulders and informs patients that they will have to find that aspect of their healthcare elsewhere. Compliance with the RPA is not aspirational; it is mandatory. Section 160 does not allow the Hospital District to provide "information" about where a patient could obtain a voluntary termination and be in compliance. Rather, Section 160 requires the state to provide comprehensive care to patients seeking voluntary termination services. If the state provides maternity care "benefits, services, or information," it must also provide women with "substantially equivalent benefits, services, or information to permit them to voluntarily terminate their pregnancies." The "or" between "services" and "information" does not mean the State may provide one or the other; rather, it means that if the state provides any such maternity care services, they must also provide voluntary termination services. Failure to do so violates Section 100 (4) by discriminating "against the exercise of these rights in the regulation or provision of benefits, facilities, services, or information."

The Hospital District argues that it cannot contract with a provider who would provide these benefits because it cannot ask a provider whether she or he would provide elective termination services. Nothing in the RPA prevents the state from hiring providers who will provide such services. Certainly, the RPA ensures that providers cannot be required to provide these services if they choose to opt out; however, the Hospital District is not prohibited from hiring, either through contracted services or through an employer-employee relationship, providers who respond to a call for such services through a job description or Request for Proposals. The specific manner in which the Hospital District complies with the RPA is not laid out in the RPA. The question of how the Hospital District complies is not directly in front of this

Court. Rather, the specific questions in front of this Court center on whether the Hospital District is complying with the RPA and, as the Court has addressed, it is not.

THEREFORE, the Court hereby DENIES the Defendants' Motion for Summary Judgment and GRANTS the Plaintiff's Cross-Motion for Summary Judgment.

SO ORDERED this 20th day of June , 2016.

Raquel Montoya-Lewis
Superior Court Judge