UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SHARON L. DANQUAH; BERYL OTIENO-NGOJE; JACQUELINE DESEO; MARITES LINAAC; MILAGROS MANANQUIL; JULITA T. CHING; CRISTINA ABAD; LORNA JOSE-MENDOZA; VIRNA BALASA; OSSIE TAYLOR; RONETTA HABARADAS; and FE ESPERANZA R. VINOYA;

Plaintiffs,

v.

UNIVERSITY OF MEDICINE AND DENTISTRY OF NEW JERSEY ("UMDNJ"); BOARD OF TRUSTEES OF UMDNJ, and its members, in their official and individual capacities; JAMES GONZALEZ, in his individual and his official capacity as Acting President and CEO of UMDNJ; SUZANNE ATKIN, in her individual and her official capacity as Chief Medical Officer of UMDNJ; MICHAEL JAKER, in his individual and his official capacity as the Cochair of UMDNJ's Bioethics Committee; PATRICIA MURPHY, in her individual and her official capacity as the Cochair of UMDNJ's Bioethics Committee; THERESA REJRAT, in her individual and her official capacity as Vice President of Patient Care Services and Chief Nursing Officer of UMDNJ; PHYLLIS LIPTACK, in her individual and her official capacity as Director of Perioperative Services at UMDNJ; MAGALE ARRIAGA, in her

Civil Case No:
2:11-cv-06377-JLL-MAH

MEMORANDUM IN SUPPORT OF PLAINTIFF'S APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION UNDER FED. R. CIV. P. 65(a) & (b)

individual and her official capacity as Same Day Surgery Nurse Manager at UMDNJ; TAMMY LUDWIG, in her individual and her official capacity as Same Day Surgery Assistant Nurse Manager at UMDNJ;

Defendants.

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I. Introduction

Emergency relief is needed under Fed. R. Civ. P. 65(a) & (b) because the University of Medicine and Dentistry of New Jersey and its officials are blatantly violating federal and state law and inflicting extreme suffering on the Plaintiff Nurses in this case, **and two of those Plaintiffs are being scheduled by UMDNJ to have their rights violated Friday morning, November 4, when their shift starts at 5:30 am.**

UMDNJ has suddenly and brutally began forcing these Nurses to assist abortions against their religious and moral beliefs, in contravention of federal and state laws. For nearly 40 years such statutes have banned precisely this kind of coercion. Congress explicitly declared in Public Law 93-348, § 214 (1974) that it was creating for the Nurses and similarly situated health personnel the "Individual Rights" to be free from such discrimination by entities like UMDNJ that are receiving biomedical or behavioral research funds. Likewise N.J. Stat. § 2A:65A-1 bans any entity in the state from requiring persons to assist in abortions. And the United States Constitution, applicable to Defendants as government actors, protects the liberty interest of nurses to decide for themselves whether to be involved in abortions, since as the United States Supreme Court has insisted, abortion is "fraught with consequences . . . for the persons who perform and assist." *Planned Parenthood v. Casey*, 505 U.S. 833, 852 (1992).

UMDNJ has performed abortions for decades without requiring nurses to assist against their beliefs, until a month ago. An emergency injunction is necessary before Friday, November 4 to stop UMDNJ's illegal bullying and to preserve the Nurses' rights, their jobs, and their psychological well-being from the "devastating consequences" of coerced involvement in abortion. *Cf. id.* at 882.

II. Statement of Facts[1]

UMDNJ is a government hospital that receives approximately $60 million in federal health and research funding every year. Compl. ¶¶ 18, 61–64. Federal law prohibits recipients of such funding from discriminating in any adverse way against health personnel because they have a religious or moral objection to assisting in abortions, or indeed any in health service. Compl. ¶¶ 57, 68. New Jersey law independently prohibits requiring assistance in abortions. Compl. ¶ 71.

Plaintiff Nurses work for UMDNJ in its Same Day Surgery Unit, which typically handles pre- and post-operative care for non-emergency surgeries. Compl. ¶¶ 28, 31. Although UMDNJ performs abortions, until September 2011 and for many years UMDNJ did not require any unwilling nurses to assist such abortion cases, but used designated and willing nursing staff to handle all such duties. Compl. ¶¶ 32–33.

[1] The facts of this case are contained in the Verified Complaint ("Compl."), and are summarized here.

A few weeks ago, however, UMDNJ began aggressively forcing the Nurses to assist these same abortions. Compl. ¶ 34. UMDNJ from the top down revised its official policy governing religious objections so that it required employees to participate in patient services despite the employees' religious objections. Compl. ¶¶ 35–38. In implementation of this Policy, the named individual Defendants began actively forcing the Nurses and their colleagues to assist abortion cases. Compl. ¶¶ 39–44. The Nurses have expressed their religious objections, but Defendants refuse to follow the law and instead are threatening all of them with termination if they did not agree to assist. Compl. ¶¶ 44–46, 54. Several of them have already been forced to undergo training to assist abortions against their religious beliefs, which beliefs Defendant Baldwin said receive "no regard" by UMDNJ in the face of being compelled to assist what she admitted are "elective" procedures. Compl. ¶¶ 47–49. Undersigned counsel Mr. Stratis came to a meeting on October 21, 2011, between the Nurses and UMDNJ officials that was supposed to address this issue, but UMDNJ cancelled the meeting when Mr. Stratis appeared to represent the Nurses' rights. Compl. ¶¶ 54–55.

The Nurses have strongly held religious and moral beliefs against assisting in an abortion process that causes the death of a preborn child. Compl. ¶¶ 30, 45, 54. They desire to continue in their jobs without termination, retaliation or other adverse actions by Defendants based on the Nurses' objections to assisting in

abortions, but Defendants insist that the Nurses will be terminated if they do not submit to Defendants' commands that they assist. Compl. ¶ 75. This imminent threat is causing irreparable harm to the Nurses. Compl. ¶¶ 43, 73.

The hospital has scheduled Plaintiffs Lorna Menendez and Julita Ching to assist abortions this Friday, November 4, 2011. Counsel for Plaintiffs asked counsel for UMDNJ to cease this threat, but they refused. TRO Affidavit ¶ ***.

III. Argument

When deciding whether to issue a preliminary injunction, a district court must consider: "(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting the preliminary relief will be in the public interest." *United States v. Bell*, 414 F.3d 474, 478 n. 4 (3d Cir. 2005); *c.f. Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The standard for a temporary restraining order is the same. *See Nutrasweet Co. v. VitMar Enterprises, Inc*., 112 F.3d 689, 692-93 (3d Cir. 1997).

The Nurses meet each factor of this test because they are likely to succeed on the merits of their claims, they are now suffering irreparable injury and will continue to suffer irreparable injury if relief is not granted, Defendants will suffer no harm from injunctive relief, and an injunction protecting the exercise of clear

statutory and constitutional rights is clearly in the public interest. Thus, a TRO and preliminary injunction should be entered against Defendants and their Policy, allowing the Nurses to refrain from participation in abortions and related health services and prohibiting Defendants from applying adverse action against them.

A. The Nurses are likely to succeed on the merits of their claims.

UMDNJ is engaging in the exact type of forced assistance in abortion that the United States and New Jersey governments made explicitly illegal nearly 40 years ago. UMDNJ is not only generally subject to these laws, but has especially violated the public trust by accepting tens of millions in tax dollars every year under the explicit condition that they would not do exactly what they are doing to the Nurses right now. UMDNJ is bullying the Nurse Plaintiffs to engage in what they believe to be the killing of a baby, and which the Defendants know is already inflicting intense anguish on the Nurses. *Cf. Casey*, 505 U.S. at 852 ("procedures some deem nothing short of an act of violence against innocent human life").

UMDNJ is doing all of this for no reason whatsoever, since until only a month ago it has engaged in abortion practice for decades without and "need" to illegally force unwilling employees to assist. As government actors, UMDNJ and its officials are violating the Nurses' constitutional right to liberty which the Supreme Court has interpreted broadly in the abortion context to include autonomy about whether or not to be involved in abortion without government penalties.

1. UMDNJ's compulsion violates 42 U.S.C. § 300a-7(c).

UMDNJ is trampling on the Nurses' individual rights under 42 U.S.C. § 300a-7(c). Subsection (c)(2) of that law was passed by Congress in 1974 under Public Law 93-348, § 214. Congress' words read verbatim as follows:

Individual Rights

> Sec. 214. (a) Subsection (c) of section 401 of the health programs extension act of 1973 //87 stat. 95, 42 USC 300a-7.// is amended (1) by inserting "(1)" after "(c)", (2) by redesignating paragraphs (1) and (2) as subparagraphs (a) and (b), respectively, and (3) by adding at the end the following new paragraph:
>
> "(2) No entity which receives after the date of enactment of this paragraph a grant or contract for biomedical or behavioral research under any program administered by the secretary of health, education, and welfare may—,
>
> > "(a) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or
> >
> > "(b) discriminate in the extension of staff or other privileges to any physician or other health care personnel,
>
> because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity."

Id. § 214.[2] By explicit declaration, therefore, Congress conferred individual civil rights on "health care personnel" including the Nurses in this case. In turn, section 1983 of Title 42 of the United States Code provides remedies in federal court for "[e]very person" who is deprived of any "rights . . . secured by the . . . laws" of the United States. The Church Amendment "appl[ies] to discrimination" committed against plaintiffs by fund recipients. *Erzinger v. Regents of University of California*, 137 Cal. App. 3d 389, 394, 187 Cal. Rptr. 164, 167 (Ct. App. 1982). Compensatory and punitive damages are available to health care personnel whose rights under the Church Amendment are violated by fund recipients. *Carey v. Maricopa County*, 602 F. Supp. 2d 1132, 1144 (D. Ariz. 2009).

UMDNJ is subject to 42 U.S.C. § 300a-7(c) because it receives a massive amount of "grant[s] or contract[s] for biomedical or behavioral research under any program administered by the secretary of health," as well as other funding under the Public Health Service Act. Exhibit 1 attached to the complaint describes nearly

[2] The Statutes at Large listed in the Public Laws constitute evidence of the law, not the U.S. Code itself, which summarizes the former. *See Cohen v. JP Morgan Chase & Co.*, 498 F.3d 111, 121 n.7 (2d Cir. 2007) (citing *United States Nat'l Bank of Ore. v. Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 448 & n.3 (1993)); *see also* 1 U.S.C. § 112, and *Schmitt v. City of Detroit*, 395 F.3d 327, 330 (6th Cir. 2005) ("even if a portion of [the Public Law] were omitted from the United States Code, it would retain the force of law").

$60 million in such funding that UMDNJ received in 2011 alone. Such biomedical and behavioral research awards include, to name only a few[3]:

- $1,037,207 for a heart and vascular research study related to blood pressure;
- $2,037,769 for a study exploring the molecular mechanisms affecting aging;
- $2,709,629 for an immunization study focusing on antibodies;
- $1,650,031 for a study to help develop methods to detect tuberculosis;
- $1,903,113 for a study comparing different treatments to prevent stroke.

Exhibit 1 at 6, 9, 10, 13, & 19.

As a recipient of such funds, UMDNJ is obliged to honor the Nurses' individual civil rights as defined by Congress. Defendants may not "discriminate in the employment, promotion, or termination of employment of any . . . health care personnel . . . [or] in the extension of staff or other privileges to . . . health care personnel . . . because [s]he refused to perform or assist in the performance of any [lawful health] service . . . on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity." Public Law 93-348, § 214; 42 U.S.C. § 300a-7(c)(2) (same). This is a blanket duty, voluntarily undertaken by

[3] Exhibit 1 was obtained through conducting a search at http://taggs.hhs.gov . Abstracts of many of these specific studies are available by running an "Award Search," "Search by Award . . . Number," at taggs.hhs.gov /SearchAward.cfm , using the award numbers listed in Exhibit 1.

UMDNJ when it accepted the above-mentioned tax dollars. It does not allow Defendants to *sometimes* discriminate against the Nurses because they object to assisting in abortion-related services, or to balance Defendants' own alleged interests against the Nurses' right not to suffer unlawful discrimination, or to simply decide one day that after decades of not forcing nurses to assist abortions Defendants will draft and enforce a policy requiring such participation. Instead, this law specifies an unequivocal individual civil right held by the Nurses that Defendants must honor. Notably, the duty does not limit itself to personnel who only work on the specifically-funded research project. By virtue of UMDNJ's receipt of millions in federal tax health dollars every year, it is obliged to honor the Congressionally-defined individual civil rights of *all* its health care personnel.

Likewise, subsection (c)(1) of 42 U.S.C. § 300a-7 also protects the Nurses against Defendants' coercion to assist abortions. Subsections (c)(1) and (2) are structured identically. Subsection (c)(1) declares:

> No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act, the Community Mental Health Centers Act, or the Developmental Disabilities Services and Facilities Construction Act after [June 18, 1973], may—
>
> > (A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or
> >
> > (B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

> because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

As the text shows, these subsections are framed in exact parallel. Both declare that "No entity which receives" certain funds may "discriminate" in the exact, comprehensive list of ways against "any physician or other health care personnel because he performed or assisted in the performance of" certain health activities. Subsection (c)(1) was passed first, in Public Law 93-45 (1973), and subsection (c)(2) was passed just a few months later in Public Law 93-348 (1974). Congress clearly intended, by this linguistic parallel, that the two sections function in the same fundamental way. Therefore Congress' later-in-time declaration, in Public Law 93-348, that by this language it intended to create "Individual Rights," is equally true about both subsections (c)(1) and (c)(2).

The only difference between these sections is in what particular funding triggers their application, and what particular activities personnel have a right to object to. But in this case the Nurses are protected under both. Subsection (c)(1) is triggered by funding under the Public Health Service Act and related acts, while subsection (c)(2) is triggered by "biomedical or behavioral research' funding. And subsection (c)(1) gives personnel the right not to assist abortions or sterilizations

contrary to their beliefs, while subsection (c)(2) gives them the right not to assist any health service contrary to their beliefs.

In this case the two protections obviously overlap. Likewise UMDNJ's funding streams triggering both subsections overlap, since the Public Health Service Act is simply the act that creates the funding under HHS and its various sub-departments. The Public Health Service Act can be found at Title 42, Chapter 6A of the United States Code. This Act authorizes the funds, operating divisions and program offices that are listed in Exhibit 1 of the complaint as being the sources for UMDNJ's cache of federal awards, for example for the NIH (42 U.S.C. § 281, 282a). UMDNJ is awash in Public Health Service Act funding that triggers 42 U.S.C. § 300a-7(c)(1).

Despite its unequivocal duty not to violate the Nurses' rights under 42 U.S.C. § 300a-7(c), however, Defendants are blatantly doing so. It would be hard to think of a more literal violation of § 300a-7(c) than the actions in which Defendants are engaging. As recited above and in the Verified Complaint, Defendants are compelling the Nurses, under direct threats of "termination" and other adverse actions (see § 300a-7(c)(1) & (2)), to "assist" (*id.*) "abortions" (§ 300a-7(c)(1)) and other "health services" supportive of the same (§ 300a-7(c)(2)), "contrary to [the Nurses'] religious beliefs or moral convictions" (§ 300a-7(c)(1) & (2)). And Defendants are doing so pursuant to an officially drafted policy, being

imposed by a swath of its chain of command. It is as if Defendants read § 300a-7(c)(1) & (2) and then decided to do exactly the opposite.

The Nurses have individual rights under § 300a-7(c), UMDNJ must not violate those rights, but UMDNJ is aggressively doing so. The Nurses have a likelihood of success on the merits of their claim under § 300a-7(c).

2. UMDNJ's compulsion violates N.J. Stat. § 2A:65A-1.

The same compulsion by Defendants is illegal under New Jersey state law. Both the federal and state governments quickly and with nearly universal support passed laws after abortion was legalized to prohibit forcing health care personnel to assist. N.J. Stat. § 2A:65A-1, passed in 1974 a few months after Public Law 93-348, declares that "No person shall be required to perform or assist in the performance of an abortion or sterilization." The Nurses have a likelihood of success on the merits of their claim that this is exactly what Defendants are doing, as described above.

3. UMDNJ's compulsion violates the United States Constitution.

Defendants' mandate that the Nurses assist abortions also violates their rights under the Fourteenth Amendment of the United States Constitution. UMDNJ is a government entity organized under Title 18A, Sub. 9, Ch. 64G of New Jersey Statutes. Its actions and that of its employees and officials in this case

constitute state action. *See Copeland v. University of Medicine and Dentistry of New Jersey*, 2009 WL 2244106, *5 (D.N.J. 2009) ("Dr. Vladeck admits that he was acting under color of state law"). As such, they are bound to respect the Nurses' rights under the Fourteenth Amendment.

The Nurses' right not to assist abortions is protected under Fourteenth Amendment. That Amendment's "Due Process Clause specially protects those fundamental rights and liberties which are, objectively, deeply rooted in this Nation's history and traditions, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). Regarding the latter, the Supreme Court itself has stated that the Fourteenth Amendment protects a liberty interest not to be involved in an abortion. The Court has insisted that abortion is "fraught with consequences . . . for the persons who perform and assist in the procedure," including "devastating consequences" for nonconsensual involvement in abortion. *Casey*, 505 U.S. at 851, 882. Even abortion providers themselves testify to the severe psychological impact of assisting in abortions. Dr. Lisa Harris of the University of Michigan has called performing abortions a "brutally visceral" and "raw" experience that can cause "serious emotional reactions that produce[] physiological symptoms, sleep disturbances (including disturbing dreams), effects

on interpersonal relationships and moral anguish."[4] The Court has set forth that whether to participate in an abortion involves "the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, [which] are central to the liberty protected by the Fourteenth Amendment. . . . Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State." *Id.* at 851–52. By infringing the Nurses' own choices about whether to assist abortions, Defendants are violating the Nurses' fundamental liberty in the area of abortion.

In addition to being implicit in the Supreme Court's defined contours of ordered liberty, the right not to assist abortions is also deeply rooted in our nation's history and tradition. The Supreme Court's tradition analysis does not require that the right in question be affirmatively recognized as a *constitutional* right for that entire tradition, but merely that as a factual matter the liberty existed.[5] This is certainly true throughout American history. Because abortion was illegal in most states prior to *Roe v. Wade* (and in all states not long before that), requiring someone to assist an abortion would be to commit part of the crime itself. The

[4] Mark L. Rienzi, "The Constitutional Right to Refuse," at 65, *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1749788 (Jan. 27, 2011) (quoting Lisa H. Harris, "Second Trimester Abortion Provision: Breaking the Silence and Changing the Discourse," 16 REPROD. HEALTH MATTERS 74, 76 (2008) (partially quoting Hern W.M., "What about us? Staff reactions to D&E," in Hern W.M., Corrigan B. *Advances in Planned Parenthood* 1980; 15:3-8)).

[5] Rienzi, supra note 4, at 17.

Court itself in *Roe* favorably quoted conscience policies, including from the American Medical Association which declared in no uncertain terms "[t]hat no physician or other professional personnel shall be compelled to perform any act which violates his good medical judgment. Neither physician, hospital, nor hospital personnel shall be required to perform any act violative of personally-held moral principles." *Roe v. Wade*, 410 U.S. 113, 143–44 & n.38 (1973). In the abortion context, the Court specifically called it "appropriate protection" that there be a legal right that "a physician or any other employee has the right to refrain, for moral or religious reasons, from participating in the abortion procedure." *Doe v. Bolton*, 410 U.S. 179, 198 (1973).

In the wake of abortion's legality before and after *Roe*, most states promptly passed laws enshrining the right of persons not to assist abortions and continued doing so through the present,[6] just as the federal government and the State of New Jersey did in the statutes listed above. These abortion-specific conscience protections are historically bolstered by federal and state constitutional and statutory protections against government infringement of religious liberty in general. The Court's analysis also places significant weight on the psychological burdens of the failing to honor such a widely-recognized liberty, *see, e.g.*, *Casey*, 505 U.S. at 836, and as mentioned above, in this instance the Supreme Court itself

[6] Rienzi, supra note 4, at 38–43.

has explicitly recognized the negative consequences of being compelled to be involved in abortion, *id.* at 851, 882. The consensus against forcing persons to assist in abortion is as historically broad and universal as any fundamental liberty interest ever recognized by the Supreme Court.

As a result, the Nurses are likely to succeed on the merits of their claim that by requiring the Nurses to assist in abortions Defendants are violating the Nurses' constitutional rights.

B. The Nurses have no adequate remedy at law and will suffer irreparable injury if an injunction is not issued.

The second consideration for the Court in determining whether to grant a motion for preliminary injunction is "whether the movant will be irreparably injured by denial of the relief." *Bell*, 414 F.3d at 478 n. 4. The Nurses have suffered and will suffer irreparable harm because they will forced to endure the extreme trauma of assisting abortions which they believe are the killing of innocent babies, or face termination. Both of these illegal options offered by Defendants are direct harms that the Nurses face even today if an injunction does not issue. Federal and state law clearly provide the Nurses the right not to be compelled to assist abortions in this manner. Any adverse action taken against them by Defendants on these grounds will constitute an already completed violation of those rights. The loss of constitutional freedoms constitutes irreparable harm,

Elrod v. Burns, 427 U.S. 347, 373 (1976) (citation omitted), and it is likewise irreparable harm for the Nurses to suffer termination or other adverse employment actions in violation of their clear right not to be forced to assist abortions.

C. If a TRO / preliminary injunction is not issued, the Nurses will suffer greater injury than Defendants, tipping the balance of hardships in their favor.

The Nurses and their colleagues are this very day being scheduled for active abortion training and assistance in abortion cases in violation of their clear federal and state rights. Some of them have already had to endure the trauma of being assigned to train to assist abortions against their deeply held religious beliefs due to Defendants' threats of termination, and all of them imminently face the same. Therefore the Nurses satisfy the third prong entitling them to a preliminary injunction: "whether granting preliminary relief will result in even greater harm to the nonmoving party." *Bell*, 414 F.3d at 478 n. 4.

Enjoining actions that violate clearly protected federal and state rights cannot harm the Defendants, since the Defendants have no right to force the Nurses to assist abortions. *Cf. Miller v. Penn Manor Sch. Dist.*, 588 F. Supp. 2d 606, 630–31 (E.D. Pa. 2008) (enjoining violations of constitutional rights does not harm the violators) (citing *Sypniewski v. Warren Hills Regional Bd. of Ed.*, 307 F.3d 243, 259 (3d Cir. 2002)). When, as here, it has been shown that the challenged actions are illegal, "no substantial harm to others can be said to inhere

in [their] enjoinment." *Cf. Déjà Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County*, 274 F.3d 377, 400 (6th Cir. 2001). Moreover, a mere month ago and for many years to that date, Defendants fully serviced these abortion cases using willing nurses, without forcing any objecting nurses to assist. As explained above, the Nurses are suffering irreparable harm due to the loss of their rights each day they are under threat to be forced to assist abortions in violation of their religious and moral beliefs. The balance of hardships therefore clearly rests in the Nurses' favor.

D. Issuance of a TRO / preliminary injunction in this case is in the public interest.

The final consideration for the Court in determining whether a preliminary injunction should be issued is "whether granting the preliminary relief will be in the public interest." *Bell*, 414 F.3d at 478 n. 4. Just as "the public interest clearly favors the protection of constitutional rights, " *Council of Alternative Political Parties v. Hooks*, 121 F.3d 876, 884 (3d Cir. 1997), the public interest is itself embodied in the federal and state civil rights laws that explicitly declare the Nurses cannot be discriminated against for objecting to assistance in abortions or related health services. Because the Nurses are suffering the loss of their plain federal and state rights, it is imperative that they receive immediate injunctive relief. The

public interest is served through the protection of fundamental and longstanding civil rights.

IV. Conclusion

The Nurses have satisfied all aspects of the requirements for issuance of a TRO and preliminary injunction against Defendants' Policy and actions compelling them to assist abortions. The Nurses also ask that the Court waive any bond requirement under Fed. R. Civ. P. 65(c), because this case involves protecting fundamental civil and constitutional rights. *See Westfield High School L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 128–29 (D. Mass. 2003) (waiving bond requirement where "requiring a security bond. . . might deter others from exercising their constitutional rights"). The Nurses therefore request that this Court grant their request for a temporary restraining order and preliminary injunction.

DATED: November 2, 2011,

Fair Lawn, New Jersey

Respectfully submitted,

s/ Demetrios K. Stratis

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**Pro hac vice applications forthcoming.*

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2011, the foregoing document was filed with the Clerk of the Court, and served in accordance with the Federal Rules of Civil Procedure, and/or the District's Local Rules and procedures, upon the following parties and participants:

University of Medicine and Dentistry of New Jersey
on behalf of itself and all Defendants named in their official capacities
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Service on these parties was accomplished by means of hand delivery.

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