

IN THE UNITED STATES DISTRICT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

JANE ROE,)
)
 Plaintiff,)
)
 v.) Case No. 05-04333-CV-C-DW
)
 LARRY CRAWFORD, et al.,)
)
 Defendants.)

ORDER

Before the Court is Plaintiff Jane Roe’s¹ Motion for Class Certification and Suggestions in Support (Docs. 18 and 19). Plaintiff moves the Court to certify this action as a class action pursuant to the provisions of FED. R. CIV. P. 23(a) and 23 (b)(2) and to designate her as the representative of a class of all persons similarly situated. For the following reasons, Plaintiff’s Motion is GRANTED.

I. Factual Background

This civil rights action challenges as unconstitutional Defendants’ denial of access to medical care to Plaintiff Jane Roe, a prisoner at the Women’s Eastern Reception, Diagnostic and Correctional Center (“WERDCC”) and its policy denying all pregnant inmates access to non-therapeutic abortion services.

Plaintiff, an inmate at WERDCC, seeks access to a local medical facility to obtain medical services to terminate her pregnancy. Pursuant to a Department of Corrections (“DOC”) Policy prohibiting temporary release and transport of inmates for non-therapeutic abortions,

¹The name is a pseudonym.

refused to release and transport Plaintiff for the procedure. Plaintiff, in turn, challenged the DOC policy as unconstitutional and sought a Court Order to obtain medical services to terminate her pregnancy. Plaintiff now moves to certify and act as the named representative of the following class:

All pregnant women who are seeking or may in the future seek non-therapeutic abortions and who are in the custody of Defendants at the time Plaintiff Roe filed her Verified Complaint in this case or who will be placed in the custody of Defendants in the future and may while in the custody of Defendants seek a non-therapeutic abortion.

II. Legal Standard

In considering a motion for class certification, the Court's inquiry is limited to determining whether the proposed class satisfies the requirements of Rule 23. Eisen v. Carlisle & Jacqueline, 417 U.S. 156, 178 (1974). Courts read Rule 23(a) liberally in the context of civil rights suits. Ahrens v. Thomas, 570 F.2d 286, 288 (8th Cir. 1978) (citations omitted).

Rule 23 dictates that in ruling on class certification, a court must first determine if: "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." FED. R. CIV. P. 23(a).

One of the requirements of Rule 23(b) must also be present before a class may be certified. If the 23(a) prerequisites are met and "the party opposing the class has acted or refused to act on grounds generally applicable to the class," thereby making appropriate "relief with respect to the class as a whole," the class action may be maintained. FED. R. CIV. P. 23(b)(2).

III. Federal Rule of Civil Procedure 23(a)

A. Numerosity

As noted above, the Court must first inquire as to whether the proposed class is “so numerous that the joinder of all members is impracticable.” FED. R. CIV. P. 23(a)(1). The proposed class is comprised of pregnant inmates seeking non-therapeutic abortions who were incarcerated at the time Plaintiff Roe filed her Complaint as well as all pregnant inmates seeking non-therapeutic abortions who will be incarcerated in DOC institutions in the future. Inmates constantly enter, leave, and reenter the Missouri prison system. Given the fluid nature of the proposed class, the Court finds that joinder of all members of the proposed class is impracticable. Atkins v. Toan, 595 F. Supp. 104, 105 (W.D. Mo. 1984) (joinder of unknown persons in a fluid class is impracticable). See also Tinsley v. Kemp, 750 F. Supp. 1001, 1005 (W.D. Mo. 1990).

Defendant argues that the Court cannot reasonably approximate the number of the class. Rule 23, however, does not mandate a particular threshold number of plaintiffs. Paxton v. United Nat’l Bank, 688 F.2d 552, 559 (8th Cir. 1982). Nor is a plaintiff required to “specify an exact number or prove the identity of each class member.” Morgan v. United Parcel Serv. of Am., Inc., 169 F.R.D. 349, 355 (E.D. Mo. 1996). Plaintiff need only show a reasonable estimate of the number of class members. Id. In that regard, an approximation of the current and future members of the class weighs in favor of certification. Plaintiff points to statistics showing that five to six percent of female prisoners incarcerated nationwide are pregnant when they enter prison. Lawrence A. Greenfeld & Tracy L. Snell, U.S. Department of Justice, Women Offenders, Oct. 3, 2000, at 8. In 2003, 2,365 entered the Missouri prison system. Ingram Decl. ¶ 5. Based on published data cited by Plaintiff, approximately 17 - 24% of pregnant women choose to terminate their pregnancies. P’s Reply, at 9. Indeed, in the short time since this Court

ordered preliminary injunctive relief, three additional DOC inmates have requested access to abortion services. Gianino Decl. ¶¶ 5, 8. Accordingly, the Court finds that the numerosity factor is clearly met.

B. Commonality

The proposed class meets the requirement of the existence of a common question of law or fact. Rule 23(a)(2) is satisfied when the legal question linking the class members is substantially related to the resolution of the litigation. DeBoer v. Mellon Mortgage Co., 64 F.3d 1171, 1174 (8th Cir. 1995) (citations omitted). Plaintiff has raised a question of law common to all members of the class, specifically, whether Defendants' policy of prohibiting temporary release and transport of inmates for non-therapeutic abortions violates the proposed class's Fourteenth and Eighth Amendment rights. Defendant does not challenge that this prong has been met.

C. Typicality

Plaintiff Roe's claims are typical of the class she seeks to represent. Typicality requires that other members of the class have the same or similar grievances as the Plaintiff. Donaldson v. Pillsbury Co., 554 F.2d 825, 830 (8th Cir. 1977).

Defendants have raised no reasons to doubt the typicality of the claims, nor is the Court aware of any. Plaintiff Roe's claim is identical to the claims of other potential class members; she complains of the same policy as that which applies to all potential class members. Plaintiff Roe will apply the same factual proof and legal theories as would be used by the potential class members. Likewise, she seeks identical relief as that of other potential class members.

D. Adequacy of Class Representation

Lastly, Plaintiff Roe will fairly and adequately represent the interests of the class. Rule 23(a)(4) requires that the class representative be “part of the class and ‘possess the same interest and suffer the same injury’ as other class members.” East Texas Motor Freight Sys., Inc., v. Rodriguez, 97 S.Ct. 1891, 1896 (1977) (citations omitted).

As discussed above, the named Plaintiff has interests which are common, if not identical, to those of the potential class members. The Court finds no merit in Defendant’s argument that there is a chance that the case will be prosecuted for the individual interest of the class representative rather than for the general interest of the class.

IV. 23(b)

Having found that the proposed class meets the requirements of 23(a), the Court must next examine whether Rule 23(b)(2) is satisfied. Defendants argue that Plaintiff has failed to meet the requirements of Rule 23(b)(2) as “a class is not needed where declaratory and injunctive relief only are sought and such relief, if entered will benefit all member of a possible class.” D’s Resp. to P’s Motion at 1. In other words, Defendants contend that certification is simply not necessary. This and other courts have specifically rejected this argument:

There is no language in Rule 23(b)(2) . . . that requires the Court to consider the necessity for a class action. Rule 23(b)(2) was specifically designed to allow for the class action mechanism in civil rights cases. Accordingly, the requirements of the rule are given a liberal construction in civil rights suits. If the requirements of Rule 23(a) are met, a district court’s discretion to deny certification on the basis of Rule 23(b)(2) is limited.

Reproductive Health Services v. Webster, 662 F.Supp. 407, 412 (W.D. Mo. 1987) (citations omitted), aff’d in relevant part, 851 F.2d 1071 (8th Cir. 1988) (affirming standing of class plaintiffs), overruled on other grounds, 492 U.S. 490 (1989). See also Tinsley, 750 F. Supp. at 1006 (certifying the class and rejecting the argument that class certification is not necessary,

inasmuch as any relief automatically would, as a practical matter, apply to all potential class members); Hoehle v. Likins, 538 F.2d 229 (8th Cir. 1976) (reversal of a court’s denial of class certification which had relied on a “necessity” theory).

In addition, challenges to prison policies and abortion restrictions are two typical contexts for class certification under Rule 23(b)(2). A class action “is an especially appropriate vehicle for civil rights actions seeking . . . declaratory relief for prison . . . reform.” Coley v. Clinton, 635 F.2d 1364, 1378 (8th Cir. 1990) (citing Moore’s Federal Practice). Likewise, class certification is appropriate in cases challenging restrictions on access to abortion. Florida Women’s Med. Clinic, Inc. v. Smith, 478 F.Supp. 233, 234 (S.D. Fla. 1979) (“This action seeking a declaration as to the constitutionality . . . of the [abortion related] statutes and rules is so clearly appropriate for Rule 23(b)(2) class treatment that extended discussion of this issue is unnecessary”).

V. Conclusion

The requirements under Rule 23(a) have clearly been met. The appropriateness of injunctive and declaratory relief, if any, demonstrates that a class should be certified under Rule 23(b)(2). Plaintiff Roe is designated as the representative of all pregnant women who are seeking or may in the future seek non-therapeutic abortions and who are in the custody of Defendants at the time Plaintiff Roe filed her Verified Complaint in this case or who will be placed in the custody of Defendants in the future and may while in the custody of Defendants seek a non-therapeutic abortion. The class claims are limited to those raised in Plaintiff’s Supplemental Amended Complaint for Declaratory and Injunctive Relief (Doc. 17).

Pursuant to Rules 23(b)(2) and 23(c)(2)(A), individual notice to the present and future

class members is not necessary in the circumstances of this case. Having considered the factors outlined in Rules 23(g)(1) and 23(g)(2)(B), the Court finds that Plaintiff's counsel has experience in litigating class action claims and has the ability and resources to devote to this action, pursue the case vigorously, and represent the Class adequately. Accordingly, Plaintiff's counsel of record are appointed to serve as class counsel.

IT IS SO ORDERED

/s/ DEAN WHIPPLE
Dean Whipple
United States District Judge

DATE: November 28, 2005