UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CHRISTOPHER T. SLATTERY, and
THE EVERGREEN ASSOCIATION, INC.,
Plaintiff,

v. **1:20-CV-112 (TJM/TWD)**

ANDREW M. CUOMO, in his official capacity as the Governor of the State of New York; ROBERTA REARDON, in her official capacity as the Commissioner of the Labor Department of the State of New York; and LETITIA JAMES, in her official capacity as the Attorney General of the State of New York,

Defendants.

Thomas J. McAvoy,
Sr. U.S. District Judge

DECISION & ORDER

Before the Court is Defendants' motion to dismiss Plaintiffs' Complaint. See dkt. # 22. Plaintiffs seek declaratory and injunctive relief related to a New York State law aimed at regulating employment decisions based on an employees reproductive health decisions. The parties have briefed the issues and the Court will decided the matter without oral argument.

I. BACKGROUND

This case involves a statute enacted by the State of New York, New York Labor Law § 203-e ("Section 203-e") that aims at regulating employment decisions that take into

account employees' use of reproductive health services. Plaintiffs Christopher T. Slattery and The Evergreen Association, Inc. ("Evergreen"), contend that the legislation violates their rights as religious employers who seek to promote a pro-life message by educating women about reproductive health-care choices and providing them pregnancy related services as an alternative to abortion.

Christopher Slattery is President and co-founder of Evergreen. Complaint ("Complt."), dkt. # 1, at ¶ 1. Evergreen does business as Expectant Mother Care and EMC FrontLine Pregnancy Centers. Id. Evergreen operates "crisis pregnancy centers" throughout New York City. Id. at ¶ 2. Those centers have "the morally and religiously motivated mission of saving children from abortion and providing alternatives to abortion." Id. Those alternatives include providing "support for mothers who decide against abortion or adoption." Id.

Slattery, a "sincere practitioner of the Catholic religion," alleges that Catholicism "forbids performing, aiding, assisting or condoning abortion or infanticide under any circumstances and condemns these acts as intrinsic evils and 'abominable crimes.'" Id. at ¶ 4. As part of his sincere beliefs, Slattery "has established and enforces" an employment policy at Evergreen that provides that "persons who wish to be hired or remain employed by Evergreen must not obtain, assist in obtaining, or condone abortion, and must not be involved in sexual relationships outside of marriage (such as cohabitation)." Id. at ¶ 5. The Catholic religion considers sexual relationships outside of marriage to be "an intrinsic evil in violation of the Sixth Commandment." Id. Because of this belief, "Evergreen . . . expects its employees, regardless of their sexual orientation, to observe sexual abstinence outside of marriage." Id. Plaintiffs therefore "hire only employees, interns or volunteers . .

. who adhere to Plaintiffs' mission and policy of opposition to abortion and sexual relationships outside of marriage, which typically involve the use of contraception that can have abortifacient effects." Id. at ¶ 6.

Plaintiffs allege that they "profess and promote the moral and religious belief that all human life is equally valuable and deserving of protection, from fertilization until natural death." Id. at ¶ 30. They "believe that every abortion claims an innocent life." Id. They likewise believe that sexual relationships, including "cohabitation" outside of marriage, are immoral and contribute to "what they oppose as the intrinsic evil of abortion." Id. at ¶ 31. The "pregnancy care centers" they operate "exist to serve women considering abortion, along with their unborn children" by "provid[ing] the compassion, concern, and support necessary to enable women to carry their unborn children to term." Id. at ¶ 32. Plaintiffs seek to serve "primarily poor, low-income and working pregnant women in distressed conditions, many of whom are considering abortions." Id. at ¶ 33. Plaintiffs offer these women "counseling, education, ultrasounds and information" during the "decision-making process in an untimely pregnancy." Id. Plaintiffs contend that they offer counseling "from a life-affirming, abstinence-promoting perspective only." Id.

Because Plaintiffs believe that abortion creates more problems for women than it solves and that "the purpose of medical care is to heal and maintain the health of the individual and that abortion does neither for the woman or the baby," they do not "recommend, provide, or refer for abortions, contraceptives, birth control, or abortifacient drugs or devices." Id. at ¶¶ 35-37.

To achieve these aims, Plaintiffs only hire and maintain the employment of "personnel who agree with, adhere to, and effectively convey Evergreen's mission and

position regarding 'reproductive health decisions' including but not limited to decisions related to abortion and sexual relationships outside of marriage and related use of potentially abortifacient contraception." Id. at ¶ 37. They expect employees "to abide and agree with their positions" on these issues "in both their work and private life." Id. at ¶ 38. Evergreen asks job candidates if they are "pro-choice or pro-life," and does not consider employing pro-choice candidates. Id. at ¶ 39. Evergreen makes these positions clear in advertising from jobs "and specifically states that it is seeking only pro-life candidates." Id. at ¶ 40. Evergreen includes this information in relation to positions like "nurses, counselors, technicians, interns and volunteers." Id. Plaintiffs will not hire persons and will discipline current employees "who refuse to act in accordance with Plaintiffs' position on abortion and sexual relations outside of marriage and Evergreen's corresponding religiously and morally motivated employment policy." Id. at ¶ 41.

Plaintiffs' complaint here is with a particular piece of legislation passed by New York that purported to address employment discrimination. Id. at ¶ 42. Before 2019, Plaintiffs contend, New York law prohibited discrimination based on: "age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status." Id. at ¶ 43 (citing N.Y. Executive Law, Article 15, § 296(a)). New York protected pregnant people from discrimination by including "[p]regnancy-related conditions" as part of the statute's definition of "disability." Id. at ¶ 44 (citing N.Y. Executive Law, Article 15, § 292(21-e, 21-f). Section 296 of the Executive law "makes it illegal, among other things, to make hiring or firing decisions, or compensation decisions, on the basis of one of the delineated protected classes." Id. at ¶ 45.

New York added to the list of categories offered protection against employment discrimination in early 2019. Id. at ¶ 46. New York enacted Section 203-e as part of a series of three bills that addressed abortion rights. Id. at ¶ 47. The first two of the bills, Plaintiffs allege, permits abortion "until the birth of the child if the abortion is deemed necessary to protect" the health of the pregnant woman. Id. The second bill "requires insurers to provide no-cost coverage for contraceptives" in health plans. Id.

Rather than amending the New York Human Rights Law, where other anti-discrimination provisions are located, Section 203-e amends New York's Labor Law. Id. at ¶ 48. The Senate version of the bill stated as its purpose "to 'prohibit employers from discriminating against employees based on the employee's or dependent's reproductive health decisions, and to provide remedies for such violations.'" Id. at ¶ 49. The statute "prohibits discrimination or any retaliatory action by an employer against an employee on the basis of the employee's or his or her dependent's reproductive health decision making, including, but not limited to, a decision to use or access a particular drug, device or medical service." Id. at ¶ 50. The statute also prohibits an employer from requiring an employee "to sign a waiver or other document which purports to deny an employee the right to make their own reproductive health care decisions, including use of a particular drug, device, or medical service." Id. at ¶ 51. The statute allegedly fails to define "reproductive health decision making" or "employee." Id. at ¶ 52. Plaintiffs contend that "employee" might "include Evergreen's interns or volunteers." Id. Another portion of the statute requires that an employee that provides an employee handbook "'include in the handbook notice of employee rights and remedies'" under the law. Id. at ¶ 53 (quoting Section 203-E(3)).

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.