

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

MICHAEL MAXWELL, JERRY
HENDERSON, & JOHN CALHOUN,

Plaintiffs,

Case No. 2002-647 CB-S

MICHAEL HALEY, Commissioner of
the Alabama Department of
Corrections; and
GRANTT CULLIVER, Warden of
Holman Correctional Facility,

Defendants.

PLAINTIFFS' MOTION TO STAY LITIGATION PENDING COMPLETION

Because Defendants are planning significant renovations to the ventilation system at Holman Correctional Facility, Plaintiffs respectfully request that the Court stay the case until June 30, 2003, to provide sufficient time for completion of these proposed changes and an analysis of their effect during the summer heat. As grounds, Plaintiffs state as follows:

1. Defendants have informed Plaintiffs' counsel and the Court on numerous occasions of their intent to make significant changes to the ventilation system at Holman Correctional Facility. Evid. 1 Brownstein Affidavit at ¶¶ 2-3;

Defendants' Motion to Dismiss Request for a Preliminary Injunction at ¶ 8

Exhibits that Commissioner Haley has retained consulting engineers to redesign

the following are verbatim from the Affidavit attached to Defendants' Motion for Dismissal of Plaintiffs' Complaint at 12 (same)

2. On October 31, 2002, Greg Loveless, Deputy Commissioner of the Alabama Department of Corrections ("ADC"), informed Plaintiff's counsel that

weeks before a company will be chosen to do the renovation. Proposed changes included overhauling the entire system, replacing exhaust fans, and installing supply fans to maintain fan air at an adequate amount of air (5000 cubic feet per minute) to force air into the inmate cells. Id. at ¶ 9.

currently covering the front of inmates' cells and replacing them with screens with larger holes, in an effort to allow greater circulation of air into inmates' cells. Id. at ¶ 9.

adequacy of the supply

5. The true test of any proposed renovations, however, will be their effect on the conditions at the prison. The party will be able to sufficiently assess the success of any renovations in alleviating Plaintiffs' substantial risk of serious harm.

Forecfully supporting a court's discretion to grant a stay of proceedings, the Supreme Court in *Landis v. North American Co.*, 299 U.S. 248

(1936), determined that:

the stay of proceedings is incidental to the power inherent in every court

even balance.

id. at 254; see also *Neison v. Grooms*, 507 F.2d 76, 78 (5th Cir. 1974) (stay upheld,

ing Landis), *Carthage Offshore Fishing Ass. v. Daley*, 55 F. Supp. 2d 1336-1342

(M.D. Fla. 1999) (stay of special master proceedings granted pending settlement

negotiations); *Hadden v. Standard Supply and Hardware Co.*, 1997 WL 40329, at *1

(M.D. Fla. 1997) (stay granted pending settlement negotiations)

motion. Proceeding at this point in the litigation, on limited judicial

and party resources. Because the temperature has now dropped, the lawsuit

harm due to excessively high temperatures until next summer. Defendants'

proposed renovations may eliminate that risk altogether.

Court forced to decide) a case based on circumstances that may dramatically

only their experience under the conditions as they existed last summer.

Similarly, testimony from jail personnel and experts will be more reliable if

individuals can assess the actual effect of any proposed changes under summer conditions.

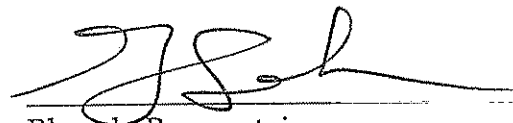
9. Engaging in prolonged discovery and trial at this point in time creates the possibility of another lawsuit after renovations are complete. Judicial and party resources would be better preserved by dealing with all relevant issues at once.

10. There is no harm to Defendants in staying the case. Defendants are ~~not~~ ~~in~~ ~~the~~ ~~best~~ ~~position~~ ~~to~~ ~~litigate~~ ~~the~~ ~~case~~ ~~at~~ ~~this~~ ~~point~~ ~~in~~ ~~time~~. Should Defendants fail to proceed at that point

Based on the foregoing, Plaintiffs respectfully request that the Court

~~stay all activity in the case until June 30, 2003~~

Respectfully submitted,



Rhonda Brownstein
Grace Graham (GRA099)
Southern Poverty Law Center

400 Washington Avenue

Montgomery, AL 36101-2087

Telephone: (334) 956-8200

P.O. Box 2087

Montgomery, AL 36101-2087

Facsimile: (334) 956-8480

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Plaintiffs,

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GRANT CULLIVER, Warden of
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Defendants.

~~RYONDA BROWNSTEIN AFFIDAVIT~~

~~I am an attorney with the Southern Poverty Law Center and~~
~~part an attorney,~~
represent Plaintiffs in the above-styled action.

~~with various Officials at the Alabama Department of Corrections,~~
~~including Commissioner Michael Haley, Deputy Commissioner Greg Loveless,~~
~~and General Counsel Andy Redd.~~

3. All of these officials told me that renovations to the ventilation
system are planned for Holman Correctional Facility
renovation occurred on October 31, 2002, with
Deputy Commissioner Greg Loveless. Mr. Loveless stated that Energy Solutions,
a Division Southern company, conditionally for the overhaul of the
ventilation system. Further, Mr. Loveless estimated that it would take 2-3 weeks---

before a company would be chosen to do the work and a contract would be signed.

which included replacing exhaust fans and installing supply fans.

Accordingly, Mr. Lovelace, the new system would move 5000 cubic units of air per minute through inmates' cells.

The cost of this replacement to the DOC would be \$75,000 to \$80,000.

Mr. Lovelace agreed to provide engineering plans, as well as a signed contract, for Planning Review.

screens that cover the front of inmates' cells. These screens are being replaced with screens with larger holes, in an effort to provide greater circulation of air into inmates' cells.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of November, 2007

Richard Brown

Richard Brownstein

Richard Brownstein

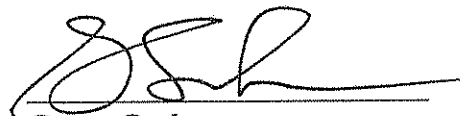
CERTIFICATE OF SERVICE

by first-class mail, postage prepaid, on the 27th of November, 2002, on the

persons whose addresses are listed below.

Jane Lecroy Brannan, Esq.
Andrew Redd, Esq.
Edward Hardison, Esq.
Alabama Department of Corrections
Legal Division
101 South Union Street

Montgomery, AL 36130
(334) 353-3883



Grace Graham
Southern Poverty Law Center
400 Washington Avenue
P.O. Box 2087
Montgomery, AL 36101-2087
Telephone: (334) 956-8200
Facsimile: (334) 956-8480