

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ADAMS & BOYLE, P.C., on behalf of itself and
its patients; WESLEY F. ADAMS, JR., M.D., on
behalf of himself and his patients; and MEMPHIS
CENTER FOR REPRODUCTIVE HEALTH, on
behalf of itself and its patients,

Plaintiffs,

v.

HERBERT H. SLATERY III, Attorney General of
Tennessee, in his official capacity; JOHN
DREYZEHNER, M.D., Commissioner of the
Tennessee Department of Health, in his official
capacity; MICHAEL D. ZANOLLI, M.D.,
President of the Tennessee Board of Medical
Examiners, in his official capacity, GLENN R.
FUNK, District Attorney General of Nashville, in
his official capacity; AMY WEIRICH, District
Attorney General of Shelby County, in her official
capacity; and BARRY P. STAUBUS, District
Attorney General of Sullivan County, in his
official capacity,

Defendants.

CIVIL ACTION

CASE NO. 3:15-cv-00705

JUDGE FRIEDMAN
MAGISTRATE JUDGE
FRENSLEY

PARTIAL JUDGMENT ON CONSENT

Having considered the Parties' Joint Motion to Enter Partial Judgment on Consent and for good cause shown, the Court finds:

That, pursuant to 42 U.S.C. § 1983, Plaintiffs challenged the constitutionality of three Tennessee laws regulating abortion: (1) the "ASTC Requirement," which requires facilities where more than 50 surgical abortions are performed annually to be licensed as ambulatory surgical treatment centers, 2015 Tenn. Pub. Acts Chapter 419 (codified at Tenn. Code Ann. § 68-11-201(3)); (2) the "Admitting-Privileges Requirement," which requires doctors who perform

abortions to have local hospital admitting privileges, 2012 Tenn. Pub. Acts Chapter 1008 (codified at Tenn. Code Ann. § 39-15-202(j)); and (3) what Plaintiffs reference as the “Delay Requirement” and Defendants reference as the “Notice and Waiting Period Requirement,” which requires an abortion patient to attend an in-person meeting with a physician to receive certain information and provides that, subject to certain exceptions, no abortion shall be performed until a waiting period of forty-eight (48) hours has elapsed after that information has been provided, 2015 Tenn. Pub. Acts Chapter 473, § 1(a)-(h) (codified at Tenn. Code Ann. § 39-15-202(a)-(h)); and

That the Supreme Court’s recent decision in *Whole Woman’s Health v. Hellerstedt*, 579 U.S. ___, 136 S. Ct. 2292 (2016), applied the undue-burden standard for evaluating the constitutionality of an abortion regulation to a pair of Texas laws that are similar to Tennessee’s ASTC Requirement and Admitting-Privileges Requirement challenged here, and concluded that both Texas laws are unconstitutional because “neither . . . confers medical benefits sufficient to justify the burdens upon access that each imposes[, that] each places a substantial obstacle in the path of women seeking a previability abortion, [and] each constitutes an undue burden on abortion access.” *Id.* at 2300; and

That in light of the current case law as set forth in *Whole Woman’s Health*, 136 S. Ct. at 2300, as Tennessee’s ASTC Requirement and Admitting-Privileges Requirement are similar to the provisions struck down in *Whole Woman’s Health v. Hellerstedt*, the parties are in agreement that to avoid the expense and utilization of resources on continued litigation regarding Tennessee’s ASTC Requirement and the Admitting-Privileges Requirement, permanent injunctive relief regarding enforcement of: (1) the ASTC Requirement currently in Tenn. Code

Ann. § 68-11-201(3); and (2) the Admitting-Privileges Requirement currently in Tenn. Code Ann. § 39-15-202(j), is appropriate; and

That there is no just reason to delay entry of final judgment as to Plaintiffs' claims for injunctive relief concerning enforcement of: (1) the ASTC Requirement currently in Tenn. Code Ann. § 68-11-201(3); and (2) the Admitting-Privileges Requirement currently in Tenn. Code Ann. § 39-15-202(j).

IT IS THEREFORE ORDERED that the motion is granted and, pursuant to Federal Rules of Civil Procedure 54(b) and 58, this Court hereby enters a final judgment as to Plaintiffs' claims for statewide injunctive relief concerning enforcement of: (1) the ASTC Requirement currently in Tenn. Code Ann. § 68-11-201(3); and (2) the Admitting-Privileges Requirement currently in Tenn. Code Ann. § 39-15-202(j); and

IT IS FURTHER ORDERED that Defendants, their agents, and their successors in office are permanently enjoined from any and all forms of enforcement of the ASTC Requirement, (2015 Tenn. Pub. Acts Chapter 419), currently codified at Tenn. Code Ann. § 68-11-201(3), against any facility where more than fifty (50) surgical abortion procedures are performed annually; and

IT IS FURTHER ORDERED that Defendants, their agents, and their successors in office are permanently enjoined from any and all forms of enforcement of the Admitting-Privileges Requirement, (2012 Tenn. Pub. Acts Chapter 1008), currently codified at Tenn. Code Ann. § 39-15-202(j), against any person or entity performing abortions; and

IT IS FURTHER ORDERED that nothing in this Partial Judgment on Consent shall affect adjudication of Plaintiffs' claims concerning what Plaintiffs reference as the "Delay Requirement" and Defendants reference as the "Notice and Waiting Period Requirement," (set

forth in 2015 Tenn. Pub. Acts Chapter 473, § 1(a)-(h) (currently codified at Tenn. Code Ann. § 39-15-202(a)-(h)); and

IT IS FURTHERED ORDERED that, in the interest of judicial economy, any request for attorney's fees or taxable costs shall be made subsequent to entry of final judgment on Plaintiffs' remaining claims.

Dated: April 14, 2017

s/ Bernard A. Friedman

THE HONORABLE BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE
FOR THE EASTERN DISTRICT OF MICHIGAN
SITTING BY SPECIAL DESIGNATION

SUBMITTED FOR ENTRY:

/s/ Scott P. Tift

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