

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ADAMS & BOYLE, P.C., et al.,

Plaintiffs,

Civil Action No. 3:15-cv-00705

vs.

HON. BERNARD A. FRIEDMAN

HERBERT H. SLATERY, III, et al.,

Defendants.

ORDER MODIFYING PRELIMINARY INJUNCTION

Plaintiffs in this matter assert a constitutional challenge against Tennessee Executive Order 25 (“EO-25”) as applied to procedural abortions. EO-25, which was enacted by Governor William Lee in response to the COVID-19 pandemic, requires “[a]ll healthcare professionals and healthcare facilities” in Tennessee to “postpone surgical and invasive procedures that are elective and non-urgent” between April 9, 2020, at 12:01 a.m. and April 30, 2020, at 12:01 a.m. EO-25 ¶¶ 2, 6. On April 13, plaintiffs filed a motion for injunctive relief. On April 17, the Court granted plaintiffs’ motion and issued a preliminary injunction “immediately enjoin[ing] [defendants] from enforcing EO-25 as applied to procedural abortions.” *Adams & Boyle, P.C. v. Slatery*, No. 3:15-CV-00705, 2020 WL 1905147, at *7 (M.D. Tenn. Apr. 17, 2020). Defendants then filed a notice of appeal.

On April 24, the United States Court of Appeals for the Sixth Circuit affirmed the Court’s order issuing a preliminary injunction but directed the Court to modify the injunction “so that it enjoins the State from enforcing EO-25 against Plaintiffs to the extent they provide procedural abortions to . . . three categories of patients” identified by plaintiffs “in their district court brief seeking injunctive relief.” *Adams & Boyle, P.C. v. Slatery*, No. 20-5408, slip op. at 21-

22 (6th Cir. Apr. 24, 2020). The three categories of patients plaintiffs identify are:

- (1) patients who, in the good faith professional judgment of the provider, will likely lose their ability to obtain an abortion in Tennessee if their procedures are delayed until after April 30, 2020;
- (2) patients who, in the good faith professional judgment of the provider, will likely be forced to undergo a lengthier and more complex abortion procedure, which is only available at two clinics in Nashville and Memphis, if their procedures are delayed until after April 30, 2020¹; [and]
- (3) patients who, in the good faith professional judgment of the provider, will likely be forced to undergo a two-day procedure – which is only available at two clinics in Nashville and Memphis, and which requires at least three separate visits to the provider – if their procedures are delayed until April 30, 2020.

Id. at 21 (quoting Pls.’ Prelim. Inj. Br. at 34 (PageID #: 5783)). The court of appeals stated that “[t]o the extent that Plaintiffs work with patients who can safely delay their procedural abortions past EO-25’s April 30 expiration date, in a manner commensurate with the aforementioned criteria, however, Plaintiffs must comply with EO-25 and delay those particular procedures.” *Id.*

In accordance with the court of appeals’ instructions,

IT IS ORDERED that the Court’s April 17 preliminary injunction is modified as follows: Defendants are hereby immediately enjoined from enforcing EO-25 against plaintiffs to the extent plaintiffs provide procedural abortions to:

- (1) patients who, in the good faith professional judgment of the provider, will likely lose their ability to obtain an abortion in Tennessee if their procedures are delayed until after April 30, 2020;

¹ The court of appeals explained that “to be clear, this second category of patients includes women who, in the good faith professional judgment of the provider, will likely be forced to undergo a D&E [‘dilation and evacuation’] procedure instead of an aspiration procedure if their procedures are delayed until after April 30, 2020.” *Adams & Boyle, P.C. v. Slatery*, No. 20-5408, slip op. at 21 (6th Cir. Apr. 24, 2020).

- (2) patients who, in the good faith professional judgment of the provider, will likely be forced to undergo a lengthier and more complex abortion procedure, which is only available at two clinics in Nashville and Memphis, if their procedures are delayed until after April 30, 2020; and
- (3) patients who, in the good faith professional judgment of the provider, will likely be forced to undergo a two-day procedure – which is only available at two clinics in Nashville and Memphis, and which requires at least three separate visits to the provider – if their procedures are delayed until April 30, 2020.

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE
SITTING BY SPECIAL DESIGNATION

Dated: April 27, 2020
Detroit, Michigan