

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**JACKSON WOMEN'S HEALTH
ORGANIZATION, on behalf of itself and its
patients, et al.**

PLAINTIFFS

VS.

CIVIL ACTION NO.: 3:12CV436-DPJ-FKB

**MARY CURRIER, M.D., M.P.H., in her
official capacity as State Health Officer of
the Mississippi Department of Health, et al.**

DEFENDANTS

**RESPONSE TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendants, sued in their official capacities only, respond to Plaintiffs' Motion for Partial Summary Judgment [Doc. 180] as follows, to-wit:

Plaintiffs have moved for partial summary judgment, asking the Court to convert the preliminary injunction, which bars enforcement of the admitting privileges requirement contained in Miss. Code Ann. § 41-75-1(f), into a permanent injunction in light of the Supreme Court's decision in *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292 (2016) and the Fifth Circuit's prior decision in this case, *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 454 & n.5 (5th Cir. 2014).

Plaintiffs' pending motion applies solely to the admitting privileges requirement of H.B. 1390. The constitutionality *vel non* of the second major component of H.B. 1390, the OB/GYN board eligibility/certification requirement, has not been raised by Plaintiffs in the instant motion. The OB/GYN requirement was permitted to take effect by this Court on July 13, 2012 [Doc. 27]. The Clinic has been and remains in compliance with that requirement, which Defendants will

continue to vigorously defend.

Defendants do not dispute that the doctors performing abortions at the Clinic have not obtained admitting privileges and have been unable to do so. Therefore, the Clinic is in violation of state law. Defendants also do not dispute that, but for the preliminary injunction, they would enforce the admitting privileges requirement against the Clinic just as they would enforce any other applicable statutory or regulatory requirement of state law. Unless the Clinic were to come into compliance with the admitting privileges requirement, the ultimate result of such enforcement would be the revocation of the Clinic's license as a Level I abortion facility.

Although the State disagrees with the analysis and conclusions of the U.S. Supreme Court's opinion in *Hellerstedt*, Defendants cannot identify any meaningful distinction between the Texas admitting privileges law struck down in *Hellerstedt* and the admitting privileges requirement of H.B. 1390. Defendants further acknowledge that the *Hellerstedt* opinion is binding on both this Court and the Fifth Circuit unless and until that decision is modified, overturned, or vacated. Whether *Hellerstedt* will stand the test of time is uncertain, but at this time that opinion is controlling authority. Defendants do not confess, concede, or admit any statements, allegations, assertions, arguments, or representations contained in Plaintiff's motion or memorandum except to the extent explicitly stated herein concerning the admitting privileges requirement only.

In conclusion, Defendants respectfully submit that it is appropriate for the Court to analyze the current evidentiary record in light of *Hellerstedt* and the Fifth Circuit's prior decision in this case, and enter an order consistent with those rulings.

RESPECTFULLY SUBMITTED, this the 2nd day of March, 2017.

MARY CURRIER, M.D., M.P.H., in her official capacity as State Health Officer of the Mississippi Department of Health, and ROBERT SHULER SMITH, District Attorney of Hinds County, Mississippi, DEFENDANTS

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STATE OF MISSISSIPPI**

BY: *s/Paul Barnes*
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CERTIFICATE OF SERVICE

I, Paul Barnes, Special Assistant Attorney General for the State of Mississippi, do hereby certify that on this date I caused the above and foregoing document to be electronically filed with the Clerk of Court using the ECF system, which sent notification of such filing to the following:

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THIS the 2nd day of March, 2017.

s/Paul E. Barnes

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