

**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; *et al.*,

Plaintiffs,

v.

HERBERT H. SLATERY III, Attorney General of
Tennessee, in his official capacity; *et al.*,

Defendants.

CASE NO. 3:15-cv-00705

JUDGE FRIEDMAN

MAGISTRATE JUDGE
FRENSLEY

**PLAINTIFFS' MOTION FOR A TEMPORARY
RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION**

Plaintiffs Adams & Boyle, P.C., Memphis Center for Reproductive Health, and Planned Parenthood of Tennessee and North Mississippi, as well as proposed Plaintiffs Knoxville Center for Reproductive Health and Dr. Kimberly Looney (together, the “Providers”), on behalf of themselves and their patients, physicians, and staff, hereby respectfully move this Court for an emergency temporary restraining order (“TRO”) pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Governor Bill Lee’s April 8, 2020, Executive Order No. 25, “An Order To Reduce The Spread Of Covid-19 By Limiting Nonemergency Health Care Procedures” (“EO-25”), as it applies to procedural abortions in Tennessee.

EO-25 took effect at midnight the day it was issued. **Since then, in light of EO-25’s broad wording and criminal penalties, all procedural abortion care—that is, all abortions after 11 weeks of pregnancy, and all abortions from the start of pregnancy for patients who are ineligible for an early method of abortion involving medications alone—is now halted in the state of Tennessee.** The Providers have already cancelled dozens of abortion appointments

scheduled for last week and this week alone—including for patients who had already traveled to the Providers’ clinics once before, as required by state law, to receive state-mandated counseling at least 48 hours before their abortion (the “Delay Law”). Every day that this ban remains in place, it forces pregnant people in Tennessee to remain pregnant against their wishes. Emergency relief temporarily restraining enforcement of EO-25 as applied to procedural abortions is essential to prevent constitutional injury, serious medical injury, and other forms of irreparable harm, and is proper for the reasons detailed in the attached Memorandum of Law.

The Providers also seek a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, blocking enforcement of EO-25, to protect current and future patients from imminent and irreparable harm to their health, safety, and constitutional right to decide whether and when to bear a child.

The issuance of an emergency temporary restraining order is warranted. The Providers have set forth specific facts in sworn declarations, showing that immediate and irreparable injury will result to the Providers’ patients before Defendants can be heard in opposition: Specifically, that every day the Executive Order remains in place patients in Tennessee are being delayed in obtaining abortion care in the midst of a global pandemic, resulting in some patients either being forced to carry their pregnancy to term against their will or forced to attempt to travel to another state in order to exercise their constitutional right to abortion. The Providers have already contacted counsel for Defendants (and proposed new Defendants) to attempt to resolve this matter without litigation, and have expressly informed counsel that the Providers would be seeking emergency relief if the matter could not otherwise be resolved. These efforts to resolve the matter were unsuccessful.

As detailed more fully in the accompanying Memorandum of Law, the Providers satisfy the remaining requirements for a TRO and subsequent preliminary injunctive relief. Because the application of EO-25 to previability abortions contravenes binding Supreme Court precedent and imposes severe burdens on people seeking abortions in Tennessee, and because forcing pregnant people to remain pregnant against their will *undermines*, rather than advances, EO-25's stated goals of "preserving personal protective equipment for emergency and essential needs and preventing community spread of COVID-19 through nonessential patient-provider interaction" EO-25 at 2, the Providers have established a substantial likelihood of success on the merits of their claim that EO-25 violates the Providers' patients' substantive due process rights under the Fourteenth Amendment to the U.S. Constitution. Further, the Providers have established that enforcement of EO-25 against procedural abortion care will inflict irreparable constitutional, medical, emotional, psychological, and other harms on the Providers' patients for which there is no adequate remedy at law. The balance of equities likewise weighs firmly in the Providers' favor and the relief they have requested will further the public interest.

Finally, the Providers respectfully request this Court exercise its discretion to waive the Federal Rule of Civil Procedure 65(c) security requirement. *Appalachian Reg'l Healthcare, Inc. v. Coventry Health & Life Insurance Co.*, 714 F.3d 424, 431 (6th Cir. 2013).

Accordingly, and for the reasons set forth in the accompanying Memorandum of Law, Plaintiffs respectfully request this Court:

- (1) Issue a TRO enjoining enforcement of EO-25 as applied to procedural abortions; and
- (2) Issue a preliminary injunction enjoining enforcement of the Delay Law's in-person counseling requirement, which requires that the physician provide state-mandated

information to patients in person, at least 48 hours before the abortion, rather than by telephone, videoconference, or other telehealth technologies.

The Providers respectfully request that the Court schedule a hearing on the motion for TRO as soon as possible. The Providers' counsel will make themselves available for a telephonic or video conference hearing at the Court's earliest convenience.

April 13, 2020

Respectfully submitted,

/s/ Thomas Castelli

Thomas H. Castelli (No. 24849)
American Civil Liberties Union
Foundation of Tennessee
P.O. Box 120160
Nashville, TN 37212
Tel: (615) 320-7142
tcastelli@aclu-tn.org

Attorney for Plaintiffs

Scott P. Tift
David W. Garrison
BARRETT JOHNSTON MARTIN & GARRISON,
LLC
Bank of America Plaza
414 Union Street, Suite 900
Nashville, TN 37219
Tel: (615) 244-2202
Fax: (615) 252-3798
stift@barrettjohnson.com
dgarrison@barrettjohnson.com

Thomas C. Jessee
Jessee & Jessee
P.O. Box 997
Johnson City, TN 37605
Tel: (423) 928-7175
jjlaw@jesseeandjessee.com

Michael J. Dell*
Jason M. Moff*

Irene Weintraub*
Timur Tusiray*
Catherine Hoge*

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, NY 10036
Tel: 212-715-9129
Tel: 212-715-9113
mdell@kramerlevin.com
jmoff@kramerlevin.com
iweintraub@kramerlevin.com
ttusiray@kramerlevin.com
choge@kramerlevin.com

*Attorneys for Plaintiffs Adams & Boyle, P.C.,
Memphis Center for Reproductive Health, and
Planned Parenthood of Tennessee and North
Mississippi*

Autumn Katz*
Genevieve Scott**
Michelle Moriarty*
Center for Reproductive Rights
199 Water Street, 22nd Floor
New York, NY 10038
Tel: (917) 637-3600
Fax: (917) 637-3666
akatz@reprights.org
gscott@reprights.org
mmoriarty@reprights.org

*Attorneys for Plaintiffs Adams & Boyle, P.C. and
Memphis Center for Reproductive Health*

Maithreyi Ratakonda*
Planned Parenthood Federation of America
123 William St., 9th Floor
New York, NY 10038
Tel: (212) 261-4405
Fax: (212) 247-6811
mai.ratakonda@ppfa.org

*Attorney for Plaintiffs Planned Parenthood of
Tennessee and North Mississippi and Dr. Kimberly
Looney*

Julia Kaye**
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
Tel: (212) 549-2633

*Attorney for Plaintiff Knoxville Center for
Reproductive Health*

*Admitted *pro hac vice*

**Application for admission *pro hac vice*
forthcoming

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Motion for Temporary Restraining Order and/or Preliminary Injunction* has been served on the following counsel of record through the Electronic Filing System on this 13th day of April, 2020:

Alexander Stuart Rieger
Steven Ashley Hart
Sue A. Sheldon
Lindsay Sisco
Matt Cloutier
Amber Seymour

Tennessee Attorney General's Office
P O Box 20207
Nashville, TN 37202-0207
(615) 741-2408
Fax: (615) 532-5683
alex.rieger@ag.tn.gov
steve.hart@ag.tn.gov
sue.sheldon@ag.tn.gov
lindsay.sisco@ag.tn.gov
matt.cloutier@ag.tn.gov
amber.seymour@ag.tn.gov

/s/ Thomas H. Castelli
Thomas H. Castelli