

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

MEMPHIS CENTER FOR REPRODUCTIVE
HEALTH, et al.,

Plaintiffs,

v.

HERBERT H. SLATERY III, et al.,

Defendants.

CIVIL ACTION

CASE NO. 3:20-cv-00501

JUDGE CAMPBELL

MAGISTRATE JUDGE FRENSLEY

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

This past June, in an effort to effectively eliminate Tennesseans' ability to access abortion, the Tennessee General Assembly passed House Bill 2263/Senate Bill 2196 (the "Act"), which includes two sets of pre-viability abortion bans (the "Cascading Bans" and the "Reason Bans," together, the "Bans"). On July 24, 2020, this Court preliminarily enjoined these Bans from taking effect. Preliminary Injunction Order, Dkt. # 41 ("PI Order"). Today, a split panel of the Sixth Circuit granted Tennessee's request to stay this Court's July 24, 2020 preliminary injunction of the Reason Bans. Order Granting Partial Stay, Dkt. # 63 ("Stay Order"). As a result of the Sixth Circuit's stay, the Reason Bans have gone into effect. Plaintiffs Memphis Center for Reproductive Health d/b/a Choices, Planned Parenthood of Tennessee and North Mississippi, Knoxville Center for Reproductive Health, Femhealth USA, Inc., d/b/a carafem, on behalf of themselves and their patients, physicians, and staff; and Plaintiffs Dr. Kimberly Looney and Dr. Nikki Zite, on behalf of themselves and their patients (together, "Plaintiffs"), hereby respectfully move this Court for an emergency temporary restraining order ("TRO") followed by a

preliminary injunction, to stop enforcement of the Reason Bans as applied to pre-viability abortion. Plaintiffs now must turn away patients if there are indicia that the patients are seeking an abortion for a prohibited reason. Plaintiffs urgently need relief from this Court to ensure that their patients are not forced to continue their pregnancies against their will, or delay obtaining care while they determine whether they have the means to travel out of state for the care they need.

While this Court previously preliminarily enjoined the Reason Bans based on Plaintiffs' claim that they were unconstitutionally vague and lacked valid medical emergency exceptions, Memorandum Opinion, Dkt. # 41 ("PI Order") at 32-40, this Court did not reach Plaintiffs' claim that the Reason Bans unconstitutionally violate their patients' right to pre-viability abortion. Similarly—in granting Defendants' request for a partial stay—the Sixth Circuit only addressed Plaintiffs' vagueness claims and explicitly declined to issue any ruling with respect to Plaintiffs' claims that the Reason Bans violate patients' constitutional right to pre-viability abortion. Stay Order at 5.

The Reason Bans will unquestionably prohibit some of Plaintiffs' patients in Tennessee from obtaining constitutionally protected pre-viability abortion care. PI Order at 40. Indeed, enforcement of the Bans, including the Reason Bans, "immediately impact[s]" patients seeking pre-viability abortion care in Tennessee and the "time-sensitive nature of the procedure adds to that impact." *Id.* This irreparable harm "outweighs any harm to Defendants or to the public interest." *Id.* at 41. In order to preserve Plaintiffs' patients' access to pre-viability abortion pending full adjudication on the merits, Plaintiffs request that the Court act expeditiously and grant this renewed request for immediate injunctive relief pursuant to Rule 65(b) of the Federal

Rules of Civil Procedure based on their claim that the Reason Bans violate their patients' constitutional right to abortion.

The issuance of this second TRO is warranted. As set forth in the accompanying Memorandum of Law in support of this motion, Plaintiffs easily satisfy the requirements for a TRO and subsequent preliminary injunction. Plaintiffs have a strong likelihood of success on their claim that the Reason Bans violate the Fourteenth Amendment by prohibiting some patients from obtaining pre-viability abortion.

Furthermore, Plaintiffs have established that absent a second TRO, Plaintiffs' patients will continue to suffer irreparable harm. So long as the Reason Bans are enforceable, some of Plaintiffs' patients will be denied pre-viability abortion care. The balance of equities weighs heavily in Plaintiffs' favor, and the relief they request here will further the public interest.

Plaintiffs also seek a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, blocking enforcement of the Reason Bans as to pre-viability abortion, to protect current and future patients from imminent and irreparable harm to their health, safety, and constitutional rights to privacy and liberty.

Finally, Plaintiffs respectfully request that this Court, as it did before, exercise its discretion to waive the Federal Rule of Civil Procedure 65(c) security requirement.

As to provision of notice pursuant to Federal Rule of Civil Procedure 65(b)(1)(b), the undersigned counsel certify that upon electronically filing this motion using the Courts' CM/ECF system, Defendants' counsel will receive automatic electronic mail notices containing the filed document.

For the foregoing reasons, and as detailed more fully in their Memorandum of Law, Plaintiffs respectfully request this Court GRANT the Renewed Motion for a Temporary

Restraining Order and/or Preliminary Injunction. A proposed Temporary Restraining Order is attached hereto.

Pursuant to Local Rule 7.01(a)(1), counsel for Plaintiffs has conferred with counsel for Defendants. Defendants oppose the relief sought in this motion.

Dated: November 20, 2020

Respectfully submitted,

/s/Thomas H. Castelli

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**Application for admission *pro hac vice* pending

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2020 a true and correct copy of the foregoing was served on the Tennessee Attorney General's Office, counsel for all Defendants, via the Court's ECF/CM system.

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