

IN THE CHANCERY COURT OF TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT

NICOLE BLACKMON; ALLYSON PHILLIPS;)
KAITLYN DULONG; K. MONICA KELLY;)
KATHRYN ARCHER; REBECCA MILNER;) CASE NO. 23-1196-I
RACHEL FULTON; HEATHER MAUNE, M.D., on)
behalf of herself and her patients; and LAURA)
ANDRESON, D.O., on behalf of herself and her)
patients,) **THREE-JUDGE PANEL**
)
Plaintiffs,) Chancellor Moskal
) Chancellor Culbreath
v.) Judge Donaghy
)
STATE OF TENNESSEE; JONATHAN SKRMETTI,)
in his official capacity as Attorney General of)
Tennessee; TENNESSEE BOARD OF MEDICAL)
EXAMINERS; MELANIE BLAKE, M.D., in her)
official capacity as President of the Tennessee Board)
of Medical Examiners; STEPHEN LOYD, M.D., in)
his official capacity as Vice President of the Tennessee)
Board of Medical Examiners; SAMANTHA)
MCLERRAN, M.D., in her official capacity as)
Secretary of the Tennessee Board of Medical)
Examiners; KEITH G. ANDERSON, M.D., in his)
official capacity as Member of the Tennessee Board of)
Medical Examiners; MICHAEL BITTEL, M.D., in his)
official capacity as Member of the Tennessee Board of)
Medical Examiners; DEBORAH CHRISTIANSEN,)
M.D., in her official capacity as Member of the)
Tennessee Board of Medical Examiners; JENNIFER)
CLAXTON, M.D., in her official capacity as Member)
of the Tennessee Board of Medical Examiners;)
JAMES DIAZ-BARRIGA, M.D., in his official)
capacity as Member of the Tennessee Board of)
Medical Examiners; JOHN W. HALE, M.D., in his)
official capacity as Member of the Tennessee Board of)
Medical Examiners; JOHN J. MCGRAW, M.D., in his)
official capacity as Member of the Tennessee Board of)
Medical Examiners; RANDALL E. PEARSON, M.D.,)
in his official capacity as Member of the Tennessee)
Board of Medical Examiners; TODD TILLMANN,)
M.D., in his official capacity as Member of the)
Tennessee Board of Medical Examiners;)
TENNESSEE BOARD OF OSTEOPATHIC)

EXAMINATION; SHANT H. GARABEDIAN, D.O.,)
in his official capacity as President of the Tennessee)
Board of Osteopathic Examination; OTIS B.)
RICKMAN, D.O., in his official capacity as Vice)
President of the Tennessee Board of Osteopathic)
Examination; PENNY GRACE JUDD, D.O., in her)
official capacity as Secretary of the Tennessee Board)
of Osteopathic Examination; J. MICHAEL WIETING,)
D.O., in his official capacity as Member of the)
Tennessee Board of Osteopathic Examination; JAN)
ZIEREN, D.O., in her official capacity as Member of)
the Tennessee Board of Osteopathic Examination; and)
MICHAEL BERNUI, D.O., in his official capacity as)
Member of the Tennessee Board of Osteopathic)
Examination,)
Defendants.)

PLAINTIFFS’ MOTION FOR TEMPORARY INJUNCTION

Plaintiffs allege that Tennessee’s near-total abortion ban, codified at Tenn. Code Ann. § 39-15-213, is preventing pregnant women across Tennessee from receiving medically necessary abortion care, resulting in an ongoing public health crisis. Ambiguity in the medical necessity exception to the ban has fostered uncertainty among the Tennessee medical community as to when abortion is permitted under the medical necessity exception, while the ban’s harsh penalties have chilled physicians from performing most medically necessary abortions. As applied to pregnant women with critical or emergent physical medical conditions and the physicians who treat them, the abortion ban violates the Tennessee Constitution. A declaratory judgment is necessary to give physicians the clarity they need to provide medically necessary abortion care to their patients without fear of imprisonment and loss of their medical licenses. A temporary injunction is necessary to prevent ongoing constitutional violations.

Plaintiffs demonstrate the need for temporary injunctive relief through their First Amended Complaint, their declarations describing how the performance of medically necessary abortions

has been chilled by ambiguity in Tennessee's current abortion ban and its medical necessity exception, declarations from Lisa Zuckerwise, M.D., Ali Raja, M.D. and Deva Sharma, M.D. explaining, among other things, the wide range of critical and emergent physical medical conditions in which abortion is medically necessary and why the abortion ban is vague and unclear to physicians, and a declaration from counsel submitting historical evidence on the longtime tradition of medically necessary abortions in Tennessee after Tennessee first criminalized abortion care in 1883 and prior to the U.S. Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973).

Under TENN. R. CIV. P. 65.02, TENN. CODE ANN. § 1-3-121, and TENN. CODE ANN. § 20-18-101(a), Plaintiffs request that this Court issue a Temporary Injunction as follows:

- (1) A declaration that the Medical Necessity Exception to Tennessee's abortion ban permits physicians to provide a pregnant person with abortion care when the physician determines, in their best, good faith medical judgment and in consultation with the pregnant person, that the pregnant person has a critical or emergent physical medical condition, including a fetal diagnosis, that poses a risk of death or a risk to their health, including their fertility, without regard to when that risk may become manifest; and
- (2) An order prohibiting Defendants, as well as their agents, servants, employees, attorneys, any person in active concert or participation with Defendants, and successors in office, from enforcing the abortion ban or instituting disciplinary actions related to alleged violations of the abortion ban in a manner violating the above declaration; and
- (3) Further, Plaintiffs ask the Court to retain jurisdiction for the purposes of issuing further appropriate injunctive relief if the Court's order is violated and to award such other and further relief as the Court deems just and proper.

Plaintiffs further intend to make a request under Local Rule 19.04 of the Local Rules for the Chancery Court, Twentieth Judicial District, that the Court hold a hearing at which testimony from the Plaintiffs and experts in support of this motion can be introduced.¹ Counsel for Plaintiffs will consult with counsel for Defendants on a briefing schedule and proposed hearing dates.

Dated: January 8, 2023

Respectfully submitted,

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¹ Local Rule 19.04 states that the Court shall conduct Temporary Injunction hearings upon affidavits or depositions unless a party requests and obtains permission of the Court for the introduction of oral testimony at the time of the hearing.

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing *Plaintiffs' Motion for Temporary Injunction* has been served on the following counsel by means of the Court's electronic filing system on this 8th day of January, 2024.

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Counsel for the Defendants

I further certify that, pursuant to the Court's order, a courtesy copy of the foregoing was served by electronic mail to:

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/s/ Scott P Tift
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