

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

Planned Parenthood of Tennessee and North
Mississippi; *et al.*,

Plaintiffs,

v.

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

Defendants.

CASE NO. 3:20-cv-00740

JUDGE CAMPBELL

**MOTION FOR TEMPORARY RESTRAINING ORDER
AND/OR PRELIMINARY INJUNCTION**

Plaintiffs Planned Parenthood of Tennessee and North Mississippi, Memphis Center for Reproductive Health, Knoxville Center for Reproductive Health, FemHealth USA, Inc., d/b/a carafem, and Dr. Audrey Lance, (together, “Plaintiffs”), on behalf of themselves and their patients, physicians, and staff, hereby respectfully move this Court for an emergency temporary restraining order (“TRO”) and/or a preliminary injunction enjoining enforcement of Tenn. Code Ann. § 39-15-218 (the “Act”). Absent injunctive relief, the Act will take effect on **October 1, 2020**.

The Act compels physicians, upon threat of criminal prosecution and imprisonment, to provide their patients with inaccurate, misleading, and irrelevant information that a medication abortion can be “reversed,” a claim that is wholly unsupported by reliable scientific evidence and that has been rejected by leading medical associations, as set forth in detail in Plaintiffs’ Memorandum of Law and accompanying declarations. The Act requires that Plaintiffs post signs in waiting rooms and patient counseling areas advising them of the supposed “reversibility” of

medication abortions and provide similar information in patient discharge papers. The Act further requires physicians to direct patients to the Tennessee Department of Health website for “information on and assistance with reversing the effects of” a medication abortion. The Act’s reference to “reversal” treatments concerns an unproven treatment that has not been demonstrated to be effective and, moreover, that may not be safe for patients.

Plaintiffs have set forth specific facts in sworn declarations showing the irreparable injury that will result to Plaintiffs and their physicians, staff, and patients if the Act goes into effect. As set forth fully in the accompanying Memorandum of Law and attached sworn declarations, without injunctive relief, physicians will be forced to lie to their patients, undermining their patients’ ability to trust them and forcing physicians to violate their ethical obligations. The Act’s requirements are likely to mislead Plaintiffs’ patients about the “reversibility” of a medication abortion, creating a risk that patients may begin a medication abortion process before they are fully decided under the assumption they can “reverse” the process later. Finally, the Act requires Plaintiffs to direct patients to unproven and potentially dangerous experimental medical treatment. These threats to Plaintiffs’ patients’ health and wellbeing, and to the First and Fourteenth Amendment rights of Plaintiffs, their patients, physicians, and staff, constitute irreparable harm. The threat of the Act’s onerous penalties for noncompliance—which include jail time, licensure penalties, and mandatory civil fines of \$10,000 per day—likewise constitutes irreparable harm.

Plaintiffs therefore seek a temporary restraining order and/or preliminary injunction under Federal Rule of Civil Procedure 65(a) blocking enforcement of the Act to protect Plaintiffs, their staff, physicians and current and future patients from irreparable harm and to safeguard their constitutional rights.

The issuance of a temporary and/or preliminary injunction are warranted because, as set forth in Plaintiffs' Memorandum of Law and accompanying declarations: (1) Plaintiffs are likely to succeed on the merits of their claims that the Act violates the First and Fourteenth Amendments; (2) Plaintiffs will suffer irreparable harm if the Act takes effect; (3) an injunction would cause no harm to others; and (4) the public interest will be served by emergency injunctive relief. *Am. C. L. Union Fund of Mich. v. Livingston Cnty.*, 796 F.3d 636, 642 (6th Cir. 2015).

First, the Act compels Plaintiffs and their physicians to deliver a state-mandated message that undermines their patients' informed consent; that is untruthful, misleading, and not relevant to the decision whether to have an abortion; and that potentially exposes Plaintiffs' patients to harm. It thus violates both Plaintiffs' and their physicians' and staff's First Amendment rights against compelled speech, *see Nat'l Inst. of Fam. & Life Advoc. v. Becerra*, 138 S. Ct. 2361, 2371–74 (2018), and Plaintiffs' patients Fourteenth Amendment right to decide whether to terminate a pregnancy free from undue state interference, *see Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 887 (1992). Moreover, the Act unconstitutionally singles out Plaintiffs and their physicians and patients for differential treatment compared with others similarly situated, in violation of the Fourteenth Amendment's guarantee of equal protection. *See City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 448–50 (1985); *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973).

Second, as discussed above, if the Act takes effect, it will cause irreparable harm by forcing Plaintiffs and their physicians and staff to deliver a government-scripted message that will misinform patients, undermine patients' ability to provide informed consent, erode the trust on which the physician-patient relationship is founded, and potentially expose patients to physical

harm, all in blatant violation of medical ethics. Those who refuse to subject their patients to these harms will face the threat of severe civil and criminal penalties.

Third, Defendants will suffer no harm if the Act is enjoined and the status quo preserved. Defendants stand to lose only the ability to enforce a law that is not currently in effect, does not serve any state interest, and is likely to be held unconstitutional. *See Planned Parenthood Ass'n of Cincinnati, Inc. v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987). The balance of harms thus weighs decisively in Plaintiffs' favor.

Finally, granting an injunction in this case will serve the public interest. As the Sixth Circuit has made clear, “[w]hen a constitutional violation is likely . . . the public interest militates in favor of injunctive relief because it is always in the public interest to prevent violation of a party’s constitutional rights.” *Am. C.L. Union Fund of Mich.*, 796 F.3d at 649 (alteration in original) (internal quotation marks omitted); *see also Am. Freedom Def. Initiative v. Suburban Mobility Auth. for Reg'l Transp.*, 698 F.3d 885, 896 (6th Cir. 2012).

In sum, a temporary and/or preliminary injunction are both warranted and urgently needed. Indeed, the only two other courts to consider similar laws have preliminarily enjoined them. *See Amer. Med. Ass'n v. Stenhjem*, 412 F.Supp.3d 1134, (D.N.D. 2019); Journal Entry of Judgement, *Tulsa Women's Reprod. Clinic v. Hunter*, No. CV-2019-2176 (Okla. Dist. Ct. Oct. 29, 2019) (granting temporary injunction).

Plaintiffs respectfully request that, should this Court grant preliminary injunctive relief, the Court exercise its discretion to waive the Federal Rule of Civil Procedure 65(c) security requirement.

Finally, pursuant to Federal Rule of Civil Procedure 65(b)(1)(B), Plaintiffs will make every effort to ensure that each of the Defendants is served with and given notice of the documents

associated with this motion as soon as possible after filing. Immediately after filing this motion, Plaintiffs' counsel will contact the Defendants at the following addresses to provide copies of the motion and all supporting documents: the Office of the Attorney General and other State defendants at tnattygen@ag.tn.gov; Amy Weirich, District Attorney for Shelby County at Amy.Weirich@scdag.com; Glenn Funk, District Attorney for Davidson County at Glenn.Funk@jis.nashville.org; Charme P. Allen, District Attorney for Knox County at DAG@knoxcounty.org; and Tom P. Thompson, Jr., District Attorney for Wilson County at jllawson@tndagc.org and thswink@tndagc.org.

For the foregoing reasons, and as set forth in the accompanying memorandum of law and declarations, Plaintiffs respectfully request that this Court GRANT this motion for a temporary restraining order and/or preliminary injunction. A proposed temporary restraining order is attached hereto.

Dated: September 1, 2020

Respectfully submitted,
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*Application for admission *pro hac vice* forthcoming

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on September 1, 2020, a true and correct copy of the foregoing has been served by e-mail according to the agreement and instructions from the Attorney General's Office to tnattygen@ag.tn.gov and on the Attorney for Defendants listed below.

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