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PLANNED PARENTHOOD ASSOCIATION
OF NASHVILLE, INC., et al.,

Plaintiffs-Appellants,

v.

NED R. McWHERTER, et al.,

Defendants-Appellees.

RICHARD R. ROSEN, CLERK

Candy Rucker D.C.

NO. 92C-1672

AMENDED FINAL ORDER AND JUDGMENT

Having received evidence and heard argument at trial during the week of October 26, 1992 and having issued a Memorandum Opinion dated November 19, 1992 addressing the constitutionality of Tenn. Code Ann. §§ 39-15-201 - 39-15-202; and

Having received and considered Plaintiffs' Motion to Alter or Amend the Judgment and having issued a Memorandum Decision dated February 5, 1993 addressing the same; and

Having decided not to hear the Motion to Alter or Amend of Doctors Trabue and Neff unless the State Attorney General's office joined the motion; and

Having reconsidered the decision of November 19, 1992 concerning Tenn. Code Ann. § 39-15-202(f) and having issued a Memorandum Decision of March 7, 1993 addressing the constitutionality of this statutory provision;

Having received and denied the parties' Joint Motion to Alter or Amend Order of June 28, 1994, which was filed on December 19, 1994; and

Having received and considered motions for awards of fees and costs filed by Plaintiffs and the court-appointed experts' counsel and having issued a Final Order dated July 6, 1995 determining these fees and costs, and determining the constitutionality of the Parental Consent Bill (previously S.B. 1340, H.B. 1729) that became law effective July 1, 1995;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the opinions of this Court dated November 19, 1992, February 5, 1993, March 7, 1994, and July 6, 1995 are incorporated by reference into this Order;
2. That the parties Joint Motion to Alter or Amend Order of June 28, 1994, filed December 19, 1994, is denied;
3. That this Order disposes of all pending motions and issues in this action and is this Court's final order and judgment in this cause, and that any remaining issues not determined in this Order and the opinions incorporated into this Order by paragraph 1 are denied;
4. That Tenn. Code Ann. § 39-15-201(a) and (b)(2) are not void for vagueness, and that the use of intrauterine devices, morning after pills, and other forms of birth control that prevent implantation are excluded from the scope of Tenn. Code § 39-15-201(a) and (b)(2);
5. That Tenn. Code Ann. § 39-15-201(c)(2) is constitutional provided that, for abortions

performed up to eighteen weeks measured from the first day of a woman's last menstrual period, the term "hospital" is construed to include ambulatory surgical centers; Tenn Code Ann. § 39-15-201(c)(2) is so construed; and the Defendants are enjoined from enforcing Tenn. Code Ann. § 39-15-201(c)(2) in a manner inconsistent with this paragraph and may enforce the statute only in a manner consistent with this paragraph;

6. That Tenn. Code Ann. § 39-15-201(d) is unconstitutional, and the Defendants are enjoined from enforcing it;

7. That Tenn. Code Ann. § 39-15-202(b)(4) is unconstitutional, and the Defendants are enjoined from enforcing it;

8. That Tenn. Code Ann. § 39-15-202(b)(1)-(3), (5)-(6) and (c) are constitutional, provided:

- a. the attending physician must either personally provide the mandated information or personally confirm with the patient that she has been given the information;
- b. to comply with Tenn. Code Ann. § 39-15-202(b)(5), the physician or his agent must provide the patient, upon request, a listing only of those agencies reasonably known to the physician;
- c. the word "or" between subsection (5) and (6) is stricken from the statute; and

Tenn. Code Ann. §§ 39-15-202(b)(1)-(3), (5)-(6) and (c) are so construed; and the Defendants are enjoined from enforcing Tenn. Code Ann. §§ 39-15-202(b) (1)-(3), (5)-(6) and (c) in a manner inconsistent with this paragraph and may enforce the statute only in a manner consistent with this paragraph;

9. That Tenn. Code Ann. § 39-15-202(d) is unconstitutional, and the Defendants are enjoined from enforcing it;

10. That Tenn. Code Ann. § 39-15-202(f) is unconstitutional and is enjoined insofar as it requires a two-day waiting period;

11. That the remainder of Tenn. Code Ann. § 39-15-202(f) is constitutional, provided:

- a. it requires notice, if feasible, to only one parent or guardian, and
- b. the term "health" encompasses not only physical health, but also emotional and psychological factors whether actual or perceived by the attending physician using his best medical judgment;
- c. the attending physician has discretion not only as to whether or not to give notice, but also as to the means of notification, as that discretion is defined in the court's decisions of November 19, 1992 and March 7, 1993, and

Tenn. Code Ann. § 39-15-202(f) is so construed; and the Defendants are enjoined from enforcing Tenn. Code Ann. § 39-15-202(f) in a manner inconsistent with this paragraph and may enforce the statute only in a manner consistent with this paragraph;

12. That Tenn. Code Ann. § 39-15-202(h) is constitutional, provided it affords exceptions to the requirements of Tenn. Code Ann. § 39-15-201 and § 39-15-202 where the life or health of a woman is threatened; Tenn. Code § 39-15-202(h) is so construed; and the Defendants are enjoined from enforcing Tenn. Code Ann. § 39-15-202(h) in a manner inconsistent with this paragraph and may enforce the statute only in a manner consistent with this paragraph;

13. That effective July 1, 1995, a Parental Consent Bill (previously S.B. 1340, H.B. 1729) became law in Tennessee;

14. That on June 15, 1995, plaintiffs filed notice with the Court that they did not "intend to amend their complaint in this action to challenge the newly enacted law" in this proceeding;

15. That irrespective of this notice by plaintiffs, and on the Court's own motion, the Court is of the opinion that it has jurisdiction, and the inherent power and obligation, to declare the newly enacted law constitutional or unconstitutional, for the reasons set forth in the Court's opinion of July 6, 1995, incorporated in this order by paragraph 1;

16. That the Parental Consent Bill (previously S.B.1340, H.B. 1729) is constitutional, for the reasons set forth in the Court's opinion of July 6, 1995, incorporated in this Order by paragraph 1;

17. That the Court incorporates by reference and adopts its Order entered April 28, 1993, awarding Plaintiffs their reasonable attorneys' fees in the amount of \$150,000 and costs of \$31,382.62, fees of \$7,725 for court-appointed expert Anthony Trabue, M.D. and \$5,525 for court-appointed expert Betty Neff, M.D., and attorneys' fees of \$25,000 for the court-appointed experts;

18. That the Plaintiffs are awarded their further reasonable attorneys' fees and costs in the amount of \$41,977.52, and that court-appointed experts Anthony Trabue, M.D. and Betty Neff, M.D. are awarded their further attorneys' fees and costs of \$2,600.

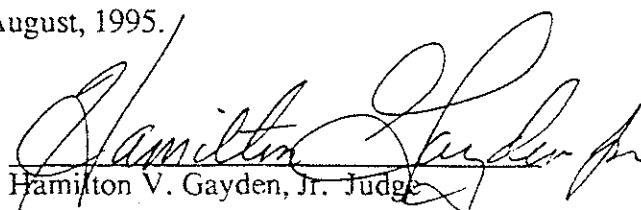
19. That the remaining court costs of this cause to the date of this order are taxed to and between the parties equally;

20. That the Court's award of attorneys' fees to Plaintiffs and to the court-appointed experts shall be assessed against the State of Tennessee;

21. That execution may issue, if necessary, on any fees, awards, and court costs awarded by the Court in this order or in any previous orders;

22. That the time for filing notices of appeal shall run from the date of this Order and Judgment.

Entered this 23rd day of August, 1995.



Hamilton V. Gayden, Jr. Judge

CERTIFICATE OF SERVICE

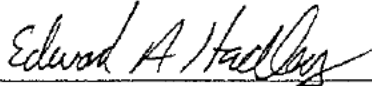
I hereby certify that a true and correct copy of the foregoing has been forwarded to the following people by U.S. Mail on this 23 day of August, 1995.

Irwin Venick


Barry Friedman
Vanderbilt University School of Law


Michael Catalano
Associate Solicitors General


Russell Heldman

Edward A. Hadley