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IN THE FIRST CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

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

Plaintiffs-Appellants,

v.

NED R. McWHERTER, et al.,

Defendants-Appellees.

No. 92C-1672

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 received and declined to consider the Motion to Alter or Amend of Doctors Trabue and Neff, and ruling that the motion is stricken from the record; 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;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. That the opinions of this Court dated November 19, 1992, February 5, 1993, and March 7, 1994 are incorporated by reference into this Order;

2. 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);

3. 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 § 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;

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

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

6. 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 subsections (5) and (6) is stricken from the statute; and

Tenn. Code Ann. §§ 9-15-202 (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;

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

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

9. 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, 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;

10. 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;

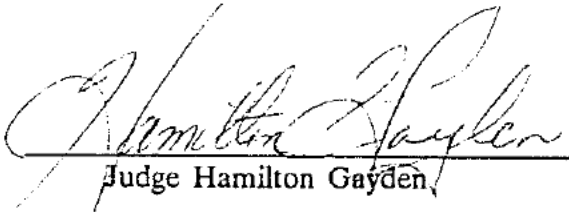
11. That the Court incorporates by reference and adopts its Order entered the 28th day of April, 1993, awarding Plaintiffs their reasonable attorneys' fees in the amount of \$150,000 and costs of \$31,382.62, fees of \$7,725 for court-appointed expert Anthony Trabue, M.D. and \$5,525 for court-appointed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

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

13. 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, with the exception of any remaining question of attorneys' fees and expenses subsequent to the award of the 28th day of April, 1993;

14. That this order and judgment supersedes and replaces that entered by this court on May 27, 1994, and that the time for filing notices of appeal shall run from the date of this order and judgment.

ENTERED this 29th day of June, 1994.



Judge Hamilton Gayden

APPROVED FOR ENTRY:


Irwin Venick, #4112
Counsel for Plaintiffs


Barry Friedman, #14567
Cooperating Attorney
ACLU Foundation of Tennessee
Vanderbilt University
School of Law

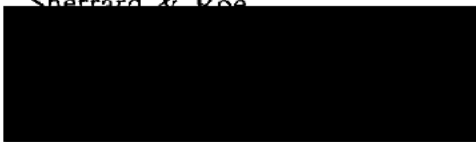
Barbara E. Otten
Roger K. Evans
Dara Klassel
Planned Parenthood Federation
of America, Inc.



Louise Melling
Steven R. Shapiro
American Civil Liberties Union Foundation
Reproductive Freedom Project

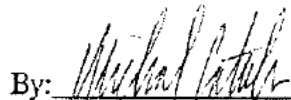


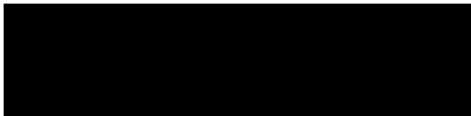

Elizabeth B. Thompson, #14505
Sherrard & Roe



Attorney for Plaintiffs

OFFICE OF THE ATTORNEY GENERAL AND REPORTER

By: 
Michael Catalano, Associate Solicitor
General, #6486



Attorney for Defendants

Certificate of Service

I hereby certify that a true and exact courtesy copy of the foregoing has been sent by United States Mail, postage prepaid, on this 17th day of June, 1994 to:

J. Russell Heldman



Attorneys for Drs. Trabue and Neff

Elizabeth B. Thompson
Elizabeth B. Thompson